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18 McKinley Ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet

- (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.



Memorandum

To: City of Portland Planning Board
Rick Knowland, Senior Planner
Penny Littell, Associate Counsel
Gary C. Wood, Corporation Counsel

From: Anthony M. Calcagni, Esq.
Juliet T. Browne, Esq.

Date: June 3, 2004

Re: Application for Conditional Rezoning Amendment
Conditional Rezoning to IR-3 Island Residential Zone (July 15, 1985) Restriction #9

This Memorandum is in support of the Application for Zoning Amendment that was made by the Diamond Cove Homeowners Association (the "DCHA") on May 17, 2004. The DCHA is a non-profit corporation with a membership consisting of the record owners of each of the residential and commercial lots within a planned unit development located on the north side of Great Diamond Island ("Diamond Cove").

Introduction

For over two years now, the City of Portland has been confronted with a dispute among residents of Great Diamond Island regarding the use of motor vehicles and golf carts on the Island. Very briefly, some residents of the Island have complained about golf carts from Diamond Cove traveling to the south side of the Island (the "Village"), and/or vehicles from the Village traveling north to Diamond Cove. With the assent and support of the City, the three separate homeowners associations on the Island had been negotiating a possible compromise on this north/south traffic issue, but the negotiations ultimately were not fruitful. As a result, on April 7, 2004, the Portland City Council voted (7-2) to "take steps to" enforce "existing covenants for which the City has enforcement authority" at Diamond Cove.

Importantly, there are two separate categories of motor vehicle restrictions at Diamond Cove. First, there are restrictions on golf carts and other motor vehicles traveling from north to

south, and from south to north, between Diamond Cove and the Village (hereinafter collectively referred to as the "North/South Restrictions"), including:

- City of Portland Subdivision Approval of Phase II (June 23, 1987)
Condition 1(xi): "No private motor vehicle belonging to a lot owner or guest shall enter into or exit the southerly boundary of the Diamond Cove property."
- Phase II Plan (approved by the City of Portland Planning Board Sept. 10, 1991) - General Note 13: "The approval of this plan was conditioned upon those conditions and requirements set forth in the letter dated July 10, 1987 . . . , which conditions include . . .
ix No private motor vehicle belonging to a lot owner or guest shall enter into or exit the southerly boundary of the Diamond Cove property. This restriction shall be incorporated in the recorded Homeowners Association documents and on the subdivision recording plat."
- Diamond Cove Declaration¹ Sec. 4.7: "No motorized vehicles of any kind, including golf carts, shall pass south of the southerly boundary of the properties except for fire equipment, ambulances or public safety vehicles in the performance of their duties, and designated Association owned vehicles which transport persons and/or goods between the properties and the pier located at the southerly end of Great Diamond Island."

Another iteration of the North/South Restrictions is contained in a private Agreement with the Maine Audubon Society.² These North/South Restrictions clearly restrict golf carts and other motor vehicles from freely entering into or exiting the southerly boundary of the Diamond Cove property, and would not be affected by the DCHA's proposed Zoning Amendment

The second motor vehicle restriction at Diamond Cove ("Restriction #9") is contained in the July 15, 1985 Conditional Rezoning to IR-3 Island Residential Zone that was granted for the Diamond Cove development, and states:

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,

¹ Amended and Restated General Declaration of Covenants and Restrictions, Diamond Cove, Great Diamond Island, Portland, Maine, dated December 23, 1993 and recorded at the Cumberland County Registry of Deeds in Book 11277, Page 322. The Declaration governs the entire Diamond Cove development.

² Agreement with Maine Audubon Society et al. (Mar. 2, 1989), Sec. D(1) (as amended): "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 exception shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. . . . 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."

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.

While Restriction #9 does not specifically prohibit golf carts or other electrically powered low-speed vehicles at Diamond Cove, an argument can be made that this language has the unintended consequence of prohibiting not only automobiles and similar motor vehicles, but golf carts as well. DCHA does not believe that was the intent of Restriction #9, and is seeking an amendment to that effect. Specifically, this Application for Conditional Rezoning Amendment is a request to change Restriction #9 to allow golf carts and other electrically powered low-speed vehicles within the privately owned portion of Diamond Cove that falls within the IR-3 Zone. (The other portions of Diamond Cove, which fall within the IR-1 Zone, are not subject to Restriction #9.) We are not hereby requesting any change to the North/South Restrictions on golf carts and other motor vehicles traveling from north to south, and from south to north, between Diamond Cove and the Village, which North/South Restrictions will remain in place.

Background

The following sections provide an overview of the development of Diamond Cove and the principle issues that shaped the various restrictions currently in place there. This information provides the necessary context for DCHA's proposed Conditional Rezoning Amendment.

A. Phase I. Diamond Cove was approved by the City and developed in two phases. Phase I consisted of development within the IR-3 zoned portion of Diamond Cove, with the original proposal involving the rehabilitation of existing Fort McKinley buildings into 134 residences and other commercial uses. The Phase I portion of the development is shown in shading (labeled "IR-3") on the Diamond Cove map attached hereto as Exhibit A.

Initially, the entire portion of the Phase I development was zoned R-2 Residential Zone. In order to accommodate the original proposal, in 1985, the entire Phase I portion of the development was rezoned to IR-3 Residential Zone. A copy of the July 15, 1985 Conditional Rezoning is attached as Exhibit B hereto. The Conditional Rezoning includes a number of conditions and restrictions, including Restriction #9. There appear to have been two primary purposes of Restriction #9. First, Restriction #9 was consistent with the March 1985 "Portland Islands Land Use and Zoning Study" (prepared by the City of Portland Dept. of Planning and Urban Development), which included a recommendation that "The City should adopt a policy for future development that minimizes the dependency on and intrusions of private automobiles on the islands." Second, by agreeing to Restriction #9, the developer was able to obtain approval for more residential units than would otherwise have been allowed. Specifically, the developer obtained a 2,500 square foot "incentive adjustment" to the residential density requirement that was set for the IR-3 Zone, and therefore was able to obtain approval for "134 dwelling units and

other permitted uses" in the IR-3 Zone. Without an enforceable restriction on motor vehicles, the developer would have had to settle for an approval of fewer units in Phase I.³

On March 4, 1986, the City of Portland Planning Board granted subdivision and site plan approval for the Phase I development at Diamond Cove. The City's approval was conditioned upon approval by the Maine Department of Environmental Protection (the "DEP"). In December 1986, the DEP approved the Phase I development pursuant to the Site Location of Development Law and also issued a Waste Discharge License for discharge of sanitary wastewater associated with the development.

Since 1986, only seventy-seven (77) Phase I residential lots (historic home units), and five (5) Phase I commercial lots, have been built and sold.

B. Phase II. Phase II of the Diamond Cove development included development of thirty-nine (39) residential lots (single-family building lots), one of which (Lot #44) subsequently was converted into a commercial lot. The Phase II portions of the development are shown in shading (labeled "IR-1") on the attached Exhibit A.

On June 23, 1987, the City of Portland Planning Board approved a 70-lot subdivision within the Phase II portions at Diamond Cove. In February 1990, however, the DEP initially denied the Phase II Site Location of Development Law application for 70 house lots. On June 25, 1991, following extended negotiations with various interested parties and changes to the application, the DEP approved the Phase II development for 39 house lots. On September 10, 1991, the Planning Board signed the modified Phase II plans showing 39 house lots.

During the City's review of the Phase II application, there was considerable attention paid to vehicular traffic moving from north to south between Diamond Cove and the Village. Consequently, the North/South Restrictions were incorporated into the City of Portland Subdivision Approval of Phase II (June 23, 1987) and Phase II Plan (approved by the City of

³ See, e.g., Planning Report #59-85, submitted to Portland City Council on June 12, 1985 ("Incentive adjustments for . . . restrictions on private automobiles (2,500 square feet) would also be possible."). This issue is discussed in more detail in Planning Report #8-86, submitted to Portland Planning Board on February 4, 1986:

"The developer is proposing a residential density equivalent to 20,000 square feet per dwelling unit while the normal requirement is 32,500 square feet per dwelling. Section 14-145.17 of the IR-3 zone permits a reduction in the lot size requirement if the Board finds that the development meets the following criteria:

...

iii. The minimum lot size per dwelling unit shall be reduced by two thousand five hundred (2,500) square feet if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles. The project development plan and the conditions and restrictions of the IR-3 rezoning indicate that private automobiles will not be operated or stored on the property."

Portland Planning Board Sept. 10, 1991). Furthermore, Section 4.7 of the Diamond Cove Declaration (which governs the entire development, including Phase I and Phase II) was redrafted to specifically include a restriction on motorized vehicles of any kind, including golf carts, from passing south of the southerly boundary of Diamond Cove.

C. Golf Cart Use at Diamond Cove. After the necessary Phase I and Phase II approvals were obtained, and since the very first buildings were rehabilitated and occupied, golf carts have been widely used throughout Diamond Cove, including the portion of Diamond Cove that falls within the IR-3 Zone. At no time in the period from 1985 to 2002 did the City ever refuse registration for a golf cart at Diamond Cove, and today, an estimated one-half of the IR-3 Zone residents own golf carts.

D. Enforcement of the North/South Restrictions. Prior to 1997, vehicular movement across the southerly boundary of the Diamond Cove property was restricted. In 1997, the successor developer, McKinley Partners Limited Partnership, opened the main gate on Diamond Avenue and relaxed rules on access to Diamond Cove for island residents. McKinley Partners did this in an attempt to promote a greater sense of community across the island. Consequently, a system of mutually permissive traffic flow, in both directions, began at around this time and persisted until late in 2002. Since that time, in an attempt to avoid the "iron curtain" approach to island relations, the three separate homeowners associations⁴ on the Island had been negotiating a possible compromise on this north/south traffic issue. The negotiations were held with the assent and support of the City -- first the Public Safety Committee, and later the City Council -- but the negotiations ultimately were not fruitful. Most recently, the three associations held an all-day mediation session on March 12, 2004 to try to reach a new agreement on north/south travel. After the mediation session, the three association boards voted as follows on the mediated agreement, which would have allowed certain north/south travel during certain periods of the year: Diamond Cove Homeowners Association 3-2 in favor; Civic Association 4-0 in favor; and Diamond Island Association 6-6. Since the Diamond Island Association board had a tie vote, it did not approve the mediated agreement, and therefore the three associations were unable to agree on an alternative to the North/South Restrictions.

In March, 2004, a group of residents from the Village filed a lawsuit against the City alleging (i) that Restriction #9 prohibited golf cart use within the IR-3 Zone and the City was not enforcing that restriction, and (ii) that the City was not enforcing the North/South Restrictions prohibiting certain north/south traffic flow. DCHA believes that the terms of the Conditional Rezone⁵ require that the issue of golf cart use within the IR-3 Zone must be resolved through an amendment process beginning with the Planning Board; we are therefore seeking approval of this

⁴ Diamond Cove Homeowners Association (all Diamond Cove residents); Diamond Island Association (seasonal and year-round residents of the Village); and Great Diamond Island Civic Association (year-round residents throughout Great Diamond Island).

⁵ Specifically, Condition 13 of the Conditional Rezone

Conditional Rezoning Amendment. In addition, following the City Council's April 7, 2004 vote, DCHA has taken important steps to enforce the North/South Restrictions. These steps are outlined in the May 21, 2004 letter from Tom Lucke attached as Exhibit C hereto. DCHA continues to work with the interested parties to try to reach a compromise solution that may relax what many Island residents believe are somewhat draconian restrictions on north/south traffic flow. Unless and until a compromise is reached among the parties and subsequently approved by the City, however, DCHA will continue to enforce the existing North/South Restrictions.

Proposed Conditional Rezoning Amendment

We are requesting that Restriction #9 be amended to read as follows:

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-A M.R.S.A. ~~Section 1(7)~~ Section 101(42), but including snowmobiles and all-terrain vehicles, shall be operated or stored, temporarily or otherwise, on the Premises; provided that nothing contained herein shall be deemed to restrict electrically powered golf carts or low-speed vehicles (as currently defined in 29-A M.R.S.A. Section 101) on the Premises.

With the amendment, electrically powered golf carts⁶ and low-speed vehicles⁷ will be specifically allowed within the privately owned portion of Diamond Cove that falls within the IR-3 Zone. Additional information on "low-speed vehicles" is attached hereto as Exhibit D.

⁶ Golf carts are defined by 29-A M.R.S.A. 101(25-A) as follows:

'Golf cart' means a motor vehicle that is originally designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour. 'Golf cart' does not include an ATV as defined in Title 12, section 13001.

⁷ "Low speed vehicles" are defined by 29-A M.R.S.A. 101(32-A) as follows:

'Low-speed vehicle' means a 4-wheeled automobile that is able to attain a speed of at least 20 miles per hour but not more than 25 miles per hour and does not exceed 1800 pounds in unloaded weight. 'Low-speed vehicle' does not include an ATV as defined in Title 12, section 13001. A low-speed vehicle must be originally manufactured and maintained in accordance with the Federal Motor Vehicle Safety Standards as a low-speed vehicle pursuant to 49 Code of Federal Regulations, Section 571.500, as amended.

In Support of the Conditional Rezoning Amendment

There are important reasons to support this Conditional Rezoning Amendment:

1. Restriction on Golf Carts in IR-3 Zone Not Necessary to Prevent North/South Traffic.

Importantly, the North/South Restrictions exist independently of Restriction #9, and in fact became effective after the July 15, 1985 Conditional Rezoning to IR-3. While enforcement of the North/South Restrictions was sporadic between the Spring of 1997 and the Summer of 2003, the North/South Restrictions are sufficient to address the concerns of traffic impact felt by the other residents of the Island. Amending Restriction #9 to specifically permit the use of golf carts in the IR-3 Zone will not impact the North/South Restrictions, which will remain in full force. The DCHA now has taken steps in accordance with the May 21, 2004 letter from Tom Lucke attached as Exhibit C hereto, and the DCHA is prepared to work with the City to ensure that the North/South Restrictions are enforced.

To be clear, only Restriction #9 needs to be amended in order to clarify that golf carts and other electrically powered low-speed vehicles may be stored and operated in the IR-3 Zone at Diamond Cove. None of the North/South Restrictions, and no other applicable provision, needs to be changed, since Restriction #9 is the only provision that arguably prohibits golf carts from being operated in the IR-3 Zone.

2. Actual Residential Development in IR-3 Zone Only 57.5% of Originally Approved Plans.

The July 15, 1985 Conditional Rezoning (Restriction #1) limited development in the IR-3 Zone to "134 dwelling units and other permitted uses" For this approval, the developer sought and was granted a reduction in the lot size requirement under Section 14-145.17 of the Portland Land Use Ordinance, which provided that the minimum lot size per dwelling unit could be reduced by 2,500 square feet if the development provided appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of private motor vehicles.⁸ Essentially, the motor vehicle restriction provided the Diamond Cove developer with approval for more residential units than would otherwise have been allowed without the restriction.

⁸ See Planning Report #8-86, submitted to Portland Planning Board on February 4, 1986.

In fact, only 77 residential units actually were developed and sold in the IR-3 Zone (i.e., 57.5% of what was approved). This significantly reduced density does not need the benefit of any incentive adjustment to the residential density requirement of the IR-3 Zone, and certainly does not call for the only zoning restriction on electric golf cart use on private property in the entire City of Portland.

3. Restriction on Golf Carts in IR-3 Zone (only) Bears No Substantial Relation to Public Health, Safety, Morals, or General Welfare.

A. Electrically Powered Vehicles, on Privately Owned Property. This Application for Conditional Rezoning Amendment is a request to change Restriction #9 to allow electrically powered golf carts and low-speed vehicles within the privately owned portion of Diamond Cove that falls within the IR-3 Zone. As so amended, private automobiles, and gas-powered golf carts and vehicles, will continue to be prohibited (other than currently excepted vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers and fire protection, public safety and emergency vehicles). In terms of motor vehicle use, therefore, Diamond Cove will continue to be much more environmentally friendly than the neighboring Village (where private automobiles and other gas-powered vehicles are operated).

