83E-E-46 2008-0177

18 Mckinley ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet

Moreover,

> all such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the project site to the public pier at the southerly end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The Owner/Manager shall conspicuously post, and keep posted in each hotelminium units at the Premises, a written notice of the applicable ordinances, rules and regulations.

When DIA first expressed its concerns about existing traffic and fears about proposed traffic generated by this development to the Planning Board in June 2008, Board members assured DIA members and the public that the Board would address those concerns at the time that an application for review and approval of the Inn at Diamond Cove came before it. In particular, at last January's workshop on this application, Board Member David Silk suggested that transportation be a focus of one of the upcoming Board workshops on the application, and Board Chair William Hall recommended that the applicant provide explicit transportation plans for transportation both to and from the Island and within the Island, from the proposed Inn at Diamond Cove to the Diamond Cove ferry terminal.

That time is now. We have reviewed the recent application materials submitted by DCHA and the Inn at Diamond Cove LLC, and find no comprehensive plan regarding transportation to and from the mainland and transportation on the Island for this proposed development As DIA members have explained to the Planning Board and the City Council, despite the clear requirement in existing DEP orders and City approvals that the existing Diamond Cove development's employees, workers, guests and owners not use the southerly pier for access, supplies and materials, vehicles that are the equivalent of airport shuttle buses currently drive from the existing Diamond Cove down narrow Island dirt roads to the southerly pier several times each day. We believe this activity already violates the existing Diamond Cove development's DEP and City permits and approvals, City ordinances and the agreements among environmental organizations and the Diamond Cove development. DIA, the Island Institute and Casco Bay Island Development Association all are on record with letters and comments (attached) requesting compliance with the original development's approvals and agreements

Please do not make this bad situation worse by creating an opportunity for guests, employees, construction workers and maintenance people from the proposed Inn at Diamond Cove to use the southerly pier for general access.

Please require the applicants to submit a detailed, workable and enforceable transportation plan setting forth the exact methods they will use to transport to and from the Inn at Diamond Cove site the following: (1) construction workers and construction materials, equipment and supplies;

PERKINS | THOMPSON
ATTORNEYS & COUNSELORS AT LAW

ESTABLISHED 1871

ONE CANAL PLAZA
PO BOX 426
PORTLAND ME 04112
TEL 207.774.2635
FAX 207.871.8026
www.perkinsthompson.com

January 22, 2010
Hand-Delivery

Portland Planning Board
City of Portland
389 Congress Street
Portland, ME 04101

Re: Inn at Diamond Cove Site Plan Application

Dear Board Members:

This Firm represents Diamond Island Association (DIA), and I am submitting these comments on behalf of DIA regarding the application by Diamond Cove Homeowner's Association (DCHA) and the Inn at Diamond Cove LLC for site plan approval. In advance of the January 26, 2010 workshop scheduled for this application, DIA raises the following concerns.

Throughout the Portland City Council's conditional zone amendment process in 2008, throughout the Department of Environmental Protection's (DEP) review process and throughout the Planning Board review process as part of the conditional rezoning and this site plan application, DIA has expressed its concern about transportation services for this project. Prior DEP approvals and the City's land use approvals for the existing development, along with agreements among the original developer and environmental organizations, make clear that the existing Diamond Cove development was to be a self-contained entity that would use the Diamond Cove pier for access, and would not use the southerly pier on the Island except in a rare emergency.

The City Council reinforced this understanding in its September 2008 "Order Authorizing Amendment to Conditional Zone" for this property. Section 5 of that Order, "Transportation Services," states that the Owner/Manager of the Inn at Diamond Cove Premises is to provide "year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier," or an "equivalent alternative," is to "provide suitable ground transportation from points of disembarkment within the Project to the hotel/miniums" and

> shall not operate motorized ground transportation off the Ft. McKinley's project site and the Owner/Manager, its guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the pier at the south end of the island except in the event of an emergency.

DOUGLAS S. CARR
PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. McGEHEE
MELISSA HANLEY MURPHY
JOHN A. ORALDO
JOHN A. HOBSON
JAMES N. KATSIAFICAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM I. SHEELS
DAVID B. McCONNELL
PAUL D. PIETROPAOLI
HOPE O'NEAL JACOBSEN
RANDY J. CRESWELL
JULIANNE C. RAY
DAWN M. HARMON
CHRISTOPHER M. DARGIE
ANTHONY J. MANIATIS
STEPHANIE A. WILLIAMS
PETER J. McDONELL
KEITH J. DUNLAP
SARA N. MOFFETT
JEFFREY A. COHEN
SHAWN K. LEYDEN

OF COUNSEL
THOMAS SCHULTEN
OWEN W. WELLS
ANDREW A. CADOT
JENNIFER H. PINCUS

From: Donna Schwartz <dlshrs@maine.rr.com>
To: RWK@portlandmaine.gov
Date: 1/22/2010 10:17 AM
Subject: the inn @DC

dear rick,
i, like many other homeowners at diamond cove, have emailed you several times before in the last few years supporting the development at diamond cove.
i hope this is the last time i will have to voice my support and that the inn will finally and without further delay be well on it's way to development!

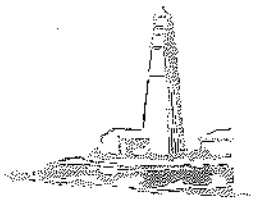
as you may also know the inn received some resistance from a few residence from the southern side of the island - why?
who really knows their motives only there are a handful of people that are just plain negative!
their expressed concern being that there will be too much traffic on the state pier which is bogus - the developers have repeatedly stated that their operation of the inn will have little or no impact on them whatsoever!

secondly, it also received opposition from a few homeowners at diamond cove who banded together w/the few folks on the southern side, collectively known as the "friends of great diamond island", and brought suit against the development.
these few diamond cove homeowners are all pretty much packing it in and leaving diamond cove as they have their homes up for sale.
believe me when i tell you that the remaining residents will not be unhappy for this exodus of these few residents off island! it can only get better!

the revenue generated by the inn will give us the additional financial assistance much needed to enable us to continue to improve and to better maintain the infrastructure of this unique historic property of diamond cove!

thank you.
most sincerely,
donna schwartz
the schoolhouse@diamond cove

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

Dear Mayor Mavodones, Portland City Councilors, & Planning Board,

Casco Bay Island Development Association is an island advocacy organization with a fifty year history of protecting the waters, islands, and communities of Casco Bay. As we start a new year, we thank the Portland City Council and Planning Board for their work over the past year to ensure that the development of the Double Barracks building on Great Diamond Island addressed environmental and community concerns. Many times over the past decade, we have communicated, through both letters and appearances at City Council Meetings, our concern that the original covenants signed by CBIDA, Island Institute, Conservation Law Foundation, and Maine Audubon - the agreements that allowed any development at the historic Diamond Cove site - were upheld throughout the development plan. The concerns we had twenty-five years ago are just as important and relevant – if not more so – today.

In order to preserve the physical environment of the island and the nature of the historic cottage community, the original covenants limited cross-island vehicle traffic between the Diamond Cove and the village/cottage community. Planners realized that the condominium development would greatly increase the density of population on a small island and, by nature of this fact alone, would threaten the environment and the integrity of the 128-year-old cottage community. Indeed, Great Diamond's population has increased 300% in the past twenty-five years, and the residents of the cottage community are outnumbered by the residents of Diamond Cove.

CBIDA has been informed that the original covenants are being questioned again. Some residents of Diamond Cove have proposed that an island-wide vote be conducted to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. While that all sounds very democratic, the reality is that the original covenants and conditions of development were imposed as democratic safeguards to protect the minority from a "simple" vote such as this. Planners recognized that the larger condominium development - without regulations - would eventually overwhelm and destroy the uniqueness of its neighbors. A majority vote of the islanders as a decision-making process is an ill-advised idea.

As Philip Conkling, president of the Island Institute, said in his book, Islands In Time (1999, pages 30-32): "There was (and is) much to be said for renovating the historic structures of the fort; the question was really how much of the rest of the island might have to be sacrificed in the process."
Indeed, the words still ring true today.

CBIDA is committed to the idea that two very different cultures and communities can peacefully co-exist on one small island, if they have respect for each other and for the laws and agreements which protect them. It is our fervent hope for 2010 that Great Diamond Islanders can be good neighbors, interact socially, behave with dignity, and enjoy the incredible beauty and history of their island, without compromising the integrity of the fragile island environment and while preserving a 128-year-old community. CBIDA hopes that the City of Portland will continue to support the original covenants regarding cross-boundary traffic, water transportation, and decision-making. Please contact us if we can be of assistance.

Sincerely,

Robert R. Laughlin
President

The meeting will be held:
Tuesday, January 26, 2010
3:30 p.m.
Council Chambers, 2nd Floor, City Hall

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you wish to submit written comments, address them to Richard Knowland, Senior Planner , Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101, contact by phone at 874-8725 or e-mail at rwk@portlandmaine.gov To access agenda materials on-line, please visit the following web address on or after the Friday preceding the meeting date: http://www.portlandmaine.gov/planning.htm

Jennifer Dorr, Office Manager
Planning and Urban Development
City of Portland
389 Congress St., 4th Floor
Portland ME 04101
(207)874-8719
jmy@portlandmaine.gov
(207)874-8719 jmy@portlandmaine.gov
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From: Donna Schwartz [mailto:dishrs@maine.rr.com]
Sent: Thursday, January 21, 2010 09:08
To: Bobby Spark
Cc: Irene Maas; Tom Maas; Ann Riley; jackie kenly; Schafer Bean; ethel bean; walter vackar; Linda Tracy <ltracydc@aol.com>; Matt Hoffner; Kate Hoffner; Tracy Sommers; Susan Welton; Wendy Taggart; Joe Taggart; Laurie Shea; Harmon Smith; fmbtrafalgar@yahoo.com; David & Cathy clem; Cathy & Ryan Rickarby; Macomber Peter; Deborah Wolak; Kenneth & Judith Wood; musmix@aol.com; jspschultze@hotmail.com; Hannah Burge; Burge, John; Vin & Jane Purpura; Rob Pfaffmann; Lisa Pfaffmann; Michael Murphy; Marie Martin; sue@bocakinsays.net; Santo & Lisa Sampino; Michael & Annette Kane; Richard & Jane Cullen; Derek Devine
Subject: Fwd: From the DCHA Board...

dear friends ...
i know a lot but i can never think of it so please forgive me if i have left someone out who we all know would want to be supportive - also, i do not have everyone's email address - so please do email them and ask for their support!
barbara has already sent a great email! i plan on physically being there and i hope that those of you that are here will try and do so as well!
PALEEZE ... let's flood them w/supportive emails at the email address as noted below <rwk@portlandmaine.gov>
MUCHO GRACIAS!
donna

Begin forwarded message:

From: "Chuck Homler" <chomler@phoenixmanagementcompany.com>
Date: January 15, 2010 2:08:56 PM EST
Subject: From the DCHA Board...

Planning Board Workshop

>>> Jennifer Dorr 01/15 12:31 PM >>>
18 McKinley Court - Great Diamond Island
The Portland Planning Board will hold a workshop to consider a proposal by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island. The renovations consist of 20 condominium/hotel units (with 16 lockout units) to be known as The Inn at Diamond Cove. A building addition of 2,881 sq. ft. is proposed to the Inn building. A swimming pool and cabana is also proposed. The project will be reviewed for compliance with Site Plan and Subdivision Standards of the Land Use Code. Zoning for the site is IR-3 conditional zoning. The workshop is an opportunity for the applicant to present a proposal to the Planning Board in an informal session, which is open to the public. Public comments will be taken at this meeting.

Rick Knowland - Fwd: The Inn @Diamond Cove

From: Donna Schwartz <dlshrs@maine.rr.com>
To: Rick Knowland <rwk@portlandmaine.gov>
Date: 1/21/2010 1:15 PM
Subject: Fwd: The Inn @Diamond Cove
CC: John Burge <jburge@agco.com>, Hannah Burge <hsburge@optonline.net>

dear rick,
this is from neighbor's of mine on diamond cove, john & hannah burge, who gave me permission to forward this onto you.
thank you!
donna schwartz - the schoolhouse @diamond cove

Begin forwarded message:

From: "Burge, John" <jburge@agco.com>
Date: January 21, 2010 9:31:42 AM EST
To: "Donna Schwartz" <dlshrs@maine.rr.com>,
Subject: **RE: The Inn@Diamond cove**

Hannah and I are fully supportive of the Inn. We feel it is important in order to help carry the costs by spreading it across more units. It will increase exposure and help property values by getting additional people interested in owning in Diamond Cove. Unfortunately, we will not be able to attend. Feel free to read this at the meeting, if you think it will help. We are the owners of 9-B if you need our address (sorry, I am not sure about the new number).

JB

John Burge
Director of Sales, Emerging Markets

AUERBACH GRAYSON

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This report has been prepared by our correspondent named above on the date set forth above. This report was not prepared by Auerbach Grayson & Company. The correspondent named above is not an associated person of Auerbach Grayson & Company *and its research analysts are not members of the Financial Industry Regulatory Authority and are not subject to the FINRA Rules on Research Analysts and Research Reports and the attendant restrictions and required disclosures required by that rule.[If the report is to be distributed to more than* major *U. S. Institutional Investors Auerbach Grayson & Company accepts responsibility for the contents of this report as provided for in SEC Releases and SEC staff no-action letters.] All persons receiving this report and wishing to buy or sell any of the securities discussed herein should do so through a representative of Auerbach Grayson & Company. Auerbach Grayson & Company and its affiliates do not own one per cent (1%) or more of any class of equity securities issued by any of the companies discussed in this report. Auerbach Grayson & Company and its affiliates have not received any investment banking compensation from any of the issuers discussed in this report in the past twelve*

From: Hermon Smith <hws11@yahoo.com>
To: RWK@portlandmaine.gov
Date: 1/21/2010 10:17 AM
Subject: double barracks

Gentlemen:

In the thirteen years we have owned at Diamond Cove, we have watched the double barracks deteriorate to the point where it is not only an eyesore, but we believe a danger as well. Renovating this building will eliminate these problems, and we hope will also make DC more appealing as a place where people will want to rent as well as buy property. Despite the opposition by a small but very vocal group, the vast majority of us at DC believe that this project will do nothing but enhance all that is beautiful in our community. Also, because of the limited number of proposed units, we feel that the impact will in no way negatively affect us. Last, but certainly not least, is the additional income to a homeowner's association which solely needs some financial relief.

Donna and Hermon Smith
Unit 9A

Rick Knowland - Support for the Inn at Diamond Cove

From: ROB PFAFFMANN <rob@pfaffmann.com>
To: <rwk@portlandmaine.gov>
Date: 1/21/2010 9:47 AM
Subject: Support for the Inn at Diamond Cove
CC: Lisa <lisa@pfaffmann.com>

To The Planning Commission
City of Portland

My wife and I own an office quarters on the parade ground, and put our blood sweat and own hands into the renovation of unit 6B 144 McKinley Court. We fully support the development of 18 McKinley Court -by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island.

I am an architect and planner and specialize in historic preservation. I am mindful of the impact concerns of my neighbors and I am convinced that there will be no impact on the quality of island life. Putting the building on the tax rolls is a benefit to all citizens of Portland and will provide more visitor to access to this special place.

We value privacy and quiet but we also value neighborly values and the need to bring Diamond Cove more fully into the culture and community of the Casco Bay Islands.

Why we are "from away" we hope to resettle in Portland soon and contribute to the vitality of Portland.

Thank You!

--
Robert S. Pfaffmann, AIA, AICP
Lisa Haabestad
144 McKinley Court
Great Diamond Island

PFAFFMANN + ASSOCIATES
223 4th Avenue
Pittsburgh, PA 15222
412.471.2470 office
412.398.7546 cell
http://www.pfaffmann.com//news.html

Rick Knowland - Suppot of Inn at Diamond Cove

From: <barbarastanley51@aol.com>
To: <rwk@portlandmaine.gov>
Date: 1/17/2010 10:07 AM
Subject: Suppot of Inn at Diamond Cove

Dear Mr. Knowland,

We have been property owners at Diamond Cove since 1997 and until recently, when we sold one, owned three ocean front lots. We lived on the island as part of the year round community for ten years. During this time we saw many changes take place at Diamond Cove. Some of these changes were not favorable to the overall climate, but there were many positive aspects to life at Diamond Cove. By far, the most exciting and positive change that we have seen in some time is the proposed development of the Inn at Diamond Cove.

As great supporters of the wonderful and well designed plan to remove the eye sore of the Double Barracks, while reestablishing what will be a thriving and compatible use of the property, we give our heartfelt support to this endeavor. The economic boost to our island and city is only one of many benefits that its development will bring to the community.

We urge you and your committees to support the proposed plan. It has ben carefully and cautiously planned and we welcome it's development and success.

Sincerely,

Barbara and James Stanley
Lots 26 & 28

Rick Knowland - Inn at Diamond Cove

From: "Richard A. Molyneux" <richardamolyneux@yahoo.com>
To: <rwk@portlandmaine.gov>
Date: 1/15/2010 4:32 PM
Subject: Inn at Diamond Cove

Dear Mr. Knowland,

I am a property owner on Diamond Cove, and will unfortunately not be in town on the 26th for the Planning Board Review of the project involving the renovation of the former double barracks building. However, I want to let you know that I believe that this is a project that is in the best interest of the residents of Diamond Cove, Great Diamond Island, Portland, the State of Maine, and the United States. While this may sound like hyperbole, the fact is this is the biggest building in a historic set of buildings that represents one of the only remaining, intact, Endicott Batteries in the United States. To not approve this renovation will be the death knell for this building and major piece of history, and as each day passes, the deterioration in this structure is pushing it close to the point where it cannot be saved. If you have not physically seen it and its location, its loss would be like missing one of you front teeth as it is prominently located at one end of the parade ground.

The renovation also brings with it much needed economic vitality to Diamond Cove, including its property values, its general store, its restaurant, its marina, Casco Bay Lines, and the City of Portland. The project was approved by a super-majority of Diamond Cove homeowners almost three years ago. The developer, by virtue of having done all of the original historic renovation at Diamond Cove, is perhaps the most qualified developer in the US to do this.

Please help all these benefits become a reality by approving this project without further delay.

Sincerely,

Richard Molyneux
51 Spring Cove Lane
Diamond Cove, ME

From:	Richard McGoldrick <rmcgoldrick@comprop-1.com>
To:	"rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Date:	1/15/2010 1:58 PM
Subject:	Inn at Diamond Cove

Rick,I will be out of town for the Workshop hearing,but wAnted to express my support for this proposal.
We built our home at 16 west shore drive in 1995,after having spent a year in one of the Parade Ground units. Along with the vast majority of our neighbors we voted overwhelmingly to support this development.
I trust the Planning Board will consider approving this proposal on it's merits, as the fullfillment of the original concept of this community.
Thank you, Richard McGoldrick 16 West Shore Dr. Great Diamond Island
Sent from my iPhone Richard McGoldrick 2073474450

Art. 2-4-1

A R C H E T Y P E

January 19, 2010

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Double Barracks (Building 46) – Great Diamond Island water capacity and sprinkler system

Dear Rick:

Please include with our application package for Development Review, on behalf of the Owner, this letter of explanation of and commitment to the provision of adequate water pressure for the full functioning of an automatic sprinkler system in accordance with Section 903.3.1.2 of the International Building Code, and meeting the requirements of NFPA 13R.

As mandated by the building code, the construction of this project as a "Hotel-Condominium" can only be permitted if it includes this sprinkler system, as dictated in IBC §506.1 and Table 503. Therefore, it can be expected by the Planning Board that this requirement will be met, even if not included as a condition on our Site Plan Approval.

As presently designed, there are two potential means for accomplishing the installation of a fully operable sprinkler system. Plan A, which is being pursued by the Owner, is to upgrade the existing water supply to the Diamond Cove Homeowner's Association. As a member of the Association, the Owner is working with the engineering division of the Portland Water District to develop a plan to increase the water pressure in the existing water system by "closing the loop" of the water lines, which currently dead-end downstream from Building 46. This modification, working with the current water capacity within that system, would increase the pressure adequately to supply the sprinkler system.

Plan B, should the negotiations and the design of the Plan A prove difficult to accomplish, is to install within the building a sprinkler pump. These pumps have been a proven means of providing adequate pressure to sprinkler systems in many projects with water pressure issues.

Rest assured, as it is impossible to build this project without a sprinkler system, this issue will be resolved in one of the two ways described above as a matter of course.

Thank you, and please do not hesitate to contact me to discuss this further.

Respectfully,

Kevin Gough
Archetype Architects

40 Union Wharf, Portland, Maine 04101 (207) 772-6022 • Fax (207) 772-4056

6. Once construction has been completed, long-term maintenance of the facilities will be the responsibility of The Inn at Diamond Cove, LLC. The catch basin sumps shall be inspected in April and October of each year. Sediment shall be removed when the depth of sediment reaches one-half the depth of the sump.

   All certifications, inspection forms, and written reports prepared by the inspector(s) shall be filed with the Owner and the City of Portland Planning Department. All written inspection forms and written reports must be filed within one (1) week of the inspection date.

VII. APPENDICES

Appendix A – Seeding Plan
Appendix B – Sample EPA Certification and Inspection Forms

14.6 PROVISIONS FOR MAINTENANCE OF THE EROSION/SEDIMENTATION CONTROL FEATURES

This project is subject to the requirements and conditions of a MeDEP Site Location of Development Permit Amendment through delegated review by the City of Portland. This permit requires the General Contractor to prepare a list and designate by name, address and telephone number all individuals who will be responsible for implementation, inspection and maintenance of all erosion control measures identified within this report and as contained in the Grading and Drainage Plan of the contract drawings. Specific responsibilities of the inspector(s) will include:

1. Execution of the Contractor/Subcontractor Certification contained in Appendix B by any and all parties responsible for erosion control measures on the site.

2. Assuring and certifying the project's construction sequence is in conformance with the specified schedule of this report. A weekly certification stating compliance, any deviations, and corrective measures necessary to comply with the erosion control requirements of this report shall be prepared and signed by the inspector(s).

3. In addition to the weekly certifications, the inspector(s) shall maintain written reports recording construction activities on the site which include:

   - Dates when major grading activities occur in a particular area.
   - Dates when major construction activities cease in a particular area, either temporarily or permanently.
   - Dates when an area is stabilized.

4. Inspection of the project work site on a weekly basis and after each significant rainfall event (0.5 inches or more within any consecutive 24-hour period) during construction until permanent erosion control measures have been properly installed and the site has been stabilized. Inspection of the project work site shall include:

   - Identification of proper erosion control measure installation in accordance with the erosion control detail sheet or as specified in this report.
   - Determine whether each erosion control measure is operating properly. If not, identify damage to the control device and determine remedial measures.
   - Identify areas which appear vulnerable to erosion and determine additional erosion control measures which should be used to improve conditions.
   - Inspect areas of recent seeding to determine percent catch of grass. A minimum catch of 90 percent is required prior to removal of erosion control measures.

   Accumulated silt/sediment should be removed when the depth of sediment reaches 50 percent of the barrier height. Accumulated silt/sediment should be removed from behind silt fencing when the depth of the sediment reaches 6 inches.

5. If inspection of the site indicates a change should be made to the erosion control plan, either to improve effectiveness or correct a site-specific deficiency, the inspector shall immediately implement the corrective measure and notify the Owner of the change.

b. Revegetate disturbed areas as rapidly as possible. All areas shall be permanently stabilized within 7 days of final grading; or temporarily stabilized within 15 days of initial disturbance of soil or within 7 days after completing the rough grading operations.

c. Incorporate planned inlets and drainage systems as early as possible into the construction phase. The swales shall be immediately lined or revegetated as soon as their installation is complete.

If the spring through fall construction schedule is not possible, and construction is planned between November 1 and April 15 of any calendar year, then the General Contractor shall submit a schedule which will satisfy the following criteria:

1. Limit the amount of exposed area to those areas in which work is expected to be undertaken during the proceeding 15 days.

2. During the construction process, all disturbed areas and stockpiles shall be covered with mulch within 24 hours of final grading.

3. Once final grade has been established, the contractor may choose to dormant seed the disturbed areas prior to placement of mulch and placement of fabric netting anchored with staples.

   a. If dormant seeding is used for the site, all disturbed areas shall receive 4" of loam and seed at an application rate of 5 lbs. per 1,000 s.f.

      All areas seeded during the winter months will be inspected in the spring for adequate catch. All areas insufficiently vegetated (less than 75 percent catch) shall be revegetated by replacing loam, seed and mulch.

   b. If dormant seeding is not used for the site, all disturbed areas shall be revegetated in the spring.

4. The area of denuded non-stabilized construction shall be limited to the minimum area practicable. An area shall be considered to be denuded until the subbase gravel is installed in pavement areas, the base slab gravel is installed in building areas, or the areas of future loam and seed have been loamed, seeded, and mulched. The mulch rate shall be twice the rate specified in the seeding plan [115 lbs. per 1,000 s.f. x 2 = 230 lbs. per 1,000 s.f.].

5. The schedule shall be subject to the approval of The Inn at Diamond Cove, LLC.

The Contractor must install any added measures which may be necessary to control erosion/sedimentation from the site dependent upon the actual site and weather conditions.

The Contractor shall note that no area shall remain denuded for a period of over 15 days before it is temporarily stabilized. Temporary stabilization shall be the installation of gravel or mulching.

2. Catch basins will be provided with sediment sumps and inlet hoods for all outlet pipes that are 15" in diameter and smaller.

14.7 TIMING AND SEQUENCE OF EROSION/SEDIMENTATION CONTROL MEASURES

The following construction sequence will be required to ensure the effectiveness of the erosion/sediment control measures is optimized.

1. Install perimeter siltation fence as indicated on the plans.
2. Clear work area using caution not to overexpose the site.
3. Perform earthwork operations to rough grade the site to subgrade.
4. Complete installation of underground utilities.
5. Install subbase and base gravels within the roadway and walkway areas.
6. Install permanent impervious surface treatments as detailed in the plan set.
7. Loam, lime, fertilize, seed and mulch disturbed areas.
8. Remove accumulated sediment from ahead of any silt barriers (as necessary).
9. Once the site is stable and a 80% catch of vegetation has been obtained, remove all temporary erosion control measures.
10. Touch up loam and seed.

Note: All denuded areas not subject to final paving; riprap or gravel shall be revegetated.

It will be necessary to schedule certain portions of the sitework to ensure erosion and sedimentation control measures are sequenced for optimum effectiveness.

The project will be constructed by a General Contractor under The Inn at Diamond Cove, LLC. The Contractor shall submit a schedule for the completion of the work which will satisfy the following criteria:

1. The above construction sequence should generally be completed in the specified order; however, several items may be constructed simultaneously. Work must also be scheduled or phased to limit the extent of the exposed areas as specified below. The intent of this sequence is to provide for erosion control and to have structural measures such as silt fence and construction entrances in place before large areas of land are denuded.
2. The work shall be conducted in sections which will:
   a. Limit the amount of exposed area to those areas in which work is expected to be undertaken during the proceeding 30 days.

2-K-4

- Siltation fence shall be installed along the downgradient edge of the stockpile.
- Soil stockpile sideslopes shall not exceed 2:1.

4. All denuded areas that have been rough graded and are not located within the building or pavement subbase areas shall receive mulch or erosion control mesh fabric within 7 days of initial disturbance of soil.

5. All soils disturbed between November 1 and April 15 will be covered with mulch within 15 days of disturbance, prior to any predicted storm event of the equivalent of ½" of rainfall in a 24-hour period, or prior to any work shutdown lasting more than 35 hours (including weekends and holidays). The mulch rate shall be double the normal rate.

   For work that is conducted between November 1 and April 15 of any calendar year, all denuded areas will be covered with hay mulch, applied at twice the normal application rate and anchored with a fabric netting. The time period for applying mulch shall be limited to 5 days for all areas or immediately in advance of a predicted rainfall event, whichever is less.

6. Silt fencing with minimum stake spacing of 6 feet should be used, unless the fence is supported by wire fence reinforcement of minimum 14 gauge and with a maximum mesh spacing of 6 inches, in which case stakes may be spaced a maximum of 10 feet apart. The bottom of the fence should be properly anchored a minimum of 6" per the plan detail and backfilled. Any silt fence identified by the owner or reviewing agencies as not being properly installed during construction shall be immediately repaired in accordance with the installation details.

7. Sediment traps will be installed at each catch basin inlet to prevent silt from entering the stormdrain system. Installation details are provided in the plan set. The barriers shall be inspected after each rainfall event and repairs made as necessary. Sediment shall be removed and the barrier restored to its original dimensions when the sediment has accumulated to ½ the design depth of the barrier. The barrier shall be removed when the tributary drainage area has been stabilized.

8. Temporary erosion control measures shall be removed once the site has been stabilized to 90% growth or in areas where permanent erosion control measures have been installed.

14.6 PERMANENT EROSION CONTROL MEASURES

The following permanent erosion control measures have been designed as part of the Erosion/Sedimentation Control Plan:

1. All areas disturbed during construction, but not subject to other restoration (paving, riprap, etc.), will be loamed, limed, fertilized, mulched, and seeded. Fabric netting, anchored with staples, shall be placed over the mulch in areas where the finish grade slope is greater than 10 percent. All areas shall receive protection within 7 days. Native topsoil shall be stockpiled and reused for final restoration when it is of sufficient quality.

1. Siltation fence will be installed downgradient of disturbed areas to trap runoff-borne sediments until the site is revegetated. The silt fence shall be installed per the detail provided in the plan set and inspected immediately after each rainfall and at least daily during prolonged rainfall. Repairs shall be made immediately by the Contractor if there are any signs of erosion or sedimentation below the fence line. Proper placement of stakes and fabric into the ground is critical to the fence's effectiveness. If there are signs of undercutting at the center or the edges, or impounding of large volumes of water behind the fence, the barrier shall be replaced with a stone check dam.

2. Hay bales are intended to trap sediments and reduce runoff velocities. Installation details are provided within the plan set.

3. Straw or hay mulch is intended to provide cover for denuded or seeded areas until revegetation is established. Mulch placed on slopes of less than 10 percent shall be anchored by applying water; mulch placed on slopes steeper than 10 percent shall be covered with a fabric netting and anchored with staples in accordance with the manufacturer's recommendations. Slopes steeper than 3:1, which are to be revegetated, shall receive Curlex blankets by American Excelsior. Mulch application rates are provided in Appendix A of this report. Hay mulch shall be available on site at all times in order to provide immediate temporary stabilization when necessary.

4. Stone sediment traps or SiltSacks® as distributed by A. H. Harris Company, Portland, Maine, will be installed at each catch basin inlet to prevent silt from entering the storm drain system. Installation details are provided in the plan set on the erosion control detail sheets.

5. Loam and seed is intended to serve as the primary permanent revegetative measure for all denuded areas not provided with other permanent erosion control measures, such as pavement or impervious area. Application rates are provided in Appendix A of this report.

14.5 TEMPORARY EROSION/SEDIMENTATION CONTROL MEASURES

The following are planned as temporary erosion/sedimentation control measures during construction:

1. Siltation fence shall be installed along the downgradient side of the disturbed areas, and all fill sections. The siltation fence will remain in place and properly maintained until the site is acceptably revegetated.

2. Hay bales will be installed at key locations to supplement the silt fence.

3. Temporary stockpiles of grubbings and common excavation will be protected as follows:

   - Stockpiles shall be stabilized within 7 days by either temporarily seeding the stockpile with a hydroseed method containing an emulsified mulch tackifier or by covering the stockpile with mulch.

4. The utilization of BMP measures (hay bales/silt fence, etc.) to capture sediment prior to discharge from the project area or into adjacent waterways.

14.2 DESCRIPTION OF PROPOSED EARTH MOVEMENT

Within the project area, the following is planned for the site:

1. Sawcutting and removal of concrete pavements;
2. Construction of an addition to the existing structure;
3. Construction of associated walkways, patios, and access drives;
4. Construction of a pool, pool deck, and cabana;
5. Utility service connections for sanitary sewer and water;
6. Installation of several water quality and bioretention filter areas for stormwater treatment; and
7. Stormdrain improvements throughout the project area including underground piping and structures.

These improvements will disturb approximately 0.42 acres of land.

14.3 EXISTING AND PROPOSED DRAINAGE FEATURES

In its existing condition, the project area includes lawn areas, walkways, and undeveloped woods that drain to a depression located southwest of the existing building. The 2' deep depression which has an apparent outlet, stores runoff until it is infiltrated or evaporated.

In the postdevelopment condition, the project area includes the proposed improvements associated with the building addition and site improvements including exterior walkways, pool and deck area, and landscaping. Much of the existing walkway network will be maintained or reconstructed. The proposed development will result in a net increase of approximately 6,534 sq. ft. of impervious area.

Runoff from the proposed developed areas is routed through a series of water quality structures and conveyed in a closed storm drain system to a discharge point northwest of the project site. Once discharged, the treated stormwater flows overland to an existing drainage ditch that drains to Casco Bay. The entire overland drainage route between the project site and Casco Bay is owned by Diamond Cove Homeowners Association. A permanent drainage and maintenance easement will be provided from the Diamond Cove Homeowners Association accepting the stormwater discharge from this site across their land, including the use of the Diamond Cove Homeowners Association storm drain system.

14.4 EROSION/SEDIMENTATION CONTROL DEVICES

The following erosion and sediment control devices will be implemented as part of the site development. These devices shall be installed as indicated on the plans or as described within this report. For further reference, see the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices.

SECTION 14

EROSION SEDIMENT CONTROL REPORT
(BASIC STANDARDS)

14.0 INTRODUCTION

DeLuca-Hoffman Associates, Inc. (DHA) has prepared an Erosion and Sedimentation Control Report for a proposed hotel condominium on Great Diamond Island in Portland, Maine. The development is part of a larger existing development on Great Diamond Island that was originally permitted with MeDEP on December 10, 1986. The proposed hotel condominium was included with the original permit and is referred to as "The Double Barracks" (Building #46). The project will include the renovation of Building #46 and an addition to said building of approximately 2,881 square feet (sq. ft.). In addition to the improvements associated with the building, the development will also include new impervious area for patios, walkways, and a swimming pool and deck totaling 3,653 sq. ft. The project site is not located within a lake watershed most at risk or an urban impaired stream.

This study and section of the permit application presents the erosion and sediment control plan designed for the project. The erosion control plan will be contained in the contract documents for implementation by the Contractor who is awarded the bid for the project by the developer.

14.1 OVERVIEW OF SOIL EROSION AND SEDIMENT CONCERNS

The susceptibility of soils to erosion is indicated on a relative scale of "K" values over a range of 0.02 to 0.69. The higher values are indicative of the most erodible soils. The Cumberland County Soil and Water Conservation District's Medium Intensity Soils Map, contained in the Development Description section of this application, shows the types of soils within the project area. The soil type and respective K value in the 10"-20" depth is identified below:

Soil Type	Hydrologic Soils Group	Description	K Value
Hollis	C/D	Sandy Loam	0.32

Based on a review of the K values, the onsite soils in the area where construction is focused are only slightly susceptible to erosion after the cover material is stripped.

The primary emphases of the erosion/sediment control report for this project are as follows:

1. Development of a careful construction sequence.
2. Rapid vegetation of denuded areas to minimize the period of soil exposure.
3. Rapid stabilization of drainage paths, drainage ditches, channels and fill embankments to avoid rill and gully erosion.

ATT 2-K-1

SECTION 14

EROSION AND SEDIMENTATION CONTROL REPORT
(BASIC STANDARDS)

THE INN AT DIAMOND COVE
GREAT DIAMOND ISLAND, PORTLAND, MAINE

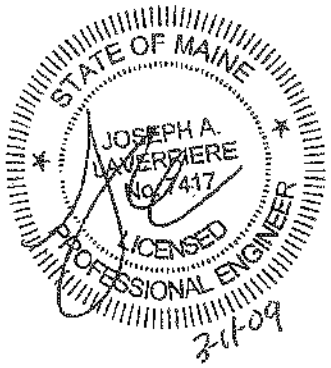
PREPARED FOR:

THE INN AT DIAMOND COVE LLC
C/O BATEMAN PARTNERS LLC
P.O. BOX 3572
PORTLAND, MAINE 04104

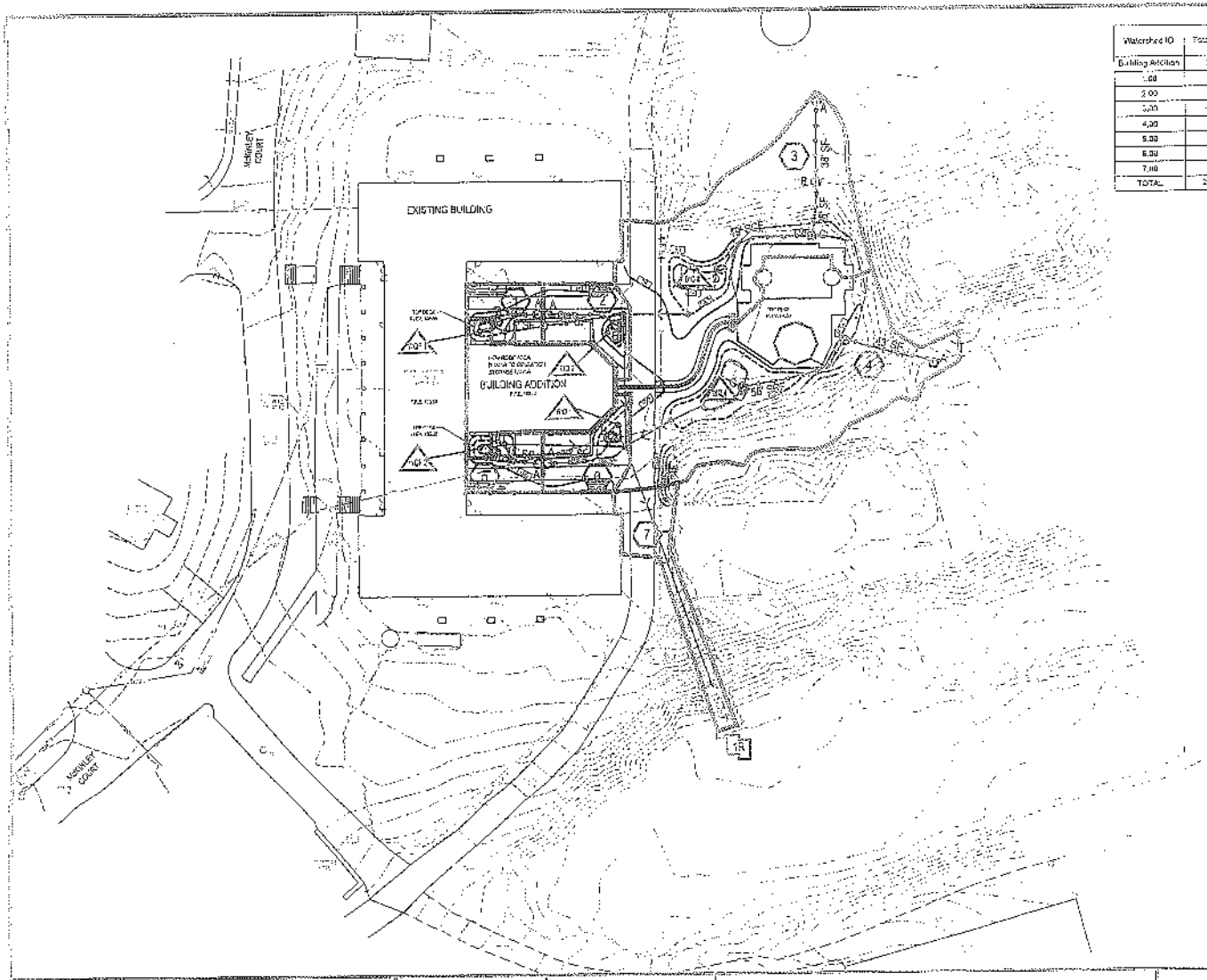
PREPARED BY:

DELUCA-HOFFMAN ASSOCIATES, INC.
778 MAIN STREET, SUITE 8
SOUTH PORTLAND, MAINE 04106
(207) 775-1121

MARCH 2009



RECEIVED JAN 21, 2010



Watershed ID	Total Area	Impervious Area	Landscaped Area	Developed Area	% Treated	Weighted Impervious Area % Treated	Weighted Developed Area % Treated
Building Addition	2,990SF	2,990SF	0SF	2,990SF	100%	30.33%	10.50%
1.00	655SF	655SF	410SF	665SF	100%	4.62%	4.77%
2.00	1,291SF	643SF	748SF	1,291SF	100%	5.50%	7.11%
3.00	7,742SF	1,773SF	2,622SF	4,295SF	100%	13.95%	23.65%
4.00	8,550SF	2,742SF	2,571SF	5,313SF	100%	27.75%	29.25%
5.00	665SF	456SF	410SF	866SF	100%	4.62%	4.77%
6.00	1,291SF	543SF	748SF	1,291SF	100%	3.33%	7.11%
7.00	1,244SF	365SF	875SF	1,244SF	0%	0.00%	0.00%
TOTAL	25,146SF	9,273SF	5,204SF	18,962SF		93.05%	93.15%

WATERSHED LEGEND

- WATERSHED BOUNDARY
- A — B WATERSHED FLOW PATH
- 1 SUBCATCHMENT
- 1R REACH
- SF SHEET FLOW
- SCF SHALLOW CONCENTRATED FLOW
- CF CHANNEL FLOW
- CIC CIRCULAR CHANNEL
- POND

NORTH

GRAPHIC SCALE

(IN FEET)

DeLuca-Hoffman Associates, Inc.
776 MAIN STREET, SUITE 6
SOUTH PORTLAND, ME 04106
207.775.1121
WWW.DELUCAHOFFMAN.COM

DRAWN:	CDD	DATE:	02.13.09
DESIGNED:	SJB	SCALE:	1" = 50'
CHECKED:	SJB	JOB NO.	2769
FILE NAME:	2769-WSHED		

THE INN AT DIAMOND COVE

POSTDEVELOPMENT WATERSHED PLAN

FIGURE W-1

study's findings, it is expected that runoff from the proposed improvements can be discharged with no adverse impacts to downstream properties or water bodies.

12.7 Attachments

Attachment A – Postdevelopment Watershed Map
Attachment B – Water Quality Filter and Bioretention Cell Sizing Calculations
Attachment C – General Standard Calculation (Treatment Percentages)
Attachment D – TR-20 Computations (HydroCAD)
Attachment E – Inspection & Maintenance Manual for Stormwater Management System

Bioretention Cell 2		
	Required	Provided
Storage Volume	70 c.f.	70 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	42 s.f.	45 s.f.

Bioretention Cell 3		
	Required	Provided
Storage Volume	347 c.f.	347 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	208 s.f.	225 s.f.

Bioretention Cell 4		
	Required	Provided
Storage Volume	433 c.f.	486 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	259 s.f.	264 s.f.

Runoff from the rooftop of the proposed building addition will be collected in a roof drain system and piped to storage tanks in the basement of the building. The stored roof water will be used for irrigation of lawn and landscaped areas on site. This system is expected to act as a stormwater treatment measure for several reasons. First, the runoff will be stored in tanks, where pollutant-laden sediment is expected to settle out. Second, the water will be used to irrigate lawn and landscape areas, where it will infiltrate rather than concentrate and flow to Casco Bay. For these reasons, we did not account for any runoff from the proposed roof area in the postdevelopment hydrologic model, and we considered the roof as new impervious area receiving water quality treatment in the treatment percentage calculations presented below. The collection and storage of the roof runoff water for use as irrigation water was discussed with MeDEP and determined to be acceptable for meeting the requirements of Chapters 500/502.

In accordance with the Chapter 500 General Standard, stormwater runoff from at least 95% of the impervious area and 80% of the developed area must be treated for pollutants. The treatment percentages for the proposed development are summarized below. A detailed treatment calculation spreadsheet is provided in Attachment C.

Diamond Cove Postdevelopment				
	Total (sf)	Untreated (sf)	Treated (sf)	% Treated
New or Redeveloped Impervious Area	9,878	369	9,509	96%
New or Redeveloped Developed Area	17,776	1,244	16,532	93%

12.6 Conclusions

The Stormwater Management Plan for this project is designed to provide pollutant treatment for the smaller, more frequent runoff events and provide for the stabilized release of stormwater runoff generated from the larger runoff events. Based on this

2-J-5

Despite the relatively low peak flow rates at the outlet of the proposed storm drain system, the flow velocities in the 10-year and 25-year design storm events are expected to be greater than the permissible velocity for Hollis Soils, which is 2.0 fps according to the Maine Erosion & Sediment Control BMP Manual. To slow the outlet flow velocity and prevent scour, a riprap channel and apron has been designed for the pipe outlet.

12.5 Stormwater Management – Water Quality Measures

As mentioned above, the proposed development activities will result in the net addition of approximately 6,534 sq. ft. of new impervious areas associated with the building addition, walkways, pool, and pool deck. The project has been designed and the study conducted in accordance with the Site Location of Development Act and Stormwater Law (Chapter 500) effective April 2007. Effective treatment of pollutants in stormwater will be provided by filtering the runoff through 2 underdrained soil filters and 4 underdrained bioretention cells located throughout the proposed developed area.

All six filter basins were designed to provide storage volumes equal to 1.0 inches times the subcatchment's impervious area plus 0.4 inch times the subcatchment's non-impervious area, in accordance with the MeDEP Stormwater Law. For all 6 filters, required storage volumes were calculated using all tributary areas. For bioretention cells 3 and 4, the required storage volumes account for runoff from undisturbed areas that are tributary to the filter.

Each proposed filter includes a 15" Nyloplast PVC catch basin at the design depth elevation to provide an emergency outlet. The basin will also provide an outlet for the underdrain, which will be capped within the basin with an orifice plate to ensure each filter draws down in 24-48 hours.

A summary of required and proposed design criteria for each filter is provided below. Stage-storage tables and drawdown calculations for each filter are attached as Attachment B.

Water Quality Filter 1		
	Required	**Provided**
Storage Volume	52 c.f.	54 c.f.
Maximum Storage Depth	18"	6"
Soil Filter Area	31 s.f.	32 s.f.

Water Quality Filter 2		
	Required	**Provided**
Storage Volume	52 c.f.	54 c.f.
Maximum Storage Depth	18"	6"
Soil Filter Area	31 s.f.	32 s.f.

Bioretention Cell 1		
	Required	**Provided**
Storage Volume	70 c.f.	80 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	42 s.f.	42 s.f.

Land use, cover, delineation of watershed subcatchments, hydraulic flow paths and hydrologic soil types were obtained using the following data:

1. Portland, Maine USGS 7.5 minute Quadrangle Maps
2. Medium Intensity Soils Mapping by Cumberland County Soil Report
3. Onsite Topographic Survey with 1-foot contour intervals by DeLuca-Hoffman Associates, Inc.
4. Offsite USGS Topographic Survey with 5-foot contour intervals
5. Field Reconnaissance by DeLuca-Hoffman Associates, Inc.

12.3 Predevelopment Conditions

In its existing condition, the project area includes lawn areas, walkways, and undeveloped woods that drain to a depression located southwest of the existing building. The 2' deep depression which has an apparent outlet, stores runoff until it is infiltrated or evaporated.

12.4 Postdevelopment Conditions

In the postdevelopment condition, the project area includes the proposed improvements associated with the building addition and site improvements including exterior walkways, pool and deck area, and landscaping. Much of the existing walkway network will be maintained or reconstructed. The proposed development will result in a net increase of approximately 6,534 sq. ft. of impervious area.

Runoff from the proposed developed areas is routed through a series of water quality structures and conveyed in a closed storm drain system to a discharge point northwest of the project site. Once discharged, the treated stormwater flows overland to an existing drainage ditch that drains to Casco Bay. The entire overland drainage route between the project site and Casco Bay is owned by Diamond Cove Homeowners Association. A permanent drainage and maintenance easement will be provided from the Diamond Cove Homeowners Association accepting the stormwater discharge from this site across their land, including the use of the Diamond Cove Homeowners Association storm drain system.

These proposed site conditions are represented in the attached postdevelopment hydrologic model. The hydrologic model is based on multiple subcatchments contributing runoff to one point of analysis, located at the outlet of the proposed storm drain system. The postdevelopment watershed map is included in Attachment A.

The following table summarizes the peak flows and velocities at the point of analysis in the postdevelopment condition for each storm analyzed:

Postdevelopment Peak Flows to Point of Analysis 1			
	Storm Event (Type III, 24-Hour)		
Point of Analysis	2-Year	10-Year	25-Year
Peak Flow (cfs)	0.08	0.96	1.53
Peak Velocity (fps)	1.27	2.42	2.77

2-3-3

12.2 Methods of Analysis-Stormwater Quantity

A hydrologic analysis was conducted based upon the methodology contained in the USDA Soil Conservation Service's Technical Releases Nos. 20 and 55 (SCS TR-20 and TR-55). For Cumberland County, Maine, a 24-hour SCS Type III storm distribution was used for the analysis using the following storm frequencies and rainfall amounts for Portland, Maine:

Storm Event	24-Hour Rainfall
2-Year Storm	3.00 Inches
10-Year Storm	4.70 Inches
25-Year Storm	5.50 Inches

Note: The proposed project is not required to provide peak discharge control for the postdevelopment condition because the site discharges to Casco Bay. Because of this, a predevelopment hydrologic analysis was not performed. The postdevelopment model was created to estimate peak discharge rates flowing offsite. This information was used to design a proper means of discharging site runoff that will not cause erosive flow velocities.

The HydroCAD computer program was used in the analysis. This program analyzes the critical points of the project watershed and uses SCS TR-20 methodology for evaluation of the anticipated conditions at these points. Drainage areas are defined with runoff curve numbers, times of concentration, and travel time data based on methods outlined in the USDA TR-55 manual. To assess storage and kinematic effects of runoff, the model uses reservoirs and pipes to imitate actual conditions. Specific hydrologic characteristics including travel times, storage capacity, and the effects of hydraulic head are considered for analysis with this program.

To model any watershed, the drainage system is represented by a system network consisting of three basic components:

- **Subcatchment:** A relatively homogenous area of land that drains into a single reach or pond. Each subcatchment generates a runoff hydrograph.
- **Reach:** A uniform stream, channel, or pipe that conveys water from one point to another reach or pond. The outflow of each reach is determined by a hydrograph routing calculation.
- **Pond:** A pond, swamp, dam, or other impoundment which fills with water from one or more sources and empties in a manner determined by a weir, culvert or other device(s) at its outlet. A pond may empty into a reach or into another pond. The outflow of each pond is also determined by a hydrograph routing calculation.

SECTION 12

STORMWATER MANAGEMENT REPORT (FLOODING & GENERAL STANDARDS)

12.0 Introduction

DeLuca-Hoffman Associates, Inc. (DHAI) has prepared a stormwater management analysis for the proposed Inn at Diamond Cove. The Inn is part of a larger development on Great Diamond Island called Diamond Cove and was originally permitted with MeDEP on December 10, 1986. The work associated with this project will include the renovation and expansion of the existing "Double Barracks" or Building #46. As part of the permit process, the MeDEP Site Location of Development Permit will be revised to reflect these proposed changes to land use and topography.

The site improvements associated with the proposed project include the construction of patios, walkways, pool, pool deck, and access drive. As a result of these proposed site improvements and the building expansion, the total increase in impervious area is approximately 6,534 sq. ft.

DeLuca-Hoffman Associates, Inc. completed this stormwater management analysis to confirm that the planned development would not result in any significant impacts nor create potential degradation of water quality to locations downstream of the development site. The project site is not located within a lake watershed most at risk or an urban impaired stream.

12.1 Existing Site Conditions

The project area includes portions of the existing building, the building addition, proposed walkways, pool and deck area, and disturbed and undisturbed landscaped areas.

The overall site has relatively flat to moderate topography, with the exception of steeper slopes to the east and southeast of the existing building with grades approaching 2:1. Ground topography ranges throughout the entire site from about elevation 84 to 105 (assumed datum).

Soils on the site consist of Hydrologic Soil Group (HSG) C and D soil types as indicated by the Medium Intensity Soil Survey for Cumberland County, by the United States Department of Agriculture, dated August 1974.

According to the Medium Intensity Soil Survey, the development site consists of the following soil:

Soil	Hydrologic Soil Group
Hollis	C/D

Rick Knowland - Inn at Diamond Cove, Great Diamond Island, Me Planninf Board Meeting 1/26/10

From: Michael Kane <madsp1@embarqmail.com>
To: <rwk@portlandmaine.gov>
Date: 1/25/2010 8:11 AM
Subject: Inn at Diamond Cove, Great Diamond Island, Me Planninf Board Meeting 1/26/10

Portland Maine Members of the planning board, we wish to express our support for the renovation of the double barrack as proposed by the Inn at Diamond Cove, LLC. We cannot attend the upcoming due to being located out of state. We have followed this process and we are in strong support.We are the owners of unit 15B (Michael & Annette Kane) home address 1538 Hartsville Trail The Villages, Fl 32162

Rick Knowland - In support of Cove Hotel

From: "mmurphy" <mjmurphymd@comcast.net>
To: "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Date: 1/25/2010 9:33 AM
Subject: In support of Cove Hotel

Dear Mr. Knowland

I am writing as a homeowner at Diamond Cove in strong support of the Inn at Diamond Cove proposal.

I think this project is in line with the original vision of diamond cove and will add new vitality to the community.

Michael Murphy
168 Diamond Ave.

Rick Knowland - The Double Barracks Renovation at Diamond Cove

From: <CuffyK@aol.com>
To: <rwk@portlandmaine.gov>
Date: 1/25/2010 9:44 AM
Subject: The Double Barracks Renovation at Diamond Cove

Please note our support of the above renovation into the Diamond Cove Inn. It will be a welcome renovation into our community and we seek your support on our behalf. We are owners of two units in Barracks Building 17. Thank you.

Sincerely,

Edward and Deborah Wolak

From: Irene Maas <imaas@myfairpoint.net>
To: RWK@portlandmaine.gov
Date: 1/26/2010 1:50 PM
Subject: Inn At Diamond

Dear Planning Board My husband, E. Thomas and myself, Irene M Maas, are full time residence of Diamond Cove. We are obviously tax payers and registered voters for past 7 years. We strong support the continuation of proposed Inn At Diamond Cove. It will help the merchants as well as the entire city of Portland and all of Diamond Cove and Great Diamond island. Thank you. Irene Maas

Nick Knowland - The Inn at Diamond Cove, LLC

From: "Joseph Taggart" <jtaggart@landvest.com>
To: <rwk@portlandmaine.gov>
Date: 1/26/2010 12:08 PM
Subject: The Inn at Diamond Cove, LLC

Mr. Knowland,

Please accept my apologies for getting these comments to you, so close to the 3:30 deadline. I am writing to express our full support for the Inn project.

My wife and our three small children have owned one of the barracks units at Diamond Cove since 2006 (4 Ingalls Road). Although we reside in New Hampshire, for the last two summers, we have lived on Diamond Cove for the months of July and August while I commute to our Portland office location. We hope to do this for many years to come.

We have spent two wonderful summers on the island. The only complaints we have revolve around the undeveloped and dilapidated Double Barracks and Hospital units – and – the high monthly assessment. We would love to see the Double Barracks building restored to its original glory. Obviously, more people mean more traffic, and in a perfect world, we would have Diamond Cove all to ourselves. Nevertheless, we understand that it will become increasingly more difficult for the existing homeowners to bear the entire burden of maintaining the association amenities and grounds. The Inn will help to defray management costs, help support a more robust General Store, encourage use of the restaurant, and bring more people to the island – thereby increasing our property values.

We are in total support of the Inn as planned, and hope that the city will help move this process along in a timely manner.

Sincerely Yours,

Joseph L. Taggart
4 Ingalls Road, Great Diamond Island, ME
13 Church Street
Amherst, NH 03031
603-672-9438

Rick Knowland - Re: Support for the Inn at Diamond Cove

From: ROB PFAFFMANN <rob@pfaffmann.com>
To: Rick Knowland <RWK@portlandmaine.gov>
Date: 1/25/2010 10:23 PM
Subject: Re: Support for the Inn at Diamond Cove

Thanks. I noticed a couple of typos ....please use this version...

On 1/25/10 10:15 AM, "Rick Knowland" <RWK@portlandmaine.gov> wrote:

> Thank you for your email. It will be forwarded to the Planning Board.
>
> >>> ROB PFAFFMANN <rob@pfaffmann.com> Thursday, January 21, 2010 >>>
> To The Planning Commission
> City of Portland
>
> Edited version:
>
> **My wife and I own an officer's quarters on the parade ground, and put our blood sweat and hands into the renovation of unit 6B 144 McKinley Court. We fully support the development of 18 McKinley Court -by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island.**
>
> **I am an architect and planner and specialize in historic preservation. I am mindful of the impact concerns of my neighbors and we are convinced that there will be no significant impact on the quality of island life. Putting the building on the tax rolls is a benefit to all citizens of Portland and will provide visitor access to this special place.**
>
> **We value privacy and quiet, but we also value neighborly values and the need to bring Diamond Cove more fully into the culture and community of the Casco Bay Islands.**
>
> **While we are "from away" we hope to resettle in Portland soon and contribute to the vitality of Portland.**
>
> **Thank You!**

Rick Knowland - (no subject)

From: <Ltracydc@aol.com>
To: <rwk@portlandmaine.gov>
Date: 1/25/2010 5:55 PM
Subject: (no subject)

Planning division,Portland Maine,I am writing as a 13 year resident of diamond cove to offer my encouragement and support for the proposed Inn at Diamond Cove.Linda Tracy,unit15g.Thank you for the time and effort you put into making the decision for this project and the City of Portland.

118 Sunset Ave.
Great Diamond Island
Portland, ME 04112-4804
Jan. 20, 2010

Mr. Richard Knowland, Senior Planner
Planning Division, City Hall, 4th floor
389 Congress St.
Portland, ME 04101

Dear Sir:

A resident / homeowner on Great Diamond Island, I'm writing to you regarding the proposal by the Inn at Diamond Cove LLC to renovate the double barracks building in Diamond Cove.

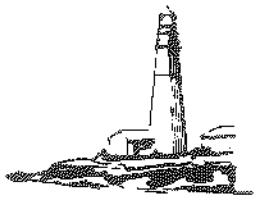
I am in favor of the proposal, primarily because this derelict structure poses a serious threat to the health and safety of islanders and visitors (especially the children). Also, I believe there will be economic benefits for the island (jobs...) and the City (taxes).

I am a member of the Diamond Island Association, but please note... *they do not speak for me*. (I am disturbed: that Board claims to represent us, but has not informed its members nor taken a poll or survey.)

Yours truly,

Elizabeth A. Weber

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

Dear Mayor Mavodones, Portland City Councilors, & Planning Board,

Casco Bay Island Development Association is an island advocacy organization with a fifty year history of protecting the waters, islands, and communities of Casco Bay. As we start a new year, we thank the Portland City Council and Planning Board for their work over the past year to ensure that the development of the Double Barracks building on Great Diamond Island addressed environmental and community concerns. Many times over the past decade, we have communicated, through both letters and appearances at City Council Meetings, our concern that the original covenants signed by CBIDA, Island Institute, Conservation Law Foundation, and Maine Audubon - the agreements that allowed any development at the historic Diamond Cove site - were upheld throughout the development plan. The concerns we had twenty-five years ago are just as important and relevant – if not more so – today.

In order to preserve the physical environment of the island and the nature of the historic cottage community, the original covenants limited cross-island vehicle traffic between the Diamond Cove and the village/cottage community. Planners realized that the condominium development would greatly increase the density of population on a small island and, by nature of this fact alone, would threaten the environment and the integrity of the 128-year-old cottage community. Indeed, Great Diamond's population has increased 300% in the past twenty-five years, and the residents of the cottage community are outnumbered by the residents of Diamond Cove.

CBIDA has been informed that the original covenants are being questioned again. Some residents of Diamond Cove have proposed that an island-wide vote be conducted to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. While that all sounds very democratic, the reality is that the original covenants and conditions of development were imposed as democratic safeguards to protect the minority from a "simple" vote such as this. Planners recognized that the larger condominium development - without regulations - would eventually overwhelm and destroy the uniqueness of its neighbors. A majority vote of the islanders as a decision-making process is an ill-advised idea.

As Philip Conkling, president of the Island Institute, said in his book, Islands In Time (1999, pages 30-32): **"There was (and is) much to be said for renovating the historic structures of the fort; the question was really how much of the rest of the island might have to be sacrificed in the process."**
Indeed, the words still ring true today.

CBIDA is committed to the idea that two very different cultures and communities can peacefully co-exist on one small island, if they have respect for each other and for the laws and agreements which protect them. It is our fervent hope for 2010 that Great Diamond Islanders can be good neighbors, interact socially, behave with dignity, and enjoy the incredible beauty and history of their island, without compromising the integrity of the fragile island environment and while preserving a 128-year-old community. CBIDA hopes that the City of Portland will continue to support the original covenants regarding cross-boundary traffic, water transportation, and decision-making. Please contact us if we can be of assistance.

Sincerely,

Robert R. Laughlin
President

Rick Knowland - Inn at Diamond Cove, Great Diamond Island, Me Planninf Board Meeting 1/26/10

From: Michael Kane <nadsp1@embarqmail.com>
To: <rwk@portlandmaine.gov>
Date: 1/25/2010 8:11 AM
Subject: Inn at Diamond Cove, Great Diamond Island, Me Planninf Board Meeting 1/26/10

Portland Maine Members of the planning board, we wish to express our support for the renovation of the double barrack as proposed by the Inn at Diamond Cove, LLC. We cannot attend the upcoming due to being located out of state. We have followed this process and we are in strong support.We are the owners of unit 15B (Michael & Annette Kane) home address 1538 Hartsville Trail The Villages, Fl 32162

Rick Knowland - In support of Cove Hotel

From: "mmurphy" <mjmurphymd@comcast.net>
To: "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Date: 1/25/2010 9:33 AM
Subject: In support of Cove Hotel

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I think this project is in line with the original vision of diamond cove and will add new vitality to the community.

Michael Murphy
168 Diamond Ave.

Rick Knowland - The Double Barracks Renovation at Diamond Cove

From: <CuffyK@aol.com>
To: <rwk@portlandmaine.gov>
Date: 1/25/2010 9:44 AM
Subject: The Double Barracks Renovation at Diamond Cove

Please note our support of the above renovation into the Diamond Cove Inn. It will be a welcome renovation into our community and we seek your support on our behalf. We are owners of two units in Barracks Building 17. Thank you.

Sincerely,

Edward and Deborah Wolak

From: Irene Maas <imaas@myfairpoint.net>
To: RWK@portlandmaine.gov
Date: 1/26/2010 1:50 PM
Subject: Inn At Diamond

Dear Planning Board My husband, E. Thomas and myself, Irene M Maas, are full time residence of Diamond Cove. We are obviously tax payers and registered voters for past 7 years. We strong support the continuation of proposed Inn At Diamond Cove. It will help the merchants as well as the entire city of Portland and all of Diamond Cove and Great Diamond Island. Thank you. Irene Maas

Rick Knowland - The Inn at Diamond Cove, LLC

From: "Joseph Taggart" <jtaggart@landvest.com>
To: <rwk@portlandmaine.gov>
Date: 1/26/2010 12:08 PM
Subject: The Inn at Diamond Cove, LLC

Mr. Knowland,

Please accept my apologies for getting these comments to you, so close to the 3:30 deadline. I am writing to express our full support for the Inn project.

My wife and our three small children have owned one of the barracks units at Diamond Cove since 2006 (4 Ingalls Road). Although we reside in New Hampshire, for the last two summers, we have lived on Diamond Cove for the months of July and August while I commute to our Portland office location. We hope to do this for many years to come.

We have spent two wonderful summers on the island. The only complaints we have revolve around the undeveloped and dilapidated Double Barracks and Hospital units – and – the high monthly assessment. We would love to see the Double Barracks building restored to its original glory. Obviously, more people mean more traffic, and in a perfect world, we would have Diamond Cove all to ourselves. Nevertheless, we understand that it will become increasingly more difficult for the existing homeowners to bear the entire burden of maintaining the association amenities and grounds. The Inn will help to defray management costs, help support a more robust General Store, encourage use of the restaurant, and bring more people to the island – thereby increasing our property values.

We are in total support of the Inn as planned, and hope that the city will help move this process along in a timely manner.

Sincerely Yours,

Joseph L. Taggart
4 Ingalls Road, Great Diamond Island, ME
13 Church Street
Amherst, NH 03031
603-672-9438

Rick Knowland - Re: Support for the Inn at Diamond Cove

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>
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> To The Planning Commission
> City of Portland
>
> Edited version:
>
> **My wife and I own an officer's quarters on the parade ground, and put our blood sweat and hands into the renovation of unit 6B 144 McKinley Court. We fully support the development of 18 McKinley Court -by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island.**
>
> **I am an architect and planner and specialize in historic preservation. I am mindful of the impact concerns of my neighbors and we are convinced that there will be no significant impact on the quality of island life. Putting the building on the tax rolls is a benefit to all citizens of Portland and will provide visitor access to this special place.**
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> **We value privacy and quiet, but we also value neighborly values and the need to bring Diamond Cove more fully into the culture and community of the Casco Bay Islands.**
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> **While we are "from away" we hope to resettle in Portland soon and contribute to the vitality of Portland.**
>
> **Thank You!**

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From: <l.tracydc@aol.com>
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Date: 1/25/2010 5:55 PM
Subject: (no subject)

Planning division,Portland Maine,I am writing as a 13 year resident of diamond cove to offer my encouragement and support for the proposed Inn at Diamond Cove.Linda Tracy,unit15g.Thank you for the time and effort you put into making the decision for this project and the City of Portland.

Public Hearing Item 1 - B-2 Text Amendments

These zones are business zones and I agree that higher residential density, on-peninsula in B-2b should be allowed. I have concerns that the bedroom mix requirement may impede the development and mixed use that we desire in these areas. I suspect that most of the recently built multi-unit residential properties do not have three- or more-bedroom units because the market in this area isn't demanding them. The vibrant night life of the Old Port and Arts District makes a likely resident in the B2-b more apt to be a small family, married or single, but probably without children. These families are also critical to maintaining the neighborhood feel that we treasure so greatly.

I am also sensitive to the fact that most of the B2 zone abuts, or is in close proximity to, residential zones. On sites abutting a residential zone, I would be more inclined to consider the bedroom mix or increased square footage per unit requirements because it may help provide a buffer between the increased density of the B2-b and the nearby residential zones; it may draw more and larger families to the area to help create that sense of neighborhood we cherish.

I am in favor of the increased setback restrictions set forth in the Treatment of Residential Infill Development in Rear Yards depending on the height of the proposed building.

Regarding the maximum front yard setback for non-residential uses, I feel it is important to preserve the street wall whenever possible. Is the maximum front yard setback often considered not to be appropriate at off-peninsula sites primarily due to parking?

Can text be added that acts as a trigger regarding building additions? If an addition is greater than x% of the original building footprint, then the maximum front yard setback must be maintained. I tend to give priority to the front yard setback, but probably the side yard and side street setback should be included, as well.

Again, I apologize for not attending today's meeting. I will see you in good health at our next meeting.

Sincerely,

Carol A. Morrissette

118 Sunset Ave.
Great Diamond Island
Portland, ME 04112-4804
Jan. 20, 2010

Mr. Richard Knowland, Senior Planner
Planning Division, City Hall, 4th floor
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Yours truly,

Elizabeth A. Weber

CAROL A MORRISSETTE

174 Danforth Street
Portland, Maine 04102

T 207.671.7965
yorkstreetstudio@hotmail.com

26 January 2010

Portland Planning Board
389 Congress Street
Portland, Maine 04101

Dear Chair Hall and Planning Board Members,

Although I am unable to attend today's meeting, I wish to offer the following comments regarding the agenda items.

Workshop Item 1 - Discussion of Digital Planning Board Packets

If we proceed with digital files, I would like the ability to download the files from the internet in order to eliminate the cost of delivering the tote bags and/or CD ROM'S. I have downloaded a few of the backup information pdf files from the City's website to review prior to meetings and am surprised at the lack of visual quality of the pdf's. It almost looks as if the documents were scanned as opposed to being turned into a pdf through Adobe Acrobat. Granted, some files are more readable than others. I am in favor of the use of digital files but I have the advantage of being able to print 11" x 17" sheets should I so desire, and have the use of an extra laptop that I do not mind filling with annotated Planning Board pdf's. I do think the Board should be provided with the latest (or at least as late as the City's) version of Adobe Acrobat so that we can annotate the pdf's without needing to print them ourselves. Again, I have an advantage here in that I already have the software and am willing to help anyone learn to use it if they'd like.

Workshop Item 2 - Vicinity of 18 McKinley Court, Great Diamond Island

I have not been able to visit the site this weekend and recognize how difficult this may be without committing most of a day or engaging in a long and adventurous walk on the island. Please let me know if an organized site visit would be considered helpful.

Issues for the Applicant:

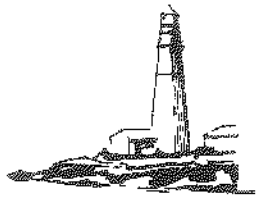
Please confirm that there is no need or suggestion for a grease trap.

What is the height of the ballasted EPDM roof above the lobby?

Workshop Item 3 - Fee in Lieu of Parking

Is the long range plan that the City contributes to the fund only in the beginning so that infrastructure may be realized quickly, with only one or two projects involved? Without an upfront contribution by the City (which may be a hard sell to taxpayers who like parking spaces), this may also be a hard sell to developers. For example, if a relatively small amount is collected as fees for a development, the tenants may not get the benefit of their (hopefully significant) in-neighborhood infrastructure improvements for five or six years. Also, I would like to see some language added that reduces the fees or raises the thresholds of the graduated fees for projects that rehabilitate an existing building. I applaud the fee in-lieu of parking concept and look forward to discussing the details of it and its implementation.

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

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ISLAND INSTITUTE

386 MAIN STREET
POST OFFICE BOX 648
ROCKLAND, MAINE 04841 – 0648
TEL (207) 594-9209 • FAX (207) 594-9314
E-MAIL inquiry@islandinstitute.org
www.islandinstitute.org

November 23, 2009

Dear Mayor Duson, upcoming Mayor Mavadones and the City of Portland Planning Board;

The Island Institute appreciates the hard work of the Portland City Council and Planning Board this past year in helping to ensure that adequate attention was given to the development of the Double Barracks building on Great Diamond Island. The Island Institute was able to work closely with the Conservation Law Foundation and the Friends of Casco Bay to ensure that the developer's site order application contained language that addressed environmental concerns regarding waste water discharge. The Maine Department of Environmental Protection changed some of the language to create a higher level of accountability and oversight to ensure the health of the bay and the island. While stopping the development was never the Island Institute's objective, it was important to ensure that the original covenants signed by the Island Institute, Conservation Law Foundation, Maine Audubon, and Casco Bay Islands Development Association were upheld throughout Great Diamond Island's Phase II development plan.

It has recently been brought to our attention that the original covenants are being threatened again. The Diamond Cove residents are interested in increasing their access to the village side for greater accessibility to Casco Bay Lines. The original covenants addressed cross-island travel and traffic concerns, and it was decided at that time to limit the access, and to keep the gate between the two communities locked except for limited travel. This has worked well to preserve the nature of the village side these past 25 years. When the original redevelopment of Fort McKinley was proposed 25 years ago, the village residents recognized a need to ensure that adequate measures be taken to maintain the integrity of the island and to ensure that environmental impact be taken into consideration.

The Island Institute has been informed that some of the Diamond Cove residents have suggested that an island-wide vote be taken to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. Great Diamond Island's population has increased 300% in the past 25 years, and the village side is now outnumbered by the Diamond Cove side. This vote would negate the purpose of the development restraints, and could create a precedence that would undermine the original covenants put into place to protect the environment and integrity of the island.

The Island Institute would appreciate the continued support from the City of Portland in upholding the original covenants signed by the Island Institute, Maine Audubon, Conservation Law Foundation and the Casco Bay Islands Development Association. The original development plans called for water transportation for the Diamond Cove side to be entirely from Diamond Cove property. Opening the gate will provide increased access and traffic on the village side and would not be in compliance with the original agreements.

Thank you for your continued attention and support.

Sincerely,

Philip Conkling
President

Recycled Paper

Thank you for your attention to this letter.

Sincerely,

John C. Bannon

JCB/lnl
Enclosures

cc: Tony and Judy Savastano (w/encl)

Indeed, DCHA actively *encourages* such violations, as is demonstrated by the following directions, posted on the Cove's website[3], to persons interested in visiting Diamond Cove:

> *If you arrive at the State pier*, the Association shuttle bus will meet you and deliver you and your belongings to your destination at the Cove. The shuttle bus also meets ferries arriving at the Cove, and can deliver routine luggage and groceries, as well as larger items for a fee. When you are ready to depart, shuttle service is also available to deliver you to the appropriate pier for departing boats. Call the number for Security/RAs (see ***DCHA Contacts***) and leave your phone number for a call-back. Be sure to call in advance, as some boats may be crowded and require *2* trips with the *shuttle bus*.

(emphasis added). A person reading those directions would have no reason to suspect that they were limited to using the Diamond Cove Pier, but would be under the impression that DCHA will provide shuttle bus service to the State Pier whenever a visitor chooses to arrive or depart from the Pier.

The Savastanos are not asking the Planning Board to take their word about traffic congestion and road damage caused by DCHA's "common transportation vehicles." I will provide photographs of these circumstances at the workshop.

To my knowledge, DCHA has not submitted, with its application for site plan approval, any transportation plan or other information plan showing how it proposes to ensure that occupants of the Inn at Diamond Cove will (a) use the Diamond Cove pier exclusively for all water transportation to and from the Portland mainland, and (b) refrain entirely from using the road system within the Cottage Community, as is required by the 2008 Amendment. Without such information, the Planning Board should at least deem the site plan application incomplete and table further review of that application until such information is received.

The Savastanos, joined by many other residents of the Cottage Community, urge the Planning Board to proceed with extra care in reviewing the current application to ensure that it does not cause already unworkable traffic problems from deteriorating further.

---

[3] http://www.diamondcove.com/directions.html

On or about March 9, 1989, Diamond Cove Associates and the other signatories amended the agreement by, among other things, deleting the word "shuttle" from the parenthetical, "(shuttle vans)," thereby causing the agreement to refer only to "'taxies' (vans)." DCA entered into that agreement for the purpose of inducing the natural resource organizations to withdraw their objection to a DEP NPDES approval for Phase II of the Project. Thus, DCHA is contractually prohibited from using any vehicle that could be construed as a "shuttle" to transport persons from Diamond Cove to the State Pier, and from the context, only in emergency situations. The terms "taxi" or "van"certainly does not include the vehicles that DCHA principally uses for so-called "common transportation:" namely, two busses, each having a gross vehicle weight of about 9600 pounds, that are capable of transporting 20 passengers plus their accompanying luggage.[2]

So does the Casco Bay Island Development Association, which was a party to another agreement with Diamond Cove Associates dated April 12, 1991. The Association, like the Island Institute, has recently written a letter to the City Council urging that the City protect the integrity of the original covenants made in the 1985 CZA. It is my understanding that the Association has forwarded a copy of that letter to the Planning Board as well.

Q. What happens when the City fails to enforce the conditions of the 1985 CZA?

A. *Severe vehicular congestion at the State Pier, damage to the fragile roads within the Cottage Community, and erosion of the isthmus between the State Pier and the Island.*

Because the City, its boards, and agencies have overlooked the significance of § 8 of the 1985 CZA, dealing with water transportation, DCHA has rapidly increased its fleet of so-called "common transportation vehicles," including the large busses described above, and sends those vehicles several times a day to pick up and discharge Diamond Cove residents and guests who are impermissibly using the State Pier for water transportation to the Cove.

---

[2] The Island Institute feels so strongly about preserving the conditions of the March 2, 1989 Agreement that it has assigned to the Savastanos the Institute's rights to enforce the language of that agreement in *Savastano v. Diamond Cove Homeowners Association,* Civil Action Docket No. RE-09-077 (Superior Court for Cumberland County).

transportation via the State Pier. The Planning Board must be careful to forbid DCHA from allowing the owners and tenants of the hotelminiums to obtain water transportation at the State Pier using DCHA's "common transportation" vehicles.

Q. Does anybody care about the answers to these questions?

A. *Yes.*

Obviously, the Savastanos care. They have been so adversely affected by the travel of DCHA busses over Nancy Lane, just a few feet from their home, that they have filed suit to enforce the restrictions on water and ground transportation contained in the 1985 CZA. *Savastano v. Diamond Cove Homeowners Association,* Civil Action Docket No. RE-09-077 (Superior Court for Cumberland County).

So do the many members of the Diamond Island Association, which has directed its attorney to attempt to preserve the original covenants contained in the 1985 CZA and certain agreements made by Diamond Cove Associates, without which it would have been unable to develop Fort McKinley.

So does the Island Institute. Attached to this correspondence is a letter from the President of the Island Institute to the City Council and the Planning Board, urging you to uphold the covenants in the 1985 CZA and in contracts that Diamond Cove Associates made with several natural resource organizations, including the Island Institute. One of those contracts, dated March 2, 1989, was between Diamond Cove Associates, the Maine Audubon Society, Conservation Law Foundation, and Island Institute. That agreement provides, among other things, the following:

> DCA agrees that no motor vehicles of any kind (automobiles, golf carts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances and "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. ...Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones.

Cove except Buildings 46 and 47 and their ancillary service area remain subject to § 8 of the 1985 CZA.

Moreover, although § 5 of the 2008 Amendment contained an independent regulation of "transportation services" governing the buildings and ancillary service area described above, § 5 of the 2008 amendment version modified § 8 of the 1985 CZA only in the following respects:

> The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from, and between the Portland waterfront and the Diamond Cove pier (or barge landing where appropriate for visitors and/or cargo) ~~via a suitable docking facility on the Premises and~~ on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service ~~is or at any time~~ becomes unavailable, the Owner/Manager shall, ~~at its own expense,~~ provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

(additions are underlined; deletions are ~~struck through~~). The remainder of § 5 of the 2008 amendment prohibits Inn owners, guests, and employees from driving motorized vehicles through the Cottage Community to the State Pier, except "in the event of an emergency."

Q. Why do these questions matter?

A. *Because DCHA cannot allow patrons and unit owners of the Inn at Diamond Cove to use its "common transportation vehicles" to obtain water transportation at the State Pier.*

The 2008 amendment requires the owner/manager of the Inn to "direct" and "advise" its owners and guests that they must comply with § 5 of the 2008 amendment. We anticipate an argument by DCHA that that language does not preclude Inn patrons from using the "common transportation vehicles" maintained by DCHA to reach the State Pier. However, even if that interpretation were correct, as was just demonstrated, DCHA itself cannot use its "common transportation" vehicles to allow its residents to obtain water

> between the Portland waterfront and Diamond Cove via *a suitable docking facility on the Premises* and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, *the Owner shall, at its own expense, provide an equivalent alternative to such service*, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

(emphasis added).[1] Section 9 of the 1985 CZA did allow DCHA to maintain "common transportation vehicles" within Diamond Cove. However, read in conjunction with Section 8, those common transportation vehicles could not be used to facilitate water transportation at any location other than "a suitable docking facility *on the Premises*." Not the State Pier. Ever.

Q: Did the 2004 Amendment to the 1985 CZA Alter § 8 of the 1985 CZA?

A: *No.*

The 2004 amendment to the 1985 CZA amended §§ 9 and 13 only. Section 8 remained unchanged. Hence, as of 2004, DCHA still could not use common transportation vehicles to allow DCHA residents and guests to obtain water transportation via the State Pier. The only docking facility that DCHA residents and guests were authorized to use was "a suitable docking facility *on the Premises*."

Q: Did the 2008 Amendment to the 1985 CZA, Which Authorized Development of the Inn at Diamond Cove, Alter § 8 of the 1985 CZA?

A: *No.*

The 2008 Amendment to the 1985 CZA altered the conditions of the 1985 CZA only with respect to Building 46 (the "Double Barracks"), Building 49 (the "Hospital"), and "the ancillary service area." It applied to no other buildings or land within Diamond Cove. Hence, every portion of Diamond

---

[1] Section 9 of the 1985 CZA did allow DCHA to maintain "common transportation vehicles" within the Diamond Cove. However, read in conjunction with Section 8 of the 1985 CZA, those common transportation vehicles could not be used to transport residents to and from the State Pier.

MURRAY
PLUMB
MURRAY

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January 22, 2010

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

RE: Inn at Diamond Cove Site Plan Application / Concerns of Tony and Judy Savastano

Dear Members of the Board:

This office represents Anthony and Judy Savastano, who own property abutting Nancy Lane and the State Pier parcel on Great Diamond Island. As a general matter, the Savastanos do not oppose the historic preservation of the Double Barracks and the Hospital for a more productive use such as the proposed Inn at Diamond Cove (hereafter the "Inn"). However, the Savastanos are vitally concerned with preventing any increase in the adverse traffic impacts from the Fort McKinley development.

I have structured this letter as a series of questions and answers that shed light on some factors that the Diamond Cove Homeowners' Association (hereafter "DCHA"), the City Council, and the Planning Board have overlooked to this date. Indeed, a provision that precludes DCHA (and in turn, the Inn) from sending motor vehicles to pick up and discharge Diamond Cove residents at the State Pier has been staring us in the face for close to 25 years, but gone unnoticed.

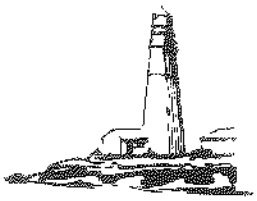
Q: **When can DCHA send motor vehicles to the State Pier to pick up and discharge persons whose destination is Diamond Cove?**

A. *Never.*

This answer may come as a surprise to persons who, for the past 25 years, have focused exclusively on Section 9 of the original "Amendment to Portland City Code, § 14-49 (Zoning Map), Re: Conditional Rezoning of Ft. McKinley" in 1985 (hereafter the "1985 CZA"). However, Section 8 of the 1985 CZA provides as follows:

> 8. Water transportation service. The Owner shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from, and

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

Dear Mayor Mavodones, Portland City Councilors, & Planning Board,

Casco Bay Island Development Association is an island advocacy organization with a fifty year history of protecting the waters, islands, and communities of Casco Bay. As we start a new year, we thank the Portland City Council and Planning Board for their work over the past year to ensure that the development of the Double Barracks building on Great Diamond Island addressed environmental and community concerns. Many times over the past decade, we have communicated, through both letters and appearances at City Council Meetings, our concern that the original covenants signed by CBIDA, Island Institute, Conservation Law Foundation, and Maine Audubon - the agreements that allowed any development at the historic Diamond Cove site - were upheld throughout the development plan. The concerns we had twenty-five years ago are just as important and relevant – if not more so – today.

In order to preserve the physical environment of the island and the nature of the historic cottage community, the original covenants limited cross-island vehicle traffic between the Diamond Cove and the village/cottage community. Planners realized that the condominium development would greatly increase the density of population on a small island and, by nature of this fact alone, would threaten the environment and the integrity of the 128-year-old cottage community. Indeed, Great Diamond's population has increased 300% in the past twenty-five years, and the residents of the cottage community are outnumbered by the residents of Diamond Cove.

CBIDA has been informed that the original covenants are being questioned again. Some residents of Diamond Cove have proposed that an island-wide vote be conducted to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. While that all sounds very democratic, the reality is that the original covenants and conditions of development were imposed as democratic safeguards to protect the minority from a "simple" vote such as this. Planners recognized that the larger condominium development - without regulations - would eventually overwhelm and destroy the uniqueness of its neighbors. A majority vote of the islanders as a decision-making process is an ill-advised idea.

As Philip Conkling, president of the Island Institute, said in his book, Islands In Time (1999, pages 30-32): **"There was (and is) much to be said for renovating the historic structures of the fort; the question was really how much of the rest of the island might have to be sacrificed in the process."**
Indeed, the words still ring true today.

CBIDA is committed to the idea that two very different cultures and communities can peacefully co-exist on one small island, **if** they have respect for each other and for the laws and agreements which protect them. It is our fervent hope for 2010 that Great Diamond Islanders can be good neighbors, interact socially, behave with dignity, and enjoy the incredible beauty and history of their island, without compromising the integrity of the fragile island environment and while preserving a 128-year-old community. CBIDA hopes that the City of Portland will continue to support the original covenants regarding cross-boundary traffic, water transportation, and decision-making. Please contact us if we can be of assistance.

Sincerely,

Robert R. Laughlin
President

August 23, 2009

Dear Mayor Duson, Portland City Council Members and City Officials,

We wish to thank you all for meeting with us at Ewell Hall on Friday. I regret that the DIA turn out was rather sparse, but many of our members have work obligations that make weekday meetings difficult to attend.

We were disappointed that our Diamond Cove neighbors still feel that the conditions of development of Diamond Cove are unjust or out of date. Nothing could be further from the truth.

Some 25 years ago we were faced with the largest development in the history of Maine islands and worked diligently with the interveners to insure that the impact to our cherished life style would be minimized. We were a majority then, but recognized that laws must be put in place to protect our interests when this massive development went forward making us a minority. The island population has grown by 300%. We are now indeed the minority.

Some at the Cove suggested calling for an island wide vote on the validity of the Conditions of Development of DCHA. This defeats the purpose of development restraint and it is a dangerous precedent to set. We need the City's help in continued enforcement of the current laws, not in negotiating a change to those laws. Your help will save us all from costly litigation. The Diamond Island Association is committed to preserving our life style now and has been consistently for 25 years..

If the Diamond Cove residents wish to improve their transportation options, we suggest that they do so by negotiation with Casco Bay Lines or some other ferry service provider, not by expanding their use of the facilities on the south side of the island. This would be consistent with the original development plans which called for water transportation entirely from Cove property.

Thanks you again for coming to Great Diamond and please help us to maintain the lifestyle in our cottage community by continuing the enforcement of the existing laws.

Best Regards,
The Diamond Island Association Executive Committee:
Judy Sedgewick
Mike Harris
Hal Soederberg
Nancy Gleason

ISLAND INSTITUTE

386 MAIN STREET
POST OFFICE BOX 648
ROCKLAND, MAINE 04841 - 0648
TEL (207) 594-9209 • FAX (207) 594-9314
E-MAIL inquiry@islandinstitute.org
www.islandinstitute.org

November 23, 2009

Dear Mayor Duson, upcoming Mayor Mavadones and the City of Portland Planning Board;

The Island Institute appreciates the hard work of the Portland City Council and Planning Board this past year in helping to ensure that adequate attention was given to the development of the Double Barracks building on Great Diamond Island. The Island Institute was able to work closely with the Conservation Law Foundation and the Friends of Casco Bay to ensure that the developer's site order application contained language that addressed environmental concerns regarding waste water discharge. The Maine Department of Environmental Protection changed some of the language to create a higher level of accountability and oversight to ensure the health of the bay and the island. While stopping the development was never the Island Institute's objective, it was important to ensure that the original covenants signed by the Island Institute, Conservation Law Foundation, Maine Audubon, and Casco Bay Islands Development Association were upheld throughout Great Diamond Island's Phase II development plan.

It has recently been brought to our attention that the original covenants are being threatened again. The Diamond Cove residents are interested in increasing their access to the village side for greater accessibility to Casco Bay Lines. The original covenants addressed cross-island travel and traffic concerns, and it was decided at that time to limit the access, and to keep the gate between the two communities locked except for limited travel. This has worked well to preserve the nature of the village side these past 25 years. When the original redevelopment of Fort McKinley was proposed 25 years ago, the village residents recognized a need to ensure that adequate measures be taken to maintain the integrity of the island and to ensure that environmental impact be taken into consideration.

The Island Institute has been informed that some of the Diamond Cove residents have suggested that an island-wide vote be taken to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. Great Diamond Island's population has increased 300% in the past 25 years, and the village side is now outnumbered by the Diamond Cove side. This vote would negate the purpose of the development restraints, and could create a precedence that would undermine the original covenants put into place to protect the environment and integrity of the island.

The Island Institute would appreciate the continued support from the City of Portland in upholding the original covenants signed by the Island Institute, Maine Audubon, Conservation Law Foundation and the Casco Bay Islands Development Association. The original development plans called for water transportation for the Diamond Cove side to be entirely from Diamond Cove property. Opening the gate will provide increased access and traffic on the village side and would not be in compliance with the original agreements.

Thank you for your continued attention and support.

Sincerely,

Philip Conkling
President

(2) Inn at Diamond Cove employees and operational supplies; and (3) Inn at Diamond Cove owners and guests and their personal effects, so that they will enter and exit the Island through the Diamond Cove pier, and will not be allowed to use the shuttle buses that currently operate in violation of existing permits, approvals and agreements

Please also require the applicant to provide a written commitment from Casco Bay Island Transit District to provide year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) or from an "equivalent alternative to such service if it is unavailable" as required by the City Council order amending the zoning to allow this project.

In addition, we ask the Planning Board to condition any approval of this proposed development on it meeting the requirements of its September 23, 2009 DEP Site Location of Development Act Amendment, including the requirement that "All solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine, ..." We also ask the Board to ensure that its approval of this proposed development is consistent with the requirements of that DEP Amendment.

Finally, DIA is concerned that the Planning Board is reviewing this application when the property appears to be the subject of several lawsuits -- one involving the status of the barge landing on Great Diamond Island, another involving the legality of the vote by DCHA to allow this application to even come before the Board and the last involving the use of Nancy Lane by DCHA's shuttle buses and other DCHA vehicles -- and when the 2004 traffic plan required by the City Council still remains unaccepted by the City. The pending litigation in particular raises questions about applicants' standing to have their application heard by the Board.

Thank you for your consideration of DIA's comments regarding this application.