B. Fire Volunteers and First Responders. Golf carts and other electrically powered low-speed vehicles serve an important purpose at Diamond Cove, in facilitating emergency responses for public health and safety. John Condon, Fire Captain, has stated (in his Apr. 8, 2004 e-mail message to Tom Fortier) that if golf carts are removed, "many of our volunteers and First Responders will not be able to respond to 911 call in a timely fashion."

C. Absurd Results. Prohibiting golf carts in the portion of Diamond Cove falling within the IR-3 Zone, while continuing to allow them in the portions of Diamond Cove falling within the IR-1 Zone, makes no logical sense, and creates a number of absurdities in how residents of Diamond Cove need to operate day-to-day. A look at Map 2 attached as Exhibit A demonstrates one of these issues. The IR-3 zone covers the core of the development and its boundaries create four separate areas within the road system (marked Zone A, B, C, and D on Map 2). Under the City's current interpretation of Restriction #9, IR-1 Zone residents can operate golf carts within three of the four zones (B, C and D). For example, a resident of zone D (on the east side of the development) can use their golf cart to visit other residents of zone D; however, they cannot cross into zone A (the IR-3 zone) to travel to the Diamond Cove pier, nor can they traverse zone A to visit their neighbors in zones B or C. The situation for a resident of zone B is almost absurd, as they are restricted to only 800 feet of road in that zone (going any further would require crossing over the IR-3 zone). Strict adherence to this interpretation of Restriction #9 would imply that an IR-1 Zone homeowner could drive their golf cart only to the IR-1 Zone boundary; at that point, they would need to park, and walk the remainder of the way to their destination. In the case of

virtually every IR-1 Zone resident, this walk (e.g., from the edge of the IR-1 Zone to the Diamond Cove pier) would represent a greater distance than their golf cart trip.

Moreover, from an environmental standpoint, it makes no logical sense to restrict golf carts to the unpaved IR-1 Zone roads, while prohibiting them from the paved roads in the IR-3 Zone. Restricting golf carts to the IR-1 Zones would mean that IR-1 Zone residents would need to make far greater use of the Diamond Cove shared bus, but increasing bus trips would mean more dust, and higher levels of emissions from that gas-powered vehicle. In comparison, allowing golf cart travel in the IR-3 Zone has very low impact. All of the roads in the IR-3 Zone are paved, and the electric carts operate without direct emissions.

D. Not a Fair Method to Address the North/South Traffic Issue. To the extent the City's goal is to prevent golf carts from traveling across the line between Diamond Cove and the Village, it is unfair to prohibit the residents of only one of the three relevant zones at Great Diamond Island (i.e., only IR-3 Zone residents, and not IR-1 or IR-2 residents) from owning and operating golf carts.

E. Inappropriate Zoning Restriction. Unless the restriction on electrically powered golf carts and low-speed vehicles only within the privately owned portion of Diamond Cove that falls within the IR-3 Zone (approximately $\frac{1}{2}$ of Diamond Cove, and $\frac{1}{4}$ of Great Diamond Island) bears a substantial relation to public health, safety, morals, or general welfare, it is not an appropriate use of the City's zoning power. For all the reasons set forth above, we do not believe that the restriction represents an appropriate use of the City's zoning power, and not surprisingly, we understand that there is no similar zoning restriction (regular or conditional) on electric golf cart use on private property in the entire City of Portland.

4. Restriction on Golf Carts in IR-3 Zone Inconsistent with City's Comprehensive Plan and Other Ordinances.

A. Land Use Ordinance. Sec. 14-145.16 of the Land Use Ordinance defines appropriate transportation within an IR-3 zone, and speaks of "common service vehicles, *golf carts* or bicycles to serve the transportation needs of residents and visitors." (emphasis added)

B. Comprehensive Plan. Specifically refers to Sec. 14-145.16: "The development plan should have the capability of meeting the development review standards of section 14-145.16." (p. 81) That is, the City's Comprehensive Plan specifically incorporates a Land Use Code provision that encourages golf cart use in the IR-3 zone.

C. Traffic and Motor Vehicles Ordinance. Sec. 28-185: "The operation of golf carts shall be permitted on the streets of Cliff Island, Great Diamond Island and Peaks Island if in compliance with the following requirements . . ."

5. To Continue to Refer to the 1985 Statutory Definition of "Motor Vehicle" Creates Other Unintended Problems.

The 1985 statutory definition of "motor vehicles" that is referred to in Restriction #9 has been amended over the years (29 M.R.S.A. Sec. 1(7) has been repealed and recodified at 29-A M.R.S.A. Sec. 101). For example, the current statutory definition of "motor vehicle," specifically excludes certain "all-terrain vehicles" and "a motorized wheelchair or an electric personal assistive mobility device," although both arguably fall within the 1985 definition of "motor vehicle" under then 29 M.R.S.A. Section 1(7). If Restriction #9 applies to motor vehicles as that term was defined in 1985, then it prohibits "motorized wheelchairs" and "electric personal assistive mobility devices" as well as golf carts. On the other hand, if Restriction #9 applies to motor vehicles as that term has been amended, then it allows some "all-terrain vehicles." Presumably, the City intended neither result.

Residents Did Not Recognize Any Intent to Prohibit Golf Carts Within Diamond Cove

Some have asserted that the residents of Diamond Cove have known, or should have known, that golf carts are prohibited in the IR-3 Zone, and consequently their use of golf carts within the IR-3 Zone has been an intentional violation of that restriction. That is simply not the case. First, the Diamond Cove Declaration, which governs the entire Diamond Cove development, has at all times specifically provided each Diamond Cove owner with the right to own and operate one golf cart. Second, the City's Diamond Cove files available at the Planning Division, and the City's actions since the development was approved, indicate an intent to allow golf carts. DCHA believes that the overwhelming evidence indicates that the intent of the parties was to limit automobiles and similar vehicles, but not golf carts. To the extent that Restriction #9 does limit golf cart use, that is an unintended consequence of referencing a statutory provision that itself was not entirely clear and has been the subject of a number of changes since 1985.

1. The Diamond Cove Declaration Specifically Allows Golf Carts.

Since the early drafts of the Diamond Cove Declaration that were first submitted to the City in connection with the Phase I site plan and subdivision reviews, the Declaration has given each Diamond Cove owner the explicit right to own and operate one golf cart per unit. The draft "General Declaration of Covenants and Restrictions," which was submitted to the City in November of 1985 (a copy of which we obtained from the Planning Division's files), contained a Section 4.7 that provided:

"4.7 Parking: Each owner shall have the right to own and operate one (1) golf cart on the premises. The Owner shall provide storage space inside the dwellings for each such golf cart." (emphasis added)

Presumably, this early draft of the Declaration was included in the supplementary material referred to in the March 10, 1986 letter from Barbara Vestal, Planning Board Vice Chairman, to David Bateman, Diamond Cove Associates, by which the City notified the original developer of Phase I subdivision and site plan approval (“The above is a summary of the Board’s actions, which were based on the subdivision and site plans as submitted, supplementary material including the so-called ‘Blue Book’ . . .”).

The succeeding versions of the Declaration dealt with automobiles and other motor vehicles differently, but consistently allowed Diamond Cove owners the right to own and operate one golf cart. The “General Declaration of Covenants and Restrictions” dated September 27, 1989, contained the following, revised Section 4.7:

“4.7 Parking: *Each owner shall have the right to own and operate one (1) golf cart on the properties.* No automobiles, trucks, recreational vehicles, all-terrain vehicles, motorcycles, snowmobiles or other motorized vehicles will be parked or kept on the properties except by the Association or its agents for maintenance or service purposes, or by contractors engaged in construction activities. Automobiles or other vehicles may be specifically permitted on any additional property as may be added to the existing properties as so specified in a supplemental declaration provided that no more than one registered vehicle per dwelling shall be permitted.” (emphasis added)

And the current version of the Declaration⁹ contains the following, revised Section 4.7:

“4.7 Parking, Automobiles and Other Vehicles: *Each owner shall have the right to own and operate one (1) golf cart on the properties.* No automobiles, trucks, recreational vehicles, all-terrain vehicles, motorcycles, snowmobiles or other motorized vehicles will be parked or kept on the properties except by the Association or its agents for maintenance or service purposes, including the common transportation of goods and passengers, fire protection, public safety and emergency purposes, or by contractors engaged in construction activities.” (emphasis added)

All versions of the Declaration were submitted to the City and are included in the City’s Planning files. In fact, Natalie L. Burns, Associate Corporation Counsel, indicated the City’s approval of the then-current version of the Declaration in a September 13, 1991 letter to Ronald N. Ward, Esq. (who was representing the developer), which letter stated:

“You have asked me to provide you with verification of the City’s review and approval of the General Declaration of Covenants and Restrictions (revised to 1991) for the Diamond Cove project on Great Diamond Island. I have reviewed the documents submitted to the

⁹ See *infra* note 1.

Planning Board pursuant to section 14-498(i)(3) of the Portland City Code and find them to be in acceptable form.”

From the beginning, therefore, the governing document at Diamond Cove has expressly provided Diamond Cove owners with the right to own and operate one golf cart, and the City has been aware of this fact. While it is true that Section 4.7 of the Declaration cannot change an applicable City zoning restriction, we raise Section 4.7 as an important explanation of how someone may reasonably conclude that golf carts were not intended to be included within the category of “motor vehicles” prohibited by Restriction #9. That is, a Diamond Cove homeowner who was aware of the specific wording of Restriction #9 (prohibiting “motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles”), and the specific working of Section 4.7 (“Each owner shall have the right to own and operate one (1) golf cart on the properties”), could reasonably conclude that the City never intended to prohibit golf carts within the IR-3 Zone.

2. City’s Records, and City’s Actions, Indicate Intent to Allow Golf Carts.

Please keep in mind that Restriction #9 is the only provision that arguably prohibits golf carts from being operated in the IR-3 Zone, and it does so by prohibiting “motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles,” not by specifically referencing golf carts. If those Diamond Cove residents who knew of Restriction #9 were confused in thinking that this (repealed and recodified) statutory definition of “motor vehicles” must not include golf carts, then a review of the City of Portland’s available files would only have added to their confusion. As examples (with emphasis added):

- Planning Report #59-85 (“Recommending Adoption of Portland Island Land Use and Zoning Study, Including Zoning Text and Map Amendments”), submitted to Portland City Council on June 12, 1985:
 - “The City should adopt a policy for future development that minimizes the dependency on and intrusions of *private automobiles* on the islands.” (p. 4)
 - “The base density for the IR-3 was therefore established at 35,000 square feet Incentive adjustments for . . . restrictions on *private automobiles* (2,500 square feet) would also be possible.” (p. 7)
 - Attachment D - Memorandum from Richard Knowland, Senior Planner, to Chairman and Members of the Planning Board (May 21, 1985):
 - “An extensive sidewalk system is indicated on the plan. Common parking areas for *golf carts* and bicycles will be sited near the Diamond Cove pier and the southerly end of Diamond Avenue. Given the proximity of the Diamond Cove landing pier to the residences and the *non-automobile alternatives* (walk system, shuttle service, bicycle and *golf carts*) the development is designed to minimize the dependency of *private automobiles* for transportation.” (p. 5 of Attachment D)

- Planning Report #8-86 (“Diamond Cove IR-3 Planned Unit Development”), submitted to Portland Planning Board on February 4, 1986:
 - “The development plan emphasizes a pedestrian orientation by restricting the use of *private automobiles* and by providing shuttle service from the main pier to the residences. The use and storage of *private automobiles* is prohibited under the IR-3 rezoning conditions and restrictions for this property.
 - ...
Common parking areas for *golf carts* and bicycles is sited near the Diamond Cove pier and the southerly end of Diamond Avenue.” (p. 3)
 - “Parking areas for *golf carts* at Diamond Cove and at the southerly border are shown in the plan.” (p. 15)
 - “With restrictions on *private automobiles*, traffic hazards are lessened.” (p. 17)
- Letter from Joseph E. Gray, Jr., Director of Planning and Urban Development, to John James, Maine Department of Environmental Protection (Sept. 17, 1986):
 - “The parking area described near Diamond Cove is for parking of *golf carts*, common shuttle and maintenance vehicles. A zoning condition for the site precludes the use, maintenance and storage of *private automobiles* in this area as well as other areas of the IR-3 Zone.”
 - “The internal circulation needs of the development are adequately addressed by provision of walkways, *golf carts*, service and shuttle vehicles. This in concert with the establishment of the ferry landing at Diamond Cove would make the need for *private motor vehicles* questionable.”
- Memorandum from Alexander Jaegerman, Chief Planner, to David Lourie, Corporation Counsel, and Joseph E. Gray, Jr., Director of Planning and Urban Development (Mar. 16, 1987):
 - “On smaller islands such as Great and Little Diamond Island, there have historically been virtually no *private cars*, and every effort should be made to control development to avoid the proliferation of such vehicles. People use wagons and *motorized carts* as a substitute for cars.”

In fact, from our detailed review of the available City planning files, it became apparent that the words “motor vehicles,” “cars,” “automobiles,” and “autos” often were used interchangeably by City officials, that everything on point showed a clear intent to restrict cars and automobiles from Diamond Cove (in both the IR-3 and IR-1 Zones), and that nothing specified an intent to prohibit golf carts within the IR-3 Zone. That is, we have yet to uncover a single written statement emanating from the City (from the many boxes of files at the Planning Division) showing a specific intent to prohibit golf carts from the IR-3 Zone. All indications are that the City’s reference to “motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles” had the unintended consequence of restricting golf carts.

The record of City actions at Diamond Cove over the years reinforced the understanding that Restriction #9 applies to cars and automobiles, but not golf carts. For example:

- Golf carts have been a widely known fixture in the IR-3 Zone at Diamond Cove since the very first buildings were rehabilitated and occupied. Tom and Carol Low, who were the first to complete restoration of a property in Phase I, owned and operated a golf cart from 1987 until they sold their property in 1999.
- Golf carts were widely understood to be in common use in the IR-3 Zone in the late 1980s and early 1990s. Yet the City took no action to restrict their use. City officials acknowledged the fact that they were aware of the presence of golf carts during this period at several of the Public Safety meetings earlier this year.
- For many years, the City actively supported the use of golf carts in the IR-3 Zone at Diamond Cove by registering the carts, consistent with State registration laws. In fact, during the period from 1996 to 2002, City representatives made annual visits to Great Diamond Island to register golf carts. At no time in the period from 1985 to 2002 did the City ever refuse registration for a golf cart at Diamond Cove.

So Diamond Cove homeowners have purchased, registered, and used golf carts in the IR-3 Zone for years. The City actually has been quite cooperative. When the City recently announced that it would no longer register golf carts in the IR-3 Zone, approximately half of the IR-3 Zone residents owned golf carts. An attempt to enforce what is now either a new interpretation or a new understanding of Restriction #9 by the City would create significant hardship for these City residents.

Conclusion

There are compelling reasons to support this proposed Conditional Rezoning Amendment, so that the amended Restriction #9 does not prohibit golf carts and other electrically powered low-speed vehicles in the IR-3 Zone at Diamond Cove. We believe the change is consistent with the intent of the parties at the time the Conditional Rezone was approved, the growth management laws of the City, and the legitimate needs of the DCHA residents. Moreover, the requested change will not have an adverse effect on the environment or any of the residents of the Island, but will simply allow Diamond Cove residents to continue to operate these vehicles on their privately owned property, as they have done since the development's first days. With respect to the separate issue concerning traffic traveling from north-to-south and from south-to-north between Diamond Cove and the Village, there are other, directly applicable restrictions in place that can and will be enforced.

City of Portland Planning Board et al.