Sincerely,

James N. Katsiaficas

JNK:pal

cc: Paul Gleason, Chair, Island Development Committee, Diamond Island Association

ATT 2-J-1

SECTION 12

STORMWATER MANAGEMENT REPORT
(FLOODING AND GENERAL STANDARDS)

THE INN AT DIAMOND COVE
GREAT DIAMOND ISLAND, PORTLAND, MAINE

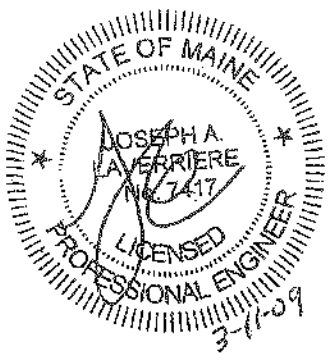
PREPARED FOR:

THE INN AT DIAMOND COVE LLC
C/O BATEMAN PARTNERS LLC
P.O. BOX 3572
PORTLAND, MAINE 04104

PREPARED BY:

DELUCA-HOFFMAN ASSOCIATES, INC.
778 MAIN STREET, SUITE 8
SOUTH PORTLAND, MAINE 04106
(207) 775-1121

MARCH 2009

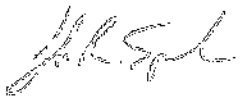


RECEIVED JAN 21, 2010

2-23-2

Please note that we will require a calculation of the peak water demand in gallons per minute or a fixture count tabulation at the time of the service application. If the District can be of further assistance in this matter, please let us know.

Sincerely,
Portland Water District



Rico Spugnardi, P.E.
Business Development Engineer
rspugnardi@pwd.org

225 DOUGLASS STREET
P.O. BOX 3553
PORTLAND, ME 04104-3553
P: 207.774.5961
F: 207.761.8307
WWW.PWD.ORG

ATT 2-I-1

PORTLAND
WATER DISTRICT

May 6, 2008

Bateman Partners
P.O. Box 3572
Portland, ME 04104

Attn: Nathan Bateman
Re: Fort McKinley, Great Diamond Island
Ability to serve with PWD water

Dear Mr. Bateman:

This letter is being sent in response to your request for an ability-to-serve letter for the proposed 20-unit condominium/hotel at the Double Barracks Building on Great Diamond Island. According to District records, the site is currently served through an 8-inch cast iron water main in Bay Avenue. There is also a hydrant located on Willis Street, 2200' from the proposed site.

The current data from the nearest hydrant indicates there should be adequate capacity of water for your needs at the location of the hydrant. However, as stated in your conversation with Gordon Johnson, the unknown plumbing system on your land makes it impossible for us to know if the available water will meet the needs of your proposed project. Onsite testing may be required to determine if it will meet your needs.

Hydrant Location:	Willis Street @ Crescent Avenue
Hydrant Number:	POD-HYD01694
Static Pressure:	97 psi
Flow:	1299 gpm
Last Tested:	6/7/1995

Please notify your mechanical engineer of these results so that they can design your system to best fit the noted conditions. Because the static pressure at the main is above the limit for which the Maine State Plumbing Code recommends installing pressure reducing valves, PWD recommends consulting with your plumber to determine if they should be used on your project.

PORTLAND HARBOR HOTEL

Old Port District

April 29, 2008

Inn at Diamond Cove, LLC
PO Box 3572
Portland, ME 04104

Re: Mainland Parking Facilities for
the Proposed Inn at Diamond Cove

Gentlemen:

The Portland Harbor Hotel, acting as the Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor Hotel currently has adequate excess parking available through both its on and off site parking leases.

Sincerely,

Gerard Kiladjian
General Manager

2-14-2

Summary of Existing Uses:

Total Spaces =	218
Total Spaces Required = (By current uses)	152
Balance of Spaces Available	**66**

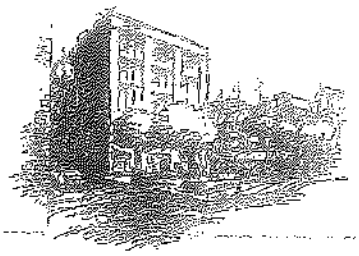
Utilizing the most restrictive use application (Residential Structures) a total of 44 spaces would be required for the Condominium Hotel use / 2 spaces for every unit plus 1 additional space for every 6 units. Therefore a surplus of 22 spaces will remain after the additional use is factored.

In Summary Harbor Plaza can accommodate the additional Condominium Hotel units and is pleased to do so at our current rate structure.

Should you require additional information do not hesitate to call.

Sincerely,

David Bateman



HARBOR PLAZA

1/19/10

The Inn at Great Diamond Island, LLC
PO Box 3572
Portland, ME 04104

Re: Double Barracks (Bldg. 46) Mainland Parking Analysis
For the Proposed Condominium Hotel Guests

Gentlemen,

As per your request the following analysis is based on the current required parking spaces located at the Harbor Plaza parking garage, and the additional spaces required by this proposed project.

Existing On-Site Parking Spaces (@ The Harbor Plaza Garage)

- Parking Garage	198
- Surface Lot	20
Total Spaces	218

Current Parking Requirements

- MEMIC Building / 47,700 sq. ft / 400 sq ft. per Space	120
- Portland Harbor Hotel / 4 Rms. / Space @ 100 Rms.	25
- 470 Fore St. / 1 Space per 200 sq. ft. Over 2000 sq. ft.	1
2nd & 3rd Fl. Hotel 1 Space/ 4 Rms.	1
- 468 Fore St. (Annex) /	
Basement for Hotel Use	0
- 1st Fl. Retail 1780 sq. ft. – None Required	0
- 2nd Fl. Hotel Meeting Rm. – None Required	0
- 3rd Fl. 2 – Hotel Rms. – None Required	0
(See 470 Fore St. Rm. Count)	
- 4Th Fl. Offices 1780 sq. ft. / 350 sq. ft. / per Space	5
Total Spaces Required	152

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

HISTORIC PRESERVATION CERTIFICATION APPLICATION
PART 2 – DESCRIPTION OF REHABILITATION

RECEIVED
APR 10 2008
NATIONAL PARK SERVICE
TAX INCENTIVES PROGRAM

Only

NPS Office Use Only
Project No: 20580

...tions: Read the instructions carefully before completing the applications. No certifications will be made unless a completed application form has been ...ved. Type or print clearly in black ink. If additional space is needed, use continuation sheets or attach blank sheets. A copy of this form may be provided to Internal Revenue Service. The decision by the National Park Service with respect to certification is made on the basis of the descriptions in this application ...rm. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, and specifications), the application form shall take precedence.

1. Name of Property: Double Barracks (Building #46)

Address of Property: Street 18 McKinley Court

City Portland County Cumberland State ME Zip 04109

☐ Listed individually in the National Register of Historic Places; give date of listing:

☒ Located in a Registered Historic District; specify: Ft. McKinley Historic District

Has a Part 1 Application (Evaluation of Significance) been submitted for this project? ☒ yes ☐ no

If yes, date Part 1 submitted: 8/2/07 Date of certification: 8/23/07 NPS Project Number: 20580

2. Data on building and rehabilitation project:

Date building constructed: 1910
Type of construction: Masonry bearing wall
Use(s) before rehabilitation: vacant US Army barracks
Proposed use(s) after rehabilitation: hotel condominiums
Estimated cost of rehabilitation: 4.6M
This application covers phase number 1 of 1 phases
Project/phase start date (est.): 6/1/08

Total number of housing units before rehabilitation: NA
Number that are low-moderate income: NA
Total number of housing units after rehabilitation: 20 hotel condominiums
Number that are low-moderate income: NA
Floor area before rehabilitation: 41,382 sf
Floor area after rehabilitation: 44,183 sf
Completion date (est.): 6/1/09

3. Project contact:

Name Christine Beard/Tremont Preservation Services
Street 21 Market Street City Ipswich
State MA Zip 01938 Daytime Telephone Number 978-356-0322

4. Owner:

I hereby attest that the information I have provided is, to the best of my knowledge, correct, and that I own the property described above. I understand that falsification of factual representations in this application is subject to criminal sanctions of up to $10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

Name David Bateman Signature [signature] Date 11/13/07
Organization The Inn at Diamond Cove LLC
Social Security or Taxpayer Identification Number 20-321-0238
Street 245 Commercial Street City Portland
State ME Zip 04101 Daytime Telephone Number 207-772-2992

NPS Office Use Only

The National Park Service has reviewed the "Historic Certification Application – Part 2" for the above-named property and has determined:

☐ that the rehabilitation described herein is consistent with the historic character of the property or the district in which it is located and that the project meets the Secretary of the Interior's "Standards for Rehabilitation." This letter is a preliminary determination only, since a formal certification of rehabilitation can be issued only to the owner of a "certified historic structure" after rehabilitation work is completed.

☒ that the rehabilitation or proposed rehabilitation will meet the Secretary of the Interior's "Standards for Rehabilitation" if the attached conditions are met.

☐ that the rehabilitation described herein is not consistent with the historic character of the property or the district in which it is located and that the project does not meet the Secretary of the Interior's "Standards for Rehabilitation." A copy of this form will be provided to the Internal Revenue Service.

5/15/2008 Jo Ellen Hensley 202-354-2026
Date National Park Service Authorized Signature National Park Service Office/Telephone No.

☒ See Attachments Condition Sheet

filter placement, overflow installation and soil filter stabilization. Within 30 days of completion of the structures, the applicant shall submit its engineer's report of inspections and certification that the structures were installed in accordance with the approved design.

7. The kitchen and cabana of the proposed inn shall not contain any equipment that would necessitate the use of a grease trap, and shall be limited to serving only continental breakfasts and light snacks to guests of the inn

8. All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R. S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.09.23 11:22:51 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES
mr/l13160abb/ats#69640

D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided the applicant submits a certification of the stormwater management system as described in Finding 7B.

E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.

F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services provided the kitchen and cabana are limited in relation to food service as described in Finding 9.

G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of THE INN AT DIAMOND COVE LLC to renovate and expand the existing Double Barracks building at Diamond Cove, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. Prior to the start of construction, the applicant shall submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

5. Prior to the start of construction, the applicant shall submit to the BLWQ copies of executed ground lease and drainage easements with the DCHA.

6. The applicant shall retain its design engineer or other qualified professional to inspect the installation of the underdrained soil filters and bio-retention cells. Inspections shall consist of weekly site visits to inspect the subgrade preparation of the structures, embankment construction, pipe bedding placement, underdrain pipe installation, soil

Based on DWQM's review and issuance of the Waste Discharge License, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

10. SOLID WASTE:

When completed, the proposed project is anticipated to generate 12 cubic yards of general solid waste per month during the peak season. All general solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 200 cubic yards of stumps and grubbings. All stumps and grubbings generated will be processed on site, with the resulting material to be used as an erosion control measure, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 290 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at the Biofuels Limited facility in Lewiston and Grimmel Industries in Topsham, both of which are currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

11. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided additional financial information is submitted as described in Finding 2.

B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.

DWM commented that the proposed system is designed in accordance with the Chapter 500 Flooding Standard.

Based on the system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas.

8. WATER SUPPLY:

When completed, the proposed project is anticipated to use 4,545 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated May 6, 2008, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

9. WASTEWATER DISPOSAL:

The redevelopment of the former Fort McKinley military base included the construction of an on-site wastewater collection and treatment system that includes a network of underground gravity sewer pipes, a number of septic tanks, and three sand filter beds. Treated wastewater is collected in an underdrain system and conveyed to a disinfection system. Treated sanitary wastewater flows through a weir before being discharged into Casco Bay. The existing wastewater facility is licensed to discharge a monthly average of up to 35,000 gallons per day.

Existing uses contributing to the wastewater collection and treatment system generate approximately 28,910 gallons of wastewater per day. Over the past several years, the DCHA has made efforts to eliminate excess inflow and infiltration within the existing collection system and made major repairs to the sand filter beds. With the authorization of the DCHA, the applicant intends to complete a list of repairs to the existing collection system in an effort to remove additional sources of inflow/infiltration. These repairs will be done during construction of the proposed project.

When completed, the proposed project is anticipated to discharge an additional 4,545 gallons of wastewater per day to DCHA's wastewater treatment facility. This project was reviewed by the Division of Water Quality Management (DWQM) of the BLWQ, which commented that the DCHA's wastewater treatment facility has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine. DWQM issued a final Maine Waste Discharge License (#W006931-5C-F-R), dated September 15, 2009. The kitchen and cabana of the proposed inn must not contain any equipment that would necessitate the use of a grease trap, and must be limited to serving only continental breakfasts and light snacks to guests of the inn.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, and the applicant's revisions, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standards: The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standards, but recommended that a professional engineer be retained to inspect the installation of the underdrained soil filters and bio-retention cells. Inspections must consist of weekly site visits to inspect the subgrade preparation of the structures, embankment construction, pipe bedding placement, underdrain pipe installation, soil filter placement, overflow installation and soil filter stabilization. Within 30 days of completion of the structures, the applicant must submit to the BLWQ its engineer's certification that the structures were installed in accordance with the approved design.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, General Standards.

C. Flooding standard:

The applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to Casco Bay, and the applicant will obtain a drainage easement with the DCHA, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500(4)(E)(2)(a), which allows a waiver when the project discharges to the ocean.

consistent with the intent of the original Board Order approving Diamond Cove. The site of the proposed project is essentially within the interior of Diamond Cove and is not significantly visible from areas outside the development.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. HISTORIC SITES:

Building #46 is part of the former Fort McKinley, which is included in the National Register of Historic Places maintained by the U. S. National Park Service. Proposed renovations to the building must be consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The applicant submitted a copy of the National Park Service's Part 2 approval of the renovation plans.

The Maine Historic Preservation Commission reviewed the proposed rehabilitation plan and stated that it is appropriately scaled and sited, and is compatible with the historic qualities of the Double Barracks and the surrounding Fort McKinley Historic District.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site.

7. STORMWATER MANAGEMENT:

The proposed project includes approximately 6,534 square feet of new impervious area and 17,776 square feet of developed area. The project site drains to Casco Bay. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of two underdrained soil filters and four bio-retention cells.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

The proposed project is shown on a set of plans, the first of which is entitled "The Inn at Diamond Cove – Cover Sheet," prepared by DeLuca-Hoffman Associates, Inc., and dated December 2008, with a last revision date of March 12, 2009.

C. Current Use of Site: The double barracks is a three-story masonry building, currently vacant and in disrepair, with a footprint area of approximately 13,629 square feet. It is located across McKinley Court from the existing parade ground.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be $8,562,000. The applicant submitted a letter from TD Banknorth, dated April 29, 2008 indicating that the bank is interested in discussing financing arrangements for the proposed project. Prior to the start of construction, the applicant must submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided evidence of final financial provisions are submitted as outlined above.

3. TECHNICAL ABILITY:

The applicant's principals have successfully developed and managed similar hotel/condominium developments. The applicant also retained the services of DeLuca-Hoffman Associates, Inc., a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

Noise generated from the proposed project is anticipated to be similar to other uses currently within Diamond Cove. The Inn's main entrance, lobby and recreational pool facility, which are expected to generate the highest noise levels, will be located at the rear of the building and away from surrounding existing uses.

The Department finds that the proposed project will result in a minor noise impact that will be consistent with the area.

5. SCENIC CHARACTER:

Building #46 is currently in various stages of dilapidation. The proposed renovation is designed to restore the original architectural and historic character of the building

2-F-2

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

THE INN AT DIAMOND COVE LLC	) SITE LOCATION OF DEVELOPMENT ACT
Portland, Cumberland County	)
THE INN AT DIAMOND COVE	) MINOR AMENDMENT
L-13160-L3-AB-B (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq., the Department of Environmental Protection has considered the application of THE INN AT DIAMOND COVE LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: History: In Board Order #L-13160-87/03-A-N, dated December 10, 1986, the Board approved Phase I of Diamond Cove, which consisted of renovating 44 former military buildings into 134 residential units and commercial uses, and constructing a marina for use by Diamond Cove residents. The majority of the renovations and development was completed in the 1980's with the exception of two buildings, which are identified in the application as the Double Barracks (Building #46) and the Hospital (Building #19). In Board Order #L-13160-L3-G-N, dated June 25, 1991, the Board approved the development of Phase II as a 39-lot residential subdivision. Numerous other Department Orders were issued for Diamond Cove which are not relevant to this amendment application. The development is located on the former site of Fort McKinley on Great Diamond Island in Casco Bay, in the City of Portland.

B. Summary: The applicant proposes to renovate Building #46, (the Double Barracks), into a 20-unit hotel/condominium. Building #46 was approved in Board Order #L-13160-87/03-A-N for residential use. The units will consist of two 1-bedroom units, ten 2-bedroom units, and eight 3-bedroom units, for a total of 46 bedrooms. Fifteen employees will be needed to operate the hotel/condominium. In addition to renovating the existing building, the applicant proposes to construct a single-story building addition with a footprint area of approximately 2,881 square feet that will primarily house the new entrance lobby area, courtyard improvements with a cabana on a raised deck, and an in-ground swimming pool.
Building #46 is currently owned by the City of Portland. The applicant holds a purchase and sales agreement with the City for the purchase of the building. The proposed pool, deck and cabana structure will be located on open space/recreation area currently owned by the Diamond Cove Homeowners Association (DCHA). The applicant submitted a copy of a long-term ground lease for this area. Additionally, the applicant submitted a draft copy of a permanent construction, maintenance and drainage easement between the applicant and the DCHA for the closed stormwater drainage system and outfall associated with the proposed project.

STATE OF MAINE

Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

September, 2009

The Inn at Diamond Cove, LLC
c/o Bateman Partners, LLC
Attn: David Bateman
PO Box 3572
Portland ME 04104

RE: Site Law Application, Portland, # L-10160-L3-AE-S

Dear Mr. Bateman:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit, please contact the project manager who handled your application, Marybeth Richardson. She can be reached at (207-822-6335) or at marybeth.richardson@maine.gov.

Sincerely,

James Cassida

James Cassida, Division Director
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: file

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
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BANGOR
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(207-941-4570 FAX 207-941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-3143

WEB SITE: WWW.MAINE.GOV/DEP

SPECIAL CONDITIONS

The serving of a continental breakfast by the Inn at Diamond Cove and having some foods available for snacks appears to be well within the scope of the customary and usual services of an inn or hotel. The wastewater produced would be domestic in nature, and the intended consumers are the guests of the Inn at Diamond Cove. Therefore Department does not see this as creating a new source of effluent. The guests can cook, eat, drink in their room, or as part of a continental breakfast or poolside. They could conceivably order a meal from the existing restaurant, or walk thereto. Still, the quantity and constituent of the wastewater produced would be essentially the same quantity or constituency. If a restaurant were to open up in the hotel (including an expansion of the existing restaurant), or the poolside areas were opened up to serve non-guests (excluding the invited guests of registered hotel guests), then the DWQM would prohibit those services as additional source of effluent.

The DEP's Division of Water Quality Management does not interpret and enforce the number of "commercial" versus "residential" uses in the development. DWQM must make sure that the wastewater reflects that which was authorized in the 1987 Site Location Order in that it is domestic in both strength and constituents, is limited to the "estimated or actual discharge" and the treatment meets secondary standards as set forth in the permit.

5. The Friends of Casco Bay and Island Institute point out that the O & M manual has not been updated since 2006.

   The permit as issued establishes a deadline of December 31, 2009 requiring the permitees to perform an assessment and update to accommodate the new permit requirements and in anticipation of the increased flow from the Barracks, including a "Wet Weather Management Plan" as part of the O & M plan.

SPECIAL CONDITIONS

10. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Michael Demarest
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone: (207) 287-3901 E-mail: michael.demarest@maine.gov

11. RESPONSE TO COMMENTS

1. The Friends of Casco Bay and Island Institute requested the permitees expand its assessment of subsurface alternatives for the "Barracks" to include the area of suitable soils for the Hospital. Their position is that the Inn has sufficient RTI to join both properties by virtue of utility easements to use the sewer to conduct wastewater to the treatment works. They assert that sewers could be laid in the right-of-way to conduct wastewater to the Hospital. Alternatively, the wastewater could be conducted through the existing sewer to the hospital or to an inground system proximate to the treatment works, and an equivalent volume of wastewater could be diverted from the sewer to the inground beds with apportioning valves.

   The Inn's LSE/PE subsequently determined that insufficient area of suitable soils existed proximate to the Hospital to treat the 5,000-7,500 gpd of wastewater from the Inn at Diamond Cove.

   The Inn's LSE/PE also determined that there were no suitable soils proximate to the treatment works for subsurface disposal.

   Finally, the Inn may have sufficient RTI to use the sewer, but it would appear that their RTI to the "Barracks" and the "Hospital," is limited to the footprint of the buildings plus any additional RTI the DCHA may grant. Therefore, lacking the required grants, it would not appear that the DWQM has any authority to require removal even if alternatives existed on DCHA land.

2. The Friends of Casco Bay and Island Institute requested the Department reinstate the original 40,000 gpd weekly average discharge volume limit. They are concerned that the development will discharge more that the permitted limit on a regular basis while still meeting the monthly average.

   This permit establishes a weekly average monitoring requirement for flow (35,000 gpd). This would give the treatment system operators important feedback to make treatment decisions. This would also give the Department additional data to make future licensing decisions.

3. The Friends of Casco Bay and Island Institute requested that the Department set a one or two year date certain for the sewer upgrades to be completed instead of the five year proposed completion date.

   The Department believes a 30-month deadline could be met. Neither the DCHA nor the Inn has objected to the Department's proposed 30-month deadline.

4. The Friends of Casco Bay and Island Institute are concerned that the "Cabana" and the Inn eating facilities represent a new source of discharge outside what was previously approved in Phase I of the 1986 Site Order (within the DWQM's OBD "qualifying period").

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

38 M.R.S.A 530 § 2.A specifies the dischargers subject to the rule as, "all permitted dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria."

38 M.R.S.A 530 § 2.A sets forth the following exemption criteria for certain discharges from toxics testing as follows:

(1) Discharges from individual discharge points permitted to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;

(2) Discharges from residential overboard discharge systems; or

(3) Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.

The permitees' single-discharge facility is exempt from the requirements of 38 M.R.S.A 530 § 2.A (2) as it permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 (Department BPJ) and the wastewater has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future, the Department may reopen this permit pursuant to Special Condition M, Reopening of Permit for Modifications, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The overboard discharge treatment system has been inspected by the Department annually over the past five years. The treatment system was consistently found to comply with the inspection criteria. As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

9. PUBLIC COMMENTS

Notification to abutting landowners and facility owners of this application was by certified mail on or about January 2, 2009. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

SPECIAL CONDITIONS

7 EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

Previous licensing actions established the monthly average, weekly average and daily maximum technology based mass limits for BOD_5 and TSS, based on the (monthly average) daily flow limitation of 0.035 MGD, the applicable BPT concentration limits and a conversion factor of 8.34 lbs/gallon. The limitations were calculated as follows:

Monthly average:	(0.035 MGD)(8.34)(30 mg/L) = 8.8 lbs/day
Weekly average:	(0.035 MGD)(8.34)(45 mg/L) = 13 lbs/day
Daily maximum:	(0.035 MGD)(8.34)(50 mg/L) = 15 lbs/day

The previous permitting action also establishing an 85% removal requirement for BOD_5 and TSS pursuant to Department rule Chapter 525(3)(III)(a&b)(3), is being carried forward in this action.

Monitoring frequencies for BOD_5 and TSS of twice monthly are also being carried forward from the previous licensing action and are based on Department policy for facilities with a flow limitation of less than or equal to 0.035 MGD (gpd)

E. Settleable solids - The previous permit established a daily maximum BPT concentration limit of 0.3 ml/L. That limit is being carried forward with this action. Actual performance under the current permit has been <0.1 ml/L for the entire reporting period. Therefore, based on compliance history, the Department is reducing the monitoring frequency from once weekly (01/07) to once monthly (01/30) to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.

F. Fecal coliform bacteria - The previous licensing action established new water quality based limitations of 15 colonies/100 ml as a monthly average (geometric mean) and 50 colonies/100 ml. This permitting action is carrying forward said water quality based limitations to be consistent with the limits associated with the National Shellfish Sanitation Program. The performance of this treatment system has averaged less than 2 col/100ml.

G. Total residual chlorine (TRC) - Limits for TRC are specified to ensure that ambient water quality standards are maintained and that BPT is being applied to the discharge. The previous licensing action established a daily maximum water quality technology based limits of 1.0 mg/L. The Department is carrying forward this requirement. End-of-pipe water quality based concentration thresholds were calculated as follows:

Parameter	Acute Criterion	Acute Dilution Factor	Daily Max. Threshold
Chlorine	0.013 mg/L	87:1	1.13 mg/L
Parameter	**Chronic Criterion**	**Chronic Dilution Factor**	**Daily Max. Threshold**
Chlorine	0.0075mg/L	1,276:1	9.65 mg/L

H. pH Range- The previous licensing action established an expanded pH range limitation of 6.0 –9.0 standard units pursuant to Department rule found at Chapter 525(3)(III)(c). The new limits are considered BPT and are being carried forward in this action.

I. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, Surface Water Toxics Control Program (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont'd)

Actual flow data supports Permit Conclusion H in that the average monthly flow of the existing development has been 11,863 gpd. The design flow for the existing active development is 29,870 gpd by Department calculations (excludes "Barracks," and undeveloped Units 83F-690-69 and 83F-700-70). The actual discharge represents 52% of the projected discharge (design flow).

C. Dilution Factors – Department rule *Surface Water Toxics Control Program*, 06-096 CMR, Chapter 530, §4(A)(2) states,

(2) For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.

(a) For discharges to the ocean such at the current permit, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.

(b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.

(c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

In 2005, using a permitted flow of 35,000 gpd (monthly average), the location and configuration of the outfall structure, the Department calculated the following dilution factors:

Acute = 87:1 Chronic = 1,276:1 Harmonic Mean: 3,828:1[(1)]

D. Biochemical Oxygen Demand and Total Suspended Solids - The previous licensing established monthly and weekly average BOD_5 and TSS best practicable treatment (BPT) concentration limits of 30 mg/L and 45 mg/L respectively, that are based on secondary treatment requirements of the Clean Water Act of 1977 §301(b)(1)(B) as defined in 40 CFR Part 133.102 and Department rule Chapter 525(3)(III). The maximum daily BOD_5 and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. All three concentration limits are being carried forward in this permitting action. DMRs submitted to the Department by the applicant(s) for the period October 2005 to the present indicate the average BOD_5 discharged is less than 2 mg/L and the maximum BOD_5 has been less than 2 mg/L, well below the permitted 30 mg/L and 50 mg/L, respectively. The monthly average and daily maximum TSS values reported were 1.7 mg/L and 11 mg/L respectively, well below their respective limits of 30 mg/L and 50 mg/L.

Footnote:

(1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication *"Technical Support Document for Water Quality-based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically-proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in Code of Maine Regulations Chapter 525, Section 3 unless the Department finds that alternate limits are appropriate.

1. The applicants have demonstrated that connection to a municipal sewerage system is not possible because one is not located on Diamond Island.

2. The applicants have documented that the existing treatment constitutes BPT. The applicant's Licensed Site Evaluator/P.E. had previously determined that there is not a subsurface option for Phase I development because of insufficient area to install subsurface systems to serve the entire facility. Because the Barracks and Hospital have since changed hands, an additional site evaluation was conducted in 2008 and 2009 to look at alternatives to connection to the OBD. The Inn's LSE/PE determined that there is a subsurface option for the "Hospital," but not for the "Barracks." The LSE/PE also evaluated whether there were sufficient areas of suitable soil to site a subsurface wastewater disposal system proximate to the hospital or existing treatment works. The area proximate to the hospital contains a suitable area for the treatment of less than 2,000 gpd of wastewater; less than half that required to serve the future development of the "Barracks." The area proximate to the treatment works lacked any suitable soils. Therefore, pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3 the "Barracks" may continue to use the OBD after redevelopment, provided the discharge does not cause or contribute to exceedences of the 35,000 gpd (monthly average) discharge volume limit. The treatment works lacks sufficient capacity for wastewater from the future development of both the "Barracks" and the "Hospital," collectively.

3. The existing treatment system is capable of meeting secondary treatment standards and is appropriate technology for the wastewater being discharged.

B. Flow - The previous licensing action established a flow limitation of 35,000 gpd as a monthly average. This was revised downwards from a 40,000 gpd weekly average to better reflect the treatment capacity of the sand filters and allow for overages resulting from the absorption of water from unusually inclement months, significant stormwater and/or meltwater events into the sand filter beds. (A one-year frequency storm event, defined as 2.5 inches of precipitation in a 24-hour period is the equivalent of 60,000 gpd of water on the existing 34,500 sq. ft. of sand filter.)

The estimated volume of wastewater resulting from redevelopment of the "Barracks" into the Inn at Diamond Cove will utilize the wastewater treatment system's excess capacity. The calculations reserve 270 gpd for each of the unrelated undeveloped residential Units 83F-690-69 and 83F-700-70.

Because there is an I/I problem, in part because of unrefurbished clay tiles in the wastewater collection system and existing connections to the Hospital, this permit is requiring remediation to address the issue. Prior to habitation of the Inn at Diamond Cove, the permittees must disconnect the "Hospital" from the collection system and the collection system capped at the point of disconnection. Any remaining unrefurbished collection pipes must be successfully lined or replaced. The permittees must also complete their proposed improvements to the manholes.

The development of the Inn may include facilities for a continental breakfast and the poolside service of beverages and light snacks as is customary, but the siting of restaurant facilities on this lot is prohibited, as it is generally an additional separate commercial entity not authorized in MDEP Site Location Order #L-013160-87/03-A-N.

SPECIAL CONDITIONS

Supernatant from the settling tanks is collected in a wet well and distributed amongst three 100-ft. by 115-ft. (11,500 sq. ft.) sand filter beds. The treated wastewater is collected in the underdrain system and conveyed to a disinfection system consisting of liquid sodium hypochlorite disinfection and two 1,000-gallon detention tanks. Dechlorination is accomplished through sodium bisulfate injection. The sanitary treated wastewater then travels through a V-notch weir-type flowmeter before being discharged to Casco Bay through an eight-inch diameter outfall pipe with diffuser. The outfall pipe extends approximately 250 feet from the shoreline to a point where there is approximately twelve vertical feet of water over the crown of the pipe at mean low water. The wastewater treatment facility is operated by a contractor operator. The treatment capacity for the installed sand filter system is 35,000 gpd. Although the cumulative design flows come to 35,445 gpd as a daily maximum, the Department's estimated discharge (design flow daily maximum) from all the existing development and the Inn is less than 35,000 as the design flows for the residential uses overlap flows attributed use of the commercial facilities. In particular, a substantial portion of the restaurant and tent event flows is or will be a result of business from the residential portion and proposed hotel. It is unlikely that the total flow from a hotel customer having breakfast at the hotel, attending a tent event at lunch, and eating at the restaurant at night and is going to use the 120-140 gpd allotted to him/her for the day, every day for a whole month.

4. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. § 414 A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., § 420 and Department rule 06-096 CMR Chapter 530, Surface Water Toxics Control Program, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected

5. RECEIVING WATER QUALITY STANDARDS

Maine Law, 38 M.R.S.A., Section 469, classifies Casco Bay at the point of discharge as Class SB waters. Maine Law, 38 M.R.S.A., Section 465-B(2) describes the classification standards for Class SB waters.

6. RECEIVING WATER CONDITIONS

The State of Maine, Department of Environmental Protection, 2008 Integrated Water Quality Monitoring and Assessment Report (305b) report published by the Department lists this waterbody (including Maine Department of Marine Resources Legal Notice Closed Area C-13) in a table entitled, "*Category 5B-1: Estuarine and Marine Waters Impaired only by Bacteria.*" As such, the subject receiving water is not attaining the standards of its classification. Portland Harbor has approximately 70 outfalls, 45 of which are UNTREATED combined sewer outfalls (CSOs). The 3-year average untreated yearly discharge from the harbor CSOs is 775 million gallons (MG). The three Portland treatment works contribute another 24 MGD. The performance of the Islands treatment works has resulted in consistent zero or near-zero bacterial levels with a geometric mean of 1.8 colonies per 100 ml.(n=20). The average actual discharge volume (monthly average) from the Diamond Cove facility is .016 MGD, less than half of the permitted volume and 52 % of the estimated design flow of the existing development. Therefore, this low-discharge facility, located on the outermost boundary of the impaired water, is not causing or contributing to the impairment of these waters. Because the applicants have maintained their system, under contract with a certified wastewater treatment plant maintenance contractor, and have passed 100 percent of the Department's annual OBD inspections, the Department is making the determination that compliance with the fecal coliform bacteria and other secondary wastewater treatment limits established in this licensing action ensure that the discharge of secondary treated wastewater from the subject facility will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

SPECIAL CONDITIONS

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
70. M. Mills	83E-B11-1A	6	90	540	4	90	360
71. C. Freund	83E-B12-1B	5	90	450	4	90	360
72. R. Whelan	83E-B20-2	5	90	450	4	90	360
73. P. Guarino	83E-B30-3	5	90	450	2	90	180
74. J.Nash	83E-B40-4	5	90	450	4	90	360
75. L. Laudrica	83E-B51-5A	5	90	450	3	90	270
76. J. Mirachel	83E-B52-5B	5	90	450	3	90	270
77. J. Burge	83E-B92-9B	7	90	630	4	90	360
78. S. Bean	83E-B71-7A	6	90	540	3	90	270
79. H. Fitch	83E-B72-7B	6	90	540	4	90	360
Existing Residential Subtotal:		264	Total: 79	23,820	Bdrms: 223	Total: 79	GPD:20,610

EXISTING COMMERCIAL USES

Commercial Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Quantity	Applicant's GPD/Unit	Applicant's Design Flow
Admin offices / Recreation: users	40	10	400	2	240	480
Admin office / Recreation : employees	1	15	15	0	0	0
Marina / washer /shower			150	1	100	100
Marina employees	1	15	15	0	0	0
General Store –Deli seats	14	20	280	0	0	0
Commercial Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Quantity	Applicant's GPD/Unit	Applicant's Design Flow
Deli Employees	3	15	45			
General Store: employees	3	15	45	2	15	30
Restaurant : seats (2 meals/day)	161	20	3,220	161	20	3,220
Restaurant : employees	20	15	300	20	15	300
Tent Site: seats	100	20	2,000	150	7	1,050
Tent Site: employees	8	15	120	8	15	120
Commercial Subtotal			6,590			5,300
Existing Development Subtotal			30,410			25,910

PROPOSED COMMERCIAL / RESIDENTIAL

Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Applicant's Count	Applicant's Design Flow	Total
Inn (Hospital):bedrooms		(none)	(none)	(not connected)	(not connected)	0
Inn (Barracks): bedrooms	46	100	4,600	2 single bed	180	360
				10 two-bed	180	1,800
				8 three-bed	270	2,160
				Bedrooms subtotal:		4,320
Pool Area Food Service: seats	30	7	210	0	0	0
Inn: (Barracks & pool) employees		15	225		15	225
Allowable Inflow/Infiltration						3000
Pool discharge	0	0	0	0	0	0
Inn / Pool area subtotal			5,035			7,545
TOTAL Design Flow			35,445			33,455

* Design flow is reserved for still unrehabilitated housing units 83F-690-69 and 83F-700-70

E. Wastewater treatment - The effluent currently receives a secondary level of treatment. The raw sewage is collected from the existing development by a network of approximate 4,200 linear feet of new PVC and 1,900 feet of clay piping, all but 1,340 feet of which has been relined. The raw sewage is distributed between six 10,000-gallon settling tanks configured in two rows of three tanks.

SPECIAL CONDITIONS

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
20. L. Shea	83E-153-15C	3	90	270	3	90	270
21. J. Tooker	83E-155-15E	3	90	270	3	90	270
22. L. Tracy	83E-157-15G	3	90	270	3	90	270
23. A. Finney	83E-161-16A	3	90	270	3	90	270
24. V. Smith	83E-162-16B	3	90	270	3	90	270
25. B. Young	83E-164-16D	3	90	270	3	90	270
26. L. Pergament	83E-165-16E	3	90	270	3	90	270
27. W. Anderson	83E-166-16F	3	90	270	3	90	270
28. R. Weinman	83E-167-16G	3	90	270	2	90	180
29. R. Cullen	83E-171-17A	3	90	270	3	90	270
30. J. Taggart	83E-172-17B	3	90	270	3	90	270
31. A. Davis	83E-173-17C	3	90	270	3	90	270
32. F. Boudreau	83E-174-17D	3	90	270	3	90	270
33. E. Wolak	83E-175-17E	3	90	270	3	90	270
34. D. Wolak	83E-176-17F	3	90	270	3	90	270
35. R. Cady	83E-177-17G	3	90	270	3	90	270
36. K. Wood	83E-178-17H	3	90	270	2	90	180
37. R. Taylor	83E-211-21A	3	90	270	3	90	270
38. R. Taylor	83E-212-21B	3	90	270	2	90	180
39. D. Clem	83E-220-22	3	90	270	3	90	270
40. D. Farrell	83E-231-23A	3	90	270	3	90	270
41. J. Amerling	83E-232-23B	3	90	270	2	90	180
42. V. Purpura	83E-241-24A	3	90	270	3	90	270
43. D. Faunce	83E-242-24B	3	90	270	3	90	270
44. C. Small	83E-251-25A	3	90	270	3	90	270
45. Eye Venture	83E-252-25B	3	90	270	3	90	270
46. J. Welton (Jail)	83E-270-27	3	90	270	3	90	270
47. D. Schwartz	83E-B780-78	3	90	270	3	90	270
48. D. Kenly	83F-301-30A	3	90	270	3	90	270
49. R. Frantz	83F-302-30B	3	90	270	3	90	270
50. F. Haley	83F-303-30C	3	90	270	3	90	270
51. J. Cox	83F-561-56A	3	90	270	3	90	270
52. Momborguette	83F-561-56B	3	90	270	2	90	180
53. W. Vackar	83F-561-56C	3	90	270	3	90	270
54. D. Devine*	83F-690-69	3	90	270	*3	*90	*270
55. D.Devine*	83F-700-70	3	90	270	*3	90	*270
56. D. Hale	83E-120-B12	4	90	360	3	90	270
57. O. Keithly	83E-136-13F	4	90	360	3	90	270
58. T. Lucke	83E-154-15D	4	90	360	2	90	180
59. G. Kennedy	83E-156-15F	4	90	360	3	90	270
60. VZV Research	83E-158-15H	4	90	360	3	90	270
61. J. Dumas	83E-163-16C	4	90	360	3	90	270
62. B.Perry	83E-168-16H	4	90	360	3	90	270
63. G. Lane	83E-260-26A	4	90	360	3	90	270
64. J. Bauer	83E-B61-6A	4	90	360	3	90	270
65. R. Pfaffmann	83E-B62-6B	4	90	360	3	90	270
66. K. Geitz	83E-B81-8A	4	90	360	4	90	360
67. D. MacKinnon	83E-B82-8B	4	90	360	4	90	360
68. H.Smith	83E-B91-9A	4	90	360	4	90	360
69. G. Altfield	83F-561-56D	4	90	360	3	90	270

SPECIAL CONDITIONS

3. PERMIT SUMMARY (continued):

Of the 44 buildings slated for redevelopment, 34 were to be renovated as 134 housing units, five as commercial uses, two as recreational, and one as maintenance/public safety. Of the 34 buildings, only the "Barrack, the "Hospital," Units 83F-690-69* and 83F-700-70* have not been rehabilitated to date.

- May 17, 1989 - The EPA issued NPDES permit #ME0023248 to McKinley Partners. The permit expired on May 17, 1994.
- June 2, 1994 – The Department issued Maine Waste Discharge License #W006931-5C-D-R for a ten-year term. The WDL authorized the discharge of up to 40,000 gpd (as a daily maximum) of secondary treated wastewater.
- October 14, 2005 – The Department issued Maine Waste Discharge License (WDL) #W006931-5C-D-R jointly to McKinley Partners and the DCHA for a five-year term. WDL #W006931-5C-D-R authorized the year-round discharge of no more than 35,000 gpd (monthly average) of secondary-treated wastewater to Casco Bay. The change recognized that extreme precipitation and snowmelt events were creating violations of the 40,000-gpd daily maximum discharge limit.
- January 12, 2009 – The Department accepted an application from the DCHA and the Inn.

D. Source description - Sanitary wastewaters are generated from the 193.4-acre residential facility comprised of 79 dwelling units (2 one-bedroom, 8 two-bedroom, 45 three-bedroom, 14 four-bedroom, 6 five-bedroom 3 six bedroom and 1 seven bedroom unit) a restaurant, a general store, two administrative/maintenance building and a 35-slip marina. The Island also hosts special tent events such as weddings throughout the summer. The sources of effluent and estimated discharge volumes have been revised since the last permit action in response to an actual count of the sources of wastewater. The previous sources were documented to be in error by the applicants and other interested parties. The updated sources appear to have been present at the previous licensing action. The permitted sources of effluent and estimated discharge volumes are as follows:

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
1. F. Willis	83B-481-48B	1	120	120	1	90	180
2. C. Vanderwell	83B-482-48B	1	120	120	1	90	180
3. J. Roberts	83B-180-18	2	90	180	2	90	180
4. M. Murphy	83B-471-47B	2	90	180	2	90	180
5. D. Moran	83B-472-47B	2	90	180	2	90	180
6. F. Trenholm	83B-541-54B	2	90	180	2	90	180
7. B. Mason	83B-542-54B	2	90	180	2	90	180
8. J. Acconzo	83B-551-55B	2	90	180	2	90	180
9. L. Vardis	83B-552-55B	2	90	180	2	90	180
10. M. Teas	83E-200-20	2	90	180	2	90	180
11. A. Riley	83E-13-13A	3	90	270	3	90	270
12. D.Johnson	83E-132-13B	3	90	270	3	90	270
13. B. Robinson	83E-133-13C	3	90	270	3	90	270
14 J. Doyle	83E-134-13D	3	90	270	3	90	270
15. L. Estabrook	83E-135-13E	3	90	270	3	90	270
16. R. Blatty	83E-137-13G	3	90	270	3	90	270
17. T. Burris	83E-138-13H	3	90	270	2	90	180
18. E. Stein	83E-151-15A	3	90	270	3	90	270
19. M. Kane	83E-152-15B	3	90	270	3	90	270

SPECIAL CONDITIONS

3. PERMIT SUMMARY (continued)

alternative. The Inns' LSE found no alternative to the use of the OBD by the "Barracks." Sufficient treatment capacity remains for connection of the "Barracks" to the existing OBD.

3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3. There is a feasible alternative to use of the existing OBD treatment. That capacity is not sufficient for use by the "Barracks." Additionally, the existing treatment works does not have sufficient treatment capacity to accept wastewater resulting from the future and subsequent redevelopment of the "Hospital."

4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6. The 1986 Site Order did not authorize a second pool. Therefore, connection of the pool to the OBD, would constitute an additional source of discharge and is prohibited.

5. Requiring rehabilitation by the permitees of the remaining 1,340 linear feet of remaining non-rehabilitated wastewater conduit associated with this permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this permit, whichever occurs first. Although the 35,455-gpd design flow (daily maximum) from the existing development, unrehabilitated Units 83F-690-69, 83F-700-70, and the proposed Inn exceeds the 35,000-gpd discharge volume limit as a daily maximum, it will not cause exceedances of the monthly average. However, the estimated numbers are sufficiently close to warrant additional measures to assure compliance with the discharge volume limit in inclement seasons.

6. Requiring the permitees to cap off the sewer connection to the hospital prior to habitation at the Inn or within 30 months of the effective date of this permit, whichever occurs first. The permitees have stated that the Hospital's roof is in disrepair and that leg of the sewer collection has been identified as a significant contributor of I/I.

7. Requiring monitoring of the discharge as a weekly average (record only). The intent of this provision is to give the permitees' treatment system operators crucial data to make treatment decisions, including implementation of a wet weather management plan to direct the staff on how to operate the facility effectively during periods of high flow. This would also give the Department additional data to make future licensing and monitoring decisions, including potential reinstatement of the original 40,000 gpd (weekly average) discharge volume limit. Should the Department observe a pattern of exceedances or near exceedances, it reserves the right (with notice to the permitees) to require additional monitoring or treatment conditions.

8. Requiring updates to the Operation and Maintenance Plan to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP). This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during period of high infiltration and inflow caused by storm or melt water events. Ideally, it should bring the DCHA and the businesses into the process, whether by establishing water use alerts, requiring the installation and use of water conserving fixtures, or implementing other water saving or discharge-reducing strategies.

C. History: The most current/relevant regulatory actions regarding the discharge from the facility include:

- December 10, 1986 –Maine Department of Environmental Protection (MDEP) Site Location Order #L-013160-87/03-A-N approved *Phase I* redevelopment of 193.4 acre Fort McKinley.

SPECIAL CONDITIONS

all but four of the 36 buildings have been renovated; Housing units 83F-690-69 (Devine) and 83F-700-70 (Devine), the "Barracks" and the "Hospital."

2. MODIFICATIONS REQUESTED:

The applicants are requesting the permit be issued to reflect the full ownership by the previously licensed DCHA, and the inclusion of the wastewater resulting from the redevelopment by the Inn of the "Barracks" as previously authorized as part of *Phase I* development in Department Site Location Order #L-013160-87/03-A-N (Site Order) on December 10, 1986. Although the current proposal is for development as a hotel/condominium, and the Site Order is for a residential use, the wastewater is domestic-like in strength and character. The Department's Division of Water Quality Management (DWQM) is not the licensing authority determining the ultimate use of the structures beyond consistency with the 1986 Site Order.

3. PERMIT SUMMARY:

A. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and permit #ME0023248 (same as the NPDES permit application number) will be utilized as the primary reference number for the Diamond Cove wastewater treatment facility.

B. Terms and Conditions:

This permitting action is similar to the 10/14/2005 permit action in that it is;

1. Carrying forward the monthly-average discharge flow limitation of 35,000 gpd;
2. Carrying forward the 30 mg/L monthly average, 45 mg/L weekly average and 50 mg/L daily maximum technology-based concentration limits for BOD_5 and TSS;
3. Carrying forward the 8.8 lbs/day monthly average, 13 lbs/day weekly average and 15 lbs/day daily maximum technology-based mass limits for BOD_5 and TSS;
4. Carrying forward the monthly average technology based concentration limits for fecal coliform bacteria;
5. Carrying forward the monthly average and daily maximum technology-based concentration limitations for total residual chlorine (TRC) of 1.0 mg/L.
6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for SS; and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

This permitting action is dissimilar to the 10/14/2005 permit action in that it is;

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
2. Authorizing the introduction of wastewater to the OBD treatment system resulting from the redevelopment of the "Barracks" into a 46-bedroom hotel/condominium by The Inn at Diamond Cove, LLC (Inn). Both the "Barracks" and the "Hospital: were acquired by the City of Portland, and will now be deeded to The Inn at Diamond Cove, LLC per the Purchase and Sales Agreement dated May 4, 2007. *Waste discharge licenses* 38 M.R.S.A. §413.3 requires a Licensed Site Evaluator/Professional Engineer to conduct a site evaluation prior to transfer of a facility served by an OBD. The transferee must replace the OBD using an alternative system) if there is a feasible

2-E-10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND MAINE WASTE DISCHARGE LICENSE
FACT SHEET

Date: June 9, 2009
Revised: September 1, 2009

PERMIT NUMBER: ME0023248
LICENSE NUMBER: W006931-5C-F-R
NAME AND ADDRESS OF APPLICANTS

Diamond Cove Homeowners Association
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

The Inn at Diamond Cove, LLC
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

COUNTY: **Cumberland County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:
Great Diamond Island
Portland, Maine 04109

RECEIVING WATER AND CLASSIFICATION: **Casco Bay, Class SB**

COGNIZANT OFFICIAL(S) AND TELEPHONE NUMBERS:

Diamond Cove Homeowners Association **Attn:** Robert Whelan **Position:** President **Telephone:** **Email:**bwhelan@whelanandcompany.com	The Inn at Diamond Cove, LLC c/o Phoenix Mgmt Co. **Attn:** Aaron Bateman P.O. Box 759, Saco, Maine 04101 **Telephone:** (207) 775-1121 **Email:** abateman@phoenixmanagementcompany.com

1. APPLICATION SUMMARY:

A. Application - The Diamond Cove Homeowners Assoc (DCHA) and The Inn at Diamond Cove, LLC (Inn) (collectively; the applicants or permitees) have submitted an application to the Department to transfer and modify WDL #W006931-5C-E-R, which was issued on October 14, 2005 and expires on October 14, 2010. The 10/14/2005 WDL authorized the year-round discharge of up to 35,000 gallons per day (as a monthly average) of secondary treated sanitary wastewater to Casco Bay, Class SB, in Portland, Maine (See Attachment A of this Fact Sheet for location map).

B. Source - Wastewater is generated by Phase I development of Department Site Location Order #L-013160-87/03-A-N. This development, located on a 193.4-acre portion of Great Diamond Island, consists of 44 buildings. Of the buildings, 36 were to be converted to 134 housing units; five were to be commercial uses, and two for recreational uses. To date

SPECIAL CONDITIONS

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permittees shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permittees shall submit the updated O&M Plan to their Department inspector for review and comment.

K. TREATMENT SYSTEM REPAIRS AND MAINTENANCE

Prior to habitation of the "Barracks" and final reconnection of the "Barracks" to the OBD, or by March 6, 2012, whichever occurs first, the permittees shall refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, permanently disconnect the "Hospital" from the sewer collection system and cap off that end of the sewer to exclude any inflow and infiltration from the Hospital leg of the sewer, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and 83E-B40-4, and replace/raise to grade the manhole casting adjacent to Unit #83E-260-26A *[PCS Code 04599]*.

L. SEPTIC TANKS

1. Septic tanks and other treatment tanks shall be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permittees shall maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs shall be maintained on site at all times and made available to Department personnel upon request.

2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The licensee shall keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

M. REOPENING OF PERMIT FOR MODIFICATIONS

If new site-specific information or any other pertinent information is gathered during the term of this permit, the Department may, at anytime and with notice to the permittees, modify this permit to:

(a) include effluent limits necessary to control specific pollutants where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded.

(b) impose or change monitoring requirements or limitations based on new information;

(c) require elimination of the discharge when an alternative form of wastewater disposal is feasible. The Department will require termination of the discharge when grant funds are made available for elimination of the discharge.

N. SEVERABILITY

In the event that any provision or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court

SPECIAL CONDITIONS

G. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

Maine Department of Environmental Protection
Bureau of Land and Water Quality
OBD Inspection Program
17 State House Station
Augusta, Maine 04333-0017

H. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permitees shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:

1. The quality and quantity of wastewater introduced to the system; and
2. Any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

I. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

On or before March 8, 2014, prior to permit transfer or **transfer of the property** occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

The Department may not grant approval for a **permit transfer** if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a **permit renewal** if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permitees funding for the removal of the discharge.

J. OPERATION & MAINTENANCE (O&M) PLAN

This facility shall maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permitees shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permitees to achieve compliance with the conditions of this permit.

By December 31, 2009, the permitees shall establish a "Wet Weather Management Plan" as part of the O & M plan. This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during the events.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time that would impair the usages designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.
3. The discharge shall not impart color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. Notwithstanding specific conditions of this permit, the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. DISINFECTION

An approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized, followed by a dechlorination system if the total residual chlorine (TRC) cannot be met by dissipation in the detention tank. At no time may the TRC in the effluent shall cause any demonstrable harm to aquatic life in the receiving waters. The dose of chlorine applied shall be sufficient to leave a TRC concentration that will effectively reduce bacteria to levels below those specified in Special Condition A, *"Effluent Limitations and Monitoring Requirements."*

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a Grade II certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permitee(s) may engage the services of the contract operator.

E. UNAUTHORIZED DISCHARGES

The permitees are authorized to discharge only in accordance with the terms and conditions of this permit and only from the existing outfall. Discharges of wastewater from any other point source are not authorized under this permit, but must be reported in accordance with Standard Condition B(5), *Bypasses*, of this permit.

This permit specifically excludes introduction of wastewater directly or indirectly from the redevelopment of the Hospital and the proposed Inn swimming pool. This permit authorizes the inclusion of wastewater resulting from the general practice of hotels and inns to have kitchen facilities to support a continental breakfast, and the proposed cabana to serve beverages and light snacks for their guests. This permit does not authorize the inclusion of wastewater from any non-domestic sources or activities such as restaurant facilities within the Inn or the pool.

F. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the wastewater collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system.

Commonly Asked Questions About Diamond Cove

Below are some commonly asked questions about the Diamond Cove development and IR-3 conditional zoning. This information is presented below.

What is the size of the Diamond Cove development?

The total land area of the Diamond Cove development is about 190 acres, which occupies the northerly half of Great Diamond Island. The IR-3 zone totals about 92 acres. The IR-3 zone section was approved for 134 dwellings within the historic military buildings although only 77 units have been placed in the buildings to date. The conditional zoning intended to facilitate the rehabilitation of the existing Fort McKinley buildings thus newly constructed buildings were prohibited. Five buildings were originally allocated for commercial uses near the Diamond Cove ferry landing but only a couple of the buildings have been used for that purpose including a restaurant.

The IR-1 single-family section of the development has 39 lots with 34 houses on the lots but isn't part of the IR-3 conditional zone.

In contrast, the remainder of the island (the southerly or village section of the island) had about 72 dwellings as of 2004.

Why was the property zoned IR-3 conditional zoning?

As part of the comprehensive island zoning update in 1985, an IR-3 zoning text was created to address large-scale development on the islands. An IR-3 is a specialized island zone that is enacted with a conditional zone. The IR-3 is the only island residential zone that allows condominiums (attached housing). Converting the military buildings into condominiums was the only feasible way to renovate the historic Fort McKinley buildings. Thus the developer requested IR-3 conditional zoning for the property.

The islands are unique landforms with sensitive environmental features particularly the shoreland areas that ring the island. The land development pattern of an island such as Great Diamond is reflective of a rural village rather than a mainland neighborhood. The special development standards of the IR-3 zone and the ability to use conditional zoning were intended to address the unique physical and natural characteristics of the islands.

The IR-3 conditional zone covers the entire Fort McKinley complex, the main complex of former military buildings around the parade ground and the Diamond Cove pier area.

A copy of the original 1985 conditional zoning is shown on Attachment 1-D.

Have there been other amendments made to the Diamond Cove conditional zoning since the 1985 approval?

Yes, the original conditional zoning has been amended three times.

In 2000, the IR-3 zone was expanded to include lot 44. Lot 44 is located near Diamond Cove and was incorporated into the zone to allow outdoor tent events associated with the Diamond Cove restaurant. A proposal for a beachfront bar (Stowaways) was not approved.

In 2004, the conditional zoning was modified to address golf cart issues within the project.

In 2008, the conditional zoning was amended to accommodate The Inn at Diamond Cove proposal.

Order 55-08/09
Given first reading: 8/18/08 Public Hearing and postponed on 9/3/08
Amended and Passed 9/15/08 (Cohen abstaining)

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING AMENDMENT TO CONDITIONAL ZONE FOR PROPERTY IN THE VICINITY OF DIAMOND COVE, GREAT DIAMOND ISLAND PORTLAND, MAINE

ORDERED, that the Conditional Zone by and between the City of Portland and The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association, adopted on _____ and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to read as follows:

SUPPLEMENTAL CONDITIONS AND RESTRICTIONS
BUILDINGS 46 ("DOUBLE BARRACKS") AND 19 ("HOSPITAL")
FT. MCKINLEY, PORTLAND, MAINE
SEPTEMBER 3, 2008

The following supplemental conditions and restrictions are imposed by the City of Portland (the "City") on that portion of the Ft. McKinley project ("Project") commonly known as Buildings 46 and 19, together with the ancillary service area, all as depicted on the map attached hereto as Attachment 1 ("Premises"), as conditions of the rezoning of the Premises at the request of The Inn At Diamond Cove, LLC ("IDC") [1], and consented to by the Diamond Cove Homeowners Association ("DCHA"):

1. Existing Conditions. The Premises are a portion of the development commonly known as Ft. McKinley, Great Diamond Island, Portland, Maine which is subject, inter alia, to those Conditions and Restrictions recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263, as amended by Order of the Portland City Council on August 16, 2004 relating to ground transportation in and around the Project (collectively, the "Existing Conditions and Restrictions").

1. Supplemental Conditions and Restrictions. Notwithstanding the terms of

[1] For purposes of this Supplemental Conditions and Restrictions document, "Owner/Manager" referred to herein shall mean, individuals and collectively, the following: IDC, its successors in interest or assigns; individual unit owners, there heirs, successors in interest and assigns; any and all management company retained by or working on behalf of IDC, its successors or assigns and/or individual units owners and their heirs, successors in interest or assigns.

the LR-3 zoning text otherwise applicable to the Premises, and the Existing Conditions and Restrictions, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and a portion of the Open Space, all depicted on the site plans dated June 24, 2008 [consisting of four (4) sheets and attached hereto as Attachment 2], all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelminiums" and a supporting pool/services area on the Open Space. "Hotelminium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services[2] which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelminium units may be rented (in whole or in part by virtue of attached bedrooms capable of being independently rented through a "lock out" system from the remainder of the unit) for varying durations to the general public through a centralized hospitality vendor. The Double Barracks may include up to a maximum of twenty (20) hotelminium units [with the maximum number of lock out units, included as part of the twenty hotelminiums and not separate units, not to exceed sixteen (16)] and the Hospital may include up to a maximum of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)]. The units contained within the Double Barracks and the Hospital buildings shall become members of a separate condominium association established for these two rehabilitated buildings, and each unit will also be considered a "lot" within DCHA, subject to all of the applicable restrictions, covenants, conditions, assessments and the like of both DCHA and the newly-established condominium association.

The Double Barracks and the Hospital, both of which may be renovated, are depicted on Attachment 2. The allowable rehabilitation of these buildings may include construction of a new swimming pool and related guest services building on that portion of the Open Space depicted on the site plans, a copy of the relevant portion of which appears as Attachment 2 hereto. The recording of the this Amendment shall be deemed to supplement the Conditions and Restrictions recorded in Book 8928, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit.

3. Disposal of Solid Waste. All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal

[2] For purposes of this Supplemental Conditions and Restrictions document, "reasonable and customary on-site hotel services" shall include but not be limited to laundry service, linen service, room service, health and fitness facilities, food and beverage service, concierge, etc.

facility.

4. Fire Protection. The Double Barracks and Hospital buildings shall be fully sprinkled and have installed, and at all times functional, a central fire alarm system operative prior to the issuance of any certificate of occupancy for the respective building.

5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service becomes unavailable, the Owner/Manager shall provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof. The Owner/Manager shall also provide suitable ground transportation from points of disembarkment within the Project to the hotelminiums. The Owner/Manager shall not provide motorized ground transportation off the Ft. McKinley Project site and the Owner/Manager, its guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the pier at the south end of the island except in the event of an emergency. All such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the project site to the public pier at the southerly end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The Owner/ Manager shall conspicuously post, and keep posted in each hotelminium units at the Premises, a written notice of the applicable ordinances, rules and regulations. Moreover, the City shall have no obligation to provide mainland parking for any owner, occupant, guest or invitee of any hotelminium unit or any manager or on-site staff thereof.

6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving the City in all meetings and discussions concerning sanitary waste disposal. No site plan or subdivision application shall be approved by the City unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

7. Interpretation; Conflicts. The within conditions and restrictions are intended to supplement the existing Conditions and Restrictions and amendments thereto, all of which shall remain in full force and effect except as modified herein or as may be modified by further amendment or ordinance duly enacted by the City of Portland. In the event of any conflict between these Supplemental Conditions and Restrictions and the pre-existing Conditions and Restrictions, as amended, these Supplemental Conditions and

Restrictions shall control.

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\GD1 072908to Council.DOC

ATT 1-D

Rick Knowland - Building 46 - Great Diamond Island

From: Thomas Errico <Thomas.Errico@tylin.com>
To: Rick Knowland <RWK@portlandmaine.gov>
Date: 12/23/2009 8:33 AM
Subject: Building 46 - Great Diamond Island
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>

Rick -- I have reviewed the November 18, 2009 submittal prepared by Archetype and offer the following comment.

- The applicant should provided detailed information on parking usage at the Portland Harbor Hotel for guests of the proposed Inn. This should include not only actual excess parking supply during the peak summer months, but also conformity with site plan parking requirements for the Portland Harbor Hotel.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, P.E.
TY LIN INTERNATIONAL

12 Northbrook Drive
Building A, Suite One
Falmouth, ME 04105

207.347.4354 (Direct)
207.781.4721 (Main)
207.781.4753 (Fax)
207.400.0719 (Mobile)

December 23, 2009

To: Rick Knowland
Barbara Barhydt
From: Public Services – David Margolis-Pineo
Re: Building 46 - Great Diamond Island

This department has no comments about this project but does have a strong recommendation.

1. The wastewater subsurface disposal system is under license by the Maine Department of Environmental Protection. Therefore any comments about this system come in the form of recommendations.
The current and proposed disposal system is a septic tank with sand filtration leach beds. These systems are very susceptible to failure by grease clogging the filter sand.
Since it is assumed that there will be a kitchen facility with dish washer, it is strongly recommended that an appropriately sized external grease trap be installed on the kitchen sewer line before going to the septic tank and sand filtration beds.

Attn. 1-F

From: Keith Gautreau
To: Rick Knowland
Date: 1/21/2010 8:00 AM
Subject: Re: Fwd: Inn at Diamond Cove

Rick,
The letter looks good and I agree with what they are saying that a fire pump would be a good alternative solution to the problem.
Keith

Keith Gautreau, Fire Captain
Fire Prevention Bureau
Portland Fire Department
380 Congress Street
Portland, ME 04101
(207)874-8405
kng@portlandmaine.gov

>>> Rick Knowland 1/19/2010 4:45:15 PM >>>
Hi Keith, fyi. Diamond Cove and water for sprinkler system.

>>> "Kevin Gough" <gough@archetypepa.com> Tuesday, January 19, 2010 >>>
Rick, Attached is our letter describing the sprinkler system and the water capacity for the Diamond Cove.Call if you have any questions.Thanks. Kevin Gough, Architect
Archetype, P.A.
48 Union Wharf
Portland, ME 04101
Phone: (207) 772-6022
gough@archetypepa.com
http://www.archetype-architects.com

CC: Alex Jaegerman ; Barbara Barhydt

COPY

CITY OF PORTLAND, MAINE
HISTORIC PRESERVATION BOARD

Rick Romano, Chair
Martha Deprez, Vice-Chair
Otis Baron
Scott Benson
Michael Hammer
Ted Oldham
John Turk

November 6, 2009

David Bateman
Bateman Partners LLC.
245 Commercial Street
Portland, Maine 04101

Re: Rehabilitation of Double Barracks, Fort McKinley Historic District

Dear Mr. Bateman:

On September 16, 2009 the City of Portland's Historic Preservation Board voted 6-0 (Benson absent) to approve your application for a Certificate of Appropriateness for the comprehensive rehabilitation of the former Double Barracks within the Fort McKinley Historic District. Approval is for exterior alterations, building addition and site changes associated with the adaptive reuse of the structure for residential hotel condominiums.

Board approval was made subject to the following conditions:

* Real slate (as opposed to the proposed faux slate) to be used on side walls of new dormers on the rear elevation. Slate to match existing in terms of type, color, width and exposure.

* Roofs of rear dormers to be EPDM.

* Composite decking material to be consistent with decking previously approved for other buildings within the Fort McKinley complex--Tendura 4" tongue-and-groove decking. If Tendura is no longer available, applicant to use equivalent product in terms of width and visual character. Any proposed substitute for Tendura to be submitted to historic preservation staff for review and approval.

* Historic preservation staff to review and approve test patch of proposed brick repointing before commencing with final repointing. Contact Scott Hanson (756-8023) to arrange an inspection.

All improvements shall be carried out as shown on the plans and specifications submitted for or presented at the 9/16/2009 public hearing and/or as described above. Changes to the approved plans and specifications and any additional work that may be undertaken must be reviewed and approved by this office prior to construction, alteration, or demolition. If, during the course of completing the approved work, conditions are encountered which prevent completing the approved work, or which require additional or alternative work, you must apply for and receive a Certificate of Appropriateness or Non-Applicability PRIOR to undertaking additional or alternative work.

Memorandum
Department of Planning and Urban Development
Planning Division

To: Chair Hall and Members of the Portland Planning Board

From: Richard Knowland, Senior Planner

Date: January 26, 2010

Re: The Inn at Diamond Cove, Great Diamond Island

A workshop has been scheduled to consider a proposal by The Inn at Diamond Cove, LLC. for a proposed 20 unit residential hotel condominium (hotelminium) on Great Diamond Island. This proposal would renovate the existing Double Barracks building within the parade ground of the Fort McKinley complex on Great Diamond Island. The Double Barracks building is the largest brick building not renovated within the Fort McKinley complex.

The Board held an initial workshop on this proposal on January 27, 2009. Since that time the applicant has received all necessary approvals from the Maine DEP related to a waste discharge license for the existing overboard wastewater discharge and a site location permit for various site changes associated with the condominium development.

The proposal is subject to site plan and subdivision review.

A vicinity map is shown on Attachment 1-A. An outline of commonly asked questions about Diamond Cove and IR-3 zoning is shown on Attachment 1-B.

Site plans and building elevations are shown on Attachments 2-C and 2-D.

Notices were sent to all property owners on Great Diamond Island.

The applicant is represented by Archetype (architect), DeLucca-Hoffman (engineer) and Ronald Ward (attorney).

I. FINDINGS

Zoning:	IR-3 conditional use zone
Use:	Residential hotel condominiums (hotelminiums)
Number of units:	20 with with 16 lock-out units two 1 bedroom units; ten 2 bedroom units; eight 3 bedroom units

Building footprint: existing .....13,629 sq. ft.
proposed.....16,510 sq. ft.
Building floor area: existing building.....51,164 sq. ft. plus addition (2,881 sq. ft.)
cabana building.....3,100 sq. ft.
Total site disturbance: 34,848 sq. ft.

The swimming pool, cabana and surrounding open space area (approx. 15,473 sq. ft.) though owned by the Diamond Cove Homeowners Assoc. will be leased by The Inn at Diamond Cove LLC.

II. DEVELOPMENT APPROVALS RECEIVED TO DATE

City of Portland Historic Preservation Board: Approval letter dated Nov. 6, 2009 with condition. See Attachment 1-G.

Maine Department of Environmental Protection: Approval letter dated Sept. 9, 2009 (with conditions)for a Maine Pollutant Discharge Elimination System Permit and Waste Discharge License involving a transfer and renewal of the license. This approval addresses sanitary waste and overboard discharge related issues. See Attachment 2-E.

Maine Department of Environmental Protection: Approval letter dated Sept 2009 under the Site Location of Development Act involving revisions to the site plan. See Attachment 2-F.

II. CONDITIONAL ZONING AMENDMENT

After Planning Board review, the City Council on September 15, 2008 enacted an amendment to the IR-3 conditional zoning for the Diamond Cove property to allow the proposed residential hotel condominium use for the Double Barracks building and the Hospital building. The Hospital building is a future project and is not part of this application.

The complete text of the enacted amendments is shown on Attachment 1-C. The amendments established a definition for the residential hotel condominium use (hotelminiums) and allowed up to 20 condominium units with up to 16 lock-out units in the Double Barracks building. The text also referenced a swimming pool and cabana services building to the rear of the Double Barracks building as depicted on the site plan.

Other Provisions

(3) Disposal of Solid Waste: Applicant is responsible for disposing of solid waste associated with this use privately on the mainland or if in the opinion of the city, it would not create an unreasonable burden, at a municipal island solid waste disposal facility.

(4) Fire Protection: Buildings shall be fully sprinkled and a central fire alarm system shall be installed.

(5) Transportation Services: Ferry service for the project is intended to be from and between the Portland Waterfront and the Diamond Cove Pier. The owner/manager shall not provide motorized ground transportation off the Ft. McKinley Project site. Guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the southerly pier except in the event of an emergency. All such transportation shall conform to all existing ordinances, rules and regulations concerning travel outside of the project site to the public pier at the southerly end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The owner/manager shall conspicuously post, and keep posted in each hotel minimum units at the premises, a written notice of the applicable ordinances, rules and regulations.

(6) Sanitary Waste: No site plan or subdivision application shall be approved by the city unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

With submission of the applicable DEP approvals this requirement has now been met.

III. PROPOSED DEVELOPMENT

The proposed development involves the renovation and conversion of the Double Barracks building into residential hotel condominiums. The applicant is not pursuing redevelopment of the hospital building at this time. Site plans and building elevations are shown on Attachments 2-C and 2-D. The specific elements of the development proposal include the following:

- Renovation and conversion of the Double Barracks building into residential hotel condominiums.

- A 2,381 sq. ft. addition is proposed to the rear of the building. It will apparently function as a dining/meeting room. An earlier plan indicated a dining room/reception area for 14 tables serving about 56 people. Other building additions include an elevator and a new porch. Patios are proposed on both sides of the addition.

- A swimming pool and a cabana building (food service, bar) are proposed to the rear of the building. A deck is shown adjacent to the pool and and cabana area.

- A series of small bioretention cells are proposed between the building addition and the swimming pool to treat stormwater. A new storm drain line is proposed that will outlet to an existing drainage swale.

- A parking space for a shuttle vehicle (6 ft. by 15 ft.) is shown along the rear driveway behind the Double Barracks building.

IV. SITE PLAN ISSUES

Wastewater Treatment and Capacity

Condition 6 of the conditional zoning states: "No site plan or subdivision application shall be approved by the City unless documentation of Maine DEP approval of the sanitary waste system serving the premises is provided."

This condition has been addressed with Maine DEP approval of a Maine Pollutant Discharge Elimination System Permit and Waste Discharge License. See Attachment 2-E.

By way of background, the original Diamond Cove wastewater treatment system approved by the DEP in 1986 was designed to accommodate 134 condominium units and 5 commercial uses. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000, a third sand filter was installed accommodating what was believed to be a total build-out of only 77 condominium units and providing for increased wastewater flows from the Diamond Cove restaurant. The wastewater treatment system is licensed by the DEP to accept and treat 35,000 gallons of waste per day based on a monthly average. The sand filter treatment system has an outfall pipe in Casco Bay. In September 2003, the DEP formally banned new overboard discharges. The existing sand filter treatment system may be maintained but the amount of wastewater flow into Casco Bay may not be increased above the license restrictions.

The developer submitted an application to the Maine DEP on December 31, 2008 to modify the existing wastewater discharge license to accommodate the additional wastewater flows for this project. After reviewing the application the Maine DEP has

determined the project in combination with the remaining Diamond Cove development will not exceed the license limits of 35,000 gallons per day based on a monthly-daily average. According to the DEP, existing uses contributing to the waste collection and treatment system generate approximately 28,910 gallons of waste per day. The proposed project is anticipated to discharge an additional 4,545 gallons of wastewater per day which will result in a daily flow waste under the daily average cap of 35,000 gallons.

A key factor in remaining below the license limits is controlling groundwater infiltration into the sewer pipes. Groundwater that migrates into the sewer pipes reduces the capacity of the treatment system. Infiltration has been a long standing issue at Diamond Cove and the property owner has made incremental improvements over the years in an attempt to address this problem. The DEP approval is "requiring rehabilitation of the remaining 1,340 linear feet of non-rehabilitated wastewater conduit associated with this Permit in addition to the other remedial measures proposed in the application…"

Other DEP requirements/conditions of interest include:

- Prohibiting wastewater (including inflow and/or infiltration) from the Hospital from inclusion in the wastewater influent to the existing over board discharge sand filter treatment system. Prior to habitation of the Inn the sewer connection to the Hospital must be capped.

- Prohibiting wastewater from the proposed swimming pool to the existing over board discharge sand filter system.

- Requiring updates to the Operation and Maintenance Plan to include provisions for near capacity discharges.

As part of the Site Location review, the DEP is requiring that "the kitchen and cabana of the proposed inn shall not contain any equipment that would necessitate the use of a grease trap, and shall be limited to serving only continental breakfasts and light snacks to guests of the inn." This effectively means there will be no restaurant at the inn. This restriction is intended to address the concern that a second restaurant at Diamond Cove would increase the waste flow above the discharge license requirements.

Transportation

The revised conditional zoning provisions are very specific in prohibiting motorized ground transportation off the Fort McKinley site to the southerly pier. The intent is that owners and visitors of the units will use the Diamond Cove pier for all water transportation needs and not use the southerly pier. As the Board is aware the transportation issues on Great Diamond Island (motor vehicles, golf carts, common motor vehicles) have been complex and contentious. We have requested that the applicant submit in writing how they will be implementing the transportation condition requirements.

The plan indicates that a designated space for shuttle vehicle (6 ft by 15 ft) will located adjacent to the rear driveway.

A two bike storage rack per sec. 14-526(a)(1)(c) is shown on the plan to the rear of the Double Barracks.

Tom Errico, Traffic Engineer Consultant, has reviewed the plan and indicates "the applicant should provide detailed information on parking usage at the Portland Harbor Hotel for guests of the proposed Inn. This should include not only actual excess parking supply during the peak summer months, but also conformity with site plan requirements for the Portland Harbor Hotel."

In response a letter has been submitted by David Bateman (dated Jan. 19, 2009) regarding mainland parking supply at the Harbor Plaza/Portland Harbor Hotel. The letter states the Harbor Plaza Garage includes 198 spaces within the parking garage and 22 surface spaces. "Current parking requirements" for existing uses on the site (MEMIC building, Portland Harbor Hotel, etc.) are calculated as 152 spaces leaving a balance of 66 spaces. Utilizing the most restrictive application (residential uses) a total of 44 spaces would be required for the condominium hotel; use/ 2 spaces for every unit plus 1 additional space for every 6 units. The letter concludes a surplus of 22 spaces will remain after the additional use is factored. Staff will review project files regarding parking requirements for other projects using the parking garage to confirm this apparent surplus.

Stormwater

The site plan indicates that a series of 4 small bio-retention basins are proposed adjacent to the roadway between the Double Barracks building and the swimming pool. The basins are intended to address stormwater quality issues required by the Maine DEP. This requirement is being triggered by the 7,620 sq. ft. of additional impervious surface areas associated with the building addition, walkways, pool and pool deck. A cross section of the proposed bio-retention basin is shown on Attachment 2-C-10. The bio-retention system replaces a plunge pool that would have required significant vegetation clearance shown on the original site plan.

Stormwater from the bio-retention basins flows into 6 catch basins and is then conveyed into a new stormdrain line that runs along the driveway before diverting to an existing drainage swale within designated common open space. The outlet of the stormdrain includes a riprap apron. See Attachment 2-C-8 for construction detail.

A note on the plan indicates that a portion of the storm drain line and outlet are located on a "permanent drainage and maintenance easement (approx. 3,032 s.f) between The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association". An executed copy of this agreement should be submitted for review and approval.

Fire

The conditional zoning requires that the Double Barracks be fully sprinkled and have a central fire alarm system.

We have requested further information on the size of the waterlines including the size of the waterline feeding the sprinkler system and associated water flow and water pressure data to assure that water supply will be adequate for the sprinkler system. To the best of our knowledge the Double Barracks building will be the first building at Diamond Cove to have a sprinkler system.

A letter from Archetype indicates there are two options for addressing the installation of a fully operable sprinkler system. See Attachment 2-L. The first option would be to increase the water pressure in the existing water system by closing the loop of the water lines, which currently dead-end downstream from Building 46. The letter indicates this modification "would increase the pressure adequately to supply the sprinkler system".

The second option would be to install a sprinkler pump within the building to provide an adequate flow of water in the event the sprinklers are activated for a fire.

Capt. Keith Gautreau of the Fire Dept. has reviewed the Archetype letter and indicates a fire pump for the sprinkler system would be a good alternative solution if the water line is not extended. In the event there is not a specific resolution of this issue with supporting documentation submitted prior to the public hearing this will need to be a condition of approval.

The nearest hydrant is about 200 feet from the Double Barracks which is acceptable.

The driveway behind the Double Barracks is about 13 feet wide. Comments from Captain Gautreau indicate the driveway should be a minimum of 16 feet wide for fire access.

Building Elevations

Building elevations are shown on Attachment 2-D. Since Fort McKinley is located in a historic district, the project is subject to review by the Portland Historic Preservation Board. On September 16, 2009, the Historic Preservation Board voted to approve a Certificate of Appropriateness (with conditions) for the comprehensive rehabilitation of the exterior alterations, building addition and site changes. See Attachment 1-G. The plans have also been reviewed and approved (with conditions) by the US Dept. of the Interior National Park Service for compliance with the guidelines for rehabilitation to historic properties. See Attachment 2-G.

The Double Barracks building is the largest brick building not renovated in the Fort McKinley complex and is currently in a very deteriorated condition. The proposal preserves the character defining features of the building with very limited changes to the exterior. The proposed building addition has a brick exterior and is located on the

northerly or rear side of the building. Small dormers are proposed on the northerly side of the building. The slate roof will apparently be retained in all 4 sides of the building.

A building elevation of the cabana building has been submitted. The cabana is an octangular shaped building sheathed in wood shakes.

Landscaping

A landscaping plan has been submitted. See Attachment 2-C-7. 120 shrubs and ornamental grasses are proposed adjacent to the building addition and the swimming pool area. Groundcover material including vines and herbaceous plants. Three Autumn Brilliance Serviceberry (1 1/2-2 in. caliper), three Korean Dogwood (5 to 6 ft high) and one Saucer Magnolia (5 to 6 ft high) are proposed.

Vegetation will be disturbed for the construction of the swimming pool. A tree protection plan should be submitted.

Comments from the City Arborist will be available for the public hearing.

Financial Capacity

An updated financial capacity letter should be submitted.

IR-3 Development Standards

Applicant should provide a written response to the IR-3 development standards (sec. 14-156.16). Although there is some overlap with site plan standards this section states "no development shall occur nor shall any use be established unless the planning board finds that the final development plan is in compliance with the following [IR-3] development standards".

Subdivision Plan

A subdivision recording plat will need to be submitted meeting the requirements of the Subdivision Ordinance. A recording plat was submitted on Thursday but staff has not had the opportunity to review it. See Attachment 2-M.

Written Public

Over the past year (plus) we have received a large number of written comments on this project. Attachment C includes the most recent comments received. For the public hearing we will gather together all of the comments for the Board to review.

Attachments

1-A Vicinity Maps
1-B Commonly Asked Questions on Diamond Cove
1-C Revised Conditional Zoning Amendments, enacted September 15, 2009
1-D Comments of Tom Errico, Traffic Review Consultant (December 23, 2009)
1-E Comments of David Margolis-Pineo, City Engineer (December 23, 2009)
1-F Comments of Keith Gautreau, Fire Captain (January 21, 2010)
1-G Approval Letter from Historic Preservation Board (November 6, 2009)

Applicant Submission

2-A Introductory Cover Letter and Related Exhibits for January 27, 2009 Planning Board Workshop
2-B Introductory Cover Letter for January 26, 2010 Planning Board Workshop
2-C Site Plan
2-D Building Elevation
2-E Maine DEP Maine Pollutant Elimination System Permit and Waste Discharge License (September, 2009)
2-F Maine DEP Site Location Permit (September, 2009)
2-G US National Park Service Historic Preservation Certification (May 15, 2008)
2-H Parking Related Information
2-I Portland Water District Letter (May 6, 2008)
2-J Stormwater Mangement Report
2-K Erosion and Sedimentation Report
2-L Water Capacity and Sprinkler System Info.
2-M Recording Plat
2-N Second Amendment to Amended and Restated General Declaration of Covenants and Restrictions (on file in Planning Office)
2-O Property Deed (on file in Planning Office)

3 Written Public Comment

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001

1. The permitees are authorized to discharge secondary treated wastewaters from Outfall #001 to Casco Bay, Class SB. Such discharges shall be limited and monitored by the permitees as specified below:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
Parameter	Monthly Average as specified	Weekly Average as specified (5)	Daily Maximum as specified	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	35,000 gpd	Report (gpd)	Report (gpd) *[07]*		—	—	Continuous *[99/99]*	Recorder *[RC]*
Biochemical Oxygen Demand (1) (BOD_5) *[00310]*	8.8 lbs./day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Total Suspended Solids (TSS) (1) *[00530]*	8.8 lbs/day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Settleable Solids *[00545]*	—	—	—	—	—	0.3 ml/L *[25]*	1/Month *[01/30]* (2)	Grab *[GR]*
Fecal Coliform Bacteria (3) *[31633]*	—	—	—	15/100 ml *[13]*	—	50/100 ml *[13]*	1/Week *[01/07]*	Grab *[GR]*
Total Residual Chlorine *[50060]* (4)	—	—		—	—	1.0 mg/L *[19]*	5/Week *[05/07]*	Grab *[GR]*
pH (Std. Unit) *[00400]*	—	—	—	—	—	6.0 - 9.0 SU *[12]*	1/Week *[05/07]*	Grab *[GR]*

The italicized numeric values bracketed in the table above and on the following pages are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMR's)

Footnotes:

Sampling – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Human Services.

1. *Percent Removal – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids.* The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L.
2. The monitoring frequency for SS has been revised from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
3. Fecal coliform bacteria – The limits and monitoring requirements are in effect on a seasonal basis, to be implemented no later than May 15 and be discontinued no earlier than September 30 of each year.
4. Total Chlorine Residual (TRC) – TRC is required in any month the effluent is chlorinated.
5. Weekly average flows that exceed 35,000 gpd will prompt the permitee(s) to implement provisions in the Wet Weather Management Plan *(see Special Condition J)*.

D. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987. The redevelopment of the barracks and hospital are existing sources in that they were connected to the wastewater disposal system and approved for redevelopment as part of *Phase I* development in Department Site Location Order #L-013160-87/03-A-N on December 10, 1986.

E. A publicly owned sewer line is not located on or abutting land owned or controlled by the applicants or is not available for the applicants' use.

F. The discharge is not located within the boundaries of a sanitary district or sewer district.

G. The Inn's Licensed Site Evaluator/Professional Engineer has determined that there is not a subsurface alternative for the Barracks, but has found there to be a feasible alternative for the Hospital, both of which have or will have changed owners since September 13, 2003, the effective date of *Waste discharge licenses* 38 M.R.S.A. §413.3.

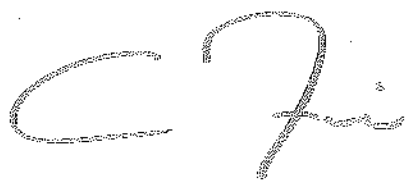
H. The proposed development will not cause exceedances of the 35,000 gpd monthly average volume limit.

I. The discharge from the existing development is primarily domestic in both strength and character. The discharge from the rehabilitation of the "Barracks" will be domestic in strength and character.

ACTION

THEREFORE, the Department APPROVES the application of the DIAMOND COVE HOMEOWNERS ASSOC. AND THE INN AT DIAMOND COVE, LLC, transferring to their name WDL #W006931-5C-E-R and authorizing the year-round discharge of no more than 35,000 gallons per day (monthly average) of treated sanitary wastewater into CASCO BAY, Class SB, in PORTLAND Maine; subject to the following conditions and all applicable standards and regulations.

1. "*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits,*" revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.
4. The amount of effluent being discharged and the number of months the discharge occurs can not be increased in accordance with *Classification of Maine Waters*, 38 M.R.S.A. §464, sub-§4(A)(6).
5. Wastewater disposal is limited to the existing active development and that resulting from the redevelopment of the "Barracks" into a 46 bedroom commercial residential facility. Influent from the proposed pool and from the "Hospital" are specifically excluded from discharge through the existing OBD.



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.09.15 12:00:56 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES
Date of initial receipt of application: 12/31/2008
Date of application acceptance: 1/13/2009

6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for settleable solids (SS); and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

B. This permitting action is dissimilar to the 10/14/2005 Permit action in that it is;

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30].
2. Authorizing the introduction of domestic wastewater to the OBD treatment system resulting from the redevelopment of the barracks into a 46-bedroom hotel/condominium.
3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3.
4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6.
5. Requiring rehabilitation of the remaining 1,340 linear feet of non-rehabilitated wastewater conduit associated with this Permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this Permit, whichever occurs first.
6. Requiring The Inn at Diamond Cove, LLC to cap off the sewer connection to the hospital prior to habitation at the Inn.
7. Requiring monitoring of the daily discharge as a weekly average (record only).
8. Requiring updates to the Operation and Maintenance Plan (O&M Plan) to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP).

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated **June 9, 2009** *(rev. 9/9/09)*, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

A. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

B. The provisions of the State's antidegradation policy as described in the *Water classification program*, 38 M.R.S.A., Section 464(4)(F), will be met, in that:

1. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
2. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
3. The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
4. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
5. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

C. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in *Water pollution control*, 38 M.R.S.A., §414-A(1)(D).

DEPARTMENT ORDER

IN THE MATTER OF

DIAMOND COVE HOMEOWNERS ASSOC AND	)	MAINE POLLUTANT DISCHARGE
THE INN AT DIAMOND COVE, LLC	)	ELIMINATION SYSTEM PERMIT
PORTLAND, CUMBERLAND COUNTY, MAINE	)	AND
OVERBOARD DISCHARGE	)	WASTE DISCHARGE
MEPDES #ME0023248	)	LICENSE
#W006931-5C-F-R APPROVAL	)	TRANSFER AND RENEWAL

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, Section 1251, et seq., *Water pollution control*, 38 M.R.S.A. § 414-A and *Overboard discharges: licenses and abandonment*, 06-096 CMR 596 (last amended November 27, 2004), the Department of Environmental Protection (Department) has considered the application of the DIAMOND COVE HOMEOWNERS ASSOC (DCHA) and THE INN AT DIAMOND COVE, LLC (Inn) (collectively, applicants or permitees) with its supportive data, agency review comments, and the related material on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

A. The applicants have submitted an application to the Department for the renewal and transfer of Waste Discharge License WDL #W006931-5C-E-R from McKinley Partners Ltd. Partnership and the DCHA to their names. The applicants also propose to modify the permit to reflect plans for the redevelopment of the "Barracks" into a condominium/hotel. The applicants propose to institute improvements to the wastewater collection infrastructure to reduce infiltration and inflow as part of the application.

B. WDL #W006931-5C-E-R, issued to the McKinley Partners and the DCHA October 14, 2005, authorized the year-round overboard discharge (OBD) of a monthly average of no more than 35,000 gallons per day of secondary treated sanitary wastewater to the Atlantic Ocean at Casco Bay, Class SB. WDL #W006931-5C-E-R is due to expire on October 14, 2010.

C. On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and permit #ME0023248 (same as the NPDES permit) will be utilized as the primary reference number for the Diamond Cove wastewater treatment facility.

SUMMARY

A. **This permitting action is similar to the 10/14/2005 Permit action in that it is;**

1. Carrying forward the monthly-average discharge flow limitation of 35,000 gpd;
2. Carrying forward the 30 mg/L monthly average, 45 mg/L weekly average and 50 mg/L daily maximum technology-based concentration limits for biochemical oxygen demand (BOD_5) and total suspended solids (TSS);
3. Carrying forward the 8.8 lbs/day monthly average, 13 lbs/day weekly average and 15 lbs/day daily maximum technology-based mass limits for BOD_5 and TSS;
4. Carrying forward the monthly average technology-based concentration limits for fecal coliform bacteria;
5. Carrying forward the daily maximum technology-based concentration limitations for total residual chlorine (TRC) of 1.0 mg/L.

Amy Fitzpatrick, DMR
Gail Wipplehauser, DMR
Robert Laughlin, Casco Bay Island Development Association
Paul Gleason
Mary Cerullo, Asst. Director; Friends of Casco Bay
Philip Conkling, President; Island Institute
Ross A. Cudlitz, LSE, P.E.
Calcagni, Anthony
Jon Carman, JMC Wastewater Services

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

September 9, 2009

Diamond Cove Homeowners Assoc and The Inn at Diamond Cove, LLC
Attn: Aaron Bateman
P.O. Box 759
Saco, ME 04072

RE: Final Permit: Maine Waste Discharge License (WDL) Application #W006931-5C-F-R
Maine Pollutant Discharge Elimination System Permit #ME0023248

Dear Mssrs. Whelan and Bateman:

Enclosed please find a copy of your final MEPDES permit/Maine Waste Discharge License which was approved by the Department of Environmental Protection. Please read the permit/license and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

We would like to make you aware of the fact that your monthly Discharge Monitoring Reports (DMR) may not reflect the revisions in this permitting action for several months. However, you are required to report applicable test results for parameters required by this permitting action that do not appear on the DMR. Please see the attached April 2003 O&M Newsletter article regarding this matter.

If you have any questions regarding the matter, please feel free to call me at 287-3901.

Sincerely,

Michael Demarest
Division of Water Quality Management
Bureau of Land and Water Quality

Enc. Final Permit

cc: Stuart Rose, DEP/SMRO
Mary Beth Richardson SMRO
Robert Whelan, President, DCHA
Aaron Bateman, Phoenix Mgmt.
Joseph Laverriere, P.E

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, ME 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570
FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, ME 04103
(207) 822-6300
FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DR., SKYWAY PK.
PRESQUE ISLE, ME 04769-2094
(207) 764-0477
FAX: (207) 764-1507

in March of 2009 and approved as part of the Site Location of Development Act Permit Amendment. A copy of the Amended Site Location of Development Act Permit is contained in an attachment to this letter.

11. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to include a unit summary table as well as the designated land areas associated with the exclusive right-to-use area, long-term ground lease area, and permanent drainage & maintenance easement area.
12. A letter from the General Manager of the Portland Harbor Hotel is attached below, which indicates the manner in which all guest parking will be handled on the mainland. There will be no parking on the island.
13. It is anticipated that all soil materials excavated as part of this project will either be re-used as backfill material or used in fill areas around the pool, etc. It is not anticipated that there will be any surplus excavation material that will need to be disposed off-site.
14. The Inn will not have a full kitchen area used for preparing foods, etc., but rather will be limited to serving continental breakfast, etc. that is customary to an Inn in accordance with the requirements set forth in the amended waste discharge license. Preparation of food for events requiring service beyond this will be catered through the Diamond Edge Restaurant.
15. As a means of satisfying the Board's and Zoning's request for context and area maps of the Island, the cover sheet for the Site Plans contains an excerpt of the USGS Map that depicts the location of the Inn on the Diamond Island, and within the context of the Fort McKinley plan.
16. The outdoor lighting system plan and photometrics is being prepared by our electrical engineer and will be provided as soon as it becomes available.
17. The current time line for completion of this project anticipates a May 2010 construction start with a completion date of June 2011.
18. In response to Comments from Dan Goyette, P.E. of Woodard Curran dated December 30, 2008, a copy of the tespit logs prepared by Albert Frick Associates has been added to Sheet C-3 of the plan set.
19. The storm drain system for the project has been revised from the original site plan submission to the City. The current design includes the use of shallow nyloplast yard inlets without the need for hooded outlets. The detail for the catch basins has been revised on Sheet C-9 of the plan set.
20. As requested by Dan Goyette, P.E., the Grading & Drainage Plan (Sheet C-5) has been revised to identify the pipe materials.

As can be seen from the above listing, our project team finds itself in conformance with the outstanding issues which our records indicate were addressed in our previous Planning Board Workshop. We seek to be included on an upcoming agenda for another workshop in order that we can move forward in the process towards an approved site plan.

We thank you for your time and your attention to the project. We are available any time to clarify or discuss these items.

Respectfully,

David Lloyd
Archetype Architects

(attachments below)

2-6-

ARCHETYPE

November 18, 2009

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Site Plan Application Double Barracks (Building 46) – Great Diamond Island

Rick:

Given the amount of time that has passed, allow me to re-introduce the Great Diamond Island Project as we request inclusion on the next Planning Board agenda. As you will recall, a workshop was held on January 27 of 2009, the results of which will be addressed here as an amendment to the pre-established Site Plan Application on file with your Department.

The following is a summary of the current project status, with a listing of items provide within this current amendment to our application:

1. The proposed renovation plans have been reviewed and approved by the National Park Service for compliance with the guidelines for renovations to historic properties. A copy of the National Park Service approval letter is attached below.
2. On September 16, 2009 the City of Portland's Historic Preservation Board voted in favor of approval for our application for a Certificate of Appropriateness for the project as presented. The letter from Deborah Andrews is attached below.
3. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to show the location of the nearest fire hydrant as well as the size of the water lines. The building fire protection sprinkler line will be serviced by an existing 6" diameter water main. Attached please find a letter dated May 6, 2009 from the Portland Water District which provides the certification of the ability of the Water District to serve the project. A copy of the ability to serve letter from the Portland Water District is contained in Attachment C of this response letter. The Inn at Diamond Cove will be served by connection to the private sanitary sewer collection system that is treated by the Overboard Discharge System that has a waste discharge license through the MeDEP. The waste discharge license was amended as part of the MeDEP review process. A copy of the amended waste discharge license is contained in an attachment to this response letter.
4. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to reflect the approximate pavement width of the roadway along the front and rear of the building. Any disturbed roadway surface behind the building will be reconstructed with concrete similar to the existing surface.
5. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to indicate a 6' by 15' parking stall for the electric transportation vehicle to transport people from the Inn to the Diamond Cove pier.
6. Pursuant to the bicycle rack requirement, section 14-526(2)(c), the Site Layout & Utility Plan (Sheet C-4) has been revised to reflect bike storage racks sufficient for eight (8) bikes.
7. It is anticipated that all soil materials excavated as part of this project will either be re-used as backfill material or used in fill areas around the pool, etc. It is not anticipated that there will be any surplus excavation material that will need to be disposed off-site.
8. A Landscape Plan has been prepared for the project and is depicted as Sheet C-7 of the plan set.
9. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to provide a summary of the building floor areas and dimensions; the footprint area (sq. ft.) and dimensions of the inn; floor area of the inn; floor area and dimensions of the building addition and elevator; and the footprint and floor area of swimming pool and cabana.
10. The stormwater drainage plan has been revised to eliminate a single stormwater drainage basin and replace with several smaller bioretention basins. The bioretention basins provide water quality treatment as required by the MeDEP under the State Stormwater Law. This change in the stormwater drainage plan was submitted to the MeDEP

48 Union Wharf, Portland, Maine 04101 (207) 772-5022 Fax (207) 772-4056

2-A-4

Major Development (more than 10,000 sq. ft.)

_X_ Under 50,000 sq. ft. ($500.00)
___ 50,000 - 100,000 sq. ft. ($1,000.00)
___ Parking Lots over 100 spaces ($1,000.00)
___ 100,000 - 200,000 sq. ft. ($2,000.00)
___ 200,000 - 300,000 sq. ft. ($3,000.00)
___ Over 300,000 sq. ft. ($5,000.00)
___ After-the-fact Review ($1,000.00 + applicable application fee)

Minor Site Plan Review

___ Less than 10,000 sq. ft. ($400.00)
___ After-the-fact Review ($1,000.00 + applicable application fee)

Plan Amendments

___ Planning Staff Review ($250.00)
___ Planning Board Review ($500.00)

Billing Address: (name, address and contact information)

The Inn at Diamond Cove, LLC
PO Box 3572
Portland, ME 04104

David Bateman (207) 772-2992

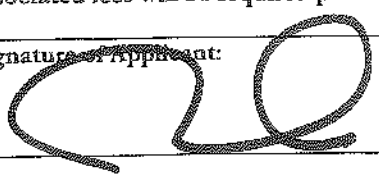
Submittals shall include **seven (7) folded** packets containing of the following materials:

A. Copy of the application.
B. Cover letter stating the nature of the project.
C. Written Submittal (Sec. 14-525 2. (c), including evidence of right, title and interest.
D. A standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 100 feet.
E. Plans and maps based upon the boundary survey and containing the information found in the attached sample plan checklist.
E. Copy of the checklist completed for the proposal listing the material contained in the submitted application.
F. In addition to the seven (7) sets of documents listed above, one (1) set of the site plans reduced to 11 x 17 must be submitted.

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 14), which includes the Subdivision Ordinance (Section 14-491) and the Site Plan Ordinance (Section 14-521). Portland's Land Use Code is on the City's web site: www.portlandmaine.gov Copies of the ordinances may be purchased through the Planning Division.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

This application is for site review only; a Performance Guarantee, Inspection Fee, Building Permit Application and associated fees will be required prior to construction.

Signature of Applicant:	Date:
	12/5/08

Development Review Application
Portland, Maine
Department of Planning and Development, Planning Division and Planning Board

Address of Proposed Development:	Building 46 Double Barracks Great Diamond Island
Zone:	1R-3
Project Name:	The Inn at Diamond Cove

Existing Building Size:	13,629	sq. ft.	Proposed Building Size:	16,510	sq. ft.
Existing Acreage of Site:	193.4 acres	~~sq. ft.~~	Proposed Acreage of Site:	.08 acres	~~sq. ft.~~

Proposed Total Disturbed Area of the Site: sq. ft. *

* If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) or Chapter 500, Stormwater Management Permit with the Maine Department of Environmental Protection (DEP).

Tax Assessor's Chart, Block & Lot	Property Owners Name/ Mailing address:	Telephone #: (207) 772-2992
Chart # 83E Block # F Lot # 460	The Inn at Diamond Cove, LLC PO Box 3572 Portland, ME 04104	Cell Phone #: (207) 332-1459
Consultant/Agent Name, Mailing Address, Telephone #, Fax # and Cell Phone #:	**Applicant's Name/ Mailing Address:**	**Telephone #:**
David Lloyd Archetype, PA 48 Union Wharf Portland, ME 04101 (207) 772-6022 (207) 831-8627	The Inn at Diamond Cove, LLC PO Box 3572 Portland, ME 04104	(207) 772-2992 Cell Phone #: (207) 332-1459

Fee for Service Deposit (all applications) __X__ ($200.00)

Proposed Development (check all that apply)

___ New Building _X_ Building Addition _X_ Change of Use ___ Residential ___ Office ___ Retail
___ Manufacturing ___ Warehouse/Distribution ___ Parking lot
___ Subdivision ($500.00) + amount of lots____ ($25.00 per lot) $_____ + major site plan fee if applicable
___ Site Location of Development ($3,000.00)
(except for residential projects which shall be $200.00 per lot_____)
___ Traffic Movement ($1,000.00) ___ Storm water Quality ($250.00)
___ Section 14-403 Review ($400.00 + $25.00 per lot)
___ Other_____

~ Please see next page ~

14. An estimate of the time period required for completion of the development;
The current time line for completion of this project anticipates a May 2009 construction start with a completion date of June 2010.

15. A list of all state and federal regulatory approvals to which the development may be subject. Include the status of any pending applications, anticipated timeframe for obtaining such permits, or letters of non-jurisdiction;
An amended waste water discharge license application has been completed and is pending approval. An amended waste water discharge license application has been completed and will be filed with the Maine Department of Environmental Protection this month.

16. Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved;
See attachment from David A. Bronson, Senior Vice President, TD Banknorth; dated April 29, 2008. In addition, Archetype Architects has designed and completed numerous building projects throughout the city of Portland. See Exhibit 4, attached.

17. Evidence of applicant's right title or interest, including deeds, leases, purchase options or other documentation;
See attachment, "Warranty Deed", dated November 8, 2006. Exhibit 5.

18. A description of any unusual natural areas, wildlife and fisheries habitats, or archaeological sites located on or near the site;
There are none, to our knowledge.

Respectfully,

David Lloyd
Archetype Architects

(attachments below)

association. This vote was recorded in a second amendment to the amended and restated general declaration of covenants and restrictions. A copy of this amendment is attached as Exhibit H. This document was recorded August 28, 2007 at the Cumberland County Register of Deeds.

2. Plans based on the boundary survey including existing soil conditions, water courses, building and grade elevations, building elevation drawings, location of other buildings, on-site waste receptacles, utilities, mains, etcetera;
Included with this application please find one set of "Site Development Plans", prepared by Deluca-Hoffman Associates, the civil engineers for the proposed development. In addition there are included herein architectural plans and building elevations prepared by Archetype Architects. Also see attachment, "Section 14 – Erosion and Sedimentation Control Report".

3. Landscape Plan;
A landscape plan has not been included with this submission. In conformance with the requirements of the National Park Service, the landscape around the building will remain as grass, consistent with the original barrack's design and the current condition (with improvements).

4. Location and intensity of outdoor lighting system;
The outdoor lighting system plan and photometrics is being prepared by our electrical engineer and will be provided as soon as it becomes available.

5. Location of fire hydrants, existing and proposed;
See attached drawing entitled "Existing Hydrant Location" prepared by Deluca-Hoffman Associates. See Exhibit 3, attached.

6. Description of proposed uses to be located on site;
The proposed renovations consist of twenty (20) condominium/hotel units together with some limited common amenities consistent with the operation of a hotel.

7. Quantity and type of residential units;
See Item 6 above.

8. Total land area of the site;
Refer to Item 1 above, as well as to Exhibit I attached.

9. Total floor area, disturbed area, and ground coverage of proposed structure;
The existing structure has a footprint of 13,629 square feet. The proposed total disturbed area of the site is 0.8 acres (34,848 square feet). The ground coverage of the proposed addition to the building is 2,881 square feet.

10. General summary of existing and proposed easements or other burdens;
N/A

11. Type, quantity and method of handling solid waste disposal; This document is forthcoming.

12. Applicant's evaluation or evidence of availability of off-site public facilities, including sewer, water, and streets;
Water Capacity Letter and Sewer Capacity letters to follow.

13. Description of existing surface drainage and a proposed stormwater management plan or description of measures to control surface runoff;
See attachment, "Section 12 – Stormwater Management Report", prepared by Deluca-Hoffman, December 2008.

SERVICE RECORD

NO. Wills

REG. NO. 30086A

Name Fort Mckinley

Name Government Water

Name Line

ST. DIVISION Great Diamond Is

Code No.

Name

Name

SERVICE DATA	MEASURES
Size of Pipe	No Information In Permanent Records
Kind of Pipe	
Main to Stop	
Stop to St. Line	
Date	
Mat. on Private	
Depth/Main	
Depth/Private	
Shut at Corp.	

locations is solely that of the local fire authority. It is your responsibility to contact your local fire department to ensure that this project is adequately served by existing and/or proposed hydrants.

Domestic Water Needs

The ability to serve request indicates that the daily water usage is expected to be 4,545 gallons per day. The data noted above indicates there should be adequate pressure and volume of water to serve the domestic water needs of the proposed Inn at Diamond Cove at the point which the Diamond Cove Association is connected to the public system. The District cannot confirm the adequacy of the private piping owned by the Diamond Cove Association. Based on the high water pressure in this area, we recommend that you consider the installation of pressure reducing devices that comply with state plumbing codes.

Private Fire Protection Water Needs

You have not indicated whether this project will require water service to provide private fire protection to the site. Please note that the District does not guarantee any quantity of water or pressure through a fire protection service. Please also note that an increase in fire and/or domestic water usage to your site could impact existing domestic and fire protection systems connected to this service line. It is the responsibility of the owner to confirm that additional usage will not adversely impact existing fire protection systems. Should new fire protection service be required, please share these results with your sprinkler system designer so that they can design the fire protection systems to best fit the noted conditions. If the data is out of date or insufficient for their needs, please contact us to request a hydrant flow test and we will work with you to get more complete data. The District can only operate public hydrants; if private hydrants must be tested to determine flow conditions, PWD must be notified but a third party must be hired to perform any testing.

Conditions of Service

The District can confirm that the supply of domestic water to the Diamond Cove Association will be adequate to support the additional use from the proposed Inn; however, the District does not have the authority to approve the connection to privately owned infrastructure. Since this will be a private connection, an application and deposit will not be required. However, the development team must contact PWD during construction so that we can verify that proper cross connection containment measures have been taken, specifically the installation of an RPZ device within the inn.

The existing meter for the Diamond Cove Association is a 6-inch fire service meter with a maximum peak flow of 3,100 gallons per minute. Please let us know if a meter upgrade is required to accommodate the additional flow. Since there is one master meter for the entire association, individual billing from the District is not available.

If the District can be of further assistance in this matter, please let us know.

Sincerely,
Portland Water District

Rico Spugnardi, P.E.
Business Development Engineer

but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

4. Maintenance of utilities. All utilities and related infrastructure and improvements on the Premises, including but not limited to water, power, communications, sewers and drains, surface drainage ways, street lights and hydrants, shall be kept fully operational and in good repair at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

5. Disposal of sanitary waste. All sanitary waste generated on the Premises shall be collected and disposed of on the Premises by means of a community sewer and secondary treatment system which complies with all applicable federal, state and local regulations, and at the Owner's expense.

6. Disposal of solid waste. All solid waste generated on the Premises shall be collected and disposed of on the mainland or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility, in a manner which meets all applicable federal, state and local requirements, and at the Owner's expense. (42) continued

7. Fire protection, public safety and emergency services. Before occupancy of the Premises, or any portion thereof, the Owner shall, at its own expense, provide to the City:

(a) a fully equipped "Quint truck", so-called, or its equivalent, for fire protection purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City under a written net lease-purchase agreement in a form mutually satisfactory to the parties and upon commercially reasonable terms, at the end of which lease term title to said vehicle shall be transferred to the City free and clear of all liens and encumbrances, and at no additional charge;

(b) a fully equipped multi-purpose truck van, for public safety and emergency purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City for its useful life under a written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar ($1.00); and

File in Planning File

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER DOCKET
Location: Portland
Docket No. BCD-WB-CV-08-041



The Friends of Great Diamond Island, LLC, et al.,

Plaintiffs

v.

DECISION AND JUDGMENT
(Phase II)

The Inn at Diamond Cove, LLC, et al.,

Defendants

This matter was heard on December 1 - 3, 2010, on Counts I and IV of Plaintiffs' Third Amended Complaint.[1] Following the trial, the parties submitted written argument. The Court received the final submissions on February 4, 2011.

After consideration of the evidence and the parties' arguments, the Court makes the following findings:

Findings of Fact

1. Diamond Cove is a planned unit development located on Great Diamond Island. The development consists primarily of single-family residences, townhouse residences, and some limited commercial structures, including a store and a restaurant.

2. The development, which was created in 1989, was originally governed by a General Declaration of Covenants and Restrictions, which Declaration was dated September 27, 1989.

[1] The Court previously conducted a hearing and issued a decision on Counts VI and VII, the other two remaining counts of Plaintiffs' Third Amended Complaint. In the interest of judicial economy and with the agreement of the parties, conducted a separate trial on Counts VI and VII.

3. The Declaration as modified continues to govern the operation of the development. The operative Declaration is the Amended and Restated General Declaration of Covenants and Restrictions dated December 23, 1993 (the Declaration).

4. At all times pertinent hereto, Defendant Diamond Cove Homeowner's Association (the Association) was responsible for the management of the development in Diamond Cove.

5. As a general rule, when a person purchased a unit within the area governed by the Association, the person received a notebook that included the Declaration as well as other governing documents. The unit owners could not negotiate, and were bound by the terms of the Declaration and other governing documents.

6. The Declaration contains two articles that relate to amendments to the Declaration: Article 12 and Article 13.1. Article 12 requires a vote of the owners of 67% of the lots to pass an amendment; Article 13.1 requires a vote of the owners of 80% of the lots to pass an amendment.

7. In 2007, Defendant Inn at Diamond Cove, LLC, submitted a proposal to the Association to redevelop two buildings located in Diamond Cove, which buildings were known as the Double Barracks and the Hospital. The proposal would require an amendment to the Declaration.

8. The Association sent notice to the unit owners that there would be a special meeting on June 30, 2007, to vote on the proposal to amend the Declaration to permit the proposed development to proceed (the Amendment).

9. The June 30, 2007, vote was to be conducted by proxy.

10. Section 7 of the Association's by-laws permits the use of proxies for Association votes provided that "the authority given by a member to another person to represent such member at

meetings of the Association shall be in writing, signed by such member or if a lot is jointly owned then by all joint owners."

11. The proxy form, which the Association forwarded to each of the unit owners before June 30, 2007, provided the unit owners with three alternative ways to vote. Option 1 permitted the unit owner to designate a person to vote on the unit owner's behalf; option 2 attached an actual ballot to the proxy form; option 3 was in essence an absentee ballot.

12. The proxy form stated in bold print, "[i]f your Lot is jointly owned, then this Proxy must be signed by all joint owners."

13. When the Association forwarded the proxy form to the unit owners, it also provided the unit owners with a copy of the proposed amendment. At the same time, the Association informed the unit owners that 67% of the eligible voters must vote in favor of the amendment in order to secure passage, in accordance with the Association's past usage of the 67% threshold for amendments to the Declaration.

14. On June 30, 2007, the vote was conducted by, and the actual votes were maintained and counted by, Dirigo Management (Dirigo), the Association's contract management company.

15. At the meeting, none of the attendees challenged the voting process, or the fact that passage of the amendment would be governed by the 67% standard of Article 12.

16. Dirigo recorded 135 votes: 100 votes in favor of the amendment, and 35 votes against the Amendment. In addition, 10 lot owners did not vote. The 100 votes in favor of the amendment represent 68.97% of the 145 eligible voters. At trial, the Association produced only 130 proxy forms.

17. As with previous Association votes, not all of the proxy forms were completed in accordance with the by-laws, or the instructions that accompanied the forms. Six proxies were

only signed by one of the joint lot owners. Of those six, three votes were in favor of the Amendment, but the remaining three do not specify their vote in favor or against the Amendment.

18. Two votes were cast on behalf of Unit 16C.

19. Although the Association recorded the amendment on August 28, 2007, the Association did not send notice of the recording to the Association members in accordance with Article 12(B)(6) of the Declaration.

20. Plaintiffs commenced this action with the filing of their Complaint on August 26, 2008. On August 27, 2008, Plaintiffs filed a First Amended Complaint; in September 2008, Plaintiffs filed a Second Amended Complaint; and in December 2008, Plaintiffs filed a Third Amended Complaint.

Discussion

In this action, Plaintiffs challenge the process by which the Association approved the proposed development. More specifically, Plaintiffs contend that the Amendment to the Declaration that was necessary for the development to proceed was not approved by the requisite number of lot owners. In support of their argument, Plaintiffs maintain that the process by which the vote was conducted was flawed, and also cite various irregularities in the votes that were cast in favor of the Amendment.

Defendants argue that under the terms of the Declaration, Plaintiffs' challenge is time-barred. In addition, Defendants assert that because the process by which the votes were cast and tabulated is consistent with the past practices of the Association, Plaintiffs' arguments are unavailing.

1. Whether Article 12 or Article 13.1 Governs the Vote[2]

Plaintiffs first argue that Article 13.1, which requires an 80% vote in order to change certain covenants and restrictions of the Declaration, applies to the subject of the Amendment, and because only 68.9% of the lot owners voted in favor of the Amendment, the Association did not properly approve the Amendment. Defendants maintain that Article 12, which requires a 67% affirmative vote for the adoption of amendments to the Declaration, governs the vote on the Amendment.

The Declaration is a contract,[3] and "[i]t is a well established principle that a contract is to be interpreted to give effect to the intention of the parties as reflected in the written instrument, construed in respect to the subject matter, motive and purpose of making the agreement, and the object to be accomplished." *Estate of Barrows*, 2006 ME 143, ¶ 13, 913 A.2d 608, 611 (quotation marks omitted).

Although the interpretation urged by Plaintiffs is not without merit, based on the evidence, the Court is convinced that the Article 12 applies to the vote. Throughout the history of the Association, the 67% threshold has been used for amendments to the Declaration. Indeed, Plaintiffs have failed to cite one Association vote to which the 80% standard applied. This is consistent with the testimony of Joseph Delafield, the principal drafter of the Declaration, as to the purpose of the standard set forth in Article 13.1. According to Mr. Delafield, Article 13.1 was intended to provide the Association with a mechanism to terminate the Declaration, and all of its covenants and restrictions. In other words, the Declaration did not mandate that the covenants and restrictions were to continue in perpetuity. Under this construction, Article 12

[2] At summary judgment, the Court determined that the Declaration was ambiguous as to whether Article 12 or Article 13.1 governed the vote. The Court, therefore, considered extrinsic evidence at trial as to the intent of the two provisions.

[3] The Law Court has recognized that the by-laws of a private association constitute an enforceable contract between the association and its members. *Morison v. Wilson Lake Country Club*, 2005 ME 71, ¶ 20, 874 A.2d 885, 888.

governs proposed changes, including additions, to the Declaration, and Article 13.1 applies to the Association's decision to terminate the Declaration in its entirety. In this way, Article 12 and Article 13.1 are consistent with and work in concert with each other. This interpretation is logical, and gives meaning to each provision of the Declaration.[4]

2. Whether Plaintiffs' Challenge is Time-barred

As part of their argument that Article 12 governs the vote on the Amendment, Defendants contend that Plaintiffs' challenge to the vote is time-barred by Article 12(B)(6), which provides in relevant part:

> No action to challenge the validity of an amendment to this Declaration adopted by the Association pursuant to this Article 12 may be brought more than one year after such amendment is recorded. After each amendment to this Declaration adopted pursuant to this Article 12 has been recorded, notice thereof shall be sent to all owners ..., but failure to send such notices shall not affect the validity of such amendment.

Defendants assert that because Plaintiffs filed their Third Amended Complaint, in which they assert their challenge to the vote, more than one year after the recording of the Amendment, Plaintiffs are foreclosed from challenging the vote on the Amendment. Plaintiffs counter that because Defendants did not send notice of the recording to the owners as required by Article 12, Defendants cannot rely upon the Article's limitation period. While they acknowledge that the Association did not send notice of the recording, Defendants argue that the one-year limitation period runs from the date of recording, and, therefore, their failure to provide notice is of no consequence.

Contrary to Defendants' argument, the one-year limitation period of Article 12(B)(6) must be considered within the context of the entire provision. *See Coastal Ventures v. Alsham*

[4] The Court's conclusion is also consistent with the reluctance of courts to intervene in a private association's interpretation of its by-laws and governing documents. *See Juarez v. Texas Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274 (Tex. App. 2005). As explained below, however, the Court's reticence to intervene in a private association's affairs is not limitless.

Plaza, LLC, 2010 ME 63, ¶ 27, 1 A.3d 416, ---. Although the one-year limitation period begins to run at the time of recording, the Article also requires that notice be sent to all of the owners. In the absence of the notice of the recording, a potential challenger to the amendment might be unaware that an amendment had been passed and recorded. Under the interpretation urged by Defendants, therefore, the Association could pass and record an amendment, delay or fail to provide notice, and thereby effectively limit any challenge to the adoption of the amendment to those who were present at the passage of the amendment. Such a result would not only be contrary to sound policy, but it would be inconsistent with the plain language of Article 12.

Under the terms of Article 12(B)(6), the failure to provide notice of the recording of an amendment does not render the amendment ineffective or a nullity. If an amendment was otherwise adopted properly, the Association's failure to notify its members of the recording of the amendment does not mean that the amendment is invalid. Although Article 12(B)(6) specifically states that the failure to provide notice does not invalidate an amendment, the Article does not contain similar language regarding the effect of the lack of notice on the limitation period. Not insignificantly, Article 12(B)(6) does not state that the one-year limitation period runs from the date of recording regardless of whether notice of the recording is provided to Association members. Given that one of the purposes of the notice requirement is to afford members who might not be aware of the amendment an opportunity to challenge the amendment if the member so desires, common sense suggests that the limitation period does not begin to run upon recording if notice of the recording is not provided. Otherwise, some members might not be aware of the Association's action, and thus unaware that the relatively brief one-year limitation period has commenced. Indeed, if the limitation period begins to run upon recording regardless of whether notice of the recording is provided in accordance with Article 12, the

Association would have no incentive to provide notice, and the notice requirement would essentially become meaningless.

Accordingly, consistent with a common sense reading of the language of Article 12(B)(6), the Court determines that the one-year limitation period of the Article commences with the Association's notice of the recording of an amendment to the members of the Association.[5] In this case, because the Association did not provide the required notice, the one-year limitation period set forth in Article 12(B)(6) does not bar Plaintiffs' challenge to the vote on the Amendment.

In the alternative, Plaintiffs argue that even if the Court determined that the limitation period began to run upon the recording of the Amendment regardless of whether the Association provided notice of the recording, they met the one-year limitation when they challenged the vote in their original Compliant and First Amended Complaint. Defendants counter that Plaintiffs are precluded from challenging the vote because they did not assert their objections to specific votes until the Third Amended Complaint, which was filed more than one year after the recording of the Amendment. The Court concludes that the Plaintiffs challenge is timely on these alternative grounds as well. M.R. Civ. P. 15(c)(2) provides that "[a]n amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading . . .". In this case, the "conduct, transaction, or occurrence" of the original Complaint is the process by which the Amendment was approved. In addition, in the

[5] The Court's conclusion is also consistent with the way in which the law construes contractually established one-year limitation periods. While it is not contrary to public policy for parties to contract to shorten a limitations period proscribed by statute, provided that the fixed time is not unreasonable, and although a one-year limitation period is generally reasonable, it is not favored and will be strictly construed against the party invoking it. 3-9 Corbin on Contracts § 9-9; *accord In re Penn Cent. Transp. Co.*, 391 F. Supp. 1404, 1407 (E.D. Penn. 1975); *Stanley R. Benjamin, Inc. v. Fidelity & Casualty Co. of N.Y.*, 340 N.Y.S.2d 578, 580 (N.Y. Sup. Ct. 1972).

First Amended Complaint, Plaintiffs allege that "[t]he Inn's proposal actually failed because the valid affirmative votes did not meet or exceed the 67% threshold . . ." (First Amended Complaint ¶ 28.) Under these circumstances, Plaintiffs' Third Amended Complaint relates back to the original Complaint and the First Amended Complaint. Plaintiffs' Third Amended Complaint is not, therefore, barred by the limitation period set forth in Article 12.

3. Plaintiffs' Challenge to the Vote

Finally, Plaintiffs argue that the Association did not approve the Amendment, even at the 67% threshold. In support of their argument, Plaintiffs cite irregularities in several votes that the Association included in the vote in favor of the Amendment. Plaintiffs assert that without these challenged votes, the Amendment does not meet the 67% threshold necessary for passage. Defendants contend that although all of the ballots and proxies by which the votes were cast might not have strictly complied with the Association's by-laws, because the voting deficiencies are technical in nature, and because the votes were cast in accordance with the Association's past practices, the votes are valid.

In their written argument, Defendants note that courts are traditionally reluctant to intervene in the affairs of non-profit organizations, *see Hottentot v. Mid-Maine Med. Ctr.*, 549 A.2d 365, 368 (Me. 1988), and describe Plaintiffs' challenges to and any problems with the votes and voting process as technical. While courts might be reluctant to intervene in the operation of organizations such as the Association, courts will and should intervene particularly when the organization fails to follow its own procedures, and the organization's rules do not provide for an internal challenge to the process by which a fundamental change in the agreement between the members and the organization was achieved.

The absence of a process within the Association to challenge the vote distinguishes this case from some of the authority upon which Defendants rely. That is, unlike the organizations in *Juarez v. Texas Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274 (Tex. App. 2005), *Danese v. Ginisi*, 654 A.2d 479 (N.J. Super. Ct. App. Div. 1995), and *Futka v. First Catholic Slovak Union*, 600 N.E.2d 797 (Ohio Ct. App. 1991), the Association's by-laws do not provide an internal procedure that Plaintiffs could have invoked to challenge the Amendment. To the contrary, by establishing the one-year limitation period discussed above, Article 12 contemplates a court action in the event of a challenge to an amendment.

The substantive issue in this case also militates in favor of intervention. In support of their argument for judicial restraint, Defendants cite cases in which the principal issue involved who could become a member of the private association. Here, the issue directly involves the process by which the agreement between the Association and its members was modified, and therefore, the process by which the property rights of Association members were potentially altered. In this way, the case is more similar to *McMahon v. Chicago Mercantile Exchange*, 582 N.E.2d 1313 (Ill. App. 1991), where the court fully adjudicated the parties' rights and obligations through an examination and interpretation of the constitution and rules of the defendant association, and *Owens Entertainment Club v. Owens Community Improvement Club*, 466 S.W.2d 70 (Tex. Civ. App. 1971), where the court invalidated the vote of a private association to convey real estate because the vote did not conform to the procedure mandated by the association's constitution. The Court believes, therefore, that an examination of the Association's vote on the Amendment is appropriate.

Before addressing the Plaintiffs' challenges to specific votes, the Court will discuss its concerns about the count of the vote on the Amendment. As noted, although the Association

reported that 135 votes had been cast, the Association produced only 130 proxies.[6] According to Peter Brewitt of Dirigo Management, a proxy should have accompanied each vote. The discrepancy between the number of proxies and the number of votes suggests either an error in the vote count, or that not all of the votes were cast properly. Particularly given the narrow margin of the vote, regardless of the reason, the discrepancy generates legitimate and serious questions about the integrity of the vote, including whether 100 votes were in fact cast in favor of the Amendment.

If one assumes that the Association counted 100 votes in favor of the Amendment, if three of the affirmative votes are invalid, the Amendment falls short of the 67% requirement.[7] The record establishes that two votes were counted for Unit 16C. Neither the by-laws, nor any other authority supports or justifies counting more than one vote for a lot. Because the Association improperly counted two votes for one lot, and because the Court cannot discern whether the two votes were consistent with each other, both votes must be invalidated. Not only is it appropriate to invalidate the votes, but the fact that two votes were recorded for one unit raises additional questions about the overall integrity of the vote.

Plaintiffs next challenge the manner in which various proxy votes were cast. Section 7 of the Association's by-laws permits the use of proxies provided that "the authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a lot is jointly owned then by all joint owners." Consistent with Section 7, the proxy form used for the vote on the Amendment stated in bold print, "[i]f

[6] The Association determined that 35 lot owners voted against the Amendment, and 10 lot owners did not vote. Because the Declaration requires an affirmative vote of 67% of the lot owners for the passage of an amendment, in accordance with the Declaration, a vote that is not cast is counted as a "no" vote. Therefore, the final count on the vote was 100 in favor and 45 against adoption of the Amendment.

[7] If three votes were to be invalidated, the number of affirmative votes would total 97, which represents 66.89% of the 145 lot owners and eligible voters.

your Lot is jointly owned, then this Proxy must be signed by all joint owners." The proxies for at least three of the votes cast in favor of the Amendment were signed by only one of the joint owners of the lots for which the votes were cast.[8]

The requirement that all joint owners sign the proxy is not only required by the by-laws and clear on the face of the proxy form, but it also represents a sound policy. Without the requirement, one owner of a jointly owned lot could cast a vote that might be contrary to the intent of the other owners of the lot thereby disenfranchising one or more of the lot's owners. Presumably, the Association included the requirement among the by-laws to prevent such a result, and to assure that each vote cast by proxy reflected the intent of all of the owners of a particular lot. For lot owners, the ability to vote on matters central to the management of Diamond Cove is undoubtedly an important aspect of their membership in the Association. The Association's failure to ensure that each vote complies with the reasonable process proscribed by its own by-laws, therefore, cannot be dismissed as a technical oversight.

Defendants nevertheless argue that the votes were properly counted partly because the Association has in the past permitted proxies that were signed by less than all of the lot owners. In other words, Defendants appear to contend that the contract between the Association and its members (i.e., the by-laws) was effectively modified through a course of dealing.

As explained above, the Law Court has recognized that the by-laws of a private association constitute an enforceable contract between the association and its members. *Morison v. Wilson Lake Country Club*, 2005 ME 71, ¶ 20, 874 A.2d 885, 888. As Defendants argue, the parties' course of performance or dealing can be used to interpret an ambiguous contract. *See*

[8] The evidence established that only one of the joint owners of three additional lots signed the proxies. However, on this record, the Court could not determine whether the three other proxies signed by only one of the joint owners of the lots for which the votes were cast resulted in votes there were in favor or against the Amendment. It is conceivable, therefore, that as many as six affirmative votes were cast through proxies that did not comply with the Association's by-laws.

Restatement (Second) of Contracts § 203 cmt. a (1981). However, "express terms are given greater weight than course of performance, course of dealing, and usage of trade." Restatement (Second) of Contracts § 203(b). Here, the Court does not find any ambiguity in the by-laws governing proxy votes and the express terms govern.

Even if the Court were to conclude the by-laws are ambiguous, and consider the Association's past practice of accepting votes cast by proxies that were signed by fewer than all of the lot owners, Defendants' argument fails. There is no reliable evidence to establish that the Plaintiffs or any of the other parties to the contract (i.e., the other lot owners) explicitly or implicitly agreed to modify Section 7 of the by-laws. In fact, in this case, the evidence established that the Association provides all new lot owners with a copy of the by-laws without any suggestion that the governing documents have been amended through some course of dealing between the Association and its members. At a minimum, the lot owners who were not members of the Association at the time of the purported course of dealing did not assent to a modification of the Declaration and by-laws.[9] Thus, even if the Court considers the alleged course of dealing between the Association and its members, the Court finds no persuasive evidence on the record of the existence of an unwritten modification of the by-laws.[10] Consequently, in accordance with the plain language of Section 7 of the by-laws, and the clear

[9] For an association that regularly has relatively new members the ability to argue successfully that the parties' contract has been amended through the parties' course of conduct will likely be difficult, if not impossible, even if a court concludes that the by-laws are ambiguous.

[10] Defendants also argue that 13-C M.R.S. § 725(2)(E) (2010) (part of the Maine Business Corporation Act) authorizes a corporation to accept a proxy signed by one of the co-owners of shares if the person who signs the proxy appears to be acting on behalf of all of the co-owners. Even if the Court determined that this Act applies to the Association, a non-profit organization, section 1701(3) of the Act provides that "[a] provision of a corporation's articles of incorporation or bylaws that was valid under the law in existence at the time the same was adopted remains in effect, notwithstanding a contrary provision of this Act, until repealed or amended by voluntary act of the corporation . . ." 13-C M.R.S. § 1701(3) (2010). Because Section 7 of the by-laws was in effect prior to the Act, the provisions of the Act do not supersede the requirements of the by-laws.

directive on the proxy form, the Association should not have counted votes that were cast by a proxy signed by fewer than all lot owners.[11]

If the vote does not include the votes cast by proxies signed by only one joint owner of a lot, and does not include the multiple votes cast on behalf of Unit 16C, the Amendment fails to achieve the 67% threshold necessary for approval. As mentioned above, the Court cannot view these deficiencies to be technical shortcomings as the Association argues. Indeed, if the Court were to consider the many problems with the vote (e.g., the discrepancy between the number of votes and the number of proxies, two votes counted for one unit, the acceptance of votes that were submitted in a form that is in direct contravention of the requirements of the by-laws, the failure of some of the individuals to whom proxies were granted to appear at the meeting to cast the vote) to be technical and without consequence, the Court would in essence have to conclude that the voting process is irrelevant, that the Association can disregard the requirements of the by-laws when it so desires, and that any vote endorsed by the Association's management is beyond reproach.

[11] Plaintiffs also cite other deficiencies with various votes and the voting process. Given the issues regarding the count of the vote, and given that the Court has concluded that four of the votes that the Association counted as affirmative votes are invalid, the Court has determined that the Amendment did not achieve the 67% threshold necessary for approval. Consequently, the Court will not address specifically each of Plaintiffs' remaining challenges. However, because the Court recognizes that the Association might seek another vote on the Amendment, the Court believes that it is appropriate to comment upon some of Plaintiffs' other challenges. First, the manner by which the proxy votes were cast is inconsistent with the way in which proxies are usually exercised. A proxy is not equivalent to an absentee ballot. Through a proxy, a voter grants to another person the authority to cast the vote. Thereafter, the person to whom the proxy is granted actually casts the vote. This is consistent with the express language of Section 7 of the by-laws, which contemplates "authority [being] given by a member to another person to *represent such member at meetings of the Association* ..." (emphasis supplied). In at least some of the votes exercised by proxy, the person to whom the proxy was granted did not appear at the meeting to exercise the vote thereby generating legitimate questions about the validity of some of the votes cast by proxy. In addition, the votes cast on behalf of some of the lots owned by a corporate or other legal entity are of concern. For instance, the votes cast on behalf of Pleasant Cove Beach, LLC, Eye Venture Associates, and Fifth Third Bank, Trustee of the Grace B. Kennedy Real Estate Trust would warrant closer scrutiny had the Court not already determined that the Amendment did not have sufficient votes for approval. At a minimum, these additional issues contribute to the Court's concerns about the integrity of the vote.

While the Court supports the policy of limited judicial intervention in the affairs of private organizations, *see Hottentot*, 549 A.2d at 368, the Court recognizes that in certain situations intervention is warranted and necessary. Where, as in this case, the Court finds that an association has failed to follow the voting process proscribed by its by-laws, and where the votes cast in contravention of the by-laws constitute the votes necessary to make a fundamental change in the relationship between the association and its members, the Court would be remiss if it did not intervene, and require that the association conduct the vote in accordance with the association's by-laws. *See Swisher v. Collins*, No. CV 06-338-S-BLW, 2009 U.S. Dist. LEXIS 49266, at *71-*72 (D. Idaho June 11, 2009) ("The League's Bylaws and Administrative Procedures . . . are the contract, and the court's judicial review authority is limited to whether the League followed its own procedures set forth in those bylaws and administrative procedures.") *Garvey v. Seattle Tennis Club*, 808 P.2d 1155, 1157 (Wash. Ct. App. 1991) ("When courts intervene in the internal affairs of a social club it is only to determine whether the club has violated its own rules."); *accord Owens Entertainment Club*, 466 S.W.2d at73 (invalidating the vote of a private association to convey real estate because the vote did not conform to the procedure mandated by the association's constitution). In other words, the Court does not consider its insistence that the Association comply with the terms of its agreement with its members to be improper interference with the internal affairs of the Association. In fact, without the Court's intervention in a situation such as this, members of an association who are aggrieved by the association's breach of its agreement with its members (i.e., the by-laws) would have no recourse.

Conclusion

Based on the foregoing analysis, the Court concludes and orders:

1. On Count I of Plaintiffs' Third Amended Complaint, the Court determines that Article 12 of the Declaration governs the vote on the Amendment, and that Plaintiffs' challenge is not time-barred by Article 12(B)(6).

2. On Count IV of Plaintiffs' Third Amended Complaint, the Court determines that there were several deficiencies with the vote on the Amendment, including the fact that the number of the votes counted is inconsistent with the number of proxies submitted, and that the Association improperly included several votes among the votes cast in favor of the Amendment. When the invalid votes that were included among the affirmative votes are not considered, the vote on the Amendment fails to achieve the 67% threshold necessary to approve the Amendment. Accordingly, the Court determines that the Amendment was not properly approved at the Association's June 30, 2007, vote on the Amendment.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Judgment into the docket by reference.

Date: 4/22/11

John C. Nivison

Justice, Maine Business & Consumer Docket

ATTACHMENT 2-A-1

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER AUTHORIZING AMENDMENT TO CONDITIONAL ZONE FOR PROPERTY IN THE VICINITY OF DIAMOND COVE, GREAT DIAMOND ISLAND PORTLAND, MAINE

ORDERED, that the Conditional Zone by and between the City of Portland and The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association, adopted on _____ and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to read as follows:

SUPPLEMENTAL CONDITIONS AND RESTRICTIONS BUILDINGS 46 ("DOUBLE BARRACKS") AND 19 ("HOSPITAL") FT. MCKINLEY, PORTLAND, MAINE SEPTEMBER 3, 2008

The following supplemental conditions and restrictions are imposed by the City of Portland (the "City") on that portion of the Ft. McKinley project ("Project") commonly known as Buildings 46 and 19, together with the ancillary service area, all as depicted on the map attached hereto as Attachment 1 ("Premises"), as conditions of the rezoning of the Premises at the request of The Inn At Diamond Cove, LLC ("IDC") [1], and consented to by the Diamond Cove Homeowners Association ("DCHA"):

1. Existing Conditions. The Premises are a portion of the development commonly known as Ft. McKinley, Great Diamond Island, Portland, Maine which is subject, inter alia, to those Conditions and Restrictions recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263, as amended by Order of the Portland City Council on August 16, 2004 relating to ground transportation in and around the Project (collectively, the "Existing Conditions and Restrictions").

2. Supplemental Conditions and Restrictions. Notwithstanding the terms of the IR-3 zoning text otherwise applicable to the Premises, and the Existing Conditions and Restrictions, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and a portion of the Open Space, all depicted on the site plans dated June 24, 2008 [consisting of four (4) sheets and

[1] For purposes of this Supplemental Conditions and Restrictions document, "Owner/Manager" referred to herein shall mean, individuals and collectively, the following: IDC, its successors in interest or assigns; individual unit owners, there heirs, successors in interest and assigns; any and all management company retained by or working on behalf of IDC, its successors or assigns and/or individual units owners and their heirs, successors in interest or assigns.

attached hereto as Attachment 2], all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelminiums" and a supporting pool/services area on the Open Space. "Hotelminium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services[2] which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelminium units may be rented (in whole or in part by virtue of attached bedrooms capable of being independently rented through a "lock out" system from the remainder of the unit) for varying durations to the general public through a centralized hospitality vendor. The Double Barracks may include up to a maximum of twenty (20) hotelminium units [with the maximum number of lock out units, included as part of the twenty hotelminiums and not separate units, not to exceed sixteen (16)] and the Hospital may include up to a maximum of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)]. The units contained within the Double Barracks and the Hospital buildings shall become members of a separate condominium association established for these two rehabilitated buildings, and each unit will also be considered a "lot" within DCHA, subject to all of the applicable restrictions, covenants, conditions, assessments and the like of both DCHA and the newly-established condominium association.

The Double Barracks and the Hospital, both of which may be renovated, are depicted on Attachment 2. The allowable rehabilitation of these buildings may include construction of a new swimming pool and related guest services building on that portion of the Open Space depicted on the site plans, a copy of the relevant portion of which appears as Attachment 2 hereto. The recording of the this Amendment shall be deemed to supplement the Conditions and Restrictions recorded in Book 8928, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit.

3. Disposal of Solid Waste. All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility.

4. Fire Protection. The Double Barracks and Hospital buildings shall be fully sprinkled and have installed, and at all times functional, a central fire alarm system operative prior to the issuance of any certificate of occupancy for the respective building.

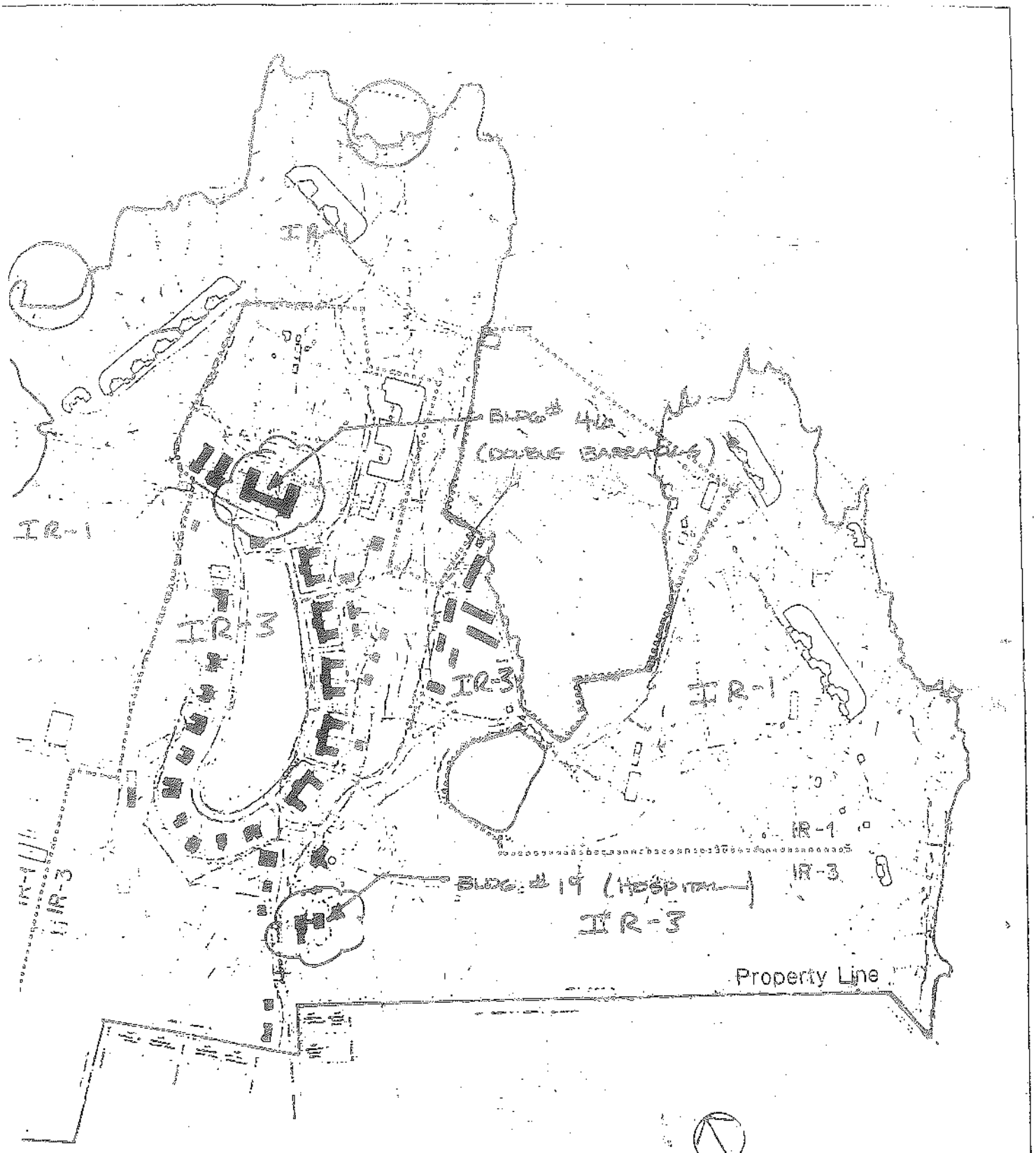
5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on

[2] For purposes of this Supplemental Conditions and Restrictions document, "reasonable and customary on-site hotel services" shall include but not be limited to laundry service, linen service, room service, health and fitness facilities, food and beverage service, concierge, etc.

a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service becomes unavailable, the Owner/Manager shall provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof. The Owner/Manager shall also provide suitable ground transportation from points of disembarkment within the Project to the hotelminiums. The Owner/Manager shall not provide motorized ground transportation off the Ft. McKinley Project site and all such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the Project site to the public pier at the southerly end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. All purchasers of units at the Premises shall receive specific notice of the applicable rules and regulations, including the potential sanctions for failure to comply. Moreover, the City shall have no obligation to provide mainland parking for any owner, occupant, guest or invitee of any hotelminium unit or any manager or on-site staff thereof.

6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving the City in all meetings and discussions concerning sanitary waste disposal. No site plan or subdivision application shall be approved by the City unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

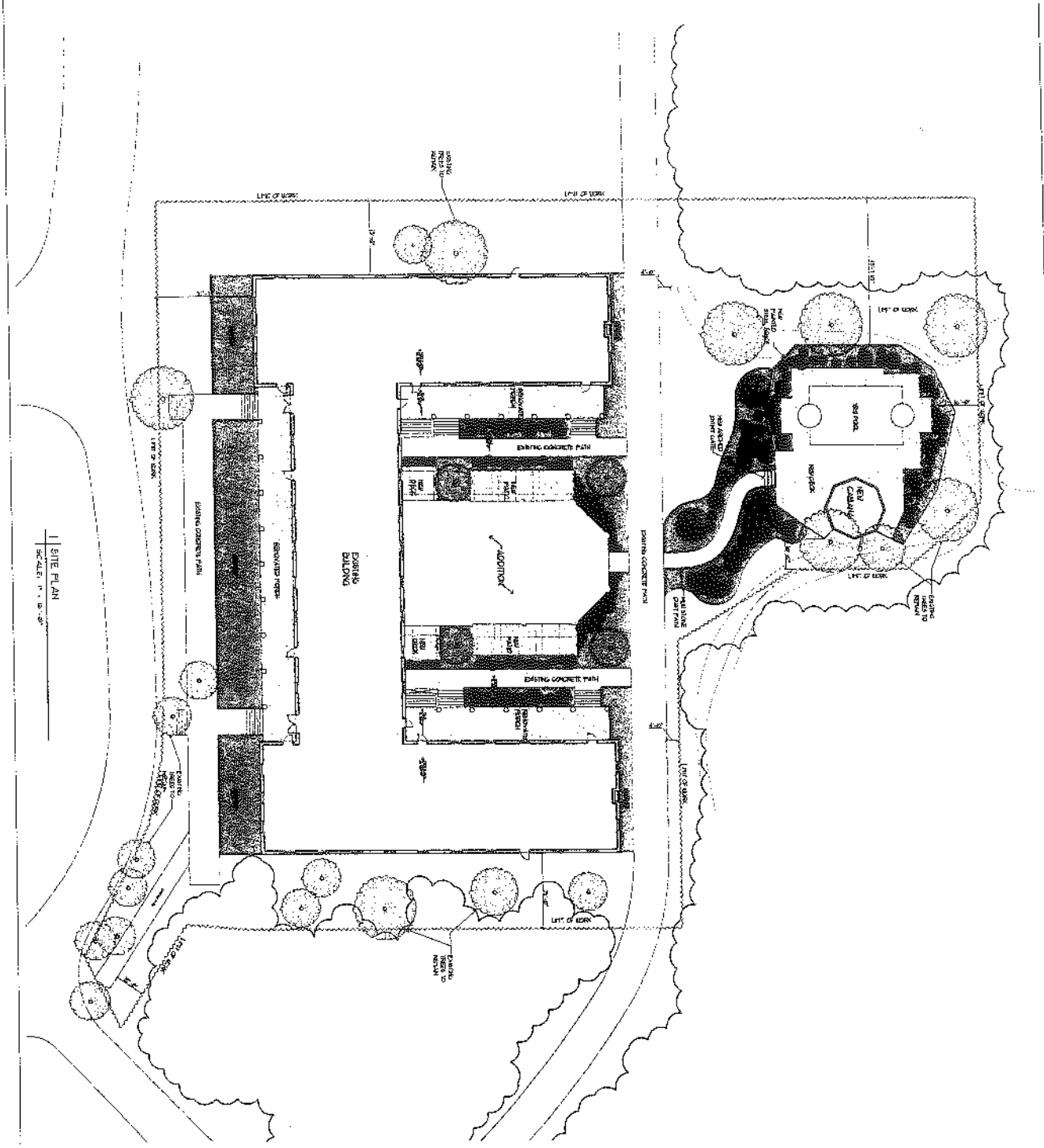
7. Interpretation; Conflicts. The within conditions and restrictions are intended to supplement the existing Conditions and Restrictions and amendments thereto, all of which shall remain in full force and effect except as modified herein or as may be modified by further amendment or ordinance duly enacted by the City of Portland. In the event of any conflict between these Supplemental Conditions and Restrictions and the pre-existing Conditions and Restrictions, as amended, these Supplemental Conditions and Restrictions shall control.



Property Plan

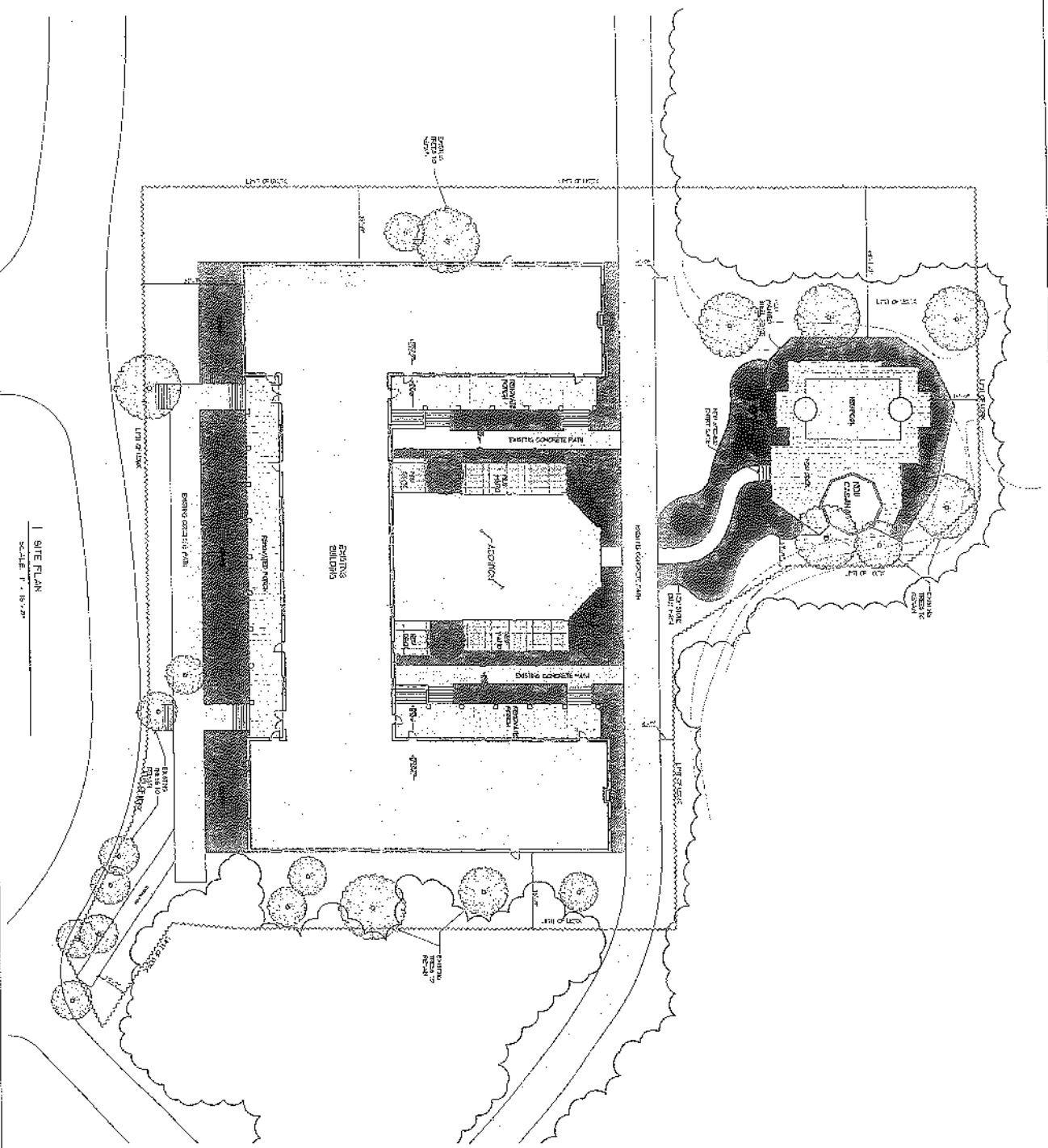
Scale 1": 500

2-A-5

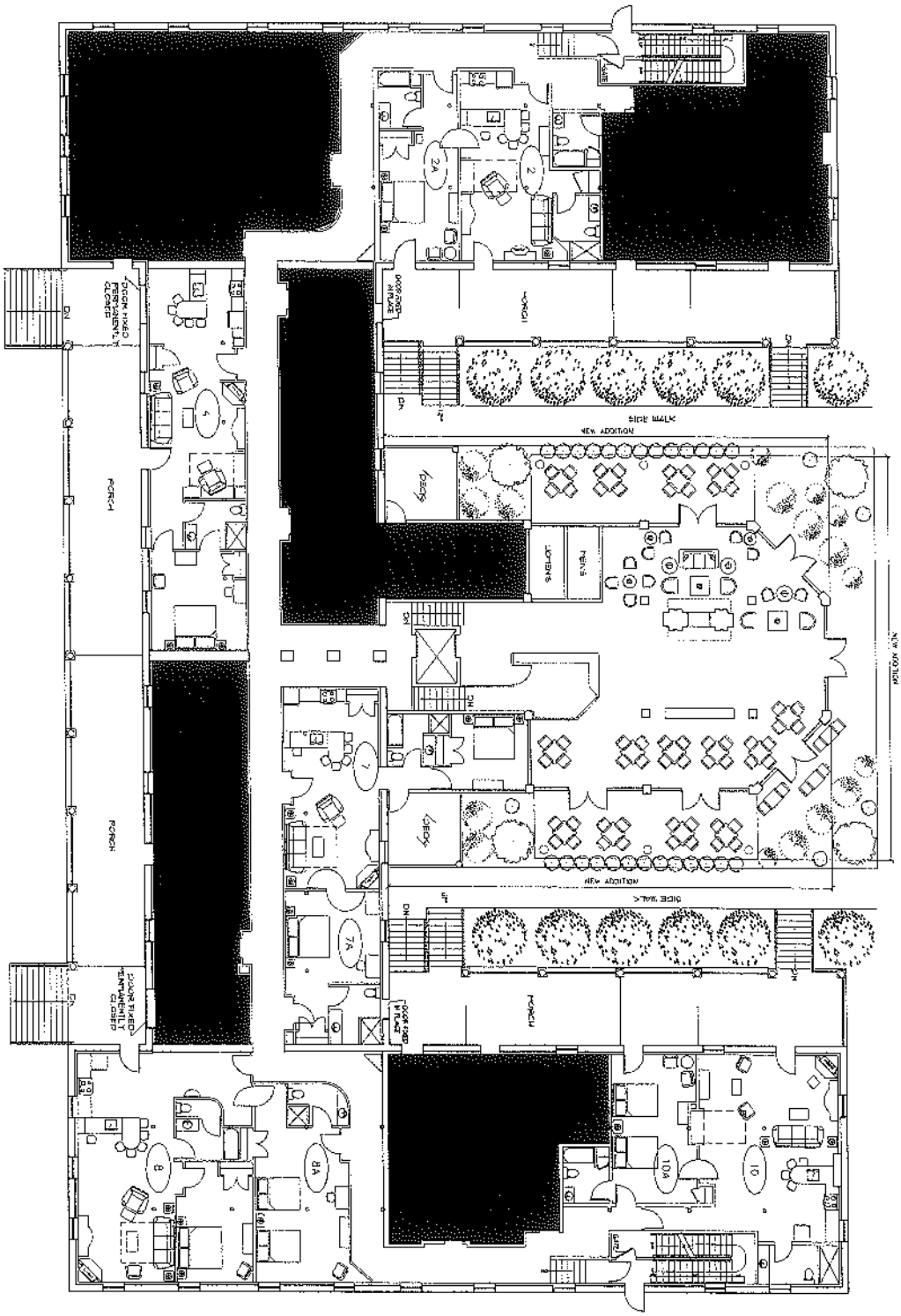

LIMIT OF WORK
EXISTING CONCRETE PATH
EXISTING BUILDING
ADDITION
NEW POOL
NEW CABANA
NEW STONE PATH
EXISTING CONCRETE PATH
EXISTING WOOD PORCH
NEW PLANTED AREA
NEW ARCHED STONE WALL
NEW STONE PATH
EXISTING STONE RETAINING WALL
NEW PLANTED AREA
NEW STONE PATH
EXISTING CONCRETE PATH
EXISTING WOOD PORCH

ATTACHMENT 2

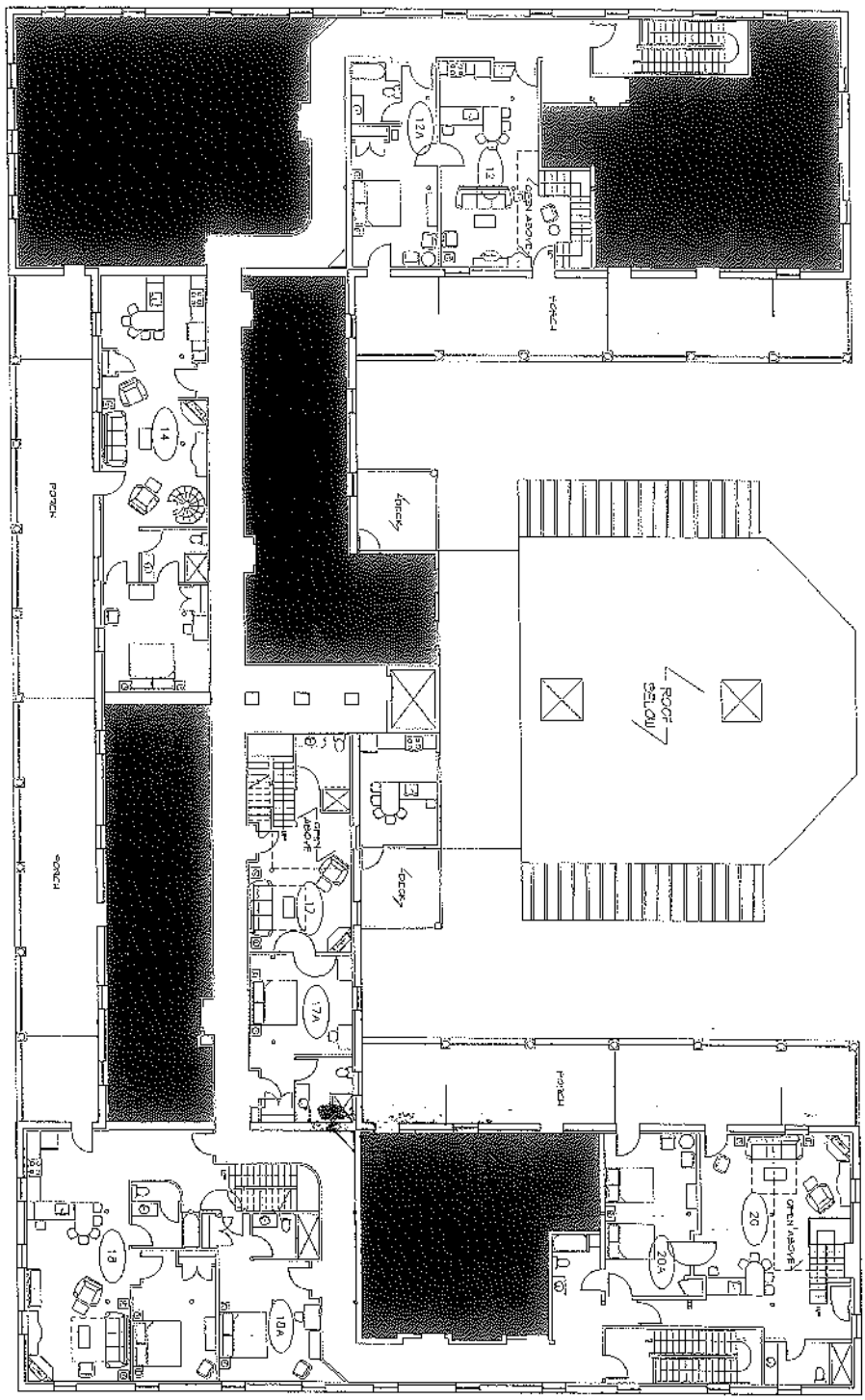
2-A-6


SITE PLAN
SCALE: 1" = 16'-0"
EXISTING BUILDING
ADDITION
EXISTING CONCRETE PATH
EXISTING CONCRETE PATH
EXISTING CONCRETE PATH
EXISTING WOODEN PATH
NEW WOODEN DECK PATH
NEW CONCRETE PATH
NEW GAZEBO
NEW CONCRETE PATH
NEW WOODEN DECK PATH
EXISTING TREES TO REMAIN
EXISTING TREES TO REMAIN
EXISTING TREES TO REMAIN

2-A-7


PORCH
PORCH
PORCH
SIDE WALK
NEW ADDITION
NEW ADDITION
SIDE WALK
NEW ADDITION
DOOR FIXED PERMANENTLY CLOSED
DOOR FIXED PERMANENTLY CLOSED
DOOR FIXED
DOOR FIXED
DOOR FIX

2-A-8

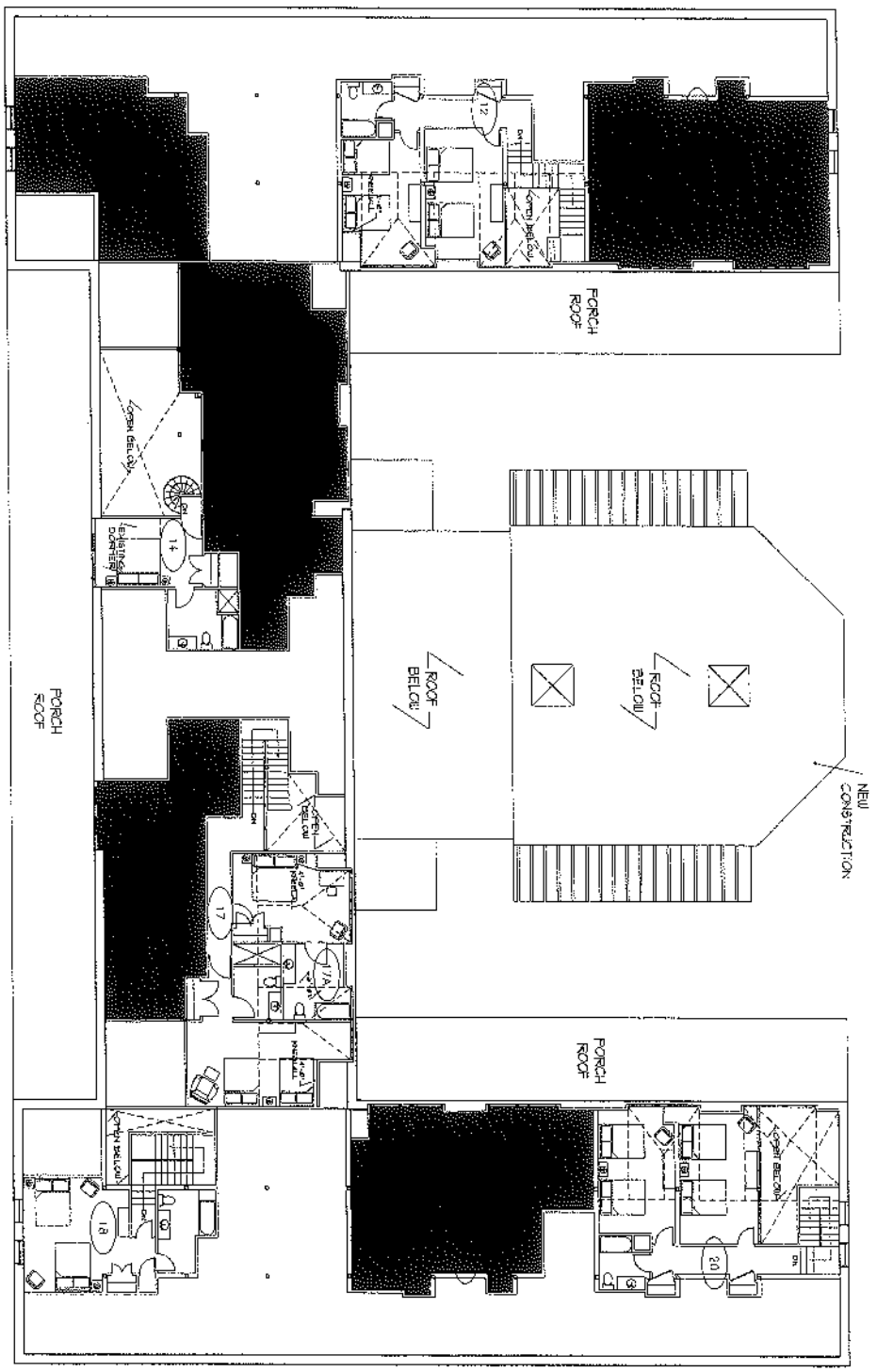


Ø1 SECOND FLOOR PLAN
SCALE: 1/8"=1'-0"

GROSS AREA - 1428.46 SF

A03	Date: October 22, 2007	Scale: 1/8"=1'-0"	Revisions: ISSUED FOR CONSTRUCTION REVIEW	PROJECT: The Inn at Diamond Cove, LLC Portland ME	ARCHETYPE, P.A. ARCHITECTS [illegible] Union Wharf, Portland, ME [illegible] (207) 772-6022 Fax (207) 772-[illegible]
	JUNE 24, 2009 PROPOSED 2ND FLOOR PLAN				DEVELOPER: Bateman Partners, LLC 245 Commercial Street Portland, ME 04101

2-A-9

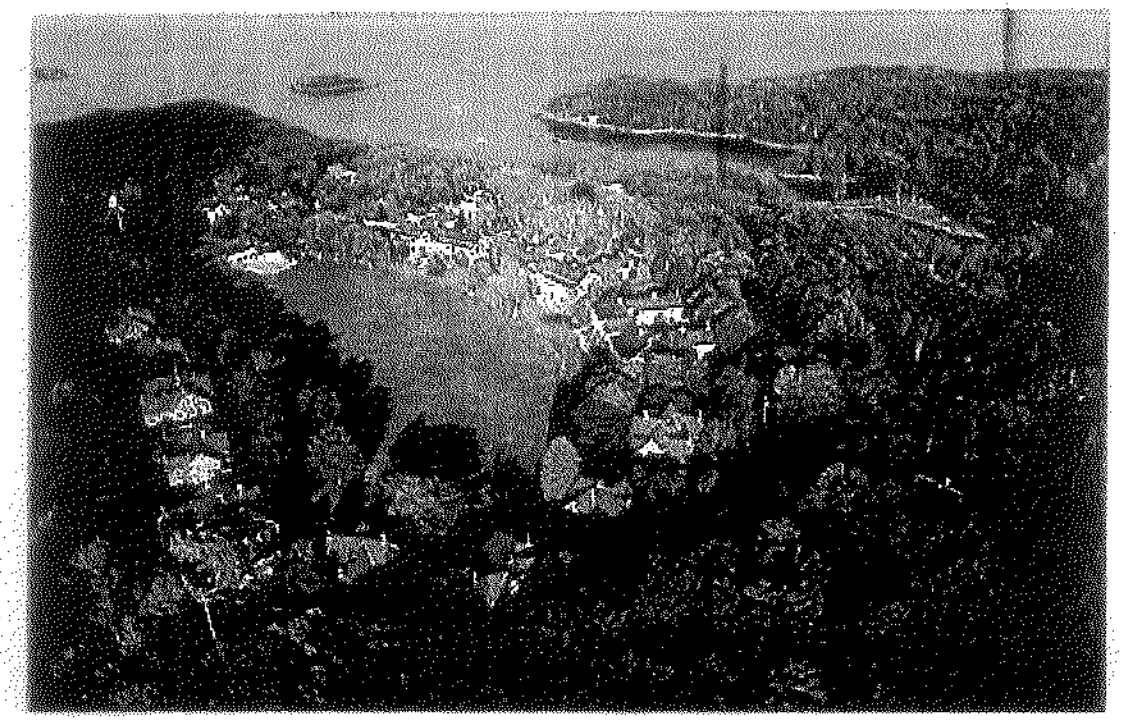


01 THIRD FLOOR PLAN
SCALE: 1/8"=1'-0"

GROSS AREA = 13784.0 SF

A04	Date: October 22, 2007	Scale: 1/8"=1'-0"	Revisions: ISSUED FOR CONSTRUCTION 10/2008	PROJECT: The Inn at Diamond Cove, LLC, Portland ME	ARCHETYPE, P.A. ARCHITECTS, 48 Union Wharf Portland, Maine 04101, (207) 772-6022 Fax (207) 772-6026	DEVELOPER: Bateman Partners, LLC, 245 Commercial Street, Portland, ME 04101
	JUNE 24, 2008 PROPOSED 3RD FLOOR PLAN					

THE DEVELOPMENT OF THE DOUBLE BARRACKS & HOSPITAL



The Inn At Diamond Cove

Confidential -- Solely for the Use of
DCHA Homeowners

Background Introduction

Last September a survey was taken of the Diamond Cove Homeowners Association to determine what you wanted the Board of Directors to focus on in the coming year. The number one priority, as ranked by the majority of the homeowners, was to "Develop A Plan To Deal With The Hospital And Double Barracks".

Since that time your board has spent considerable effort accomplishing this mandate, and is pleased to announce that we do have a plan for your consideration.

This narrative will be one of two written communications you will receive from the board, and it will provide a general outline of the development project, including the pros and cons, and our recommendation.

The second communication, planned to be distributed on June 1st, will include a copy of a legal document necessary to amend our covenants to allow the development to proceed, plus a ballot for each homeowner to cast, either in favor or opposition to the project. You will have approximately 3 weeks to cast your vote, and during that time, a series of meetings, along with an email process, will be set up to answer any questions.

This is a complex project. It involves DCHA, the City of Portland, the developer, and all the agencies that govern what takes place at Diamond Cove. As such, it will require your careful review and understanding of all the facts so that you can make a thoughtful decision that is in the best long term interest of Diamond Cove.

The developer has negotiated with the City of Portland a one year option to purchase the Hospital building, and at this time there is no action for the DCHA. Present thinking by the developer is that the Hospital would most likely lend itself to a 3-4 unit residence.

The Project - Double Barracks

- Name: The Inn at Diamond Cove

- Developers: Hart Hotels and Charles Deslauriers
  - Hart Hotels, Inc. is the developer, owner and manager of hotels and restaurants including the Four Diamond awarded Portland Harbor Hotel. http://www.harthotels.com/
  - Charles DesLauriers has been involved in the development of dozens of hotels throughout the United States and Canada.

- Owners Representatives:
  - Construction Manager: Portland Builders
  - Development Consultants: Bateman Partners, LLC
  - Project Architect: David Lloyd A.I.A.
  - Project Engineer: Deluca Hoffman Associates
    Joseph Laverriere

- Concept: Create a destination condominium hotel operating for 6 month season
  - Renovate the Double Barracks up to 22 condominium units
  - Each unit sell will be able to participate in hotel rental program
  - Units projected to rent for approximately $350 per night in season.
  - Development Timeframe: Construction starts this fall and projected to be completed for 2008 season

- Services/Amenities:
  - The Inn at Diamond Cove will have its own swimming pool
  - The Inn at Diamond Cove will operate its own van service
  - The Inn at Diamond Cove will provide its own exterior maintenance
  - The Inn at Diamond Cove will have its own security service.

Double Barracks Project Description

- The proposed concept is based on a format which has been successfully used in prior developments by this Developer.

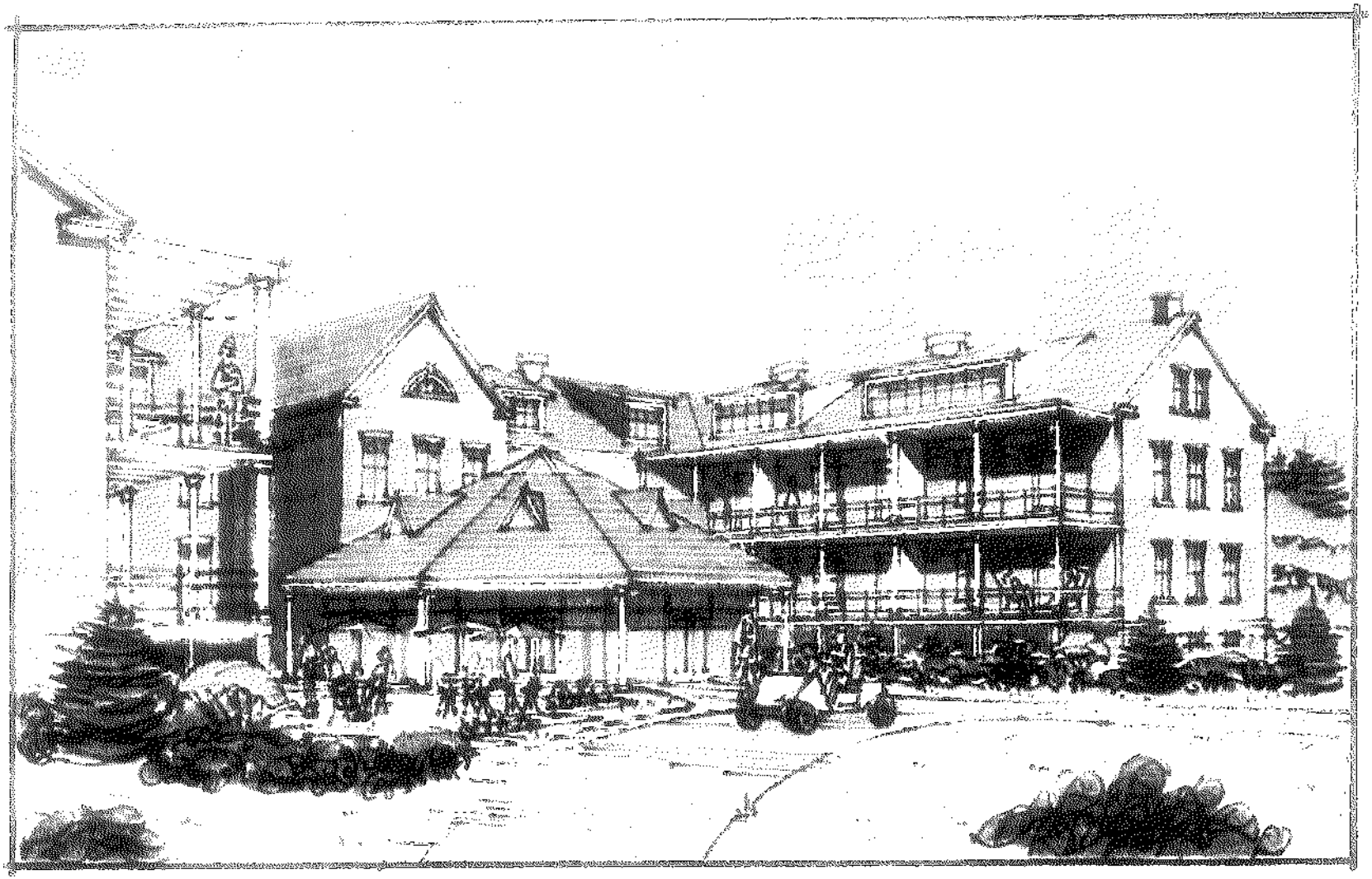
- The double barracks building would be renovated to accommodate up to twenty two (22) condominium units which could be placed into a hotel rental pool.

- The property would operate as a destination hotel for a six month season each year (May thru October).

- The plan for the renovated double barracks would provide a main entrance at the rear of the building within the courtyard, framed by the two end wings. An elevator and entry element would be incorporated into a new addition at the center.

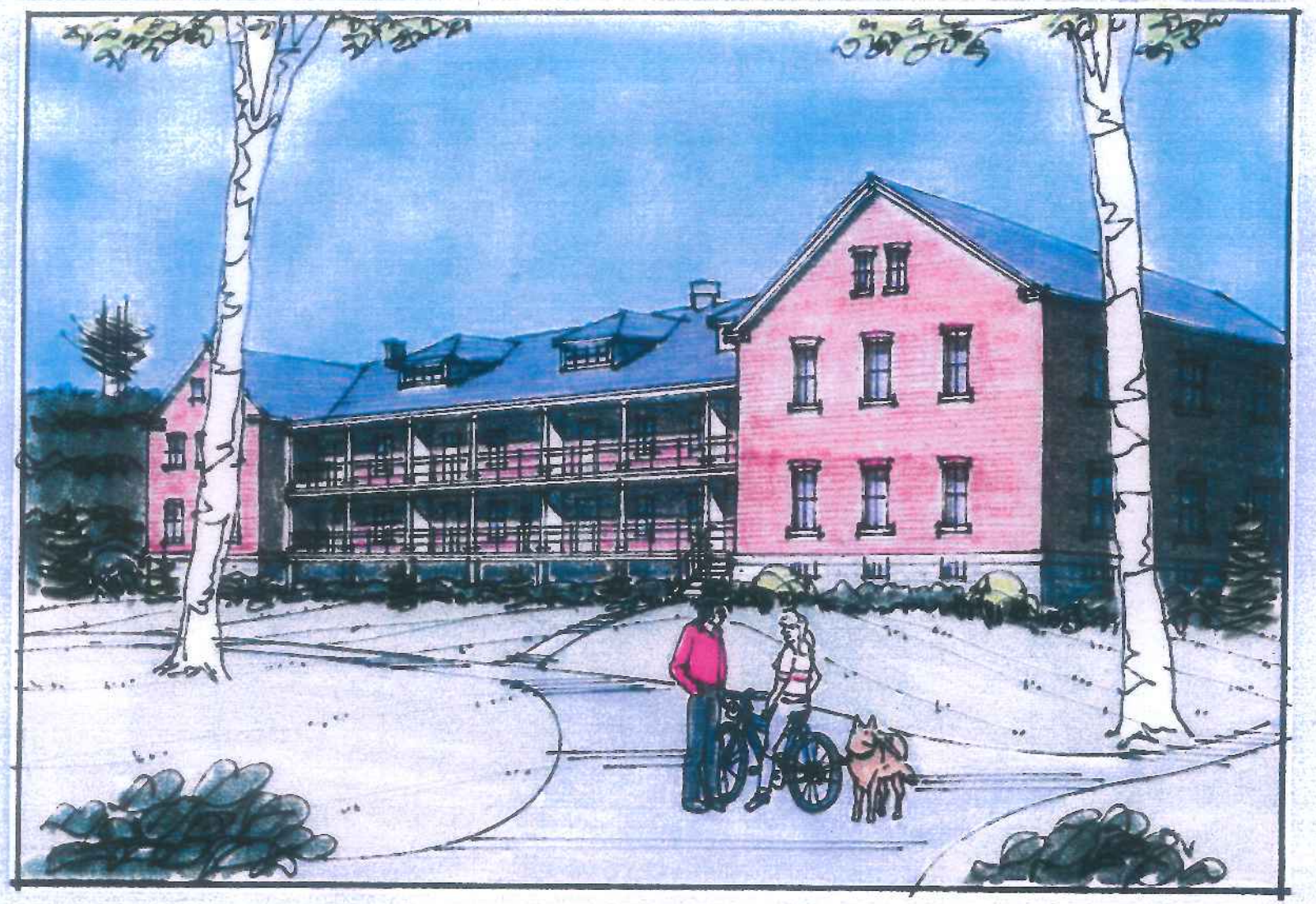
- Directly across from the entry courtyard (on a portion of what currently is open space recreation area) will be a new swimming pool and service bar.

Architect Rendering - Double Barracks



Rear façade facing away from the parade ground

Architect Rendering - Double Barracks

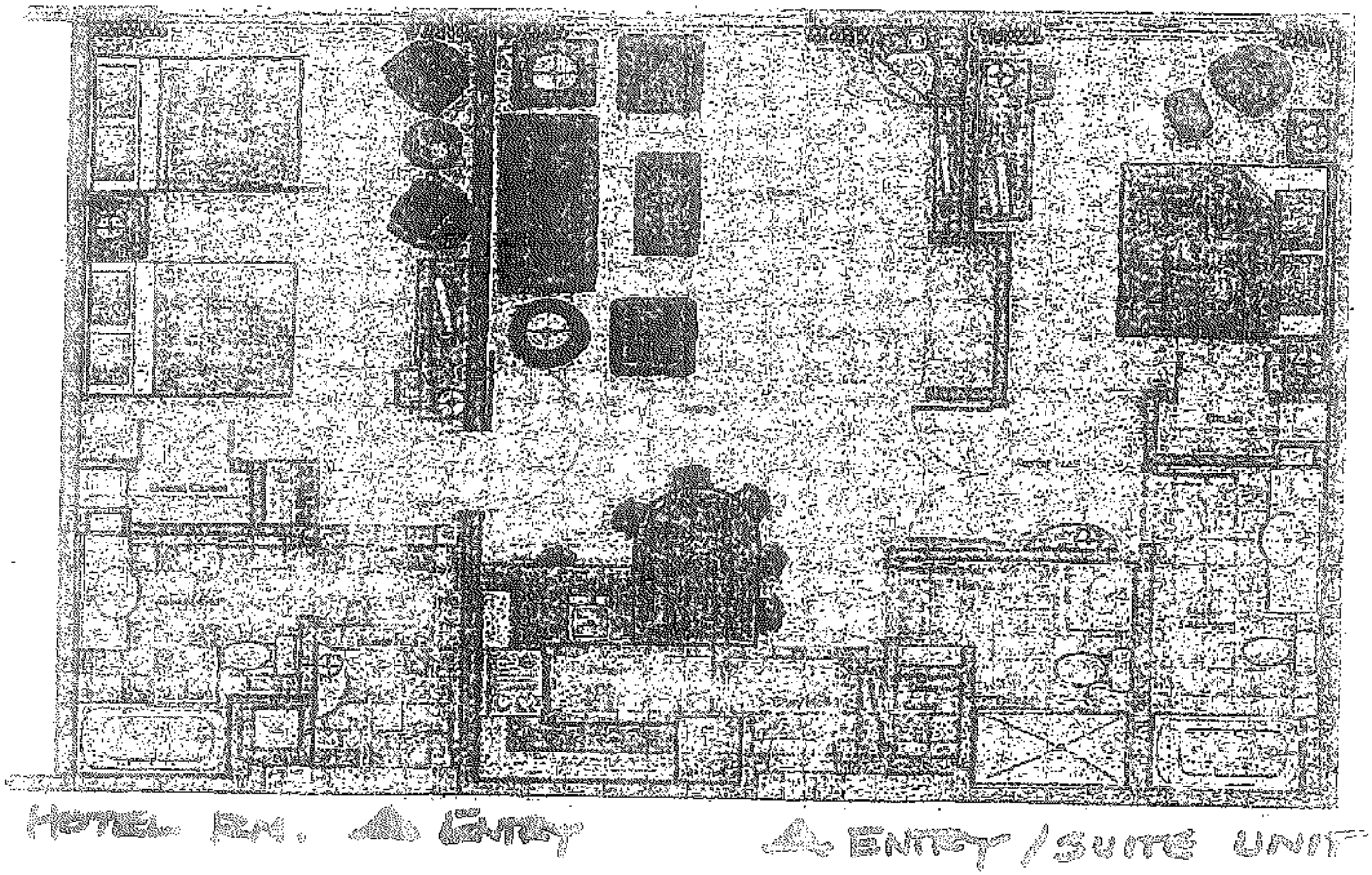


Façade facing the parade ground

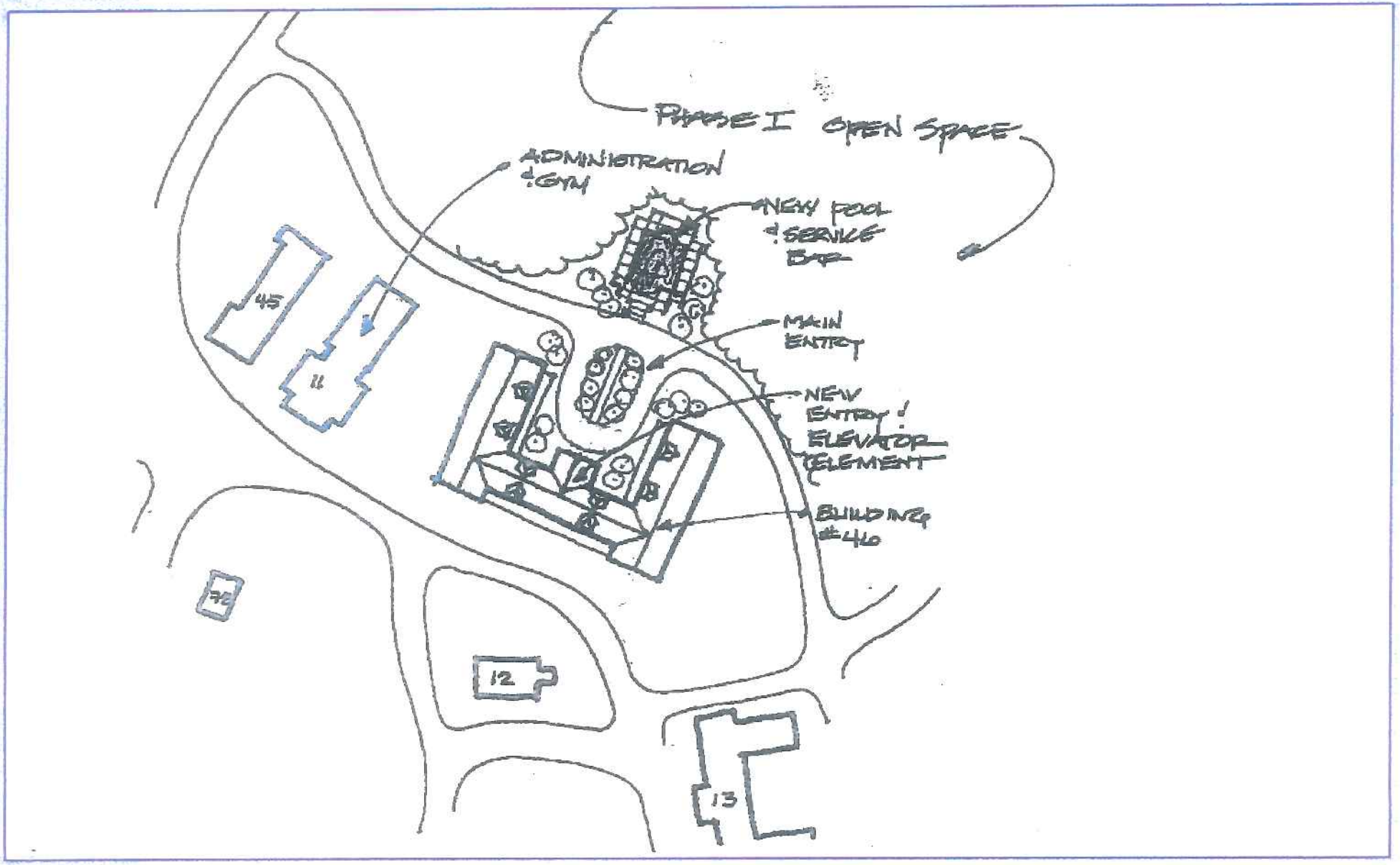
Confidential -- Solely for the Use of
DCHA Homeowners

Inn at Diamond Cove: A Two Bedroom Unit

Example



Inn At Diamond Cove Site Plan



Benefits To Diamond Cove Homeowners

- ## Revenue:
  - At current rates, the Inn will pay approximately $130,000 per year in dues, if all 22 units are built, starting upon completion. This represents 17% of total dues presently being collected. Since the Inn will have its own pool and van, thereby mitigating demand on our infrastructure. The additional revenue should provide DCHA more flexibility in covering operating and capital costs.
  - The Inn will pay a negotiated fee for use of the administration building and/or gym for conferences or functions.
- ## Property Values:
  - The Inn will market to upscale clients who could become future home buyers.
  - The relief on escalating dues should make properties more attractive to buyers
  - For those DC homeowners who wish to rent their units through the existing rental program, the possibility exists that corporate conference groups would find that to be an attractive option.
  - The marketing of the Inn will create more awareness of Diamond Cove
  - The elimination of an eyesore should enhance property values.
- ## Service Support:
  - The restaurant, marina, general store, and spa should all benefit from the existence of the Inn. They may also find it beneficial to extend their season.
  - Additional leverage with Casco Bay Lines to improve schedules
  - The Inn may institute a private water transportation service available to DCHA residents
  - With 24 hour security and professional management, issues with excessive, late night noise should be mitigated.