June 3, 2004

Page 15 of 15

EXHIBITS:

Exhibit A - Map

Exhibit B - July 15, 1985 Conditional Rezoning

Exhibit C - May 21, 2004 Letter from Tom Lucke, Diamond Cove Homeowners Association

Exhibit D - Neighborhood Electric Vehicles (LSVs) at Diamond Cove

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048089

City of Portland, Maine

IN THE CITY COUNCIL
EXHIBIT B

AMENDMENT TO PORTLAND CITY CODE

SECTION 14-49 (ZONING MAP)

RE: CONDITIONAL REZONING OF FT. MCKINLEY

- WHEREAS, Diamond Cove Associates is the record owner of certain land, with the buildings thereon, situated on the northerly portion of Great Diamond Island and commonly known as the Ft. McKinley property; and
- WHEREAS, in the process of a comprehensive land use study and rezoning of the Portland islands by the City, Diamond Cove Associates requested that a portion of said property be rezoned from the R-2 Residential Zone to the IR-3 Island Residential Zone; and
- WHEREAS, the Planning Board, pursuant to 30 M.R.S.A. Section 4962(1)(I), and after notice and hearing and due deliberation thereon, recommended rezoning a portion of the property as aforesaid, subject, however, to certain conditions; and
- WHEREAS, the City Council hereby finds and declares that said conditional rezoning would be pursuant to and consistent with the City's comprehensive plan and would satisfy the guidelines set forth in Section 14-145.13 of the Portland City Code, all for the reasons contained in the Planning Board's report accompanying this Amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE, IN THE CITY COUNCIL ASSEMBLED, AS FOLLOWS:

THAT, the Zoning Map of the City of Portland, Maine (1958), as amended, on file in the Office of the Director of Planning and Urban Development (incorporated into this code by Section 14-49) be further amended as shown on the attached fragmentary map entitled "Fort Mckinley Property Zoning Map (Great Diamond Island)", subject, however, to the Conditions and Restrictions attached hereto.

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 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

- (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.

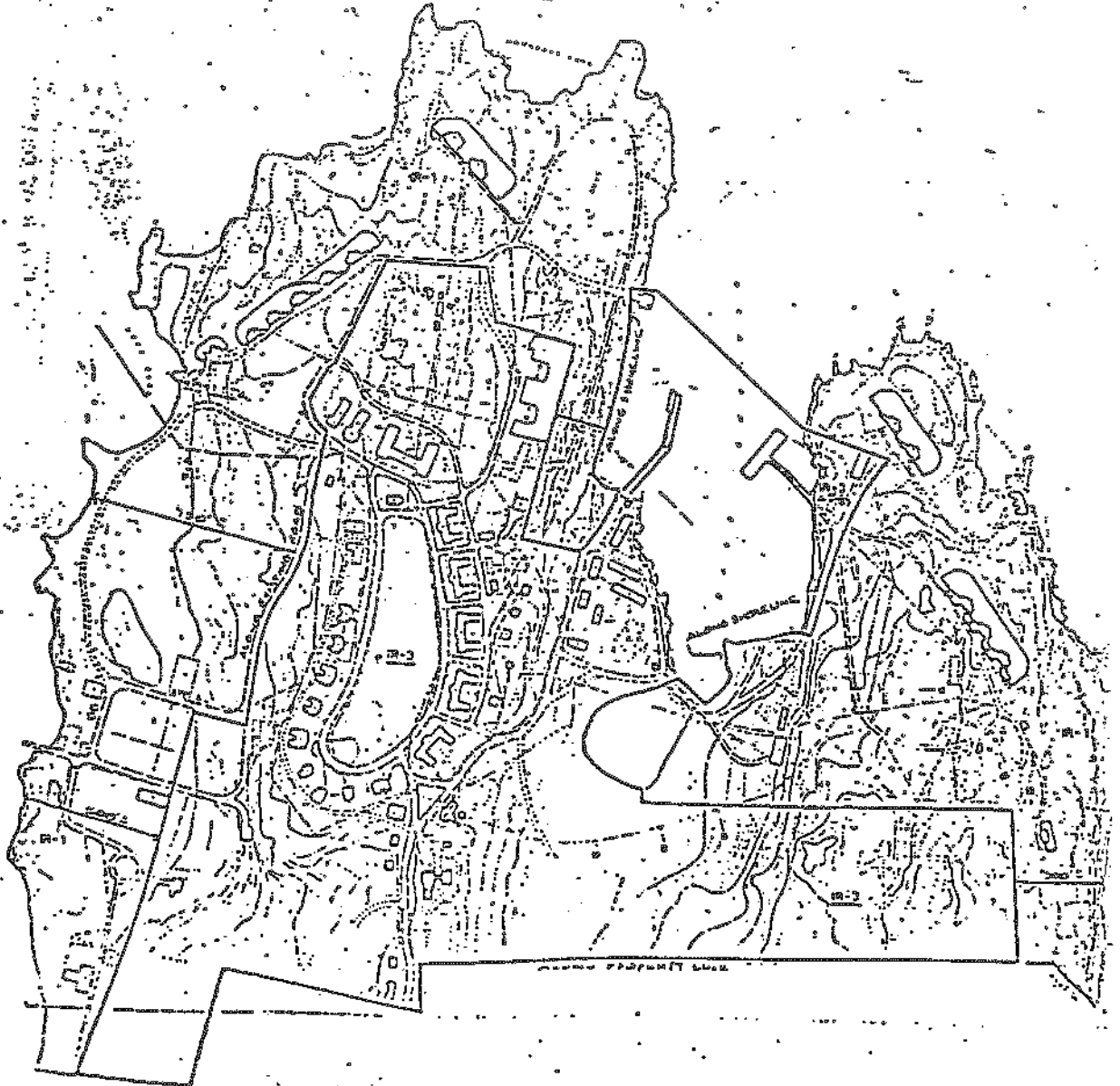
13. Breach. In case of any breach of these conditions and restrictions, and except as otherwise hereinbefore provided, the City shall, after giving written notice to the Owner and a reasonable time to cure not to exceed six (6) months, refer the same to the Planning Board, which shall, after notice and 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.

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.
(49)

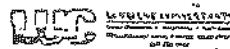
Diamond Cove

GREAT DIAMOND ISLAND.

PORTLAND, ORE.

DEVELOPER : DICTAR ASSOCIATES

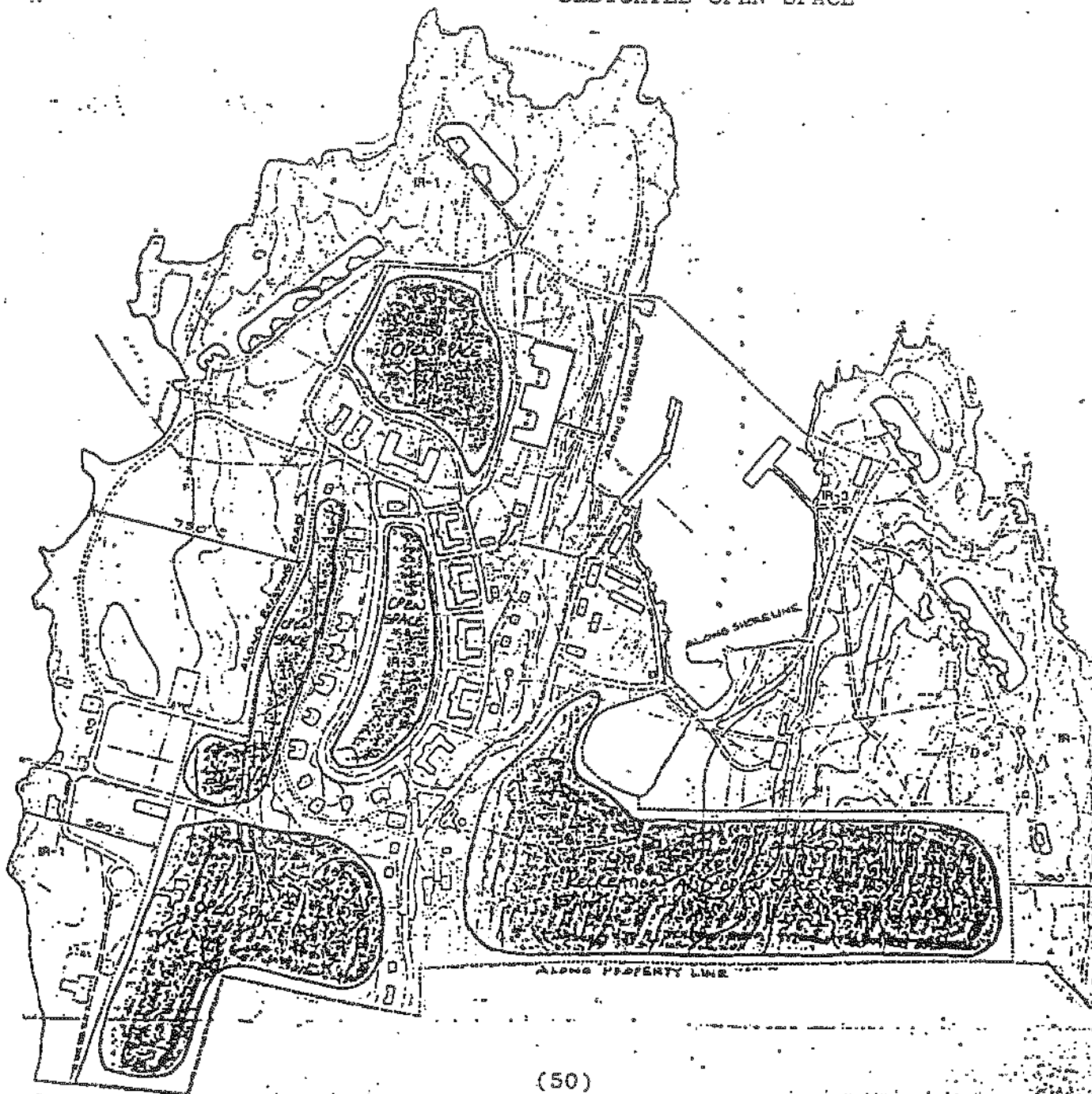
PORTLAND, ORE.



Consulting Planners, Engineers and Surveyors



DEDICATED OPEN SPACE



AMENDMENT TO PORTLAND CITY
CODE SECTION 14-49 (ZONING
MAP) SECTION 14-49 (ZONING
MAP) RE: CONDITIONAL
REZONING OF FT. MCKINLEY

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.

SEAL

Jane Durgin

Attest: *Jane Durgin*
City Clerk.

SEAL

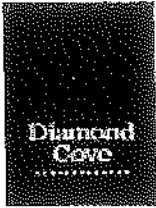
JANUARY 28, 1986

STATE OF MAINE
CUMBERLAND, ss.

Personally appeared the above-named Jane Durgin and acknowledged the foregoing instrument to be her free act and deed in her said capacity. *Jane Durgin*
Councilor

RECEIVED
RECORDED REGISTRY OF DEEDS
1989 SEP 28 PM 3:32
CUMBERLAND COUNTY

[Signature]



Diamond Cove
Homeowners Association
Great Diamond Island
Portland, ME 04109

EXHIBIT C

May 21, 2004

Via e-mail and US Mail

Diamond Island Association
Great Diamond Island Civic Association
Island Institute
Maine Audubon
City of Portland, Fire Department
City of Portland, Public Works
City of Portland, Island Administrator
City of Portland, Planning Department
City of Portland, Corporation Counsel
Great Diamond Island Volunteer Fire Company

Dear Interested Party,

As you are aware, the Portland City Council voted last month to take steps to enforce restrictions governing traffic on Great Diamond Island and at Diamond Cove. At the same time, Island Institute and Maine Audubon, who are parties to a related private agreement with the Diamond Cove Homeowners Association (DCHA) also expressed the view that enforcement should fall back to the terms of the original restrictions and agreements.

In response to the City Council vote, and through discussions with representatives of the City, the Diamond Cove Homeowners Association (DCHA) has developed a program to support compliance with these restrictions. Many of you are aware of elements of this program, as they have been discussed with you as we developed them. The purpose of this letter is to explain to you, in a more comprehensive manner, the key steps that the DCHA has undertaken to date and additional steps that will be taken beginning early next week as part of this program.

Two years of work with the other Associations has made it clear to everyone that traffic through the Fort gate is a very sensitive issue. The relevant restrictions in this case are:

1. City of Portland, Subdivision approval, 1.xi., (1987): "No private motor vehicle belonging to a lot owner or guest shall enter or exit the southerly boundary of the Diamond Cove property."
2. Private agreement between DCA, the Conservation Law Foundation, Island Institute and Maine Audubon (March 2, 1989, amended March 10, 1989), "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 exception shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island".

3. Diamond Cove Declaration, Section 4.7: "No motorized vehicle of any kind, including golf carts, shall pass south of the southerly boundary of the properties except for fire equipment, ambulances or public safety vehicles in the performance of their duties, and designated Association owned vehicles which transport persons and/or goods between the properties and the pier located at the southerly end of Great Diamond Island".

All of these restrictions effectively prohibit most island traffic through the gate, with a very limited number of exceptions. To date, the DCHA has taken the following steps to support compliance with these restrictions:

- We reminded our members of these restrictions in a memo sent to all homeowners, dated April 28, 2004.
- We recently posted signs at both gates indicating that only authorized vehicles are permitted to cross the Fort boundary. The signs recite Condition xi. of the subdivision approval, and section 4.7 of the Diamond Cove Declaration.
- We also informed our members that we would shortly be closing the gates along West Shore Drive and Diamond Avenue to prevent unauthorized vehicles from transiting the Diamond Cove boundary.
- Finally, we have explained to our members that we will begin a system of fines for homeowners who cross the boundary in contravention of the restrictions.

Beginning Monday the 24th of May, we will take the additional step of closing the gates, as follows:

- The so-called "lower gate" at the Diamond Cove property line on West Shore Drive will be closed and locked. This will effectively prohibit vehicular traffic from entering or exiting the property through this gate. Reflectors will be placed on the gate to ensure that the gate is visible at night.
- The DCHA will provide keys to open this gate in both the Fire Truck and the Ambulance that are stored at Diamond Cove to ensure that the gate can be opened quickly in an emergency. In addition, island First Responders and Volunteer Fire Company Officers are being provided with keys for emergency use only (this was agreed in consultation with the volunteer Fire Company). In the interest of all islanders, a limited number of essential service vehicles (e.g., City service

vehicles, the oil delivery truck) will also be provided with keys for lower gate access.

- The DCHA will direct its Site Manager to open the "lower gate" only to authorized traffic, consistent with the restrictions of Condition (xi) of the Phase II subdivision approval. This should effectively eliminate most traffic through the lower gate (we expect that traffic to and from the barge landing will continue to use this gate, as appropriate, with prior arrangement with the DCHA site manager).
- The so-called "upper gate" on Diamond Avenue will be shut, but will not be locked at this time. Only authorized traffic consistent with the existing boundary crossing restrictions will be allowed through the upper gate. This closing is in anticipation of an automated gate mechanism that we expect to install later this Spring (we are still in the process of finalizing bids from prospective vendors). A pedestrian access gate will remain open on Diamond Avenue.

We are informing you of these changes so that you (and in the case of DIA and Civic, your members) will be aware of these changes and plan travel accordingly.

In general, traffic through the gates (other than as identified above) will need to be coordinated through the DCHA's site manager, Dirigo Management. This may require advanced planning – for example, to ensure that contractor vehicles or heavy equipment will be able to transit the Fort boundary via the lower gate when they arrive at Diamond Cove (i.e., at the barge landing) headed for worksites on the southern portion of the island. With sufficient advanced notice, we do not anticipate problems with this system, and we will work with you to address any problems that might occur. Please contact John Washburn at Dirigo if you have any concerns – your thoughts will be forwarded to the DCHA Board (John can be reached at 766 1080).

I want to assure all parties that the DCHA continues to welcome pedestrian visitors, consistent with the access restrictions that were agreed upon early in the development's history. In particular, Great Diamond Island homeowners and their guests are invited to walk (or bicycle) through the pedestrian access gate on Diamond Avenue to visit their friends at Diamond Cove, to get to the ferry via the Diamond Cove pier, to enjoy the Restaurant, and to shop at the General Store.

In addition to supporting compliance with the north/south traffic restrictions, DCHA is taking another step in response to the City Council vote. We recently filed an application with the City to amend Restriction 9 of the Phase I conditional rezoning. This proposed amendment would clarify that electric golf carts may be operated within the privately owned property at Diamond Cove. We have not proposed any changes to the travel restrictions on golf carts and other motor vehicles traveling from north to south, and from

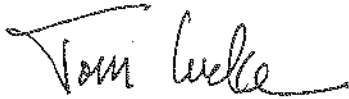
south to north. As you can tell from the steps outlined earlier in this letter, DCHA's intent is to fully comply with, and enforce, the existing cross-border traffic restrictions.

We will continue to operate under these restrictions until and unless (at some future date) we can come to some other agreement by working with the two other Associations on the island. We understand this may take time, but we look forward to these ongoing discussions; we believe continuing this open dialog among the Associations is the right way to identify any possible mutually acceptable changes to the cross-boundary travel restrictions.

While I know that not everyone will be happy with the gate closings, we feel that this is the path we must follow in order to support compliance with the cross-boundary traffic restrictions and protect the Association from potential legal action.

Please contact me directly over the next few days if you have any concerns about these steps (you can reach me at 617 775 5923).

Regards,

A handwritten signature in black ink that reads "Tom Lucke". The signature is written in a cursive style with a long horizontal stroke at the end.

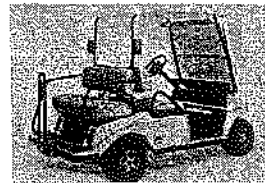
Tom Lucke
President
Diamond Cove Homeowners Association

Exhibit D: Neighborhood Electric Vehicles (NEVs) at Diamond Cove

Since the earliest days of Diamond Cove, golf carts and golf-cart type vehicles have been used to provide transportation on the property. Some were two-passenger golf carts (complete with the original racks for golf bags). Others were four-passenger “transporter” versions of a standard golf cart.

Roughly 2 years ago, residents began to investigate what are commonly referred to as Neighborhood Electric Vehicles (NEVs). Officially, these NEVs are classified by the US National Highway Traffic Safety Administration (and the State of Maine) as Low-Speed Vehicles (LSVs). The first of these NEVs arrived at Diamond Cove early in 2002.

NEVs were ultimately accepted by the community because their operating characteristics are very similar to a golf cart. Indeed, in some communities, NEVs are used both on the golf course (as a golf cart) and on the street. The most common NEV / LSV in use at Diamond Cove is a GEM. Comparing the specifications of a GEM e4 (below) to a Club Villager 4 (representative of a typical golf cart found on the island) one can see how similar the two are.



	GEM e4 (NEV / LSV)	ClubCar Villager 4 (Golf Cart)
Dimensions	128" x 55' x 70"	92" x 48" x 69"
Gross Weight	1270 lbs	1180 lbs
Seating	4 persons	4 persons
Max Speed	15 Mph (Turf Mode)	15 Mph
Safety Equipment	Headlights, tail lights, brake lights, horn, turn signal, safety glass windshield and wiper, safety belts	Headlights, tail lights, brake lights, horn, turn signal (safety package)

Note: While a GEM e4 has a maximum speed of 25 Mph in “High” mode, DCHA rules require all low-speed vehicles to be operated in “Turf” mode (golf cart mode) on Diamond Cove roads. In this mode, speed is automatically limited to 15 Mph.

While a NEV and a golf cart have similar operating characteristics, they are separately defined by both the Federal Government and the State of Maine. As a result, our proposed amendment to Restriction #9 references both golf carts and LSVs.



Memorandum

To: City of Portland Planning Board
Rick Knowland, Senior Planner
Penny Littell, Associate Counsel
Gary C. Wood, Corporation Counsel

From: Anthony M. Calcagni, Esq.
Juliet T. Browne, Esq.

Date: July 12, 2004

Re: Application for Conditional Rezoning Amendment
Conditional Rezoning to IR-3 Island Residential Zone (July 15, 1985) Restriction #9

This Memorandum is to follow up on our June 3, 2004 Memorandum in support of the Application for Zoning Amendment made by the Diamond Cove Homeowners Association (the "DCHA"), and to answer some of the questions raised at the June 8 Planning Board Workshop.

Is the proposed Amendment consistent with the City's Comprehensive Plan?

Yes. The purpose of the IR-3 Island Residential Zone, as described in both the City's Comprehensive Plan and the Land Use Code,

"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.” (Comprehensive Plan p. 81; Land Use Ordinance pp. 14-174 - 14-175)

Nothing in the Comprehensive Plan specifies an intent to restrict golf cart use in the IR-3 Island Residential Zone (or in any other zone, for that matter). Sec. 14-145.16 of the Land Use Ordinance addresses transportation within an IR-3 Island Residential Zone as follows:

- “(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.” (emphasis added)

While Sec. 14-145.16 speaks of minimizing the use and dependency on private motor vehicles, it also specifically speaks of the use of common service vehicles, golf carts, and bicycles in an IR-3 Island Residential Zone. Clearly, therefore, common service vehicles, golf carts, and bicycles are intended to be allowed in an IR-3 Island Residential Zone under the City’s Code of Ordinances, and are in fact encouraged as alternatives to automobiles.

Notably, the distinction between “private motor vehicles” and “common service vehicles, golf carts, or bicycles” made in Sec. 14-145.16 appears to the same as that made by City officials during the City’s review and ultimate approval of the Diamond Cove project, when the words “motor vehicles,” “cars,” “automobiles,” and “autos” often were used interchangeably by City officials, and everything on point showed a clear intent to restrict cars and automobiles from Diamond Cove (in both the IR-3 and IR-1 Zones), while clear statements were made showing the City’s intent to allow common service vehicles, golf carts, and bicycles within the IR-3 Zone.¹ At all relevant times, the City’s Codes, and the City officials responsible for implementing the Codes, have shown a clear intent to restrict cars at Diamond Cove, and to allow golf carts as an alternative to cars.

¹ See pp. 12-13 of our June 3 Memorandum for specific examples.

Is the proposed Amendment consistent with the pedestrian orientation at Diamond Cove?

Yes. While Diamond Cove was developed with a pedestrian orientation, golf carts have been a widely known fixture at Diamond Cove (including the IR-3 Zone) since the very first buildings were rehabilitated and occupied.² The combination of golf carts, the Diamond Cove shared bus, and bicycles has allowed this pedestrian-orientated community to succeed, without any private automobiles, which is precisely the intent of Sec. 14-145.16 of the Land Use Ordinance (cited above).

A visit to Diamond Cove, and particularly a walk around the Parade Ground area in the IR-3 zone, would clearly demonstrate that the development retains its fundamentally pedestrian orientation. At any given time during the day, a visitor would find many residents walking the roads – for example, headed to or from the pool, the Administration building, or the tennis courts. At the same time, a visitor would note that the majority of existing golf carts remain parked for most of the day – some are not used for days at a time, until inclement weather, a large load of items, transport of small children, or a trip to a distant neighbor require their use. Children commonly bicycle, walk and run on and around McKinley Court, with essentially no interference from golf carts. The sidewalks adjacent to McKinley Court see very little use, and the street itself forms the primary pedestrian way around the Parade Ground. All of this is readily apparent from a visit, even with the existing 56 golf carts and NEVs at Diamond Cove.³

Does the proposed Amendment require changes to other permits, approvals, or agreements?

No. Restriction #9 of the July 15, 1985 Conditional Rezoning is the only provision that arguably prohibits golf carts from being operated in the IR-3 Zone. No other applicable permit, approval, or agreement can be construed to do so. While the “North/South Restrictions”⁴ do restrict golf cart travel across the southerly boundary of the Diamond Cove property, they do nothing to restrict golf cart use within the confines of Diamond Cove. And as we have made clear, this proposed Amendment does not seek to amend the existing North/South Restrictions, which will remain in full force and effect.

In its written (undated) “Position of the Diamond Island Association Regarding the Proposed Amendment,” the Diamond Island Association (“DIA”) tries to collapse these two separate issues by writing:

² See p. 14 of our June 3 Memorandum for examples and a more detailed history of golf cart use at Diamond Cove.

³ See Attachment 1 to the June 4, 2004 Memorandum submitted by Gary C. Wood to the Planning Board.

⁴ As defined on p. 2 of our June 3 Memorandum.

“The Planning Board can spend much time on the proposed amendment to no avail, as the consent to any change will still be required of the DEP, the Conservation Law Foundation, the CBIDA, the Island Institute and the Maine Audubon Society.”

This statement is simply untrue. None of the numerous DEP Orders that govern Diamond Cove restrict golf cart use within the IR-3 zone, and the DEP has confirmed that allowing golf cart use within the IR-3 zone would not require an amendment of any of the existing orders, or any other DEP approval. Similarly, the March 2, 1989 Agreement between several environmental groups and Diamond Cove Associates, as amended, restricts north-south traffic flow and prohibits the use of automobiles within the IR-3 zone, but does not restrict golf cart use within the confines of Diamond Cove.⁵ We understand that the parties to that Agreement do not take a contrary position. DIA’s argument applies to modifications to the North/South Restrictions, which would not be affected by DCHA’s proposed Amendment. (The DCHA agrees with the DIA that modification of the North/South Restrictions would require the consent of a number of environmental groups, as well as some regulatory approvals.)

Can Diamond Cove assimilate the potential increase in golf carts?

Yes. From both an infrastructure and density standpoint, Diamond Cove can easily absorb 82 golf carts in the IR-3 zone, in addition to the 39 that are currently authorized by the City for the IR-1 zone. From a “cultural” standpoint, the Diamond Cove residents have already accepted the idea of one golf cart per unit by virtue of the language in the Diamond Cove Declaration.

From an infrastructure standpoint, the roads in the IR-3 zone at Diamond Cove are paved, and were originally constructed to support the demands of military vehicles at Fort McKinley. The gravel roads in the IR-1 zone were constructed to City and DEP standards, and are far more durable than the ways on the southern portion of the island (as DIA has stated, many of the ways on the southern side of the island are little more than paths). Our roads engineer, Mike Millett of Millett Associates, is confident that the roadways in the IR-3 zone “could easily support golf carts in numbers far exceeding” the maximum of 121 that are allowed under the Diamond Cove Declaration (see Exhibit A).

⁵ Sec. D(1) of the Agreement, as amended, provides:

“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 exception shall be fire equipment, ambulances, public safety vehicles and designated “taxis” (vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. . . . 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.”

This provision expressly restricts both automobiles and golf carts from passing the southerly boundary of the Diamond Cove property; however, it only restricts automobiles from operating within the IR-1 and IR-3 zones.

From a traffic density standpoint, Diamond Cove would remain a very low density environment, even with the maximum possible number of golf carts and NEVs in the IR-3 zone. Diamond Cove consists of 193.4 acres, including 8 miles of roadway.⁶ The IR-3 zone is 90.8 acres and has 5 miles of paved roads. The IR-1 zone (where there is no question that golf carts are permitted) is 102.6 acres and has 2.5 miles of gravel roads. 39 units have been created in the IR-1 zone, and 82 units have been created in the IR-3 zone, for a total of 121 units. As discussed in detail on pp. 10-12 of our June 3 Memorandum, the Diamond Cove Declaration restricts the number of golf carts at Diamond Cove to one per unit.⁷ Thus, the maximum City-approved vehicle density in the IR-1 zone is 15.8 carts per mile of road (a maximum of 39 carts divided by 2.5 miles of road). Even assuming every unit in the IR-3 zone eventually purchased a golf cart, the vehicle density in this zone would be only 14.8 carts per road mile (82 carts divided by 5 miles of roads). This is slightly lower than the density already approved for the IR-1 zone, which (at 15.8 carts per mile) could reasonably be considered a benchmark for an acceptable level.

Even with the maximum possible 121 golf carts (39 from IR-1 and 82 from IR-3), the density of carts and total vehicle impact would be substantially lower within Diamond Cove than the current density in the IR-2 zone on the Village side of Great Diamond Island (the IR-2 zone constitutes the developed portion of the southern side of the island, and potentially serves as another benchmark for vehicle density). Exhibit B provides this comparison in a set of graphs and a table. The IR-2 zone includes roughly 2.7 miles of dirt roads⁸ (some of which are more akin to paths than roads), and currently supports 72 vehicles (46 golf carts and 26 private cars/trucks). Golf cart density is currently 17.3 carts per road mile, and total vehicle density is 27.2 vehicles per road mile. However, unlike at Diamond Cove, the total number of vehicles in the IR-2 zone is not limited in any way, so these densities may increase significantly in the future. Further, merely counting the number of total vehicles understates the extent to which heavier vehicles (cars and trucks) impact the roads. A more reasonable density comparison might be based on weight, with private cars and trucks counted at 3 times a golf cart (roughly the ratio of curb weight for a typical golf cart or NEV versus a car). Using this "impact" score, the IR-2 density jumps to 46.8 adjusted vehicles per mile, compared to 15.1 for Diamond Cove.

In short, the limited number of units to be developed in the IR-3 zone (82), coupled with the existing restriction of one golf cart per unit, ensure that that will be no traffic problems associated with golf cart use within the IR-3 zone. Even at the maximum possible number of golf carts and NEVs in the IR-3 zone, the density will be lower than that authorized by the City for the IR-1 zone, and overall will be lower than the current density in the IR-2 zone.

⁶ Millett Associates, December 2003

⁷ The Diamond Cove Declaration provides: "Each owner shall have the right to own and operate one (1) golf cart on the properties."

⁸ Based on a map produced by the City of Portland's GIS Workgroup, April 2002

A vocal minority of Village residents have spoken against the DCHA's proposed Amendment, asserting that it would have adverse effects on the environment and/or the "culture" at Great Diamond Island, notwithstanding the fact that Village residents currently operate gas-powered vehicles without restriction. With respect to the environmental claims, it is important to note that (a) absolutely no evidence has been presented to indicate that electric golf cart use at Diamond Cove would have any material effect on the environment, and (b) while the City has shown a desire to minimize the use of and dependency on private automobiles on its islands, there has been no policy to minimize the use of and dependency on electric golf carts (which generally are recognized as an environmentally friendly alternative to automobiles). In fact, restricting golf carts at Diamond Cove certainly would cause Diamond Cove residents to make far greater use of the Diamond Cove shared bus, and increasing bus trips would cause more dust and higher levels of emissions from that gas-powered vehicle. In comparison, electric golf cart travel in the IR-3 Zone has very low impact. As noted above, all of the roads in the IR-3 Zone are paved (hence there are no issues related to dust or possible erosion), and the electric carts operate without direct emissions.

With respect to the claims on culture, please keep in mind that the residents of Diamond Cove want the right to have one electrically powered golf cart or low-speed vehicle per unit, for operation within the privately owned lands of Diamond Cove. Generally speaking, these residents already thought they had such a right when they first purchased their unit at Diamond Cove. To say that Diamond Cove residents should live in a "culture" that doesn't allow one electric golf cart per unit for operation at Diamond Cove, while their Village neighbors continue to enjoy their rights to own and operate an unlimited number of gas-powered cars, trucks and golf carts in the Village, seems highly unfair and arbitrary.

Should the proposed Amendment be conditioned upon enforcement of the North/South Restrictions, to prevent the passage of private motor vehicles (including golf carts) across the southerly boundary of Diamond Cove?

Not Necessarily. DCHA recognizes the importance of ensuring that the existing North/South Restrictions are enforced, and has taken steps to do so. For example, as of Monday, July 12, both the "upper gate" on Diamond Avenue and the "lower gate" on West Shore Drive have been locked. (See July 6, 2004 explanatory letter from Tom Lucke to Interested Parties attached as Exhibit C hereto.) Thus, the proposed Amendment to clarify that golf carts may be operated within the IR-3 zone will not have the unintended consequence of creating additional infractions of the North/South Restrictions.

Nevertheless, because of past concerns over enforcement of the existing North/South Restrictions, City Corporation Counsel has recommended that if the proposed Amendment is approved, an enforcement "mechanism and process should be created and included in the

conditional rezoning agreement.”⁹ Again, we believe that the recently implemented steps address these concerns. Moreover, we believe that issues associated with enforcement of the existing North/South Restrictions should not be made a part of this Amendment, for two additional reasons. First, IR-3 zoning conditions should relate only to uses within the IR-3 Zone, and the DCHA’s proposed Amendment does in fact address only golf cart use within the IR-3 zone. The traffic issues that the North/South Restrictions address, however, affect not only the IR-3 Zone, but also the adjacent IR-1 and IR-2 zones. To the extent the City would like to revisit the north/south traffic issues, we believe that a zoning condition affecting only the IR-3 Zone (which covers only about one-half of Diamond Cove, and only about one-quarter of Great Diamond Island) would be an improper means to that end.