Requirements of Diamond Cove

- Diamond Cove Homeowners Association must agree to the following terms and conditions in order for the development to move forward:

  - DCHA will allow the double barracks to exist within the association, and as provided for in the declaration, as a condominium.

  - DCHA will waive the previous unpaid homeowner's assessments

  - Monthly assessments for all units within the Double Barracks will commence July 1, 2008 (projected completion date) or upon the issuance of a Certificate of Occupancy by the City of Portland, whichever comes first.

  - Any improvements required on the waste water beds and related equipment will be paid for, up front, by the developer. Subsequently, DCHA will reimburse the developer one half of the cost, up to a maximum of $100,000, to be paid in equal installments over five years. This reimbursement will start upon the commencement of the monthly assessments. Both parties will work together during the construction phase of any bed upgrades to insure that the work complies with all regulations and is competitively priced.

Requirements of Diamond Cove (Continued)

- DCHA will allow the use of the administrative building and gym to the Inn for functions at a mutually agreed upon fee.

- DCHA will allow the Inn to be responsible for all exterior repairs and maintenance of the double barracks, and will make a pro-rata adjustment to the monthly dues to reflect the value of the work..

- DCHA will cooperate with the developer with the issuance of local, state and federal permits.

- Developer will install a swimming pool for the use of the Inn's owners and guests on a portion of what currently is open space recreation area.

- Developer will operate its own van service to transport guests and owners around the island. The developer will need City approval to operate the same. The Inn also anticipates operating one or two stretch golf carts. The condominium unit owners will not be allowed to own or operate golf carts without approval by both the City of Portland and the DCHA Board.

- Since the Inn will provide its own transportation and operate its own swimming pool, there will be no rental fee assessed.

- Developer will abide by all Design Review requirements, pay all impact and barge landing fees.

Possible Negatives of the Development

- There will be more people at Diamond Cove. For example, if all 22 units are completed, there will be 66 more beds on the island. Existing homeowners would be sharing beaches, tennis courts, parade ground, restaurant, general store, with the additional people.

- The net revenue gain could be reduced by up to $20,000 per year for the first 5 years to pay for DCHA cost sharing of the waste water upgrade. This assumes that the upgrade would cost $200,000 or more to construct, which it may or may not. DCHA share is capped at a total of $100,000.

- DCHA will be releasing all liens on the properties for past assessments due. The current owner, The City of Portland, has indicated that it will not pay any such assessments.

- New assessments on the double barracks building commence upon completion of the project or July 1, 2008 whichever comes first.

Relevant Facts

Tear Down

- Both buildings are designated as historic and therefore protected structures. According to the Portland Code of Ordinances for historic buildings, the owner must preserve protected structures. "All structures located in a historic district shall be preserved against decay and deterioration by the owner who has legal custody and control. This includes preserving the foundation, floor supports, structural members, walls, partitions, ceilings, roofs, fireplaces, chimneys, and includes weather protection".

- For demolition, a Certificate of Hardship from the City of Portland Zoning Board of Appeals is needed. This requires that engineering studies be done, renovation estimates, 2 appraisals, market study, a public hearing where the applicant must make a clear case showing that a delay will result in undue hardship of a unique or exceptional character which could not have been avoided. Undue hardship does not include financial loss. If the condition of the structure is claimed to prevent reasonable use the applicant must prove that such condition is not the result of acts of neglect by the owner or his predecessors in title. As the City of Portland is the owner of the buildings only they can apply for a certificate of hardship. Early estimates of several years ago for a tear down were in the $500,000 range.

Relevant Facts (Continued)

- Tear Down (Continued):

  - Diamond Cove has few opportunities for additional revenue to offset rising costs. Once torn down the potential dues from the existing lots within these two buildings will be gone.

  - It is unlikely that the City will consider tearing down these buildings; a.) reduce potential for tax revenue, b.) historical preservation c.) the early estimates of several years ago for a tear down were in the $500,000 range. Rather the City is more likely to transfer the buildings to a developer, qualified or not.

  - The movie theater and one of the officer's quarter's buildings were lost in recent years to fire and vandalism. The double barracks and hospital buildings are the two largest remaining structures of the original Ft. McKinley. A restoration will save a significant historical structure and maintain the character of Diamond Cove.

Relevant Facts (Continued)

- Liability
  - DCHA is not, and never has been in the chain of title on these buildings. The City of Portland has claimed that it does not have physical possession, only "tax title". While our attorney does not agree with the City's legal theory, that it may not be held liable for its negligence in the operation or maintenance of these buildings, that does not necessarily prevent DCHA from being brought into a lawsuit were someone to be injured in one of these buildings. Cost of a legal defense would be significant.

- Leverage
  - Perhaps the most important element of this proposal is the fact that DCHA DOES NOT OWN THESE BUILDINGS AND THEREFORE HAS ABSOLUTELY NO SAY AS TO WHO THE CITY OF PORTLAND SELLS THEM TO. As we are not the owner of the buildings our goal is to influence, rather than control, what happens to these buildings.

Conclusion

- The goal of the board of directors was to determine what could be done with these buildings that would be in the best interest of the Diamond Cove community. Recognizing our limitations -- we do not own the buildings and cannot control who they are sold to or the caliber and quality of the renovation, it is our belief that the development team and proposal achieve the goal you set.

  - ✓ It brings in new revenue up to 17% of our present total assessment.
  - ✓ It uses little of our infrastructure, is open 6 months (~~delete~~), and is fairly self sufficient.
  - ✓ The Inn's business model will attract guests who could be future buyers of property.
  - ✓ It will be professionally managed. The owner/developer is substantial and has a track record of operating quality projects. The owner's consultant knows Diamond Cove better than anyone else and therefore has less of a chance of not finishing the project.
  - ✓ We eliminate any potential liability related to someone getting hurt in one of these abandoned buildings.
  - ✓ We improve our relationship with the City by working together to make this successful. We increase the viability of the restaurant and the general store.

Conclusion (Continued)

- In return, we will have to be willing to share some of our part of the island with an increased number of people, something Diamond Cove was originally designed to do.

- Having recently learned of the final details of the proposed project, the Board now feels it is the best option available to DCHA. It allows the homeowners to have meaningful input into a project which could improve the revenue stream and help maintain the existing infrastructure, help property values, have minimal impact on existing infrastructure and eliminate a potential eyesore and potentially dangerous situation which currently exists with the Double Barracks and the Hospital buildings.

- No one on the board has any personal financial investment or involvement in this development. You, the homeowners, will ultimately decide by your vote if you want to see these buildings developed as outlined. Again, the developer can still buy and develop these properties in a somewhat different fashion without our approval. Your affirmative vote will allow us some degree of influence over the final product.

- Our by-laws require that 2/3 of the home owners cast an affirmative vote for this to be approved. A NON-VOTE IS RECORDED AS A NEGATIVE VOTE. It is important that you participate in the voting so that a decision that is reflective of the community's true wishes is made.

Respectfully,

DCHA Board of Directors

2-C-1

Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 15, 2007

Ronald N. Ward, Esq.
Drummond Woodsum & MacMahon
PO Box 9781, 245 Commercial Street
Portland, ME 04104

Re: Inn at Diamond Cove

Dear Ron:

You have inquired as to the procedure for review for the proposal for the redevelopment of the double barracks on Great Diamond Island. After reviewing the document entitled "The Development of the Double Barracks & Hospital," as well as your responses the follow-up questions contained in your email of July 27, 2007, The City's Planning Department has made the following initial conclusions.

From the information provided, it appears that the intention is to run an inn at the location of the barracks building on GDI, which is located within the IR-3 zone. An inn is an allowable use within the zone. However, the definition of "inn" under Section 14-47 states that "guest rooms shall not contain separate kitchen facilities." We recommend that the way to resolve this is to apply for an amendment to the conditional zone to allow for inns that are comprised of rooms with kitchen facilities.

Second, it appears from the site plan that the pool is proposed to be constructed in an area that has been designated as open space. This would also require an amendment to the conditional zone.

The question of site plan review is somewhat complicated. The project would be subject to major site plan review based on the size of the reuse and the site improvements including the gazebo and pool and patio area. The reuse of the barracks building itself may be eligible for exemption from site plan review to the extent that the project remains within the extent of the original building. If the gazebo is going to be greater than 500 square feet, that would bring this project into major site plan review or perhaps it could be construed as a minor site plan and

2-2-2

partial exemption. If there is an expansion of the sand filter system, that might also constitute a project component subject to site plan review. We cannot give a definitive ruling on these matters at this time, but if you proceed with the zoning amendment, we will scope out the subsequent reviews on the basis of the materials submitted at that time.

Fourth, in reviewing the original conditional rezoning for Diamond Cove, the commercial uses were shown as clustered around the cove area, while the parade ground buildings were depicted as residential. It does not appear to be specifically restricted to that arrangement, but if a conditional rezoning amendment is pursued, that would eliminate any doubt or debate about the intent of the original rezoning regarding the location of commercial uses.

Finally, the number of units proposed for each building is specifically set forth in the subdivision plan. Building 46 is allotted 14 units. The proposal to increase the number of units in building 46 to 22 units may require an amendment to the subdivision.

As stated previously, these conclusions are based on the information that has been submitted. Please feel free to provide additional information if you feel we have mischaracterized the proposed project.

Please contact me if you have any questions.

Sincerely,

Alex Jaegerman
Planning Division Director

cc: Joe Gray, City Manager
Lee Urban, Director of Planning & Development
Mary Costigan, Associate Corporation Counsel
Rick Knowland, Senior Planner
Barbara Barhydt, Development Review Services Manager

Rick Knowland - Inn at Diamond Cove, LLC conditional zoning amendment

From: Rick Knowland
To: rnw@dwmlaw.com
Date: 4/9/2008 4:43 PM
Subject: Inn at Diamond Cove, LLC conditional zoning amendment
CC: Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Penny Littell

Ron, I thought I'd give you some quick comments on the Diamond Cove conditional zoning amendments proposed by the Inn at Diamond Cove, LLC. that was submitted yesterday. With a tight time frame before the workshop, I'd like to give you the benefit of initial staff comments.

1. It was stated the wastewater flow data sheet was to be updated reflecting the hospital building but as a stand alone document it falls short on details. Was there a report/memo that accompanied this chart? Is there a narrative that explains how the sanitary waste generated by the barracks and hospital buildings is to be handled? (Remember this project was approved 20 plus years ago so it would be extremely helpful to have written narrative of the existing sewer treatment system, where it is located, what type of system is it, the capacity of the system and DEP license requirements). Does the applicant have a letter from the Maine DEP regarding their review of this project?

2. Comments on text amendment to conditional rezoning of Ft. McKinley:

a. Second paragraph; section "9a" appears to be the wrong refererence. We assumed the proposed text would follow under paragraph 1 of the original conditional zoning text document.

b. The paragraph references "residential hotel condominiums" and then "residential condominiums". Which one is it? Should choose which term you'd like to use. Also the use should be defined in the paragraph.

c. What is meant by the "the immediate attendant there to and that portion of the Open Space"?

d. The paragraph should reference that a portion of the dedicated open space shall be used for the improvements noted on the site plan including a swimming pool and the gazebo (food and beverage building). Also how do you deal with the the fact "open space shall be dedicated and reserved as such in perpetuity" according to paragraph 1 of the original conditional zoning?

Other questions/issues:

3. Will there be a separate condo association from the Diamond Cove condo association? If yes, what is the relationship?

4. The paragraph references a separate lot for the hospital and barracks? Unless I'm missing something, this seems unusual in that I don't believe the rest of Fort McKinley has separate lots for buildings. Please explain. I'm not sure what the implications maybe for Fort McKinley as a planned unit development.

5. Do you have a letter of support from the Diamond Cove condo association supporting the proposal?

6. What changes will need to be made to the Diamond Cove condo documents in light of this proposal?

7. A more detailed explaination of the on-site transportation methods for this project in relation to the Diamond Cove condo transportation system would be appropriate.

8. There is a discrepancy between large size plan submitted and the smaller 8 1/2 inch by 11 inch site plan

submitted. Which one is operative? Also the appropriate site plan should have a date on it so it can be properly referenced. We will need an 11 inch by 17 inch copy of the large plan.

9. The original conditional zoning provisiopn was submitted but it was revised a few years ago so I'll get an updated copy to you.

10. The density formula for the IR-3 will need to verified in terms of the number of existing dwelling units and the hotel condos. You probably have plenty of land area but that calculation needs to take place.

11. A better graphic for the entire project would be appropriate. Perhaps a color aerial (11 by 17) labeling the barracks and hospital location could be provided.

12. The original IR-3 plan for Diamond Cove clustered commercial uses near the ferry landing. This proposal is a change from that plan so I'd suggest you have some type of explaination for this change including the the outside improvements such as the swimming pool and bar/food building.

13. I've not done an exhaustive review of the IR-3 zone development standards that track the policy statements of the IR-3 zone. You'll want to take a look at these relative to your project.

Ron, These are some very quick comments. Obviously the more detailed information submitted in an application, the more complete review comments we can provide. We had initially discussed having one workshop on this item but there are significant gaps in the submission so we'll see how the initial workshop goes.

These comments are focused on the zoning amendment itself and not on the development details of the project.

As other review comments become available, I will forward them accordingly. If anyone on my cc list has comments I've missed, please forward them accordingly.

Rick Knowland - Inn at Diamond Cove, LLC zoning amendment

From: Rick Knowland
To: rnw@dwmlaw.com
Date: 4/11/2008 8:23 AM
Subject: Inn at Diamond Cove, LLC zoning amendment
CC: Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Mike Murray; Penny Littell

Ron, As a follow-up to my Wednesday comments email, I've gone through our files and found a report prepared by Oliver Associates dated June 2000 entitled "Wastewater Treatment Infrstructure Evaluation" which was prepared for the Diamond Cove project.

If your team doesn't have a copy of this report I'd be happy to forward it to you.

Regarding other comments on the conditional zoning application, I've received a comment regarding mainland parking for this use. Obviously there was a solution some time ago for Diamond Cove but I believe it would be important to refresh our memories on this issue and how the developer intends to address this. This will undoubtedly come up in the review process.

ATTACHMENT 2-F-1

Rick Knowland -

From: "Demarest, Michael" <Michael.Demarest@maine.gov>
To: <amy@batemanpartnersllc.com>, <joe@delucahoffman.com>, "Rick Knowland " <RWK@portlandmaine.gov>
Date: 7/8/2008 4:05 PM
Subject:
CC: <pcgleason@aol.com>, <trlucke@earthlink.net>, "Richardson, Marybeth" <Marybeth.Richardson@maine.gov>

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

RE: Proposed Barracks Redevelopment, Great Diamond Island

Dear Sirs:

It was a pleasure meeting with you at the Portland DEP office last month. The meeting was valuable in that I was able to meet each of you in person, get a glimpse of the big picture and get an idea of the particular OBD licensing issues that need to be addressed. As you know from my email sent June 18th, the issues fall into four distinct areas: Site evaluation, possible conflicts with the previous site license, new discharges, and inflow/infiltration (I/I). Since then, one more issue has come forth; the need to transfer the license to the current owners of record. Apparently McKinley Partners Ltd. Partnership has ceded their title completely to the Diamond Cove Homeowners Association. To complicate matters, I don't believe the current developers have demonstrated their right, title and/or interest (RTI).

I came to the meeting having briefly reviewed the (physical) DMR sheets for the previous five years. My impression at the time of the meeting was that the I/I was being addressed. However, once I committed the values to a spreadsheet, a different picture has emerged.

DATE	BOD5	TSS	SS_mg/L	FECAL_MO_col/100ml	FECAL_DAY_col/100ml	PH	VOL_AVE	VOL_MAX	TCR	COMPLY
Lic. Require	30 mg/L	30 mg/L	0.3	30 col/100ml	50 col/100ml	>6.0 &< 9.0	35000 gpd	Tx Capacity	1	
Jan-06	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	11425	23946	NODI	
Feb-06	< 2	13	< 0.1	NODI	NODI	6.4-6.5	12068	41970	NODI	Tx_cap
Mar-06	< 2	15	< 0.1	NODI	NODI	6.4-6.5	3819	8453	NODI	
Apr-06	< 2	5.5	< 0.1	NODI	NODI	6.4-6.5	6629	16612	NODI	
May-06	2.6	< 1	< 0.1	1.4	3	6.4-6.5	24065	61264	0.24	Tx_cap
Jun-06	< 2	< 1	< 0.1	1.2	2	6.4-6.5	21151	56675	0.46	Tx_cap
Jul-06	< 2	< 1	< 0.1	< 1	1	6.0-6.4	20611	44492	0.13	Tx_cap
Aug-06	< 2	1	< 0.1	< 1	< 1	5.6-6.2	12600	21204	0.2	
Sep-06	6	6	< 0.1	< 1	<1	5.8-6.4	6626	18248	0.78	pH
Oct-06	< 2	< 2	< 0.1	NODI	NODI	5.8-6.2	15857	69120	NODI	pH, Tx_cap
Nov-06	< 2	< 1	< 0.1	NODI	NODI	6.2-6.4	19834	58945	NODI	Yes
Dec-06	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	10138	23458	NODI	Yes
2006 Avg.							13735.25	37032.25		
Jan-07	< 2	< 1	< 0.1	NODI	NODI	6.4-6.5	8962	27000	NODI	yes
Feb-07	< 2	< 1	< 0.1	NODI	NODI	6.4	4307	6376	NODI	Yes
Mar-07	< 2	< 1	< 0.1	NODI	NODI	6.3-6.8	8882	28600	NODI	Yes
Apr-07	< 2	< 1	< 0.1	NODI	NODI	6.4-6.6	12583	71578	NODI	pH, Tx cap
May-07	17	1.1	< 0.1	< 1	< 1	6.2-6.3	11042	24893	0.74	Yes
Jun-07	< 2	< 1	< 0.1	< 1	< 1	6.3-6.4	9836	19036	0.88	Yes
Jul-07	2	1	1	< 1	< 1	6.3-6.4	10304	16241	0.42	Yes
Aug-07	< 2	4.1	< 0.1	< 1	< 1	6.3-6.4	12313	25096	0.13	Yes
Sep-07	< 2	3.8	< 0.1	< 1	< 1	6.3-6.4	5704	11334	0.82	Yes
Oct-07	< 2	4	< 0.1	NODI	NODI	6.3-6.4	9526	33351	NODI	Yes
Nov-07	NODI	NODI	< 0.1	NODI	NODI	6.3-6.4	11431	26741	NODI	Yes
Dec-07	< 2	< 2	< 0.1	NODI	NODI	6.3-6.4	11070	30604	NODI	Yes
							9663.3333	26737.5		
Jan-08	< 2	< 1	< 0.1	NODI	NODI	6.2-6.3	20237	64770	NODI	Tx_cap
Feb-08	< 2	< 1	< 0.1	NODI	NODI	6.2-6.3	22596	79339	NODI	Tx_cap
Mar-08	< 2	< 1	< 0.1	NODI	NODI	6.1-6.4	21410	67451	NODI	Tx_cap
May-08	< 2	< 1	< 0.1	NODI	NODI	6.3-6.4	14609	39577	NODI	Tx_cap
Jun-08										
Jul-08										
Aug-08										

Sep-08										
Oct-08										
Nov-08										
Dec-08										
							19713	62784.25		

Although I do not have a copy of the daily discharge records, I would imagine that the majority of the high readings were a direct result of the higher-than-normal precipitation during those months. However, without daily flow records, I cannot say how much is direct absorption by the sand filter versus the I/I from the campus. I would surmise that any development plan include at the very least, a capping off of the hospital piping, which you identified as the major source of I/I.

I have reviewed the Phase I development as approved under Site Location Order #L-013160-87/03-A-N, which approved the renovation of 44 buildings as follows: 36 units to be developed into 134 housing units, 5 buildings to commercial uses, 2 to be rehabilitated for recreational use, and one to a security/maintenance facility.

From my perspective as the project manager of the OBD Licensing Program, the DEP can approve the use of the existing unused treatment capacity because the redevelopment of the barracks (and hospital) was in the Phase I site license and in theory, there exists some unused actual or estimated treatment capacity.

Because a site evaluation has been done for the existing development, the Department will require a determination by a LSE/PE that there is no feasible subsurface alternative to the use of the OBD by the proposed development, and demonstration that the estimated or actual discharge will not cause the Phase I development to exceed the licensed (35000gpd monthly average) or treatment capacity of the system. We will also require the applicant to address the inflow and infiltration problems because, storm events are causing overages of the treatment capacity and have substantially raised the gpd monthly averages. Additionally, it would appear that island folks have added a substantial number of bedrooms to their existing homes, which are not just violations of the license, but also impact the ability of the applicant to meet either the estimated or the actual discharge volume limits.

Please be advised that, the inclusion of fifty tables to serve meals at the hotel by the restaurant or by the pool as proposed would appear to be an expansion of the existing restaurant, therefore clearly prohibited under the law. The presence of private kitchens within the barrack "units" are well within what was originally envisioned. We would support the provision a continental breakfast by the Hotel because we see that as well within the normal practice.

Sincerely,

Michael Demarest
Overboard Licensing Program
Division of Water Quality Management
Bureau of Land and Water Quality

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UGUSTA, ME 04333-0017
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T.

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2-F-3

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

May 21, 2008

RE: Great Diamond Island Redevelopment Plan

Dear Sirs:

I am getting many calls from Island folks stating that the redevelopment of the double barracks is considerably more extensive than that which was presented to me for analysis by Joe Laverriere of DeLuca Hoffmann Associates in August of 2007. Although this public alarm is generally the norm for such projects, in this case I am somewhat disturbed by the difference between what is being presented to me and what is actually being proposed. So at this time I would like some very clear precise details on what you are intending to do.

In October of 2005 this Department generously renewed the license with a 35,000 gpd monthly average instead of the 40,000 gpd maximum because it was our assessment that meltwater and storm events were regularly causing violations outside of the licensees control. For example, a 5-yr storm event (4.3 inches of rain within a 24 hour period) over the 34,500 sq.ft.surface of the sand filter (assuming 100% inflow) would add 92,719 gallons – roughly 2.5 times the treatment capacity of the system. A modest storm event (1-inch of rain) would add 21,583 gallons in that day.

In August of 2007, Joe Laverriere of DeLuca Hoffmann called me and asked about using the OBD. The island redevelopment at that time, was confined to the double barracks (see attachment A). As Joe explained the project to me, the building was to be used for 20 residential condominiums containing 42 bedrooms. I asked for design flows for both the existing and the proposed wastewater discharges and the flows submitted were based on the following residential occupancy: 6 single-bedroom residential units, 6 two-bedroom residential units, and 8 three-bedroom residential units (20 units containing 42 bedrooms). The Deluca Hoffman design flows for the proposed development were based on single-family dwellings, but were slightly understated as single-bedroom units may only be reduced to 120 gpd per unit per the *Maine Subsurface Waste Water Disposal Rules*, 10-144 CMR 241 (501.2). The DeLuca Hoffman design flows show a 9,780 difference between the treatment capacity and the existing development. My figures were similar, so, with the assumption that the 1,900 remaining feet of the 4,900 linear feet of sewer would be rehabilitated or replaced, it was my assessment that the development should not cause violations or flows in excess of the treatment capacity of the OBD system.

However, the City of Portland recently contacted me to ask if the treatment system has adequate capacity and whether the renovated barracks may hook into the OBD treatment system. My answer was that, because the barracks was continuously a part of GDI phase I development, the Barracks may use the OBD, provided there is sufficient estimated and actual capacity. My best professional judgment was still that, provided the remaining 1,900 linear feet of old tile was replaced/refurbished to eliminate to inflow/infiltration problem the system had marginally enough capacity and the license would allow it.

The City asked me if it was presented to me as a hotel or condo. This Department was still unconcerned because, using the 100 gpd/bedroom design standard for hotels the design flows were still within the treatment capacity, even when factoring in 9 employees within a 24-hr. period.

PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS AS RESIDENTIAL						
DESCRIPTION	UNITS	ADF RATE (gpd/unit)	ADF Total (gpd)	144 CMR 241 (gpd/unit)	144 CMR 241 Total (gpd)	COMMENTS
1 Bedrm. Residential	6	90	540	120*	720*	*144 CMR 241.501.2
1 Bedrm. Residential	6	180	1,080	180	1,080	
1 Bedrm. Residential	8	270	2,160	270	2,160	
Totals:	20		3780		3,960	

1 Bedrm. Hotel	6			100	600	
2 Bedrm. Hotel	6			200	1,200	
3 Bedrm. Hotel	8			300	2,400	
9 Employees? (guess)				15	135	
					4,335	

Now, according to Marybeth Richardson, it would appear that the proposal is indeed a hotel. According to floor plans sent to me, there appears to be a 62-seat glassed-in garden restaurant (reportedly, breakfast only 620 gpd without employees) in addition to the 42 bedrooms. Furthermore, the former hospital (building #19) is also being redeveloped into an additional 12 units (assuming the same ratio -- 24 bedrooms), and an islander reports that the proposal includes a swimming pool. If the hospital redevelopment mirrors the double barracks, with restaurant (and pool facilities), there is little or no excess capacity beyond that built into the design flows. I haven't included any calculations for the swimming pool(s). The daily backwash from the swimming pool filter(s) may be substantial. Draining the heavily chlorinated pool into the OBD would create overages (violations) and potential treatment problems. These factors in combination with storm events will likely push the licensees into noncompliance on a regular basis.

So, I am concerned that development at the level proposed will push the limits just a little too far, creating violations of the license and making renewal difficult.

Please submit, in writing, your proposal so that I can provide an accurate analysis.

GREAT DIAMOND ISLAND

WASTEWATER FLOWS TRIBUTARY TO OVERBOARD DISCHARGE SYSTEM
WASTE DISCHARGE LICENSE W009931-41-A-N

CURRENT USES

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	2	90	180	
2 BEDROOM RESIDENTIAL UNITS	15	180	2,700	
3 BEDROOM RESIDENTIAL UNITS	53	270	14,310	
4 BEDROOM RESIDENTIAL UNITS	9	360	3,240	
RESTAURANT (2 MEALS PER DAY)				NOTE 1
SEATS	161	20	3,220	
EMPLOYEES	18	15	270	
SPECIAL EVENT TENT (ASSEMBLY AREA)				
AVG. NUMBER OF PEOPLE PER EVENT	100	2	200	NOTE 2
ADMINISTRATION / MAINTENANCE BLDG.	2	240	480	
MARINA				
PUBLIC SLIPS	3	30	90	NOTE 3
GIFT STORE				
EMPLOYEES	2	15	30	
SUBTOTAL			24,720	GPD

PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS (SEE NOTE 4)

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	6	90	540	
2 BEDROOM RESIDENTIAL UNITS	6	180	1,080	
3 BEDROOM RESIDENTIAL UNITS	8	270	2,160	
SUBTOTAL			3,780	GPD

TOTAL SEWER FLOW	28,500	GPD
ALLOWABLE I/I FLOW	3,000	GPD
TOTAL FLOW	31,500	GPD

AVAILABLE OBD SYSTEM TREATMENT CAPACITY 34,500 GPD
EXCESS CAPACITY 3,000 GPD

NOTE 1 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THE MAXIMUM SEATING CAPACITY IS 161 FOR THE RESTAURANT AND BAR. THE RESTAURANT HAS A TOTAL OF 18 EMPLOYEES SERVING 2 MEALS A DAY (LUNCH AND DINNER). THE AVERAGE DAILY NUMBER OF MEALS SERVED (BASED UPON PEAK MONTHS OF JULY AND AUGUST) ARE:

100 PEOPLE AT LUNCH
160 PEOPLE AT DINNER

NOTE 2 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THERE ARE A MAXIMUM OF 17 SPECIAL EVENTS IN A FULL SEASON WITH AN AVERAGE OF 100 PEOPLE PER EVENT. THE STAFF AT THE RESTAURANT SERVE THE SPECIAL EVENT ACTIVITY; THEREFORE, SPECIAL EVENT STAFF ARE INCLUDED UNDER THE RESTAURANT.

NOTE 3 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT,WHILE PROVISIONS FOR PUMP-OUT ARE AVAILABLE FOR THE PUBLIC MARINA SLIPS, THESE FACILITIES HAVE NEVER BEEN USED BY THE GENERAL PUBLIC.

NOTE 4 - PROPOSED USES ASSOCIATED WITH THE REDEVELOPMENT OF THE BARRACKS BUILDING IS BASED UPON INFORMATION PROVIDED BY DAVID BATEMAN, DEVELOPER OF PROJECT.

ATTACHMENT 2-G-1

Sec. 14-145.12. Other requirements.

Other requirements include the following:

(a) *Offstreet parking:* Off-street parking shall be required as provided in division 20 (off-street parking) of this article.

(b) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 15-92, § 13, 6-15-92)

DIVISION 7.3 IR-3 ISLAND RESIDENTIAL ZONE

Sec. 14-145.13. Purpose.

The purpose of the IR-3 island residential zone is to allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone:

(a) An IR-3 zone should have a minimum land area of twenty (20) acres;

(b) A site for an IR-3 zone should be able to accommodate a higher density of development by providing buffers from surrounding areas on a substantially sized parcel for which natural amenities are capable of being conserved in a development plan for the site;

(c) IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed;

(d) The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and

✳ (e) The development plan should have the capability of meeting the development review standards of section 14-145.16. See next page.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.14. Permitted uses.

The following uses are permitted in the IR-3 island residential zone:

(a) Planned unit development, including:

1. Single-family detached dwellings;

2. Single-family attached dwellings provided that new construction shall be limited to no more than six (6) attached dwellings per building;

3. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms;

4. Inns, provided that the total number of rooms does not exceed fifty (50);

5. Restaurants;

6. Retail businesses or services;

7. Campgrounds, excluding recreation vehicles, licensed by the State of Maine Department of Human Services provided that:

a. No tent shall be located within seventy-five (75) feet of the perimeter of the site;

b. The land area of the site shall not be less than the equivalent of five thousand (5,000)

Sec. 14-145.15. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.16. Development review.

In addition to other applicable requirements, no development shall occur nor shall any new use be established unless the planning board finds that the final development plan for the site is in compliance with the following development standards:

(a) *Transportation:* The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.

A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply-delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.

The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.

(b) *Solid waste:* Adequate provision for off-island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the project: compaction and

reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

(c) *Sanitary waste:* All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.

(d) *Water:* The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.

(e) *Shoreland areas:* The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

(f) *Environmentally sensitive areas:* The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man-made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.

(g) *Recreation and open space:* All open spaces on the site shall be functionally integrated into the development plan by

virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.

(h) *Financial and technical capability:* The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.

(i) *Environmental impact analysis:* The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife, botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

(j) *Development phasing:* If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.

(k) *Emergency services:* The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.



ATTACHMENT 2-[illegible]

CONDITIONS AND RESTRICTIONS

The following conditions and restrictions are imposed by the City of Portland (the City) on Diamond Cove Associates (the Owner) as conditions of the rezoning of the property described on the map attached hereto (the Premises) from the R-2 Residential Zone to the IR-3 Island Residential Zone:

1. Development limited. The development, use and occupancy of the Premises shall be limited to one hundred thirty-four (134) dwelling units and other permitted uses, and uses accessory thereto. Except for the reconstruction, renovation and repair of existing buildings and structures, and the construction of minor additions and improvements thereto, there shall be no construction or development of any new principal building or structure on the Premises. All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity.

2. Completion of development. The development of the Premises as aforesaid shall be substantially completed within three (3) years after the issuance of all licenses, permits and approvals required and requiring final action by any administrative agency, board or commission, including but not limited to subdivision, site plan and site location of development approvals, but not including building, plumbing, electrical or similar permits, which licenses, permits and approvals shall hereafter be diligently pursued; provided, however, that the time for performance hereunder shall be extended for the time during which performance is delayed by reasons wholly beyond the Owner's control, including but not limited to strikes, lock-outs, labor disputes, inability to procure materials, failure of power, riots, war, insurrection, administrative or judicial delay and similar reasons, but not including financial hardship or business conditions; provided, further, that the Planning Board may, after notice and hearing, extend the time for performance hereunder for up to one (1) additional year if it finds that substantial progress has been made toward completion, and that there is a reasonable likelihood of substantial completion within the time as extended.

3. Maintenance of streets, walks and landings. All streets and ways, walks and pedestrian rights of way, and landings, floats and docks on the Premises, including but not limited to those to which the public has a right of access, shall be kept reasonably safe and passable at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that the City may, from time to time, designate such areas as need not be kept clear of ice and snow when or where, in its opinion, the public health, safety and welfare do not require it; provided, further, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including

but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

4. Maintenance of utilities. All utilities and related infrastructure and improvements on the Premises, including but not limited to water, power, communications, sewers and drains, surface drainage ways, street lights and hydrants, shall be kept fully operational and in good repair at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

5. Disposal of sanitary waste. All sanitary waste generated on the Premises shall be collected and disposed of on the Premises by means of a community sewer and secondary treatment system which complies with all applicable federal, state and local regulations, and at the Owner's expense.

6. Disposal of solid waste. All solid waste generated on the Premises shall be collected and disposed of on the mainland or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility, in a manner which meets all applicable federal, state and local requirements, and at the Owner's expense.

7. Fire protection, public safety and emergency services. Before occupancy of the Premises, or any portion thereof, the Owner shall, at its own expense, provide to the City:

(a) a fully equipped "Quint truck", so-called, or its equivalent, for fire protection purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City under a written net lease-purchase agreement in a form mutually satisfactory to the parties and upon commercially reasonable terms, at the end of which lease term title to said vehicle shall be transferred to the City free and clear of all liens and encumberances, and at no additional charge;

(b) a fully equipped multi-purpose truck van, for public safety and emergency purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City for its useful life under a written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar ($1.00); and

(c) a building or buildings, or portions thereof, suitably located on the Premises, for permanent maintenance and storage of said vehicles and related apparatus and equipment, and housing of at least two (2) City personnel associated therewith, which facility shall conform to City specifications and be leased to the City under a ninety-nine (99) year written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar ($1.00), and delivery of possession on a "turn-key" basis.

Upon the City's occupancy of said facility, the Owner shall, at its own expense, provide at all times thereafter a number, not to exceed two (2), of qualified private personnel equal to the number of City personnel then assigned thereto, which private personnel shall be on the Premises and available at all times on an on-call basis to assist said City personnel in the rendering of fire protection, public safety and emergency services on or to the Premises; provided, however, that nothing herein shall constitute any representation or commitment by the City to provide any particular level of staffing or services. Said private personnel shall be trained and equipped for such purposes by the City and at its expense, and shall be under the direction and supervision of authorized City personnel at all times while so engaged; provided, however, that in no case shall said private personnel be deemed agents or employees of the City for any purpose, including but not limited to workers' compensation, unemployment compensation, tort claims liability and collective bargaining; provided, further, that notwithstanding the foregoing, in the event that the City is held liable for any claim arising out of or relating to any actions of said private personnel, which actions were not pursuant to and consistent with the directions of authorized City personnel, the Owner shall indemnify and save forever harmless the City from and against any and all such claims.

8. Water transportation service. The Owner shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, the Owner shall, at its own expense, provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

9. Restrictions on motor vehicles. Except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, no motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles, shall be operated or stored, temporarily or otherwise, on the Premises.

10. Applicability of other laws. The development, use and occupancy of the Premises shall be subject to all other applicable laws, ordinances, regulations and requirements of the City as they may from time to time exist, and neither these conditions or restrictions nor the performance of any obligation hereunder shall constitute compliance therewith or prevent the enforcement thereof, any violation of which shall also constitute a breach of these conditions and restrictions, any breach of which shall also constitute a violation of Chapter 14, Article III (Zoning) of the Portland City Code.

11. Successors bound. These conditions and restrictions shall bind the Owner, its successors and assigns, of or to the Premises, or any portion thereof or any interest therein, including but not limited to any security interest, and any person in possession or occupancy of the Premises, or any portion thereof, and shall inure to the benefit of and be enforceable by the City. The Owner shall, at its own expense, record a copy of these conditions and restrictions in the Cumberland County Registry of Deeds, and shall, by deed, covenant, declaration of condominium or other recorded or recordable instruments, as appropriate, ensure that these conditions and restrictions are enforceable by the City against all such successors, assigns and persons. Nothing herein shall be deemed to limit the Owner's right of alienability of the Premises, or any portion thereof, subject to these conditions and restrictions, which conditions and restrictions shall run with the land and be binding upon the Owner, its successors and assigns, as their interests may appear.

12. No reliance or estoppel. Nothing in these conditions or restrictions shall constitute any representation or commitment by the City to retain the zoning classification of the Premises, or shall entitle the Owner to rely thereon for any purpose, or shall estop the City from any future rezoning or exercise of other authority with respect to the Premises. Nothing herein shall be deemed to preclude the Owner from petitioning the City for any future rezoning of the Premises or other property in the vicinity thereof; provided, however, that nothing herein shall constitute any representation or commitment by the City to grant such a petition or otherwise act thereon.

13. Breach. In case of any breach of these conditions and restrictions, and except as otherwise hereinbefore provided, the City shall, after giving written notice to the Owner and a reasonable time to cure not to exceed six (6) months, refer the same to the Planning Board, which shall, after notice and hearing, make a recommendation to the City Council whether to rezone the Premises, or any portion thereof, which recommendation shall be advisory only.

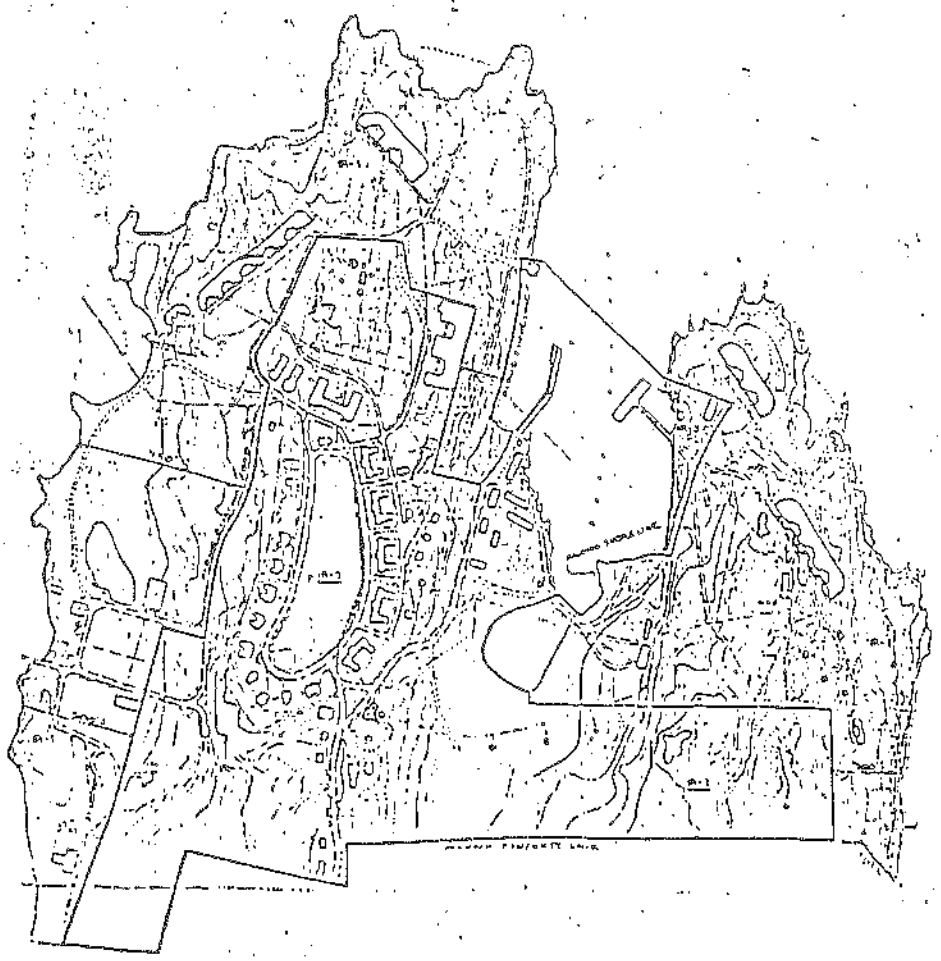
14. Declaration of invalidity. In the event that these conditions and restrictions, or any portion thereof, are declared invalid for any reason by a court of competent jurisdiction, the City shall invoke the same procedure as hereinbefore provided for breach of these conditions and restrictions.

15. Remedies not impaired. No failure or delay by the City to enforce any of these conditions and restrictions shall impair any remedy available for breach hereof, or constitute a waiver of or acquiescence in any breach hereof, the remedies for which shall be cumulative.

BK8928PG0269

7/15/85

FORT MCKINLEY PROPERTY ZONING MAP
(GREAT DIAMOND ISLAND)



NOTE: SHORELAND ZONE LINE EXTENDS INLAND A DISTANCE OF 250 FEET FROM THE NORMAL HIGH WATER MARK OF THE BAYS, COVES, SOUNDS, INLETS AND OPEN WATERS OF CASCO BAY.

BK8926PG0270

7/15/85

Diamond Cove

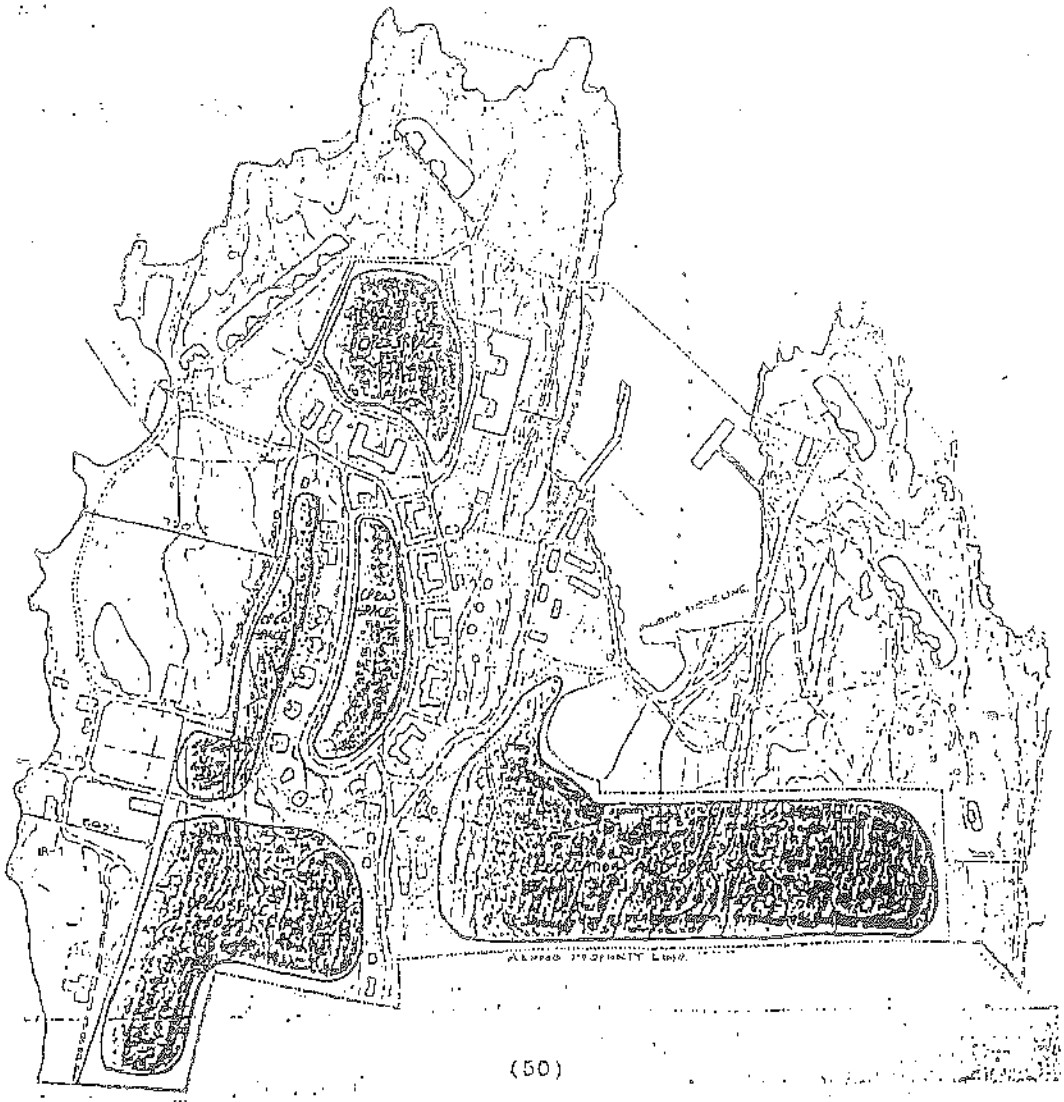
GREAT DIAMOND ISLAND

DEVELOPER : DICTAR ASSOCIATES

PORTLAND, MAI

PORTLAND, MAI

DEDICATED OPEN SPACE



AMENDMENT TO PORTLAND CITY CODE SECTION 14-49 (ZONING MAP) SECTION 14-49 (ZONING MAP) RE: CONDITIONAL REZONING OF PT. [illegible]

IN THE CITY COUNCIL

JUNE 12, 1985

Given a first reading. Public hearing held.

JUNE 24 - Public hearing held. Councilor Smith moved, seconded MacWilliams to table to July 15th afternoon City Council Meeting, passed 7 yeas.

JULY 15 - Removed from the table. Motion to replace with substitute amendment, passed, 8 Yeas, and passed, as amended, 8 Yeas.

Item #98 dated July 15, 1985 is relevant to this item. Titled Access For Island Subdivisions, it refers to this item.

Jane Durgin

Attest: Jane Durgin
City Clerk.

SEAL

SEAL

STATE OF MAINE
CUMBERLAND, ss.

January 27, 1986

Personally appeared the above-named Jane Durgin and acknowledged the foregoing instrument to be her free act and deed in her said capacity.

Eunice Curran
Notary Public Comm. Exp. 10-16-88

RECEIVED
[illegible] OF DEEDS
1989 SEP 28 PM 3:32
CUMBERLAND COUNTY

BK8928PG0271

2-H-8

Attachment

From: "william d robitzek" <wrobitzek@bermansimmons.com>
To: <rwk@portlandmaine.gov>
Date: 5/9/2008 9:48:19 AM
Subject: Inn at Diamond Cove Project

Rick,

Attached are two documents. The Word document is the DIA's proposal for additional language regarding transportation and enforcement. There are good reasons, which I will be glad to share at the upcoming Workshop, for every element included in this proposal.

The scanned document is intended to correct a statment made by Ron Ward in his recent letter to you and a statement by Mr. Bateman that the so-called Audubon Agreement only affects Phase II. Ron apparently mistakenly sent you the wrong agreement as an attachment to his letter. I am including the Agreement and Amendment referred to at the last Workshop regarding the legal interests of third parties in various aspects of the Phase I development, including the issue of transportation.

If questions, please call my cell, 212-7709. I did not have Penny's email and would appreciate your forwarding this to her.

Thanks,
Bill

William D. Robitzek
Berman & Simmons
129 Lisbon Street
Lewiston, Maine 04240
(207) 784-3576
Assistant: Amy Christiansen x218

-----Original Message-----
From: Berman/Simmons [mailto:Berman/Simmons]
Sent: Thursday, May 08, 2008 7:16 PM
To: william d robitzek
Subject: Scan

This scan has been sent from Konica4.

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender at once.

CC: <mec@portlandmaine.gov>, "Ronald Ward" <rnw@dwmlaw.com>

AGREEMENT

This Agreement is entered into this 2nd day of March, 1989 by and between Diamond Cove Associates, of Portland, Maine, Maine Audubon Society, of Falmouth, Maine, Conservation Law Foundation, of Boston, Massachusetts, and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; and

WHEREAS, DCA received approval (hereinafter "Waste Discharge License") for the discharge of 40,000 g.p.d. of wastewater from Phase I of the project from the DEP on December 10, 1986; and

WHEREAS, DCA has applied to the DEP for approval of Phase II of the project under the Site Location of Development Law and said application has been tabled; and

WHEREAS, DCA has applied to the DEP for an amendment to its existing Waste Discharge License to provide for an incremental discharge of 8,500 g.p.d. of wastewater associated with Phase II of the project; and

WHEREAS, DCA has applied to the United States Environmental Protection Agency (hereinafter "EPA") for a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit to serve the project; and

WHEREAS, the EPA has issued a draft NPDES permit, dated December 7, 1988, which draft permit would authorize a flow of 40,000 g.p.d. treated to a "zero fecal coliform" standard from Phase I of the project; and

WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. increment to the Waste Discharge License; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Conservation Law Foundation and Island Institute to the issuance of the NPDES permit and the 8,500 g.p.d. incremental wastewater discharge; and

WHEREAS, Maine Audubon Society and Island Institute are concerned about a variety of non-wastewater related issues associated with both Phase I and Phase II of the project including but not limited to the capacity of DCA to complete the project in a manner which will fit harmoniously into the environment without adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society and Island Institute to Phase II of the project as that opposition relates to some non-wastewater related issues.

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows:

A. Wastewater Discharge

1. DCA will permanently withdraw its application for an 8,500 g.p.d. increment to its existing Waste Discharge License.

2. DCA will take all necessary steps to amend the draft NPDES permit, dated December 7, 1988, to provide that:

a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.

b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average . It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.

3. DCA will take all necessary steps to amend its DEP Waste Discharge License to provide that:

a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.

b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.

c. The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the NPDES permit.

d. DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

4. Independent of the Waste Discharge License, DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

5. The total combined flow from Phase I and Phase II of the project shall not exceed 40,000 g.p.d. and DCA will not petition any state or federal agency to increase its wastewater discharge above 40,000 g.p.d. The combined flow from Phase I and Phase II of the project shall not exceed the "zero fecal coliform" level. This Agreement is not intended to limit DCA's rights to mix Phase I and Phase II wastewater provided that government approvals are obtained. Accordingly, DCA reserves

the right to amend its DEP waste discharge license and the NPDES permit, as drafted or as finally issued, to provide for commingling of Phase I and Phase II wastewater.

6. DCA will take all necessary steps to amend its Site Location Order to reflect the change in location of the waste discharge pipe to Pleasant Cove.

7. DCA will take all necessary steps to obtain a submerged lands lease from the Bureau of Public Lands of the Maine Department of Conservation and an Army Corps of Engineers permit for the discharge pipe location at Pleasant Cove.

8. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose final issuance of the draft NPDES permit, dated December 7, 1988, as above amended, and Maine Audubon Society and Conservation Law Foundation will inform EPA that they agree with issuance of the NPDES permit as amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose a State of Maine certification, under Section 401 of the Clean Water Act, that the NPDES permit, as above amended, will be in accordance with applicable state laws. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, any aspect of the NPDES permit as above amended or the Section 401 certification.

9. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose the above amendments to the Site Location Order and the Waste Discharge License, and Maine Audubon Society and Conservation Law Foundation will inform DEP that they agree with issuance of the Order and the License as above amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose issuance of the Bureau of Public Lands submerged lands lease and the Army Corps of Engineers permit for the relocated waste discharge pipe, and Maine Audubon Society and Conservation Law Foundation will inform the Bureau of Public Lands and the Corps of Engineers that they agree with issuance of the lease and the permit. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, the amendments to the Site Location Order and the Waste Discharge License or issuance of the submerged lands lease or the Corps of Engineers permits.

10. The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. The parties also recognize that DCA intends to have a system for disposing of wastewater in place by June 1, 1989. Therefore, if it appears on April 1, 1989 that the necessary

governmental authorizations for the wastewater discharge will not be issued to DCA before June 1, 1989, Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver (intended to last not more than 1 year) from the Maine Department of Human Services for the use of holding tanks. Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver. DCA agrees to use said holding tanks only until such time as it may legally discharge the wastewater.

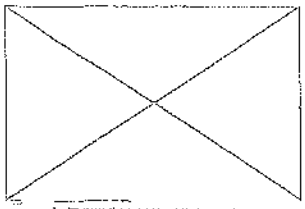
11. In the event that the state and federal agencies, or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the objectives of this Part A cannot be accomplished, then the obligations of the parties under this entire Agreement shall become null and void.

B. Cooperation in Replication

DCA will cooperate with Maine Audubon Society and Conservation Law Foundation in efforts they undertake to have other wastewater treatment facilities replicate the "zero fecal coliform" discharge system by making available to said organizations engineering and performance data for the DCA wastewater treatment facility.

C. Density

DCA agrees to limit the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including currently approved commercial and recreational uses, to not more than 173 and agrees to seek an amendment to its Site Location Order to reflect such a limitation. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to obtain an amendment to its Site Location Order to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.



F. Disclosures

1. DCA agrees to provide prospective purchasers of "condominium" units and single family house lots with copies of the Declaration of Covenants and Restrictions and copies of all local, state and federal licenses. DCA will seek to have such a condition placed in its Site Location Order.

G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal any and all issues that may arise during Site Location Law Phase II consideration by the DEP and BEP that are not expressly dealt with by the covenants in this Agreement.

H. Integration; Contract; Authorization

1. This Agreement contains all of the agreement of the parties, and any prior arrangements are hereby terminated and superseded.

2. The terms of this Agreement are contractual and not a mere recital.

3. The signatories hereto represent that they are duly authorized to sign this Agreement.

I. Interpretation and Remedies

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement may be brought in a Maine court of competent jurisdiction.

The parties recognize that this Agreement requires actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

J. Confidentiality

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed.

K. Binding on Successors

This Agreement is binding on the successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have set their hands this 24th day of March, 1989.

DIAMOND COVE ASSOCIATES

By: _____
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: _____
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: _____
Attorney

ISLAND INSTITUTE

By: _____
Philip Conkling
Executive Director

1369P

AMENDMENTS TO AGREEMENT

The Agreement, dated March 2, 1989, by and between Diamond Cove Associates, Maine Audubon Society, Conservation Law Foundation and Island Institute is amended as follows:

P.1 ¶ 2: WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development on approximately 198 acres of the property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

P.1 ¶ 9: WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. or any other increment to the Waste Discharge License; and

P.3 ¶ 3 c: The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the December 7, 1988 draft NPDES permit.

P.3 ¶ d 2nd sent.: The dollar amount to be guaranteed in such account shall be sufficient to cover the repair, maintenance and reconstruction costs of the wastewater treatment facility adjusted for inflation as determined by the DEP.

P.4 ¶ 10: The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. DCA has stated that it needs a wastewater disposal system in place by June 1, 1989. Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver from the Maine Department of Human Services for the use of holding tanks (such waiver to last not more than 1 year from its issuance, or until such time as it may legally discharge the wastewater, whichever is shorter). Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver.

P.5 ¶ 11: In the event that the 5 state and federal agencies (DEP, DHS, BPL, EPA and ACE mentioned above), or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the permits of this Part A cannot be obtained,

then the obligations of the parties under this entire Agreement shall be null and void.

P.5 ¶ C. Density

DCA agrees to limit permanently the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including the currently approved 5 commercial and 2 recreational uses, to not more than 173 on the entire 198 acre DCA property. DCA shall take all necessary steps to amend to its Site Location Order and its Phase II Site Location application to reflect such a limitation; pending approval of such an amendment, DCA will abide by the limitation herein. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to amend its Phase II Site Location application to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.

P.6 ¶ D sub. ¶ 1. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (electric vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will take all necessary steps to amend the Order to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones. This provision shall become part of the Declaration of Covenants and Restrictions.

P.7 ¶ G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal

any and all issues that may arise during Phase II consideration by the DEP, BEP or other agencies that are not expressly agreed to in the covenants of this agreement.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates below indicated.

3/9/89

DIAMOND COVE ASSOCIATES

By: _____
Richard Dobson, Partner

MAINE AUDUBON SOCIETY

_____

By: Karin R. Tilberg
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

_____

By: _____
Attorney

ISLAND INSTITUTE

March 9, 1989

By: _____
Philip Conkling
Director

1381P

Whereas the Inn at Diamond Cove LLC has proposed the development of two dilapidated, but historically significant, buildings within the IR-3 zone on Great Diamond Island by the creation of residential condominiums units;

Whereas the ordinances for the IR-3 zone require a transportation plan "primarily with a pedestrian orientation";

Whereas Diamond Cove's use of motor vehicles is restricted by various legal requirements including but not limited to the zoning ordinance, the Conditional Rezoning amendments, DEP site reviews and an agreement with several public non-profit organizations;

Whereas the Diamond Island Association, which represents the residents of the cottage community on the southern side of the island, has raised concerns about the increased traffic burden which the proposed development could place on their road system, environment and culture;

Whereas Diamond Cove's current permissible use of the roads on the southern side of the island is a route traversing the length of the island, through the cottage community, to the state pier at the southern tip of Great Diamond Island, via Nancy Lane, a right of way granted to the City of Portland over private property;

Whereas Diamond Cove has its own pier virtually adjacent to the proposed development;

Whereas the developer's representative, David Bateman, at the public workshop session for this project stated that he "will guarantee that [the developer has] no intention" of using the pier at the southern end of the island "under any circumstances" because "it just can't work for us" and therefore the proposed amendment below is consistent with the developer's plans and intentions,

NOW THEREFORE, the Conditions and Restrictions for Diamond Cove are amended so as to add the following language to section 9(a):

Transportation Restriction. No person or entity ever associated with the properties (described as Buildings 19 and 46) which are the subject of this amendment, including but not limited to their construction, grounds, operations, occupation, management, ownership or use of shall use, operate or cause to be used a motor vehicle south of the boundaries of Diamond Cove, except in case of a fire or medical emergency. This amendment applies, but is not limited, to the use of vehicles for construction, maintenance, service and the common transportation of goods and passengers related to these properties. "Motor Vehicle" as used herein is as defined in 29-A M.R.S. §101 (42) but also includes snowmobiles and all-terrain vehicles.

Notice to Purchasers and Renters. The above language shall be included in the covenants

and rules governing the units in the two properties covered by the amendment. The language shall also be made a part of any materials provided to any prospective purchaser, renter or repurchaser of any of the units.

Other Conditions and Restrictions. All other Conditions and Restrictions previously imposed by the City of Portland on the Diamond Cove development shall apply to these properties and their units, owners and users, including specifically, but without limitation, section 11, regarding the binding of all successors and assigns of the current petitioners, as well as the individual unit owners and users, to all those Conditions and Restrictions as well as to this Restriction.

Enforcement. If there is a separate condominium or owners association relating to either of the two properties, that association and the Diamond Cove Homeowners Association shall, in the first instance, be responsible to enforce this restriction. Violations of the above section, if reported to the City of Portland Code Enforcement Office, shall be prosecuted by it. Any person or entity found in violation of the above restriction shall be liable for a fine of $500 for the first offense and $1,000 for each subsequent offense. If more than three persons or entities associated with the properties which are subject to this amendment are found to have violated these restrictions, then the Planning Board may, upon presentation of a request by a property owner on Great Diamond Island, make a recommendation to the City Council to revoke that part of the amendment permitting the rental or use of the properties or any of the units as a hotel or inn. Any property owner on Great Diamond Island may file suit for any damages caused by the breach or for any appropriate equitable remedy, regardless of the actions of the Code Enforcement Office, Planning Board or City Council regarding a breach.

Rick Knowland - The Inn at Diamond Cove

From: "Condon, John" <jcondon@acadiabenefits.com>
To: "'rwk@portlandmaine.gov'" <rwk@portlandmaine.gov>
Date: 4/22/2008 8:21 AM
Subject: The Inn at Diamond Cove
CC: 'David Pendleton' <dop@portlandmaine.gov>

Good morning, have you had any discussions with the developer on Fire and Rescue issues ? The Great Diamond Island Volunteer Fire and Rescue Company members do not take shifts for coverage for Rescue. At any given point in time neither of the two EMT's may be on the island. We currently have 5 First Responders and they also may not be on the island. This means that in the event of a medical emergency, the response would be from the mainland via a Paramedic team coming from Portland on the Fireboat. Each year we meet with all of the residents and explain our services and the fact that they are an hour to Maine Medical. We also meet with the owners of Daimond's Edge to make certain they understand the response time. Thanks for your help. John Condon, Fire Captain

John M. Condon, CLU
Acadia Benefits, Inc.
111 Commercial St., 5th Flr.
Portland, ME 04101
P: (207) 761-2426 ext 228
F: (207)761-0976
jcondon@acadiabenefits.com
www.acadiabenefits.com

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Rick Knowland - Conditional Zoning amendment proposed by The Inn at Diamond Cove LLC -Please include in the record Request...

From: <byoung@levatirockwood.com>
To: <sh@ci.portland.me.us>, <rwk@portlandmaine.gov>
Date: 5/13/2008 2:36:53 PM
Subject: Conditional Zoning amendment proposed by The Inn at Diamond Cove LLC -Please include in the record for the Workshop on May 12, 2008

Dear Sirs:

I am a property owner at Diamond Cove (Unit 16D) and have reviewed the file for the Conditional Zoning Amendment proposed by The Inn at Diamond Cove LLC. I am writing to express certain questions and concerns that I believe need to be addressed before the proposal can be considered complete and appropriate for consideration on the merits by the Planning Board.

I would ask that this letter be read into the record of the Workshop on this proposed Amendment being conducted later this afternoon.

My concerns are as follows:

1. Wastewater Treatment.

DEP:

Michael Demarest's 5/8/08 email indicates that the DEP has some continuing work and concerns to address. In order for this application be considered to be complete and ready for Planning Board determination, shouldn't the DEP have an opportunity to do that?

Bedroom calculations:

The applicant's materials indicate that at least 8 of the units will have 5 to 7 queen size beds, so will be able to accommodate between 10 and 14 persons. Shouldn't the flow assumptions for these units be based on at least 5 bedrooms, given the bedding configurations? Perhaps the applicant could provide the occupancy rates and head counts that the applicant is using in its investor and financial materials - this might give a sense of appropriate assumptions as to usage?

Sufficiency of the analysis presented to date:

Is the DeLuca -Hoffman Associates April 29, 2008 letter sufficient for the Planning Board to make an informed decision on this matter? It appears to be an informal letter - doesn't a proposal of this scope require a full engineering study and professional opinion to be delivered?

Assumptions as to flow:

The applicant's engineering data appears to rely on information provided by the commercial interests (restaurant), which will have a commercial interest in the Hotel since they will be doing the food service. Shouldn't information be provided by an independent, uninterested party?

2. Open Space.

Planning Board conversion of Open Space to private use:

The Open Space designation was considered to be in perpetuity. What is the authority of the Planning Board to - by a simple zoning amendment proposed by the commercial developer - turn the Open Space over to the commercial developer for primary use of a swimming pool and commercial bar area?

Insufficiency of information as to what is being requested:

In order to make a decision on the Open Space, doesn't the Planning Board need a survey locating the boundaries of the parcel to be converted and showing the improvements to be built?

Otherwise, how do you know how much of the Open Space parcel is the Planning Board being asked to convert to a private use? The plans submitted do not delineate the exact location, nor do they describe precisely the scope of what the use will be, i.e. dimensions of the pool, improvements, one pool or multiple pools (wading), size. These are questions that should be answered.

Effect on neighbors and other residents of Diamond Cove:

The Planning Division's memo of May 9, 2008 indicates that the land now owned in common by the DCHA will be owned by the privately hotel but concludes that "it is unlikely this loss of land will adversely affect open space at Diamond Cove". In coming to this conclusion, what consideration was given to (i) the effect on the adjacent neighbors and other residents of Diamond Cove that turning an unspecified amount of Open Space into a pool for a 44 room hotel and cabana, and (ii) whether turning this Open Space into private land with a pool and cabana is consistent with the overall original development plan?

Uses of the "cabana".

What will be its dimensions? Will it contain food cooking facilities? Will it serve alcoholic beverages? Is a liquor license required? Will there be restroom facilities? Will this constitute a separate commercial property? The applicant should provide information responsive to these questions before the Planning Board can make an informed decision.

3. Transportation.

To date, the applicant has been unclear about its commitment in terms of intra- island transportation, a particularly sensitive topic for all of Great Diamond Island. Diamond Island Association and Casco Bay Island Development Association, Inc. have expressed concerns about this. Shouldn't this topic to be resolved among the various parties and a consensus reached before this project can be considered in a meaningful way? Otherwise, won't the Planning Board be putting the entire Island back in the uncertain position that it was a few years ago?

4. Parking.

The applicant has submitted a letter from the General Manager of the

Portland Harbor Hotel that it will make parking available to Diamond Cove Hotel guests on the mainland, saying that it has excess parking available. How will this be monitored and enforced?

What happens, however, if the Harbor Hotel no longer has excess parking? Will the applicant provide an assement for parking on the mainland property to be recorded in the land records?

A predecessor related party made a similar promise for mainland parking in the original development 20 years ago, but it was never actually delivered. Should the Planning Board request a firmer commitment, particularly in view of the shortage of parking around the Ferry Terminal?

If no such commitment is received, has an analysis been done of the effects on the Casco Bay Lines Parking Garage, which currently has a waiting list in excess of 150 island families?

5. Commercial uses to be located at the Cove. The original plan was for there only to be 5 commercial units, to be centrally located around the actual cove. From a planning standpoint, is there a basis for now adding a new, high intensity commercial use on the Parade Ground itself?

What is the exact scope of the commercial use that the applicant is proposing, will there be dining services provided at the hotel, at the pool, if so, for what meals? Will there also be a bar? If so, will the dining facility be open for public functions?

6. Safety.

With a public hotel on the island, how will the City provide fire, police and EMT coverage for the public staying at the hotel?

7. Financing.

The applicant has provided a letter from TDNorth that just states that it would "welcome the opportunity to discuss the possibility of financing the project . . . at some point in the future." No specifics are given as to the size of the loan, the term, conditions to financing. This is far from an actual expression of interest in providing specific financing for the project and the Board should require further information as to the status of the applicant's financing in order to assess commercial viability before considering the requested zoning amendments.

Thank you very much for your time and patience.

Very truly yours,

Barbara A. Young

DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

BOARD ORDER
IN THE MATTER OF December 10, 1986

DIAMOND COVE ASSOCIATES Portland, Maine DIAMOND COVE - PHASE I #L-013160-87/03-A-N	)	SITE LOCATION ORDER FINDINGS OF FACT AND ORDER

Pursuant to the provision of Title 38, M.R.S.A., Sections 474 and 483, and Section 401 of the Federal Water Pollution Control Act, the Board of Environmental Protection has considered the application of DIAMOND COVE ASSOCIATES with its supportive data, staff summary, agency review comments, comments from the public, public hearing transcript, and other related materials on file and finds the following facts:

1. Title, Right or Interest

Diamond Cove Associates (the "applicant") owns a 193.4 acre parcel of land on Great Diamond Island in Casco Bay. Great Diamond is a 349-acre island which is part of the City of Portland. The property is described in a deed dated 17 April 1984 and recorded in Book 6424, Pages 277 to 281, Cumberland County Registry of Deeds.

2. Project Description

The applicant proposes to renovate 44 buildings located on the property. 36 buildings will be converted to 134 housing units; 5 will be converted to commercial uses; 2 will be rehabilitated for recreational use; and one will be renovated for maintenance and security uses. In addition, a pier will be reconstructed to provide access to the site, an in-ground swimming pool will be installed, 2 tennis courts will be refurbished and an athletic field will be cleared and recultivated. The buildings, pier, pool, tennis courts and athletic field are depicted on a plan dated 10/25/85 (revised 11/20/85, 1/21/86, and 10/14/86) and entitled "Diamond Cove, Great Diamond Island, Portland, Maine, Phase I Development" (hereinafter "Site Plan").

The proposed construction will occur primarily within that portion of the property which has been zoned Island Residential 3 (IR-3) by the City of Portland. The IR-3 zone occupies about 91 acres of the property and is designated "Lot 3" on the Site plan. The remainder of the site, about 102 acres, is zoned Island Residential 1 (IR-1). The IR-1 zone is designated "Lot 1" and "Lot 3" on the Site Plan. IR-1 is a low density residential zone. Mixed residential and commercial uses are permitted within an an IR-3 zone.

The applicant is not now seeking approval for development in the IR-1 zone except for that development which is necessary for support of the IR-3 zone construction, i.e., construction of a chlorine contact shed and the placement and maintenance of sewer lines. However, the applicant may seek approval in the future for development of an undetermined number of single family house lots within the IR-1 areas.

DIAMOND COVE ASSOCIATES
Portland, Maine
DIAMOND COVE
#L-013160-87/03-A-N

) 19 SITE LOCATION ORDER
)
)
) FINDINGS OF FACT AND ORDER

8. A plan for management and protection of the old growth stand of trees referred to in Finding 17 shall be submitted to by the Department by January 31, 1987. The plan shall be developed by a duly qualified forester. The plan shall define the limits of the stand including the edge vegetation necessary for its preservation, and shall specify the requirements for continued preservation management of the stand. Relevant standards for the preservation of distinguished timber stands, requirements for windfirmness, and stand definition shall be used to delineate the stand. The plan shall include appropriate limitations on pruning and tree removal to ensure that the stand will continue to screen the fort buildings when viewed from Casco Bay and the mainland. No road construction, sewer or water line installation or repair, or tree clearing shall occur until the plan is approved by the Department.

The applicant and the Diamond Cove Homeowners Association shall maintain the old growth trees in accordance with the approved plan. The Landscape Plan shall be revised to conform with the requirements of the approved plan.

9. The applicant and the Diamond Cove Homeowners Association shall implement the recommendations of the Department of Inland Fisheries and Wildlife as set forth in Finding 19.

10. Prior to the sale or lease of the first housing unit, Section 7.3 of the General Declaration of Covenants and Restrictions shall be amended to specify that the Association:

a) will maintain the old-growth stand of pine and hemlock in accordance with the plan approved by the Department of Environmental Protection; and

b) will maintain all other common open space, other than the old-growth stand of hemlock and pine, in accordance with the recommendations of the Maine Department of Inland Fisheries and Wildlife as set forth in Finding 19.

11. All power generating, storing and transferring facilities including pump stations shall be investigated and analyzed in accordance with the recommendations of the BOHMC (see Finding 9D of this Order). No housing unit shall be sold or leased until a report of the investigation, including remedial action if necessary, is submitted to and approved by the Commissioner.

DIAMOND COVE ASSOCIATES
Portland, Maine
DIAMOND COVE
#L-013160-87/03-A-N

) 15 SITE LOCATION ORDER
)
)
) FINDINGS OF FACT AND ORDER

The permissable pruning and tree removal, if undertaken, will reduce the value of the old-growth stand as a visual screen and will expose the parade buildings to view from Casco Bay and the mainland. If the visual screen provided by the stand is maintained, the project will have a minimal impact on the scenic character of Casco Bay. The buildings proposed for renovation are clustered at the interior uplands of the project site. No shoreline development, other than reconstruction of a pier in Diamond Cove (see Finding 21) is proposed.

19. Wildlife and Fisheries

The applicant will obtain a Waste Discharge License to discharge effluent from the proposed sewage treatment system into Casco Bay. The impact of the effluent on the fisheries of Casco Bay is a subject of the Waste Discharge License.

The project site does not contain an important deer wintering area. However, the proposed development will result in the loss of more than 160 acres of habitat that is currently meeting the year-round requirements of an unknown number of deer, and will thereby reduce the capacity of Great Diamond Island to support deer.

To offset the deer habitat losses resulting from the project, the Maine Department of Inland Fisheries and Wildlife recommends:

1) The area designated as open space on the Recording Plat be retained in its natural state with no new structures located there. This open space includes and is adjacent to, winter deer cover and will serve as a buffer between it and adjacent developed land.

2) Within this open space, maintain oak and apple trees for food value and hemlock and other softwood for shelter values. Since this area is adjacent to winter cover, any activity benefiting deer would have its greatest positive impact here.

3) Include Ladino clover in any seed mixture used to reclaim field area. This will provide a supplemental source of deer food, particularly during spring and fall.

4) Remove sections of existing fence to allow better deer access to open space area.

5) Leave existing snags which provide nesting cavities for birds.

6) In developed areas requiring landscaping include such species as crab apple, honey suckle and/or dogwoods in the planting scheme. Not only will these shrubs provide color but also fruits readily eaten by many birds.

From: Rick Knowland
To: Gary Wood
Date: 1/30/03 4:55PM
Subject: Motor vehicle restrictions On Great Diamond Island

Gary, I have read the letter dated 1-21-03 from John Bannon to Jim Cloutier concerning motor vehicle restrictions. As someone who was in the middle of this issue during the Diamond Cove review during the 1980s, Mr. Bennon's letter for the most part is on the mark. There are a variety of regulatory issues specifically related to the Diamond Cove development approval that would not be "undone" if the City Council were to pass an ordinance related to this issue.

I can say without hesitation that if the motor vehicle restriction had not been imposed on this development, Dicler Assoc. (the developer) would not have received City and DEP approval for this development. This restriction was fundamental to protecting the character and environment of the island.

CC: Alex Jaegerman

November 15, 2006

Lee D. Urban, Esq.
Director of the Planning and Development Department
City of Portland
389 Congress Street
Portland, Maine 04101

Peter S. Plumb
John C. Lightbody
Thomas C. Newman
John C. Bannon
Susan D. Thomas
Drew A. Anderson
Richard L. O'Meara
Christopher B. Branson
Michael D. Traister
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Staci K. Converse
Kelly W. McDonald
Nicole L. Bradick

Of Counsel:
Peter L. Murray
Amy M. Sneirson
Barbara T. Schneider

E. Stephen Murray
(1941-2001)

RE: Traffic Management Plan for Diamond Cove at Great Diamond Island

Dear Lee:

I represent Tony and Judy Savastano, who own property abutting Nancy Lane on Great Diamond Island. The purpose of this letter is to convey to you and the Planning Department the Savastanos' concerns about the interaction between the Diamond Cove Traffic Management Plan, past approvals of the Diamond Cove project, and certain matters currently being discussed before the Casco Bay Island Transit District.

Great Diamond Island's representative on the CBITD board has been urging CBITD to reroute ferry traffic during the winter and spring so as to add two additional stops per week at the State Pier on the southerly side of Great Diamond Island. That representative happens to reside within Diamond Cove. CBITD is scheduled to vote on that measure within a week. Those two additional ferry stops will add two more round trips per week by the Diamond Cove "common transportation vehicles" between the Cove and the State Pier. The only possible route for those round-trips is Nancy Lane.

Because the traveled way of Nancy Lane passes within a few feet of the Savastanos' home, they are the persons most affected by increased vehicular traffic on Nancy Lane. Moreover, the Savastanos' property includes (a) the fee beneath all portions of Nancy Lane from the State Pier to roughly the intersection of Nancy Lane and Nicholas Street; and (b) the fee to the westerly half of Nancy Lane from the aforementioned intersection to a point about 170' northwest of the intersection of Nancy Lane and Sunset Avenue Extension. Although the City properly laid out Nancy Lane in 1960, at that time the City took only a right-of-way *easement*, not the *fee* interest in the land underlying the easement. *City of Rockland v. Johnson*, 267 A.2d 382 (Me. 1970). Because the Savastanos legally own the road bed of Nancy Lane, the City must take into consideration potential harm to the Savastanos' fee ownership of the roadbed when considering whether the proposed Diamond Cove Traffic

Management Plan will, in the near and distant future, adequately control traffic by "common transportation vehicles" over Nancy Lane.

Although the addition of two round trips per week by the Cove's common transportation vehicles is significant by itself, what concerns the Savastanos even more is whether seemingly unrelated, incremental changes to the ferry service to the Diamond Cove pier will ultimately shift most or all of the ferry stops to the State Pier. Mounting numbers of round-trips by the Cove's "common transportation vehicles" over Nancy Lane to reach the State Pier would cause substantial harm to the Savastanos. In contrast, shifting all ferry service to the State Pier would be of considerable benefit to the Diamond Cove Homeowners' Association (hereafter the "DCHA"), because to do so would effectively relieve the DCHA from having to fund expensive maintenance of, and repairs to, the Diamond Cove pier.

My clients were aware of the harm potentially caused by declining use of the Diamond Cove pier when the City was drafting the 2004 Amendment to the Conditional Rezoning Agreement for Diamond Cove. During the drafting process, I sent to the City the following proposed condition: "DCHA shall maintain in safe and useable condition the present ferry dock servicing Diamond Cove." The City rejected that proposed condition, perhaps believing that the scenario I have been describing in this letter would never materialize. Unfortunately, it *has* materialized, only two years after the Council adopted the 2004 Amendment.

The Savastanos have two major objections to traffic on Nancy Lane caused by increasing numbers of round trips by "common transportation vehicles" between the Cove and the State Pier.

First, the Savastanos are concerned that that traffic will threaten not only their privacy, but the physical integrity of their home and the roadbed of Nancy Lane -- both of which they own in fee. In the past, the City has been relatively slow to repair and maintain Nancy Lane, which often becomes deeply rutted and pot-holed by vehicular traffic, particularly after significant rains. Those conditions raise the risk of accidents near the Savastanos' home and lead to severe erosion of the roadbed. Although the Savastanos have recently had productive discussions with Mike Bobinsky of the Public Works Department about maintenance of Nancy Lane, the control of traffic impacts on Nancy Lane is not within the jurisdiction of the Public Works Department. The City's Planning Department itself must develop a coherent strategy for

limiting traffic by "common transportation vehicles" on Nancy Lane, and cannot merely rely upon Public Works' ability to make ad hoc repairs to the road.

Second, the situation described in this letter demonstrates the unwisdom of allowing the 2004 Rezoning Amendment effectively to supersede the conditions under which the Diamond Cove project was allowed to be developed in the first place.

For example, the Maine DEP granted a Site Plan of Development Act approval for Phase I of the Diamond Cove development (the condominiums) based upon the developers' representation that they would reconstruct and thereafter maintain the central pier at Diamond Cove. *See* DEP Site Location Order dated December 19, 1986, #L-013160 -87/03-A-N, §§ 11(B), 21. The DEP repeated its requirement of ensuring adequate ferry service to the Diamond Cove pier in its order approving Phase II of the Diamond Cove development (the single-family house lots). *See* DEP Site Location Order dated June 25, 1991, #L-013160–L3-G-N, § 7(B).

Likewise, Condition 8 of the City's original Order approving the Conditional Rezoning of the Fort McKinley property, dated July 15, 1985, required the developer either to (a) arrange for year-round CBITD ferry service sufficient to meet the needs of Diamond Cove residents; or, if such ferry service were unavailable, (b) provide an equivalent water transportation service *at its own expense*. The 1985 Order did not allow the developer or its successors to shift, to the State Pier and the residents of the southerly side of the island, Diamond Cove's responsibility to provide adequate water transportation for residents of the Cove. Nothing in the 2004 Amendment even *purported* to modify the Cove's responsibility to reconstruct and maintain the Diamond Cove pier and to procure, at its sole expense, ferry service sufficient for the needs of Cove residents.

Accordingly, it is critical for the City, when evaluating the proposed Diamond Cove Traffic Management Plan, to consider not only the present circumstances of the Island, but also the long-term consequences of allowing the State Pier gradually to become the primary, and ultimately the exclusive, means for Diamond Cove residents to obtain water transportation. Such a result would subject residents of the southerly side of the Island to impacts from the Cove's "common transportation vehicles" far beyond anyone's

contemplation either when the City approved the original rezoning of Fort McKinley in 1985, or when it amended that rezoning in 2004.

In sum, the Savastanos ask the City to do two things. First, the City must insist that the Traffic Management Plan include a condition similar to the one I had proposed back in 2004: namely, that DCHA shall have a perpetual duty to maintain in safe and useable condition the present ferry dock servicing Diamond Cove. Second, the City must strictly enforce Diamond Cove's *existing* responsibility to provide water transportation services sufficient to meet the needs of Diamond Cove residents, at the DCHA's own expense.

Thank you for your consideration of this letter. I know that you will give it your characteristically thoughtful attention.

Sincerely,

John C. Bannon

JCB/dmw

cc: Tony and Judy Savastano

Ultimately there is some likelihood that the City would not be interested in accepting the streets given the ensuing responsibility for providing snow plowing services and other long term maintenance responsibilities. Should the developer petition the City for acceptance of the street, it is likely that the City would require that the streets be paved, that a building be required to house additional equipment needed to serve the project and an underground storage tank be provided for fuel (see Attachment D).

The development will have a pedestrian orientation since the use and storage of automobiles is for practical purposes prohibited. A condition of the IR-3 rezoning is that the operation, use and storage of private automobiles is not allowed in the IR-3 zoned area. As the main pier at Diamond Cove is in the IR-3 zone, autos could not travel through the IR-3 to the IR-1 zone. A shuttle service will be available from the pier to take the residents to their dwellings. Parking areas for golf carts at Diamond Cove and the southerly border (IR-3) of the property are shown on the plan. Recently the developer indicated to staff that private automobiles would in fact be excluded from the IR-1 zone.

The Board may want to consider as a condition of approval, a requirement that private automobiles not be permitted given the pedestrian orientation of the IR-3 and the remainder of the island. Theoretically private automobiles could land at the southerly ferry landing (other side of the island) and drive to Willis Street and into the IR-1 portion of the development.

The primary water transportation route will be from Diamond Cove eliminating possible conflicts with the ferry landing at the southerly end of the island. A condition of IR-3 rezoning was for the applicant to provide for ferry service at Diamond Cove. The Casco Bay Ferry Transit District has previously indicated their interest in serving the development.

A condition of D.E.P. approval was that the developer make 67 mainland parking spaces available to the residences of the first phase. In addition 27 mainland parking spaces are to be made available for the parking demand associated with the commercial uses at Diamond Cove. The parking spaces are to be located in the downtown area.

The applicant has submitted a traffic and parking study for the project conducted by T.Y. Lin International/Hunter-Ballew Associates (cover letter dated 06-01-87, see Attachment F). The report indicates that the typical peak weekday parking demand during the summer months is 70 spaces, while the peak weekend demand during the summer is estimated at 84 spaces. The consultant has conducted a survey of several downtown parking garages and indicates that sufficient off-street parking is available in the general vicinity of the waterfront to meet the

DRUMMOND WOODSUM PLIMPTON & MACMAHON, P.A.
ATTORNEYS AT LAW
900 MAINE RAMINGS PLAZA
PORTLAND, MAINE 04101

DANIEL T. DRUMMOND, JR.
HAROLD E. WOODSUM, JR.
DAVID PLIMPTON
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JOHN A. CRAUSTEIN
JOSEPH L. DELAFIELD III
S. JAMES LEWIS, JR.
DANIEL AMORY
ROBERT E. HIRSHON
HARRY R. SPINGLE
RICHARD A. SPENCER
THOMAS H. ALLEN
RICHARD A. CARRIGLIO

RONALD N. WARD
JAY S. BLUMENKOPF
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KATHLEEN BARRY
GEORGE A. CARMEL
CAROLYN B. HULL
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MARY T. ESPOSITO
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JERROL A. CROUTER
KEITH C. JONES
WILLIAM P. SPITTON, J.P.*

*ADMITTED IN NEW YORK ONLY

AREA CODE 207
7724941

June 24, 1985

HAND DELIVERED

David Lourie, Esq.
Corporation Counsel
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: Rezoning of Portland, Maine Islands
Ft. McKinley, Great Diamond Island

Dear Mr. Lourie:

I write on behalf of Dictar Associates (Developer) and Diamond Cove Associates (Land Owner) to provide you assurances regarding our intentions with respect to the above-captioned matter.

First, please consider this letter our request that the Portland City Council ("Council") approve the proposed rezoning of the Ft. McKinley site on Great Diamond Island as finally approved by the Portland Planning Board ("Board") on June 4, 1985. Second, please be advised that we support and will adhere to the conditions imposed upon us and the Ft. McKinley site. Finally, please be advised that we will initiate no action against the City, or subdivision thereof, challenging either the conditional zoning process or the conditions.

The representations set forth above, of course, are conditional upon the Council approving the zoning "package" forwarded to it by the Board. If the Council elects not to adopt the current proposal, or if we are subject to a challenge by another interested party, we must reserve the right to respond as necessary to protect our rights.

We urge that the Council continue with the conditional rezoning process and approve the reasoned conclusions reached by the Board.

Sincerely,

R. N. Ward

Ronald N. Ward
Attorney for Dictar Associates Inc.
and Diamond Cove Associates

RNW/dja

1

From: Demarest, Michael <Michael.Demarest@maine.gov>
To: pcgleason@aol.com
Cc: RWK@portlandmaine.gov; joe@delucahoffman.com; Richardson, Marybeth <Marybeth.Richardson@maine.gov>; Albert Frick <afa@maine.rr.com>
Subject: Questions about the redevelopment of the Barracks, Gteat Diamond Island;
Date: Mon, 5 May 2008 10:41 am
Attachments: 6931(DiamondCove)Barracks2ndFlPlan_040208.pdf (245K), 6931(DiamondCove)Barracks1stFlPlan_040208.pdf (421K), 6931(DiamondCove)Barracks3rdFlPlan_040208.pdf (164K), 6931(DiamondIsl_McKinley)DeLucaHoffman_SewerFlows_080207.pdf (8K)

Dear Ms. Gleason:

I hope the attached information helps. As was discussed, there are only three options for the Barracks: Publicly Operated Treatment Works (POTW), a subsurface wastewater disposal system or the existing overboard discharge (OBD).

To connect to the OBD, the developer has to prove that there is not a subsurface option, that the Barracks was continuously authorized within their DEP site license, and that the development will not push them over the discharge limit (estimated design flow or actual). In order for the actual flows not to exceed the limit, the licensee has to address the existing I/I problem that already is causing overages during the spring melt and heavy precipitation events.

I doubt a POTW is a viable option in the current economy.

Although Albert Frick did do a site evaluation in 2004, it was for the entire development. It occurs to me that the Barracks may be small enough to have its own subsurface system because two sand filters were never constructed, but I don't think I have enough information on the soils at this particular location. I suspect they may not be suitable, but that is a Licensed Site Evaluator / P.E.'s job

I have not received a determination on whether the Barracks redevelopment has continuously been authorized in the site license, but am trying to figure that out.

I will forward any specific findings as soon as I can.

DeLUCA-HOFFMAN ASSOCIATES, LLC
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL 207 775 1121
FAX 207 879 0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION
- LANDSCAPE ARCHITECTURE

April 29, 2003

Ms. Richard Knowland, Senior Planner
Department of Planning and Development
City of Portland
389 Congress Street
Portland, ME 04101

Subject: The Inn at Diamond Cove, LLC
Conditional Zoning Amendment
Diamond Cove, Great Diamond Island
Wastewater Treatment and Capacity

Dear Mr. Knowland:

On behalf of The Inn at Diamond Island LLC, our office has prepared a summary of the wastewater treatment capacity available on Great Diamond Island in support of the applicant's requested proposal for the renovation and conversion of the "Double Barracks" (Building #46) and the "Hospital" (Building #19) into residential hotel condominiums.