Second, incorporating the existing North/South Restrictions into the Conditional Rezoning for the IR-3 Island Residential Zone would simply stick these restrictions (which already are enforceable by the City) into another governmental approval that applies to Diamond Cove, and thereby make the North/South Restrictions that much more complicated to modify at a future date. As reflected in the DIA’s submittal and the history on the north/south traffic issue, the subjects of whether and how the North/South Restrictions should be modified have generated considerable rancor and little consensus. The DCHA believes, however, that it is appropriate for the various associations on the island and environmental groups that are parties to the March 2, 1989 Agreement to continue to explore whether there is a compromise position. If and when a consensus among the parties is reached, we can mutually seek modification of the applicable agreements and/or approvals. Since the DCHA is already in the process of enforcing the existing North/South Restrictions, we believe it is both unnecessary and potentially counterproductive to incorporate enforcement of the North/South Restrictions -- and by implication those restrictions themselves -- into the Conditional Rezoning for the IR-3 Island Residential Zone.

In the event the City continues to believe it is important to tie enforcement of the existing North/South Restrictions to approval of the requested Amendment, we believe a more workable solution would be to include a condition that requires the DCHA to enter into a binding agreement with the City upon the City Council’s acceptance of the DCHA’s Conditional Rezoning Amendment, to address enforcement of the North/South Restrictions. Such an agreement could be modified by mutual agreement of the DCHA and the City without another conditional rezoning amendment, in order to address changing conditions and the needs of the residents of the Island. We think that could be accomplished by an agreement in the form attached as Exhibit D, which captures the essential points of your Corporation Counsel’s “Proposed Conditions,” in a form that can be agreed to by the DCHA.

⁹ See p. 4 of the June 4, 2004 Memorandum submitted by Gary C. Wood to the Planning Board, and the attached “Proposed Conditions Restricting Use of Diamond Cove Motor Vehicles Outside of Diamond Cove If Planning Board Approves Proposed Amendment To Allow Golf Carts in IR-3 Zone on Great Diamond Island.”

City of Portland Planning Board et al.
July 12, 2004
Page 8 of 8

EXHIBITS:

Exhibit A - June 24, 2004 letter from Millett Associates

Exhibit B - Density Comparisons

Exhibit C - July 6, 2004 letter from Tom Lucke to Interested Parties

Exhibit D - Proposed Agreement to Enforce North/South Traffic Restrictions

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Millett Associates

Civil / Environmental Engineering

June 24, 2004

Mr. Tony Calcagni, Esq.
Verrill & Dana
One Portland Square
Portland, ME 04101

RE: Diamond Cove Homeowner's Association, Golf Cart Use

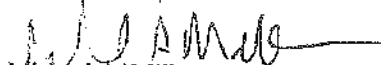
Dear Tony:

Millett Associates has been retained by the Diamond Cove Homeowners Association since the fall of 2003 to advise them on issues relating to their roads and drainage. This letter is a follow-up to a phone conversation with Tom Lucke on June 23, 2004.

It is our understanding that there is some question as to the use of roadways within the IR-3 zone for golf carts. If properly maintained, roadways in this zone, also referred to as the Historic District, can structurally support the allotted 82 golf carts plus the 39 golf carts from the outlying residential areas. In fact, the roadways within the IR-3 zone, being paved with a gravel base, could easily support golf carts in numbers far exceeding the allotment.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,

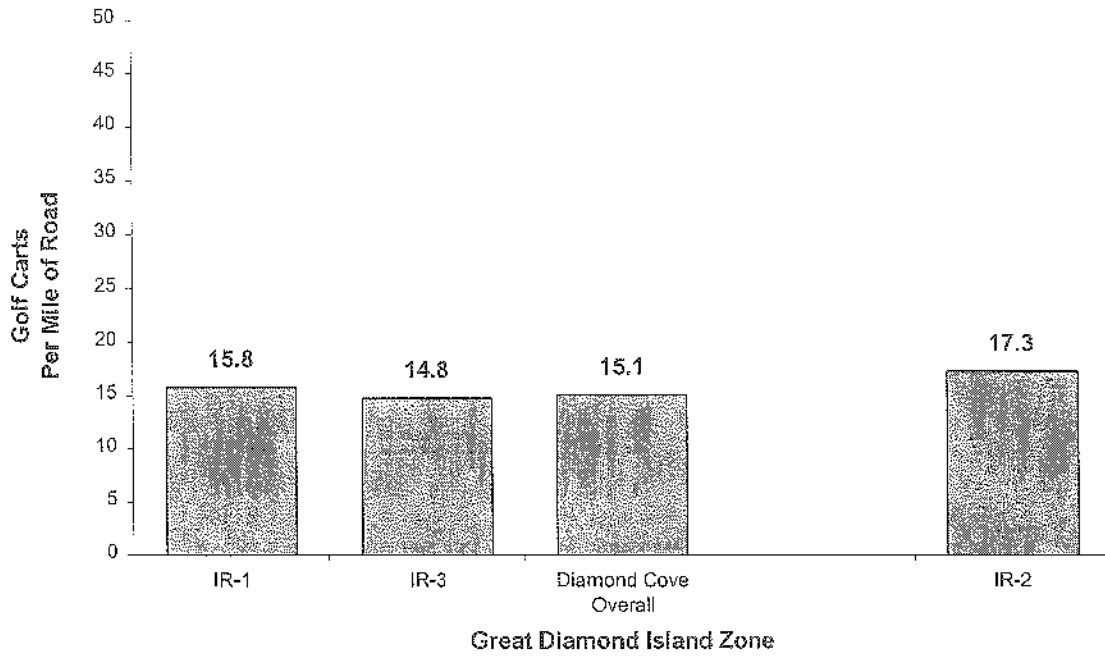

Michael A. Millett, P.E.
Millett Associates

MAM/mm

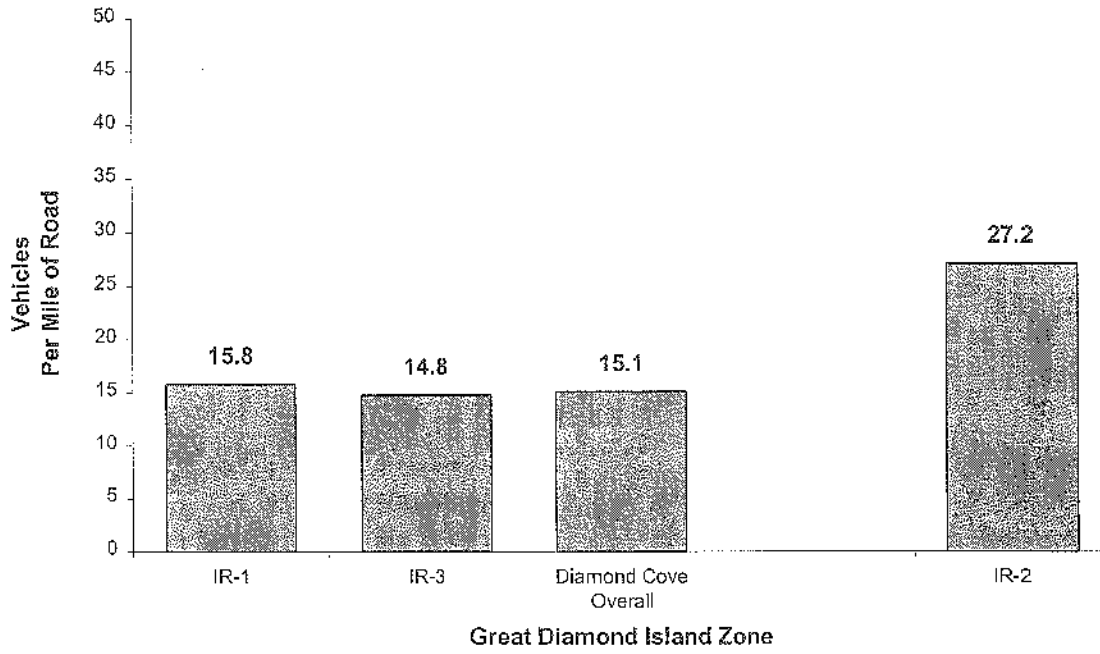
Civil Infrastructure Design Specialists

38 Homsted Lane - Hermon, ME 04401 - Tel/Fax (207) 848-2734

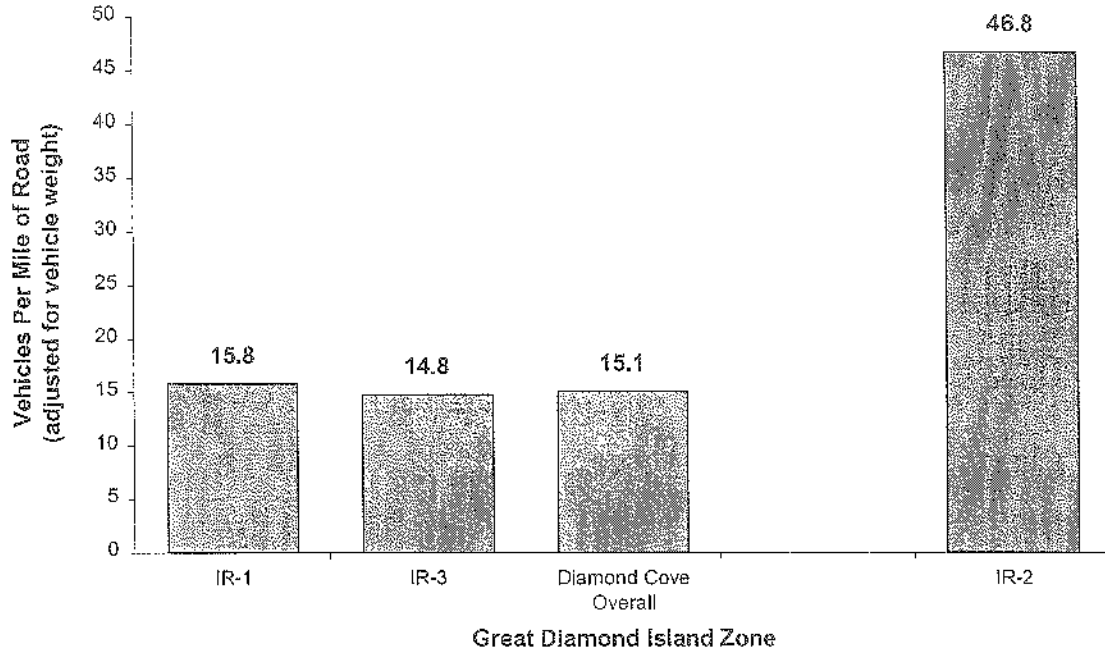
Comparison of Golf Cart Density



Comparison of Private Vehicle Density (Golf Carts, Cars and Trucks)



Comparison of Private Vehicle Impact
(Golf Carts, Cars and Trucks)



	IR-1	IR-3	Diamond Cove Overall	IR-2	IR-2 compared to IR-3	IR-2 compared to DC
Roadways in Feet	13,000	29,240	42,240	14,000		
Area in Acres	103	91	193	105		
Golf Carts	39	82	121	46		
Golf Carts + Private Cars & Trucks	39	82	121	72		
Carts/mile of road	15.8	14.8	15.1	17.3	17%	15%
Carts/acre	0.4	0.9	0.6	0.4	-51%	-30%
Vehicles/mile of road	15.8	14.8	15.1	27.2	83%	80%
Vehicles/acre	0.4	0.9	0.6	0.7	-24%	10%
Vehicle impact / mile of road	15.8	14.8	15.1	46.8	216%	209%

Notes: Figures for IR-2 zone not yet confirmed with Planning Department; Comparison assumes all Diamond Cove owners have one golf cart; Assumes current level of vehicle ownership on the southern side of the island (future ownership could be much higher). Impact based on an adjustment for vehicle weight (a car average 3x the curb weight of a golf cart or NEV),



Diamond Cove
Homeowners Association
Great Diamond Island
Portland, ME 04109

EXHIBIT C

July 6, 2004

Via e-mail and US Mail

Diamond Island Association
Great Diamond Island Civic Association
Island Institute
Maine Audubon
City of Portland, Fire Department
City of Portland, Public Works
City of Portland, Island Administrator
City of Portland, Planning Department
City of Portland, Corporation Counsel
Great Diamond Island Volunteer Fire Company

Dear Interested Party,

I wrote to you in late May describing the program that the Diamond Cove Homeowners Association (DCHA) had developed and implemented to support compliance with restrictions governing traffic on Great Diamond Island and at Diamond Cove. The purpose of this letter is to provide you with an update on the program and to explain additional changes that will take place starting July 12th, 2004.

To recap, as of Monday the 24th of May, the DCHA closed the gates to the Fort, as follows:

- The so-called "lower gate" at the Diamond Cove property line on West Shore Drive was closed and locked. This effectively prohibited vehicular traffic from entering or exiting the property through this gate. Reflectors were placed on the gate to ensure that the gate was visible at night.
- The DCHA provided keys to open this gate in both the Fire Truck and the Ambulance that are stored at Diamond Cove to ensure that the gate could be opened quickly in an emergency. In addition, island First Responders and Volunteer Fire Company Officers were provided with keys for emergency use only (this was agreed in consultation with the volunteer Fire Company). In the interest of all islanders, a limited number of essential service vehicles (e.g., City service vehicles, the oil delivery truck) were also be provided with keys for lower gate access.

- The DCHA directed its Site Manager to open the “lower gate” only to authorized traffic, consistent with the restrictions of Condition (xi) of the Phase II subdivision approval.
- We requested that traffic via the barge landing to and from worksites at on the southern side of the island would continue to use this gate, as appropriate, with prior arrangement with the DCHA site manager.
- The so-called “upper gate” on Diamond Avenue was shut, but not locked. The closing was in anticipation of an automated gate mechanism that we expect to install later this summer. A pedestrian access gate remains open on Diamond Avenue.

As we noted in our letter to you in May, traffic through the lower gate was to be coordinated through the DCHA’s site manager, Dirigo Management. We recognized that this might require advanced planning – for example, to ensure that contractor vehicles or heavy equipment would be able to transit the Fort boundary via the lower gate when they arrived at Diamond Cove (i.e., at the barge landing) headed for worksites on the southern portion of the island. With sufficient advanced notice, we did not anticipate problems with this system.

However, over the past month this system of prior notification has not worked well. Contractors and heavy equipment headed for the southern portion of the island have landed at the Diamond Cove barge landing without prior notice to Dirigo Management. Rather than contacting Dirigo, these vehicles have driven up West Shore Drive to Woodside Drive, around McKinley Court, onto upper Diamond Avenue and through the upper gate on their way to work sites on the southern portion of the island.

This is an extremely unfortunate situation. Particularly in the summer, there are many residents walking these particular roads throughout the day – for example, headed to or from the pool, the Administration building, or the tennis courts. Children commonly bicycle, walk and run around McKinley Court. In short, heavy vehicle traffic on McKinley Court and upper Diamond Avenue is inconsistent with the primarily pedestrian nature of these areas. In addition, the movement of tracked vehicles on these roads is prohibited by the DCHA’s construction guidelines. All construction vehicles entering Diamond Cove via the barge landing and bound for worksites on the southern portion of the island must use the lower gate.

To ensure that this is the case, beginning Monday July 12th, DCHA will take the following steps:

- The upper gate will be locked, using a lock that is keyed identically to the one on the lower gate. This will ensure that all emergency vehicles will continue to be able to use the upper gate.
- All construction vehicles entering or leaving Diamond Cove via the barge landing for worksites on the southern portion of the island will be require to contact Dirigo Management at least 24 hours in advance of their arrival. Dirigo will arrange for the opening of the lower gate.
- Dirigo's on-site RAs will not be authorized to open the upper gate for construction traffic. All arrangements will need to be made, in advance, through Dirigo's management office in Portland.
- Contractors who transit the Parade Ground roads without specific, written authorization from Dirigo may be subject to fines and a loss of landing privileges at the Diamond Cove barge landing.