The current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses that are currently serviced by the wastewater treatment system and their associated sewer flow rates based upon Table 501.2 of the Maine Subsurface Waste Water Disposal Rules (MSWWDR) are summarized as follows:

2 one-bedroom units @ 90 gpd per bedroom	~~360~~ gpd 180
15 two-bedroom units @ 90 gpd per bedroom	2,700 gpd
53 three-bedroom units @ 90 gpd per bedroom	14,310 gpd
9 four-bedroom units @ 90 gpd per bedroom	3,240 gpd
200-seat restaurant with 25 employees	
@ 30 gpd per seat	6,000 gpd
@ 15 gpd per employee	375 gpd
2 administrative offices	480 gpd
Marina pump out	90 gpd
Special event tent	1,750 gpd
Gift store with 2 employees @ 15 gpd per employee	30 gpd
Total flow =	~~29,335~~ gpd 29155

It should be noted that the MSWWDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

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October 2005 through March 2008. These flow records were provided by the operator (Diamond Cove Home Owners Association). Based upon a review of this data, the annual records for 2006 showed the highest flow rates over the annual basis; therefore, these records were used on a conservative basis for comparison with flow rates computed from the MSWWDR. A detailed summary of the flow records is appended to this letter. In addition, a graphical presentation of the flow meter records is also appended to this letter which depicts the seasonal fluctuations of flow rates throughout the year to the wastewater treatment system.

In general, the period from late fall to early spring (October through April) represents the least occupancy and usage on the island. The seasonal uses such as the marina, special event tent and restaurant are closed and only a limited number of year-round residents remain on the island. The peak period of activity and use on the island occurs during the period of May through September.

As indicated in the daily and monthly flow records, the highest flows during 2006 occurred during the month of May through August. Specifically, the highest monthly average daily flow rates occurred in May with a flow rate of 24,066 gpd, which correlates reasonably well with the 29,335 gpd flow rate computed based upon the MSWWDR.

The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition of the "Double Barrack" renovation will result in a total flow of 32,575 gpd (29,335 gpd plus 3,240 gpd) resulting in a remaining surplus flow 2,425 gpd that is allocated to for the future "Hospital" renovation. This surplus future flow allocation amount of 2,425 gpd is more than adequate up to twelve 2-bedroom units.

Based upon a review of the 2006 wastewater treatment system flow records, the existing wastewater treatment system has sufficient capacity to accommodate the projected flows associated with the planned renovation of the "Double Barracks" as well as provide sufficient reserve capacity for the future renovation of the "Hospital".

Please contact our office with any questions you may have concerning this letter.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.

Joseph A. Laverriere, P.E.
Senior Engineer

JAL/sq/JN2769/Knowland-4-29-08

Attachments

C: David Bateman – The Inn at Diamond Cove, LLC

	# Bedrooms
6 – 1 Bed Room units	6
6 – 2 Bed Room units	12
8 – 3 Bed Room units	24
Total	42

42 x 90 gpd 3790

	Gallons per Day
Existing Use	29,155
Inflow / Infiltration	3000
Double Barrels Renovations	3790
Total Flow	35945
License limit	35,000
Amount Over limit	945 gpd

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DIAMOND COVE
SANITARY SEWER FLOW RECORDS

JANUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		20,943
2		17,300
3		12,732
4		6,594
5		8,916
6		8,336
7		6,273
8		7,053
9		8,524
10		8,128
11		14,079
12		11,011
13		9,201
14	Y	23,946
15		19,155
16		13,632
17		11,735
18	Y	23,619
19		16,301
20		12,728
21		12,566
22		21,845
23		N/A
24		7,889
25		11,202
26		7,602
27		6,081
28		6,145
29		7,393
30	Y	7,716
31		6,629

TOTAL MONTHLY FLOW	353,897	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	11,797	GALLONS

FEBRUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		5,242
2		5,038
3	Y	41,870
4		40,529
5	Y	41,741
6		27,610
7		16,651
8		14,885
9		12,938
10		11,007
11		11,008
12		8,801
13		8,784
14		7,497
15		6,938
16		6,977
17		7,802
18		8,771
19		6,875
20		6,197
21		6,431
22		5,582
23		4,691
24		4,874
25		5,645
26		5,330
27		3,844
28		2,880

TOTAL MONTHLY FLOW	337,911	GALLONS
TOTAL DAYS	28	
AVERAGE DAILY FLOW	12,068	GALLONS

MARCH 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		2,889
2		2,867
3		2,854
4		3,178
5		3,685
6		3,460
7		3,161
8		2,423
9		2,793
10	Y	2,989
11		3,086
12		2,767
13		3,963
14	Y	8,463
15		6,564
16		5,744
17		5,703
18		5,473
19		5,415
20		4,529
21		4,321
22		3,922
23		3,384
24		3,600
25		3,945
26		3,479
27		3,003
28		2,785
29		2,649
30		3,099
31		2,670

TOTAL MONTHLY FLOW	118,654	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,828	GALLONS

APRIL 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,173
2		3,018
3		2,682
4	Y	15,612
5		14,858
6		13,314
7		11,287
8		10,679
9		8,627
10		7,705
11		7,075
12		6,418
13	Y	8,437
14		7,284
15		7,450
16		6,713
17		6,664
18		5,432
19		4,936
20		3,523
21		3,672
22		5,198
23	Y	4,941
24	Y	5,300
25		2,950
26		3,606
27		3,650
28		5,021
29		6,056
30		4,574

TOTAL MONTHLY FLOW	188,866	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,629	GALLONS

MAY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,810
2	Y	61,264
3	Y	46,467
4		30,166
5		20,189
6		15,426
7		12,633
8		10,624
9		11,337
10	Y	16,413
11	Y	25,256
12	Y	54,643
13	Y	61,136
14	Y	37,900
15	Y	40,382
16	Y	53,483
17		32,703
18		24,137
19	Y	26,872
20		18,313
21		17,870
22		19,535
23		15,550
24		13,949
25		13,051
26		11,273
27		11,232
28		13,920
29		11,274
30		7,863
31		8,087

TOTAL MONTHLY FLOW	745,060	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	24,066	GALLONS

JUNE 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		8,001
2	Y	10,201
3	Y	35,639
4	Y	40,365
5		25,612
6		17,350
7	Y	44,685
8	Y	67,444
9		46,094
10	Y	56,675
11		33,683
12		27,332
13		17,044
14		17,395
15		16,030
16		13,488
17		10,180
18		10,372
19		10,853
20		8,645
21		10,019
22		10,161
23		11,749
24	Y	14,723
25		14,542
26		10,885
27		10,254
28	Y	9,083
29		12,500
30		12,311

TOTAL MONTHLY FLOW	634,486	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	21,150	GALLONS

May 15, 2008

Dear Planning Commission,

I wasn't able to attend the workshop held the other day regarding the proposed Inn at Diamond Cove. There are a few issues I would like to bring up surrounding this project.

My husband and I live at 30 West Shore Drive on the perimeter of the Parade Ground on Diamond Cove. We built a home here and have been island residents for five years. Prior to moving here, we had lived in Lagos, Nigeria (for business) and desperately wanted to settle somewhere where there was quiet and peaceful surroundings when our stay there was finished. We were fortunate enough to choose Diamond Cove. Part of that decision was the fact that there were two hundred acres of dedicated open space. The association Covenants and Declaration clearly spelled out that these lands were to remain "open" space in perpetuity. Our understanding of that term, like so many others here, was that that meant the land was held in trust, for all time. How is it then that this project can even be contemplated? If it is approved for one developer, who is to say that it won't be denied for another? A precedent will be set here if the Inn is allowed as planned---and it certainly won't be one that will be favorable to those who had the foresight to protect our land.

The project was approved by the Cove residents, but not by a majority. If the City of Portland had not been allowed to vote, there is a great possibility that the vote would have denied the Inn. The members of the DCHA who pay assessments here don't do so because we receive so many services for them. We pay them, in part, because that money assured us that the two hundred acres of open space would be protected. Do we now get a reduction on our fees? What will happen in the future? What about the water treatment system that certainly, in all logic, cannot handle a condo/hotel? What about the delicate land now supporting an already fragile barge landing? How will it hold up to hundreds of barge landings? We know from building a home here that the average number of barge trips to build just an average home here is about thirty two. Multiply that for demolition, site repair, and then construction? Where will all the construction vehicles be stored? What about a hotel's trash? Who is responsible for its removal and how often will that be? Suffice it to say, the quality of life here on the

Cove will be greatly diminished. Island living isn't all that easy, but for those of us who willingly chose to be here, for whatever reasons, are greatly saddened by the issue now confronting us. You and other Boards have the authority and duty to uphold what was provided to us by past members---our right to enjoy this island without turning it into a commercial playground. We personally do not know Mr. Bateman since we moved here after his involvement with Ft. McKinley, but what we cannot understand is how this project, with so many unsettled issues, can be allowed to go forward to benefit only a small group of investors who don't live here year round and who don't see the island as home.

We understand that the City would like to rid itself of these two buildings, but this project is not the answer. Please evaluate these, and other, issues carefully before making your decisions. There really is a lot riding on how you vote this. Just what DOES "in perpetuity" mean??

Thank you for your consideration,

Alexandra and Byron Neal
30 West Shore Drive
Diamond Cove
Portland, ME





pools and bars .. amendment should strengthen not diminish
the strength of the open space
IR-3 correctly slipperly slope negligible

☐ Joe Lam private agreement

D.B 20 total lockout 36 units ~~for hosp~~ for double bassin 20 have kitchens
hospital building 12 units max maybe 24

RN say people could go snack on the southern bus

☐ Bill Hall private agreement

☐ Michael max. # of units

☐ Lee is this exclusive lanes
pool area leased used in common
Planning Board site plan review
# of bedrooms # unit of units
p.b. doesn't have the capability to go thru all the 3rd party
agreements
in IR-3 zone its a mixed use zone including
commercial

134 max.

22

6

132 max # of people 6 persons per lot

David Silk density observation

conditional zoning provisions

not opinion will meet or not meet site plan

standards not making a decision

or determined to meet those standards

interplay with 2004 amendments and original amendment

Lloyd plan

June 20, 2008 site plan (A-0.10)

Lee motion

with the following addition

max occupancy of #41 states as 20 units with

a max number of 16 which are part of the zone

101 April 29 AIII dorm

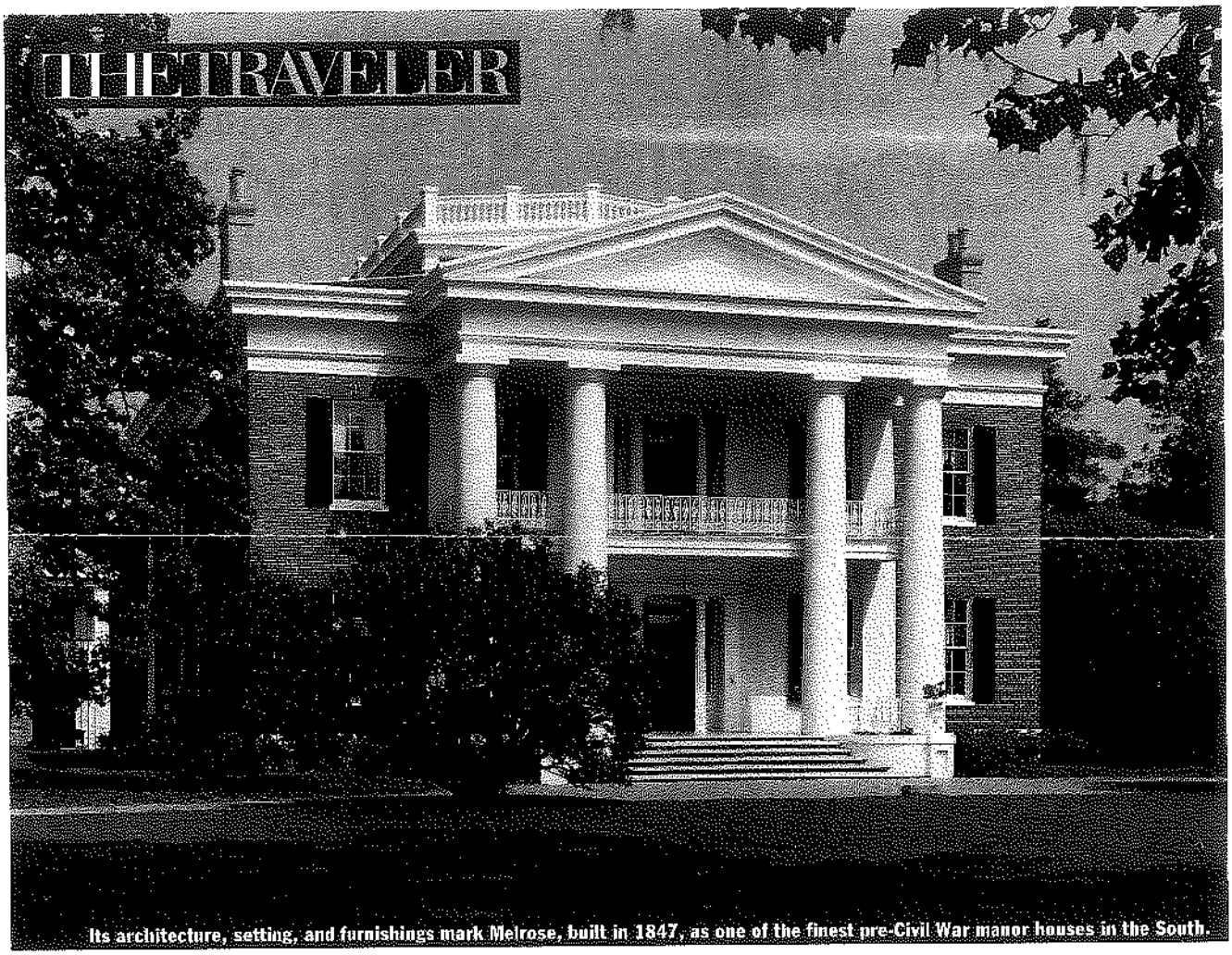
builder 12 units with a max of 12 lock-out units

② paragraph 5 written statement by applicant their commitment to provide tran transportation

③ Clarification of the wind owner/manager

④ staff cit supplemental 2 amendments

⑤ ref site plan June 24, 2008 4 boards presented at the meeting


THE TRAVELER

Its architecture, setting, and furnishings mark Melrose, built in 1847, as one of the finest pre-Civil War manor houses in the South.

Auntie Bellum *The richest of mind's-eye imaginings stands as reality in Natchez, the grande dame of historic cotton-country architecture.* By Eddie Nickens

For nearly two centuries Natchez, Mississippi, has carefully nurtured the stereotype of the white-columned South. At the onset of the Civil War, Natchez was a town of but 6,600 souls on a bluff looming over the Mississippi River, but already it was known as an incubator of Deep South style. As early as 1920 filmmakers discovered the cotton planters' town houses and suburban villas, and ever since Natchez's grand architecture has been piped into the American consciousness as the epitome of southern antebellum life.

It is amazing how complete the picture survives even today. Cotton fields still sweep the horizon in the flatlands around Natchez, while the town is filled with grand houses. Corinthian and Ionic capitals top forests of giant columns; pedimented porticoes are as commonplace as mosquitoes. A walking tour of the town serves as a crash course in cotton-era opulence, whereas a drive to some of the outlying estates reveals houses that render Tara but a passable hovel by comparison. The Natchez of the 1990s boasts the nation's second-oldest "pilgrimage" tour of historic houses, has a bed-and-breakfast inn on practically every street corner, and surely outranks all contenders in per capita hoopskirt ownership. Even when the famous Natchez Pilgrimages are not opening the doors to some sixty private homes and house museums, more than a dozen houses are open daily. A visit to Natchez can serve as a study in the evolution of neoclassical architecture, a style that came to symbolize the entire South.

The place to begin is Auburn. Natchez cotton planters rarely lived in the archetypical manor house overlooking the plantation. Instead they built large town houses or suburban hilltop villas. On one of those knolls today a brick path tunnels beneath the bows of live oaks to the front of a large house built in a fusion of styles. In 1812 a New York-educated architect named Levi Weeks boasted in a letter that he was building the first house in the Mississippi Territory to use "the orders of Architecture." Weeks's was a seminal venture, for this red-brick mansion with two-story columns and a formal portico sent other planters scrambling for contractors.

According to Ron Miller, the execu-

PHOTOGRAPH: VIC KING GIFASON

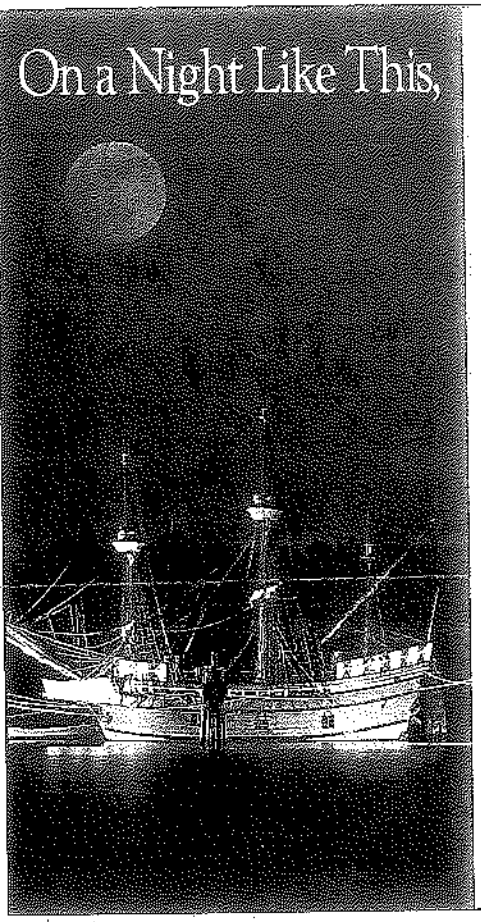
done it and for one reason—because we absolutely set out from day one being mindful of privacy issues."

Bateman thinks the doubters will eventually come around to his way of thinking as they see results. For starters, the public facilities adjacent to the marina are being developed so that visitors can enjoy the island without feeling the need to wander up to the parade ground, which extends along a plateau eighty feet up from the waterfront. The popularity of the restaurant has spawned Stowaway's, a movable beach bar placed alongside the cove's beach. The art gallery has gained momentum. And the tent beside the freshwater pond is frequently booked for weddings and receptions.

Additionally, Casco Bay Lines, which operates ferry service from Portland to nearby islands, established a new ferry stop on the north side of Great Diamond Island to serve Diamond Cove. "It was the first time that there have been two stops on an island in Casco Bay," says Bateman. "And they didn't do it because they were philanthropists. They did it because we're an economic center."

Prospects for future improvements, if realized, will open Diamond Cove to even wider use. The public walking tour will be expanded to include the tactical as well as residential aspects of the fort. Bateman also talks about his desire to convert the former mine-storage building into a bed-and-breakfast inn with a European-style spa. On top of that, increasing use of the resort by Maine-based corporations as a setting for executive retreats has spawned perhaps the most ambitious idea: to rework the double barracks—as yet untouched—into a meeting facility with thirty-two guest rooms. The budget for that: $4.4 million.

But, after a decade of promoting big ideas with few concrete results, the developers of Diamond Cove have now made enough headway that they can talk proudly about accomplishments as well as visions. Bateman, for one, speaks as a man who believes in destiny when he recounts his first visit to Fort McKinley. "I'm not the only person who ever stood on that parade ground and said: This is a travesty. Something's got to happen," he says. "I was just probably the right person at the right time in the right place." ❋



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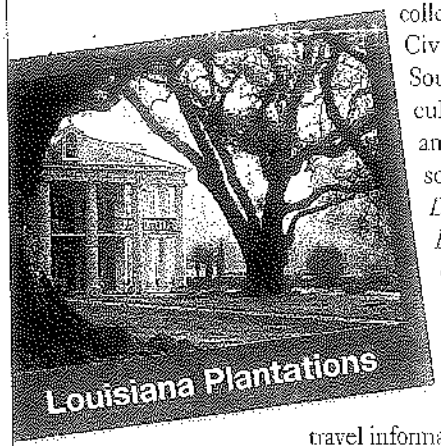

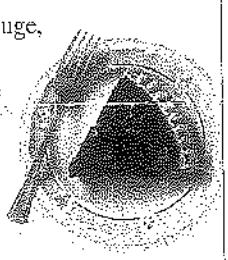

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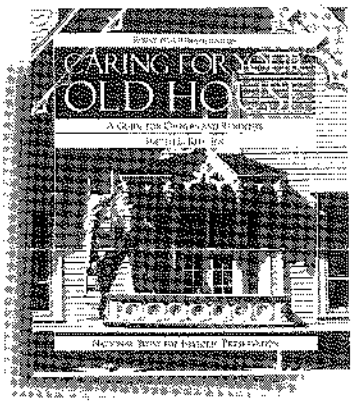

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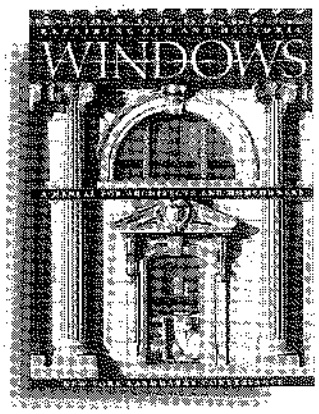

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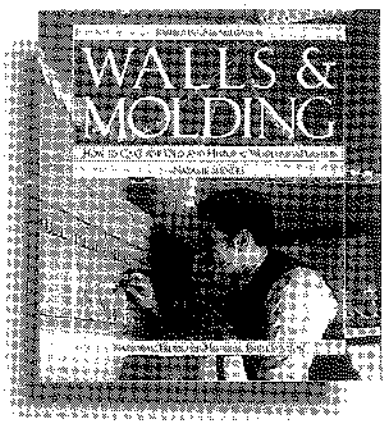

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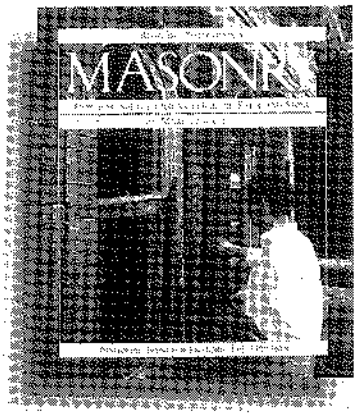

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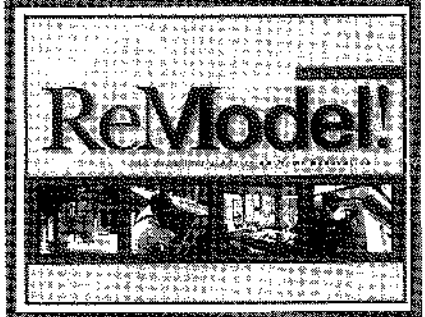

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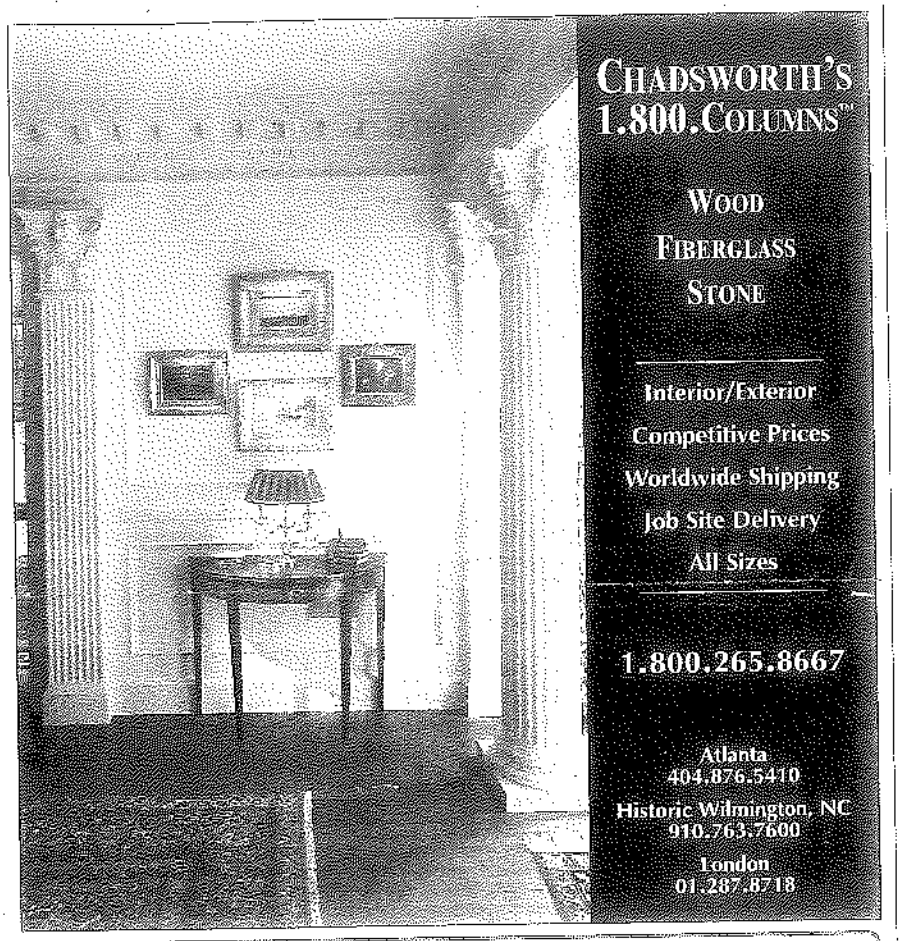

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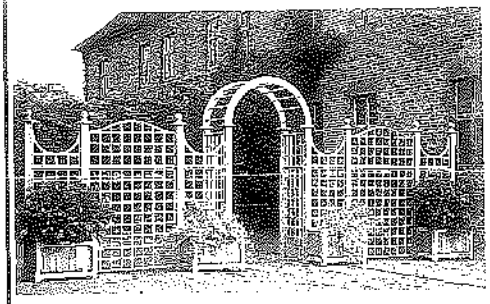

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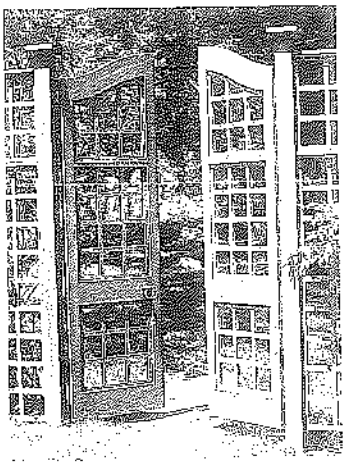

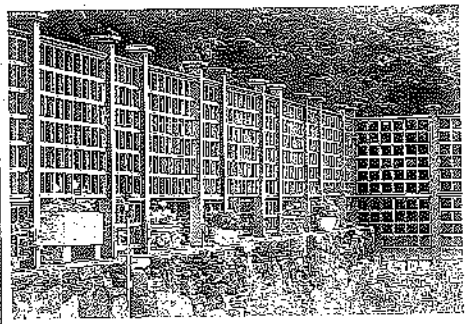

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fireplaces were retained, although all the units have been equipped with new radiant heating systems.

In the officers' quarters—which were considerably larger and appointed with more architectural detail—more effort is being made to maintain the original configuration of rooms and to restore or rebuild interior millwork. Ornate tin ceilings have been revived. And some pieces, such as dining room breakfronts, are custom-duplicated to match what had been damaged or stolen. "People had come in and literally thrown pieces out through the window," says Bateman. "Literally, outside of each home were the pieces. It turned into as much of an archaeological project as it did an architectural one to figure out what came from where."

Each building is restored as buyers come along, so that they have a voice in selecting paint colors, finishes, and appliances. Bateman operates a mill shop on site where a full-time staff manufactures new railings, rebuilds exterior columns, restores doors, and duplicates other building elements as needed.

The current population of Diamond Cove includes six year-round resident owners. Of the sixty-eight units available, forty-seven have sold. Most homeowners intend to spend summers and weekends here or make their property available as seasonal rentals. Costs of the town house units vary from $140,000 to $240,000. Officers' quarters, some of which are spacious duplexes and a handful of which are single-family houses, are valued from $260,000 to $500,000.

With buyers paying such high prices, the management at Diamond Cove goes to great lengths to strike a delicate balance between making the historic precinct accessible and guaranteeing privacy and security to homeowners. Some visitors have been offended by the polite-but-firm security personnel who patrol the complex on golf carts, but Bateman says that allowing unrestricted public access to the entire property "would have been the kiss of death." Such a liberal policy would have prevented him from saving the officers' quarters intact, he says. "We are selling them as they were originally designed. But that's a $350,000-to-$500,000 sale each time, out on a rock, in Maine, that typically attracts bargain-hunters. It's very unlikely. But we've

The Statehouse

Massachusetts Borrows Page From Preservationist's Handbook

Historic Massachusetts, Inc., (HMI) recently launched what its president, Arthur Bergeron, calls a "state-level Stanley Lowe program": a Bay State initiative using preservation to promote restoration and ignite community pride. Lowe, a Pittsburgh preservationist and a National Trust trustee, has earned national attention for his leadership in helping old city neighborhoods rejuvenate themselves. "He has shown how to use historic preservation as a tool for affordable housing on a major scale," observes Roberta Gratz, the author of *The Living City*. "He has shown banks how they can make money while doing what is best for their community."

HMI laid the groundwork for its program in 1994 by inviting civic and business leaders from around the state to a day-long conference. Among the attendees was Mary Claire Kennedy, the mayor of Lawrence. "When I saw Pittsburgh Mayor Tom Murphy's slide show," recalls Kennedy, "I saw amazing similarities between Pittsburgh's old neighborhoods and ours. I thought that if they can restore run-down areas, we can, too." She and local bankers volunteered to work with HMI on a statewide pilot program applying the Pittsburgh model to Massachusetts neighborhoods.



Andres Gonzalez, upper right, and members of Lawrence, Massachusetts's City C.O.R.E encircle Officer Mike McGrath.

Community leaders in Lawrence settled on the rehabilitation of the historic Orange-Wheeler house as the catalyst for their first project. Decay has obscured the house's stunning architecture, but its structure remains basically sound. HMI volunteers helped a local community-development corporation to locate heirs to the estate and to acquire an option to buy the property. After being rehabilitated this spring with the help of neighborhood labor, the house will serve as headquarters for City C.O.R.E., a local branch of the national YouthBuild vocational and leadership training organization (see "We Need Love, We Need Support...," *Historic Preservation,* May/June 1993). A community policeman named Mike McGrath will live upstairs to provide extra security for the neighborhood.

HMI tapped Andres Gonzalez, a neighborhood resident working on crisis intervention for troubled children, to coordinate the project. The twenty-three-year-old former gang member was shot four years ago witnessing a dispute. "There I was, a young father lying on the ground asking a friend to take care of my child in case I died," Gonzalez says. "That got to me—and to my friends in the gang. We realized that while we were poisoning our neighborhood, little 'gang-member wannabes' saw us as role models. We got smart and left the gang."

HMI sent Gonzalez and coordinators selected for similar projects in Chelsea, New Bedford, and the Blackstone River Valley to Pittsburgh for a firsthand view of Lowe's projects. "I was amazed by Stanley," says Gonzalez. "He took us around the older neighborhoods. Seeing how he worked with local banks, how he encouraged low-income people to take charge of their lives, how he raised his son.... He gave us a lot of pointers. From Stanley I got the idea that [neighborhood revitalization] was definitely doable."

Buoyed by the Pittsburgh experience, Gonzalez returned to Lawrence and set to work. He distributed fliers to neighborhood residents. "If you care about your neighborhood, please come to our meetings," they read. Fifteen people showed up. They formed the Orange-Wheeler Neighborhood Association, recruited more members, cleared debris from the alleys, and met regularly. The mayor sent city officials to the meetings to help solve problems as they arose. When local residents complained about drug dealers and prostitutes haunting the dark alleys, the city asked Massachusetts Electric to install lights and the city police to crack down. The association is tracking down absentee landlords and identifying those who will cooperate with the renewal effort. By enforcing building codes, the city is taking a harder line with landlords content to milk their properties while letting them rot.

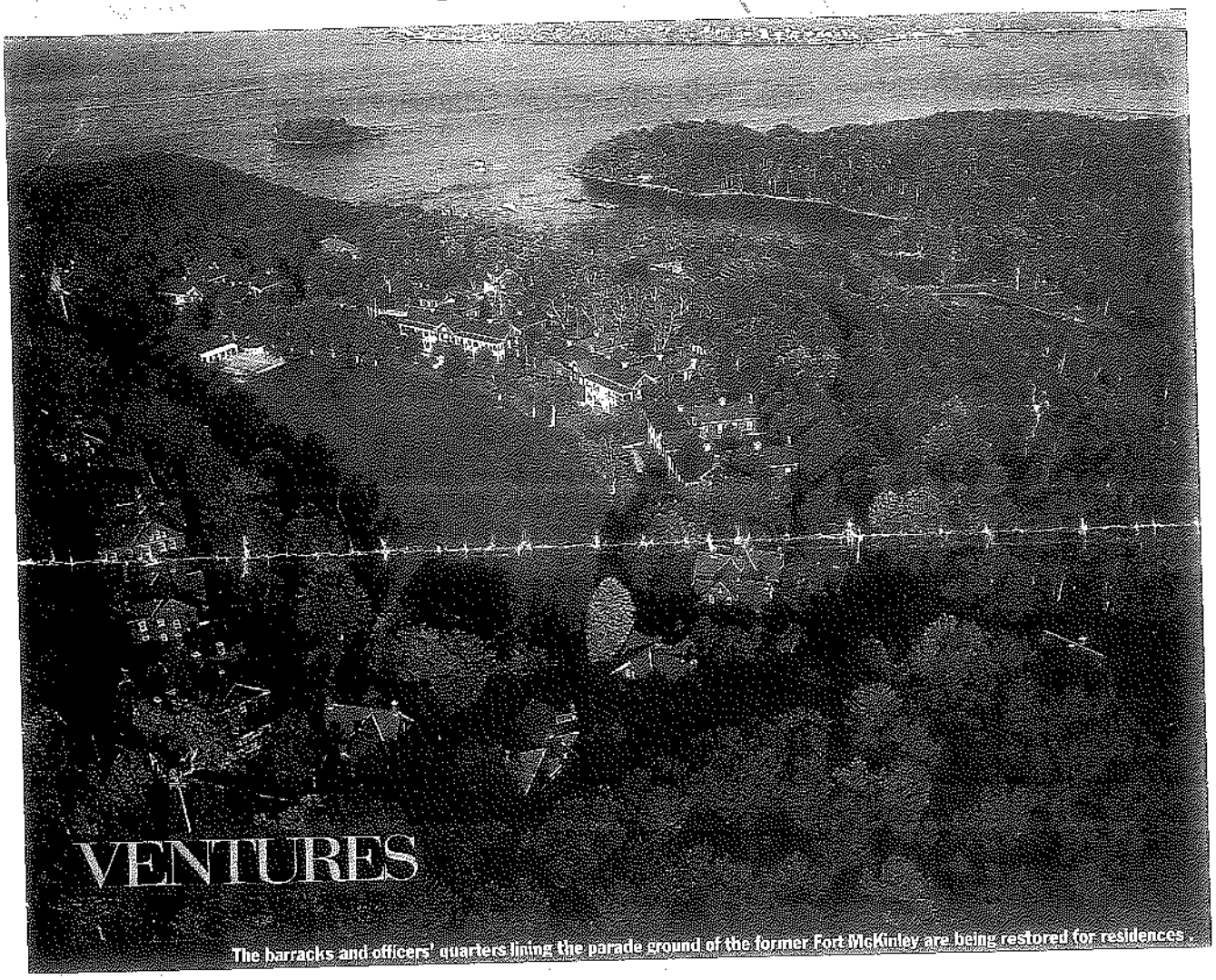
To assist in the Orange-Wheeler rehabilitation, the city obtained a $50,000 grant from the Massachusetts Preservation Projects Fund, a $5-million program recently resuscitated by State Senator Robert Durand's Special Commission on Historic Preservation. If the state community-development office approves a city request for $750,000, local banks will match it and Lawrence will be able to acquire and repair other dilapidated buildings in the neighborhood. "It doesn't make sense to invest in just one property," Kennedy says. "We need to do the whole block to protect our investment."

HMI hopes to stimulate as many as forty "Stanley Lowe projects" throughout the state. Much work lies ahead in Lawrence, but the most important accomplishment—giving the neighborhood hope—has been achieved. And Gonzalez feels lucky to have a key role in the Lawrence effort: "A lot of people are depending on me for a lot of things. I'm gonna try my hardest to do this for my city and my people."

—CONSTANCE BEAUMONT

Constance Beaumont is the director of state and local policy for the National Trust.

PETER VANDERWARKER



The barracks and officers' quarters lining the parade ground of the former Fort McKinley are being restored for residences.

Island Gem

Imagination and persistence pay off in the conversion of a century-old Army fort near Portland, Maine, into a residential resort. By Vernon Mays

In its heyday at the turn of the century, Fort McKinley was the pride of the U.S. Army. Its cannons were dead-eye accurate and nearly impossible to spot because of the way they blended into the seaward slopes of Great Diamond Island off the coast of Portland, Maine. Some 700 soldiers manned the garrison—the nerve center of a chain of island batteries protecting the port.

But obsolescence came quickly to McKinley, which had boasted a stately parade ground ringed by Queen Anne-style officers' quarters and Colonial Revival barracks with wide porches. Retired from active service in 1949 and neglected for four decades, the gun batteries deteriorated to ruins. And as windows were broken and porches collapsed, the buildings in the residential core became just so many pieces of a military ghost town.

Then David Bateman came along. Bateman, a Portland architect-turned-real estate developer, looked at the crumpled remains of the deserted barracks and saw a wealth of possibilities. Seduced by the romantic ensemble of brick buildings around the elliptical lawn, Bateman also recognized that the arrangement of structures on the 193-acre parcel was ideally suited to a new use. "Even though it was designed for military purposes and had a very sterile thought in mind, the whole complex was wonderfully residential in its detailing," he recalls.

Now twelve years in the making, the conversion from military outpost to summer resort community is reaching critical mass at Diamond Cove, as the development is known. When completed, the community will include sixty-eight residences in restored or renovated historic buildings adjacent to the parade ground and as many as thirty-nine new houses built on waterfront lots. The appeal for buyers: the unique allure of a historic site combined with upscale amenities including a marina, a heated pool, tennis courts, beaches, a fitness room, and a gym—even two lanes of duckpins in a restored bowling alley built by the Army.

Day-trippers from Portland also have discovered the four-star Diamond's Edge restaurant, which occupies the

MEMORANDUM

TO: City of Portland Planning Department (Knowland)
FROM: The Inn At Diamond Cove, LLC
RE: Site Plan Application at Ft. McKinley
DATE: April 29, 2008

The following is in response to the various questions posed at the initial Planning Board workshop on April 22nd, in no particular order:

1. Sanitary Waste – The Project has confirmation of adequate current capacity in the existing system to handle all of the units proposed in the Double Barracks and Hospital. See enclosed correspondence from the Project's consulting engineers at DeLuca-Hoffman Associates (Laverriere).

2. Transportation – The Project will have its own transportation needs and facilities quite apart from those provided by the Diamond Cove Homeowners Association ("DCHA"). During construction, all contractors will arrive at either the Cove landing or by barge landing on the north end of the island. The construction transportation will be provided by Casco Bay Lines and private water shuttles. Following construction, all of our owners, guests and employees will be directed to the same landing points utilizing the same services and specifically advised not to utilize any off-site facilities, including the public pier at the south end of the Island. Over time, it is possible that the Project and DCHA will collaborate on certain transportation but the Project will not be collaborating on any transportation which exits the Ft. McKinley site.

3. Public Water – From prior, extensive reviews, we confirm more than adequate capacity to service the Project. We have requested a confirmatory letter from the Portland Water District which has been assured to be delivered later this week.

4. Solid Waste – The Project will create new members of DCHA who will pay assessments accordingly. Part of that assessment is for solid waste disposal which is contracted by and entirely controlled by DCHA.

5. Financial and Technical Capability – Enclosed is a financing interest letter from TD Banknorth and a resume from Bateman Partners, LLC, development consultant. David Bateman initiated his involvement with the planning and build-out of the Project in the early 1980s. The list of consultants retained to work on this Project includes DeLuca Hoffman Associates, Archetype (David Lloyd) and Portland Builders.

6. Development Phasing – The Double Barracks construction will go forward immediately, assuming the permits are timely issued. The Hospital is anticipated to go forward in the next building season assuming the Double Barracks phase of the Project has proven successful.

7. Recreation and Open Space – Both the Double Barracks and the Hospital are badly dilapidated, existing structures not located on the areas designated as recreational or open space. The proposed swimming pool and cabana structures are located on what was labeled "Open Space/Recreation" in an exhibit to the City's conditional rezoning document certified by the City Clerk on January 28, 1986 ("Project Conditions"). Section 1 of the Project Conditions provides that those portions of the Project "identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity." The term "open space" is not a defined term in the document. However, the proposed swimming pool and cabana are not materially different from the existing swimming pool/cabana constructed on the Parade Grounds in the 1980s after the Phase I permits were in hand. The Parade Grounds were also designated open space/recreation. From a legal perspective, we have precedent that the proposed pool/cabana does not violate the terms of the Project Conditions. From a practical standpoint, the existing swimming pool/cabana will not easily handle the additional use which would be generated by the Project. Providing a second facility will help assure the comfortable co-existence between the Project and DCHA, with no material loss of recreational area or open space and with no impacts upon historic vistas. In any event, the Project Conditions are elements of the conditional rezoning dating back to 1985 and it falls exclusively to the City to both interpret its document and decide whether the Project meets the criteria. With respect to the DCHA position, see Section 15 below.

8. Environmentally Sensitive Areas -- The original site and subdivision approvals specifically anticipated the redevelopment of the Double Barracks and the Hospital, which were included in the allowable 134 units in the Phase I portion of the Project. In connection with the permitting for both Phase I and Phase II, environmentally sensitive areas were carefully mapped out. Neither the buildings involved in this Project nor the small area dedicated to the swimming pool/cabana were designated "environmentally sensitive areas".

9. Shoreland Zoning – The Project is located in the interior of Ft. McKinley, several hundred feet from the nearest water bodies and does not fall within a shoreland zone.

10. Environmental Impact Analysis – Years and hundreds of thousands of dollars were invested in environmental impacts for both Phase I and Phase II, stretching from the 1980s into the 1990s. The Project is the rehabilitation of historic buildings which were formerly included in this analysis. The updated details on some of the

specific areas are noted in this memo. We have no information from any source suggesting that this Project needs more analysis other than that provided herein.

11. Emergency Services – The Double Barracks building has been designed with a central alarm and sprinkler system to meet local and state fire codes for the proposed use. See enclosed letter from Archetype dealing with Life Safety issues. The overall plan for emergency services for Ft. McKinley has been created and implemented by DCHA.

12. Mainland Parking – The Project's mainland parking needs will be met by Portland Harbor Hotel, pursuant to its various leasing arrangements with area parking lots, including the ramped parking facility located beneath Portland Harbor Hotel. See enclosed letter from Portland Harbor Hotel relating to mainland parking.

13. Organizational Status - The Inn At Diamond Cove, LLC is a Maine limited liability company with both a Clerk and a Registered Agent, registered with the Maine Secretary of State. The members are Maine Union Realty, LLC (a New York state limited liability company, with David Hart and members of his family as the principal members, together with Charles DesLauriers). Other members may be added. Ronald N. Ward is the Registered Agent.

14. Settlement Agreement with Maine Audubon Society, et al. – See enclosed memo from Ronald N. Ward on this topic.

15. DCHA Support – See enclosed copy of Second Amendment recorded in Book 25425, Page 2 confirming DCHA super majority approval of the Project.

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April 29, 2008

Ms. Richard Knowland, Senior Planner
Department of Planning and Development
City of Portland
389 Congress Street
Portland, ME 04101

Subject: The Inn at Diamond Cove, LLC
Conditional Zoning Amendment
Diamond Cove, Great Diamond Island
Wastewater Treatment and Capacity

Dear Mr. Knowland:

On behalf of The Inn at Diamond Island LLC, our office has prepared a summary of the wastewater treatment capacity available on Great Diamond Island in support of the applicant's requested proposal for the renovation and conversion of the "Double Barracks" (Building #46) and the "Hospital" (Building #19) into residential hotel condominiums.

The current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses that are currently serviced by the wastewater treatment system and their associated sewer flow rates based upon Table 501.2 of the Maine Subsurface Waste Water Disposal Rules (MSWWDR) are summarized as follows:

2 one-bedroom units @ 90 gpd per bedroom	360 gpd
15 two-bedroom units @ 90 gpd per bedroom	2,700 gpd
53 three-bedroom units @ 90 gpd per bedroom	14,310 gpd
9 four-bedroom units @ 90 gpd per bedroom	3,240 gpd
200-seat restaurant with 25 employees	
@ 30 gpd per seat	6,000 gpd
@ 15 gpd per employee	375 gpd
2 administrative offices	480 gpd
Marina pump out	90 gpd
Special event tent	1,750 gpd
Gift store with 2 employees @ 15 gpd per employee	30 gpd
Total flow =	29,335 gpd

It should be noted that the MSWWDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

October 2005 through March 2008. These flow records were provided by the operator (Diamond Cove Home Owners Association). Based upon a review of this data, the annual records for 2006 showed the highest flow rates over the annual basis; therefore, these records were used on a conservative basis for comparison with flow rates computed from the MSWWDR. A detailed summary of the flow records is appended to this letter. In addition, a graphical presentation of the flow meter records is also appended to this letter which depicts the seasonal fluctuations of flow rates throughout the year to the wastewater treatment system.

In general, the period from late fall to early spring (October through April) represents the least occupancy and usage on the island. The seasonal uses such as the marina, special event tent and restaurant are closed and only a limited number of year-round residents remain on the island. The peak period of activity and use on the island occurs during the period of May through September.

As indicated in the daily and monthly flow records, the highest flows during 2006 occurred during the month of May through August. Specifically, the highest monthly average daily flow rates occurred in May with a flow rate of 24,066 gpd, which correlates reasonably well with the 29,335 gpd flow rate computed based upon the MSWWDR.

The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition of the "Double Barrack" renovation will result in a total flow of 32,575 gpd (29,335 gpd plus 3,240 gpd) resulting in a remaining surplus flow 2,425 gpd that is allocated to for the future "Hospital" renovation. This surplus future flow allocation amount of 2,425 gpd is more than adequate up to twelve 2-bedroom units.

Based upon a review of the 2006 wastewater treatment system flow records, the existing wastewater treatment system has sufficient capacity to accommodate the projected flows associated with the planned renovation of the "Double Barracks" as well as provide sufficient reserve capacity for the future renovation of the "Hospital".

Please contact our office with any questions you may have concerning this letter.

Sincerely,

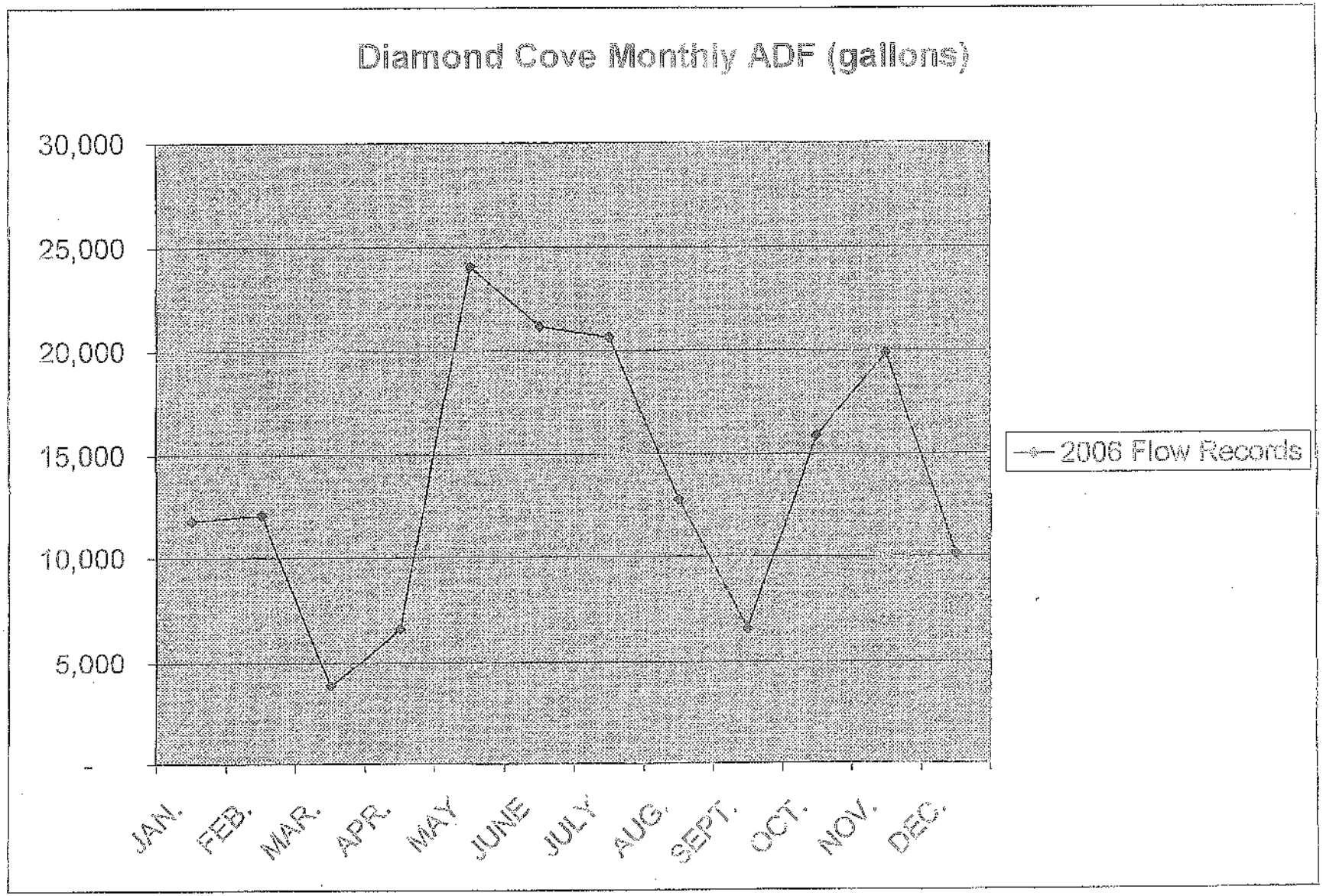
DeLUCA-HOFFMAN ASSOCIATES, INC.

Joseph A. Laverriere, P.E.
Senior Engineer

JAL/sq/JN2769/Knowland-4-29-08

Attachments

C: David Bateman – The Inn at Diamond Cove, LLC


Diamond Cove Monthly ADF (gallons)
30,000
25,000
20,000
15,000
10,000
5,000
-
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
2006 Flow Records

DIAMOND COVE
SANITARY SEWER FLOW RECORDS

JANUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		20,943
2		17,300
3		12,732
4		8,594
5		8,916
6		8,336
7		8,273
8		7,053
9		8,524
10		8,128
11		14,079
12		11,011
13		9,201
14	Y	23,946
15		19,155
16		13,632
17		11,795
18	Y	23,618
19		15,301
20		12,725
21		12,585
22		21,845
23		N/A
24		7,889
25		11,202
26		7,502
27		6,081
28		8,145
29		7,393
30	Y	7,716
31		5,529

TOTAL MONTHLY FLOW	353,897	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	11,797	GALLONS

FEBRUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		6,242
2		6,638
3	Y	41,970
4		40,629
5	Y	41,741
6		27,510
7		18,551
8		14,868
9		12,938
10		11,007
11		11,006
12		8,801
13		8,784
14		7,497
15		6,938
16		6,977
17		7,602
18		6,771
19		6,975
20		6,197
21		6,431
22		5,592
23		4,691
24		4,874
25		5,545
26		5,330
27		3,844
28		2,660

TOTAL MONTHLY FLOW	337,911	GALLONS
TOTAL DAYS	28	
AVERAGE DAILY FLOW	12,068	GALLONS

MARCH 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		2,889
2		2,967
3		2,954
4		3,178
5		3,685
6		3,460
7		3,151
8		2,423
9		2,793
10	Y	2,963
11		3,086
12		2,767
13		3,963
14	Y	8,458
15		6,564
16		5,744
17		5,703
18		5,473
19		5,415
20		4,529
21		4,321
22		3,922
23		3,384
24		3,630
25		3,545
26		3,479
27		3,093
28		2,786
29		2,549
30		3,099
31		2,570

TOTAL MONTHLY FLOW	118,654	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,825	GALLONS

APRIL 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,173
2		3,018
3		2,682
4	Y	16,612
5		14,956
6		13,314
7		11,287
8		10,579
9		8,627
10		7,705
11		7,075
12		5,419
13	Y	6,437
14		7,284
15		7,450
16		6,713
17		6,664
18		5,432
19		4,938
20		3,523
21		3,672
22		5,198
23	Y	4,941
24	Y	6,300
25		2,950
26		3,605
27		3,650
28		5,021
29		6,056
30		4,574

TOTAL MONTHLY FLOW	195,865	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,529	GALLONS

MAY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,610
2	Y	61,264
3	Y	46,457
4		30,166
5		20,189
6		15,428
7		12,633
8		10,524
9		11,337
10	Y	16,413
11	Y	25,256
12	Y	54,843
13	Y	51,136
14	Y	37,900
15	Y	40,382
16	Y	53,483
17		32,703
18		24,137
19	Y	26,672
20		18,313
21		17,670
22		19,535
23		15,550
24		13,949
25		13,051
26		11,273
27		11,232
28		13,920
29		11,274
30		7,663
31		8,097

TOTAL MONTHLY FLOW	746,060	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	24,066	GALLONS

JUNE 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		8,001
2	Y	10,201
3	Y	36,838
4	Y	40,365
5		25,612
6		17,350
7	Y	44,685
8	Y	67,444
9		46,094
10	Y	56,675
11		33,688
12		27,332
13		17,044
14		17,395
15		16,030
16		13,469
17		10,180
18		10,372
19		10,853
20		8,645
21		10,019
22		10,161
23		11,749
24	Y	14,723
25		14,542
26		10,885
27		10,254
28	Y	9,083
29		12,500
30		12,311

TOTAL MONTHLY FLOW	634,486	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	21,150	GALLONS

DIAMOND COVE
SANITARY SEWER FLOW RECORDS

JULY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		13,226
2		15,615
3		14,301
4		12,875
5		11,871
6		11,015
7		12,674
8		11,476
9		13,111
10		9,279
11	Y	12,349
12		29,727
13	Y	44,192
14		28,550
15		25,711
16		20,975
17		18,769
18		15,511
19		13,815
20		15,543
21		31,525
22	Y	35,699
23	Y	33,716
24		30,364
25		22,194
26		21,371
27		20,387
28		26,863
29		24,604
30		16,956
31		18,456

TOTAL MONTHLY FLOW	698,941	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	22,611	GALLONS

AUGUST 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		21,204
2		18,035
3		17,341
4		17,867
5		16,748
6		17,871
7		14,403
8		14,145
9		14,531
10		13,472
11		15,730
12		13,111
13		14,207
14		11,851
15	Y	13,340
16		10,242
17		18,971
18		4,236
19		13,761
20	Y	14,100
21		9,221
22		11,111
23		10,233
24		8,542
25		15,817
26		13,019
27		7,844
28	Y	7,523
29		8,594
30		7,314
31		6,165

TOTAL MONTHLY FLOW	395,639	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	12,794	GALLONS

SEPTEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		7,088
2		8,563
3	Y	6,893
4		10,157
5		5,208
6		4,687
7		4,568
8		13,372
9		2,781
10		5,345
11		4,545
12		5,281
13		5,138
14		4,026
15		5,375
16		7,613
17		6,850
18		7,132
19		18,248
20		7,478
21		5,858
22		5,781
23	Y	4,484
24		5,422
25		5,422
26		5,422
27		4,310
28		5,891
29	Y	6,019
30		7,835

TOTAL MONTHLY FLOW	197,779	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,593	GALLONS

OCTOBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		5,268
2		7,223
3		7,066
4		5,452
5		3,920
6		6,049
7		5,627
8		4,389
9		4,833
10		2,874
11		17,253
12	Y	26,495
13		12,939
14		12,478
15		9,547
16		8,440
17		12,345
18		9,145
19		10,397
20	Y	31,103
21		27,605
22		25,704
23		19,054
24		12,004
25		14,696
26		12,322
27		16,193
28	Y	63,120
29		41,219
30		27,444
31		22,395

TOTAL MONTHLY FLOW	491,592	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	15,858	GALLONS

NOVEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		16,283
2	Y	12,248
3		12,405
4		9,966
5		10,474
6		8,372
7		12,690
8	Y	48,530
9		58,945
10		26,115
11		31,206
12	Y	23,760
13	Y	32,203
14	Y	50,148
15		20,888
16	Y	24,945
17	Y	34,420
18		19,794
19		22,107
20		11,288
21		12,065
22		12,675
23		16,085
24		12,127
25		13,313
26		12,798
27		8,480
28		7,564
29	Y	6,681
30	Y	6,250

TOTAL MONTHLY FLOW	595,015	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	19,834	GALLONS

DECEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1	Y	15,821
2		12,050
3		10,615
4		8,336
5		8,751
6		8,895
7		8,421
8		8,112
9		5,288
10		6,236
11	Y	5,704
12		5,704
13	Y	4,431
14		5,475
15	Y	4,725
16	Y	7,964
17		5,131
18		4,158
19		5,057
20		5,348
21		3,033
22	Y	5,135
23	Y	23,459
24		18,559
25		18,469
26		17,737
27		16,056
28		12,979
29		19,924
30		18,315
31		17,511

TOTAL MONTHLY FLOW	313,402	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	10,110	GALLONS

BATEMAN PARTNERS LLC
DEVELOPERS & CONSULTANTS

261 COMMERCIAL STREET
PORTLAND, MAINE 04101
TELEPHONE (207) 772-2992
FAX (207) 772 1881

Bateman Partners, LLC was created specifically to develop and manage real estate, which the principals have done since 1979. The principles have developed projects in southern Maine in excess of 100 million dollars from 1979 through 2008. Many of these projects Bateman Partners, LLC and or its principals still own and or manage.

The Principals of Bateman Partners, LLC initially developed both elderly and family subsidized housing in conjunction with the New Hampshire and Maine state housing authorities. The focus of development eventually spread to market rate housing and commercial office buildings as the city of Portland grew throughout the 1980's. Recreational developments which included the Falmouth Country Club and its adjacent residential subdivision as well as Diamond Cove, a 193-acre island resort community.

Most recently Bateman Partners, LLC has acted as both the development consultant and partners in the Tidewater Farm and Village project in Falmouth Maine. This project consist of 85 acres of land which was rezoned to allow the construction of 50 single family homes, 22 residential condominiums, 65,000 sq' of commercial office space and a 75 room Inn. At this point in time this development is 50% built out with another 2 years left in construction. The Principals of Bateman Partners are David Bateman, Nathan Bateman, and Aaron Bateman.

David Bateman is the president of Bateman Partners, LLC. Mr. Bateman is a trained architect with extensive experience in the field of design and construction. Mr. Bateman is responsible for all day-to-day management of the Bateman Partners, LLC entities and their assets

Mr. Bateman has extensive experience in the following specific areas:

- Feasibility and market analysis
- Project design and master planning
- Local, State and federal approvals and permitting
- Project financing
- Equity syndication
- Contract negotiation
- Construction supervision and estimating
- Project management
- Sales and Marketing

Since 1979 Mr. Bateman has been responsible for the acquisition, development, and management of real estate projects with a combined development cost in excess of One Hundred million dollars.

Mr. Bateman's personal goal has been to provide Maine with innovative projects, which improve the quality of life for its residents. Whether it be pioneering the concept of "scattered site" family housing, (a method which blends subsidized housing into existing

neighborhoods), creating Maine's first elderly congregate care facility, or through traditional commercial and resort developments, the basic commitment to quality of life has never been compromised.

Nathan Bateman is the Vice President of Bateman Partners, LLC. Nathan holds a degree in Finance and Entrepreneurial studies from Babson College. Nathan assists David Bateman in all day-to-day management of the Bateman Partners, LLC entities and their assets. Nathan responsibilities also include creating feasibility studies for potential projects, obtaining local and state approvals, securing financing and overall all project management.

Aaron Bateman is the Treasure of Bateman Partner, LLC. Aaron holds a degree in Finance from Babson College and maintains a successful property management company in Saco, Maine.

REAL ESTATE PROJECTS DEVELOPED BY DAVID BATEMAN AND BATEMAN PARTNERS, LLC

Subsidized Housing Projects	Development Costs
- Summer Street / 32 units of elderly and family housing Located in Biddeford, Maine	1.40 M
- Presidential Housing / 45 units of elderly housing Located in Biddeford, Maine	2.00 M
- Central Block / 24 units of elderly housing Located in Farmington, New Hampshire	1.10 M
- Bethel Housing / 20 units of elderly housing Located in Bethel, Maine	.98 M
- Pleasant Street / 45 units of elderly and family housing Located in Saco, Maine	2.40 M
- Lincoln Street / 21 units of scattered site family housing Located in Saco, Maine	1.60 M
- Pierson Lane / 68 units of scattered site family housing Located in Biddeford, Maine	4.90 M
- Front Street / 36 units of elderly housing Located in Sanford, Maine	1.90 M
- Falls I / 61 units of family housing Located in Saco, Maine (moderate income)	3.40 M
	19.68M

Commercial Projects	
- Marineast Complex / 87 market rate rental town homes 10,000 sq.ft. Commercial building South Portland, Maine	6.00 M
- Safford House / historic rehabilitation 9,000 sq.ft. commercial office building Portland, Maine	.83 M
- Harbor Plaza / 60,000 sq.ft. commercial office building and 200 car parking facility Portland, Maine	7.50 M

- Lowell St. Medical Building / 30,000 sq.ft. medical building with offices and ambulatory clinic facility Portland, Maine	1.80 M
- Ocean View Retirement Complex / 70 unit congregate care facility Falmouth, Maine (Phase I)	4.50 M
- Bay View Apartments / 71 unit market rate rental complex Portland, Maine	2.40 M
- Falmouth Country Club / 18 hole championship golf course and related private club facilities Falmouth, Maine	4.73 M
- Falmouth on the Green Subdivision / 122 lot residential subdivision encompassing 450 acres, which surround the Falmouth Country Club Falmouth, Maine	5.70 M
- Diamond Cove McKinley Estates / 197 acre resort development Located on Great Diamond Island Portland, Maine	16.00 M
- Cummings Mill / 48 Luxury Apartments Located in the historic Cummings Mill, South Berwick, Maine	5.6 M
- Portland Harbor Hotel / 100 room boutique Hotel located in the "Old Port" Commercial Area of Portland, Maine	13.00 M
- OHM Properties, LLC 6,000 sq' medical office building Located in Falmouth, ME	1.5 M
	69.56 M

Project Currently Under Development / Construction

- Tidewater Farm / 50 lot subdivision and 75 room inn Located in Falmouth, ME	6.00 M
- Tidewater Village / Road and Utility upgrades to support 4 Commercial building pad sites in Falmouth, ME	2.00 M
- TV#2 / 20,000 sq' building consisting of 7 residential condos and 4 commercial condominiums	4.2M
- CCCEA Multipurpose Learning Facility / 6,000 sq' of office space For the University of Maine and Cumberland County Cooperative Extension Located in Falmouth, ME	1.6 M
- 468 Fore Street / 16,000 sq' of office, retail and hotel facility. This facility supports the existing Portland Harbor Hotel Located in Portland, ME	5.7 M
- The Inn at Diamond Cove / 20 unit Condo Hotel Located on Great Diamond Island, Portland ME	6.5M
	26 M

April 24, 2008

Nathan Bateman
The Inn at Diamond Cove, LLC
Bateman Partners, LLC
261 Commercial Street
Portland, ME 04101

RE: The Inn at Diamond Cove

Dear Mr. Bateman,

In reference to the above mentioned project, which is the conversion of the Double Barracks on Great Diamond Island to a hotel use, please be advised of the following:

1. The building was designed under the code criteria of NFPA 101. This code covers Life Safety issues. I have also had preliminary discussions with Steve Dodge, plan reviewer at the State Public Safety Office. We are both in agreement that drawings to date are in compliance with this code.

2. The building is to be fully sprinkled per NFPA 13.

3. The design is in compliance with the IBC CODE 2003 edition. These code criteria will be verified in final construction documentation.

Please understand that all design work in connection with this building will abide by the above code criteria yielding a current code compliant building.

Sincerely,

David Lloyd
Architect

43 Union Wharf, Portland, Maine 04101 (207) 772-0022 • Fax (207) 772-1056

PORTLAND HARBOR HOTEL

Old Port District

April 29, 2008

Inn at Diamond Cove, LLC
PO Box 3572
Portland, ME 04104

Re: Mainland Parking Facilities for
the Proposed Inn at Diamond Cove

Gentlemen:

The Portland Harbor Hotel, acting as the Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor Hotel currently has adequate excess parking available through both its on and off site parking leases.

Sincerely,

Gerard Kiladjian
General Manager

Four Diamond Award

468 Fore Street, Portland, Maine 04101 207-775-9090
Fax: 207-775-9990 Reservations: 888-798-9090 www.portlandharborhotel.com

Drummond Woodsum

Ronald N. Ward

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Post Office Box 9781
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ADMITTED IN ME ONLY

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MEMORANDUM

TO: City of Portland Planning Department
FROM: Ronald N. Ward
RE: Ft. McKinley Settlement Agreement dated April 12, 1991
DATE: April 29, 2008

At the initial workshop session on April 22, 2008, references were made to an agreement entered into between the developer and the various opposition environmental groups. The inference of one of those comments was that the environmental groups reserved some jurisdiction over the current Project which is located entirely within Phase I of the Ft. McKinley Project. You have asked that we respond to this theory.

Enclosed is a copy of the Agreement entered into between the developer (Diamond Cove Associates) and Maine Audubon Society, Casco Bay Island Development Association and Island Institute. This Agreement was entered into to settle on-going litigation involving Phase II of the Project, comprised primarily of single family lots. As of the date of the Agreement, Phase I of the Project had been fully permitted and was well into construction. David Bateman was personally involved in all of the negotiations.

As you will note from the Agreement itself, there is no suggestion that this settlement agreement was intended to affect anything other than the subject matter of the litigation, i.e., Phase II. To the extent that the environmental groups now reference some control over "open space and recreation areas", that is limited to the designated areas appearing on the Phase II plan recorded in Plan Book 191, Page 143. That plan does not include the current Project.

RNW:kjl
Enclosure

AGREEMENT

This Agreement is entered into this 12th day of April, 1991 by and between Diamond Cove Associates, of Portland, Maine: Maine Audubon Society, of Falmouth, Maine; Casco Bay Island Development Association of Portland, Maine; and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential subdivision for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of single family house lots (said house lots being Phase II of the project), the number of said house lots being 39 under a January 22, 1991 Site Location of Development Application; and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; said Phase I consisting of "townhouse" commercial and residential uses; and

WHEREAS, DCA applied on July 27, 1987 to the DEP for approval of a 70 lot subdivision project under the Site Location of Development Law and said application was denied on December 13, 1989; and

WHEREAS, DCA has appealed the denial of its application to the Maine Supreme Judicial Court, which appeal is still pending; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute are concerned about the adverse impacts on the visual characteristics , historic values, and the unusual natural areas of Casco Bay and Great Diamond Island associated with Phase II of the project; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute wish to ensure that DCA will complete Phase II in a manner which will fit harmoniously into the environment and without unreasonable adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Casco Bay Island Development Association and Island Institute to the construction of Phase II as proposed in January, 1991; and

WHEREAS, all parties wish to avoid unnecessary litigation, including the now pending appeal of the December 13, 1989 denial; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association and Island Institute wish to provide for a mechanism under which they can monitor compliance with the covenants and restrictions which are intended to retain the visual characteristics, historic values and unusual natural areas on the Island;

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows with respect to the January 22, 1991 Phase II application as amended by this Agreement:

A. Appeal and New Application:

1. DCA will withdraw its pending appeal of the denial of its July 27, 1987 Site Location of Development Application upon execution of this Agreement.

2. Maine Audubon Society, Island Institute and Casco Bay Island Development Association will not in any way oppose or express any reservation about DCA's Phase II application of January 22, 1991, as amended by this Agreement. The obligation of this paragraph shall be broadly construed and includes, without limitation, communications to governmental officials and agencies and to the press, and further applies not only to the organizations identified but also to employees and members of such organizations, acting in their corporate capacities, who participated in negotiating this Agreement.

Maine Audubon Society, Island Institute and Casco Bay Island Development Association and those individuals previously mentioned shall not request a reconsideration of DEP approval of the January 22, 1991 Phase II application as amended by this Agreement and shall not appeal to the courts the DEP approval of the January 22, 1991 Phase II application as amended by this Agreement.

3. In the event DCA makes any changes to its January 22, 1991 Phase II application as amended by this agreement the parties agree that the rights of Maine Audubon Society, Island Institute and Casco Bay Island Development Association to oppose the application are restored without limitation.

4. DCA agrees not to amend its January 22, 1991 Phase II application by adding any proposed lots beyond those contained in the existing application on file.

5. DCA agrees to provide notice of any and all additional DEP or other, State, Municipal or Federal regulatory filings or amendments to Maine Audubon Society, Island Institute and Casco Bay Island Development Association.

B. Design Review Process:

1. DCA agrees that a violation of the Covenants and Restrictions or the Design Review Guidelines shall be a violation of any Site Location of Development Law approval, whether conditional or unconditional, issued by the DEP for Phase II as proposed in DCA's January 22, 1991 application.

2. DCA agrees that provision B.1 of this Agreement shall become part of the Declaration of Covenants and Restrictions and further agrees that conditions concerning scenic impacts which may be imposed by the DEP shall also become part of the Declaration of Covenants and Restrictions.

3. DCA agrees to amend the Design Review Guidelines and the Declaration of Covenants and Restrictions submitted as part of its January 22, 1991 application as shown on the attached revised Guidelines and Covenants.

C. Gun Batteries:

1. DCA agrees that gun batteries Farry, Berry, Weymouth and Carpenter shall be subject to the terms of the Memorandum of Agreement by and between the Advisory Committee on Historic Preservation, the U.S. Environmental Protection Agency and the State Historic Preservation Office dated May 23, 1989 and further agrees that such gun batteries shall be made subject to a restrictive covenant running to the Homeowners Association which prohibits all building upon or physically altering such gun batteries. The Homeowners Association may not release or amend such covenants.

D. Amended Declaration of Covenants and Restrictions; Open Space:

1. All areas shown as open space recreation within Phase II on the plans accompanying the January 22, 1991 application will remain as open space and will not be divided or built upon or otherwise altered from their natural character in the future. Such restrictions on future use of these areas shall be placed in the Declaration of Covenants and Restrictions and with a provision that they not be amended or deleted, without the consent of all Phase II lot owners, Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

2. The Declaration of Covenants and Restrictions for Diamond Cove, recorded in the Cumberland County Registry of Deeds in Book 8930, Page 243, shall be completely amended by the preparation and recordation of an amended and restated Declaration covering Phase I and Phase II. The amended Declaration shall provide Maine Audubon Society, Casco Bay Island Development Association and Island Institute a limited right to enter upon the common areas of the project upon reasonable notice periodically each year to ensure that there have been no

violations of the covenants and restrictions contained in the amended Declaration which are intended to protect and preserve the visual characteristics, historic values and unusual natural areas of the Diamond Cove project. The amended Declaration shall be in form and substance satisfactory to counsel for Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

3. Maine Audubon Society, Casco Bay Island Development Association and Island Institute, their successors and assigns shall have the right to enforce and continue to enforce the terms and provisions of this Agreement and of the amended and restated Declaration of Covenants and Restrictions and Design Review Guidelines which are intended to protect and preserve the visual characteristics, historic values, including gun batteries, open space and unusual natural areas of the Diamond Cove project against DCA and its successors and assigns including without limitation the lot owners in Phase II and the Diamond Cove Homeowners Association. Notice of this right of enforcement shall be incorporated into the amended Declaration. The right of enforcement shall run with the land and be binding upon all subsequent owners of the Phase II lots and the common areas.

E. Contract; Authorization:

1. The terms of this Agreement are contractual and not a mere recital.

2. The signatories hereto represent that they are duly authorized to sign this Agreement.

F. Interpretation and Remedies:

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement and the Declaration of Covenants and Restrictions as well as the Design Review Guidelines (as may be amended from time to time) may be brought in a Maine court of competent jurisdiction by the parties.

The parties recognize that this Agreement, and the Covenants and Guidelines require actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association, and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement, Covenants and Guidelines will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement or the Covenants and Guidelines.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this

situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

G. Confidentiality:

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed and intend that a copy of this Agreement be forwarded to the Maine DEP upon execution.

H. Binding on Successors:

This Agreement is binding on the successors in interest and assigns of the parties.

I. Consents:

DCA shall obtain the consent of its mortgagees and ground lessors of record to the amended Declaration and shall cause such mortgagees and ground lessors, if any, to each enter into a form of consent or joinder agreement to the amended Declaration acceptable to counsel for Island Institute under which such mortgagees or ground lessors agree to be subject to the terms of the amended Declaration.

J. Further Actions and Assurances:

DCA, Maine Audubon Society, Casco Bay Island Development Association and Island Institute agree to each proceed in good faith using their best efforts to accomplish the matters contemplated hereby, including, without limitation, to draft and agree upon a revised set of Design Review Guidelines and an amended and restated Declaration of Covenants and Restrictions which accomplish the matters addressed herein to the satisfaction of counsel for each of the parties hereto. DCA agrees to use its best efforts to obtain the consents of its mortgagees and ground lessors and of any and all owners of lots within the project to the amended and restated Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned have set their hands.

DIAMOND COVE ASSOCIATES

DATED: April 9, 1991

BY: _____
WILLIAM L. PLOUFFE, ATTORNEY

MAINE AUDUBON SOCIETY

DATED: April 12, 1991

BY: _____
ELIZABETH L. LOVEJOY, ATTORNEY

ISLAND INSTITUTE & CASCO BAY
ISLAND DEVELOPMENT ASSOCIATION

DATED: April 12, 1991

BY: _____
JEFFREY A. THALER, ATTORNEY

DAA0041C

SECOND AMENDMENT
TO AMENDED AND RESTATED GENERAL DECLARATION
OF COVENANTS AND RESTRICTIONS
Diamond Cove, Great Diamond Island, Portland, Maine

THIS CERTIFICATE OF SECOND AMENDMENT is made by the DIAMOND COVE HOMEOWNERS ASSOCIATION, a Maine nonprofit corporation (the "Association"), with the affirmative vote of at least sixty-seven percent (67%) in voting interest of the owners of the Association.

WHEREAS, the rights and obligations of the members of the Association, the owners of properties at Diamond Cove on Great Diamond Island in Portland, Maine, is governed by that certain Amended and Restated General Declaration of Covenants and Restrictions dated December 17, 1993 and recorded at the Cumberland County Registry of Deeds in Book 11277, Page 322; as modified by First Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated February 25, 1994 and recorded at said Registry of Deeds in Book 11307, Page 200, Amended and Corrected Second Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated August 27, 1999 and recorded at said Registry of Deeds in Book 15011, Page 87, Third Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated February 5, 2001 and recorded at said Registry of Deeds in Book 16009, Page 317 (the "Third Supplement"), and Fourth Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated July 26, 2002 and recorded at said Registry of Deeds in Book 17985, Page 251; and as amended by Amendment to Amended and Restated General Declaration of Covenants and Restrictions dated July 26, 2002 and recorded at said Registry of Deeds in Book 17897, Page 347 (collectively, as modified and amended, the "Declaration");

WHEREAS, with the Third Supplement, fourteen (14) residential lots were created in Building 46 at Diamond Cove;

WHEREAS, to date, said fourteen (14) residential lots have remained unsold and undeveloped, and currently are owned by the City of Portland, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101; and

WHEREAS, the following Second Amendment to the Declaration was adopted to provide for the development of the residential lots within Building 46 (the "Double Barracks Lots"), and to amend the Declaration in certain other respects;

NOW, THEREFORE, the undersigned officers of the Association hereby certify that the following Second Amendment to the Declaration was adopted at a meeting of the Association duly called and held in accordance with the Association Bylaws by an affirmative vote of at least sixty-seven percent (67%) in voting interest of the owners, and that all required notices were duly served upon owners, Eligible Mortgage Holders, the Maine Audubon Society, the Casco Bay Island Development Association, and the Island Institute.

1. Waiver of Assessments on Double Barracks Lots.

   a. Upon transfer by the City of Portland of all Double Barracks Lots to a developer approved by the Association's Board of Directors (the "Approved Developer"):

      i. Any lien on the Double Barracks Lots held by the Association for past assessments due shall be released of record; and

      ii. No Double Barracks Lot shall be subject to assessment pursuant to Article 8 of the Declaration until "developed" (as hereinafter defined); provided, however, that such temporary waiver of assessments shall expire, and all Double Barracks Lots shall be subject to assessment (whether developed or not), on July 1, 2008.

   b. As used herein, a Lot shall be deemed "developed" when a certificate of occupancy for such Lot is issued by the City of Portland. For purposes of calculating assessments by the fraction set forth in the third paragraph of Section 8.1.3 of the Declaration, Double Barracks Lots shall not be included in the denominator of such fraction until subject to assessment pursuant to this Section.

2. Voting of Double Barracks Lots. Upon transfer by the City of Portland of all Double Barracks Lots to the Approved Developer, no Double Barracks Lot shall be entitled to a vote in accordance with Section 6.2 of the Declaration until subject to assessment pursuant to Section 1 above.

3. Increase in Number of Double Barracks Lots. The Approved Developer may increase the number of individual Double Barracks Lots within Building 46, from fourteen (14) up to a maximum of twenty two (22) residential lots, provided that:

   a. The Approved Developer shall prepare at its sole cost, for the review and approval by the Association's Board of Directors, (i) a Supplement to the Declaration to describe the changes made, and (ii) a revised Phase I Plan (Sheet 3 of 7) to show the changes made, showing the location of all boundaries of the Double Barracks Lots; and

   b. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals, including (without limitation): (i) from the City of Portland; (ii) from the State of Maine Department of Environmental Protection; and (iii) from any mortgagee(s) of the Double Barracks Lots.

Any such change shall be effective when the Supplement to the Declaration and the revised Phase I Plan(s) are executed by both the President and Secretary of the Association and then recorded at the Cumberland County Registry of Deeds.

4. Hotel Condominium. The Approved Developer may declare Building 46 as a condominium, and the units so created shall be the Double Barracks Lots and shall be treated as residential lots for all purposes under the Declaration, provided that:

   a. Notwithstanding anything to the contrary in the provisions of Section 4.1 of the Declaration, Building 46 may be used for purposes consistent with a residential hotel condominium, including reasonable and customary on-site services limited to the owners and their guests and tenants in residence, but specifically excluding third-party functions or any on-site commercial food or beverage operation, subject to all applicable governmental land use laws and ordinances. Each Double Barracks Lot shall only be used for no more than one single family dwelling; provided, however, that rental tenants shall not be subject to the "single family" restriction of Section 2.15 of the Declaration, but shall be limited to a maximum occupancy of six (6) persons per Double Barracks Lot.

   b. Notwithstanding anything to the contrary in the provisions of Section 4.12 of the Declaration, the Approved Developer may incorporate directional signage within the existing signage of the Association and may place a single sign at the entry driveway to Building 46, subject to applicable governmental land use laws and ordinances and the approval of the Association's Board of Directors.

In connection with any such declaration of condominium for Building 46:

   c. The condominium shall be subject in all respects to the Declaration (as hereby amended), and any lien established upon a Double Barracks Lot pursuant to the Declaration shall be prior to any lien established in connection with the condominium.

   d. With respect to any action taken or contemplated to be taken by the condominium association or any condominium hotel management company for Building 46 (any such association or company responsible for the maintenance of the Building 46 condominium common areas hereinafter referred to as the "Building 46 Manager"), the Association shall have the power to veto any such action taken or contemplated to be taken by the Building 46 Manager that is inconsistent with the Declaration (as hereby amended), and the Association also shall have the power to require specific action to be taken by the Building 46 Manager in connection with the obligations and responsibilities set forth in the Declaration, such as requiring that Building 46 and all improvements thereto be kept and maintained in clean, safe, attractive and sightly condition and in good repair.

   e. The Approved Developer shall have the right to designate the front, side and rear yards currently allocated to the Double Barracks Lots (pursuant to Section 10.3 of the Declaration) as common area for use in common (together with the courtyard area allocated to Building 46 pursuant to Section 10.2 of the Declaration) by all owners, guests and tenants of the owners of the Double Barracks Lots, in which

event the revised Phase I Plan submitted by the Approved Developer pursuant to Section 3(a) above shall be revised accordingly.

f. If the Building 46 Manager maintains, repairs and landscapes the front, side and rear yards and the courtyard area allocated to the Double Barracks Lots (pursuant to Section 10 of the Declaration) to a standard at least equal to that required by the Declaration, as reasonably determined by the Association's Board of Directors, then any charge included in the Association's assessments to Phase I lot owners for maintenance, repairs and landscaping performed by the Association within such Phase I areas shall be deducted from the Association's assessments to the owners of the Double Barracks Lots. If the Building 46 Manager fails to maintain, repair and landscape the front, side and rear yards and the courtyard area allocated to the Double Barracks Lots to a standard at least equal to that required by the Declaration, as reasonably determined by the Association's Board of Directors, then the Association shall have the right (but no obligation) to cause such maintenance, repair and landscaping to be performed at the cost of the owners of the Double Barracks Lots.

g. Either the Approved Developer or the Building 46 Manager shall maintain with respect to Building 46 commercial general liability insurance having limits in such amounts as shall be reasonably acceptable to the Association, under a policy covering the Association as an additional insured, to be written on an occurrence basis. Certificates of such insurance shall be delivered to the Association at or prior to the commencement of construction of the development of Building 46, and thereafter upon request and within twenty (20) days prior to the expiration of such policies. The policy providing such insurance shall include a provision that such insurance shall not be terminated or substantially changed by the insurer without twenty (20) days' prior written notice to the Association.

5. Golf Carts and Other Vehicles. Notwithstanding the provisions of Section 4.7 of the Declaration, the owners of the Double Barracks Lots shall not have the right to own and operate any golf cart, neighborhood electrical vehicle, electric personal assistive mobility device (a/k/a human transporter), low-speed vehicle as currently defined in 29-A M.R.S.A Section 101, or any similar vehicle, unless (i) the City of Portland amends its applicable Conditional Rezoning Agreement to allow more than eighty-two (82) such vehicles within Phase I of the Diamond Cove development, and (ii) the Association's Board of Directors approves such ownership and operation. One or more vehicles may be operated for the benefit of the owners of the Double Barracks Lots for service purposes, including the common transportation of goods and passengers, provided that (a) the Association's Board of Directors approves the number (if that number exceeds two) and type of such vehicle(s), (b) the Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the City of Portland) for such vehicle(s), and (c) liability insurance with respect to such vehicle(s) is maintained, according to the terms set forth in Section 4(g) above.

6. Swimming Pool and Service Bar Area. In connection with the development of Building 46, the Approved Developer shall construct, at its sole cost, an in-ground swimming pool and service bar area for use by the owners, guests and tenants of the owners of the Double Barracks Lots, and (subject to reasonable rules and regulations) other members of the Association, in a location at the common properties to be agreed upon by the Approved Developer and the Association's Board of Directors. The common properties necessary for such swimming pool and service bar area shall be leased by the Association to the Building 46 Manager, subject to reasonable terms and conditions as determined by the Association's Board of Directors. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the State of Maine Department of Environmental Protection) for the proposed swimming pool and service bar area, which may be located within "Open Space Recreation Areas" of Phase I if specifically permitted by such approvals.

7. Wastewater Treatment System. The Approved Developer shall prepare at its sole cost, for the review and approval by the Association's Board of Directors, a plan of improvements to the existing wastewater treatment system necessitated by the development of the Double Barracks Lots. Such approval by the Association's Board of Directors of the plan of improvements shall not be unreasonably withheld, and any withholding of such approval shall be based upon the report of a licensed engineer commissioned by the Association. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the State of Maine Department of Environmental Protection) for such approved improvements and development. Commencing with the first year that all Double Barracks Lots are "developed" and subject to assessment pursuant to Section 1 above, the Association will reimburse the Approved Developer one-half of the costs of such improvements, up to a maximum of $100,000, to be paid by the Association in equal installments over five years.

8. Approved Developer; Assignment. This Second Amendment shall not take effect unless and until the City of Portland shall convey all Double Barracks Lots to the Approved Developer. The Approved Developer may not assign its rights or obligations hereunder without the prior written consent of the Association's Board of Directors, which consent shall not be unreasonably withheld.

9. Termination. In the event that the Approved Developer shall not substantially commence construction of the development of Building 46 (as evidenced by the obtaining of a building permit from the City of Portland and commencement of construction activity by the Approved Developer) by July 1, 2008, then at the election of the Association's Board of Directors at any time prior to substantial commencement of construction, the provisions hereinbefore set forth in Section 3 (Increase in Number of Double Barracks Lots), Section 4 (Hotel Condominium, and/or Section 6 (Swimming Pool and Service Bar Area) may be terminated and rendered null and void. Any such election by the Board of Directors shall be effective when a notice of such termination is executed by both the

President and Secretary of the Association and then recorded at the Cumberland County Registry of Deeds.

10. Declaration. Except as set forth in this Second Amendment, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Diamond Cove Homeowners Association has caused this instrument to be executed by its President and Secretary, as of July ____, 2007.

DIAMOND COVE HOMEOWNERS ASSOCIATION

By: _____
Philip J. Guarino, its President

Witness

By: _____
John Burge, its Secretary

Witness

STATE OF MAINE
COUNTY OF CUMBERLAND

July ___, 2007

Then personally appeared the above named Philip J. Guarino, President of Diamond Cove Homeowners Association, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of said Diamond Cove Homeowners Association.

Before me,

_____
Notary Public / Attorney-at-Law
Print Name: John F. Dean

JOHN F. DEAN
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires August 2, 2013

P:\Users\acafcagn\DCHA\Garden\2Amdt6c.doc

Commonwealth of Massachusetts
Middlesex, ss.
On this 15th day of August, 20 07, before me, the undersigned notary public, personally appeared Philip J. Guarino, proved to me through satisfactory evidence of identification, which were MA DL, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

_____
Notary Public

SEAL

Received
Recorded Register of Deeds
Aug 28,2007 02:17:03P
Cumberland County
Pamela E. Lovley

TD Banknorth, N.A.
One Portland Square
P.O.Box 9540
Portland, ME 04112-9540
T: 207 761-8500
Toll Free: 800 462-3666
TDBanknorth.com

April 29, 2008

Mr. Richard Knowland
Planning Division
City of Portland
389 Congress Street
Portland, ME 04101

Re: The Inn at Diamond Cove, LLC

Dear Mr. Knowland:

TD Banknorth, N.A. has reviewed preliminary financial and project information on the development to be known as The Inn at Diamond Cove.

TD Banknorth, N.A. has not issued a commitment to provide construction financing for this project. The bank would welcome the opportunity to discuss the possibility of financing the project with the project owners at some point in the future.

If you need any additional information, please call.

Sincerely,

David A. Bronson
Senior Vice President

Rick Knowland - FW: Diamond Cove

From: Ronald Ward <rnw@dwmlaw.com>
To: 'Rick Knowland ' <RWK@portlandmaine.gov>
Date: 4/29/2008 1:47 PM
Subject: FW: Diamond Cove
CC: 'Nathan Bateman' <nathan@batemanpartnersllc.com>, David Bateman <david@batemanpartnersllc.com>

Rick- attached is pdf from the architect showing the actual layout of the individual condo units, totaling 20 in all. 6 are 1 bedroom, 6 2 bedroom and 8 are 3 bedroom units. We'll answer your specific question in a separate memo.

The response to your 15 point memo of 4/23 is in processing and assembly of enclosures now.

Ronald N. Ward, Esq.
Drummond Woodsum & MacMahon
PO Box 9781
245 Commercial Street
Portland, ME 04104

207-772-1941
207-772-3627 (fax)
rward@dwmlaw.com

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IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

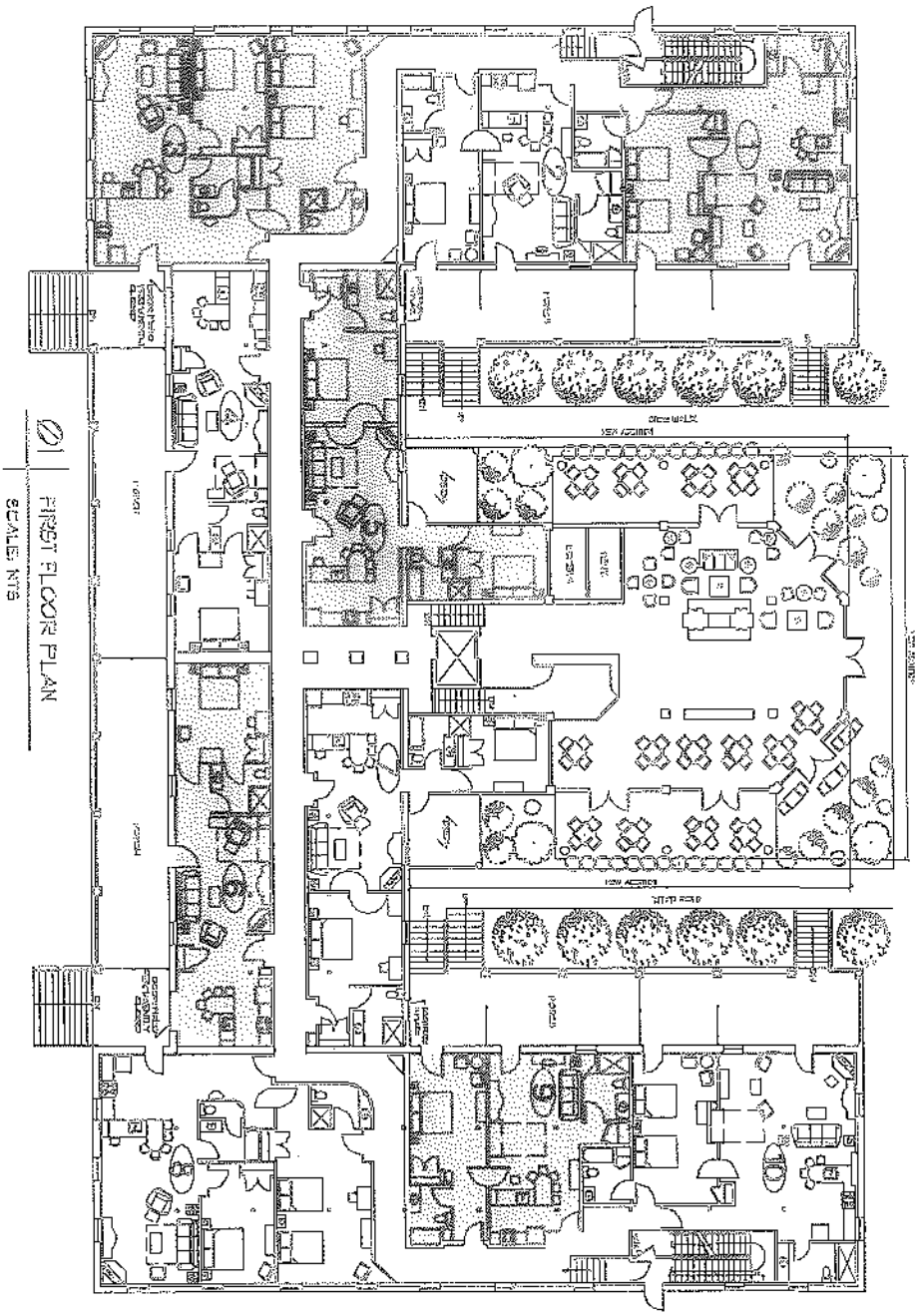
From: Nathan Bateman [mailto:nathan@batemanpartnersllc.com]
Sent: Tuesday, April 29, 2008 11:25 AM
To: Ronald Ward
Subject: FW: Diamond Cove

Nathan Bateman
Bateman Partners, LLC
245 Commercial Street
Portland, ME 04101
Tel: 207-772-2992
Fax: 207-772-1881
nathan@batemanpartnersllc.com

From: David Hickman [mailto:hickman@archetypepa.com]
Sent: Thursday, April 24, 2008 3:03 PM
To: Nathan Bateman
Subject: Diamond Cove

Sorry, please disregard the previous e-mail.

David Hickman
Archetype, P.A.
48 Union Wharf
Portland, ME 04101
Phone: (207) 772-6022
Fax: (207) 772-4056
Hickman@archetypepa.com
http://www.archetype-architects.com

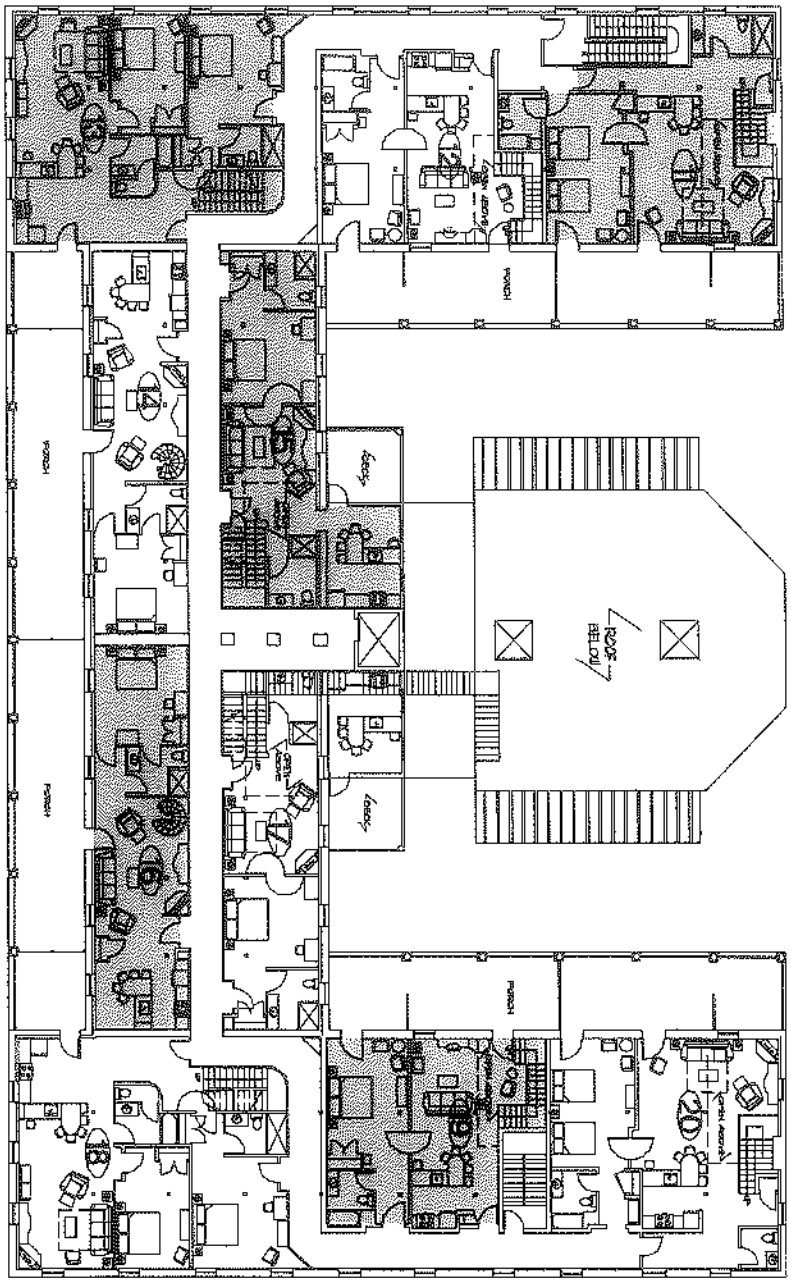


PROPOSED PLANS

The Inn at Diamond Cove, LLC

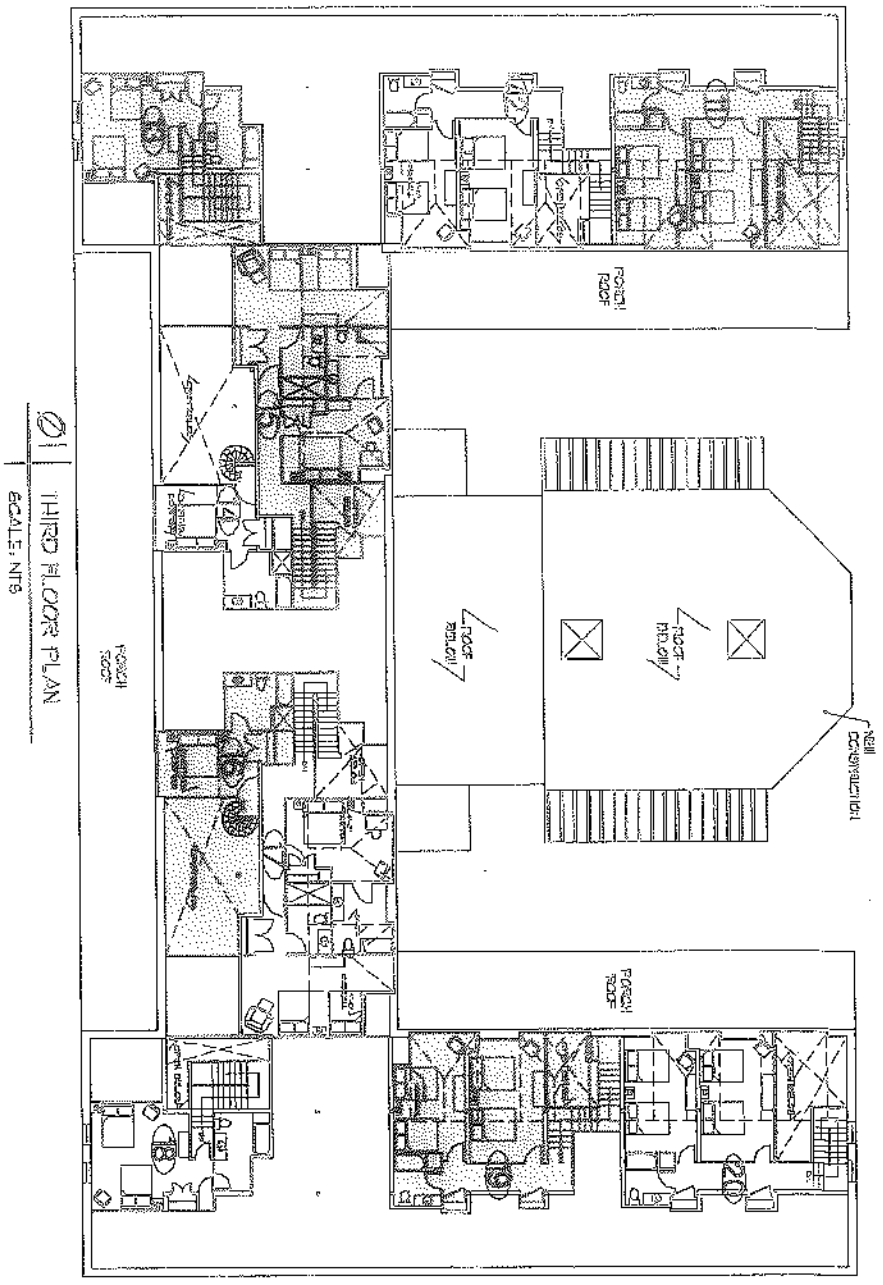
ARCHITYPE, P.A. ARCHITECTS

Bateman Partners, LLC

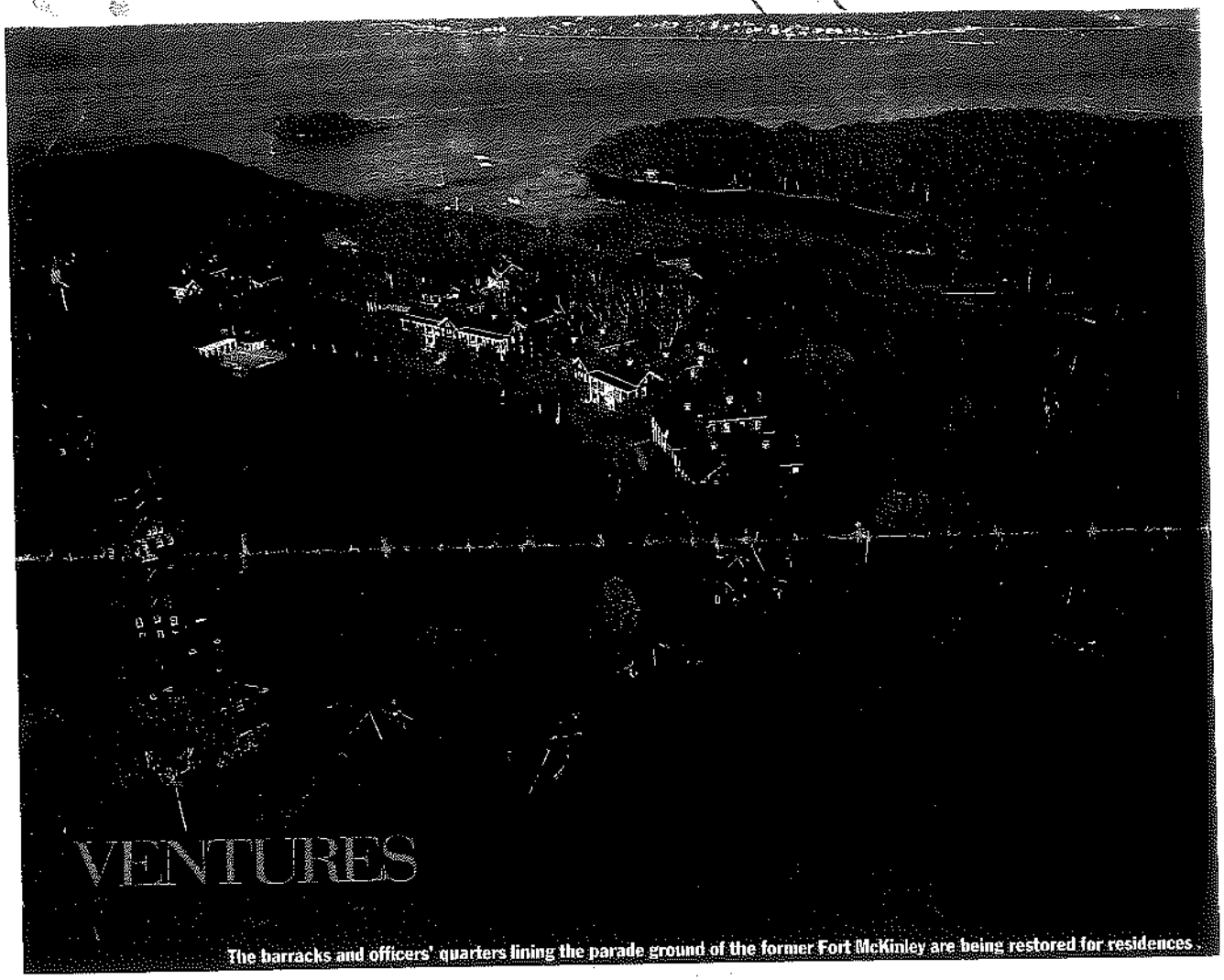


Ø1 SECOND FLOOR PLAN
SCALE: NTS

A02	PROPOSED PLANS		The Inn at Diamond Cove, LLC	ARCHETYPE, P.A. ARCHITECTS	Bayside Partners, LLC


THIRD FLOOR PLAN
SCALE: 1/8"=1'-0"
ROOF BELOW
ROOF BELOW
ROOF BELOW

See last page



The barracks and officers' quarters lining the parade ground of the former Fort McKinley are being restored for residences.

Island Gem

Imagination and persistence pay off in the conversion of a century-old Army fort near Portland, Maine, into a residential resort. By Vernon Mays

In its heyday at the turn of the century, Fort McKinley was the pride of the U.S. Army. Its cannons were dead-eye accurate and nearly impossible to spot because of the way they blended into the seaward slopes of Great Diamond Island off the coast of Portland, Maine. Some 700 soldiers manned the garrison—the nerve center of a chain of island batteries protecting the port.

But obsolescence came quickly to McKinley, which had boasted a stately parade ground ringed by Queen Anne-style officers' quarters and Colonial Revival barracks with wide porches. Retired from active service in 1949 and neglected for four decades, the gun batteries deteriorated to ruins. And as windows were broken and porches collapsed, the buildings in the residential core became just so many pieces of a military ghost town.

Then David Bateman came along. Bateman, a Portland architect-turned-real estate developer, looked at the crumpled remains of the deserted barracks and saw a wealth of possibilities. Seduced by the romantic ensemble of brick buildings around the elliptical lawn, Bateman also recognized that the arrangement of structures on the 193-acre parcel was ideally suited to a new use. "Even though it was designed for military purposes and had a very sterile thought in mind, the whole complex was wonderfully residential in its detailing," he recalls.

Now twelve years in the making, the conversion from military outpost to summer resort community is reaching critical mass at Diamond Cove, as the development is known. When completed, the community will include sixty-eight residences in restored or renovated historic buildings adjacent to the parade ground and as many as thirty-nine new houses built on waterfront lots. The appeal for buyers: the unique allure of a historic site combined with upscale amenities including a marina, a heated pool, tennis courts, beaches, a fitness room, and a gym—even two lanes of duckpins in a restored bowling alley built by the Army.

Day-trippers from Portland also have discovered the four-star Diamond's Edge restaurant, which occupies the

The Statehouse

MASSACHUSETTS BORROWS PAGE FROM PRESERVATIONIST'S HANDBOOK

Historic Massachusetts, Inc., (HMI) recently launched what its president, Arthur Bergeron, calls a "state-level Stanley Lowe program": a Bay State initiative using preservation to promote restoration and ignite community pride. Lowe, a Pittsburgh preservationist and a National Trust trustee, has earned national attention for his leadership in helping old city neighborhoods rejuvenate themselves. "He has shown how to use historic preservation as a tool for affordable housing on a major scale," observes Roberta Gratz, the author of *The Living City*. "He has shown banks how they can make money while doing what is best for their community."

HMI laid the groundwork for its program in 1994 by inviting civic and business leaders from around the state to a day-long conference. Among the attendees was Mary Claire Kennedy, the mayor of Lawrence. "When I saw Pittsburgh Mayor Tom Murphy's slide show," recalls Kennedy, "I saw amazing similarities between Pittsburgh's old neighborhoods and ours. I thought that if they can restore run-down areas, we can, too." She and local bankers volunteered to work with HMI on a statewide pilot program applying the Pittsburgh model to Massachusetts neighborhoods.

Community leaders in Lawrence settled on the rehabilitation of the historic Orange-Wheeler house as the catalyst for their first project. Decay has obscured the house's stunning architecture, but its structure remains basically sound. HMI volunteers helped a local community-development corporation to locate heirs to the estate and to acquire an option to buy the property. After being rehabilitated this spring with the help of neighborhood labor, the house will serve as headquarters for City C.O.R.E., a local branch of the national YouthBuild vocational and leadership training organization (see "We Need Love, We Need Support...," *Historic Preservation*, May/June 1993). A community policeman named Mike McGrath will live upstairs to provide extra security for the neighborhood.

HMI tapped Andres Gonzalez, a neighborhood resident working on crisis intervention for troubled children, to coordinate the project. The twenty-three-year-old former gang member was shot four years ago witnessing a dispute. "There I was, a young father lying on the ground asking a friend to take care of my child in case I died," Gonzalez says. "That got to me—and to my friends in the gang. We realized that while we were poisoning our neighborhood, little 'gang-member wannabes' saw us as role models. We got smart and left the gang."



Andres Gonzalez, upper right, and members of Lawrence, Massachusetts's City C.O.R.E encircle Officer Mike McGrath.

PETER VANDERWARKER

HMI sent Gonzalez and coordinators selected for similar projects in Chelsea, New Bedford, and the Blackstone River Valley to Pittsburgh for a firsthand view of Lowe's projects. "I was amazed by Stanley," says Gonzalez. "He took us around the older neighborhoods. Seeing how he worked with local banks, how he encouraged low-income people to take charge of their lives, how he raised his son.... He gave us a lot of pointers. From Stanley I got the idea that [neighborhood revitalization] was definitely doable."

Buoyed by the Pittsburgh experience, Gonzalez returned to Lawrence and set to work. He distributed fliers to neighborhood residents. "If you care about your neighborhood, please come to our meetings," they read. Fifteen people showed up. They formed the Orange-Wheeler Neighborhood Association, recruited more members, cleared debris from the alleys, and met regularly. The mayor sent city officials to the meetings to help solve problems as they arose. When local residents complained about drug dealers and prostitutes haunting the dark alleys, the city asked Massachusetts Electric to install lights and the city police to crack down. The association is tracking down absentee landlords and identifying those who will cooperate with the renewal effort. By enforcing building codes, the city is taking a harder line with landlords content to milk their properties while letting them rot.

To assist in the Orange-Wheeler rehabilitation, the city obtained a $50,000 grant from the Massachusetts Preservation Projects Fund, a $5-million program recently resuscitated by State Senator Robert Durand's Special Commission on Historic Preservation. If the state community-development office approves a city request for $750,000, local banks will match it and Lawrence will be able to acquire and repair other dilapidated buildings in the neighborhood. "It doesn't make sense to invest in just one property," Kennedy says. "We need to do the whole block to protect our investment."

HMI hopes to stimulate as many as forty "Stanley Lowe projects" throughout the state. Much work lies ahead in Lawrence, but the most important accomplishment—giving the neighborhood hope—has been achieved. And Gonzalez feels lucky to have a key role in the Lawrence effort: "A lot of people are depending on me for a lot of things. I'm gonna try my hardest to do this for my city and my people."

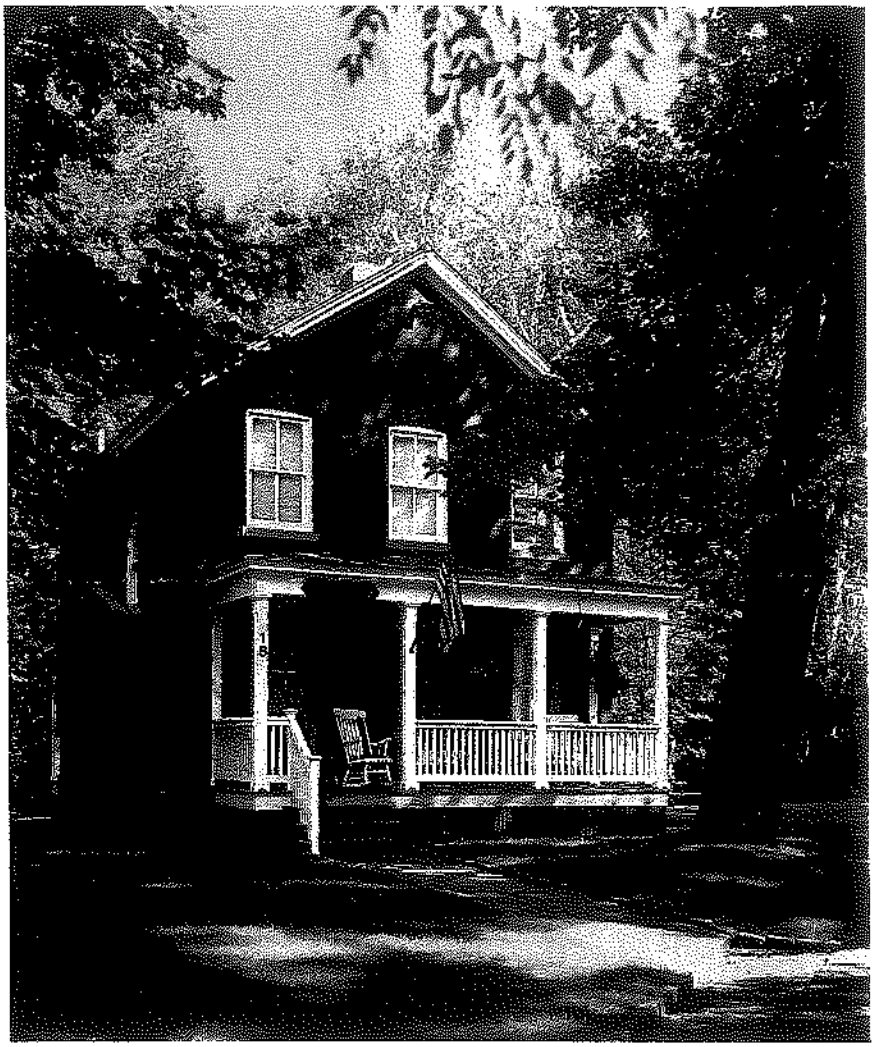
—CONSTANCE BEAUMONT

Constance Beaumont is the director of state and local policy for the National Trust.

former quartermaster's storehouse, and weekly live theater performances in a tent erected alongside a freshwater pond. It's no coincidence that this bucolic island, an easy sail from downtown Portland, has been a favorite spot for summer excursions since the early nineteenth century. Some even say that landscape painting got its start in this area when Maine artist Charles Codman set up his easel on the idyllic beaches of Diamond Cove, located at the northern end of an island shaped like a giant lobster claw. Bateman and his wife and partner, Robin, have encouraged those associations by developing an artists-in-residence program and operating the former wagon shed as a gallery for regional painters. "In the summer, it's a real bustling place," observes Bateman, who tallied 22,000 people crossing Diamond Cove's rebuilt pier during the 1995 season.

Restoring the buildings to their former brilliance has been a challenge, given the extended lack of maintenance. In some cases, the abuse was intentional. After the government sold off the property in the 1950s, the first private owner removed $300,000 worth of scrap metal from the site. Then, over the years, Portland residents treated the fort as their own private source of used building materials. "I had people offering to sell back doors and doorknobs," Bateman says. Even more threatening were plans by other developers to bulldoze the historic buildings and start from scratch. To them, the fort was a liability.

Bateman's approach was quite different. As a partner with Dictar Associates, a development group that bought the site in 1984, his first move was to have the forty-three-acre core of the fort listed in the National Register of Historic Places. Yet, despite Bateman's recognition of the fort's cultural value, not everyone was overjoyed by the plans to bring additional residents onto the island. In particular, The Island Institute, an environmental group based in Rockland, Maine, challenged the issuance of a sewage discharge permit to the project. After long delays, a settlement was reached that allowed the project to move ahead. Now Bateman calls the project "the most highly restricted residential subdivision ever approved in the state of Maine."



The 125 buildings of Fort McKinley, built of local brick, served a wide range of functions. The house shown here is the former surgeon's quarters.

"The whole environmental concern was based on what sort of development was going to occur all along the Maine coast," says Earl Shettleworth, the director of the Maine Historic Preservation Commission. "We felt the project should go forward, because it was the only way these buildings were going to be preserved. Quite frankly, they probably would not even be there today if this project had not happened."

Financial problems followed the environmental battles. In 1991 the failure of Maine Savings Bank, which held the property's mortgage, placed the project in jeopardy again. A new development team, McKinley Partners, rescued it, keeping Bateman in place as the managing partner.

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Those who come to visit are treated to twice-daily guided tours of the fort, construction on which began in 1897 when

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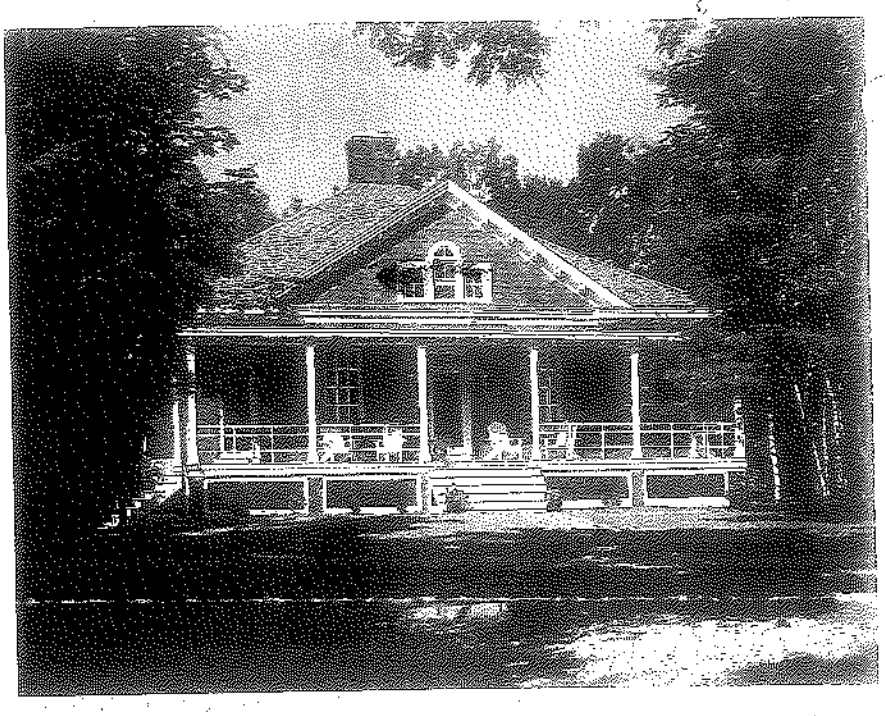

This structure, which was constructed near the parade ground as Fort McKinley's jail, has been restored for use as a single-family house.

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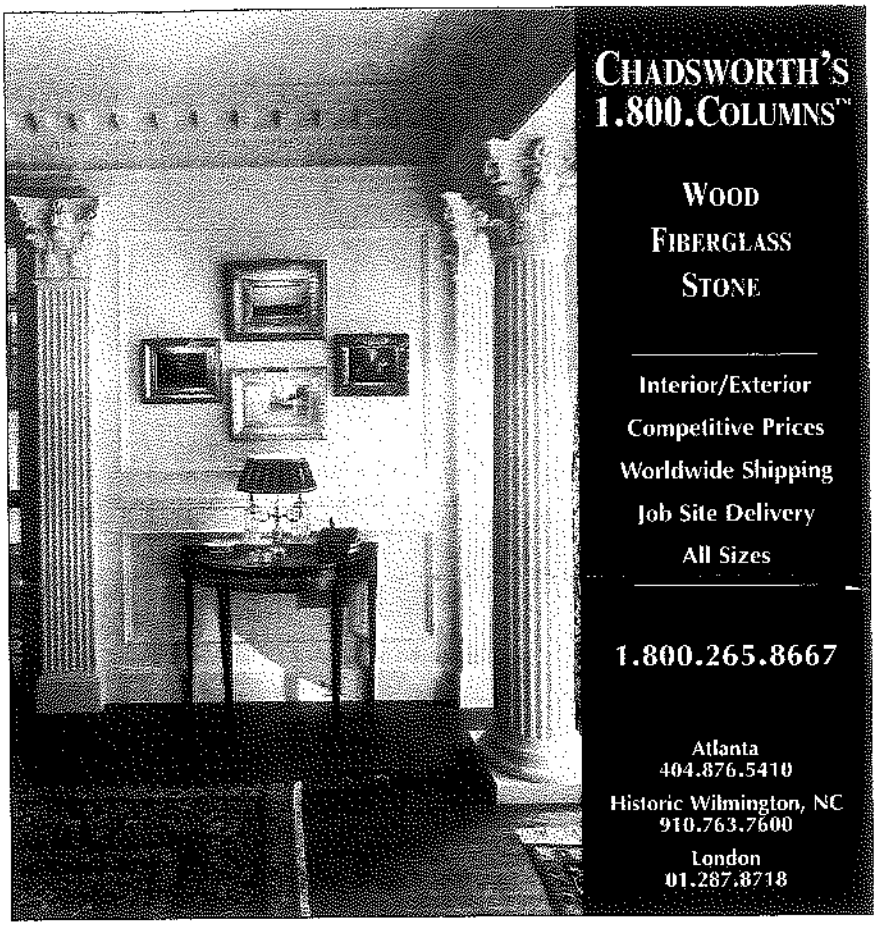
BRIAN VANDEN BRINK



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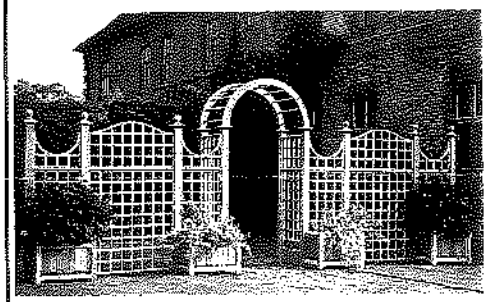

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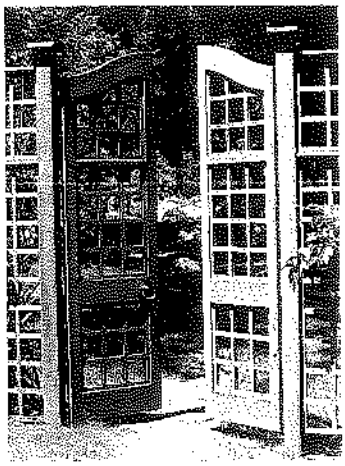

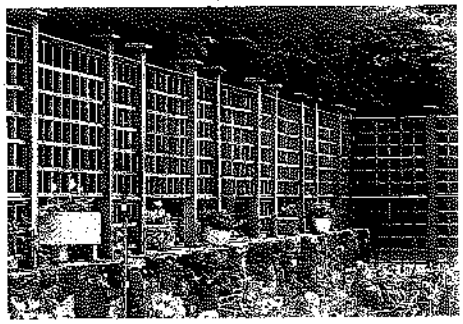

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fireplaces were retained, although all the units have been equipped with new radiant heating systems.

In the officers' quarters—which were considerably larger and appointed with more architectural detail—more effort is being made to maintain the original configuration of rooms and to restore or rebuild interior millwork. Ornate tin ceilings have been revived. And some pieces, such as dining room breakfronts, are custom-duplicated to match what had been damaged or stolen. "People had come in and literally thrown pieces out through the window," says Bateman. "Literally, outside of each home were the pieces. It turned into as much of an archaeological project as it did an architectural one to figure out what came from where."

Each building is restored as buyers come along, so that they have a voice in selecting paint colors, finishes, and appliances. Bateman operates a mill shop on site where a full-time staff manufactures new railings, rebuilds exterior columns, restores doors, and duplicates other building elements as needed.

The current population of Diamond Cove includes six year-round resident owners. Of the sixty-eight units available, forty-seven have sold. Most homeowners intend to spend summers and weekends here or make their property available as seasonal rentals. Costs of the town house units vary from $140,000 to $240,000. Officers' quarters, some of which are spacious duplexes and a handful of which are single-family houses, are valued from $260,000 to $500,000.

With buyers paying such high prices, the management at Diamond Cove goes to great lengths to strike a delicate balance between making the historic precinct accessible and guaranteeing privacy and security to homeowners. Some visitors have been offended by the polite-but-firm security personnel who patrol the complex on golf carts, but Bateman says that allowing unrestricted public access to the entire property "would have been the kiss of death." Such a liberal policy would have prevented him from saving the officers' quarters intact, he says. "We are selling them as they were originally designed. But that's a $350,000-to-$500,000 sale each time, out on a rock, in Maine, that typically attracts bargain-hunters. It's very unlikely. But we've

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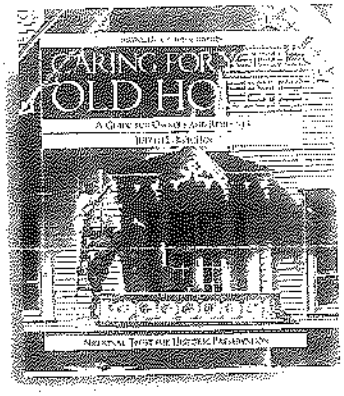

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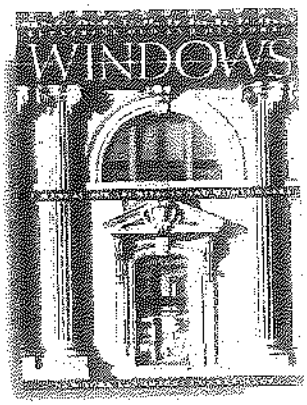

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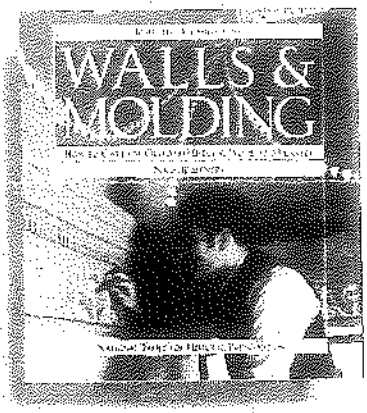

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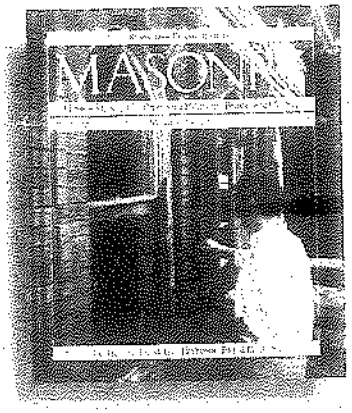

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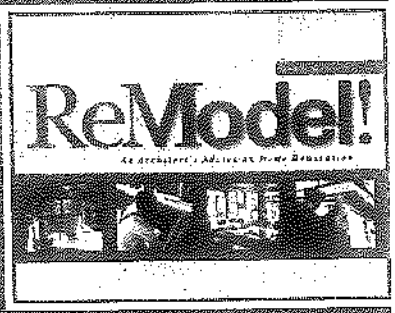

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done it and for one reason—because we absolutely set out from day one being mindful of privacy issues."

Bateman thinks the doubters will eventually come around to his way of thinking as they see results. For starters, the public facilities adjacent to the marina are being developed so that visitors can enjoy the island without feeling the need to wander up to the parade ground, which extends along a plateau eighty feet up from the waterfront. The popularity of the restaurant has spawned Stowaway's, a movable beach bar placed alongside the cove's beach. The art gallery has gained momentum. And the tent beside the freshwater pond is frequently booked for weddings and receptions.

Additionally, Casco Bay Lines, which operates ferry service from Portland to nearby islands, established a new ferry stop on the north side of Great Diamond Island to serve Diamond Cove. "It was the first time that there have been two stops on an island in Casco Bay," says Bateman. "And they didn't do it because they were philanthropists. They did it because we're an economic center."

Prospects for future improvements, if realized, will open Diamond Cove to even wider use. The public walking tour will be expanded to include the tactical as well as residential aspects of the fort. Bateman also talks about his desire to convert the former mine-storage building into a bed-and-breakfast inn with a European-style spa. On top of that, increasing use of the resort by Maine-based corporations as a setting for executive retreats has spawned perhaps the most ambitious idea: to rework the double barracks—as yet untouched—into a meeting facility with thirty-two guest rooms. The budget for that: $4.4 million.

But, after a decade of promoting big ideas with few concrete results, the developers of Diamond Cove have now made enough headway that they can talk proudly about accomplishments as well as visions. Bateman, for one, speaks as a man who believes in destiny when he recounts his first visit to Fort McKinley. "I'm not the only person who ever stood on that parade ground and said: This is a travesty. Something's got to happen," he says. "I was just probably the right person at the right time in the right place." ❖



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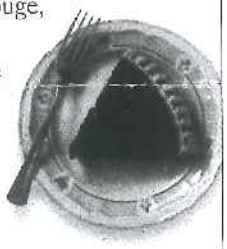

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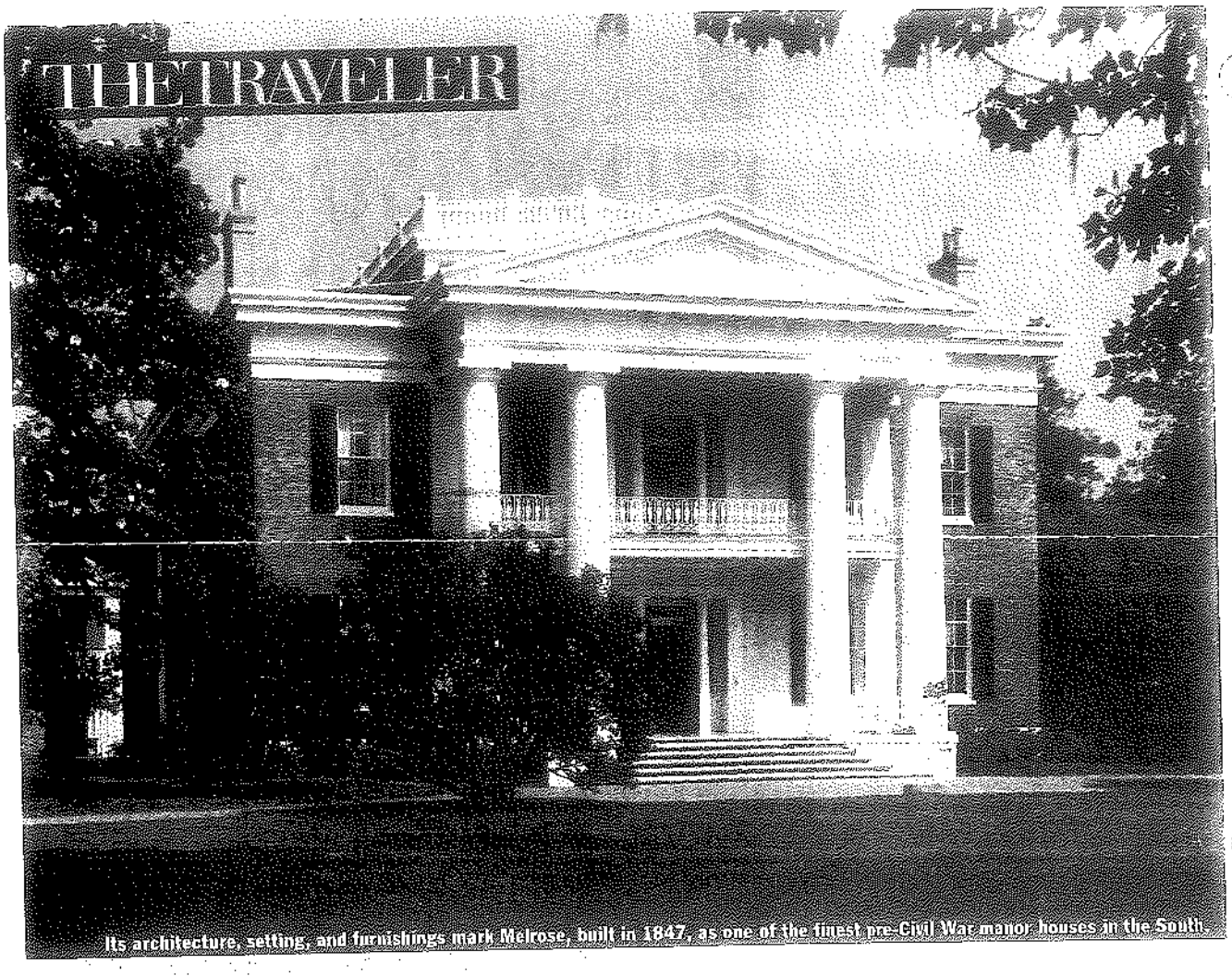

Its architecture, setting, and furnishings mark Melrose, built in 1847, as one of the finest pre-Civil War manor houses in the South.

Auntie Bellum

The richest of mind's-eye imaginings stands as reality in Natchez, the grande dame of historic cotton-country architecture. By Eddie Nickens

For nearly two centuries Natchez, Mississippi, has carefully nurtured the stereotype of the white-columned South. At the onset of the Civil War, Natchez was a town of but 6,600 souls on a bluff looming over the Mississippi River, but already it was known as an incubator of Deep South style. As early as 1920 filmmakers discovered the cotton planters' town houses and suburban villas, and ever since Natchez's grand architecture has been piped into the American consciousness as the epitome of southern antebellum life.

It is amazing how complete the picture survives even today. Cotton fields still sweep the horizon in the flatlands around Natchez, while the town is filled with grand houses. Corinthian and Ionic capitals top forests of giant columns; pedimented porticoes are as commonplace as mosquitoes. A walking tour of the town serves as a crash course in cotton-era opulence, whereas a drive to some of the outlying estates reveals houses that render Tara but a passable hovel by comparison. The Natchez of the 1990s boasts the nation's second-oldest "pilgrimage" tour of historic houses, has a bed-and-breakfast inn on practically every street corner, and surely outranks all contenders in per capita hoopskirt ownership. Even when the famous Natchez Pilgrimages are not opening the doors to some sixty private homes and house museums, more than a dozen houses are open daily. A visit to Natchez can serve as a study in the evolution of neoclassical architecture, a style that came to symbolize the entire South.

The place to begin is Auburn. Natchez cotton planters rarely lived in the archetypical manor house overlooking the plantation. Instead they built large town houses or suburban hilltop villas. On one of those knolls today a brick path tunnels beneath the bows of live oaks to the front of a large house built in a fusion of styles. In 1812 a New York-educated architect named Levi Weeks boasted in a letter that he was building the first house in the Mississippi Territory to use "the orders of Architecture." Weeks's was a seminal venture, for this red-brick mansion with two-story columns and a formal portico sent other planters scrambling for contractors.

According to Ron Miller, the execu-

PHOTOGRAPH DAVID KING GLEASON

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EARLE G. SHETTLE, WORTH, JR.
DIRECTOR

December 18, 2002

David Bateman
c/o Dictar Associates
261 Commercial Street
Portland, Maine 04101

Re: Former Hospital and Double Barracks
Fort McKinley Historic District, Portland, Maine

Dear David:

I am writing in response to your letter dated December 11, 2002 in which you have requested the Commission's preliminary input on three treatment options for the subject buildings which your committee will be exploring. These options are: 1) Renovation/Re-use; 2) Stabilize Ruins; and 3) Demolition/Removal. Both the Hospital and Double Barracks are contributing buildings in the Fort McKinley Historic District, which was listed in the National Register of Historic Places on March 21, 1985.

As you know, the Maine Department of Environmental Protection's Site Location Order dated December 10, 1986 for Phase I of the Diamond Cove development, describes the project as being comprised of the renovation of 44 buildings located in the historic district. In its Findings of Fact and Order, the MDEP concluded that it was in the public interest for these 44 buildings to be preserved and used. Furthermore, it stipulated that all renovation work was to be undertaken in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. At the time of the issuance of the permit, the plans for the renovation had been approved by the Commission. In addition to the MDEP's findings relative to the historic resources at Fort McKinley, the Commission's authority to review and approve rehabilitation work on National Register listed and eligible historic buildings and structures on the property was inserted as a Special Condition of the Federal Wastewater Discharge License for Phase I that was issued by the Environmental Protection Agency in 1989. These permits and their respective conditions remain in force to this day.

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The original MDEP permit for Phase I of the project at Fort McKinley was predicated in part on the expectation that all 44 buildings in the historic district – including the Hospital and Double Barracks – were to be renovated in accordance with plans approved by the Commission. Consequently, we believe that these two buildings must be rehabilitated, and that demolition and removal is not an option. It is our understanding that some effort has been made in the past to stabilize and mothball the buildings until such time that a renovation plan can be developed. In the meantime, we recommend that the Association routinely monitor their status, and take any action that may be necessary to prevent further deterioration.

Please do not hesitate to contact Kirk Mohney of my staff if you have any additional questions pertaining to this matter.

Sincerely,

Earle G. Shettleworth, Jr.
State Historic Preservation Officer

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PHOTO: VANDEN BRINK

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E-MAIL inquiry@islandinstitute.org
www.islandinstitute.org

November 23, 2009

Dear Mayor Duson, upcoming Mayor Mavadones and the City of Portland Planning Board;

The Island Institute appreciates the hard work of the Portland City Council and Planning Board this past year in helping to ensure that adequate attention was given to the development of the Double Barracks building on Great Diamond Island. The Island Institute was able to work closely with the Conservation Law Foundation and the Friends of Casco Bay to ensure that the developer's site order application contained language that addressed environmental concerns regarding waste water discharge. The Maine Department of Environmental Protection changed some of the language to create a higher level of accountability and oversight to ensure the health of the bay and the island. While stopping the development was never the Island Institute's objective, it was important to ensure that the original covenants signed by the Island Institute, Conservation Law Foundation, Maine Audubon, and Casco Bay Islands Development Association were upheld throughout Great Diamond Island's Phase II development plan.

It has recently been brought to our attention that the original covenants are being threatened again. The Diamond Cove residents are interested in increasing their access to the village side for greater accessibility to Casco Bay Lines. The original covenants addressed cross-island travel and traffic concerns, and it was decided at that time to limit the access, and to keep the gate between the two communities locked except for limited travel. This has worked well to preserve the nature of the village side these past 25 years. When the original redevelopment of Fort McKinley was proposed 25 years ago, the village residents recognized a need to ensure that adequate measures be taken to maintain the integrity of the island and to ensure that environmental impact be taken into consideration.

The Island Institute has been informed that some of the Diamond Cove residents have suggested that an island-wide vote be taken to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. Great Diamond Island's population has increased 300% in the past 25 years, and the village side is now outnumbered by the Diamond Cove side. This vote would negate the purpose of the development restraints, and could create a precedence that would undermine the original covenants put into place to protect the environment and integrity of the island.

The Island Institute would appreciate the continued support from the City of Portland in upholding the original covenants signed by the Island Institute, Maine Audubon, Conservation Law Foundation and the Casco Bay Islands Development Association. The original development plans called for water transportation for the Diamond Cove side to be entirely from Diamond Cove property. Opening the gate will provide increased access and traffic on the village side and would not be in compliance with the original agreements.

Thank you for your continued attention and support.

Sincerely,

Philip Conkling
President

Thank you for your attention to this letter.

Sincerely,

John C. Bannon

JCB/lnl
Enclosures

cc: Tony and Judy Savastano (w/encl)

Indeed, DCHA actively *encourages* such violations, as is demonstrated by the following directions, posted on the Cove's website[3], to persons interested in visiting Diamond Cove:

> *If you arrive at the State pier*, the Association shuttle bus will meet you and deliver you and your belongings to your destination at the Cove. The shuttle bus also meets ferries arriving at the Cove, and can deliver routine luggage and groceries, as well as larger items for a fee. When you are ready to depart, shuttle service is also available to deliver you to the appropriate pier for departing boats. Call the number for Security/RAs (see ***DCHA Contacts***) and leave your phone number for a call-back. Be sure to call in advance, as some boats may be crowded and require *2* trips with the *shuttle bus.*

(emphasis added). A person reading those directions would have no reason to suspect that they were limited to using the Diamond Cove Pier, but would be under the impression that DCHA will provide shuttle bus service to the State Pier whenever a visitor chooses to arrive or depart from the Pier.

The Savastanos are not asking the Planning Board to take their word about traffic congestion and road damage caused by DCHA's "common transportation vehicles." I will provide photographs of these circumstances at the workshop.

To my knowledge, DCHA has not submitted, with its application for site plan approval, any transportation plan or other information plan showing how it proposes to ensure that occupants of the Inn at Diamond Cove will (a) use the Diamond Cove pier exclusively for all water transportation to and from the Portland mainland, and (b) refrain entirely from using the road system within the Cottage Community, as is required by the 2008 Amendment. Without such information, the Planning Board should at least deem the site plan application incomplete and table further review of that application until such information is received.

The Savastanos, joined by many other residents of the Cottage Community, urge the Planning Board to proceed with extra care in reviewing the current application to ensure that it does not cause already unworkable traffic problems from deteriorating further.

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[3] http://www.diamondcove.com/directions.html

On or about March 9, 1989, Diamond Cove Associates and the other signatories amended the agreement by, among other things, deleting the word "shuttle" from the parenthetical, "(shuttle vans)," thereby causing the agreement to refer only to "'taxies' (vans)." DCA entered into that agreement for the purpose of inducing the natural resource organizations to withdraw their objection to a DEP NPDES approval for Phase II of the Project. Thus, DCHA is contractually prohibited from using any vehicle that could be construed as a "shuttle" to transport persons from Diamond Cove to the State Pier, and from the context, only in emergency situations. The terms "taxi" or "van"certainly does not include the vehicles that DCHA principally uses for so-called "common transportation:" namely, two busses, each having a gross vehicle weight of about 9600 pounds, that are capable of transporting 20 passengers plus their accompanying luggage.[2]

So does the Casco Bay Island Development Association, which was a party to another agreement with Diamond Cove Associates dated April 12, 1991. The Association, like the Island Institute, has recently written a letter to the City Council urging that the City protect the integrity of the original covenants made in the 1985 CZA. It is my understanding that the Association has forwarded a copy of that letter to the Planning Board as well.

Q. What happens when the City fails to enforce the conditions of the 1985 CZA?

A. *Severe vehicular congestion at the State Pier, damage to the fragile roads within the Cottage Community, and erosion of the isthmus between the State Pier and the Island.*

Because the City, its boards, and agencies have overlooked the significance of § 8 of the 1985 CZA, dealing with water transportation, DCHA has rapidly increased its fleet of so-called "common transportation vehicles," including the large busses described above, and sends those vehicles several times a day to pick up and discharge Diamond Cove residents and guests who are impermissibly using the State Pier for water transportation to the Cove.

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[2] The Island Institute feels so strongly about preserving the conditions of the March 2, 1989 Agreement that it has assigned to the Savastanos the Institute's rights to enforce the language of that agreement in *Savastano v. Diamond Cove Homeowners Association,* Civil Action Docket No. RE-09-077 (Superior Court for Cumberland County).

transportation via the State Pier. The Planning Board must be careful to forbid DCHA from allowing the owners and tenants of the hotelminiums to obtain water transportation at the State Pier using DCHA's "common transportation" vehicles.

Q. **Does anybody care about the answers to these questions?**

A. *Yes.*

Obviously, the Savastanos care. They have been so adversely affected by the travel of DCHA busses over Nancy Lane, just a few feet from their home, that they have filed suit to enforce the restrictions on water and ground transportation contained in the 1985 CZA. *Savastano v. Diamond Cove Homeowners Association,* Civil Action Docket No. RE-09-077 (Superior Court for Cumberland County).

So do the many members of the Diamond Island Association, which has directed its attorney to attempt to preserve the original covenants contained in the 1985 CZA and certain agreements made by Diamond Cove Associates, without which it would have been unable to develop Fort McKinley.

So does the Island Institute. Attached to this correspondence is a letter from the President of the Island Institute to the City Council and the Planning Board, urging you to uphold the covenants in the 1985 CZA and in contracts that Diamond Cove Associates made with several natural resource organizations, including the Island Institute. One of those contracts, dated March 2, 1989, was between Diamond Cove Associates, the Maine Audubon Society, Conservation Law Foundation, and Island Institute. That agreement provides, among other things, the following:

> DCA agrees that no motor vehicles of any kind (automobiles, golf carts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances and "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. ...Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones.

Cove except Buildings 46 and 47 and their ancillary service area remain subject to § 8 of the 1985 CZA.

Moreover, although § 5 of the 2008 Amendment contained an independent regulation of "transportation services" governing the buildings and ancillary service area described above, § 5 of the 2008 amendment version modified § 8 of the 1985 CZA only in the following respects:

> The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from, and between the Portland waterfront and the Diamond Cove pier (or barge landing where appropriate for visitors and/or cargo) ~~via a suitable docking facility on the Premises and~~ on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service ~~is or at any time~~ becomes unavailable, the Owner/Manager shall, ~~at its own expense,~~ provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

(additions are underlined; deletions are ~~struck through~~). The remainder of § 5 of the 2008 amendment prohibits Inn owners, guests, and employees from driving motorized vehicles through the Cottage Community to the State Pier, except "in the event of an emergency."

Q. Why do these questions matter?

A. ***Because DCHA cannot allow patrons and unit owners of the Inn at Diamond Cove to use its "common transportation vehicles" to obtain water transportation at the State Pier.***

The 2008 amendment requires the owner/manager of the Inn to "direct" and "advise" its owners and guests that they must comply with § 5 of the 2008 amendment. We anticipate an argument by DCHA that that language does not preclude Inn patrons from using the "common transportation vehicles" maintained by DCHA to reach the State Pier. However, even if that interpretation were correct, as was just demonstrated, DCHA itself cannot use its "common transportation" vehicles to allow its residents to obtain water

> between the Portland waterfront and Diamond Cove via *a suitable docking facility on the Premises* and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, *the Owner shall, at its own expense, provide an equivalent alternative to such service*, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

(emphasis added).[1] Section 9 of the 1985 CZA did allow DCHA to maintain "common transportation vehicles" within Diamond Cove. However, read in conjunction with Section 8, those common transportation vehicles could not be used to facilitate water transportation at any location other than "a suitable docking facility *on the Premises*." Not the State Pier. Ever.

Q: **Did the 2004 Amendment to the 1985 CZA Alter § 8 of the 1985 CZA?**

A: *No.*

The 2004 amendment to the 1985 CZA amended §§ 9 and 13 only. Section 8 remained unchanged. Hence, as of 2004, DCHA still could not use common transportation vehicles to allow DCHA residents and guests to obtain water transportation via the State Pier. The only docking facility that DCHA residents and guests were authorized to use was "a suitable docking facility *on the Premises*."

Q: **Did the 2008 Amendment to the 1985 CZA, Which Authorized Development of the Inn at Diamond Cove, Alter § 8 of the 1985 CZA?**

A: *No.*

The 2008 Amendment to the 1985 CZA altered the conditions of the 1985 CZA only with respect to Building 46 (the "Double Barracks"), Building 49 (the "Hospital"), and "the ancillary service area." It applied to no other buildings or land within Diamond Cove. Hence, every portion of Diamond

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[1] Section 9 of the 1985 CZA did allow DCHA to maintain "common transportation vehicles" within the Diamond Cove. However, read in conjunction with Section 8 of the 1985 CZA, those common transportation vehicles could not be used to transport residents to and from the State Pier.

MURRAY PLUMB MURRAY

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January 22, 2010

Portland Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

RE: Inn at Diamond Cove Site Plan Application / Concerns of Tony and Judy Savastano

Dear Members of the Board:

This office represents Anthony and Judy Savastano, who own property abutting Nancy Lane and the State Pier parcel on Great Diamond Island. As a general matter, the Savastanos do not oppose the historic preservation of the Double Barracks and the Hospital for a more productive use such as the proposed Inn at Diamond Cove (hereafter the "Inn"). However, the Savastanos are vitally concerned with preventing any increase in the adverse traffic impacts from the Fort McKinley development.

I have structured this letter as a series of questions and answers that shed light on some factors that the Diamond Cove Homeowners' Association (hereafter "DCHA"), the City Council, and the Planning Board have overlooked to this date. Indeed, a provision that precludes DCHA (and in turn, the Inn) from sending motor vehicles to pick up and discharge Diamond Cove residents at the State Pier has been staring us in the face for close to 25 years, but gone unnoticed.

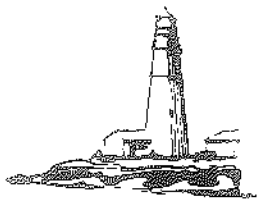
Q: When can DCHA send motor vehicles to the State Pier to pick up and discharge persons whose destination is Diamond Cove?

A. *Never.*

This answer may come as a surprise to persons who, for the past 25 years, have focused exclusively on Section 9 of the original "Amendment to Portland City Code, § 14-49 (Zoning Map), Re: Conditional Rezoning of Ft. McKinley" in 1985 (hereafter the "1985 CZA"). However, Section 8 of the 1985 CZA provides as follows:

> 8. Water transportation service. The Owner shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from, and

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

Dear Mayor Mavodones, Portland City Councilors, & Planning Board,

Casco Bay Island Development Association is an island advocacy organization with a fifty year history of protecting the waters, islands, and communities of Casco Bay. As we start a new year, we thank the Portland City Council and Planning Board for their work over the past year to ensure that the development of the Double Barracks building on Great Diamond Island addressed environmental and community concerns. Many times over the past decade, we have communicated, through both letters and appearances at City Council Meetings, our concern that the original covenants signed by CBIDA, Island Institute, Conservation Law Foundation, and Maine Audubon - the agreements that allowed any development at the historic Diamond Cove site - were upheld throughout the development plan. The concerns we had twenty-five years ago are just as important and relevant – if not more so – today.

In order to preserve the physical environment of the island and the nature of the historic cottage community, the original covenants limited cross-island vehicle traffic between the Diamond Cove and the village/cottage community. Planners realized that the condominium development would greatly increase the density of population on a small island and, by nature of this fact alone, would threaten the environment and the integrity of the 128-year-old cottage community. Indeed, Great Diamond's population has increased 300% in the past twenty-five years, and the residents of the cottage community are outnumbered by the residents of Diamond Cove.

CBIDA has been informed that the original covenants are being questioned again. Some residents of Diamond Cove have proposed that an island-wide vote be conducted to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. While that all sounds very democratic, the reality is that the original covenants and conditions of development were imposed as democratic safeguards to protect the minority from a "simple" vote such as this. Planners recognized that the larger condominium development - without regulations - would eventually overwhelm and destroy the uniqueness of its neighbors. A majority vote of the islanders as a decision-making process is an ill-advised idea.

As Philip Conkling, president of the Island Institute, said in his book, Islands In Time (1999, pages 30-32): **"There was (and is) much to be said for renovating the historic structures of the fort; the question was really how much of the rest of the island might have to be sacrificed in the process."**
Indeed, the words still ring true today.

CBIDA is committed to the idea that two very different cultures and communities can peacefully co-exist on one small island, if they have respect for each other and for the laws and agreements which protect them. It is our fervent hope for 2010 that Great Diamond Islanders can be good neighbors, interact socially, behave with dignity, and enjoy the incredible beauty and history of their island, without compromising the integrity of the fragile island environment and while preserving a 128-year-old community. CBIDA hopes that the City of Portland will continue to support the original covenants regarding cross-boundary traffic, water transportation, and decision-making. Please contact us if we can be of assistance.

Sincerely,

Robert R. Laughlin
President

August 23, 2009

Dear Mayor Duson, Portland City Council Members and City Officials,

We wish to thank you all for meeting with us at Elwell Hall on Friday. I regret that the DIA turn out was rather sparse, but many of our members have work obligations that make weekday meetings difficult to attend.

We were disappointed that our Diamond Cove neighbors still feel that the conditions of development of Diamond Cove are unjust or out of date. Nothing could be further from the truth.

Some 25 years ago we were faced with the largest development in the history of Maine islands and worked diligently with the interveners to insure that the impact to our cherished life style would be minimized. We were a majority then, but recognized that laws must be put in place to protect our interests when this massive development went forward making us a minority. The island population has grown by 300%. We are now indeed the minority.

Some at the Cove suggested calling for an island wide vote on the validity of the Conditions of Development of DCHA. This defeats the purpose of development restraint and it is a dangerous precedent to set. We need the City's help in continued enforcement of the current laws, not in negotiating a change to those laws. Your help will save us all from costly litigation. The Diamond Island Association is committed to preserving our life style now and has been consistently for 25 years..

If the Diamond Cove residents wish to improve their transportation options, we suggest that they do so by negotiation with Casco Bay Lines or some other ferry service provider, not by expanding their use of the facilities on the south side of the island. This would be consistent with the original development plans which called for water transportation entirely from Cove property.

Thanks you again for coming to Great Diamond and please help us to maintain the lifestyle in our cottage community by continuing the enforcement of the existing laws.

Best Regards,
The Diamond Island Association Executive Commmittee:
Judy Sedgewick
Mike Harris
Hal Soederberg
Nancy Gleason



ISLAND INSTITUTE

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November 23, 2009

Dear Mayor Duson, upcoming Mayor Mavadones and the City of Portland Planning Board;

The Island Institute appreciates the hard work of the Portland City Council and Planning Board this past year in helping to ensure that adequate attention was given to the development of the Double Barracks building on Great Diamond Island. The Island Institute was able to work closely with the Conservation Law Foundation and the Friends of Casco Bay to ensure that the developer's site order application contained language that addressed environmental concerns regarding waste water discharge. The Maine Department of Environmental Protection changed some of the language to create a higher level of accountability and oversight to ensure the health of the bay and the island. While stopping the development was never the Island Institute's objective, it was important to ensure that the original covenants signed by the Island Institute, Conservation Law Foundation, Maine Audubon, and Casco Bay Islands Development Association were upheld throughout Great Diamond Island's Phase II development plan.

It has recently been brought to our attention that the original covenants are being threatened again. The Diamond Cove residents are interested in increasing their access to the village side for greater accessibility to Casco Bay Lines. The original covenants addressed cross-island travel and traffic concerns, and it was decided at that time to limit the access, and to keep the gate between the two communities locked except for limited travel. This has worked well to preserve the nature of the village side these past 25 years. When the original redevelopment of Fort McKinley was proposed 25 years ago, the village residents recognized a need to ensure that adequate measures be taken to maintain the integrity of the island and to ensure that environmental impact be taken into consideration.

The Island Institute has been informed that some of the Diamond Cove residents have suggested that an island-wide vote be taken to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. Great Diamond Island's population has increased 300% in the past 25 years, and the village side is now outnumbered by the Diamond Cove side. This vote would negate the purpose of the development restraints, and could create a precedence that would undermine the original covenants put into place to protect the environment and integrity of the island.

The Island Institute would appreciate the continued support from the City of Portland in upholding the original covenants signed by the Island Institute, Maine Audubon, Conservation Law Foundation and the Casco Bay Islands Development Association. The original development plans called for water transportation for the Diamond Cove side to be entirely from Diamond Cove property. Opening the gate will provide increased access and traffic on the village side and would not be in compliance with the original agreements.

Thank you for your continued attention and support.

Sincerely,

Philip Conkling
President

(2) Inn at Diamond Cove employees and operational supplies; and (3) Inn at Diamond Cove owners and guests and their personal effects, so that they will enter and exit the Island through the Diamond Cove pier, and will not be allowed to use the shuttle buses that currently operate in violation of existing permits, approvals and agreements

Please also require the applicant to provide a written commitment from Casco Bay Island Transit District to provide year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) or from an "equivalent alternative to such service if it is unavailable" as required by the City Council order amending the zoning to allow this project.

In addition, we ask the Planning Board to condition any approval of this proposed development on it meeting the requirements of its September 23, 2009 DEP Site Location of Development Act Amendment, including the requirement that "All solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine, ..." We also ask the Board to ensure that its approval of this proposed development is consistent with the requirements of that DEP Amendment.

Finally, DIA is concerned that the Planning Board is reviewing this application when the property appears to be the subject of several lawsuits -- one involving the status of the barge landing on Great Diamond Island, another involving the legality of the vote by DCHA to allow this application to even come before the Board and the last involving the use of Nancy Lane by DCHA's shuttle buses and other DCHA vehicles -- and when the 2004 traffic plan required by the City Council still remains unaccepted by the City. The pending litigation in particular raises questions about applicants' standing to have their application heard by the Board.

Thank you for your consideration of DIA's comments regarding this application.

Sincerely,

James N. Katsiaficas

JNK:pal

cc: Paul Gleason, Chair, Island Development Committee, Diamond Island Association

Moreover,

> all such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the project site to the public pier at the southerly end of Great Diamond Island. All owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The Owner/Manager shall conspicuously post, and keep posted in each hotelminium units at the Premises, a written notice of the applicable ordinances, rules and regulations.

When DIA first expressed its concerns about existing traffic and fears about proposed traffic generated by this development to the Planning Board in June 2008, Board members assured DIA members and the public that the Board would address those concerns at the time that an application for review and approval of the Inn at Diamond Cove came before it. In particular, at last January's workshop on this application, Board Member David Silk suggested that transportation be a focus of one of the upcoming Board workshops on the application, and Board Chair William Hall recommended that the applicant provide explicit transportation plans for transportation both to and from the Island and within the Island, from the proposed Inn at Diamond Cove to the Diamond Cove ferry terminal.

That time is now. We have reviewed the recent application materials submitted by DCHA and the Inn at Diamond Cove LLC, and find no comprehensive plan regarding transportation to and from the mainland and transportation on the Island for this proposed development As DIA members have explained to the Planning Board and the City Council, despite the clear requirement in existing DEP orders and City approvals that the existing Diamond Cove development's employees, workers, guests and owners not use the southerly pier for access, supplies and materials, vehicles that are the equivalent of airport shuttle buses currently drive from the existing Diamond Cove down narrow Island dirt roads to the southerly pier several times each day. We believe this activity already violates the existing Diamond Cove development's DEP and City permits and approvals, City ordinances and the agreements among environmental organizations and the Diamond Cove development. DIA, the Island Institute and Casco Bay Island Development Association all are on record with letters and comments (attached) requesting compliance with the original development's approvals and agreements

Please do not make this bad situation worse by creating an opportunity for guests, employees, construction workers and maintenance people from the proposed Inn at Diamond Cove to use the southerly pier for general access.

Please require the applicants to submit a detailed, workable and enforceable transportation plan setting forth the exact methods they will use to transport to and from the Inn at Diamond Cove site the following: (1) construction workers and construction materials, equipment and supplies;

PERKINS THOMPSON
ATTORNEYS & COUNSELORS AT LAW

ESTABLISHED 1871

ONE CANAL PLAZA
PO BOX 426
PORTLAND ME 04112
TEL 207.774.2635
FAX 207.871.8026

January 22, 2010
Hand-Delivery

Portland Planning Board
City of Portland
389 Congress Street
Portland, ME 04101

Re: Inn at Diamond Cove Site Plan Application

Dear Board Members:

This Firm represents Diamond Island Association (DIA), and I am submitting these comments on behalf of DIA regarding the application by Diamond Cove Homeowner's Association (DCHA) and the Inn at Diamond Cove LLC for site plan approval. In advance of the January 26, 2010 workshop scheduled for this application, DIA raises the following concerns.

Throughout the Portland City Council's conditional zone amendment process in 2008, throughout the Department of Environmental Protection's (DEP) review process and throughout the Planning Board review process as part of the conditional rezoning and this site plan application, DIA has expressed its concern about transportation services for this project. Prior DEP approvals and the City's land use approvals for the existing development, along with agreements among the original developer and environmental organizations, make clear that the existing Diamond Cove development was to be a self-contained entity that would use the Diamond Cove pier for access, and would not use the southerly pier on the Island except in a rare emergency.

The City Council reinforced this understanding in its September 2008 "Order Authorizing Amendment to Conditional Zone" for this property. Section 5 of that Order, "Transportation Services," states that the Owner/Manager of the Inn at Diamond Cove Premises is to provide "year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier," or an "equivalent alternative," is to "provide suitable ground transportation from points of disembarkment within the Project to the hotelminiums" and

> shall not operate motorized ground transportation off the Ft. McKinley's project site and the Owner/Manager, its guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the pier at the south end of the island except in the event of an emergency.

DOUGLAS S. CARR
PHILIP C. HUNT
JOHN S. UPTON
PEGGY L. MCGEHEE
MELISSA HANLEY MURPHY
JOHN A. CRALDO
JOHN A. HOBSON
JAMES N. KATSIAFICAS
TIMOTHY P. BENOIT
J. GORDON SCANNELL, JR.
FRED W. BOPP III
MARK P. SNOW
WILLIAM J. SHEILS
DAVID B. MCCONNELL
PAUL D. PETROPAOLI
HOPE CREAL JACOBSEN
RANDY J. CRESWELL
JULIANNE C. RAY
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ANTHONY J. MANHART
STEPHANIE A. WILLIAMS
PETER J. MCDONELL
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SARA N. MOPPIN
JEFFREY A. COHEN
SHAWN R. LEYDEN

OF COUNSEL
THOMAS SCHULTEN
OWEN W. WELLS
ANDREW A. CALDOT
JENNIFER H. PINCUS

From: Donna Schwartz <dishrs@maine.rr.com>
To: RWK@portlandmaine.gov
Date: 1/22/2010 10:17 AM
Subject: the inn @DC

dear rick,
i, like many other homeowners at diamond cove, have emailed you several times before in the last few years supporting the development at diamond cove.
i hope this is the last time i will have to voice my support and that the inn will finally and without further delay be well on it's way to development!

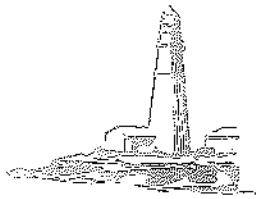
as you may also know the inn received some resistance from a few residence from the southern side of the island - why?
who really knows their motives only there are a handful of people that are just plain negative!
their expressed concern being that there will be too much traffic on the state pier which is bogus - the developers have repeatedly stated that their operation of the inn will have little or no impact on them whatsoever!

secondly, it also received opposition from a few homeowners at diamond cove who banded together w/the few folks on the southern side, collectively known as the "friends of great diamond island", and brought suit against the development.
these few diamond cove homeowners are all pretty much packing it in and leaving diamond cove as they have their homes up for sale.
believe me when i tell you that the remaining residents will not be unhappy for this exodus of these few residents off island! it can only get better!

the revenue generated by the inn will give us the additional financial assistance much needed to enable us to continue to improve and to better maintain the infrastructure of this unique historic property of diamond cove!

thank you.
most sincerely,
donna schwartz
the schoolhouse@diamond cove

Casco Bay Island Development Association, Inc
PO Box 94, Cliff Island, Maine 04019



January 6, 2010

Dear Mayor Mavodones, Portland City Councilors, & Planning Board,

Casco Bay Island Development Association is an island advocacy organization with a fifty year history of protecting the waters, islands, and communities of Casco Bay. As we start a new year, we thank the Portland City Council and Planning Board for their work over the past year to ensure that the development of the Double Barracks building on Great Diamond Island addressed environmental and community concerns. Many times over the past decade, we have communicated, through both letters and appearances at City Council Meetings, our concern that the original covenants signed by CBIDA, Island Institute, Conservation Law Foundation, and Maine Audubon - the agreements that allowed any development at the historic Diamond Cove site - were upheld throughout the development plan. The concerns we had twenty-five years ago are just as important and relevant – if not more so – today.

In order to preserve the physical environment of the island and the nature of the historic cottage community, the original covenants limited cross-island vehicle traffic between the Diamond Cove and the village/cottage community. Planners realized that the condominium development would greatly increase the density of population on a small island and, by nature of this fact alone, would threaten the environment and the integrity of the 128-year-old cottage community. Indeed, Great Diamond's population has increased 300% in the past twenty-five years, and the residents of the cottage community are outnumbered by the residents of Diamond Cove.

CBIDA has been informed that the original covenants are being questioned again. Some residents of Diamond Cove have proposed that an island-wide vote be conducted to question the validity of the Conditions of Development of the Diamond Cove Homeowners Association. While that all sounds very democratic, the reality is that the original covenants and conditions of development were imposed as democratic safeguards to protect the minority from a "simple" vote such as this. Planners recognized that the larger condominium development - without regulations - would eventually overwhelm and destroy the uniqueness of its neighbors. A majority vote of the islanders as a decision-making process is an ill-advised idea.

As Philip Conkling, president of the Island Institute, said in his book, Islands In Time (1999, pages 30-32): "There was (and is) much to be said for renovating the historic structures of the fort; the question was really how much of the rest of the island might have to be sacrificed in the process."
Indeed, the words still ring true today.

CBIDA is committed to the idea that two very different cultures and communities can peacefully co-exist on one small island, if they have respect for each other and for the laws and agreements which protect them. It is our fervent hope for 2010 that Great Diamond Islanders can be good neighbors, interact socially, behave with dignity, and enjoy the incredible beauty and history of their island, without compromising the integrity of the fragile island environment and while preserving a 128-year-old community. CBIDA hopes that the City of Portland will continue to support the original covenants regarding cross-boundary traffic, water transportation, and decision-making. Please contact us if we can be of assistance.

Sincerely,

Robert R. Laughlin
President

The meeting will be held:
Tuesday, January 26, 2010
3:30 p.m.
Council Chambers, 2nd Floor, City Hall

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you wish to submit written comments, address them to Richard Knowland, Senior Planner , Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101, contact by phone at 874-8725 or e-mail at rwk@portlandmaine.gov To access agenda materials on-line, please visit the following web address on or after the Friday preceding the meeting date: http://www.portlandmaine.gov/planning.htm

Jennifer Dorr, Office Manager
Planning and Urban Development
City of Portland
389 Congress St., 4th Floor
Portland ME 04101
(207)874-8719
jmy@portlandmaine.gov
(207)874-8719 jmy@portlandmaine.gov
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months, and does not intend to seek or expect to receive investment banking compensation from any of the issuers discussed in this report in the next three (3) months. Auerbach Grayson & Company has not acted as manager or co-manager of any public offering of securities issued by any of the companies discussed in this report in the past three (3) years. Neither Auerbach Grayson & Company nor any of its officers own options, rights or warrants to purchase any of the securities of the issuers whose securities are discussed in this report. Auerbach Grayson & Company does not make a market in any of the securities discussed in this report, and it and its associated persons do not stand ready to buy from or sell to any customers, as principal, any of the securities discussed in this report.

From: Donna Schwartz [mailto:dlshrs@maine.rr.com]
Sent: Thursday, January 21, 2010 09:08
To: Bobby Spark
Cc: Irene Maas; Tom Maas; Ann Riley; jackie kenly; Schafer Bean; ethel bean; walter vackar; Linda Tracy <ltracydc@aol.com>; Matt Hoffner; Kate Hoffner; Tracy Sommers; Susan Welton; Wendy Taggart; Joe Taggart; Laurie Shea; Harmon Smith; fmbrafalgar@yahoo.com; David & Cathy clem; Cathy & Ryan Rickarby; Macomber Peter; Deborah Wolak; Kenneth & Judith Wood; muemix@aol.com; jsoschultze@hotmail.com; Hannah Burge; Burge, John; Vin & Jane Purpura; Rob Pfaffmann; Lisa Pfaffmann; Michael Murphy; Marie Martin; sue@bocakinseys.net; Santo & Lisa Sampino; Michael & Annette Kane; Richard & Jane Cullen; Derek Devine
Subject: Fwd: From the DCHA Board...

dear friends ...
i know a lot but i can never think of it so please forgive me if i have left someone out who we all know would want to be supportive - also, i do not have everyone's email address - so please do email them and ask for their support!
barbara has already sent a great email! i plan on physically being there and i hope that those of you that are here will try and do so as well!
PALEEZE ... let's flood them w/supportive emails at the email address as noted below <rwk@portlandmaine.gov>
MUCHO GRACIAS!
donna

Begin forwarded message:

From: "Chuck Homler" <chomler@phosnixmanagementcompany.com>
Date: January 15, 2010 2:08:56 PM EST
Subject: From the DCHA Board...

Planning Board Workshop

>>> Jennifer Dorr 01/15 12:31 PM >>>
18 McKinley Court - Great Diamond Island
The Portland Planning Board will hold a workshop to consider a proposal by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island. The renovations consist of 20 condominium/hotel units (with 16 lockout units) to be known as The Inn at Diamond Cove. A building addition of 2,881 sq. ft. is proposed to the Inn building. A swimming pool and cabana is also proposed. The project will be reviewed for compliance with Site Plan and Subdivision Standards of the Land Use Code. Zoning for the site is IR-3 conditional zoning. The workshop is an opportunity for the applicant to present a proposal to the Planning Board in an informal session, which is open to the public. Public comments will be taken at this meeting.

Rick Knowland - Fwd: The Inn @Diamond Cove

From: Donna Schwartz <dlshrs@maine.rr.com>
To: Rick Knowland <rwk@portlandmaine.gov>
Date: 1/21/2010 1:15 PM
Subject: Fwd: The Inn @Diamond Cove
CC: John Burge <jburge@agco.com>, Hannah Burge <hsburge@optonline.net>

dear rick,
this is from neighbor's of mine on diamond cove, john & hannah burge, who gave me permission to forward this onto you.
thank you!
donna schwartz - the schoolhouse @diamond cove

Begin forwarded message:

> **From:** "Burge, John" <jburge@agco.com>
> **Date:** January 21, 2010 9:31:42 AM EST
> **To:** "Donna Schwartz" <dlshrs@maine.rr.com>,
> **Subject: RE: The Inn@Diamond cove**
>
> Hannah and I are fully supportive of the inn. We feel it is important in order to help carry the costs by spreading it across more units. It will increase exposure and help property values by getting additional people interested in owning in Diamond Cove. Unfortunately, we will not be able to attend. Feel free to read this at the meeting, if you think it will help. We are the owners of 9-B if you need our address (sorry, I am not sure about the new number).
>
> JB
>
> John Burge
> Director of Sales, Emerging Markets
>
> AUERBACH GRAYSON
> Auerbach Grayson & Company
> 25 West 45th Street
> New York, NY 10036 USA
> 1-212-453-3528
> 1-917-699-2545 (cell)
> 1-212-557-9066
> jburge@agco.com
> www.agco.com

This report has been prepared by our correspondent named above on the date set forth above. This report was not prepared by Auerbach Grayson & Company. The correspondent named above is not an associated person of Auerbach Grayson & Company and its research analysts are not members of the Financial Industry Regulatory Authority and are not subject to the FINRA Rules on Research Analysts and Research Reports and the attendant restrictions and required disclosures required by that rule.[If the report is to be distributed to more than major U. S. Institutional Investors Auerbach Grayson & Company accepts responsibility for the contents of this report as provided for in SEC Releases and SEC staff no-action letters.] All persons receiving this report and wishing to buy or sell any of the securities discussed herein should do so through a representative of Auerbach Grayson & Company. Auerbach Grayson & Company and its affiliates do not own one per cent (1%) or more of any class of equity securities issued by any of the companies discussed in this report. Auerbach Grayson & Company and its affiliates have not received any investment banking compensation from any of the issuers discussed in this report in the past twelve

From: Harmon Smith <hws11@yahoo.com>
To: RWK@portlandmaine.gov
Date: 1/21/2010 10:17 AM
Subject: double barracks

Gentlemen:

In the thirteen years we have owned at Diamond Cove, we have watched the double barracks deteriorate to the point where it is not only an eyesore, but we believe a danger as well. Renovating this building will eliminate these problems, and we hope will also make DC more appealing as a place where people will want to rent as well as buy property. Despite the opposition by a small but very vocal group, the vast majority of us at DC believe that this project will do nothing but enhance all that is beautiful in our community. Also, because of the limited number of proposed units, we feel that the impact will in no way negatively affect us. Last, but certainly not least, is the additional income to a homeowner's association which solely needs some financial relief.

Donna and Harmon Smith
Unit 9A

Rick Knowland - Support for the Inn at Diamond Cove

From: ROB PFAFFMANN <rob@pfaffmann.com>
To: <rwk@portlandmaine.gov>
Date: 1/21/2010 9:47 AM
Subject: Support for the Inn at Diamond Cove
CC: Lisa <lisa@pfaffmann.com>

To The Planning Commission
City of Portland

My wife and I own an office quarters on the parade ground, and put our blood sweat and own hands into the renovation of unit 6B 144 McKinley Court. We fully support the development of 18 McKinley Court -by The Inn at Diamond Cove, LLC. to renovate the Double Barracks building at Diamond Cove, Great Diamond Island.

I am an architect and planner and specialize in historic preservation. I am mindful of the impact concerns of my neighbors and I am convinced that there will be no impact on the quality of island life. Putting the building on the tax rolls is a benefit to all citizens of Portland and will provide more visitor to access to this special place.

We value privacy and quiet but we also value neighborly values and the need to bring Diamond Cove more fully into the culture and community of the Casco Bay Islands.

Why we are "from away" we hope to resettle in Portland soon and contribute to the vitality of Portland.

Thank You!

--

Robert S. Pfaffmann, AIA, AICP
Lisa Haabestad
144 McKinley Court
Great Diamond Island

PFAFFMANN + ASSOCIATES
223 4th Avenue
Pittsburgh, PA 15222
412.471.2470 office
412.398.7546 cell
http://www.pfaffmann.com//news.html

Rick Knowland - Suppot of Inn at Diamond Cove

From: <barbarastanley51@aol.com>
To: <rwk@portlandmaine.gov>
Date: 1/17/2010 10:07 AM
Subject: Suppot of Inn at Diamond Cove

Dear Mr. Knowland,

We have been property owners at Diamond Cove since 1997 and until recently, when we sold one, owned three ocean front lots. We lived on the island as part of the year round community for ten years. During this time we saw many changes take place at Diamond Cove. Some of these changes were not favorable to the overall climate, but there were many positive aspects to life at Diamond Cove. By far, the most exciting and positive change that we have seen in some time is the proposed development of the Inn at Diamond Cove.

As great supporters of the wonderful and well designed plan to remove the eye sore of the Double Barracks, while reestablishing what will be a thriving and compatible use of the property, we give our heartfelt support to this endeavor. The economic boost to our island and city is only one of many benefits that its development will bring to the community.

We urge you and your committees to support the proposed plan. It has ben carefully and cautiously planned and we welcome it's development and success.

Sincerely,

Barbara and James Stanley
Lots 26 & 28

Rick Knowland - Inn at Diamond Cove

From: "Richard A. Molyneux" <richardamolyneux@yahoo.com>
To: <rwk@portlandmaine.gov>
Date: 1/15/2010 4:32 PM
Subject: Inn at Diamond Cove

Dear Mr. Knowland,

I am a property owner on Diamond Cove, and will unfortunately not be in town on the 26th for the Planning Board Review of the project involving the renovation of the former double barracks building. However, I want to let you know that I believe that this is a project that is in the best interest of the residents of Diamond Cove, Great Diamond Island, Portland, the State of Maine, and the United States. While this may sound like hyperbole, the fact is this is the biggest building in a historic set of buildings that represents one of the only remaining, intact, Endicott Batteries in the United States. To not approve this renovation will be the death knell for this building and major piece of history, and as each day passes, the deterioration in this structure is pushing it close to the point where it cannot be saved. If you have not physically seen it and its location, its loss would be like missing one of you front teeth as it is prominently located at one end of the parade ground.

The renovation also brings with it much needed economic vitality to Diamond Cove, including its property values, its general store, its restaurant, its marina, Casco Bay Lines, and the City of Portland. The project was approved by a super-majority of Diamond Cove homeowners almost three years ago. The developer, by virtue of having done all of the original historic renovation at Diamond Cove, is perhaps the most qualified developer in the US to do this.

Please help all these benefits become a reality by approving this project without further delay.

Sincerely,

Richard Molyneux
51 Spring Cove Lane
Diamond Cove, ME

ATTACHMENT 6

From: Richard McGoldrick <rmcgoldrick@comprop-1.com>
To: "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>
Date: 1/15/2010 1:56 PM
Subject: Inn at Diamond Cove

Rick,I will be out of town for the Workshop hearing,but wAnted to express my support for this proposal.
We built our home at 16 west shore drive in 1995,after having spent a year in one of the Parade Ground units. Along with the vast majority of our neighbors we voted overwhelmingly to support this development.
I trust the Planning Board will consider approving this proposal on it's merits, as the fullfillment of the original concept of this community.
Thank you, Richard McGoldrick 16 West Shore Dr. Great Diamond Island
Sent from my iPhone Richard McGoldrick 2073474450

ATT. 2-B-1

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

September 9, 2009

Diamond Cove Homeowners Assoc and The Inn at Diamond Cove, LLC
Attn: Aaron Bateman
P.O. Box 759
Saco, ME 04072

RE: **Final Permit:** Maine Waste Discharge License (WDL) Application #W006931-5C-F-R
Maine Pollutant Discharge Elimination System Permit #ME0023248

Dear Mssrs. Whelan and Bateman:

Enclosed please find a copy of your **final** MEPDES permit/Maine Waste Discharge License which was approved by the Department of Environmental Protection. Please read the permit/license and its attached conditions carefully. You must follow the conditions in the order to satisfy the requirements of law. Any discharge not receiving adequate treatment is in violation of State Law and is subject to enforcement action.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision.*"

We would like to make you aware of the fact that your monthly Discharge Monitoring Reports (DMR) may not reflect the revisions in this permitting action for several months. However, you are required to report applicable test results for parameters required by this permitting action that do not appear on the DMR. Please see the attached April 2003 O&M Newsletter article regarding this matter.

If you have any questions regarding the matter, please feel free to call me at 287-3901.

Sincerely,

Michael Demarest
Division of Water Quality Management
Bureau of Land and Water Quality

Enc. Final Permit

cc: Stuart Rose, DEP/SMRO
Mary Beth Richardson SMRO
Robert Whelan, President, DCHA
Aaron Bateman, Phoenix Mgmt.
Joseph Laverriere, P.E

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, ME 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

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PRESQUE ISLE
1235 CENTRAL DR., SKYWAY PK.
PRESQUE ISLE, ME 04769-2094
(207) 764-6477
FAX: (207) 764-1507

Amy Fitzpatrick, DMR
Gail Wipplehauser, DMR
Robert Laughlin, Casco Bay Island Development Association
Paul Gleason
Mary Cerullo, Asst. Director; Friends of Casco Bay
Philip Conkling, President; Island Institute
Ross A. Cudlitz, LSE, P.E.
Calcagni, Anthony
Jon Carman, JMC Wastewater Services

2-E-3

DEPARTMENT ORDER

IN THE MATTER OF

DIAMOND COVE HOMEOWNERS ASSOC AND	)	MAINE POLLUTANT DISCHARGE
THE INN AT DIAMOND COVE, LLC	)	ELIMINATION SYSTEM PERMIT
PORTLAND, CUMBERLAND COUNTY, MAINE	)	AND
OVERBOARD DISCHARGE	)	WASTE DISCHARGE
MEPDES #ME0023248	)	LICENSE
#W006931-5C-F-R APPROVAL	)	**TRANSFER AND RENEWAL**

Pursuant to the provisions of the *Federal Water Pollution Control Act*, Title 33 USC, Section 1251, et seq., *Water pollution control*, 38 M.R.S.A. § 414-A and *Overboard discharges: licenses and abandonment*, 06-096 CMR 596 (last amended November 27, 2004), the Department of Environmental Protection (Department) has considered the application of the DIAMOND COVE HOMEOWNERS ASSOC (DCHA) and THE INN AT DIAMOND COVE, LLC (Inn) (collectively, applicants or permitees) with its supportive data, agency review comments, and the related material on file and FINDS THE FOLLOWING FACTS:

APPLICATION SUMMARY

A. The applicants have submitted an application to the Department for the renewal and transfer of Waste Discharge License WDL #W006931-5C-E-R from McKinley Partners Ltd. Partnership and the DCHA to their names. The applicants also propose to modify the permit to reflect plans for the redevelopment of the "Barracks" into a condominium/hotel. The applicants propose to institute improvements to the wastewater collection infrastructure to reduce infiltration and inflow as part of the application.

B. WDL #W006931-5C-E-R, issued to the McKinley Partners and the DCHA October 14, 2005, authorized the year-round overboard discharge (OBD) of a monthly average of no more than 35,000 gallons per day of secondary treated sanitary wastewater to the Atlantic Ocean at Casco Bay, Class SB. WDL #W006931-5C-E-R is due to expire on October 14, 2010.

C. On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and permit #ME0023248 (same as the NPDES permit) will be utilized as the primary reference number for the Diamond Cove wastewater treatment facility.

SUMMARY

A. **This permitting action is similar to the 10/14/2005 Permit action in that it is;**

1. Carrying forward the monthly-average discharge flow limitation of 35,000 gpd;
2. Carrying forward the 30 mg/L monthly average, 45 mg/L weekly average and 50 mg/L daily maximum technology-based concentration limits for biochemical oxygen demand (BOD_5) and total suspended solids (TSS);
3. Carrying forward the 8.8 lbs/day monthly average, 13 lbs/day weekly average and 15 lbs/day daily maximum technology-based mass limits for BOD_5 and TSS;
4. Carrying forward the monthly average technology-based concentration limits for fecal coliform bacteria;
5. Carrying forward the daily maximum technology-based concentration limitations for total residual chlorine (TRC) of 1.0 mg/L.