While these changes may cause some small inconveniences, they are in direct response to the lack of compliance we have seen over the course of the last month. With appropriate prior notice to Dirigo, things should operate smoothly.

I will be traveling for the next ten days, and as a result will be difficult to reach. In my absence, please contact John Washburn at Dirigo if you have any concerns about these steps (you can reach him at 207 871 1080). John can act as a single point of contact for the rest of the Diamond Cove Board.

Regards,



Tom Lucke
President
Diamond Cove Homeowners Association
On Behalf of the Board of Directors

AGREEMENT TO ENFORCE
NORTH/SOUTH TRAFFIC RESTRICTIONS
AT DIAMOND COVE

AGREEMENT made this ____ day of _____, 2004, by and between the **CITY OF PORTLAND**, a body politic and corporate located in the County of Cumberland and State of Maine (hereinafter the “**CITY**”), and the **DIAMOND COVE HOMEOWNERS ASSOCIATION**, a Maine nonprofit corporation with a mailing address of Diamond Cove, Portland, Maine 04109 (hereinafter “**DCHA**”).

W I T N E S S E T H:

WHEREAS, **DCHA**’s members are the record owners of the residential and commercial lots located within a planned unit development located on Great Diamond Island in Portland, Maine (“Diamond Cove”);

WHEREAS, the property within Diamond Cove is subject to certain restrictions on motor vehicles traveling southerly from Diamond Cove to the southern parts of Great Diamond Island, including a June 23, 1987 subdivision restriction which provides that: “No private motor vehicle belonging to a lot owner or guest shall enter into or exit the southerly boundary of the Diamond Cove property” (hereinafter the “Subdivision Restriction”);

WHEREAS, on _____, 2004, the **CITY** approved an Application for Zoning Amendment made by **DCHA**, to clarify that electric golf carts and other electrically powered low-speed vehicles may be operated within the IR-3 zone at Diamond Cove;

WHEREAS, as a condition to such approval by the **CITY**, **DCHA** agreed to enter into this Agreement, to ensure enforcement of the Subdivision Restriction;

NOW THEREFORE, the parties, in consideration of the mutual promises set forth herein, hereby agree as follows:

EXHIBIT D

1. **DCHA** will take the following steps to enforce the existing restrictions on motor vehicle traffic entering or exiting the southerly boundary of the Diamond Cove property, including the Subdivision Restriction:
 - (a) **DCHA** will close and lock the so-called “lower gate” at the Diamond Cove property line on West Shore Drive, and the so-called “upper gate” on Diamond Avenue, to prohibit unauthorized vehicular traffic from entering or exiting through either gate.
 - (b) Only vehicles used for fire protection, public safety, and emergency purposes, and other vehicles not prohibited by the Subdivision Restriction (collectively, “Exempted Vehicles”), will be provided by **DCHA** with the means to open the lower gate and/or the upper gate. Said means will be subject to the approval of the Portland Fire Chief or his designee.
 - (c) **DCHA** will institute a registration and approval process for Exempted Vehicles that are provided by **DCHA** with the means to open the lower gate and/or the upper gate and exit the southerly boundary of the Diamond Cove property. Vehicles approved by **DCHA** must also be approved by the **CITY**’s Office of Code Enforcement. If **DCHA** determines that an application meets the definition of Exempted Vehicles set forth in Section 1(b) above, then **DCHA** may provide the operator with a key for the lower gate, and/or a key for the upper gate, together with a prominent exemption decal provided by the **CITY** to be placed on the operator’s vehicle. Any such operator will be required to sign a statement (i) agreeing that the key(s) would be used only with the specified vehicle and only for the specified exempted purpose, and (ii) acknowledging the right of **DCHA** and the **CITY** to impose fines and to revoke gate privileges for violations of the foregoing use restrictions. **DCHA** will identify any such approved operator/vehicle on a list of exemptions to be kept on file at the office of the Diamond Cove site manager (currently Dirigo Management Company, One City Center, 4th Floor, Portland, Maine), which list and any amendments thereto shall be provided to the **CITY**’s Office of Code Enforcement.
 - (d) **DCHA** will levy fines for violations of the foregoing restrictions, consistent with the Diamond Cove Declaration, in cases when an operator of a motorized vehicle of any kind (including golf carts) is found to pass south of the southerly boundary of the Diamond Cove property for any purpose other than those set forth for Exempted Vehicles. In the event of apparent violations, the site manager will be directed to send a letter identifying the date and time in question to the holder of the key, with a copy of such notice to be sent to the **CITY**. The holder of the key will have the opportunity to respond to explain the circumstances of the boundary crossing. Non-conforming crossing of the gate would result in a penalty, imposed by the **DCHA** Board on the holder of the key. Initially, penalties would be as

EXHIBIT D

follows: First offense – \$50 fine; second offense – \$100 fine; third offense – \$200 fine and revocation of crossing privileges.

- (e) With respect to Exempted Vehicles that (i) have not been previously approved and provided by **DCHA** with the means to open the lower gate and/or the upper gate, and (ii) need to use the private Diamond Cove barge landing and then exit the southerly boundary of the Diamond Cove property for a destination other than Diamond Cove, **DCHA** may adopt a policy whereby, upon sufficient advance request, a representative of **DCHA** may meet the operator of such Exempted Vehicle at a specified time and place in order to open/close the lower gate. **DCHA** may charge a fee in connection with any such policy. A log of any such gate openings shall be maintained by **DCHA** and kept on file at the office of the Diamond Cove site manager, and a copy of such log shall be provided to the **CITY**'s Office of Code Enforcement upon request. Nothing contained herein shall be deemed to require **DCHA** to provide access to the Diamond Cove barge landing, or to open either the upper or lower gate for any vehicle that has not been previously approved and provided by **DCHA** with the means to open the gate in accordance with Section 1(c) above. **DCHA** reserves all rights to bring a civil or criminal action against any person who violates any such policy adopted by **DCHA**, or otherwise trespasses at Diamond Cove.
 - (f) Nothing in this Section shall be construed or applied to prevent the **CITY** from bringing separate enforcement actions for violations of the Subdivision Restriction, including (in the **CITY**'s discretion) prosecution as a Land Use violation pursuant to 30-A M.R.S.A. § 4452 and Rule 80K of the Maine Rules of Civil Procedure.
 - (g) **DCHA** will immediately provide notice to all of its members of the foregoing policies and procedures.
2. This Agreement may be amended only by written agreement executed by both the **CITY** and **DCHA**. No such amendment to this Agreement shall require further amendment to the July 15, 1985 "Conditional Rezoning of Ft. McKinley," as amended.
3. Nothing contained herein shall be deemed to grant any third party rights. Without limiting the generality of the foregoing, nothing contained herein shall be deemed to entitle any third party with the means of opening either the upper gate or the lower gate without **DCHA** approval.

EXHIBIT D

- 4. This Agreement shall be construed and applied in accordance with the laws of the State of Maine.
- 5. If any term or provision of this contract is found to be illegal or unenforceable, that finding shall not affect the legality and enforceability of the other provisions and terms of the Agreement.

IN WITNESS WHEREOF, the **CITY OF PORTLAND** has caused this Agreement to be signed by _____, its _____, thereunto duly authorized, and **DIAMOND COVE HOMEOWNERS ASSOCIATION** has caused this Agreement to be signed by _____, its President, thereunto duly authorized, the day and date first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Print:
Its:

WITNESS:

DIAMOND COVE HOMEOWNERS ASSOCIATION

By: _____
Print:
Its: President

Minutes of Neighborhood Meeting, July 9th 2004
DCHA Administration Building
Diamond Cove
Great Diamond Island, ME 04109

The meeting was called to order at 7:14PM by Jonathan Dietz, Treasurer of the Diamond Cove Homeowners Association. Mr. Dietz stated the purpose of the meeting was to discuss a rezoning issue to allow golf carts to operate in the IR3 zone. He thanked Cathy Vanderweil and Bonnie Dietz for providing refreshments. Anthony Calcagni, DCHA attorney from the firm of Verrill & Dana was introduced.

Mr. Calcagni stated DCHA is not trying to amend any restrictions regarding North/South traffic which is enforceable by the City of Portland. DCHA is requesting the use of golf carts and low-speed vehicles (GEM cars) in the IR3 zone, which is the area surrounding the parade ground and along Diamond Ave. from the gate to the Diamond Cove pier. Mr. Calcagni then asked for questions from the audience.

Tom Maas, Diamond Cove IR1 year 'round resident, DCHA Board member and member of the Great Diamond Island Fire Dept., asked what would help the DCHA cause with the city.

Mr. Calcagni replied that we go before the Planning Board on July 20th @ 5 PM for a public hearing. Ultimately the Planning Board will vote to recommend some action to the City Council, who will then decide the issue. He suggested interested parties write letters to Rick Knowland at the Portland Planning Department. People can also contact city councilors.

John Condon, Diamond Island Association board member, seasonal resident of Southern side of Great Diamond Island, stated there is a strong feeling among South side residents that the rezoning application is a first step in reopening the gate between the North/South sides of the island. He would like to see, in writing, a strong statement from DCHA that the gates will remain closed in the future. He brought up a public safety issue: 1st responders need some form of transportation across the gates. He pointed out that when building 9A&B burned it was 28 minutes before the Portland Fire boat arrived and when Mary Giggy fell recently it was 30 minutes

before the fire boat arrived. At times like this cross island modes of transportation become a public safety issue rather than a convenience issue.

Lorine Pergament, Diamond Cove IR3 seasonal resident, pointed out that currently golf carts which are permitted in both IR1 zones can only stay in their own zone but can't cross the IR3 zone which limits travel for residents of the IR1 zones. When she purchased her unit the realtor told her she could have a golf cart. She requested a history of the zoning.

Mr. Calcagni responded:

In connection with development of Phase 1 the original developer asked for a zone change because the density planned was greater than permitted under the [then] current zoning. As part of the permission for a greater density development, the IR3 zone was created and restrictions were put in place including Restriction #9, which limits motor vehicle traffic within the IR3 zone. The language in Restriction #9 is confusing as to whether the intent was to limit all vehicular traffic or only automobiles and this is why we are requesting the zoning change at this time. There also are separate restrictions regarding what vehicles can/cannot cross the North-South boundaries. DCHA is not seeking to change those restrictions. In the DCHA Declaration it states that owners can have one [1] golf cart per dwelling. It is clear from city records that golf carts were considered an acceptable form of transportation on the island and that there is confusion regarding the use of the phrase motor vehicles in Restriction #9. At this time, however, the Planning Board will not focus on the history but on current conditions to guide them in their decision process.

Jackie Kenly, Diamond Cove IR3 year 'round resident, stated she was against closing the gates forever. She said she pays taxes and has a right to use city roads. She pointed out that she could take her golf cart to the other side, leave it there and use it on the city roads. She also expressed concern that a mechanized gate could malfunction which would cause problems during an emergency.

Jennifer Fox, Diamond Cove IR3 year 'round resident member of the GDI Fire Dept. and 1st Responder, stated that they have had training and drills and it currently takes 1 minute 34 seconds to open the upper [Diamond Ave.] gates, which are currently closed but not locked.

Charlotte Stein, Diamond Cove IR3 seasonal resident, stated that the purpose of this meeting was to discuss golf carts. It was not about North/South traffic.

Frank Robinson, Diamond Cove IR3 seasonal resident asked for clarification of Restriction #9. Was the wording operated or owned?

Mr. Calcagni responded that the language of Restriction #9 reads "operated or stored". He added that the North/South restrictions are separate from this issue. Although it has not in the past, the city is now going to enforce the North/South restrictions.

Charlotte Stein said she had heard a rumor from one of the members of the lawsuit that their intention was to eliminate all motor vehicles on Great Diamond Island.

Bill Robitzek, seasonal resident of Southern Great Diamond Island and Vice President of the Diamond Island Association, stated he had been a member of the golf cart negotiation committee for 2 years and he had a strong position against the current proposition. He said the public safety issue for golf carts is flawed because a golf cart is not a good choice for a public safety vehicle. The island should identify vehicular needs and if there is a need for a first response vehicle the DIA would contribute to a new vehicle.

He went on to state that the Diamond Island Association sees the rezoning application as a first step to reopen the gates. In 1990 a letter was sent from the Audubon Society lawyer to the Diamond Cove developer David Bateman's lawyer stating that there was a golf cart at Diamond Cove and that it violated Restriction #9. He added that the reason for Restriction #9 was concern from the Audubon Society and the Island Institute that life on the Southerly side of the island would be overrun by the hundreds of people at Diamond Cove. The restriction was to preserve the culture of the Southern side of the island. He would like the DIA to develop a transportation system for the island. There are concerns for the elderly and handicapped residents of the South side. He pointed out that after 2 years of negotiations the 6/6 policy was developed. He would like to see vehicles assigned as needed not as a convenience.

Judy Lee, Diamond Cove IR3 seasonal resident, asked Mr. Robitzek if the DIA would withdraw its opposition to the rezoning application if DCHA locked the gates and publicly stated its intention to keep the gates locked at all times.

Bill Robitzek replied that the DIA would remain opposed but as they had concerns about the Planning Board's response to the issue of the money invested in golf carts by Diamond Cove residents the Board of the DIA have decided that if the rezoning passed Bill will write further restriction to those proposed by Gary Wood (Portland Corporation Counsel).

Jon Dietz asked why the DIA is opposed to the rezoning.

Bill Robitzek responded he'd written a 5 page document to the Planning Board covering that. He said the developer misled Diamond Cove residents concerning golf carts.

Rick Frantz, Diamond Cove IR3 year 'round resident, Lt. of the Great Diamond Island Fire Dept., 1st Responder and moderator of the GDI Long Range Planning Committee, stated he and his wife live next to the fire engine and when a call comes in, they go immediately to the ambulance and leave for the destination. Other Diamond Cove responders must use golf carts to catch up to the ambulance.

Sarah Fitch, Diamond Cove IR3 year 'round resident, remarked that the Diamond Island Association shouldn't decide if golf carts are a convenience or a necessity for Diamond Cove residents. She is currently the mother of 2 and soon-to-be mother of 3 small children. Her parents live $\frac{3}{4}$ mile away and particularly in the winter a golf cart is a necessity to visit her parents and to get her mail.

Tom Maas spoke of how he had been in favor of open gates and unrestricted North/South traffic but found he was in the minority at Diamond Cove.

Byron Neal, Diamond Cove IR1 year 'round resident, reminded the audience that Diamond Cove was still primarily a pedestrian community and that our electric golf carts are non-polluting and quiet.

Pat McCarron, Great Diamond Island, Southern side, year 'round resident, 1st responder remarked that the Diamond Island Association Board of Directors does not speak for her or for many people, that many members of the DIA don't agree with the stand the Board of Directors of the DIA have taken.

Faith Boudreau, Diamond Cove IR3 year 'round resident said she doesn't own a golf cart but many times during the winter she was unable to get her mail. She has bursitis and arthritis and has trouble getting around. She thought the response to the fire was great with all the golf carts gathering to help.

Alex Neal, Diamond Cove IR1 year 'round resident, wanted people to consider the long term effects of a lack of golf carts at Diamond Cove and the negative impact it would have on property resale values.

Mr. Calcagni reminded the audience that not everyone on the Village side of the Island is opposed to the DCHA application, and that the Board of the Great Diamond Island Civic Association has unanimously supported the DCHA rezoning application.

Wayne Bartlett, Great Diamond Island, Southern side, year 'round resident and Island Public Works employee, said long ago there were locks on the gates and then they came off and now we're going in the right direction.

Bill Robitzek said there has been controversy between the Fort and the Southern side of the island for 15 years and that every 3 years or so it bubbles to the surface. It's golf carts now, but it'll be something else another time was his opinion. He felt the current controversy was not so much about golf carts but about maintaining the culture of the south side of the island. He felt that as we were unable to solve the issues ourselves we needed the Planning Board to decide for us but was confident that we would all "get thru it".

Richard Ingraham, Great Diamond Island, Southern side, year summer resident has been coming to the island for 40 years said the Civic Association and the Diamond Island Association aren't in complete agreement with each other on many issues. He hoped there was a way to

establish a medallion system where a certain number of carts from each side could cross the North/South boundary at times.