6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for settleable solids (SS); and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

B. This permitting action is dissimilar to the 10/14/2005 Permit action in that it is:

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30].
2. Authorizing the introduction of domestic wastewater to the OBD treatment system resulting from the redevelopment of the barracks into a 46-bedroom hotel/condominium.
3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3.
4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6.
5. Requiring rehabilitation of the remaining 1,340 linear feet of non-rehabilitated wastewater conduit associated with this Permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this Permit, whichever occurs first.
6. Requiring The Inn at Diamond Cove, LLC to cap off the sewer connection to the hospital prior to habitation at the Inn.
7. Requiring monitoring of the daily discharge as a weekly average (record only).
8. Requiring updates to the Operation and Maintenance Plan (O&M Plan) to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP).

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated June 9, 2009 *(rev. 9/9/09)*, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

A. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

B. The provisions of the State's antidegradation policy as described in the *Water classification program*, 38 M.R.S.A., Section 464(4)(F), will be met, in that:

1. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
2. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
3. The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
4. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
5. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

C. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in *Water pollution control*, 38 M.R.S.A., §414-A(1)(D).

D. The overboard discharge system was in continuing existence for the 12 months preceding June 1, 1987. The redevelopment of the barracks and hospital are existing sources in that they were connected to the wastewater disposal system and approved for redevelopment as part of *Phase I* development in Department Site Location Order #L-013160-87/03-A-N on December 10, 1986.

E. A publicly owned sewer line is not located on or abutting land owned or controlled by the applicants or is not available for the applicants' use.

F. The discharge is not located within the boundaries of a sanitary district or sewer district.

G. The Inn's Licensed Site Evaluator/Professional Engineer has determined that there is not a subsurface alternative for the Barracks, but has found there to be a feasible alternative for the Hospital, both of which have or will have changed owners since September 13, 2003, the effective date of *Waste discharge licenses* 38 M.R.S.A. §413.3.

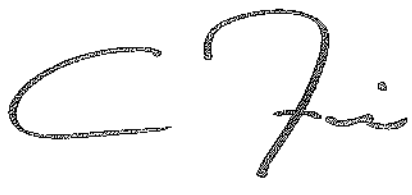
H. The proposed development will not cause exceedances of the 35,000 gpd monthly average volume limit.

I. The discharge from the existing development is primarily domestic in both strength and character. The discharge from the rehabilitation of the "Barracks" will be domestic in strength and character.

ACTION

THEREFORE, the Department APPROVES the application of the DIAMOND COVE HOMEOWNERS ASSOC. AND THE INN AT DIAMOND COVE, LLC, transferring to their name WDL #W006931-5C-E-R and authorizing the year-round discharge of no more than 35,000 gallons per day (monthly average) of treated sanitary wastewater into CASCO BAY, Class SB, in PORTLAND Maine; subject to the following conditions and all applicable standards and regulations.

1. "*Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable to All Permits,*" revised July 1, 2002, copy attached.
2. The attached Special Conditions, including any effluent limitations and monitoring requirements.
3. This permit expires five (5) years from the date of signature below.
4. The amount of effluent being discharged and the number of months the discharge occurs can not be increased in accordance with *Classification of Maine Waters*, 38 M.R.S.A. §464, sub-§4(A)(6).
5. Wastewater disposal is limited to the existing active development and that resulting from the redevelopment of the "Barracks" into a 46 bedroom commercial residential facility. Influent from the proposed pool and from the "Hospital" are specifically excluded from discharge through the existing OBD.



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.09.15 12:00:56 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES
Date of initial receipt of application: 12/31/2008
Date of application acceptance: 1/13/2009

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001

1. The permitees are authorized to discharge secondary treated wastewaters from Outfall #001 to Casco Bay, Class SB. Such discharges shall be limited and monitored by the permitees as specified below:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
Parameter	Monthly Average as specified	Weekly Average as specified (5)	Daily Maximum as specified	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	35,000 gpd	Report (gpd)	Report (gpd) *[07]*		—	—	Continuous *[99/99]*	Recorder *[RC]*
Biochemical Oxygen Demand (1) (BOD_5) *[00310]*	8.8 lbs./day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Total Suspended Solids (TSS) (1) *[00530]*	8.8 lbs/day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Settleable Solids *[00545]*	—	—	—	—	—	0.3 ml/L *[25]*	1/Month *[01/30]* (2)	Grab *[GR]*
Fecal Coliform Bacteria (3) *[31633]*	—	—	—	15/100 ml *[13]*	—	50/100 ml *[13]*	1/Week *[01/07]*	Grab *[GR]*
Total Residual Chlorine *[50060]* (4)	—	—		—	—	1.0 mg/L *[19]*	5/Week *[05/07]*	Grab *[GR]*
pH (Std. Unit) *[00400]*	—	—	—	—	—	6.0 - 9.0 SU *[12]*	1/Week *[05/07]*	Grab *[GR]*

The italicized numeric values bracketed in the table above and on the following pages are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMR's)

Footnotes:

Sampling – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Human Services.

1. *Percent Removal – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids.* The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L.
2. The monitoring frequency for SS has been revised from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
3. Fecal coliform bacteria – The limits and monitoring requirements are in effect on a seasonal basis, to be implemented no later than May 15 and be discontinued no earlier than September 30 of each year.
4. Total Chlorine Residual (TRC) – TRC is required in any month the effluent is chlorinated.
5. Weekly average flows that exceed 35,000 gpd will prompt the permitee(s) to implement provisions in the Wet Weather Management Plan *(see Special Condition J)*.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time that would impair the usages designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.
3. The discharge shall not impart color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. Notwithstanding specific conditions of this permit, the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. DISINFECTION

An approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized, followed by a dechlorination system if the total residual chlorine (TRC) cannot be met by dissipation in the detention tank. At no time may the TRC in the effluent shall cause any demonstrable harm to aquatic life in the receiving waters. The dose of chlorine applied shall be sufficient to leave a TRC concentration that will effectively reduce bacteria to levels below those specified in Special Condition A, *"Effluent Limitations and Monitoring Requirements."*

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a **Grade II** certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permitee(s) may engage the services of the contract operator.

E. UNAUTHORIZED DISCHARGES

The permitees are authorized to discharge only in accordance with the terms and conditions of this permit and only from the existing outfall. Discharges of wastewater from any other point source are not authorized under this permit, but must be reported in accordance with Standard Condition B(5), *Bypasses,* of this permit.

This permit specifically excludes introduction of wastewater directly or indirectly from the redevelopment of the Hospital and the proposed Inn swimming pool. This permit authorizes the inclusion of wastewater resulting from the general practice of hotels and inns to have kitchen facilities to support a continental breakfast, and the proposed cabana to serve beverages and light snacks for their guests. This permit does not authorize the inclusion of wastewater from any non-domestic sources or activities such as restaurant facilities within the Inn or the pool.

F. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the wastewater collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system.

SPECIAL CONDITIONS

C. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

Maine Department of Environmental Protection
Bureau of Land and Water Quality
OBD Inspection Program
17 State House Station
Augusta, Maine 04333-0017

H. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permitees shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:

1. The quality and quantity of wastewater introduced to the system; and
2. Any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

I. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

On or before March 8, 2014, prior to permit transfer or transfer of the property occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

The Department may not grant approval for a permit transfer if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a permit renewal if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permitees funding for the removal of the discharge.

J. OPERATION & MAINTENANCE (O&M) PLAN

This facility shall maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permitees shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permitees to achieve compliance with the conditions of this permit.

By December 31, 2009, the permitees shall establish a "Wet Weather Management Plan" as part of the O & M plan. This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during the events.

SPECIAL CONDITIONS

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permitees shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permitees shall submit the updated O&M Plan to their Department inspector for review and comment.

K. TREATMENT SYSTEM REPAIRS AND MAINTENANCE

Prior to habitation of the "Barracks" and final reconnection of the "Barracks" to the OBD, or by March 8, 2012, whichever occurs first, the permitees shall refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, permanently disconnect the "Hospital" from the sewer collection system and cap off that end of the sewer to exclude any inflow and infiltration from the Hospital leg of the sewer, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and 83E-B40-4, and replace/raise to grade the manhole casting adjacent to Unit #83E-260-26A *[PCS Code 04599]*.

L. SEPTIC TANKS

1. Septic tanks and other treatment tanks shall be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permitees shall maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs shall be maintained on site at all times and made available to Department personnel upon request.
2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The licensee shall keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

M. REOPENING OF PERMIT FOR MODIFICATIONS

If new site-specific information or any other pertinent information is gathered during the term of this permit, the Department may, at anytime and with notice to the permitees, modify this permit to:

(a) include effluent limits necessary to control specific pollutants where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded.

(b) impose or change monitoring requirements or limitations based on new information;

(c) require elimination of the discharge when an alternative form of wastewater disposal is feasible. The Department will require termination of the discharge when grant funds are made available for elimination of the discharge.

N. SEVERABILITY

In the event that any provision or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court

2-E-10

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND MAINE WASTE DISCHARGE LICENSE
FACT SHEET

Date: June 9, 2009
Revised: September 1, 2009

PERMIT NUMBER: ME0023248
LICENSE NUMBER: W006931-5C-F-R
NAME AND ADDRESS OF APPLICANTS

Diamond Cove Homeowners Association
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

The Inn at Diamond Cove, LLC
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

COUNTY: Cumberland County

NAME AND ADDRESS WHERE DISCHARGE OCCURS:
Great Diamond Island
Portland, Maine 04109

RECEIVING WATER AND CLASSIFICATION: Casco Bay, Class SB

COGNIZANT OFFICIAL(S) AND TELEPHONE NUMBERS:

Diamond Cove Homeowners Association Attn: Robert Whelan Position: President Telephone: Email:bwhelan@whelanandcompany.com	The Inn at Diamond Cove, LLC c/o Phoenix Mgmt Co. Attn: Aaron Bateman P.O. Box 759, Saco, Maine 04101 Telephone: (207) 775-1121 Email: abateman@phoenixmanagementcompany.com

1. APPLICATION SUMMARY:

A. Application - The Diamond Cove Homeowners Assoc (DCHA) and The Inn at Diamond Cove, LLC (Inn) (collectively; the applicants or permitees) have submitted an application to the Department to transfer and modify WDL #W006931-5C-E-R, which was issued on October 14, 2005 and expires on October 14, 2010. The 10/14/2005 WDL authorized the year-round discharge of up to 35,000 gallons per day (as a monthly average) of secondary treated sanitary wastewater to Casco Bay, Class SB, in Portland, Maine (See Attachment A of this Fact Sheet for location map).

B. Source - Wastewater is generated by Phase I development of Department Site Location Order #L-013160-87/03-A-N. This development, located on a 193.4-acre portion of Great Diamond Island, consists of 44 buildings. Of the buildings, 36 were to be converted to 134 housing units; five were to be commercial uses, and two for recreational uses. To date

SPECIAL CONDITIONS

all but four of the 36 buildings have been renovated: Housing units 83F-690-69 (Devine) and 83F-700-70 (Devine), the "Barracks" and the "Hospital."

2. MODIFICATIONS REQUESTED:

The applicants are requesting the permit be issued to reflect the full ownership by the previously licensed DCHA, and the inclusion of the wastewater resulting from the redevelopment by the Inn of the "Barracks" as previously authorized as part of *Phase I* development in Department Site Location Order #L-013160-87/03-A-N (Site Order) on December 10, 1986. Although the current proposal is for development as a hotel/condominium, and the Site Order is for a residential use, the wastewater is domestic-like in strength and character. The Department's Division of Water Quality Management (DWQM) is not the licensing authority determining the ultimate use of the structures beyond consistency with the 1986 Site Order.

3. PERMIT SUMMARY:

A. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and permit #ME0023248 (same as the NPDES permit application number) will be utilized as the primary reference number for the Diamond Cove wastewater treatment facility.

B. Terms and Conditions:

This permitting action is similar to the 10/14/2005 permit action in that it is;

1. Carrying forward the monthly-average discharge flow limitation of 35,000 gpd;
2. Carrying forward the 30 mg/L monthly average, 45 mg/L weekly average and 50 mg/L daily maximum technology-based concentration limits for BOD_5 and TSS;
3. Carrying forward the 8.8 lbs/day monthly average, 13 lbs/day weekly average and 15 lbs/day daily maximum technology-based mass limits for BOD_5 and TSS;
4. Carrying forward the monthly average technology based concentration limits for fecal coliform bacteria;
5. Carrying forward the monthly average and daily maximum technology-based concentration limitations for total residual chlorine (TRC) of 1.0 mg/L.
6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for SS; and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

This permitting action is dissimilar to the 10/14/2005 permit action in that it is;

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
2. Authorizing the introduction of wastewater to the OBD treatment system resulting from the redevelopment of the "Barracks" into a 46-bedroom hotel/condominium by The Inn at Diamond Cove, LLC (Inn). Both the "Barracks" and the "Hospital: were acquired by the City of Portland, and will now be deeded to The Inn at Diamond Cove, LLC per the Purchase and Sales Agreement dated May 4, 2007. *Waste discharge licenses* 38 M.R.S.A. §413.3 requires a Licensed Site Evaluator/Professional Engineer to conduct a site evaluation prior to transfer of a facility served by an OBD. The transferee must replace the OBD using an alternative system) if there is a feasible

SPECIAL CONDITIONS

3. PERMIT SUMMARY (continued)

alternative. The Inns' LSF found no alternative to the use of the OBD by the "Barracks." Sufficient treatment capacity remains for connection of the "Barracks" to the existing OBD.

3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3. There is a feasible alternative to use of the existing OBD treatment. That capacity is not sufficient for use by the "Barracks." Additionally, the existing treatment works does not have sufficient treatment capacity to accept wastewater resulting from the future and subsequent redevelopment of the "Hospital."

4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6. The 1986 Site Order did not authorize a second pool. Therefore, connection of the pool to the OBD, would constitute an additional source of discharge and is prohibited.

5. Requiring rehabilitation by the permitees of the remaining 1,340 linear feet of remaining non-rehabilitated wastewater conduit associated with this permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this permit, whichever occurs first. Although the 35,455-gpd design flow (daily maximum) from the existing development, unrehabilitated Units 83F-690-69, 83F-700-70, and the proposed Inn exceeds the 35,000-gpd discharge volume limit as a daily maximum, it will not cause exceedances of the monthly average. However, the estimated numbers are sufficiently close to warrant additional measures to assure compliance with the discharge volume limit in inclement seasons.

6. Requiring the permitees to cap off the sewer connection to the hospital prior to habitation at the Inn or within 30 months of the effective date of this permit, whichever occurs first. The permitees have stated that the Hospital's roof is in disrepair and that leg of the sewer collection has been identified as a significant contributor of I/I.

7. Requiring monitoring of the discharge as a weekly average (record only). The intent of this provision is to give the permitees' treatment system operators crucial data to make treatment decisions, including implementation of a wet weather management plan to direct the staff on how to operate the facility effectively during periods of high flow. This would also give the Department additional data to make future licensing and monitoring decisions, including potential reinstatement of the original 40,000 gpd (weekly average) discharge volume limit. Should the Department observe a pattern of exceedances or near exceedances, it reserves the right (with notice to the permitees) to require additional monitoring or treatment conditions.

8. Requiring updates to the Operation and Maintenance Plan to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP). This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during period of high infiltration and inflow caused by storm or melt water events. Ideally, it should bring the DCHA and the businesses into the process, whether by establishing water use alerts, requiring the installation and use of water conserving fixtures, or implementing other water saving or discharge-reducing strategies.

C. History: The most current/relevant regulatory actions regarding the discharge from the facility include:

- December 10, 1986 –Maine Department of Environmental Protection (MDEP) Site Location Order #L-013160-87/03-A-N approved *Phase I* redevelopment of 193.4 acre Fort McKinley.

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3. PERMIT SUMMARY (continued):

Of the 44 buildings slated for redevelopment, 34 were to be renovated as 134 housing units, five as commercial uses, two as recreational, and one as maintenance/public safety. Of the 34 buildings, only the "Barrack, the "Hospital," Units 83F-690-69* and 83F-700-70* have not been rehabilitated to date.

- May 17, 1989 - The EPA issued NPDES permit #ME0023248 to McKinley Partners. The permit expired on May 17, 1994.
- June 2, 1994 – The Department issued Maine Waste Discharge License #W006931-5C-D-R for a ten-year term. The WDL authorized the discharge of up to 40,000 gpd (as a daily maximum) of secondary treated wastewater.
- October 14, 2005 – The Department issued Maine Waste Discharge License (WDL) #W006931-5C-D-R jointly to McKinley Partners and the DCHA for a five-year term. WDL #W006931-5C-D-R authorized the year-round discharge of no more than 35,000 gpd (monthly average) of secondary-treated wastewater to Casco Bay. The change recognized that extreme precipitation and snowmelt events were creating violations of the 40,000-gpd daily maximum discharge limit.
- January 12, 2009 – The Department accepted an application from the DCHA and the Inn.

D. Source description - Sanitary wastewaters are generated from the 193.4-acre residential facility comprised of 79 dwelling units (2 one-bedroom, 8 two-bedroom, 45 three-bedroom, 14 four-bedroom, 6 five-bedroom 3 six bedroom and 1 seven bedroom unit) a restaurant, a general store, two administrative/maintenance building and a 35-slip marina. The Island also hosts special tent events such as weddings throughout the summer. The sources of effluent and estimated discharge volumes have been revised since the last permit action in response to an actual count of the sources of wastewater. The previous sources were documented to be in error by the applicants and other interested parties. The updated sources appear to have been present at the previous licensing action. The permitted sources of effluent and estimated discharge volumes are as follows:

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
1. F. Willis	83B-481-48B	1	120	120	1	90	180
2. C. Vanderweil	83B-482-48B	1	120	120	1	90	180
3. J. Roberts	83B-180-18	2	90	180	2	90	180
4. M. Murphy	83B-471-47B	2	90	180	2	90	180
5. D. Moran	83B-472-47B	2	90	180	2	90	180
6. F. Trenholm	83B-541-54B	2	90	180	2	90	180
7. B. Mason	83B-542-54B	2	90	180	2	90	180
8. J. Acconzo	83B-551-55B	2	90	180	2	90	180
9. L. Vardis	83B-552-55B	2	90	180	2	90	180
10. M. Teas	83E-200-20	2	90	180	2	90	180
11. A. Riley	83E-13-13A	3	90	270	3	90	270
12. D.Johnson	83E-132-13B	3	90	270	3	90	270
13. B. Robinson	83E-133-13C	3	90	270	3	90	270
14 J. Doyle	83E-134-13D	3	90	270	3	90	270
15. L. Estabrook	83E-135-13E	3	90	270	3	90	270
16. R. Blatty	83E-137-13G	3	90	270	3	90	270
17. T. Burris	83E-138-13H	3	90	270	2	90	180
18. E. Stein	83E-151-15A	3	90	270	3	90	270
19. M. Kane	83E-152-15B	3	90	270	3	90	270

SPECIAL CONDITIONS

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
20. L. Shea	83E-153-15C	3	90	270	3	90	270
21. J. Tooker	83E-155-15E	3	90	270	3	90	270
22. L. Tracy	83E-157-15G	3	90	270	3	90	270
23. A. Finney	83E-161-16A	3	90	270	3	90	270
24. V. Smith	83E-162-16B	3	90	270	3	90	270
25. B. Young	83E-164-16D	3	90	270	3	90	270
26. L. Pergament	83E-165-16E	3	90	270	3	90	270
27. W. Anderson	83E-166-16F	3	90	270	3	90	270
28. R. Weinman	83E-167-16G	3	90	270	2	90	180
29. R. Cullen	83E-171-17A	3	90	270	3	90	270
30. J. Taggart	83E-172-17B	3	90	270	3	90	270
31. A. Davis	83E-173-17C	3	90	270	3	90	270
32. F. Boudreau	83E-174-17D	3	90	270	3	90	270
33. E. Wolak	83E-175-17E	3	90	270	3	90	270
34. D. Wolak	83E-176-17F	3	90	270	3	90	270
35. R. Cady	83E-177-17G	3	90	270	3	90	270
36. K. Wood	83E-178-17H	3	90	270	2	90	180
37. R. Taylor	83E-211-21A	3	90	270	3	90	270
38. R. Taylor	83E-212-21B	3	90	270	2	90	180
39. D. Clem	83E-220-22	3	90	270	3	90	270
40. D. Farrell	83E-231-23A	3	90	270	3	90	270
41. J. Amerling	83E-232-23B	3	90	270	2	90	180
42. V. Purpura	83E-241-24A	3	90	270	3	90	270
43. D. Faunce	83E-242-24B	3	90	270	3	90	270
44. C. Small	83E-251-25A	3	90	270	3	90	270
45. Eye Venture	83E-252-25B	3	90	270	3	90	270
46. J. Welton (Jail)	83E-270-27	3	90	270	3	90	270
47. D. Schwartz	83E-B780-78	3	90	270	3	90	270
48. D. Kenly	83F-301-30A	3	90	270	3	90	270
49. R. Frantz	83F-302-30B	3	90	270	3	90	270
50. F. Haley	83F-303-30C	3	90	270	3	90	270
51. J. Cox	83F-561-56A	3	90	270	3	90	270
52. Momborguette	83F-561-56B	3	90	270	2	90	180
53. W. Vackar	83F-561-56C	3	90	270	3	90	270
54. D. Devine*	83F-690-69	3	90	270	*3	*90	*270
55. D.Devine*	83F-700-70	3	90	270	*3	90	*270
56. D. Hale	83E-120-B12	4	90	360	3	90	270
57. O. Keithly	83E-136-13F	4	90	360	3	90	270
58. T. Lucke	83E-154-15D	4	90	360	2	90	180
59. G. Kennedy	83E-156-15F	4	90	360	3	90	270
60. VZV Research	83E-158-15H	4	90	360	3	90	270
61. J. Dumas	83E-163-16C	4	90	360	3	90	270
62. B.Perry	83E-168-16H	4	90	360	3	90	270
63. G. Lane	83E-260-26A	4	90	360	3	90	270
64. J. Bauer	83E-B61-6A	4	90	360	3	90	270
65. R. Pfaffmann	83E-B62-6B	4	90	360	3	90	270
66. K. Geitz	83E-B81-8A	4	90	360	4	90	360
67. D. MacKinnon	83E-B82-8B	4	90	360	4	90	360
68. H.Smith	83E-B91-9A	4	90	360	4	90	360
69. G. Altfield	83F-561-56D	4	90	360	3	90	270

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Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
70. M. Mills	83E-B11-1A	6	90	540	4	90	360
71. C. Freund	83E-B12-1B	5	90	450	4	90	360
72. R. Whelan	83E-B20-2	5	90	450	4	90	360
73. P. Guarino	83E-B30-3	5	90	450	2	90	180
74. J.Nash	83E-B40-4	5	90	450	4	90	360
75. L. Laucirica	83E-B51-5A	5	90	450	3	90	270
76. J. Mirachel	83E-B52-5B	5	90	450	3	90	270
77. J. Burge	83E-B92-9B	7	90	630	4	90	360
78. S. Bean	83E-B71-7A	6	90	540	3	90	270
79. H. Fitch	83E-B72-7B	6	90	540	4	90	360
Existing Residential Subtotal:		264	Total: 79	23,820	Bdrms: 223	Total: 79	GPD:20,610

EXISTING COMMERCIAL USES

Commercial Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Quantity	Applicant's GPD/Unit	Applicant's Design Flow
Admin offices / Recreation: users.	40	10	400	2	240	480
Admin office / Recreation : employees	1	15	15	0	0	0
Marina / washer /shower			150	1	100	100
Marina employees	1	15	15	0	0	0
General Store --Deli seats	14	20	280	0	0	0
Commercial Wastewater Source	**Quantity**	**DEP GPD/Unit**	**DEP Sum Design Flow**	**Quantity**	**Applicant's GPD/Unit**	**Applicant's Design Flow**
Deli Employees	3	15	45			
General Store: employees	3	15	45	2	15	30
Restaurant : seats (2 meals/day)	161	20	3,220	161	20	3,220
Restaurant : employees	20	15	300	20	15	300
Tent Site: seats	100	20	2,000	150	7	1,050
Tent Site: employees	8	15	120	8	15	120
Commercial Subtotal			6,590			5,300
Existing Development Subtotal			30,410			25,910

PROPOSED COMMERCIAL / RESIDENTIAL

Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Applicant's Count	Applicant's Design Flow	Total
Inn (Hospital):bedrooms		(none)	(none)	(not connected)	(not connected)	0
Inn (Barracks): bedrooms	46	100	4,600	2 single bed	180	360
				10 two-bed	180	1,800
				8 three-bed	270	2,160
				Bedrooms subtotal:		4,320
Pool Area Food Service: seats	30	7	210	0	0	0
Inn: (Barracks & pool) employees		15	225		15	225
Allowable Inflow/Infiltration						3000
Pool discharge	0	0	0	0	0	0
Inn / Pool area subtotal			5,035			7,545
TOTAL Design Flow			35,445			33,455

* Design flow is reserved for still unrehabilitated housing units 83F-690-69 and 83F-700-70

E. Wastewater treatment - The effluent currently receives a secondary level of treatment. The raw sewage is collected from the existing development by a network of approximate 4,200 linear feet of new PVC and 1,900 feet of clay piping, all but 1,340 feet of which has been relined. The raw sewage is distributed between six 10,000-gallon settling tanks configured in two rows of three tanks.

SPECIAL CONDITIONS

Supernatant from the settling tanks is collected in a wet well and distributed amongst three 100-ft. by 115-ft. (11,500 sq. ft.) sand filter beds. The treated wastewater is collected in the underdrain system and conveyed to a disinfection system consisting of liquid sodium hypochlorite disinfection and two 1,000-gallon detention tanks. Dechlorination is accomplished through sodium bisulfate injection. The sanitary treated wastewater then travels through a V-notch weir-type flowmeter before being discharged to Casco Bay through an eight-inch diameter outfall pipe with diffuser. The outfall pipe extends approximately 250 feet from the shoreline to a point where there is approximately twelve vertical feet of water over the crown of the pipe at mean low water. The wastewater treatment facility is operated by a contractor operator. The treatment capacity for the installed sand filter system is 35,000 gpd. Although the cumulative design flows come to 35,445 gpd as a daily maximum, the Department's estimated discharge (design flow daily maximum) from all the existing development and the Inn is less than 35,000 as the design flows for the residential uses overlap flows attributed use of the commercial facilities. In particular, a substantial portion of the restaurant and tent event flows is or will be a result of business from the residential portion and proposed hotel. It is unlikely that the total flow from a hotel customer having breakfast at the hotel, attending a tent event at lunch, and eating at the restaurant at night and is going to use the 120-140 gpd allotted to him/her for the day, every day for a whole month.

4. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. § 414 A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., § 420 and Department rule 06-096 CMR Chapter 530, Surface Water Toxics Control Program, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected

5. RECEIVING WATER QUALITY STANDARDS

Maine Law, 38 M.R.S.A., Section 469, classifies Casco Bay at the point of discharge as Class SB waters. Maine Law, 38 M.R.S.A., Section 465-B(2) describes the classification standards for Class SB waters.

6. RECEIVING WATER CONDITIONS

The State of Maine, Department of Environmental Protection, 2008 Integrated Water Quality Monitoring and Assessment Report (305b) report published by the Department lists this waterbody (including Maine Department of Marine Resources Legal Notice Closed Area C-13) in a table entitled, "*Category 5B-1: Estuarine and Marine Waters Impaired only by Bacteria.*" As such, the subject receiving water is not attaining the standards of its classification. Portland Harbor has approximately 70 outfalls, 45 of which are UNTREATED combined sewer outfalls (CSOs). The 3-year average untreated yearly discharge from the harbor CSOs is 775 million gallons (MG). The three Portland treatment works contribute another 24 MGD. The performance of the Islands treatment works has resulted in consistent zero or near-zero bacterial levels with a geometric mean of 1.8 colonies per 100 ml.(n=20). The average actual discharge volume (monthly average) from the Diamond Cove facility is .016 MGD, less than half of the permitted volume and 52 % of the estimated design flow of the existing development. Therefore, this low-discharge facility, located on the outermost boundary of the impaired water, is not causing or contributing to the impairment of these waters. Because the applicants have maintained their system, under contract with a certified wastewater treatment plant maintenance contractor, and have passed 100 percent of the Department's annual OBD inspections, the Department is making the determination that compliance with the fecal coliform bacteria and other secondary wastewater treatment limits established in this licensing action ensure that the discharge of secondary treated wastewater from the subject facility will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically-proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in Code of Maine Regulations Chapter 525, Section 3 unless the Department finds that alternate limits are appropriate.

1. The applicants have demonstrated that connection to a municipal sewerage system is not possible because one is not located on Diamond Island.

2. The applicants have documented that the existing treatment constitutes BPT. The applicant's Licensed Site Evaluator/P.E. had previously determined that there is not a subsurface option for Phase I development because of insufficient area to install subsurface systems to serve the entire facility. Because the Barracks and Hospital have since changed hands, an additional site evaluation was conducted in 2008 and 2009 to look at alternatives to connection to the OBD. The Inn's LSE /PE determined that there is a subsurface option for the "Hospital," but not for the "Barracks." The LSE/PE also evaluated whether there were sufficient areas of suitable soil to site a subsurface wastewater disposal system proximate to the hospital or existing treatment works. The area proximate to the hospital contains a suitable area for the treatment of less than 2,000 gpd of wastewater; less than half that required to serve the future development of the "Barracks." The area proximate to the treatment works lacked any suitable soils. Therefore, pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3 the "Barracks" may continue to use the OBD after redevelopment, provided the discharge does not cause or contribute to exceedences of the 35,000 gpd (monthly average) discharge volume limit. The treatment works lacks sufficient capacity for wastewater from the future development of both the "Barracks" and the "Hospital," collectively.

3. The existing treatment system is capable of meeting secondary treatment standards and is appropriate technology for the wastewater being discharged.

B. Flow - The previous licensing action established a flow limitation of 35,000 gpd as a monthly average. This was revised downwards from a 40,000 gpd weekly average to better reflect the treatment capacity of the sand filters and allow for overages resulting from the absorption of water from unusually inclement months, significant stormwater and/or meltwater events into the sand filter beds. (A one-year frequency storm event, defined as 2.5 inches of precipitation in a 24-hour period is the equivalent of 60,000 gpd of water on the existing 34,500 sq. ft. of sand filter.)

The estimated volume of wastewater resulting from redevelopment of the "Barracks" into the Inn at Diamond Cove will utilize the wastewater treatment system's excess capacity. The calculations reserve 270 gpd for each of the unrelated undeveloped residential Units 83F-690-69 and 83F-700-70.

Because there is an I/I problem, in part because of unrefurbished clay tiles in the wastewater collection system and existing connections to the Hospital, this permit is requiring remediation to address the issue. Prior to habitation of the Inn at Diamond Cove, the permitees must disconnect the "Hospital" from the collection system and the collection system capped at the point of disconnection. Any remaining unrefurbished collection pipes must be successfully lined or replaced. The permitees must also complete their proposed improvements to the manholes.

The development of the Inn may include facilities for a continental breakfast and the poolside service of beverages and light snacks as is customary, but the siting of restaurant facilities on this lot is prohibited, as it is generally an additional separate commercial entity not authorized in MDEP Site Location Order #L-013160-87/03-A-N.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont'd)

Actual flow data supports Permit Conclusion H in that the average monthly flow of the existing development has been 11,863 gpd. The design flow for the existing active development is 29,870 gpd by Department calculations (excludes "Barracks," and undeveloped Units 83F-690-69 and 83F-700-70). The actual discharge represents 52% of the projected discharge (design flow).

C. Dilution Factors – Department rule *Surface Water Toxics Control Program*, 06-096 CMR, Chapter 530, §4(A)(2) states,

(2) For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.

(a) For discharges to the ocean such at the current permit, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.

(b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.

(c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

In 2005, using a permitted flow of 35,000 gpd (monthly average), the location and configuration of the outfall structure, the Department calculated the following dilution factors:

Acute = 87:1 Chronic = 1,276:1 Harmonic Mean: 3,828:1[(1)]

D. Biochemical Oxygen Demand and Total Suspended Solids - The previous licensing established monthly and weekly average BOD_5 and TSS best practicable treatment (BPT) concentration limits of 30 mg/L and 45 mg/L respectively, that are based on secondary treatment requirements of the Clean Water Act of 1977 §301(b)(1)(B) as defined in 40 CFR Part 133.102 and Department rule Chapter 525(3)(III). The maximum daily BOD_5 and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. All three concentration limits are being carried forward in this permitting action. DMRs submitted to the Department by the applicant(s) for the period October 2005 to the present indicate the average BOD_5 discharged is less than 2 mg/L and the maximum BOD_5 has been less than 2 mg/L, well below the permitted 30 mg/L and 50 mg/L, respectively. The monthly average and daily maximum TSS values reported were 1.7 mg/L and 11 mg/L respectively, well below their respective limits of 30 mg/L and 50 mg/L.

Footnote:

(1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication *"Technical Support Document for Water Quality-based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

Previous licensing actions established the monthly average, weekly average and daily maximum technology based mass limits for BOD_5 and TSS, based on the (monthly average) daily flow limitation of 0.035 MGD, the applicable BPT concentration limits and a conversion factor of 8.34 lbs/gallon. The limitations were calculated as follows:

Monthly average:	(0.035 MGD)(8.34)(30 mg/L) = 8.8 lbs/day
Weekly average:	(0.035 MGD)(8.34)(45 mg/L) = 13 lbs/day
Daily maximum:	(0.035 MGD)(8.34)(50 mg/L) = 15 lbs/day

The previous permitting action also establishing an 85% removal requirement for BOD_5 and TSS pursuant to Department rule Chapter 525(3)(III)(a&b)(3), is being carried forward in this action.

Monitoring frequencies for BOD_5 and TSS of twice monthly are also being carried forward from the previous licensing action and are based on Department policy for facilities with a flow limitation of less than or equal to 0.035 MGD (gpd)

E. Settleable solids - The previous permit established a daily maximum BPT concentration limit of 0.3 ml/L. That limit is being carried forward with this action. Actual performance under the current permit has been <0.1 ml/L for the entire reporting period. Therefore, based on compliance history, the Department is reducing the monitoring frequency from once weekly (01/07) to once monthly (01/30) to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.

F. Fecal coliform bacteria - The previous licensing action established new water quality based limitations of 15 colonies/100 ml as a monthly average (geometric mean) and 50 colonies/100 ml. This permitting action is carrying forward said water quality based limitations to be consistent with the limits associated with the National Shellfish Sanitation Program. The performance of this treatment system has averaged less than 2 col/100ml.

G. Total residual chlorine (TRC) - Limits for TRC are specified to ensure that ambient water quality standards are maintained and that BPT is being applied to the discharge. The previous licensing action established a daily maximum water quality technology based limits of 1.0 mg/L. The Department is carrying forward this requirement. End-of-pipe water quality based concentration thresholds were calculated as follows:

Parameter	Acute Criterion	Acute Dilution Factor	Daily Max. Threshold
Chlorine	0.013 mg/L	87:1	1.13 mg/L
Parameter	**Chronic Criterion**	**Chronic Dilution Factor**	**Daily Max. Threshold**
Chlorine	0.0075mg/L	1,276:1	9.65 mg/L

H. pH Range- The previous licensing action established an expanded pH range limitation of 6.0 –9.0 standard units pursuant to Department rule found at Chapter 525(3)(III)(c). The new limits are considered BPT and are being carried forward in this action.

I. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing:
Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, Surface Water Toxics Control Program (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

38 M.R.S.A 530 § 2.A specifies the dischargers subject to the rule as; "all permitted dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria."

38 M.R.S.A 530 § 2.A sets forth the following exemption criteria for certain discharges from toxics testing as follows:

(1) Discharges from individual discharge points permitted to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;

(2) Discharges from residential overboard discharge systems; or

(3) Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.

The permitees' single-discharge facility is exempt from the requirements of 38 M.R.S.A 530 § 2.A (2) as it permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 (Department BPJ) and the wastewater has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future, the Department may reopen this permit pursuant to Special Condition M, Reopening of Permit for Modifications, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The overboard discharge treatment system has been inspected by the Department annually over the past five years. The treatment system was consistently found to comply with the inspection criteria. As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

9. PUBLIC COMMENTS

Notification to abutting landowners and facility owners of this application was by certified mail on or about January 2, 2009. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

SPECIAL CONDITIONS

10. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Michael Demarest
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone: (207) 287-3901 E-mail: michael.demarest@maine.gov

11. RESPONSE TO COMMENTS

1. The Friends of Casco Bay and Island Institute requested the permitees expand its assessment of subsurface alternatives for the "Barracks" to include the area of suitable soils for the Hospital. Their position is that the Inn has sufficient RTI to join both properties by virtue of utility easements to use the sewer to conduct wastewater to the treatment works. They assert that sewers could be laid in the right-of-way to conduct wastewater to the Hospital. Alternatively, the wastewater could be conducted through the existing sewer to the hospital or to an inground system proximate to the treatment works, and an equivalent volume of wastewater could be diverted from the sewer to the inground beds with apportioning valves.

   The Inn's LSE/PE subsequently determined that insufficient area of suitable soils existed proximate to the Hospital to treat the 5,000-7,500 gpd of wastewater from the Inn at Diamond Cove.

   The Inn's LSE/PE also determined that there were no suitable soils proximate to the treatment works for subsurface disposal.

   Finally, the Inn may have sufficient RTI to use the sewer, but it would appear that their RTI to the "Barracks" and the "Hospital," is limited to the footprint of the buildings plus any additional RTI the DCHA may grant. Therefore, lacking the required grants, it would not appear that the DWQM has any authority to require removal even if alternatives existed on DCHA land.

2. The Friends of Casco Bay and Island Institute requested the Department reinstate the original 40,000 gpd weekly average discharge volume limit. They are concerned that the development will discharge more that the permitted limit on a regular basis while still meeting the monthly average.

   This permit establishes a weekly average monitoring requirement for flow (35,000 gpd). This would give the treatment system operators important feedback to make treatment decisions. This would also give the Department additional data to make future licensing decisions.

3. The Friends of Casco Bay and Island Institute requested that the Department set a one or two year date certain for the sewer upgrades to be completed instead of the five year proposed completion date.

   The Department believes a 30-month deadline could be met. Neither the DCHA nor the Inn has objected to the Department's proposed 30-month deadline.

4. The Friends of Casco Bay and Island Institute are concerned that the "Cabana" and the Inn eating facilities represent a new source of discharge outside what was previously approved in Phase I of the 1986 Site Order (within the DWQM's OBD "qualifying period").

SPECIAL CONDITIONS

The serving of a continental breakfast by the Inn at Diamond Cove and having some foods available for snacks appears to be well within the scope of the customary and usual services of an inn or hotel. The wastewater produced would be domestic in nature, and the intended consumers are the guests of the Inn at Diamond Cove. Therefore Department does not see this as creating a new source of effluent. The guests can cook, eat, drink in their room, or as part of a continental breakfast or poolside. They could conceivably order a meal from the existing restaurant, or walk thereto. Still, the quantity and constituent of the wastewater produced would be essentially the same quantity or constituency. If a restaurant were to open up in the hotel (including an expansion of the existing restaurant), or the poolside areas were opened up to serve non-guests (excluding the invited guests of registered hotel guests), then the DWQM would prohibit those services as additional source of effluent.

The DEP's Division of Water Quality Management does not interpret and enforce the number of "commercial" versus "residential" uses in the development. DWQM must make sure that the wastewater reflects that which was authorized in the 1987 Site Location Order in that it is domestic in both strength and constituents, is limited to the "estimated or actual discharge" and the treatment meets secondary standards as set forth in the permit.

5. The Friends of Casco Bay and Island Institute point out that the O & M manual has not been updated since 2006.

   The permit as issued establishes a deadline of December 31, 2009 requiring the permitees to perform an assessment and update to accommodate the new permit requirements and in anticipation of the increased flow from the Barracks, including a "Wet Weather Management Plan" as part of the O & M plan.

ATT 2-F-1

STATE OF MAINE
Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

September, 2009

The Inn at Diamond Cove, LLC
c/o Bateman Partners, LLC
Attn: David Bateman
PO Box 3572
Portland ME 04104

RE: Site Law Application, Portland, # L-13160-L3-AB-B

Dear Mr. Bateman:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit, please contact the project manager who handled your application, Marybeth Richardson. She can be reached at (207-822-6335) or at marybeth.richardson@maine.gov.

Sincerely,

James Cassida

James Cassida, Division Director
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: file

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2-F-2

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

THE INN AT DIAMOND COVE LLC	) SITE LOCATION OF DEVELOPMENT ACT
Portland, Cumberland County	)
THE INN AT DIAMOND COVE	) MINOR AMENDMENT
L-13160-L3-AB-B (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq., the Department of Environmental Protection has considered the application of THE INN AT DIAMOND COVE LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: History: In Board Order #L-13160-87/03-A-N, dated December 10, 1986, the Board approved Phase I of Diamond Cove, which consisted of renovating 44 former military buildings into 134 residential units and commercial uses, and constructing a marina for use by Diamond Cove residents. The majority of the renovations and development was completed in the 1980's with the exception of two buildings, which are identified in the application as the Double Barracks (Building #46) and the Hospital (Building #19). In Board Order #L-13160-L3-G-N, dated June 25, 1991, the Board approved the development of Phase II as a 39-lot residential subdivision. Numerous other Department Orders were issued for Diamond Cove which are not relevant to this amendment application. The development is located on the former site of Fort McKinley on Great Diamond Island in Casco Bay, in the City of Portland.

B. Summary: The applicant proposes to renovate Building #46, (the Double Barracks), into a 20-unit hotel/condominium. Building #46 was approved in Board Order #L-13160-87/03-A-N for residential use. The units will consist of two 1-bedroom units, ten 2-bedroom units, and eight 3-bedroom units, for a total of 46 bedrooms. Fifteen employees will be needed to operate the hotel/condominium. In addition to renovating the existing building, the applicant proposes to construct a single-story building addition with a footprint area of approximately 2,881 square feet that will primarily house the new entrance lobby area, courtyard improvements with a cabana on a raised deck, and an in-ground swimming pool.
Building #46 is currently owned by the City of Portland. The applicant holds a purchase and sales agreement with the City for the purchase of the building. The proposed pool, deck and cabana structure will be located on open space/recreation area currently owned by the Diamond Cove Homeowners Association (DCHA). The applicant submitted a copy of a long-term ground lease for this area. Additionally, the applicant submitted a draft copy of a permanent construction, maintenance and drainage easement between the applicant and the DCHA for the closed stormwater drainage system and outfall associated with the proposed project.

The proposed project is shown on a set of plans, the first of which is entitled "The Inn at Diamond Cove – Cover Sheet," prepared by DeLuca-Hoffman Associates, Inc., and dated December 2008, with a last revision date of March 12, 2009.

C. Current Use of Site: The double barracks is a three-story masonry building, currently vacant and in disrepair, with a footprint area of approximately 13,629 square feet. It is located across McKinley Court from the existing parade ground.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be $8,562,000. The applicant submitted a letter from TD Banknorth, dated April 29, 2008 indicating that the bank is interested in discussing financing arrangements for the proposed project. Prior to the start of construction, the applicant must submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided evidence of final financial provisions are submitted as outlined above.

3. TECHNICAL ABILITY:

The applicant's principals have successfully developed and managed similar hotel/condominium developments. The applicant also retained the services of DeLuca-Hoffman Associates, Inc., a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

Noise generated from the proposed project is anticipated to be similar to other uses currently within Diamond Cove. The Inn's main entrance, lobby and recreational pool facility, which are expected to generate the highest noise levels, will be located at the rear of the building and away from surrounding existing uses.

The Department finds that the proposed project will result in a minor noise impact that will be consistent with the area.

5. SCENIC CHARACTER:

Building #46 is currently in various stages of dilapidation. The proposed renovation is designed to restore the original architectural and historic character of the building

consistent with the intent of the original Board Order approving Diamond Cove. The site of the proposed project is essentially within the interior of Diamond Cove and is not significantly visible from areas outside the development.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. HISTORIC SITES:

Building #46 is part of the former Fort McKinley, which is included in the National Register of Historic Places maintained by the U. S. National Park Service. Proposed renovations to the building must be consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The applicant submitted a copy of the National Park Service's Part 2 approval of the renovation plans.

The Maine Historic Preservation Commission reviewed the proposed rehabilitation plan and stated that it is appropriately scaled and sited, and is compatible with the historic qualities of the Double Barracks and the surrounding Fort McKinley Historic District.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site.

7. STORMWATER MANAGEMENT:

The proposed project includes approximately 6,534 square feet of new impervious area and 17,776 square feet of developed area. The project site drains to Casco Bay. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of two underdrained soil filters and four bio-retention cells.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

DWM commented that the proposed system is designed in accordance with the Chapter 500 Flooding Standard.

Based on the system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas.

8. WATER SUPPLY:

When completed, the proposed project is anticipated to use 4,545 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated May 6, 2008, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

9. WASTEWATER DISPOSAL:

The redevelopment of the former Fort McKinley military base included the construction of an on-site wastewater collection and treatment system that includes a network of underground gravity sewer pipes, a number of septic tanks, and three sand filter beds. Treated wastewater is collected in an underdrain system and conveyed to a disinfection system. Treated sanitary wastewater flows through a weir before being discharged into Casco Bay. The existing wastewater facility is licensed to discharge a monthly average of up to 35,000 gallons per day.

Existing uses contributing to the wastewater collection and treatment system generate approximately 28,910 gallons of wastewater per day. Over the past several years, the DCHA has made efforts to eliminate excess inflow and infiltration within the existing collection system and made major repairs to the sand filter beds. With the authorization of the DCHA, the applicant intends to complete a list of repairs to the existing collection system in an effort to remove additional sources of inflow/infiltration. These repairs will be done during construction of the proposed project.

When completed, the proposed project is anticipated to discharge an additional 4,545 gallons of wastewater per day to DCHA's wastewater treatment facility. This project was reviewed by the Division of Water Quality Management (DWQM) of the BLWQ, which commented that the DCHA's wastewater treatment facility has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine. DWQM issued a final Maine Waste Discharge License (#W006931-5C-F-R), dated September 15, 2009. The kitchen and cabana of the proposed inn must not contain any equipment that would necessitate the use of a grease trap, and must be limited to serving only continental breakfasts and light snacks to guests of the inn.

Based on DWQM's review and issuance of the Waste Discharge License, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

10. SOLID WASTE:

When completed, the proposed project is anticipated to generate 12 cubic yards of general solid waste per month during the peak season. All general solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 200 cubic yards of stumps and grubbings. All stumps and grubbings generated will be processed on site, with the resulting material to be used as an erosion control measure, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 290 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at the Biofuels Limited facility in Lewiston and Grimmel Industries in Topsham, both of which are currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

11. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided additional financial information is submitted as described in Finding 2.

B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.

D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided the applicant submits a certification of the stormwater management system as described in Finding 7B.

E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.

F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services provided the kitchen and cabana are limited in relation to food service as described in Finding 9.

G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of THE INN AT DIAMOND COVE LLC to renovate and expand the existing Double Barracks building at Diamond Cove, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. Prior to the start of construction, the applicant shall submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

5. Prior to the start of construction, the applicant shall submit to the BLWQ copies of executed ground lease and drainage easements with the DCHA.

6. The applicant shall retain its design engineer or other qualified professional to inspect the installation of the underdrained soil filters and bio-retention cells. Inspections shall consist of weekly site visits to inspect the subgrade preparation of the structures, embankment construction, pipe bedding placement, underdrain pipe installation, soil

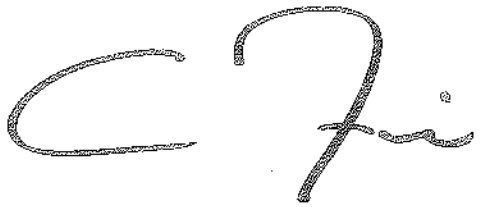
filter placement, overflow installation and soil filter stabilization. Within 30 days of completion of the structures, the applicant shall submit its engineer's report of inspections and certification that the structures were installed in accordance with the approved design.

7. The kitchen and cabana of the proposed inn shall not contain any equipment that would necessitate the use of a grease trap, and shall be limited to serving only continental breakfasts and light snacks to guests of the inn

8. All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R. S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.09.23 11:22:51 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES
mr/l13160abb/ats#69640

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

HISTORIC PRESERVATION CERTIFICATION APPLICATION
PART 2 – DESCRIPTION OF REHABILITATION

RECEIVED
APR 10 2008
NATIONAL PARK SERVICE
HTC INCENTIVE PROGRAM

Only

NPS Office Use Only
Project No: 20580

Instructions: Read the instructions carefully before completing the applications. No certifications will be made unless a completed application form has been received. Type or print clearly in black ink. If additional space is needed, use continuation sheets or attach blank sheets. A copy of this form may be provided to the Internal Revenue Service. The decision by the National Park Service with respect to certification is made on the basis of the descriptions in this application form. In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, and specifications), the application form shall take precedence.

1. Name of Property: Double Barracks (Building #46)

Address of Property: Street 18 McKinley Court

City Portland County Cumberland State ME Zip 04109

☐ Listed individually in the National Register of Historic Places; give date of listing:

☒ Located in a Registered Historic District; specify: Ft. McKinley Historic District

Has a Part 1 Application (Evaluation of Significance) been submitted for this project? ☒ yes ☐ no

If yes, date Part 1 submitted: 8/2/07 Date of certification: 8/23/07 NPS Project Number: 20580

2. Data on building and rehabilitation project:

Date building constructed: 1910

Type of construction: Masonry bearing wall

Use(s) before rehabilitation: vacant US Army barracks

Proposed use(s) after rehabilitation: hotel condominiums

Estimated cost of rehabilitation: 4.6M

This application covers phase number 1 of 1 phases

Project/phase start date (est.): 6/1/08

Total number of housing units before rehabilitation: NA

Number that are low-moderate income: NA

Total number of housing units after rehabilitation: 20 hotel condominiums

Number that are low-moderate income: NA

Floor area before rehabilitation: 41,382 sf

Floor area after rehabilitation: 44,193 sf

Completion date (est.): 6/1/09

3. Project contact:

Name Christine Beard/Tremont Preservation Services

Street 21 Market Street City Ipswich

State MA Zip 01938 Daytime Telephone Number 978-356-0322

4. Owner:

I hereby attest that the information I have provided is, to the best of my knowledge, correct, and that I own the property described above. I understand that falsification of factual representations in this application is subject to criminal sanctions of up to $10,000 in fines or imprisonment for up to five years pursuant to 18 U.S.C. 1001.

Name David Bateman Signature [signature] Date 11/13/07

Organization The Inn at Diamond Cove LLC

Social Security or Taxpayer Identification Number 20-321-0238

Street 245 Commercial Street City Portland

State ME Zip 04101 Daytime Telephone Number 207-772-2992

NPS Office Use Only

The National Park Service has reviewed the "Historic Certification Application – Part 2" for the above-named property and has determined:

☐ that the rehabilitation described herein is consistent with the historic character of the property or the district in which it is located and that the project meets the Secretary of the Interior's "Standards for Rehabilitation." This letter is a preliminary determination only, since a formal certification of rehabilitation can be issued only to the owner of a "certified historic structure" after rehabilitation work is completed.

☒ that the rehabilitation or proposed rehabilitation will meet the Secretary of the Interior's "Standards for Rehabilitation" if the attached conditions are met.

☐ that the rehabilitation described herein is not consistent with the historic character of the property or the district in which it is located and that the project does not meet the Secretary of the Interior's "Standards for Rehabilitation." A copy of this form will be provided to the Internal Revenue Service.

5/15/2008 Jo Ellen Hensley 202-354-2026

Date National Park Service Authorized Signature National Park Service Office/Telephone No.

☒ See Attachments Condition Sheet

ATT 2-M-1



HARBOR PLAZA

1/19/10

The Inn at Great Diamond Island, LLC
PO Box 3572
Portland, ME 04104

Re: Double Barracks (Bldg. 46) Mainland Parking Analysis
For the Proposed Condominium Hotel Guests

Gentlemen,

As per your request the following analysis is based on the current required parking spaces located at the Harbor Plaza parking garage, and the additional spaces required by this proposed project.

Existing On-Site Parking Spaces (@ The Harbor Plaza Garage)

- Parking Garage	198
- Surface Lot	20
Total Spaces	**218**

Current Parking Requirements

- MEMIC Building / 47,700 sq. ft / 400 sq ft. per Space	120
- Portland Harbor Hotel / 4 Rms. / Space @ 100 Rms.	25
- 470 Fore St. / 1 Space per 200 sq. ft. Over 2000 sq. ft.	1
2nd & 3rd Fl. Hotel 1 Space/ 4 Rms.	1
- 468 Fore St. (Annex) /	
Basement for Hotel Use	0
- 1st Fl. Retail 1780 sq. ft. – None Required	0
- 2nd Fl. Hotel Meeting Rm. – None Required	0
- 3rd Fl. 2 – Hotel Rms. – None Required	0
(See 470 Fore St. Rm. Count)	
- 4Th Fl. Offices 1780 sq. ft. / 350 sq. ft. / per Space	5
Total Spaces Required	**152**

2-H-2

Summary of Existing Uses:

Total Spaces =	218
Total Spaces Required = (By current uses)	152
Balance of Spaces Available	66

Utilizing the most restrictive use application (Residential Structures) a total of 44 spaces would be required for the Condominium Hotel use / 2 spaces for every unit plus 1 additional space for every 6 units. Therefore a surplus of 22 spaces will remain after the additional use is factored.

In Summary Harbor Plaza can accommodate the additional Condominium Hotel units and is pleased to do so at our current rate structure.

Should you require additional information do not hesitate to call.

Sincerely,

David Bateman

2-H-3

PORTLAND HARBOR HOTEL

Old Port District

April 29, 2008

Inn at Diamond Cove, LLC
PO Box 3572
Portland, ME 04104

Re: Mainland Parking Facilities for
the Proposed Inn at Diamond Cove

Gentlemen:

The Portland Harbor Hotel, acting as the Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor Hotel currently has adequate excess parking available through both its on and off site parking leases.

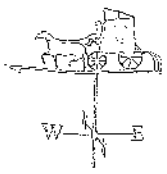
Sincerely,

Gerard Kiladjian
General Manager

225 DOUGLASS STREET
P.O. BOX 3553
PORTLAND, ME 04104-3553
P: 207.774.5961
F: 207.761.8307
WWW.PWD.ORG

ATT 2-I-1

PORTLAND
WATER DISTRICT



May 6, 2008

Bateman Partners
P.O. Box 3572
Portland, ME 04104

Attn: Nathan Bateman
Re: Fort McKinley, Great Diamond Island
Ability to serve with PWD water

Dear Mr. Bateman:

This letter is being sent in response to your request for an ability-to-serve letter for the proposed 20-unit condominium/hotel at the Double Barracks Building on Great Diamond Island. According to District records, the site is currently served through an 8-inch cast iron water main in Bay Avenue. There is also a hydrant located on Willis Street, 2200' from the proposed site.

The current data from the nearest hydrant indicates there should be adequate capacity of water for your needs at the location of the hydrant. However, as stated in your conversation with Gordon Johnson, the unknown plumbing system on your land makes it impossible for us to know if the available water will meet the needs of your proposed project. Onsite testing may be required to determine if it will meet your needs.

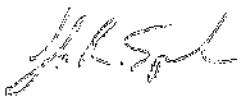
Hydrant Location:	Willis Street @ Crescent Avenue
Hydrant Number:	POD-HYD01694
Static Pressure:	97 psi
Flow:	1299 gpm
Last Tested:	6/7/1995

Please notify your mechanical engineer of these results so that they can design your system to best fit the noted conditions. Because the static pressure at the main is above the limit for which the Maine State Plumbing Code recommends installing pressure reducing valves, PWD recommends consulting with your plumber to determine if they should be used on your project.

2-I-2

Please note that we will require a calculation of the peak water demand in gallons per minute or a fixture count tabulation at the time of the service application. If the District can be of further assistance in this matter, please let us know.

Sincerely,
Portland Water District



Rico Spugnardi, P.E.
Business Development Engineer
rspugnardi@pwd.org

ATT 2-J-1

SECTION 12

STORMWATER MANAGEMENT REPORT
(FLOODING AND GENERAL STANDARDS)

THE INN AT DIAMOND COVE
GREAT DIAMOND ISLAND, PORTLAND, MAINE

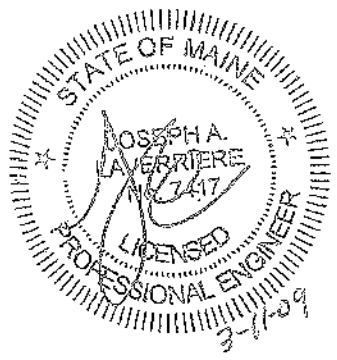
PREPARED FOR:

THE INN AT DIAMOND COVE LLC
C/O BATEMAN PARTNERS LLC
P.O. BOX 3572
PORTLAND, MAINE 04104

PREPARED BY:

DELUCA-HOFFMAN ASSOCIATES, INC.
778 MAIN STREET, SUITE 8
SOUTH PORTLAND, MAINE 04106
(207) 775-1121

MARCH 2009



REVISED JAN 21, 2010

SECTION 12

STORMWATER MANAGEMENT REPORT (FLOODING & GENERAL STANDARDS)

12.0 Introduction

DeLuca-Hoffman Associates, Inc. (DHAI) has prepared a stormwater management analysis for the proposed Inn at Diamond Cove. The Inn is part of a larger development on Great Diamond Island called Diamond Cove and was originally permitted with MeDEP on December 10, 1986. The work associated with this project will include the renovation and expansion of the existing "Double Barracks" or Building #46. As part of the permit process, the MeDEP Site Location of Development Permit will be revised to reflect these proposed changes to land use and topography.

The site improvements associated with the proposed project include the construction of patios, walkways, pool, pool deck, and access drive. As a result of these proposed site improvements and the building expansion, the total increase in impervious area is approximately 6,534 sq. ft.

DeLuca-Hoffman Associates, Inc. completed this stormwater management analysis to confirm that the planned development would not result in any significant impacts nor create potential degradation of water quality to locations downstream of the development site. The project site is not located within a lake watershed most at risk or an urban impaired stream.

12.1 Existing Site Conditions

The project area includes portions of the existing building, the building addition, proposed walkways, pool and deck area, and disturbed and undisturbed landscaped areas.

The overall site has relatively flat to moderate topography, with the exception of steeper slopes to the east and southeast of the existing building with grades approaching 2:1. Ground topography ranges throughout the entire site from about elevation 84 to 105 (assumed datum).

Soils on the site consist of Hydrologic Soil Group (HSG) C and D soil types as indicated by the Medium Intensity Soil Survey for Cumberland County, by the United States Department of Agriculture, dated August 1974.

According to the Medium Intensity Soil Survey, the development site consists of the following soil:

Soil	Hydrologic Soil Group
Hollis	C/D

2-3-3

12.2 Methods of Analysis-Stormwater Quantity

A hydrologic analysis was conducted based upon the methodology contained in the USDA Soil Conservation Service's Technical Releases Nos. 20 and 55 (SCS TR-20 and TR-55). For Cumberland County, Maine, a 24-hour SCS Type III storm distribution was used for the analysis using the following storm frequencies and rainfall amounts for Portland, Maine:

Storm Event	24-Hour Rainfall
2-Year Storm	3.00 Inches
10-Year Storm	4.70 Inches
25-Year Storm	5.50 Inches

Note: The proposed project is not required to provide peak discharge control for the postdevelopment condition because the site discharges to Casco Bay. Because of this, a predevelopment hydrologic analysis was not performed. The postdevelopment model was created to estimate peak discharge rates flowing offsite. This information was used to design a proper means of discharging site runoff that will not cause erosive flow velocities.

The HydroCAD computer program was used in the analysis. This program analyzes the critical points of the project watershed and uses SCS TR-20 methodology for evaluation of the anticipated conditions at these points. Drainage areas are defined with runoff curve numbers, times of concentration, and travel time data based on methods outlined in the USDA TR-55 manual. To assess storage and kinematic effects of runoff, the model uses reservoirs and pipes to imitate actual conditions. Specific hydrologic characteristics including travel times, storage capacity, and the effects of hydraulic head are considered for analysis with this program.

To model any watershed, the drainage system is represented by a system network consisting of three basic components:

- Subcatchment: A relatively homogenous area of land that drains into a single reach or pond. Each subcatchment generates a runoff hydrograph.
- Reach: A uniform stream, channel, or pipe that conveys water from one point to another reach or pond. The outflow of each reach is determined by a hydrograph routing calculation.
- Pond: A pond, swamp, dam, or other impoundment which fills with water from one or more sources and empties in a manner determined by a weir, culvert or other device(s) at its outlet. A pond may empty into a reach or into another pond. The outflow of each pond is also determined by a hydrograph routing calculation.

2-J-4

Land use, cover, delineation of watershed subcatchments, hydraulic flow paths and hydrologic soil types were obtained using the following data:

1. Portland, Maine USGS 7.5 minute Quadrangle Maps
2. Medium Intensity Soils Mapping by Cumberland County Soil Report
3. Onsite Topographic Survey with 1-foot contour intervals by DeLuca-Hoffman Associates, Inc.
4. Offsite USGS Topographic Survey with 5-foot contour intervals
5. Field Reconnaissance by DeLuca-Hoffman Associates, Inc.

12.3 Predevelopment Conditions

In its existing condition, the project area includes lawn areas, walkways, and undeveloped woods that drain to a depression located southwest of the existing building. The 2' deep depression which has an apparent outlet, stores runoff until it is infiltrated or evaporated.

12.4 Postdevelopment Conditions

In the postdevelopment condition, the project area includes the proposed improvements associated with the building addition and site improvements including exterior walkways, pool and deck area, and landscaping. Much of the existing walkway network will be maintained or reconstructed. The proposed development will result in a net increase of approximately 6,534 sq. ft. of impervious area.

Runoff from the proposed developed areas is routed through a series of water quality structures and conveyed in a closed storm drain system to a discharge point northwest of the project site. Once discharged, the treated stormwater flows overland to an existing drainage ditch that drains to Casco Bay. The entire overland drainage route between the project site and Casco Bay is owned by Diamond Cove Homeowners Association. A permanent drainage and maintenance easement will be provided from the Diamond Cove Homeowners Association accepting the stormwater discharge from this site across their land, including the use of the Diamond Cove Homeowners Association storm drain system.

These proposed site conditions are represented in the attached postdevelopment hydrologic model. The hydrologic model is based on multiple subcatchments contributing runoff to one point of analysis, located at the outlet of the proposed storm drain system. The postdevelopment watershed map is included in Attachment A.

The following table summarizes the peak flows and velocities at the point of analysis in the postdevelopment condition for each storm analyzed:

Postdevelopment Peak Flows to Point of Analysis 1			
	Storm Event (Type III, 24-Hour)		
Point of Analysis	2-Year	10-Year	25-Year
Peak Flow (cfs)	0.08	0.96	1.53
Peak Velocity (fps)	1.27	2.42	2.77

2-5-5

Despite the relatively low peak flow rates at the outlet of the proposed storm drain system, the flow velocities in the 10-year and 25-year design storm events are expected to be greater than the permissible velocity for Hollis Soils, which is 2.0 fps according to the Maine Erosion & Sediment Control BMP Manual. To slow the outlet flow velocity and prevent scour, a riprap channel and apron has been designed for the pipe outlet.

12.5 Stormwater Management – Water Quality Measures

As mentioned above, the proposed development activities will result in the net addition of approximately 6,534 sq. ft. of new impervious areas associated with the building addition, walkways, pool, and pool deck. The project has been designed and the study conducted in accordance with the Site Location of Development Act and Stormwater Law (Chapter 500) effective April 2007. Effective treatment of pollutants in stormwater will be provided by filtering the runoff through 2 underdrained soil filters and 4 underdrained bioretention cells located throughout the proposed developed area.

All six filter basins were designed to provide storage volumes equal to 1.0 inches times the subcatchment's impervious area plus 0.4 inch times the subcatchment's non-impervious area, in accordance with the MeDEP Stormwater Law. For all 6 filters, required storage volumes were calculated using all tributary areas. For bioretention cells 3 and 4, the required storage volumes account for runoff from undisturbed areas that are tributary to the filter.

Each proposed filter includes a 15" Nyloplast PVC catch basin at the design depth elevation to provide an emergency outlet. The basin will also provide an outlet for the underdrain, which will be capped within the basin with an orifice plate to ensure each filter draws down in 24-48 hours.

A summary of required and proposed design criteria for each filter is provided below. Stage-storage tables and drawdown calculations for each filter are attached as Attachment B.

Water Quality Filter 1		
	Required	Provided
Storage Volume	52 c.f.	54 c.f.
Maximum Storage Depth	18"	6"
Soil Filter Area	31 s.f.	32 s.f.

Water Quality Filter 2		
	Required	Provided
Storage Volume	52 c.f.	54 c.f.
Maximum Storage Depth	18"	6"
Soil Filter Area	31 s.f.	32 s.f.

Bioretention Cell 1		
	Required	Provided
Storage Volume	70 c.f.	80 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	42 s.f.	42 s.f.

Bioretention Cell 2		
	Required	Provided
Storage Volume	70 c.f.	70 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	42 s.f.	45 s.f.

Bioretention Cell 3		
	Required	Provided
Storage Volume	347 c.f.	347 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	208 s.f.	225 s.f.

Bioretention Cell 4		
	Required	Provided
Storage Volume	433 c.f.	486 c.f.
Maximum Storage Depth	6"	6"
Soil Filter Area	259 s.f.	264 s.f.

Runoff from the rooftop of the proposed building addition will be collected in a roof drain system and piped to storage tanks in the basement of the building. The stored roof water will be used for irrigation of lawn and landscaped areas on site. This system is expected to act as a stormwater treatment measure for several reasons. First, the runoff will be stored in tanks, where pollutant-laden sediment is expected to settle out. Second, the water will be used to irrigate lawn and landscape areas, where it will infiltrate rather than concentrate and flow to Casco Bay. For these reasons, we did not account for any runoff from the proposed roof area in the postdevelopment hydrologic model, and we considered the roof as new impervious area receiving water quality treatment in the treatment percentage calculations presented below. The collection and storage of the roof runoff water for use as irrigation water was discussed with MeDEP and determined to be acceptable for meeting the requirements of Chapters 500/502.

In accordance with the Chapter 500 General Standard, stormwater runoff from at least 95% of the impervious area and 80% of the developed area must be treated for pollutants. The treatment percentages for the proposed development are summarized below. A detailed treatment calculation spreadsheet is provided in Attachment C.

Diamond Cove Postdevelopment				
	Total (sf)	Untreated (sf)	Treated (sf)	% Treated
New or Redeveloped Impervious Area	9,878	369	9,509	96%
New or Redeveloped Developed Area	17,776	1,244	16,532	93%

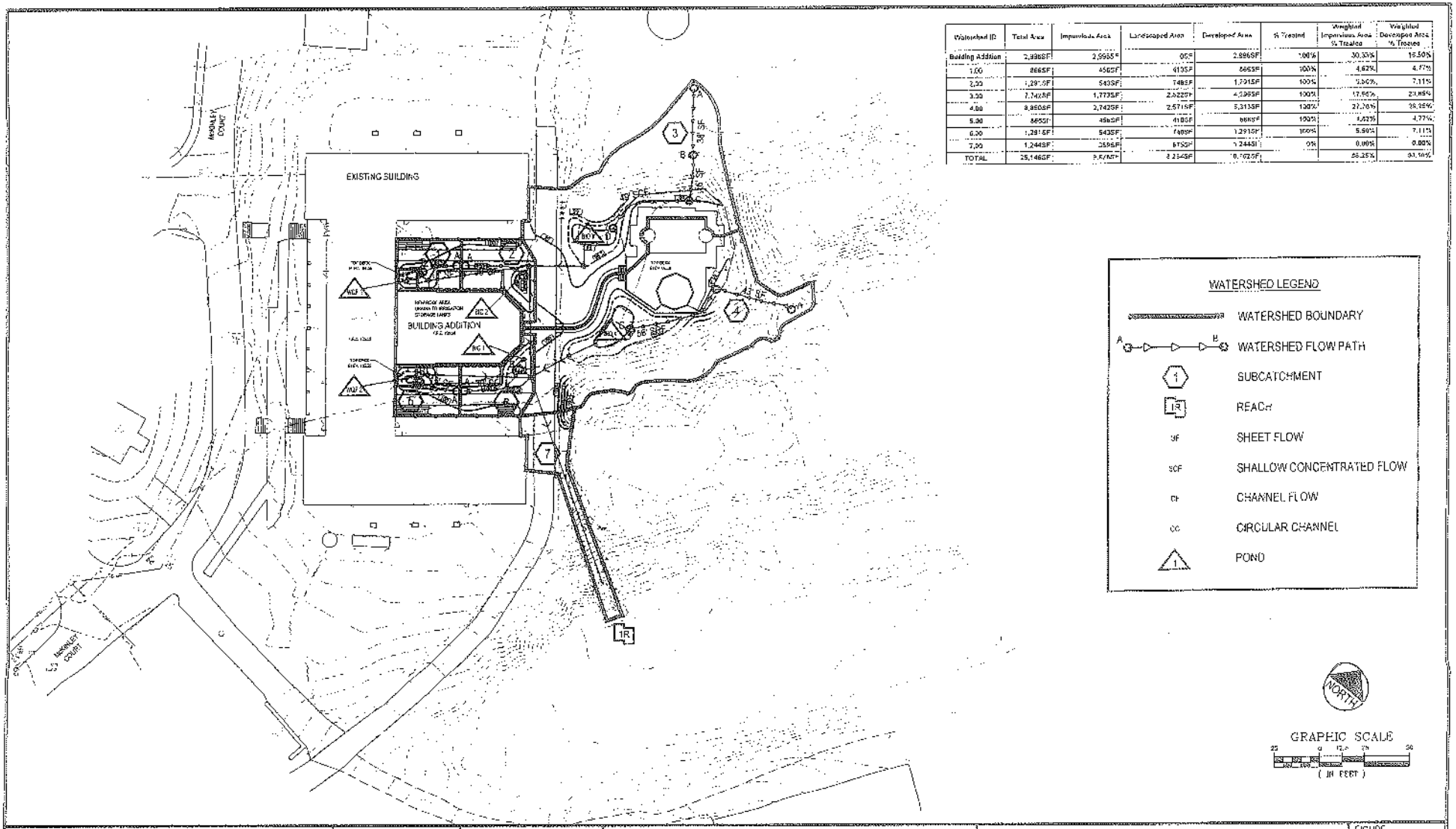
12.6 Conclusions

The Stormwater Management Plan for this project is designed to provide pollutant treatment for the smaller, more frequent runoff events and provide for the stabilized release of stormwater runoff generated from the larger runoff events. Based on this

study's findings, it is expected that runoff from the proposed improvements can be discharged with no adverse impacts to downstream properties or water bodies.

12.7 Attachments

Attachment A – Postdevelopment Watershed Map
Attachment B – Water Quality Filter and Bioretention Cell Sizing Calculations
Attachment C – General Standard Calculation (Treatment Percentages)
Attachment D – TR-20 Computations (HydroCAD)
Attachment E – Inspection & Maintenance Manual for Stormwater Management System



Watershed ID	Total Area	Impervious Area	Landscaped Area	Developed Area	% Treated	Weighted Impervious Area % Treated	Weighted Developed Area % Treated
Building Addition	2,996SF	2,996SF	0SF	2,996SF	100%	30.33%	15.58%
1.00	866SF	456SF	410SF	866SF	100%	4.62%	4.77%
2.00	1,281SF	543SF	748SF	1,291SF	100%	5.50%	7.11%
3.00	7,742SF	1,773SF	2,622SF	4,395SF	100%	17.95%	23.85%
4.00	8,850SF	2,742SF	2,571SF	5,313SF	100%	27.76%	28.25%
5.00	865SF	456SF	410SF	866SF	100%	4.62%	4.77%
6.00	1,281SF	543SF	748SF	1,291SF	100%	5.50%	7.11%
7.00	1,244SF	356SF	675SF	1,244SF	0%	0.00%	0.00%
TOTAL	25,146SF	9,669SF	8,234SF	18,762SF		88.25%	93.16%

DeLuca-Hoffman Associates, Inc. 778 MAIN STREET, SUITE 8 SOUTH PORTLAND, ME 04106 207.775.1121 WWW.DELUCAHOFFMAN.COM	DRAWN:	CJD	DATE:	02.13.09	THE INN AT DIAMOND COVE
	DESIGNED:	SJB	SCALE:	1" = 50'	POSTDEVELOPMENT WATERSHED PLAN
	CHECKED:	SJB	JOB NO.	2769	FIGURE W-1
	FILE NAME:	2769-WSHED			

ATT 2-K-1

SECTION 14

EROSION AND SEDIMENTATION CONTROL REPORT
(BASIC STANDARDS)

THE INN AT DIAMOND COVE
GREAT DIAMOND ISLAND, PORTLAND, MAINE

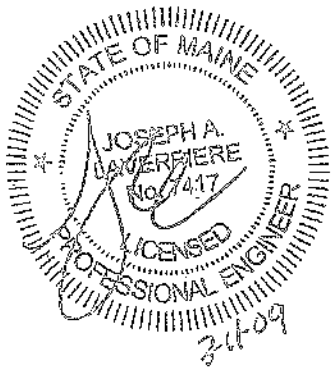
PREPARED FOR:

THE INN AT DIAMOND COVE LLC
C/O BATEMAN PARTNERS LLC
P.O. BOX 3572
PORTLAND, MAINE 04104

PREPARED BY:

DELUCA-HOFFMAN ASSOCIATES, INC.
778 MAIN STREET, SUITE 8
SOUTH PORTLAND, MAINE 04106
(207) 775-1121

MARCH 2009



RECEIVED JAN 21, 2010

2-K-2

SECTION 14

EROSION SEDIMENT CONTROL REPORT (BASIC STANDARDS)

14.0 INTRODUCTION

DeLuca-Hoffman Associates, Inc. (DHAI) has prepared an Erosion and Sedimentation Control Report for a proposed hotel condominium on Great Diamond Island in Portland, Maine. The development is part of a larger existing development on Great Diamond Island that was originally permitted with MeDEP on December 10, 1986. The proposed hotel condominium was included with the original permit and is referred to as "The Double Barracks" (Building #46). The project will include the renovation of Building #46 and an addition to said building of approximately 2,881 square feet (sq. ft.). In addition to the improvements associated with the building, the development will also include new impervious area for patios, walkways, and a swimming pool and deck totaling 3,653 sq. ft. The project site is not located within a lake watershed most at risk or an urban impaired stream.

This study and section of the permit application presents the erosion and sediment control plan designed for the project. The erosion control plan will be contained in the contract documents for implementation by the Contractor who is awarded the bid for the project by the developer.

14.1 OVERVIEW OF SOIL EROSION AND SEDIMENT CONCERNS

The susceptibility of soils to erosion is indicated on a relative scale of "K" values over a range of 0.02 to 0.69. The higher values are indicative of the most erodible soils. The Cumberland County Soil and Water Conservation District's Medium Intensity Soils Map, contained in the Development Description section of this application, shows the types of soils within the project area. The soil type and respective K value in the 10"-20" depth is identified below:

Soil Type	Hydrologic Soils Group	Description	K Value
Hollis	C/D	Sandy Loam	0.32

Based on a review of the K values, the onsite soils in the area where construction is focused are only slightly susceptible to erosion after the cover material is stripped.

The primary emphases of the erosion/sediment control report for this project are as follows:

1. Development of a careful construction sequence.
2. Rapid vegetation of denuded areas to minimize the period of soil exposure.
3. Rapid stabilization of drainage paths, drainage ditches, channels and fill embankments to avoid rill and gully erosion.

4. The utilization of BMP measures (hay bales/silt fence, etc.) to capture sediment prior to discharge from the project area or into adjacent waterways.

14.2 DESCRIPTION OF PROPOSED EARTH MOVEMENT

Within the project area, the following is planned for the site:

1. Sawcutting and removal of concrete pavements;
2. Construction of an addition to the existing structure;
3. Construction of associated walkways, patios, and access drives;
4. Construction of a pool, pool deck, and cabana;
5. Utility service connections for sanitary sewer and water;
6. Installation of several water quality and bioretention filter areas for stormwater treatment; and
7. Stormdrain improvements throughout the project area including underground piping and structures.

These improvements will disturb approximately 0.42 acres of land.

14.3 EXISTING AND PROPOSED DRAINAGE FEATURES

In its existing condition, the project area includes lawn areas, walkways, and undeveloped woods that drain to a depression located southwest of the existing building. The 2' deep depression which has an apparent outlet, stores runoff until it is infiltrated or evaporated.

In the postdevelopment condition, the project area includes the proposed improvements associated with the building addition and site improvements including exterior walkways, pool and deck area, and landscaping. Much of the existing walkway network will be maintained or reconstructed. The proposed development will result in a net increase of approximately 6,534 sq. ft. of impervious area.

Runoff from the proposed developed areas is routed through a series of water quality structures and conveyed in a closed storm drain system to a discharge point northwest of the project site. Once discharged, the treated stormwater flows overland to an existing drainage ditch that drains to Casco Bay. The entire overland drainage route between the project site and Casco Bay is owned by Diamond Cove Homeowners Association. A permanent drainage and maintenance easement will be provided from the Diamond Cove Homeowners Association accepting the stormwater discharge from this site across their land, including the use of the Diamond Cove Homeowners Association storm drain system.

14.4 EROSION/SEDIMENTATION CONTROL DEVICES

The following erosion and sediment control devices will be implemented as part of the site development. These devices shall be installed as indicated on the plans or as described within this report. For further reference, see the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices.

1. Siltation fence will be installed downgradient of disturbed areas to trap runoff-borne sediments until the site is revegetated. The silt fence shall be installed per the detail provided in the plan set and inspected immediately after each rainfall and at least daily during prolonged rainfall. Repairs shall be made immediately by the Contractor if there are any signs of erosion or sedimentation below the fence line. Proper placement of stakes and fabric into the ground is critical to the fence's effectiveness. If there are signs of undercutting at the center or the edges, or impounding of large volumes of water behind the fence, the barrier shall be replaced with a stone check dam.

2. Hay bales are intended to trap sediments and reduce runoff velocities. Installation details are provided within the plan set.

3. Straw or hay mulch is intended to provide cover for denuded or seeded areas until revegetation is established. Mulch placed on slopes of less than 10 percent shall be anchored by applying water; mulch placed on slopes steeper than 10 percent shall be covered with a fabric netting and anchored with staples in accordance with the manufacturer's recommendations. Slopes steeper than 3:1, which are to be revegetated, shall receive Curlex blankets by American Excelsior. Mulch application rates are provided in Appendix A of this report. Hay mulch shall be available on site at all times in order to provide immediate temporary stabilization when necessary.

4. Stone sediment traps or SiltSacks® as distributed by A. H. Harris Company, Portland, Maine, will be installed at each catch basin inlet to prevent silt from entering the storm drain system. Installation details are provided in the plan set on the erosion control detail sheets.

5. Loam and seed is intended to serve as the primary permanent revegetative measure for all denuded areas not provided with other permanent erosion control measures, such as pavement or impervious area. Application rates are provided in Appendix A of this report.

14.5 TEMPORARY EROSION/SEDIMENTATION CONTROL MEASURES

The following are planned as temporary erosion/sedimentation control measures during construction:

1. Siltation fence shall be installed along the downgradient side of the disturbed areas, and all fill sections. The siltation fence will remain in place and properly maintained until the site is acceptably revegetated.

2. Hay bales will be installed at key locations to supplement the silt fence.

3. Temporary stockpiles of grubbings and common excavation will be protected as follows:

   - Stockpiles shall be stabilized within 7 days by either temporarily seeding the stockpile with a hydroseed method containing an emulsified mulch tackifier or by covering the stockpile with mulch.

- Silfation fence shall be installed along the downgradient edge of the stockpile.
- Soil stockpile sideslopes shall not exceed 2:1.

4. All denuded areas that have been rough graded and are not located within the building or pavement subbase areas shall receive mulch or erosion control mesh fabric within 7 days of initial disturbance of soil.

5. All soils disturbed between November 1 and April 15 will be covered with mulch within 15 days of disturbance, prior to any predicted storm event of the equivalent of ½" of rainfall in a 24-hour period, or prior to any work shutdown lasting more than 35 hours (including weekends and holidays). The mulch rate shall be double the normal rate.

   For work that is conducted between November 1 and April 15 of any calendar year, all denuded areas will be covered with hay mulch, applied at twice the normal application rate and anchored with a fabric netting. The time period for applying mulch shall be limited to 5 days for all areas or immediately in advance of a predicted rainfall event, whichever is less.

6. Silt fencing with minimum stake spacing of 6 feet should be used, unless the fence is supported by wire fence reinforcement of minimum 14 gauge and with a maximum mesh spacing of 6 inches, in which case stakes may be spaced a maximum of 10 feet apart. The bottom of the fence should be properly anchored a minimum of 6" per the plan detail and backfilled. Any silt fence identified by the owner or reviewing agencies as not being properly installed during construction shall be immediately repaired in accordance with the installation details.

7. Sediment traps will be installed at each catch basin inlet to prevent silt from entering the stormdrain system. Installation details are provided in the plan set. The barriers shall be inspected after each rainfall event and repairs made as necessary. Sediment shall be removed and the barrier restored to its original dimensions when the sediment has accumulated to ½ the design depth of the barrier. The barrier shall be removed when the tributary drainage area has been stabilized.

8. Temporary erosion control measures shall be removed once the site has been stabilized to 90% growth or in areas where permanent erosion control measures have been installed.

14.6 PERMANENT EROSION CONTROL MEASURES

The following permanent erosion control measures have been designed as part of the Erosion/Sedimentation Control Plan:

1. All areas disturbed during construction, but not subject to other restoration (paving, riprap, etc.), will be loamed, limed, fertilized, mulched, and seeded. Fabric netting, anchored with staples, shall be placed over the mulch in areas where the finish grade slope is greater than 10 percent. All areas shall receive protection within 7 days. Native topsoil shall be stockpiled and reused for final restoration when it is of sufficient quality.

2. Catch basins will be provided with sediment sumps and inlet hoods for all outlet pipes that are 15" in diameter and smaller.

14.7 TIMING AND SEQUENCE OF EROSION/SEDIMENTATION CONTROL MEASURES

The following construction sequence will be required to ensure the effectiveness of the erosion/sediment control measures is optimized.

1. Install perimeter siltation fence as indicated on the plans.
2. Clear work area using caution not to overexpose the site.
3. Perform earthwork operations to rough grade the site to subgrade.
4. Complete installation of underground utilities.
5. Install subbase and base gravels within the roadway and walkway areas.
6. Install permanent impervious surface treatments as detailed in the plan set.
7. Loam, lime, fertilize, seed and mulch disturbed areas.
8. Remove accumulated sediment from ahead of any silt barriers (as necessary).
9. Once the site is stable and a 90% catch of vegetation has been obtained, remove all temporary erosion control measures.
10. Touch up loam and seed.

Note: All denuded areas not subject to final paving; riprap or gravel shall be revegetated.

It will be necessary to schedule certain portions of the sitework to ensure erosion and sedimentation control measures are sequenced for optimum effectiveness.

The project will be constructed by a General Contractor under The Inn at Diamond Cove, LLC. The Contractor shall submit a schedule for the completion of the work which will satisfy the following criteria:

1. The above construction sequence should generally be completed in the specified order; however, several items may be constructed simultaneously. Work must also be scheduled or phased to limit the extent of the exposed areas as specified below. The intent of this sequence is to provide for erosion control and to have structural measures such as silt fence and construction entrances in place before large areas of land are denuded.

2. The work shall be conducted in sections which will:

   a. Limit the amount of exposed area to those areas in which work is expected to be undertaken during the proceeding 30 days.

b. Revegetate disturbed areas as rapidly as possible. All areas shall be permanently stabilized within 7 days of final grading; or temporarily stabilized within 15 days of initial disturbance of soil or within 7 days after completing the rough grading operations.

c. Incorporate planned inlets and drainage systems as early as possible into the construction phase. The swales shall be immediately lined or revegetated as soon as their installation is complete.

If the spring through fall construction schedule is not possible, and construction is planned between November 1 and April 15 of any calendar year, then the General Contractor shall submit a schedule which will satisfy the following criteria:

1. Limit the amount of exposed area to those areas in which work is expected to be undertaken during the proceeding 15 days.

2. During the construction process, all disturbed areas and stockpiles shall be covered with mulch within 24 hours of final grading.

3. Once final grade has been established, the contractor may choose to dormant seed the disturbed areas prior to placement of mulch and placement of fabric netting anchored with staples.

   a. If dormant seeding is used for the site, all disturbed areas shall receive 4" of loam and seed at an application rate of 5 lbs. per 1,000 s.f.

      All areas seeded during the winter months will be inspected in the spring for adequate catch. All areas insufficiently vegetated (less than 75 percent catch) shall be revegetated by replacing loam, seed and mulch.

   b. If dormant seeding is not used for the site, all disturbed areas shall be revegetated in the spring.

4. The area of denuded non-stabilized construction shall be limited to the minimum area practicable. An area shall be considered to be denuded until the subbase gravel is installed in pavement areas, the base slab gravel is installed in building areas, or the areas of future loam and seed have been loamed, seeded, and mulched. The mulch rate shall be twice the rate specified in the seeding plan [115 lbs. per 1,000 s.f. x 2 = 230 lbs. per 1,000 s.f.].

5. The schedule shall be subject to the approval of The Inn at Diamond Cove, LLC.

The Contractor must install any added measures which may be necessary to control erosion/sedimentation from the site dependent upon the actual site and weather conditions.

The Contractor shall note that no area shall remain denuded for a period of over 15 days before it is temporarily stabilized. Temporary stabilization shall be the installation of gravel or mulching.

14.8 PROVISIONS FOR MAINTENANCE OF THE EROSION/SEDIMENTATION CONTROL FEATURES

This project is subject to the requirements and conditions of a MeDEP Site Location of Development Permit Amendment through delegated review by the City of Portland. This permit requires the General Contractor to prepare a list and designate by name, address and telephone number all individuals who will be responsible for implementation, inspection and maintenance of all erosion control measures identified within this report and as contained in the Grading and Drainage Plan of the contract drawings. Specific responsibilities of the inspector(s) will include:

1. Execution of the Contractor/Subcontractor Certification contained in Appendix B by any and all parties responsible for erosion control measures on the site.

2. Assuring and certifying the project's construction sequence is in conformance with the specified schedule of this report. A weekly certification stating compliance, any deviations, and corrective measures necessary to comply with the erosion control requirements of this report shall be prepared and signed by the inspector(s).

3. In addition to the weekly certifications, the inspector(s) shall maintain written reports recording construction activities on the site which include:

   - Dates when major grading activities occur in a particular area.
   - Dates when major construction activities cease in a particular area, either temporarily or permanently.
   - Dates when an area is stabilized.

4. Inspection of the project work site on a weekly basis and after each significant rainfall event (0.5 inches or more within any consecutive 24-hour period) during construction until permanent erosion control measures have been properly installed and the site has been stabilized. Inspection of the project work site shall include:

   - Identification of proper erosion control measure installation in accordance with the erosion control detail sheet or as specified in this report.
   - Determine whether each erosion control measure is operating properly. If not, identify damage to the control device and determine remedial measures.
   - Identify areas which appear vulnerable to erosion and determine additional erosion control measures which should be used to improve conditions.
   - Inspect areas of recent seeding to determine percent catch of grass. A minimum catch of 90 percent is required prior to removal of erosion control measures.

   Accumulated silt/sediment should be removed when the depth of sediment reaches 50 percent of the barrier height. Accumulated silt/sediment should be removed from behind silt fencing when the depth of the sediment reaches 6 inches.

5. If inspection of the site indicates a change should be made to the erosion control plan, either to improve effectiveness or correct a site-specific deficiency, the inspector shall immediately implement the corrective measure and notify the Owner of the change.

6. Once construction has been completed, long-term maintenance of the facilities will be the responsibility of The Inn at Diamond Cove, LLC. The catch basin sumps shall be inspected in April and October of each year. Sediment shall be removed when the depth of sediment reaches one-half the depth of the sump.

   All certifications, inspection forms, and written reports prepared by the inspector(s) shall be filed with the Owner and the City of Portland Planning Department. All written inspection forms and written reports must be filed within one (1) week of the inspection date.

VII. APPENDICES

Appendix A – Seeding Plan
Appendix B – Sample EPA Certification and Inspection Forms

ATT. 2-L-1

ARCHETYPE

January 19, 2010

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Double Barracks (Building 46) – Great Diamond Island water capacity and sprinkler system

Dear Rick:

Please include with our application package for Development Review, on behalf of the Owner, this letter of explanation of and commitment to the provision of adequate water pressure for the full functioning of an automatic sprinkler system in accordance with Section 903.3.1.2 of the International Building Code, and meeting the requirements of NFPA 13R.

As mandated by the building code, the construction of this project as a "Hotel-Condominium" can only be permitted if it includes this sprinkler system, as dictated in IBC §506.1 and Table 503. Therefore, it can be expected by the Planning Board that this requirement will be met, even if not included as a condition on our Site Plan Approval.