Lori Lucke, Diamond Cove IR3 seasonal and weekend resident for 7 years said she hopes to be here full time when they retire. They don't have a golf cart now but is in favor of a zoning change as she wants the ability to have a golf cart and to drive it in the historic area, not for convenience but transporting sail gear.

Jon Dietz said that when it is 0° degrees in the winter or pouring rain, a golf cart is important for transporting goods and people around the cove.

Bruce Robinson, Diamond Cove IR3 seasonal resident for the past 3 years said his ideal concept of Great Diamond Island is as a pedestrian community but felt golf carts should be an option for residents. He is disturbed by being part of a gated community and all it implies.

Bill Robitzek asked for the DCHA Board's reactions to a letter from Gary Wood.

Attorney Calcagni replied that the DCHA prefers a "free-standing agreement" between the City of Portland and DCHA to enforce the North/South Restrictions; he doesn't want to see Attorney Wood's proposed conditions as part of the conditional rezoning, because if ever the 3 Island associations were to agree to modify the current North/South Restrictions it would be very difficult to do so. He wanted everyone to be aware that it is the City Council who will listen and decide on this application, and encouraged everyone to submit letters and felt that going to the City meetings and hearings was even more important.

The meeting was adjourned at 8:24 pm

The Neighborhood Meeting was attended by 32 people; 26 from Diamond Cove, 5 from the southerly side of Great Diamond Island and 1 counsel for DCHA

Respectfully Submitted,

Judy Lee

7/11/04

Neighborhood Meeting Sign In Sheet

July 9, 2004

Name

Address/Lot #

Name	Address/Lot #
Fannie Dely	Diamond Cove Lot 20
Judy Lee	Diamond Cove 15F
Charlene Steier	Diamond Cove 15A
TOM MAAS	Diamond Cove Lot 40
Cathy Vanderveil	48A+B 54A+B
John Maas	Diamond Cove Lot 40
John &	Diamond Cove 15A
Richard Ingraham	GT. DIAMOND ISLAND ^{729 CRESCENT AVE}
David Kewly	Diamond Cove 30A
Laraine K. Pergament	DC 1-1/2 E
ANTHONY CALABRO	FALMOUTH (ATTY. FOR DELTA)
Jackie Kewly	GDI 30A
Laura M. Sucke	15D McKinley Ct, GDI
Alex/Bryon Nest	30 W. Shore Dr.
Faith Boudreau	17D McKinley Ct, GDI
Nick FRANTZ	30 B DIAMOND Cove
Steve	"
W.A. Anderson	16 F Diamond Cove
James & Anne Vardi	55B DC
Bin Whitely	Bay + Spring.
Pet McCann	Summit Ave GDI
JOHN CONDON	Summit Ave UNK
FB Robinson	13-C
Joe Cameron	23A
Jana Fitch	1A
John O'Leary	1A
Nancy Tooker	15E

Neighborhood Meeting Sign in Sheet

July 9, 2004

Name

Address/Lot #

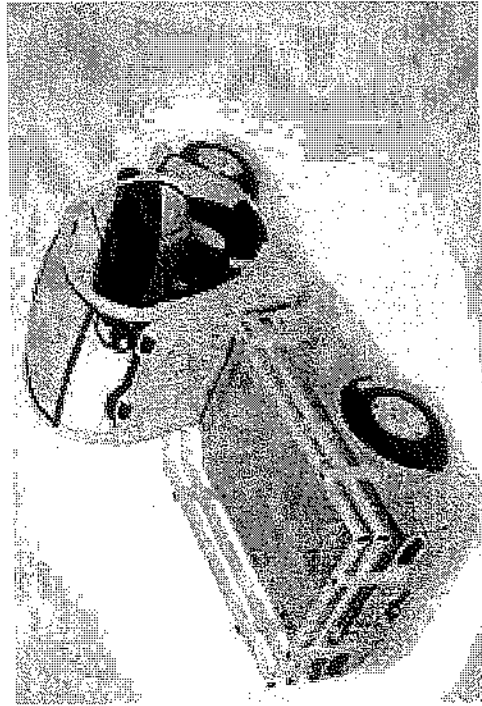
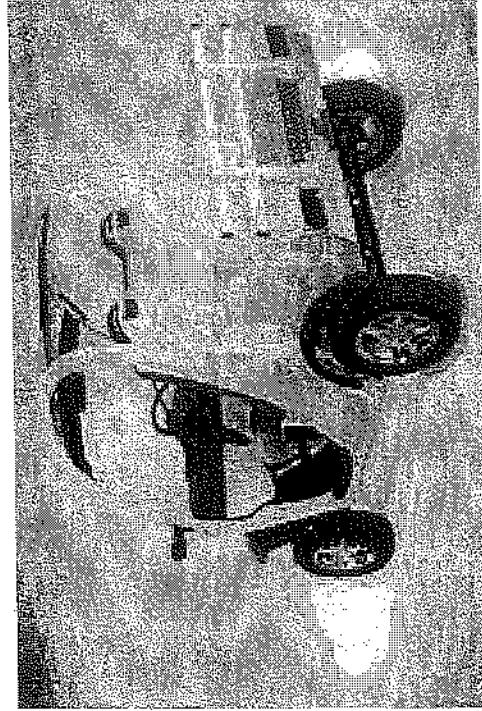
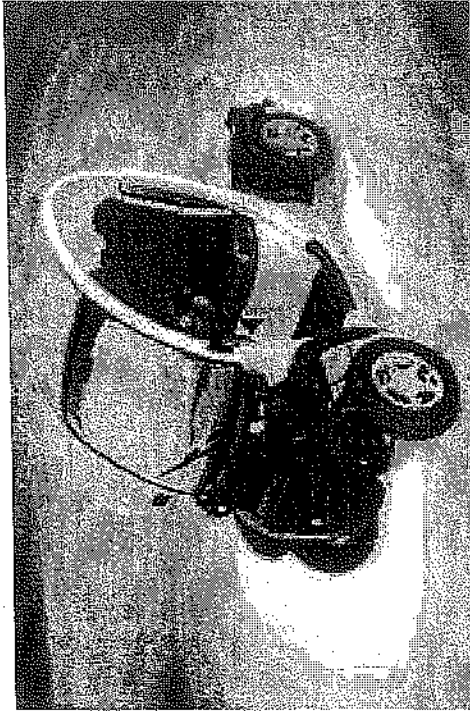
Nancy Bartlett

owner of Land on ^{Diamond Avenue} G.D.Z.

Jonathan Dietz

Lot 20 Diamond Cove

IONIS
GEM™ 2005



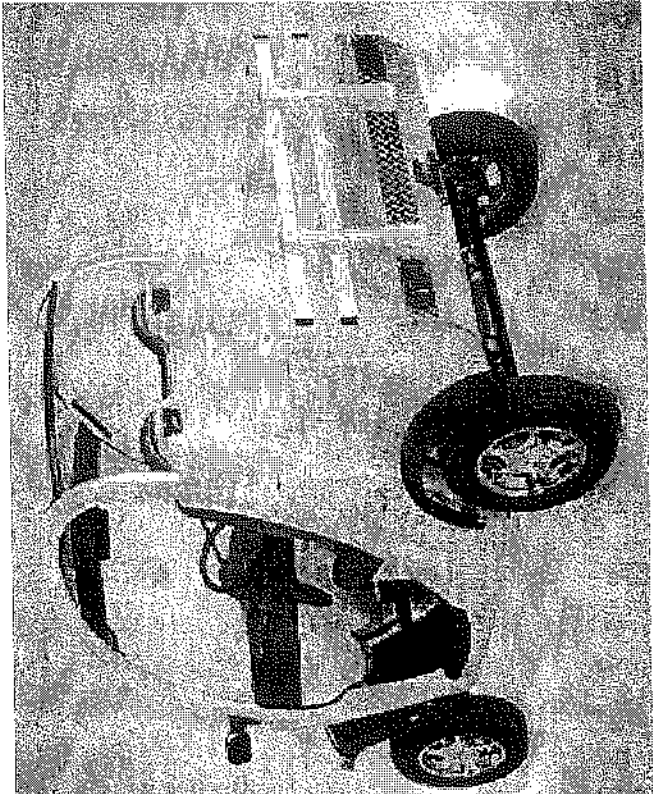
Welcome to the neighborhood!

es

CURB WEIGHT - 1,140 lb
G.W. - 1,850 lb
LENGTH - 108"
HEIGHT - 70"
WIDTH - 55"
WHEELBASE - 72"
TURNING RADIUS - 12' 6"
**TIRES - 12-inch, two-ply
street-rated**
FLAT BED - 37" x 48"
RANGE - Up to 30 miles
TOP SPEED - 25 mph

The vehicle that is perfect for your environment.

Whether carrying anything from groceries to a new house, the GEM is the answer. Small enough to allow easy and practical maneuvering, the GEM can be used in any environment. This model adds the ability to carry up to 1,000 lbs. A variety of accessories are available to help you get the most out of your GEM.



Functionality

- * Four models to choose from: e2, e4, eS, eL
- * Changeable modular accessory backs can carry anything from picnic baskets and groceries to luggage and golf clubs.
- * Easy-to-clean interior and rubber floor mats reduce cleaning and maintenance time.
- * Perfect all-around vehicle for communities, resorts, marinas, park systems, hotels, industrial complexes, construction sites, college campuses and military bases.
- * 2-ply street and turf rated tires.
- * Electronically controlled 25 mph top speed.
- * Low speed setting allows for reducing top speed from 25 mph to 15 mph.
- * Choice of canvas or hard doors
- * Available heater/defroster

Plug And Play. Maintaining your GEM Neighborhood Electric Vehicle couldn't be any easier. Simply recharge the batteries by plugging into any household 110-volt outlet. A single charge will take you up to 30 miles.**

Take Your Pick. Choosing from GEM's four practical models, you're sure to find the GEM that's right for your needs. And with so many options and accessories, customizing your GEM is a breeze.

** Range will vary depending on temperature, terrain, and driving style.

CITY OF PORTLAND
PLANNING DEPARTMENT
COMPREHENSIVE PLAN SHELF
PLEASE DO NOT REMOVE FROM
PLANNING OFFICE

6

PORTLAND
ISLANDS
LAND USE
AND
ZONING
STUDY

JUNE 1985



CITY OF PORTLAND, DEPT. OF PLANNING
AND URBAN DEVELOPMENT

E. ENVIRONMENTAL CONDITIONS AND LIMITATIONS

- ° The topography of the islands is characterized by extensive rock ledge and shallow soils. These conditions present serious difficulties for road construction, underground utility placement, and private septic systems;
- ° The soils conditions as documented by the Cumberland County Soils Survey show the predominance of soils that are rated as severely limited for community development, and septic disposal in particular;
- ° Groundwater aquifers on Cliff, Long, and areas of other islands which lack public water service are highly vulnerable to leachate pollution from septic systems and landfills, and are vulnerable to salt water intrusion from overuse. Both surface soils and the bedrock conditions hamper recharging of the aquifers and make the construction of public water lines expensive. Also, as a predominately summer residential area the demand for groundwater is at a peak when the supply and recharge are at their lowest level.
- ° Geologically, the long narrow islands of Portland and Casco Bay are the rootstocks and foothills of an ancient chain of mountains. It is useful to think of these islands as rock ridges recently separated from the mainland by rising seas.
- ° The combination of steep slopes and thin soils along portions of the islands' shoreline render them vulnerable to erosion.
- ° Portland's islands host a variety of marine and terrestrial wildlife, which gather to live and produce. In addition to nesting ospreys, guillemots, terns, eiders, gulls and cormorants, the shores of Portland's islands are notable places to view a variety of other birds such as great blue herons, egrets and a host of shorebirds. Harbor seals also haul out on half time ledges at a number of points within easy viewing of the islands.

A. SUMMARY AND GOAL STATEMENT.

The Portland islands pose a completely unique situation for land use planning and zoning. Unlike most other densely inhabited islands on the Maine coast which are separate municipalities, the Portland islands are similar to the neighborhoods of a large, urban mainland municipality and pose strong contrasts of urban vs. rural and seasonal vs. year-round living. Similarly, unlike other areas of seasonal home concentrations in the rural, Lakes regions of the State, the islands are subject to spillover growth pressures from the 'city', and invite comparison to the mainland's relatively high level of public services in terms of streets, sewage, schools, waste collection, fire protection, police and libraries.

The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), and the people who reside and work there. The City's land use policies and regulations should reflect this essential difference.

The overall land use goal is to balance future growth and development on the islands to preserve those essential natural, physical and social factors that contribute to the islands unique value and character.

This section includes recommendations for policies, zoning amendments and further studies which together serve to accomplish the goal stated above.

B. ISLAND POLICIES

1. The City should adopt a policy of considering the islands as unique and valuable natural areas whose primary use is as seasonal residential and recreation areas. Appropriate year round development should be encouraged provided that issues of municipal services delivery can be addressed.
2. Development on the islands should be managed to minimize the impact on the islands' fragile natural habitat.
3. The City should adopt a policy for future development that minimizes the dependency on and intrusions of private automobiles on the islands.
4. An adequate level of municipal services should be maintained for the islands. Over time municipal services and infrastructure should be improved, but with the realization that logistical constraints unique to the islands pose problems that make service delivery difficult to provide.
5. The City should improve open space and recreational opportunities on the islands to address the needs of residents and visitors. The City should encourage the retention and expansion of pedestrian access to the shoreline including acquisition of shoreline easements.

C. LAND USE REGULATIONS AND MUNICIPAL INITIATIVES

The City should amend the zoning text and map to add three new residential zones which would replace the existing residential zones on the islands. The purpose of these zoning classifications is to better define the residential land use characteristics that are unique to the islands.

IR-1 ISLAND RESIDENTIAL

The purpose of the IR-1 island residential zone would be to provide for low-intensity residential, recreational, and rural uses in the less developed areas of the islands.

IR-2 ISLAND RESIDENTIAL

The purpose of the IR-2 island residential zone would be to protect the character of existing developed residential neighborhoods on the islands.

IR-3 ISLAND RESIDENTIAL

The purpose of the IR-3 island residential zone would be to allow for planned unit development in a manner compatible with both the natural and built environment.

Parcels should not be rezoned to IR-3 unless an applicant can demonstrate that a development plan for the site can meet a series of detailed location and performance standards and is part of a contract or conditional rezoning. These standards would provide guidance to the City on whether a specific site would be appropriate for an IR-3 rezoning.

CONTRACT-CONDITIONAL ZONING

All IR-3 rezoning should be subject to contract or conditional zoning. Contract zoning is critical to the IR-3 rezoning process in that if a development plan for a proposed rezoning met the IR-3 review standards, the city would require that the zone change be subject to certain conditions through contract zoning that would insure that the final development for the site was in conformity with the land use policies represented in the IR-3 standards. This zoning tool can insure that the representations and assertions of a particular zone change application and development plan that served as the basis for granting the rezoning, are formally carried out in the context in which it was approved. Given the sensitive environmental issues and development constraints on the islands, it is not in the interest of the City to approve an IR-3 without appropriate assurances that the ultimate development for the site appropriately addresses such development constraints.

Position
of the
Diamond Island Association
Regarding the Proposed Amendment

This memorandum is written to you to express the position of the Diamond Island Association regarding the proposed amendment to the contract zone on Great Diamond Island which would legalize golfcarts and slow vehicles. The DIA opposes such an amendment for the reasons stated below.

Who We Are

The Diamond Island Association represents the property owners who will be most affected by increased development, whether by construction of buildings or by vehicle use, on the island. Established in the late 1880's the Association was a planned development in which parcels were sold off in quarter acre lots and the owners became members of the Association. All the roads on the southerly side of the island were created from Association property and given to the City. All property owners within the original Association plan are members of the Association by their deed; over 85% of the property owners on the south side pay annual dues; of the approximate 70 homes in this district, the owners of approximately 65 are active members. We therefore represent the property owners who are the most direct beneficiaries of the original covenants, contract zoning and agreements regarding the Cove development.