As presently designed, there are two potential means for accomplishing the installation of a fully operable sprinkler system. Plan A, which is being pursued by the Owner, is to upgrade the existing water supply to the Diamond Cove Homeowner's Association. As a member of the Association, the Owner is working with the engineering division of the Portland Water District to develop a plan to increase the water pressure in the existing water system by "closing the loop" of the water lines, which currently dead-end downstream from Building 46. This modification, working with the current water capacity within that system, would increase the pressure adequately to supply the sprinkler system.

Plan B, should the negotiations and the design of the Plan A prove difficult to accomplish, is to install within the building a sprinkler pump. These pumps have been a proven means of providing adequate pressure to sprinkler systems in many projects with water pressure issues.

Rest assured, as it is impossible to build this project without a sprinkler system, this issue will be resolved in one of the two ways described above as a matter of course.

Thank you, and please do not hesitate to contact me to discuss this further.

Respectfully,

Kevin Gough
Archetype Architects

48 Union Wharf, Portland, Maine 04101 (207) 772-6823 • Fax (207) 772-4036

Applicant's Submittal

EXHIBIT A

January 9, 2009

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Development Review Application Double Barracks (Building 46) – Great Diamond Island

Dear Rick:

We are submitting our revised and extended application for Development Review on behalf of applicant and owner, The Inn at Diamond Cove, LLC, a Maine limited liability company, for a renovation of and addition to Building No. 46 (Double Barracks) at Diamond Cove, Great Diamond Island.

The building in question is substantially deteriorated and in a state of near abandon. The Double Barracks is planned be fully rehabilitated in accordance with the National Park Service and the Portland Historical Board and shall convert the property to a hotel condominium use together with some limited common amenities consistent with the operations of a hotel. The building itself will house 20 residential units, governed by a newly-formed condominium association. Each of the units shall be considered a "lot" within the Diamond Cove Homeowners Association and will be used for purposes consistent with a residential hotel condominium, including reasonable and customary on-site services limited to the owners, their guests, tenants in residence and members of DCHA. The addition will entail a one story lobby structure in the inner courtyard of the existing building with a three story elevator tower and porch addition on the face of the building in that courtyard.

Located in an IR-3 zone, the addition is a permitted use based upon a Zoning Text Amendment to the Fort McKinley Conditional Zone.

The following is a summary of the current project status:

1. The proposed renovation plans have been reviewed and approved by the National Park Service for compliance with the guidelines for renovations to historic properties.
2. An amended waste water discharge license application has been completed and will be filed with the Maine Department of Environmental Protection this month.
3. An amendment to the existing site location order for the Diamond Cove Project will also be submitted this month to the Maine D.E.P. to allow the proposed renovations.

THE FOLLOWING SUBMISSION ITEMS FOR DEVELOPMENT AND SITE PLAN REVIEW ARE LISTED FOR BOTH STATUS AND APPLICABILITY:

Site Plan Checklist:
1. Standard boundary survey;
Buiding 46 (Double Barracks) was declared as (14) fourteen lots by the declarant as recorded by amended plans recorded on August 22, 2002 in plan book 202, pages 526-528 "Phase I Plan". A copy of that plan is attached as Exhibit I. This plan reflects a building and lot footprint which can be transferred to each individual owner and a dashed line which represents each lot owner's exclusive right to use area (which is part of the Diamond Cove Home Owners Common Space). The Diamond Cove Home Owners Association increased the number of declared lots in Building 46 from (14) fourteen lots to up to a maximum of (22) twenty-two lots by vote of the

association. This vote was recorded in a second amendment to the amended and restated general declaration of covenants and restrictions. A copy of this amendment is attached as Exhibit II. This document was recorded August 28, 2007 at the Cumberland County Register of Deeds.

2. Plans based on the boundary survey including existing soil conditions, water courses, building and grade elevations, building elevation drawings, location of other buildings, on-site waste receptacles, utilities, mains, etcetera;
Included with this application please find one set of "Site Development Plans", prepared by Deluca-Hoffman Associates, the civil engineers for the proposed development. In addition there are included herein architectural plans and building elevations prepared by Archetype Architects. Also see attachment, "Section 14 – Erosion and Sedimentation Control Report".

3. Landscape Plan;
A landscape plan has not been included with this submission. In conformance with the requirements of the National Park Service, the landscape around the building will remain as grass, consistent with the original barrack's design and the current condition (with improvements).

4. Location and intensity of outdoor lighting system;
The outdoor lighting system plan and photometrics is being prepared by our electrical engineer and will be provided as soon as it becomes available.

5. Location of fire hydrants, existing and proposed;
See attached drawing entitled "Existing Hydrant Location" prepared by Deluca-Hoffman Associates. See Exhibit 3, attached.

6. Description of proposed uses to be located on site;
The proposed renovations consist of twenty (20) condominium/hotel units together with some limited common amenities consistent with the operation of a hotel.

7. Quantity and type of residential units;
See Item 6 above.

8. Total land area of the site;
Refer to Item 1 above, as well as to Exhibit I attached.

9. Total floor area, disturbed area, and ground coverage of proposed structure;
The existing structure has a footprint of 13,629 square feet. The proposed total disturbed area of the site is 0.8 acres (34,848 square feet). The ground coverage of the proposed addition to the building is 2,881 square feet.

10. General summary of existing and proposed easements or other burdens;
N/A

11. Type, quantity and method of handling solid waste disposal; *This document is forthcoming.*

12. Applicant's evaluation or evidence of availability of off-site public facilities, including sewer, water, and streets;
Water Capacity Letter and Sewer Capacity letters to follow.

13. Description of existing surface drainage and a proposed stormwater management plan or description of measures to control surface runoff;
See attachment, "Section 12 – Stormwater Management Report", prepared by Deluca-Hoffman, December 2008.

14. An estimate of the time period required for completion of the development;
The current time line for completion of this project anticipates a May 2009 construction start with a completion date of June 2010.

15. A list of all state and federal regulatory approvals to which the development may be subject. Include the status of any pending applications, anticipated timeframe for obtaining such permits, or letters of non-jurisdiction;
An amended waste water discharge license application has been completed and is pending approval. An amended waste water discharge license application has been completed and will be filed with the Maine Department of Environmental Protection this month.

16. Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved;
See attachment from David A. Bronson, Senior Vice President, TD Banknorth; dated April 29, 2008. In addition, Archetype Architects has designed and completed numerous building projects throughout the city of Portland. See Exhibit 4, attached.

17. Evidence of applicant's right title or interest, including deeds, leases, purchase options or other documentation;
See attachment, "Warranty Deed", dated November 8, 2006. Exhibit 5.

18. A description of any unusual natural areas, wildlife and fisheries habitats, or archaeological sites located on or near the site;
There are none, to our knowledge.

Respectfully,

David Lloyd
Archetype Architects

(attachments below)

2-A-3

Development Review Application
Portland, Maine
Department of Planning and Development, Planning Division and Planning Board

Address of Proposed Development:	Building 46 Double Barracks Great Diamond Island
Zone:	1R-3
Project Name:	The Inn at Diamond Cove

Existing Building Size:	13,629	sq. ft.	**Proposed Building Size:**	16,510	sq. ft.
Existing Acreage of Site:	193.4 acres	~~sq. ft.~~	**Proposed Acreage of Site:**	.08 acres	~~sq. ft.~~

Proposed Total Disturbed Area of the Site: sq. ft. *

* If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) or Chapter 500, Stormwater Management Permit with the Maine Department of Environmental Protection (DEP).

Tax Assessor's Chart, Block & Lot: Chart # 83E Block # F Lot # 460	**Property Owners Name/ Mailing address:** The Inn at Diamond Cove, LLC PO Box 3572 Portland, ME 04104	**Telephone #:** (207) 772-2992 **Cell Phone #:** (207) 332-1459
Consultant/Agent Name, Mailing Address, Telephone #, Fax # and Cell Phone #: David Lloyd Archetype, PA 48 Union Wharf Portland, ME 04101 (207) 772-6022 (207) 831-8627	**Applicant's Name/ Mailing Address:** The Inn at Diamond Cove, LLC PO Box 3572 Portland, ME 04104	**Telephone #:** (207) 772-2992 **Cell Phone #:** (207) 332-1459

Fee for Service Deposit (all applications) __X__ **($200.00)**

Proposed Development (check all that apply)

___ New Building __X__ Building Addition __X__ Change of Use ___ Residential ___ Office ___ Retail
___ Manufacturing ___ Warehouse/Distribution ___ Parking lot
___ Subdivision ($500.00) + amount of lots____ ($25.00 per lot) $_____ + major site plan fee if applicable
___ Site Location of Development ($3,000.00)
(except for residential projects which shall be $200.00 per lot_____)
___ Traffic Movement ($1,000.00) ___ Storm water Quality ($250.00)
___ Section 14-403 Review ($400.00 + $25.00 per lot)
___ Other_____

~ Please see next page ~

2-4-4

Major Development (more than 10,000 sq. ft.)

_X_ Under 50,000 sq. ft. ($500.00)

___ 50,000 - 100,000 sq. ft. ($1,000.00)

___ Parking Lots over 100 spaces ($1,000.00)

___ 100,000 - 200,000 sq. ft. ($2,000.00)

___ 200,000 - 300,000 sq. ft. ($3,000.00)

___ Over 300,000 sq. ft. ($5,000.00)

___ After-the-fact Review ($1,000.00 + applicable application fee)

Minor Site Plan Review

___ Less than 10,000 sq. ft. ($400.00)

___ After-the-fact Review ($1,000.00 + applicable application fee)

Plan Amendments

___ Planning Staff Review ($250.00)

___ Planning Board Review ($500.00)

Billing Address: (name, address and contact information)

The Inn at Diamond Cove, LLC
PO Box 3572
Portland, ME 04104

David Bateman (207) 772-2992

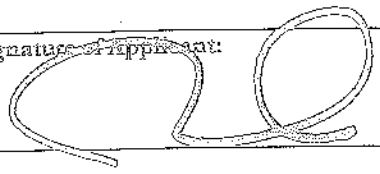
Submittals shall include seven (7) folded packets containing of the following materials:

A. Copy of the application.
B. Cover letter stating the nature of the project.
C. Written Submittal (Sec. 14-525 2. (c), including evidence of right, title and interest.
D. A standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 100 feet.
E. Plans and maps based upon the boundary survey and containing the information found in the attached sample plan checklist.
E. Copy of the checklist completed for the proposal listing the material contained in the submitted application.
F. In addition to the seven (7) sets of documents listed above, one (1) set of the site plans reduced to 11 x 17 must be submitted.

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 14), which includes the Subdivision Ordinance (Section 14-491) and the Site Plan Ordinance (Section 14-521). Portland's Land Use Code is on the City's web site: www.portlandmaine.gov Copies of the ordinances may be purchased through the Planning Division.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

This application is for site review only; a Performance Guarantee, Inspection Fee, Building Permit Application and associated fees will be required prior to construction.

Signature of Applicant:	Date:
	12/5/08

2-B-1

A R C H E T Y P E

November 18, 2009

Richard Knowland
Senior Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Site Plan Application Double Barracks (Building 46) – Great Diamond Island

Rick:

Given the amount of time that has passed, allow me to re-introduce the Great Diamond Island Project as we request inclusion on the next Planning Board agenda. As you will recall, a workshop was held on January 27 of 2009, the results of which will be addressed here as an amendment to the pre-established Site Plan Application on file with your Department.

The following is a summary of the current project status, with a listing of items provide within this current amendment to our application:

1. The proposed renovation plans have been reviewed and approved by the National Park Service for compliance with the guidelines for renovations to historic properties. A copy of the National Park Service approval letter is attached below.
2. On September 16, 2009 the City of Portland's Historic Preservation Board voted in favor of approval for our application for a Certificate of Appropriateness for the project as presented. The letter from Deborah Andrews is attached below.
3. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to show the location of the nearest fire hydrant as well as the size of the water lines. The building fire protection sprinkler line will be serviced by an existing 6" diameter water main. Attached please find a letter dated May 6, 2009 from the Portland Water District which provides the certification of the ability of the Water District to serve the project. A copy of the ability to serve letter from the Portland Water District is contained in Attachment C of this response letter. The Inn at Diamond Cove will be served by connection to the private sanitary sewer collection system that is treated by the Overboard Discharge System that has a waste discharge license through the MeDEP. The waste discharge license was amended as part of the MeDEP review process. A copy of the amended waste discharge license is contained in an attachment to this response letter.
4. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to reflect the approximate pavement width of the roadway along the front and rear of the building. Any disturbed roadway surface behind the building will be reconstructed with concrete similar to the existing surface.
5. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to indicate a 6' by 15' parking stall for the electric transportation vehicle to transport people from the Inn to the Diamond Cove pier.
6. Pursuant to the bicycle rack requirement, section 14-526(2)(c), the Site Layout & Utility Plan (Sheet C-4) has been revised to reflect bike storage racks sufficient for eight (8) bikes.
7. It is anticipated that all soil materials excavated as part of this project will either be re-used as backfill material or used in fill areas around the pool, etc. It is not anticipated that there will be any surplus excavation material that will need to be disposed off-site.
8. A Landscape Plan has been prepared for the project and is depicted as Sheet C-7 of the plan set.
9. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to provide a summary of the building floor areas and dimensions; the footprint area (sq. ft.) and dimensions of the inn; floor area of the inn; floor area and dimensions of the building addition and elevator; and the footprint and floor area of swimming pool and cabana.
10. The stormwater drainage plan has been revised to eliminate a single stormwater drainage basin and replace with several smaller bioretention basins. The bioretention basins provide water quality treatment as required by the MeDEP under the State Stormwater Law. This change in the stormwater drainage plan was submitted to the MeDEP

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in March of 2009 and approved as part of the Site Location of Development Act Permit Amendment. A copy of the Amended Site Location of Development Act Permit is contained in an attachment to this letter.

11. As requested, the Site Layout & Utility Plan (Sheet C-4) has been revised to include a unit summary table as well as the designated land areas associated with the exclusive right-to-use area, long-term ground lease area, and permanent drainage & maintenance easement area.
12. A letter from the General Manager of the Portland Harbor Hotel is attached below, which indicates the manner in which all guest parking will be handled on the mainland. There will be no parking on the island.
13. It is anticipated that all soil materials excavated as part of this project will either be re-used as backfill material or used in fill areas around the pool, etc. It is not anticipated that there will be any surplus excavation material that will need to be disposed off-site.
14. The Inn will not have a full kitchen area used for preparing foods, etc., but rather will be limited to serving continental breakfast, etc. that is customary to an Inn in accordance with the requirements set forth in the amended waste discharge license. Preparation of food for events requiring service beyond this will be catered through the Diamond Edge Restaurant.
15. As a means of satisfying the Board's and Zoning's request for context and area maps of the Island, the cover sheet for the Site Plans contains an excerpt of the USGS Map that depicts the location of the Inn on the Diamond Island, and within the context of the Fort McKinley plan.
16. The outdoor lighting system plan and photometrics is being prepared by our electrical engineer and will be provided as soon as it becomes available.
17. The current time line for completion of this project anticipates a May 2010 construction start with a completion date of June 2011.
18. In response to Comments from Dan Goyette, P.E. of Woodard Curran dated December 30, 2008, a copy of the test pit logs prepared by Albert Frick Associates has been added to Sheet C-3 of the plan set.
19. The storm drain system for the project has been revised from the original site plan submission to the City. The current design includes the use of shallow sylopiast yard inlets without the need for hooded outlets. The detail for the catch basins has been revised on Sheet C-9 of the plan set.
20. As requested by Dan Goyette, P.E., the Grading & Drainage Plan (Sheet C-5) has been revised to identify the pipe materials.

As can be seen from the above listing, our project team finds itself in conformance with the outstanding issues which our records indicate were addressed in our previous Planning Board Workshop. We seek to be included on an upcoming agenda for another workshop in order that we can move forward in the process towards an approved site plan.

We thank you for your time and your attention to the project. We are available any time to clarify or discuss these items.

Respectfully,

David Lloyd
Archetype Architects

(attachments below)

6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for settleable solids (SS); and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

B. This permitting action is dissimilar to the 10/14/2005 Permit action in that it is;

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30].
2. Authorizing the introduction of domestic wastewater to the OBD treatment system resulting from the redevelopment of the barracks into a 46-bedroom hotel/condominium.
3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3.
4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6.
5. Requiring rehabilitation of the remaining 1,340 linear feet of non-rehabilitated wastewater conduit associated with this Permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this Permit, whichever occurs first.
6. Requiring The Inn at Diamond Cove, LLC to cap off the sewer connection to the hospital prior to habitation at the Inn.
7. Requiring monitoring of the daily discharge as a weekly average (record only).
8. Requiring updates to the Operation and Maintenance Plan (O&M Plan) to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP).

CONCLUSIONS

BASED on the findings in the attached Fact Sheet dated June 9, 2009 *(rev. 9/9/09)*, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

A. The discharge, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

B. The provisions of the State's antidegradation policy as described in the *Water classification program*, 38 M.R.S.A., Section 464(4)(F), will be met, in that:

1. Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected;
2. Where high quality waters of the State constitute an outstanding national resource, that water quality will be maintained and protected;
3. The standards of classification of the receiving water body are met or, where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification;
4. Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification, that higher water quality will be maintained and protected; and
5. Where a discharge will result in lowering the existing quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

C. The discharge will be subject to effluent limitations that require application of best practicable treatment as defined in *Water pollution control*, 38 M.R.S.A., §414-A(1)(D).

SPECIAL CONDITIONS

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS – OUTFALL #001

1. The permitees are authorized to discharge secondary treated wastewaters from Outfall #001 to Casco Bay, Class SB. Such discharges shall be limited and monitored by the permitees as specified below:

Effluent Characteristic	Discharge Limitations						Minimum Monitoring Requirements	
Parameter	Monthly Average as specified	Weekly Average (5) as specified	Daily Maximum as specified	Monthly Average as specified	Weekly Average as specified	Daily Maximum as specified	Measurement Frequency as specified	Sample Type as specified
Flow *[50050]*	35,000 gpd	Report (gpd)	Report (gpd) *[07]*		—	—	Continuous *[99/99]*	Recorder *[RC]*
Biochemical Oxygen Demand (1) (BOD_5) *[00310]*	8.8 lbs./day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Total Suspended Solids (TSS) (1) *[00530]*	8.8 lbs/day *[26]*	13 lbs./day *[26]*	15 lbs/day *[26]*	30 mg/L *[19]*	45 mg/L *[19]*	50 mg/L *[19]*	1/Month *[01/30]*	Grab *[GR]*
Settleable Solids *[00545]*	—	—	—	—	—	0.3 ml/L *[25]*	**1/Month** *[01/30]* (2)	Grab *[GR]*
Fecal Coliform Bacteria (3) *[31633]*	—	—	—	15/100 ml *[13]*	—	50/100 ml *[13]*	1/Week *[01/07]*	Grab *[GR]*
Total Residual Chlorine *[50060]* (4)	—	—		—	—	1.0 mg/L *[19]*	5/Week *[05/07]*	Grab *[GR]*
pH (Std. Unit) *[00400]*	—	—	—	—	—	6.0 - 9.0 SU *[12]*	1/Week *[05/07]*	Grab *[GR]*

The italicized numeric values bracketed in the table above and on the following pages are code numbers that Department personnel utilize to code the monthly Discharge Monitoring Reports (DMR's).

Footnotes:

Sampling – All effluent monitoring must be conducted at a location following the last treatment unit in the treatment process as to be representative of end-of-pipe effluent characteristics. Any change in sampling location must be approved by the Department in writing. Sampling and analysis must be conducted in accordance with; a) methods approved by 40 Code of Federal Regulations (CFR) Part 136, b) alternative methods approved by the Department in accordance with the procedures in 40 CFR Part 136, or c) as otherwise specified by the Department. Samples that are sent out for analysis must be analyzed by a laboratory certified by the State of Maine's Department of Human Services.

1. Percent Removal – The treatment facility shall maintain a minimum of 85 percent removal of both biochemical oxygen demand and total suspended solids. The percent removal shall be calculated based on influent and effluent concentration values. The percent removal shall be waived when the monthly average influent concentration is less than 200 mg/L.
2. The monitoring frequency for SS has been revised from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
3. Fecal coliform bacteria – The limits and monitoring requirements are in effect on a seasonal basis, to be implemented no later than May 15 and be discontinued no earlier than September 30 of each year.
4. Total Chlorine Residual (TRC) – TRC is required in any month the effluent is chlorinated.
5. Weekly average flows that exceed 35,000 gpd will prompt the permitee(s) to implement provisions in the Wet Weather Management Plan *(see Special Condition J)*.

SPECIAL CONDITIONS

B. NARRATIVE EFFLUENT LIMITATIONS

1. The effluent shall not contain a visible oil sheen, foam or floating solids at any time that would impair the usages designated by the classification of the receiving waters.
2. The effluent shall not contain materials in concentrations or combinations which are hazardous or toxic to aquatic life, or which would impair the usages designated by the classification of the receiving waters.
3. The discharge shall not impart color, taste, turbidity, toxicity, radioactivity or other properties that cause those waters to be unsuitable for the designated uses and characteristics ascribed to their class.
4. Notwithstanding specific conditions of this permit, the effluent must not lower the quality of any classified body of water below such classification, or lower the existing quality of any body of water if the existing quality is higher than the classification.

C. DISINFECTION

An approved chlorine contact tank providing the proper detention time consistent with good engineering practice must be utilized, followed by a dechlorination system if the total residual chlorine (TRC) cannot be met by dissipation in the detention tank. At no time may the TRC in the effluent shall cause any demonstrable harm to aquatic life in the receiving waters. The dose of chlorine applied shall be sufficient to leave a TRC concentration that will effectively reduce bacteria to levels below those specified in Special Condition A, *"Effluent Limitations and Monitoring Requirements."*

D. TREATMENT PLANT OPERATOR

The person who has the management responsibility over the treatment facility must hold a Grade II certificate (or higher) or must be a Maine Registered Professional Engineer pursuant to *Sewerage Treatment Operators*, Title 32 M.R.S.A., Sections 4171-4182 and *Regulations for Wastewater Operator Certification*, 06-096 CMR 531 (effective May 8, 2006). All proposed contracts for facility operation by any person must be approved by the Department before the permitee(s) may engage the services of the contract operator.

E. UNAUTHORIZED DISCHARGES

The permitees are authorized to discharge only in accordance with the terms and conditions of this permit and only from the existing outfall. Discharges of wastewater from any other point source are not authorized under this permit, but must be reported in accordance with Standard Condition B(5), *Bypasses,* of this permit.

This permit specifically excludes introduction of wastewater directly or indirectly from the redevelopment of the Hospital and the proposed Inn swimming pool. This permit authorizes the inclusion of wastewater resulting from the general practice of hotels and inns to have kitchen facilities to support a continental breakfast, and the proposed cabana to serve beverages and light snacks for their guests. This permit does not authorize the inclusion of wastewater from any non-domestic sources or activities such as restaurant facilities within the Inn or the pool.

F. LIMITATIONS FOR INDUSTRIAL USERS

Pollutants introduced into the wastewater collection and treatment system by a non-domestic source (user) shall not pass through or interfere with the operation of the treatment system.

SPECIAL CONDITIONS

G. MONITORING AND REPORTING

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report (DMR) forms provided by the Department and **postmarked on or before the thirteenth (13th) day of the month or hand-delivered to the Department's Regional Office such that the DMR's are received by the Department on or before the fifteenth (15th) day of the month** following the completed reporting period. A signed copy of the DMR and all other reports required herein shall be submitted to the following address:

Maine Department of Environmental Protection
Bureau of Land and Water Quality
OBD Inspection Program
17 State House Station
Augusta, Maine 04333-0017

H. NOTIFICATION REQUIREMENT

In accordance with Standard Condition D, the permitees shall notify the Department of any substantial change in the volume or character of pollutants being introduced into the wastewater collection and treatment system by a source introducing pollutants into the system at the time of permit issuance. For the purposes of this section, notice regarding substantial change shall include information on:

1. The quality and quantity of wastewater introduced to the system; and
2. Any anticipated impact caused by the change in the quantity or quality of the wastewater to be discharged from the treatment system.

I. SITE EVALUATION FOR TRANSFERRED AND RENEWED PERMITS

On or before March 8, 2014, prior to permit transfer or **transfer of the property** occupying the permitted overboard discharge system, a site evaluation must be performed by a licensed site evaluator with experience in designing systems for the replacement of overboard discharge systems.

The Department may not grant approval for a **permit transfer** if the site evaluation concludes that a non-discharging wastewater disposal system designed in compliance with the Maine Subsurface Waste Water Disposal Rules administered by the Maine Department of Health and Human Services, Division of Environmental Health can be installed as a replacement system for the overboard discharge.

The Department may not grant approval for a **permit renewal** if the site evaluation concludes that a non-discharging wastewater disposal system can be installed as a replacement system for the overboard discharge and the Department has offered the permitees funding for the removal of the discharge.

J. OPERATION & MAINTENANCE (O&M) PLAN

This facility shall maintain a current written comprehensive Operation & Maintenance (O&M) Plan. The plan shall provide a systematic approach by which the permitees shall at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permitees to achieve compliance with the conditions of this permit.

By December 31, 2009, the permitees shall establish a "Wet Weather Management Plan" as part of the O & M plan. This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during the events.

SPECIAL CONDITIONS

By December 31 of each year, or within 90 days of any process changes or minor equipment upgrades, the permitees shall evaluate and modify the O&M Plan including site plan(s) and schematic(s) for the wastewater treatment facility to ensure that it is up-to-date. The O&M Plan shall be kept on-site at all times and made available to Department and EPA personnel upon request.

Within 90 days of completion of new and or substantial upgrades of the wastewater treatment facility, the permitees shall submit the updated O&M Plan to their Department inspector for review and comment.

K. TREATMENT SYSTEM REPAIRS AND MAINTENANCE

Prior to habitation of the "Barracks" and final reconnection of the "Barracks" to the OBD, or by March 8, 2012, whichever occurs first, the permitees shall refurbish the remaining 1,340 linear feet of unrehabilitated sewer collection pipe, permanently disconnect the "Hospital" from the sewer collection system and cap off that end of the sewer to exclude any inflow and infiltration from the Hospital leg of the sewer, replace the perforated manhole cover on Diamond Avenue with a solid cover, replace/raise to grade the manhole casting between Units #83E-B30-3 and 83E-B40-4, and replace/raise to grade the manhole casting adjacent to Unit #83E-260-26A *[PCS Code 04599]*.

L. SEPTIC TANKS

1. Septic tanks and other treatment tanks shall be regularly inspected (at least once per calendar year) and maintained to ensure that they are providing best practicable treatment. The permitees shall maintain logs of inspections/maintenance that records the date, notes on observations, repairs conducted etc. The logs shall be maintained on site at all times and made available to Department personnel upon request.
2. Tank contents should be removed whenever the sludge and scum occupies one-third of the tank's liquid capacity or whenever levels approach maximum design capacity. Following pumping, the tanks shall be checked for damage at key joints and the inlet and outlet baffles, and repaired promptly if damaged. The licensee shall keep a pumping log including the date of pumping, quantity of material removed, name and number of licensed contractor, pumping frequency and other relevant observations.

M. REOPENING OF PERMIT FOR MODIFICATIONS

If new site-specific information or any other pertinent information is gathered during the term of this permit, the Department may, at anytime and with notice to the permitees, modify this permit to:

(a) include effluent limits necessary to control specific pollutants where there is a reasonable potential that the effluent may cause water quality criteria to be exceeded.

(b) impose or change monitoring requirements or limitations based on new information;

(c) require elimination of the discharge when an alternative form of wastewater disposal is feasible. The Department will require termination of the discharge when grant funds are made available for elimination of the discharge.

N. SEVERABILITY

In the event that any provision or part thereof, of this permit is declared to be unlawful by a reviewing court, the remainder of the permit shall remain in full force and effect, and shall be construed and enforced in all aspects as if such unlawful provision, or part thereof, had been omitted, unless otherwise ordered by the court

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
AND MAINE WASTE DISCHARGE LICENSE
FACT SHEET

Date: **June 9, 2009**
Revised: **September 1, 2009**

PERMIT NUMBER: **ME0023248**
LICENSE NUMBER: **W006931-5C-F-R**
NAME AND ADDRESS OF APPLICANTS

Diamond Cove Homeowners Association
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

The Inn at Diamond Cove, LLC
c/o Phoenix Management Co.
Attn: Aaron Bateman
P.O. Box 759
Saco, Maine 04101
(207)712-3113
abateman@phoenixmanagementcompany.com

COUNTY: **Cumberland County**

NAME AND ADDRESS WHERE DISCHARGE OCCURS:
Great Diamond Island
Portland, Maine 04109

RECEIVING WATER AND CLASSIFICATION: **Casco Bay, Class SB**

COGNIZANT OFFICIAL(S) AND TELEPHONE NUMBERS:

Diamond Cove Homeowners Association **Attn:** Robert Whelan **Position:** President **Telephone:** **Email:** bwhelan@whelanandcompany.com	The Inn at Diamond Cove, LLC c/o Phoenix Mgmt Co. **Attn:** Aaron Bateman P.O. Box 759, Saco, Maine 04101 **Telephone:** (207) 775-1121 **Email:** abateman@phoenixmanagementcompany.com

1. APPLICATION SUMMARY:

A. Application - The Diamond Cove Homeowners Assoc (DCHA) and The Inn at Diamond Cove, LLC (Inn) (collectively; the applicants or permitees) have submitted an application to the Department to transfer and modify WDL #W006931-5C-E-R, which was issued on October 14, 2005 and expires on October 14, 2010. The 10/14/2005 WDL authorized the year-round discharge of up to 35,000 gallons per day (as a monthly average) of secondary treated sanitary wastewater to Casco Bay, Class SB, in Portland, Maine (See Attachment A of this Fact Sheet for location map).

B. Source - Wastewater is generated by Phase I development of Department Site Location Order #L-013160-87/03-A-N. This development, located on a 193.4-acre portion of Great Diamond Island, consists of 44 buildings. Of the buildings, 36 were to be converted to 134 housing units; five were to be commercial uses, and two for recreational uses. To date

SPECIAL CONDITIONS

all but four of the 36 buildings have been renovated: Housing units 83F-690-69 (Devine) and 83F-700-70 (Devine), the "Barracks" and the "Hospital."

2. MODIFICATIONS REQUESTED:

The applicants are requesting the permit be issued to reflect the full ownership by the previously licensed DCHA, and the inclusion of the wastewater resulting from the redevelopment by the Inn of the "Barracks" as previously authorized as part of *Phase I* development in Department Site Location Order #L-013160-87/03-A-N (Site Order) on December 10, 1986. Although the current proposal is for development as a hotel/condominium, and the Site Order is for a residential use, the wastewater is domestic-like in strength and character. The Department's Division of Water Quality Management (DWQM) is not the licensing authority determining the ultimate use of the structures beyond consistency with the 1986 Site Order.

3. PERMIT SUMMARY:

A. Regulatory - On January 12, 2001, the Department received authorization from the U.S. Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) permit program in Maine. From that point forward, the program has been referred to as the MEPDES permit program and permit #ME0023248 (same as the NPDES permit application number) will be utilized as the primary reference number for the Diamond Cove wastewater treatment facility.

B. Terms and Conditions:

This permitting action is similar to the 10/14/2005 permit action in that it is;

1. Carrying forward the monthly-average discharge flow limitation of 35,000 gpd;
2. Carrying forward the 30 mg/L monthly average, 45 mg/L weekly average and 50 mg/L daily maximum technology-based concentration limits for BOD_5 and TSS;
3. Carrying forward the 8.8 lbs/day monthly average, 13 lbs/day weekly average and 15 lbs/day daily maximum technology-based mass limits for BOD_5 and TSS;
4. Carrying forward the monthly average technology based concentration limits for fecal coliform bacteria;
5. Carrying forward the monthly average and daily maximum technology-based concentration limitations for total residual chlorine (TRC) of 1.0 mg/L.
6. Carrying forward the minimum 85% BOD_5 and TSS removal requirement;
7. Carrying forward the 0.3 ml/L daily maximum technology-based limit for SS; and
8. Carrying forward the pH range limitation to 6.0 – 9.0 standard units.

This permitting action is dissimilar to the 10/14/2005 permit action in that it is;

1. Revising the monitoring frequency for SS from once weekly [01/07] to once monthly [01/30] to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.
2. Authorizing the introduction of wastewater to the OBD treatment system resulting from the redevelopment of the "Barracks" into a 46-bedroom hotel/condominium by The Inn at Diamond Cove, LLC (Inn). Both the "Barracks" and the "Hospital: were acquired by the City of Portland, and will now be deeded to The Inn at Diamond Cove, LLC per the Purchase and Sales Agreement dated May 4, 2007. *Waste discharge licenses* 38 M.R.S.A. §413.3 requires a Licensed Site Evaluator/Professional Engineer to conduct a site evaluation prior to transfer of a facility served by an OBD. The transferee must replace the OBD using an alternative system) if there is a feasible

SPECIAL CONDITIONS

3. PERMIT SUMMARY (continued)

alternative. The Inns' LSE found no alternative to the use of the OBD by the "Barracks." Sufficient treatment capacity remains for connection of the "Barracks" to the existing OBD.

3. Specifically prohibiting wastewater (including inflow and/or infiltration) from the "Hospital" from inclusion in the wastewater influent to the existing OBD sand filter treatment system pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3. There is a feasible alternative to use of the existing OBD treatment. That capacity is not sufficient for use by the "Barracks." Additionally, the existing treatment works does not have sufficient treatment capacity to accept wastewater resulting from the future and subsequent redevelopment of the "Hospital."

4. Specifically prohibiting wastewater from the proposed swimming pool to the existing OBD sand filter treatment system pursuant to *Classification of Maine waters* 38 M.R.S.A. § 464.A.6. The 1986 Site Order did not authorize a second pool. Therefore, connection of the pool to the OBD, would constitute an additional source of discharge and is prohibited.

5. Requiring rehabilitation by the permitees of the remaining 1,340 linear feet of remaining non-rehabilitated wastewater conduit associated with this permit in addition to the other remedial measures proposed in the application prior to habitation of the "Barracks" or within 30 months of the effective date of this permit, whichever occurs first. Although the 35,455-gpd design flow (daily maximum) from the existing development, unrehabilitated Units 83F-690-69, 83F-700-70, and the proposed Inn exceeds the 35,000-gpd discharge volume limit as a daily maximum, it will not cause exceedances of the monthly average. However, the estimated numbers are sufficiently close to warrant additional measures to assure compliance with the discharge volume limit in inclement seasons.

6. Requiring the permitees to cap off the sewer connection to the hospital prior to habitation at the Inn or within 30 months of the effective date of this permit, whichever occurs first. The permitees have stated that the Hospital's roof is in disrepair and that leg of the sewer collection has been identified as a significant contributor of I/I.

7. Requiring monitoring of the discharge as a weekly average (record only). The intent of this provision is to give the permitees' treatment system operators crucial data to make treatment decisions, including implementation of a wet weather management plan to direct the staff on how to operate the facility effectively during periods of high flow. This would also give the Department additional data to make future licensing and monitoring decisions, including potential reinstatement of the original 40,000 gpd (weekly average) discharge volume limit. Should the Department observe a pattern of exceedances or near exceedances, it reserves the right (with notice to the permitees) to require additional monitoring or treatment conditions.

8. Requiring updates to the Operation and Maintenance Plan to include provisions for near capacity discharges. The update must include a Wet Weather Management Plan (WWMP). This plan would direct the staff on how to operate the facility effectively during periods of high flow, including operating procedures for a range of intensities, solids handling procedures, and provide written operating and maintenance procedures during period of high infiltration and inflow caused by storm or melt water events. Ideally, it should bring the DCHA and the businesses into the process, whether by establishing water use alerts, requiring the installation and use of water conserving fixtures, or implementing other water saving or discharge-reducing strategies.

C. History: The most current/relevant regulatory actions regarding the discharge from the facility include:

- December 10, 1986 –Maine Department of Environmental Protection (MDEP) Site Location Order #L-013160-87/03-A-N approved *Phase I* redevelopment of 193.4 acre Fort McKinley.

SPECIAL CONDITIONS

3. PERMIT SUMMARY (continued):

Of the 44 buildings slated for redevelopment, 34 were to be renovated as 134 housing units, five as commercial uses, two as recreational, and one as maintenance/public safety. Of the 34 buildings, only the "Barrack, the "Hospital," Units 83F-690-69* and 83F-700-70* have not been rehabilitated to date.

- May 17, 1989 - The EPA issued NPDES permit #ME0023248 to McKinley Partners. The permit expired on May 17, 1994.
- June 2, 1994 – The Department issued Maine Waste Discharge License #W006931-5C-D-R for a ten-year term. The WDL authorized the discharge of up to 40,000 gpd (as a daily maximum) of secondary treated wastewater.
- October 14, 2005 – The Department issued Maine Waste Discharge License (WDL) #W006931-5C-D-R jointly to McKinley Partners and the DCHA for a five-year term. WDL #W006931-5C-D-R authorized the year-round discharge of no more than 35,000 gpd (monthly average) of secondary-treated wastewater to Casco Bay. The change recognized that extreme precipitation and snowmelt events were creating violations of the 40,000-gpd daily maximum discharge limit.
- January 12, 2009 – The Department accepted an application from the DCHA and the Ten.

D. Source description - Sanitary wastewaters are generated from the 193.4-acre residential facility comprised of 79 dwelling units (2 one-bedroom, 8 two-bedroom, 45 three-bedroom, 14 four-bedroom, 6 five-bedroom 3 six bedroom and 1 seven bedroom unit) a restaurant, a general store, two administrative/maintenance building and a 35-slip marina. The Island also hosts special tent events such as weddings throughout the summer. The sources of effluent and estimated discharge volumes have been revised since the last permit action in response to an actual count of the sources of wastewater. The previous sources were documented to be in error by the applicants and other interested parties. The updated sources appear to have been present at the previous licensing action. The permitted sources of effluent and estimated discharge volumes are as follows:

Owner	Unit I.D	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
1. F. Willis	83B-481-48B	1	120	120	1	90	180
2. C. Vanderweil	83B-482-48B	1	120	120	1	90	180
3. J. Roberts	83B-180-18	2	90	180	2	90	180
4. M. Murphy	83B-471-47B	2	90	180	2	90	180
5. D. Moran	83B-472-47B	2	90	180	2	90	180
6. F. Trenholm	83B-541-54B	2	90	180	2	90	180
7. B. Mason	83B-542-54B	2	90	180	2	90	180
8. J. Acconzo	83B-551-55B	2	90	180	2	90	180
9. L. Vardis	83B-552-55B	2	90	180	2	90	180
10. M. Teas	83E-200-20	2	90	180	2	90	180
11. A. Riley	83E-13-13A	3	90	270	3	90	270
12. D.Johnson	83E-132-13B	3	90	270	3	90	270
13. B. Robinson	83E-133-13C	3	90	270	3	90	270
14 J. Doyle	83E-134-13D	3	90	270	3	90	270
15. L. Estabrook	83E-135-13E	3	90	270	3	90	270
16. R. Blatty	83E-137-13G	3	90	270	3	90	270
17. T. Burris	83E-138-13H	3	90	270	2	90	180
18. E. Stein	83E-151-15A	3	90	270	3	90	270
19. M. Kane	83E-152-15B	3	90	270	3	90	270

SPECIAL CONDITIONS

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
20. L. Shea	83E-153-15C	3	90	270	3	90	270
21. J. Tooker	83E-155-15E	3	90	270	3	90	270
22. L. Tracy	83E-157-15G	3	90	270	3	90	270
23. A. Finney	83E-161-16A	3	90	270	3	90	270
24. V. Smith	83E-162-16B	3	90	270	3	90	270
25. B. Young	83E-164-16D	3	90	270	3	90	270
26. L. Pergament	83E-165-16E	3	90	270	3	90	270
27. W. Anderson	83E-166-16F	3	90	270	3	90	270
28. R. Weinman	83E-167-16G	3	90	270	2	90	180
29. R. Cullen	83E-171-17A	3	90	270	3	90	270
30. J. Taggart	83E-172-17B	3	90	270	3	90	270
31. A. Davis	83E-173-17C	3	90	270	3	90	270
32. F. Boudreau	83E-174-17D	3	90	270	3	90	270
33. E. Wolak	83E-175-17E	3	90	270	3	90	270
34. D. Wolak	83E-176-17F	3	90	270	3	90	270
35. R. Cady	83E-177-17G	3	90	270	3	90	270
36. K. Wood	83E-178-17H	3	90	270	2	90	180
37. R. Taylor	83E-211-21A	3	90	270	3	90	270
38. R. Taylor	83E-212-21B	3	90	270	2	90	180
39. D. Clem	83E-220-22	3	90	270	3	90	270
40. D. Farrell	83E-231-23A	3	90	270	3	90	270
41. J. Amerling	83E-232-23B	3	90	270	2	90	180
42. V. Purpura	83E-241-24A	3	90	270	3	90	270
43. D. Faunce	83E-242-24B	3	90	270	3	90	270
44. C. Small	83E-251-25A	3	90	270	3	90	270
45. Eye Venture	83E-252-25B	3	90	270	3	90	270
46. J. Welton (Jail)	83E-270-27	3	90	270	3	90	270
47. D. Schwartz	83E-B780-78	3	90	270	3	90	270
48. D. Kenly	83F-301-30A	3	90	270	3	90	270
49. R. Frantz	83F-302-30B	3	90	270	3	90	270
50. F. Haley	83F-303-30C	3	90	270	3	90	270
51. J. Cox	83F-561-56A	3	90	270	3	90	270
52. Momborguette	83F-561-56B	3	90	270	2	90	180
53. W. Vackar	83F-561-56C	3	90	270	3	90	270
54. D. Devine*	83F-690-69	3	90	270	*3	*90	*270
55. D.Devine*	83F-700-70	3	90	270	*3	90	*270
56. D. Hale	83E-120-B12	4	90	360	3	90	270
57. O. Keithly	83E-136-13F	4	90	360	3	90	270
58. T. Lucke	83E-154-15D	4	90	360	2	90	180
59. G. Kennedy	83E-156-15F	4	90	360	3	90	270
60. VZV Research	83E-158-15H	4	90	360	3	90	270
61. J. Dumas	83E-163-16C	4	90	360	3	90	270
62. B.Perry	83E-168-16H	4	90	360	3	90	270
63. G. Lane	83E-260-26A	4	90	360	3	90	270
64. J. Bauer	83E-B61-6A	4	90	360	3	90	270
65. R. Pfaffmann	83E-B62-6B	4	90	360	3	90	270
66. K. Geitz	83E-B81-8A	4	90	360	4	90	360
67. D. MacKinnon	83E-B82-8B	4	90	360	4	90	360
68. H.Smith	83E-B91-9A	4	90	360	4	90	360
69. G. Altfield	83F-561-56D	4	90	360	3	90	270

SPECIAL CONDITIONS

Owner	Unit I.D.	Bedroom Count	DEP Design	DEP Total Design Flow	Applicant's Count	Applicant's Design Flow	Total
70. M. Mills	83E-B11-1A	6	90	540	4	90	360
71. C. Freund	83E-B12-1B	5	90	450	4	90	360
72. R. Whelan	83E-B20-2	5	90	450	4	90	360
73. P. Guarino	83E-B30-3	5	90	450	2	90	180
74. J.Nash	83E-B40-4	5	90	450	4	90	360
75. L. Laucirica	83E-B51-5A	5	90	450	3	90	270
76. J. Mirachel	83E-B52-5B	5	90	450	3	90	270
77. J. Burge	83E-B92-9B	7	90	630	4	90	360
78. S. Bean	83E-B71-7A	6	90	540	3	90	270
79. H. Fitch	83E-B72-7B	6	90	540	4	90	360
Existing Residential Subtotal:		264	Total: 79	23,820	Bdrms: 223	Total: 79	GPD:20,610

EXISTING COMMERCIAL USES

Commercial Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Quantity	Applicant's GPD/Unit	Applicant's Design Flow
Admin offices / Recreation: users.	40	10	400	2	240	480
Admin office / Recreation : employees	1	15	15	0	0	0
Marina / washer /shower			150	1	100	100
Marina employees	1	15	15	0	0	0
General Store –Deli seats	14	20	280	0	0	0
Commercial Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Quantity	Applicant's GPD/Unit	Applicant's Design Flow
Deli Employees	3	15	45			
General Store: employees	3	15	45	2	15	30
Restaurant : seats (2 meals/day)	161	20	3,220	161	20	3,220
Restaurant : employees	20	15	300	20	15	300
Tent Site: seats	100	20	2,000	150	7	1,050
Tent Site: employees	8	15	120	8	15	120
Commercial Subtotal			6,590			5,300
Existing Development Subtotal			30,410			25,910

PROPOSED COMMERCIAL / RESIDENTIAL

Wastewater Source	Quantity	DEP GPD/Unit	DEP Sum Design Flow	Applicant's Count	Applicant's Design Flow	Total
Inn (Hospital):bedrooms		(none)	(none)	(not connected)	(not connected)	0
Inn (Barracks): bedrooms	46	100	4,600	2 single bed	180	360
				10 two-bed	180	1,800
				8 three-bed	270	2,160
				Bedrooms subtotal:		4,320
Pool Area Food Service: seats	30	7	210	0	0	0
Inn: (Barracks & pool) employees		15	225		15	225
Allowable Inflow/Infiltration						3000
Pool discharge	0	0	0	0	0	0
Inn / Pool area subtotal			5,035			7,545
TOTAL Design Flow			35,445			33,455

* Design flow is reserved for still unrehabilitated housing units 83F-690-69 and 83F-700-70

E. Wastewater treatment - The effluent currently receives a secondary level of treatment. The raw sewage is collected from the existing development by a network of approximate 4,200 linear feet of new PVC and 1,900 feet of clay piping, all but 1,340 feet of which has been relined. The raw sewage is distributed between six 10,000-gallon settling tanks configured in two rows of three tanks.

SPECIAL CONDITIONS

Supernatant from the settling tanks is collected in a wet well and distributed amongst three 100-ft. by 115-ft. (11,500 sq. ft.) sand filter beds. The treated wastewater is collected in the underdrain system and conveyed to a disinfection system consisting of liquid sodium hypochlorite disinfection and two 1,000-gallon detention tanks. Dechlorination is accomplished through sodium bisulfate injection. The sanitary treated wastewater then travels through a V-notch weir-type flowmeter before being discharged to Casco Bay through an eight-inch diameter outfall pipe with diffuser. The outfall pipe extends approximately 250 feet from the shoreline to a point where there is approximately twelve vertical feet of water over the crown of the pipe at mean low water. The wastewater treatment facility is operated by a contractor operator. The treatment capacity for the installed sand filter system is 35,000 gpd. Although the cumulative design flows come to 35,445 gpd as a daily maximum, the Department's estimated discharge (design flow daily maximum) from all the existing development and the Inn is less than 35,000 as the design flows for the residential uses overlap flows attributed use of the commercial facilities. In particular, a substantial portion of the restaurant and tent event flows is or will be a result of business from the residential portion and proposed hotel. It is unlikely that the total flow from a hotel customer having breakfast at the hotel, attending a tent event at lunch, and eating at the restaurant at night and is going to use the 120-140 gpd allotted to him/her for the day, every day for a whole month.

4. CONDITIONS OF PERMITS

Maine law, 38 M.R.S.A. § 414 A, requires that the effluent limitations prescribed for discharges, including, but not limited to, effluent toxicity, require application of best practicable treatment (BPT), be consistent with the U.S. Clean Water Act, and ensure that the receiving waters attain the State water quality standards as described in Maine's Surface Water Classification System. In addition, 38 M.R.S.A., § 420 and Department rule 06-096 CMR Chapter 530, Surface Water Toxics Control Program, require the regulation of toxic substances not to exceed levels set forth in Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, and that ensure safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected

5. RECEIVING WATER QUALITY STANDARDS

Maine Law, 38 M.R.S.A., Section 469, classifies Casco Bay at the point of discharge as Class SB waters. Maine Law, 38 M.R.S.A., Section 465-B(2) describes the classification standards for Class SB waters.

6. RECEIVING WATER CONDITIONS

The State of Maine, Department of Environmental Protection, 2008 Integrated Water Quality Monitoring and Assessment Report (305b) report published by the Department lists this waterbody (including Maine Department of Marine Resources Legal Notice Closed Area C-13) in a table entitled, "*Category 5B-1: Estuarine and Marine Waters Impaired only by Bacteria.*" As such, the subject receiving water is not attaining the standards of its classification. Portland Harbor has approximately 70 outfalls, 45 of which are UNTREATED combined sewer outfalls (CSOs). The 3-year average untreated yearly discharge from the harbor CSOs is 775 million gallons (MG). The three Portland treatment works contribute another 24 MGD. The performance of the Islands treatment works has resulted in consistent zero or near-zero bacterial levels with a geometric mean of 1.8 colonies per 100 ml.(n=20). The average actual discharge volume (monthly average) from the Diamond Cove facility is .016 MGD, less than half of the permitted volume and 52 % of the estimated design flow of the existing development. Therefore, this low-discharge facility, located on the outermost boundary of the impaired water, is not causing or contributing to the impairment of these waters. Because the applicants have maintained their system, under contract with a certified wastewater treatment plant maintenance contractor, and have passed 100 percent of the Department's annual OBD inspections, the Department is making the determination that compliance with the fecal coliform bacteria and other secondary wastewater treatment limits established in this licensing action ensure that the discharge of secondary treated wastewater from the subject facility will not cause or contribute to the failure of the receiving waters to meet the standards of its designated classification.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Best Practicable Treatment (BPT) - Overboard discharges may be permitted only where no technologically-proven alternative exists. Overboard discharge treatment systems must be capable of meeting secondary treatment standards as described in Code of Maine Regulations Chapter 525, Section 3 unless the Department finds that alternate limits are appropriate.

1. The applicants have demonstrated that connection to a municipal sewerage system is not possible because one is not located on Diamond Island.

2. The applicants have documented that the existing treatment constitutes BPT. The applicant's Licensed Site Evaluator/P.E. had previously determined that there is not a subsurface option for Phase I development because of insufficient area to install subsurface systems to serve the entire facility. Because the Barracks and Hospital have since changed hands, an additional site evaluation was conducted in 2008 and 2009 to look at alternatives to connection to the OBD. The Inn's LSE /PE determined that there is a subsurface option for the "Hospital," but not for the "Barracks." The LSE/PE also evaluated whether there were sufficient areas of suitable soil to site a subsurface wastewater disposal system proximate to the hospital or existing treatment works. The area proximate to the hospital contains a suitable area for the treatment of less than 2,000 gpd of wastewater; less than half that required to serve the future development of the "Barracks." The area proximate to the treatment works lacked any suitable soils. Therefore, pursuant to *Waste discharge licenses* 38 M.R.S.A. §413.3 the "Barracks" may continue to use the OBD after redevelopment, provided the discharge does not cause or contribute to exceedences of the 35,000 gpd (monthly average) discharge volume limit. The treatment works lacks sufficient capacity for wastewater from the future development of both the "Barracks" and the "Hospital," collectively.

3. The existing treatment system is capable of meeting secondary treatment standards and is appropriate technology for the wastewater being discharged.

B. Flow - The previous licensing action established a flow limitation of 35,000 gpd as a monthly average. This was revised downwards from a 40,000 gpd weekly average to better reflect the treatment capacity of the sand filters and allow for overages resulting from the absorption of water from unusually inclement months, significant stormwater and/or meltwater events into the sand filter beds. (A one-year frequency storm event, defined as 2.5 inches of precipitation in a 24-hour period is the equivalent of 60,000 gpd of water on the existing 34,500 sq. ft. of sand filter.)

The estimated volume of wastewater resulting from redevelopment of the "Barracks" into the Inn at Diamond Cove will utilize the wastewater treatment system's excess capacity. The calculations reserve 270 gpd for each of the unrelated undeveloped residential Units 83F-690-69 and 83F-700-70.

Because there is an I/I problem, in part because of unrefurbished clay tiles in the wastewater collection system and existing connections to the Hospital, this permit is requiring remediation to address the issue. Prior to habitation of the Inn at Diamond Cove, the permitees must disconnect the "Hospital" from the collection system and the collection system capped at the point of disconnection. Any remaining unrefurbished collection pipes must be successfully lined or replaced. The permitees must also complete their proposed improvements to the manholes.

The development of the Inn may include facilities for a continental breakfast and the poolside service of beverages and light snacks as is customary, but the siting of restaurant facilities on this lot is prohibited, as it is generally an additional separate commercial entity not authorized in MDEP Site Location Order #L-013160-87/03-A-N.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (Cont'd)

Actual flow data supports Permit Conclusion H in that the average monthly flow of the existing development has been 11,863 gpd. The design flow for the existing active development is 29,870 gpd by Department calculations (excludes "Barracks," and undeveloped Units 83F-690-69 and 83F-700-70). The actual discharge represents 52% of the projected discharge (design flow).

C. Dilution Factors – Department rule *Surface Water Toxics Control Program*, 06-096 CMR, Chapter 530, §4(A)(2) states,

(2) For estuaries where tidal flow is dominant and marine discharges, dilution factors are calculated as follows. These methods may be supplemented with additional information such as current studies or dye studies.

(a) For discharges to the ocean such at the current permit, dilution must be calculated as near-field or initial dilution, or that dilution available as the effluent plume rises from the point of discharge to its trapping level, at mean low water level and slack tide for the acute exposure analysis, and at mean tide for the chronic exposure analysis using appropriate models determined by the Department such as MERGE, CORMIX or another predictive model.

(b) For discharges to estuaries, dilution must be calculated using a method such as MERGE, CORMIX or another predictive model determined by the Department to be appropriate for the site conditions.

(c) In the case of discharges to estuaries where tidal flow is dominant and marine waters, the human health criteria must be analyzed using a dilution equal to three times the chronic dilution factor.

In 2005, using a permitted flow of 35,000 gpd (monthly average), the location and configuration of the outfall structure, the Department calculated the following dilution factors:

Acute = 87:1 Chronic = 1,276:1 Harmonic Mean: 3,828:1[(1)]

D. Biochemical Oxygen Demand and Total Suspended Solids - The previous licensing established monthly and weekly average BOD_5 and TSS best practicable treatment (BPT) concentration limits of 30 mg/L and 45 mg/L respectively, that are based on secondary treatment requirements of the Clean Water Act of 1977 §301(b)(1)(B) as defined in 40 CFR Part 133.102 and Department rule Chapter 525(3)(III). The maximum daily BOD_5 and TSS concentration limits of 50 mg/L were based on a Department best professional judgment of BPT. All three concentration limits are being carried forward in this permitting action. DMRs submitted to the Department by the applicant(s) for the period October 2005 to the present indicate the average BOD_5 discharged is less than 2 mg/L and the maximum BOD_5 has been less than 2 mg/L, well below the permitted 30 mg/L and 50 mg/L, respectively. The monthly average and daily maximum TSS values reported were 1.7 mg/L and 11 mg/L respectively, well below their respective limits of 30 mg/L and 50 mg/L.

Footnote:

(1) The harmonic mean dilution factor is approximated by multiplying the chronic dilution factor by three (3). This multiplying factor is based on guidelines for estimation of human health dilution presented in the USEPA publication *"Technical Support Document for Water Quality-based Toxics Control"* (Office of Water; EPA/505/2-90-001, page 88), and represents an estimation of harmonic mean flow on which human health dilutions are based in a riverine 7Q10 flow situation.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

Previous licensing actions established the monthly average, weekly average and daily maximum technology based mass limits for BOD_5 and TSS, based on the (monthly average) daily flow limitation of 0.035 MGD, the applicable BPT concentration limits and a conversion factor of 8.34 lbs/gallon. The limitations were calculated as follows:

Monthly average: (0.035 MGD)(8.34)(30 mg/L) = 8.8 lbs/day
Weekly average: (0.035 MGD)(8.34)(45 mg/L) = 13 lbs/day
Daily maximum: (0.035 MGD)(8.34)(50 mg/L) = 15 lbs/day

The previous permitting action also establishing an 85% removal requirement for BOD_5 and TSS pursuant to Department rule Chapter 525(3)(III)(a&b)(3), is being carried forward in this action.

Monitoring frequencies for BOD_5 and TSS of twice monthly are also being carried forward from the previous licensing action and are based on Department policy for facilities with a flow limitation of less than or equal to 0.035 MGD (gpd)

E. Settleable solids - The previous permit established a daily maximum BPT concentration limit of 0.3 ml/L. That limit is being carried forward with this action. Actual performance under the current permit has been <0.1 ml/L for the entire reporting period. Therefore, based on compliance history, the Department is reducing the monitoring frequency from once weekly (01/07) to once monthly (01/30) to be consistent with the once monthly monitoring frequency for BOD_5 and TSS.

F. Fecal coliform bacteria - The previous licensing action established new water quality based limitations of 15 colonies/100 ml as a monthly average (geometric mean) and 50 colonies/100 ml. This permitting action is carrying forward said water quality based limitations to be consistent with the limits associated with the National Shellfish Sanitation Program. The performance of this treatment system has averaged less than 2 col/100ml.

G. Total residual chlorine (TRC) - Limits for TRC are specified to ensure that ambient water quality standards are maintained and that BPT is being applied to the discharge. The previous licensing action established a daily maximum water quality technology based limits of 1.0 mg/L. The Department is carrying forward this requirement. End-of-pipe water quality based concentration thresholds were calculated as follows:

Parameter	Acute Criterion	Acute Dilution Factor	Daily Max. Threshold
Chlorine	0.013 mg/L	87:1	1.13 mg/L
Parameter	**Chronic Criterion**	**Chronic Dilution Factor**	**Daily Max. Threshold**
Chlorine	0.0075mg/L	1,276:1	9.65 mg/L

H. pH Range- The previous licensing action established an expanded pH range limitation of 6.0 –9.0 standard units pursuant to Department rule found at Chapter 525(3)(III)(c). The new limits are considered BPT and are being carried forward in this action.

I. Whole Effluent Toxicity (WET), Priority Pollutant, and Analytical Chemistry Testing: Maine law, 38 M.R.S.A., §414-A and §420, prohibit the discharge of effluents containing substances in amounts that would cause the surface waters of the State to contain toxic substances above levels set forth in Federal Water Quality Criteria as established by the USEPA. Department rule, 06-096 CMR Chapter 530, Surface Water Toxics Control Program (toxics rule) sets forth effluent monitoring requirements and procedures to establish safe levels for the discharge of toxic pollutants such that existing and designated uses of surface waters are maintained and protected and narrative and numeric water quality criteria are met. Department rule 06-096 CMR Chapter 584, Surface Water Quality Criteria for Toxic Pollutants, sets forth ambient water quality criteria (AWQC) for toxic pollutants and procedures necessary to control levels of toxic pollutants in surface waters.

SPECIAL CONDITIONS

7. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

38 M.R.S.A 530 § 2.A specifies the dischargers subject to the rule as, "all permitted dischargers of industrial process wastewater or domestic wastes discharging to surface waters of the State must meet the testing requirements of this section. Dischargers of other types of wastewater are subject to this subsection when and if the Department determines that toxicity of effluents may have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria."

38 M.R.S.A 530 § 2.A sets forth the following exemption criteria for certain discharges from toxics testing as follows:

(1) Discharges from individual discharge points permitted to discharge less than 50,000 gallons per day of solely domestic wastewater and with a chronic dilution factor of at least 50 to 1, provided no holding tank wastes containing chemicals are accepted by the facility;

(2) Discharges from residential overboard discharge systems; or

(3) Discharges from combined sewer overflow discharge points, provided the owner of the sewerage system is conducting or participating in a discharge abatement program.

The permitees' single-discharge facility is exempt from the requirements of 38 M.R.S.A 530 § 2.A (2) as it permitted to discharge less than 50,000 gpd, the chronic dilution factor is greater than 50:1 (Department BPJ) and the wastewater has domestic-like characteristics. However, should there be a substantial change in the characteristics of the discharge in the future, the Department may reopen this permit pursuant to Special Condition M, Reopening of Permit for Modifications, to incorporate the applicable whole effluent toxicity (WET), priority pollutant or analytical testing requirements cited above.

8. DISCHARGE IMPACT ON RECEIVING WATER QUALITY

The overboard discharge treatment system has been inspected by the Department annually over the past five years. The treatment system was consistently found to comply with the inspection criteria. As permitted, the Department has determined the existing water uses will be maintained and protected and the discharge will not cause or contribute to the failure of the waterbody to meet standards for Class SB classification.

9. PUBLIC COMMENTS

Notification to abutting landowners and facility owners of this application was by certified mail on or about January 2, 2009. The Department receives public comments on an application until the date a final agency action is taken on that application. Those persons receiving copies of draft permits shall have at least 30 days in which to submit comments on the draft or to request a public hearing, pursuant to Chapter 522 of the Department's rules.

SPECIAL CONDITIONS

10. DEPARTMENT CONTACTS

Additional information concerning this permitting action may be obtained from and written comments should be sent to:

Michael Demarest
Division of Water Quality Management
Bureau of Land and Water Quality
Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Telephone: (207) 287-3901 E-mail: michael.demarest@maine.gov

11. RESPONSE TO COMMENTS

1. The Friends of Casco Bay and Island Institute requested the permitees expand its assessment of subsurface alternatives for the "Barracks" to include the area of suitable soils for the Hospital. Their position is that the Inn has sufficient RTI to join both properties by virtue of utility easements to use the sewer to conduct wastewater to the treatment works. They assert that sewers could be laid in the right-of-way to conduct wastewater to the Hospital. Alternatively, the wastewater could be conducted through the existing sewer to the hospital or to an inground system proximate to the treatment works, and an equivalent volume of wastewater could be diverted from the sewer to the inground beds with apportioning valves.

   The Inn's LSE/PE subsequently determined that insufficient area of suitable soils existed proximate to the Hospital to treat the 5,000-7,500 gpd of wastewater from the Inn at Diamond Cove.

   The Inn's LSE/PE also determined that there were no suitable soils proximate to the treatment works for subsurface disposal.

   Finally, the Inn may have sufficient RTI to use the sewer, but it would appear that their RTI to the "Barracks" and the "Hospital," is limited to the footprint of the buildings plus any additional RTI the DCHA may grant. Therefore, lacking the required grants, it would not appear that the DWQM has any authority to require removal even if alternatives existed on DCHA land.

2. The Friends of Casco Bay and Island Institute requested the Department reinstate the original 40,000 gpd weekly average discharge volume limit. They are concerned that the development will discharge more that the permitted limit on a regular basis while still meeting the monthly average.

   This permit establishes a weekly average monitoring requirement for flow (35,000 gpd). This would give the treatment system operators important feedback to make treatment decisions. This would also give the Department additional data to make future licensing decisions.

3. The Friends of Casco Bay and Island Institute requested that the Department set a one or two year date certain for the sewer upgrades to be completed instead of the five year proposed completion date.

   The Department believes a 30-month deadline could be met. Neither the DCHA nor the Inn has objected to the Department's proposed 30-month deadline.

4. The Friends of Casco Bay and Island Institute are concerned that the "Cabana" and the Inn eating facilities represent a new source of discharge outside what was previously approved in Phase I of the 1986 Site Order (within the DWQM's OBD "qualifying period").

SPECIAL CONDITIONS

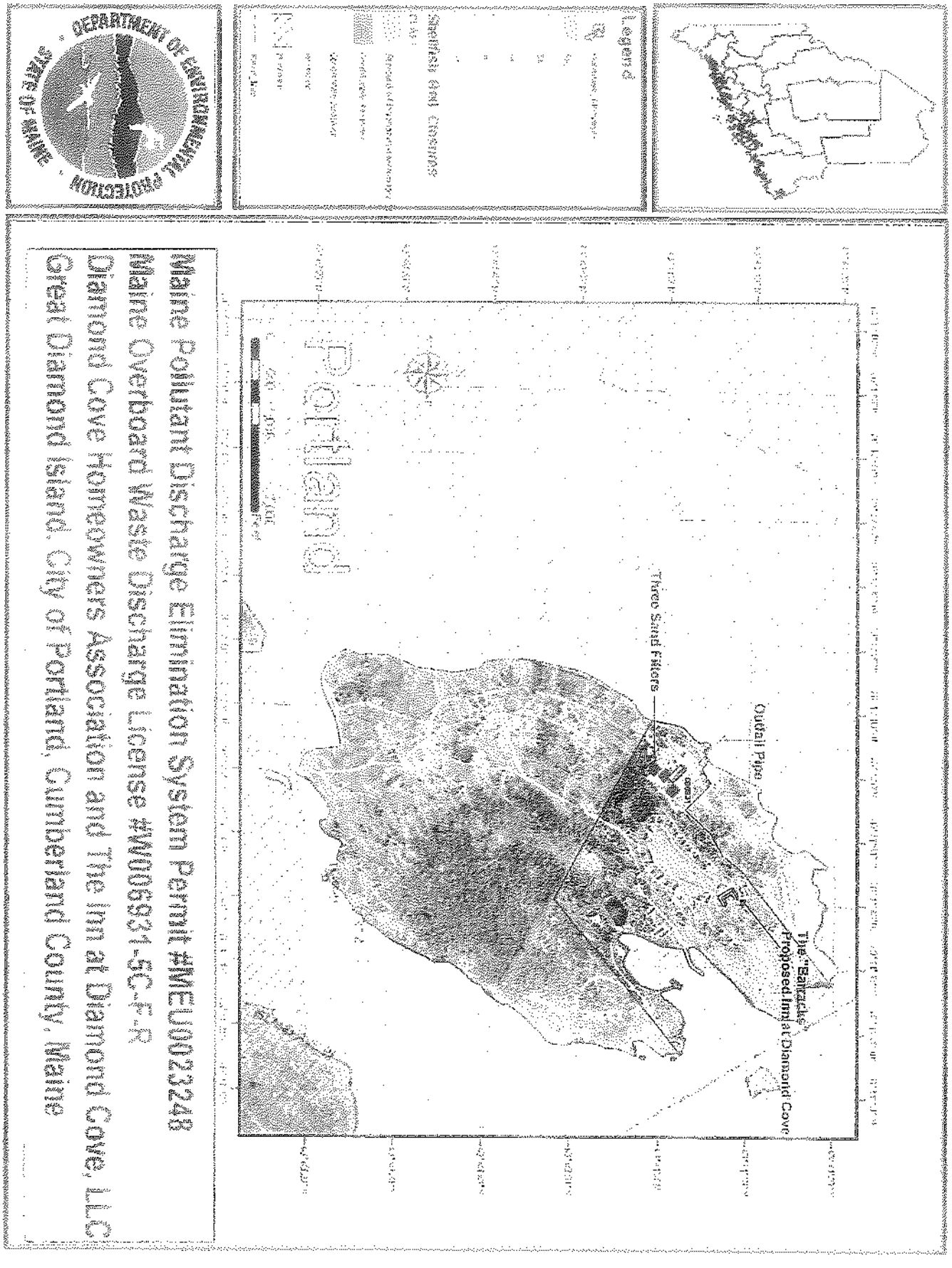
The serving of a continental breakfast by the Inn at Diamond Cove and having some foods available for snacks appears to be well within the scope of the customary and usual services of an inn or hotel. The wastewater produced would be domestic in nature, and the intended consumers are the guests of the Inn at Diamond Cove. Therefore Department does not see this as creating a new source of effluent. The guests can cook, eat, drink in their room, or as part of a continental breakfast or poolside. They could conceivably order a meal from the existing restaurant, or walk thereto. Still, the quantity and constituent of the wastewater produced would be essentially the same quantity or constituency. If a restaurant were to open up in the hotel (including an expansion of the existing restaurant), or the poolside areas were opened up to serve non-guests (excluding the invited guests of registered hotel guests), then the DWQM would prohibit those services as additional source of effluent.

The DEP's Division of Water Quality Management does not interpret and enforce the number of "commercial" versus "residential" uses in the development. DWQM must make sure that the wastewater reflects that which was authorized in the 1987 Site Location Order in that it is domestic in both strength and constituents, is limited to the "estimated or actual discharge" and the treatment meets secondary standards as set forth in the permit.

5. The Friends of Casco Bay and Island Institute point out that the O & M manual has not been updated since 2006.

   The permit as issued establishes a deadline of December 31, 2009 requiring the permitees to perform an assessment and update to accommodate the new permit requirements and in anticipation of the increased flow from the Barracks, including a "Wet Weather Management Plan" as part of the O & M plan.

SPECIAL CONDITIONS



MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

STANDARD CONDITIONS APPLICABLE TO ALL PERMITS

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A. GENERAL PROVISIONS

1. **General compliance.** All discharges shall be consistent with the terms and conditions of this permit; any changes in production capacity or process modifications which result in changes in the quantity or the characteristics of the discharge must be authorized by an additional license or by modifications of this permit; it shall be a violation of the terms and conditions of this permit to discharge any pollutant not identified and authorized herein or to discharge in excess of the rates or quantities authorized herein or to violate any other conditions of this permit.

2. **Other materials.** Other materials ordinarily produced or used in the operation of this facility, which have been specifically identified in the application, may be discharged at the maximum frequency and maximum level identified in the application, provided:

(a) They are not

(i) Designated as toxic or hazardous under the provisions of Sections 307 and 311, respectively, of the Federal Water Pollution Control Act; Title 38, Section 420, Maine Revised Statutes; or other applicable State Law; or
(ii) Known to be hazardous or toxic by the licensee.

(b) The discharge of such materials will not violate applicable water quality standards.

3. **Duty to comply.** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of State law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act, and 38 MRSA, §420 or Chapter 530.5 for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
(b) Any person who violates any provision of the laws administered by the Department, including without limitation, a violation of the terms of any order, rule license, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

4. **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

5. **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6. **Reopener clause.** The Department reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedule of compliance or other provisions which may be authorized under 38 MRSA, §414-A(5).

7. Oil and hazardous substances. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the Federal Clean Water Act; section 106 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; or 38 MRSA §§ 1301, et. seq.

8. Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

9. Confidentiality of records. 38 MRSA §414(6) reads as follows. "Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part or any record, report or information, other than the names and addresses of applicants, license applications, licenses, and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department."

10. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

11. Other laws. The issuance of this permit does not authorize any injury to persons or property or invasion of other property rights, nor does it relieve the permittee if its obligation to comply with other applicable Federal, State or local laws and regulations.

12. Inspection and entry. The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the EPA Administrator), upon presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

B. OPERATION AND MAINTENACE OF FACILITIES

1. General facility requirements.

(a) The permittee shall collect all waste flows designated by the Department as requiring treatment and discharge them into an approved waste treatment facility in such a manner as to

maximize removal of pollutants unless authorization to the contrary is obtained from the Department.

(b) The permittee shall at all times maintain in good working order and operate at maximum efficiency all waste water collection, treatment and/or control facilities.

(c) All necessary waste treatment facilities will be installed and operational prior to the discharge of any wastewaters.

(d) Final plans and specifications must be submitted to the Department for review prior to the construction or modification of any treatment facilities.

(e) The permittee shall install flow measuring facilities of a design approved by the Department.

(f) The permittee must provide an outfall of a design approved by the Department which is placed in the receiving waters in such a manner that the maximum mixing and dispersion of the wastewaters will be achieved as rapidly as possible.

2. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

3. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

5. Bypasses.

(a) Definitions.

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph D(1)(f), below. (24-hour notice).

(d) Prohibition of bypass.

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
(C) The permittee submitted notices as required under paragraph (c) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (d)(i) of this section.

6. Upsets.

(a) Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;
(ii) The permitted facility was at the time being properly operated; and
(iii) The permittee submitted notice of the upset as required in paragraph D(1)(f) , below. (24 hour notice).
(iv) The permittee complied with any remedial measures required under paragraph B(4).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

C. MONITORING AND RECORDS

1. **General Requirements.** This permit shall be subject to such monitoring requirements as may be reasonably required by the Department including the installation, use and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). The permittee shall provide the Department with periodic reports on the proper Department reporting form of monitoring results obtained pursuant to the monitoring requirements contained herein.

2. **Representative sampling.** Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. If effluent limitations are based wholly or partially on quantities of a product processed, the permittee shall ensure samples are representative of times when production is taking place. Where discharge monitoring is required when production is less than 50%, the resulting data shall be reported as a daily measurement but not included in computation of averages, unless specifically authorized by the Department.

3. **Monitoring and records.**

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(c) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;
(ii) The individual(s) who performed the sampling or measurements;
(iii) The date(s) analyses were performed;
(iv) The individual(s) who performed the analyses;
(v) The analytical techniques or methods used; and
(vi) The results of such analyses.

(d) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in the permit.

(e) State law provides that any person who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule license, permit approval or decision is subject to the penalties set forth in 38 MRSA, §349.

D. REPORTING REQUIREMENTS

1. Reporting requirements.

(a) Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D(4).

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

(b) Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. This permit is not transferable to any person except upon application to and approval of the Department pursuant to 38 MRSA, § 344 and Chapters 2 and 522.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(f) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit.
(B) Any upset which exceeds any effluent limitation in the permit.
(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (f)(ii) of this section if the oral report has been received within 24 hours.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this section.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

2. **Signatory requirement.** All applications, reports, or information submitted to the Department shall be signed and certified as required by Chapter 521, Section 5 of the Department's rules. State law provides that any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any order, rule, permit, approval or decision of the Board or Commissioner is subject to the penalties set forth in 38 MRSA, §349.

3. **Availability of reports.** Except for data determined to be confidential under A(9), above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department. As required by State law, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal sanctions as provided by law.

4. **Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under this Section, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(i) One hundred micrograms per liter (100 ug/l);
(ii) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

(b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following ``notification levels'':

(i) Five hundred micrograms per liter (500 ug/l);
(ii) One milligram per liter (1 mg/l) for antimony;
(iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Chapter 521 Section 4(g)(7); or
(iv) The level established by the Department in accordance with Chapter 523 Section 5(f).

5. Publicly owned treatment works.

(a) All POTWs must provide adequate notice to the Department of the following:

(i) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA or Chapter 528 if it were directly discharging those pollutants.
(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
(iii) For purposes of this paragraph, adequate notice shall include information on (A) the quality and quantity of effluent introduced into the POTW, and (B) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(b) When the effluent discharged by a POTW for a period of three consecutive months exceeds 80 percent of the permitted flow, the permittee shall submit to the Department a projection of loadings up to the time when the design capacity of the treatment facility will be reached, and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

E. OTHER REQUIREMENTS

1. Emergency action - power failure. Within thirty days after the effective date of this permit, the permittee shall notify the Department of facilities and plans to be used in the event the primary source of power to its wastewater pumping and treatment facilities fails as follows.

(a) For municipal sources. During power failure, all wastewaters which are normally treated shall receive a minimum of primary treatment and disinfection. Unless otherwise approved, alternate power supplies shall be provided for pumping stations and treatment facilities. Alternate power supplies shall be on-site generating units or an outside power source which is separate and independent from sources used for normal operation of the wastewater facilities.

(b) For industrial and commercial sources. The permittee shall either maintain an alternative power source sufficient to operate the wastewater pumping and treatment facilities or halt, reduce or otherwise control production and or all discharges upon reduction or loss of power to the wastewater pumping or treatment facilities.

2. **Spill prevention.** (applicable only to industrial sources) Within six months of the effective date of this permit, the permittee shall submit to the Department for review and approval, with or without conditions, a spill prevention plan. The plan shall delineate methods and measures to be taken to prevent and or contain any spills of pulp, chemicals, oils or other contaminates and shall specify means of disposal and or treatment to be used.

3. **Removed substances.** Solids, sludges trash rack cleanings, filter backwash, or other pollutants removed from or resulting from the treatment or control of waste waters shall be disposed of in a manner approved by the Department.

4. **Connection to municipal sewer.** (applicable only to industrial and commercial sources) All wastewaters designated by the Department as treatable in a municipal treatment system will be cosigned to that system when it is available. This permit will expire 90 days after the municipal treatment facility becomes available, unless this time is extended by the Department in writing.

F. DEFINITIONS. For the purposes of this permit, the following definitions shall apply. Other definitions applicable to this permit may be found in Chapters 520 through 529 of the Department's rules

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For bacteria, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

Average weekly discharge limitation means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best management practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Composite sample means a sample consisting of a minimum of eight grab samples collected at equal intervals during a 24 hour period (or a lesser period as specified in the section on monitoring and reporting) and combined proportional to the flow over that same time period.

Continuous discharge means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

Daily discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Flow weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Grab sample means an individual sample collected in a period of less than 15 minutes.

Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

Maximum daily discharge limitation means the highest allowable daily discharge.

New source means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or
(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

Pass through means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR parts 122, 123 and 124. Permit includes an NPDES general permit (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

Person means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

Point source means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Publicly owned treatment works ("POTW") means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

Septage means, for the purposes of this permit, any waste, refuse, effluent sludge or other material removed from a septic tank, cesspool, vault privy or similar source which concentrates wastes or to which chemicals have been added. Septage does not include wastes from a holding tank.

Time weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected over a constant time interval.

Toxic pollutant includes any pollutant listed as toxic under section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004 Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

Other Considerations in Appealing a Decision to the Board

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

What to Expect Once You File a Timely Appeal with the Board

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. Appeals to Maine Superior Court

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

Additional Information

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: **The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

STATE OF MAINE

Department of Environmental Protection

JOHN ELIAS BALDACCI
GOVERNOR

David P. Littell
COMMISSIONER

September, 2009

The Inn at Diamond Cove, LLC
c/o Bateman Partners, LLC
Attn: David Bateman
PO Box 3572
Portland ME 04104

RE: Site Law Application, Portland, # L-13160-L3-AB-B

Dear Mr. Bateman:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit, please contact the project manager who handled your application, Marybeth Richardson. She can be reached at (207-822-6335) or at marybeth.richardson@maine.gov.

Sincerely,

James Cassida

James Cassida, Division Director
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: file

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST

BANGOR
106 HOGAN ROAD
BANGOR ME 04401
(207-941-4570 FAX 207-941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 764-3143

WEB SITE: WWW.MAINE.GOV/DEP

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

THE INN AT DIAMOND COVE LLC	) SITE LOCATION OF DEVELOPMENT ACT
Portland, Cumberland County	)
THE INN AT DIAMOND COVE	) MINOR AMENDMENT
L-13160-L3-AB-B (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq., the Department of Environmental Protection has considered the application of THE INN AT DIAMOND COVE LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: History: In Board Order #L-13160-87/03-A-N, dated December 10, 1986, the Board approved Phase I of Diamond Cove, which consisted of renovating 44 former military buildings into 134 residential units and commercial uses, and constructing a marina for use by Diamond Cove residents. The majority of the renovations and development was completed in the 1980's with the exception of two buildings, which are identified in the application as the Double Barracks (Building #46) and the Hospital (Building #19). In Board Order #L-13160-L3-G-N, dated June 25, 1991, the Board approved the development of Phase II as a 39-lot residential subdivision. Numerous other Department Orders were issued for Diamond Cove which are not relevant to this amendment application. The development is located on the former site of Fort McKinley on Great Diamond Island in Casco Bay, in the City of Portland.

B. Summary: The applicant proposes to renovate Building #46, (the Double Barracks), into a 20-unit hotel/condominium. Building #46 was approved in Board Order #L-13160-87/03-A-N for residential use. The units will consist of two 1-bedroom units, ten 2-bedroom units, and eight 3-bedroom units, for a total of 46 bedrooms. Fifteen employees will be needed to operate the hotel/condominium. In addition to renovating the existing building, the applicant proposes to construct a single-story building addition with a footprint area of approximately 2,881 square feet that will primarily house the new entrance lobby area, courtyard improvements with a cabana on a raised deck, and an in-ground swimming pool.
Building #46 is currently owned by the City of Portland. The applicant holds a purchase and sales agreement with the City for the purchase of the building. The proposed pool, deck and cabana structure will be located on open space/recreation area currently owned by the Diamond Cove Homeowners Association (DCHA). The applicant submitted a copy of a long-term ground lease for this area. Additionally, the applicant submitted a draft copy of a permanent construction, maintenance and drainage easement between the applicant and the DCHA for the closed stormwater drainage system and outfall associated with the proposed project.

The proposed project is shown on a set of plans, the first of which is entitled "The Inn at Diamond Cove – Cover Sheet," prepared by DeLuca-Hoffman Associates, Inc., and dated December 2008, with a last revision date of March 12, 2009.

C. Current Use of Site: The double barracks is a three-story masonry building, currently vacant and in disrepair, with a footprint area of approximately 13,629 square feet. It is located across McKinley Court from the existing parade ground.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be $8,562,000. The applicant submitted a letter from TD Banknorth, dated April 29, 2008 indicating that the bank is interested in discussing financing arrangements for the proposed project. Prior to the start of construction, the applicant must submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards provided evidence of final financial provisions are submitted as outlined above.

3. TECHNICAL ABILITY:

The applicant's principals have successfully developed and managed similar hotel/condominium developments. The applicant also retained the services of DeLuca-Hoffman Associates, Inc., a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

Noise generated from the proposed project is anticipated to be similar to other uses currently within Diamond Cove. The Inn's main entrance, lobby and recreational pool facility, which are expected to generate the highest noise levels, will be located at the rear of the building and away from surrounding existing uses.

The Department finds that the proposed project will result in a minor noise impact that will be consistent with the area.

5. SCENIC CHARACTER:

Building #46 is currently in various stages of dilapidation. The proposed renovation is designed to restore the original architectural and historic character of the building

consistent with the intent of the original Board Order approving Diamond Cove. The site of the proposed project is essentially within the interior of Diamond Cove and is not significantly visible from areas outside the development.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. HISTORIC SITES:

Building #46 is part of the former Fort McKinley, which is included in the National Register of Historic Places maintained by the U. S. National Park Service. Proposed renovations to the building must be consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The applicant submitted a copy of the National Park Service's Part 2 approval of the renovation plans.

The Maine Historic Preservation Commission reviewed the proposed rehabilitation plan and stated that it is appropriately scaled and sited, and is compatible with the historic qualities of the Double Barracks and the surrounding Fort McKinley Historic District.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site.

7. STORMWATER MANAGEMENT:

The proposed project includes approximately 6,534 square feet of new impervious area and 17,776 square feet of developed area. The project site drains to Casco Bay. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of two underdrained soil filters and four bio-retention cells.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, and the applicant's revisions, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standards: The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standards, but recommended that a professional engineer be retained to inspect the installation of the underdrained soil filters and bio-retention cells. Inspections must consist of weekly site visits to inspect the subgrade preparation of the structures, embankment construction, pipe bedding placement, underdrain pipe installation, soil filter placement, overflow installation and soil filter stabilization. Within 30 days of completion of the structures, the applicant must submit to the BLWQ its engineer's certification that the structures were installed in accordance with the approved design.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, General Standards.

C. Flooding standard:

The applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to Casco Bay, and the applicant will obtain a drainage easement with the DCHA, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500(4)(E)(2)(a), which allows a waiver when the project discharges to the ocean.

DWM commented that the proposed system is designed in accordance with the Chapter 500 Flooding Standard.

Based on the system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas.

8. WATER SUPPLY:

When completed, the proposed project is anticipated to use 4,545 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated May 6, 2008, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

9. WASTEWATER DISPOSAL:

The redevelopment of the former Fort McKinley military base included the construction of an on-site wastewater collection and treatment system that includes a network of underground gravity sewer pipes, a number of septic tanks, and three sand filter beds. Treated wastewater is collected in an underdrain system and conveyed to a disinfection system. Treated sanitary wastewater flows through a weir before being discharged into Casco Bay. The existing wastewater facility is licensed to discharge a monthly average of up to 35,000 gallons per day.

Existing uses contributing to the wastewater collection and treatment system generate approximately 28,910 gallons of wastewater per day. Over the past several years, the DCHA has made efforts to eliminate excess inflow and infiltration within the existing collection system and made major repairs to the sand filter beds. With the authorization of the DCHA, the applicant intends to complete a list of repairs to the existing collection system in an effort to remove additional sources of inflow/infiltration. These repairs will be done during construction of the proposed project.

When completed, the proposed project is anticipated to discharge an additional 4,545 gallons of wastewater per day to DCHA's wastewater treatment facility. This project was reviewed by the Division of Water Quality Management (DWQM) of the BLWQ, which commented that the DCHA's wastewater treatment facility has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine. DWQM issued a final Maine Waste Discharge License (#W006931-5C-F-R), dated September 15, 2009. The kitchen and cabana of the proposed inn must not contain any equipment that would necessitate the use of a grease trap, and must be limited to serving only continental breakfasts and light snacks to guests of the inn.

Based on DWQM's review and issuance of the Waste Discharge License, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

10. SOLID WASTE:

When completed, the proposed project is anticipated to generate 12 cubic yards of general solid waste per month during the peak season. All general solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 200 cubic yards of stumps and grubbings. All stumps and grubbings generated will be processed on site, with the resulting material to be used as an erosion control measure, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 290 cubic yards of construction debris and demolition debris. All construction and demolition debris generated will be disposed of at the Biofuels Limited facility in Lewiston and Grimmel Industries in Topsham, both of which are currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

11. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided additional financial information is submitted as described in Finding 2.

B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.

C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.

D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided the applicant submits a certification of the stormwater management system as described in Finding 7B.

E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.

F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services provided the kitchen and cabana are limited in relation to food service as described in Finding 9.

G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of THE INN AT DIAMOND COVE LLC to renovate and expand the existing Double Barracks building at Diamond Cove, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

4. Prior to the start of construction, the applicant shall submit an updated estimate of project costs and evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State or evidence of another form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate to the Bureau of Land and Water Quality for review and approval.

5. Prior to the start of construction, the applicant shall submit to the BLWQ copies of executed ground lease and drainage easements with the DCHA.

6. The applicant shall retain its design engineer or other qualified professional to inspect the installation of the underdrained soil filters and bio-retention cells. Inspections shall consist of weekly site visits to inspect the subgrade preparation of the structures, embankment construction, pipe bedding placement, underdrain pipe installation, soil

filter placement, overflow installation and soil filter stabilization. Within 30 days of completion of the structures, the applicant shall submit its engineer's report of inspections and certification that the structures were installed in accordance with the approved design.

7. The kitchen and cabana of the proposed inn shall not contain any equipment that would necessitate the use of a grease trap, and shall be limited to serving only continental breakfasts and light snacks to guests of the inn

8. All other Findings of Fact, Conclusions and Conditions remain as approved in Board Order #L-13160-87/03-A-N, and subsequent orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES
mr/l13160abb/ats#69640

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.

2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.

3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.

6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.

7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.

8. A copy of this approval must be included in or attached to all contract bid specifications for the development.

9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

STORMWATER MANAGEMENT LAW STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

(1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. § 420-D(8) and is subject to penalties under 38 M.R.S.A. § 349.

(2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

(3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

(4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.

(5) Initiation of project within two years. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference.

(6) Reexamination after five years. If the project is not completed within five years from the date of the granting of approval, the department may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances or requirements which may have occurred during the five-year period.

(7) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

(8) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.

(9) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.

(a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
(b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
(c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained

November 16, 2005

DEP INFORMATION SHEET
Appealing a Commissioner's Licensing Decision

Dated: May 2004 **Contact: (207) 287-2811**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D (4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status*. Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.

2. *The findings, conclusions or conditions objected to or believed to be in error*. Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge*. If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought*. This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B) (5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials.
There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD
The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

ATT 2-M-1



Surveyor's Statement of Alteration

Survey & Goodwin Consultants, Inc., hereby states to McKinley Partners, exclusively that this plan proposes to:

1. To depict the fixed, title, and man yards of Building 78 which was inadvertently omitted from a plan recorded at the Cumberland County Registry of Deeds in Plan Book 201 at Page 36 but indicated on a plan recorded at the Cumberland County Registry of Deeds in Plan Book 193 at Page 199. No comment is either created or extinguished by this plan.
2. To correct a scrivener's error in the "Surveyors Statement of Alteration" on a plan recorded at Cumberland County Registry of Deeds in Plan Book 201 Page 36. Said statement commonly refers to a "Phase I-Second Amended Sheet 3 of 7 of the plans of Diamond Cove as being recorded in Plan Book 194 at Page 198. Said plan is recorded in Plan Book 193 at Page 199.

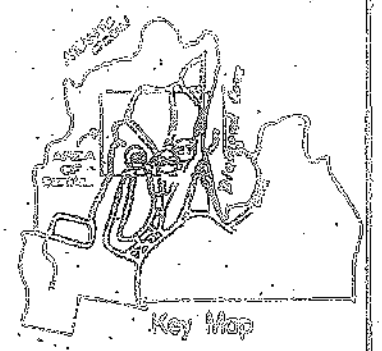
Wendy A. Pettit, P.L.S.
Survey & Goodwin Consultants, Inc.
Maine Professional Surveyor # 2294
13 Westbrook Commons – 2nd Floor
Westbrook, Maine 04092
207-856-0095

Date

General Notes:

1. Please see plan book 193, Page 36, sheet 1 of 7 for additional notes, conditions, and legend.

2. These lots are subject to an amended and restated general declaration of covenants and restrictions (CCRD 11777-[illegible]) as recorded by the first record and third supplement to amended and restated general declaration of covenants and restrictions recorded herewith.



RECEIVED JAN 21, 2010

S.G.C.
12 WESTBROOK COMMON
WESTBROOK, MAINE 04092

DATE:	REVISIONS:

DIAMOND COVE
Great Diamond Island
Portland, Maine

PLAN OF DIAMOND COVE
Phase I - Third Amended Sheet 3

Federal Owner:
McKinley Partners Limited Partnership
Diamond Cove, Great Diamond Island
Portland, Maine 04102

DATE: 02/08/01	JOB NO: [illegible]
DRN: [illegible]	CHK: [illegible]
FIELD BK: [illegible]	
SCALE: 1" = 50'	SHEET: [illegible]

FEET
0 10 20 40
METERS

SURVEY OF RECORD:
State of Maine, Cumberland Co.
Registry of Deeds
Received [illegible] 22 [illegible]
at [illegible] and recorded in
Plan Book 202 Page 577
Attest:
[illegible]
Register

LANDTOWN CONSULTANTS
[illegible]
[illegible] STREET
PORTLAND, MAINE