Our Actions Thus Far

Over the course of the last two years, our President and Vice President have engaged in negotiations with the Cove Association and the Civic Association to see if the traffic dispute on the island could be resolved. We have always made it clear that we were not in favor of changing the legal restrictions. We understood, as a matter of practical reality, that if the parties could achieve a workable solution that the zoning and other agreements might ultimately be changed to reflect that agreed-to reality. But no agreement regarding the ownership and use of golfcarts by the Cove was ever arrived at by all three Associations. Because of the lack of agreement,

in January of this year we stated our position to the City and asked that the restrictions be enforced.

We have already begun the steps necessary to assess the vehicular needs of the southern side of GDI and expect to have a plan in place shortly which will begin to reduce the need for vehicles there. This is consistent with the predominant culture of the island which has been pedestrian-oriented.

At our membership and Board meeting on May 30, 2004, we invited the President of the Cove to discuss their position. He attended and a long discussion ensued. Thereafter the Board voted to oppose the current amendment. It is apparent to us that the present attempt at wholesale legalization of the Cove vehicles does not consider the history of the development of the island, its present transportation needs or the challenge of the island's future.

The History

The major thrust of the Cove's argument in support of keeping their golfcarts is a claim that the restrictions of the late 1980's were not intended to include golfcarts and that any accumulation of carts at the Cove have been without knowledge of the restrictions. We would note that fourteen years ago, in a letter of August 3, 1990, the developer of the Cove was put on notice that the importation of golfcarts to the Cove as well as their use on the southern end was "contrary to the letter and intent of the 1989 agreement among the parties to that agreement" as well as a "violation of the Portland zoning restrictions."

Even before that, the pedestrian orientation of the restrictions was well-known. The Cove's developer's attorney acknowledged to Portland's Corporation Counsel, David Lourie, in a letter dated March 10, 1987:

The intent of the City planners, as expressed in the developing zoning text was clearly understood – IR-3 would be primarily pedestrian oriented, IR-1 would be more traditional in its treatment of traffic. Paragraph 9 of the Conditions and Restrictions, on its face, prohibits all vehicles, save a limited list of "common vehicles", from being operated on the "Premises".

Indeed, the CBIDA, in a letter to then-Director of Planning, Joseph Gray, noted the density bonus of 2500 square feet per unit the developer received in exchange for precluding private vehicles from IR-3. CBIDA then stated that the actions of the developer at that time to permit the permitted IR-1 vehicles to travel into and park in the IR-3 zone "leaves in question its ultimate intent. Introduction of any private cars on site may effectuate eventual erosion of the IR-3 private vehicular prohibition. Meanwhile the developer will have realized the benefits of the density bonus." (emphasis in original)

Even before that, the DEP's Site Location Order of December 10, 1986 stated:

The City of Portland, as a zoning condition, has prohibited the operation and storage of 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) within the IR-3 zone. A shuttle-type transportation system will be instituted by the applicant and operated on an as-needed, on-call basis to serve the residents of the Diamond Cove project. (emphasis added)

The Island's Present Transportation Needs

As the Planning Board knows, the island is relatively small, only about 6/10 of a square mile. For many years the entire southern side of the island had its transportation needs met by a few pickup trucks and a few golf carts. Although the number of vehicles on the southern side has increased since we lost our community taxi, the stated goal of the DIA is to decrease that number and preserve, as much as possible, the pedestrian culture of the island. And indeed, the southern side IS primarily pedestrian. This is evidenced by our dirt roads, the large number of gardenway carts "parked" at the ferry dock and the fact that most owners of vehicles voluntarily restrict their use.

Tom Fortier perhaps said it best when he was quoted in the Portland Press Herald as stating that the island is at a crossroads and needs to decide whether it wants to be more like Peaks Island or more like Cushing Island. It

has, historically, been more like Cushing. If it becomes like Peaks, it will be because of the current effort to expand the ownership and use of vehicles on the island.

The proposed amendment constitutes a wholesale legalization of 60-70 current vehicles and innumerable future others without addressing the capacity of the island for traffic or the island's current transportation needs. Regardless of the Cove's reinterpretation of the history of the restrictions, they have demonstrated no need for every unit owner to have a vehicle. The island is small and is easily traveled by foot. If there is inclement weather or the need to move bulky items, they already have an extensive and adequate common transportation system in place. Moreover, the vehicles they are currently asking the City to permit are inadequate for the harsher months of the year when non-pedestrian transportation is arguably more necessary. These vehicles, unlimited in number, will lie unused for most of the year.

The Future of the Island

This amendment lies at the crossroads of planning for the future of Great Diamond Island. Approval, with wholesale legalization, leads towards the Peaks Island model. It would seem that a planning perspective would assess the needs of the island first and determine not whether the vehicles are wanted by their owners, but whether they are necessary as they will undoubtedly change the culture of the island.

Policy Considerations

1. Should the City enforce its laws?

At its core, the thrust of the proposed amendment is a claim that the Cove residents were unaware of the requirements of the law. The public record clearly indicates that no one could have believed that such vehicles were permitted. Additionally, within the last several years, when the controversy was so public as to even be covered by the media, Cove residents continued to purchase golfcarts and, more recently, GEM cars. Even if there could be a legitimate claim by a few to originally being confused by the record, approval of the amendment would amount to

condoning intentional violations in recent years by many residents when the restriction was well-known.

2. Most other issues disappear if the amendment is denied

Richard Knowland, in his memorandum to the Board, indicated that if the Board entertains this amendment then "a management mechanism assuring that only authorized vehicles cross the property line to the south. Otherwise the Diamond Cove amendment as proposed may unravel the original intent of restriction #9."

The three island associations have grappled with the details of a potential "management mechanism" for the last two years. All attempts at reconciling the interests of the groups have failed. Needless to say, there will be no need for the Planning Board to enter this thicket and attempt to design something the parties have failed to if the amendment is denied. Without legalizing vehicles in IR-3, there will be no need to design a management mechanism.

3. The "camel's nose"

The DIA's concern about legalizing these vehicles is that this would merely be an initial step in a multi-year process. There is an old adage, about not letting the camel get its nose into your tent because eventually you'll have the whole animal inside.

Once the vehicles are legal, there are then two succeeding arguments. First, (and this has been argued by the Cove already on a number of occasions): "the southerly roads are public City roads, so we have a "right" to drive on them." Second, as the Cove population becomes more year-round, golfcarts and GEM cars will be found to be inadequate in the winter and cars will be needed. There is no reason to believe that the Planning Board will not be petitioned again once the current vehicles are legalized.

4. "Urbanization"

The DEP's Site Location Order of February 8, 1990, in denying that application for the proposed development of 65 house lots in the IR-1 zone

noted that the Phase I development (IR-3) had already increased the density of Great Diamond Island threefold making it "about 7 times more dense than the average for Maine's island communities." The Order went on to note:

As the Island Institute has pointed out, islands are inherently limited and vulnerable environments They have limited capacity to support development without sacrificing their unique natural and cultural features.

The DEP rejected that proposal because it "would in effect sanction the urbanization of an off-shore island."

The current amendment not only legalizes the vehicles of those who gambled they would, retroactively, become legal. It sets no upper limit on the number of vehicles which can arrive at the Cove in the future. It, in essence, sanctions a free-for-all of vehicular traffic in a small place where people have effectively traveled by foot for generations. We respectfully suggest that "convenience" is no substitute for "culture".

The Cove has established, essentially, a private gated community, which even before the current gates restricted access from the southern end and by the public. They have relied upon their legal right to design their private property to establish that gated culture. The right to design their culture must, however, be reviewed and restricted by the broader vision of the City which has historically recognized the threat of urbanization and urban sprawl. The position of the DIA regarding this amendment is consistent with the continuing vigilance of the City in restricting heights of buildings, density of developments and dangers to the environment.

5. Futility

Finally, the contract zoning is merely one component of a set of interlaced documents which have the same goal and language: preclusion of vehicle ownership in IR-3. The Planning Board can spend much time on the proposed amendment to no avail, as the consent to any change will still be required of the DEP, the Conservation Law Foundation, the CBIDA, the Island Institute and the Maine Audubon Society. The last written public positions of the latter two organizations make clear that, in the absence of an

agreed-to solution, they want the restrictions to stay in place and be enforced.



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

Portland City Council
Public Safety Committee
Peter O'Donnell, Chair
Jill Duson
John Griffin

2/13/03

Chair O'Donnell, Councilors Duson and Griffin:

The Island Institute has been monitoring the controversy regarding golf cart use on Great Diamond Island as it has progressed over the last year and a half.

The vehicle restrictions were a part of a comprehensive set of negotiations to protect the natural and cultural environment of Great Diamond Island. These covenants were agreed to in order to ensure the sustainability of the island's delicate ecology and to preserve the island's rural character against the threats of the proposed development of Diamond Cove. These restrictions, and the values that gave rise to them, were not imposed by the signatories to the covenants, but rather arose from the community itself. The agreement that was codified in these restrictions is the fundamental reason that the community at the time ultimately dropped its opposition to the Diamond Cove development.

Throughout this period, the Institute's position on the issues that have arisen has been consistent with our general policy regarding conflicts within island communities: we do what is in our power to facilitate local decision-making processes. In general we will support those solutions that achieve substantial local consensus in important community matters because the Institute believes that islanders are in the best position to understand the effects of specific community decisions.

With regard to the vehicle issues on Great Diamond, we believe that a process which can lead to a legitimate local solution is underway. The Institute supports the process of negotiations between the Diamond Cove Homeowner's Association, the Diamond Island Association, and the Great Diamond Civic Association. As long as the appointed representatives from all three associations believe that the negotiations are continuing in good faith, and that significant progress is being made, the Institute will continue to support this process.

If, however, this process stalls or breaks down, and no locally-supported agreement emerges, the Island Institute as signatory to the 1991 covenants restricting motor vehicle use on Great Diamond Island, will pursue our legal and ethical obligation to stand behind these restrictions.

As guardians to these agreements - to which all parties recognize violations have been occurring for some time - we have no choice but to enforce the legally binding covenants if no alternative and mutually agreeable solution can be reached. We are choosing to take this opportunity to state this position for the record in hopes that the situation can be further clarified for all parties involved.

Sincerely,

Nathan W. Michaud
Program Officer for Community Planning

Tuesday, April 29, 2003

Tom Fortier
City of Portland
389 Congress St.
Portland, ME 04101

RE: Great Diamond Island Gold Cart Use

Dear Mr. Fortier:

This letter is to inform the City of Portland that Maine Audubon concurs with the Island Institute's position in regard to golf cart use on Great Diamond Island.

Together with the Island Institute, Maine Audubon has been monitoring the controversy regarding golf cart use on Great Diamond Island as it has progressed over the last year and a half. Our executive director, Kevin Carley, and I met with a number of concerned residents on the island last September.

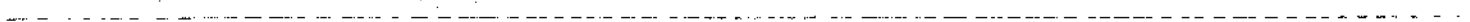
The vehicle restrictions were a part of a comprehensive set of negotiations designed to protect the natural and cultural environment of Great Diamond Island. These covenants were agreed to in order to ensure the sustainability of the island's delicate ecology and to preserve the island's rural character against the threats of the proposed development of Diamond Cove. These restrictions, and the values that gave rise to them, were not imposed by the signatories to the covenants, but rather arose from the community itself. The agreement that was codified in these restrictions is the fundamental reason that the community at the time ultimately dropped its opposition to the Diamond Cove development.

Our position since the golf cart use issue has been raised has been to support a local decision-making processes. In general we will support a solution that achieves substantial local consensus on an important community matter. We believe that a process that can lead to a legitimate local solution is underway. Maine Audubon supports the process of negotiations between the Diamond Cove Homeowner's Association, the Diamond Island Association, and the Great Diamond Civic Association. As long as the appointed representatives from all three associations believe that the negotiations are continuing in good faith, and that significant progress is being made, we will continue to support this process.

If, however, this process stalls or breaks down, and no locally-supported agreement emerges, Maine Audubon as signatory to the 1991 covenants restricting motor vehicle use on Great Diamond Island, will stand behind these restrictions. As guardians to these agreements - which all parties recognize violations have been occurring for some time - we have no choice but to enforce the legally binding covenants if no alternative and mutually agreeable solution can be reached. We are choosing to take this opportunity to state this position for the record in hopes that the situation can be further clarified for all parties involved.

Sincerely,

Jennifer D. Burns
Staff Attorney
Maine Audubon



10th June, 2004

Orlando Delogu
City of Portland
389 Congress Street
Portland, Maine 04101

Dear Mr. Delogu,

I am writing in reference to the Planning Board meeting held on the evening of the 8th of June 2004 to address the zoning amendment presented by the Diamond Cove Homeowners Association.

During this meeting the issue of capping the number of golf carts allowed at the Cove, to some number other than the existing one "cart per home" limitation, was raised. I would like to provide the following comments on this specific issue:

- Diamond Cove is a large open area of roughly 200 acres. The current space can more than compensate for one cart per owner without any effect on the quality of life in our community.
- What is the basis for the density cap you discussed? If the planning board believes the current restriction of one cart per homeowner would negatively impact the quality of the environment, or quality of the life of the homeowners, what is the basis for believing this?
- The original development was approved by the city to allow more than 120 units. Why would the city now believe any number less than 120 golf carts would overcome some perceived density restriction, or be required to maintain some subjective quality of life issue imposed on us by people who have never even visited the island, when the DCHA themselves, who live, breath and confront the quality of life issues on a daily basis - don't believe such a cap is necessary?
- I find it perplexing why the city would find a need to place a cap on a private community, against the wishes of the community, when it impacts no one outside that community... including the city. Why deny the right for us to own, on our own property, our own means of transportation when those in the city, our neighbors, can own any number of vehicles... electric or gas powered?
- You had indicated your staff may vote on the necessity of numerical caps on golf carts at DC. Tom Lucke then inquired if any of your staff had been out to the cove and witnessed for themselves whether caps were truly necessary or would effect the quality of life on the community. Your response was that this is an internal issue for you and your staff. Given a decision will be made by your staff on this very issue, and we the taxpayers, will bear the brunt of that decision then I strongly disagree with this response. Your office needs to be transparent on this point and I for one want to ensure an informed and knowledgeable decision is being made. Your staff (including Gary Wood himself) demonstrated a disrespectful lack of preparedness and knowledge over this entire issue - an issue which has been burning in the hearts and minds of your taxpayers for years. I certainly hope, where the viability of our lives in this community is at stage, you would have the decency to make a decision based on sound knowledge and experience. This is not a question to sweep under the cover... it is a question which needs to be to professionally addressed. If none of your staff have visited the island and seen, with their own eyes, the open spaces, the residential spaces or the golf carts operating in

those spaces, how can you possibly vote on this issue in any informed manner? I want to know those people making the decision are doing so on an informed basis and such a decision is not based purely on a politically expedient justification concocted up by uniformed policy makers.

Life is not viable here without our being able to own an individual means of transportation. We are a Portland neighborhood. We pay Portland taxes with little representation. We pay a disproportionate amount of taxes for the services we consume. Even the right to drive on city roads is denied to us... even though the taxes we pay go for the upkeep of those same roads. Now your even trying to deny us the right to have freedom of movement in our very own neighborhood.

The vote before you is none other then a vote to allow our community to be viable or not... and to enjoy freedoms common to every other citizen of Portland – the freedom of choice and freedom to own a means of transportation in our neighborhood.

I hope the planning department can make a wise and informed decision on this matter and one which represents the needs of the taxpayers of our growing, but struggling, community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph A. Bauer', with a long horizontal flourish extending to the right.

Joseph A. Bauer
6A Mckinley Court

5 June, 2004

Rick Knowland
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Amendments to Diamond Cove Zoning Rules -- Great Diamond Island

Dear Mr. Knowland,

I would like to request your support for the amendment to Restriction #9 of the June 15th 1985 conditional rezoning, which will formally allow homeowners use of electric golf carts at the Diamond Cove Community.

As a year around resident I believe it would be nothing short of a travesty to deny our rights to own a low impact mode of transportation in what is a unique, historically preserved community struggling to be both economically and socially viable.

The golf cart issue is at the core of that struggle. Without the right to own an individual means of transportation, we cannot exist as a viable community.

We cannot live isolated in our homes wholly dependant on the limited transportation service provided to the community to meet the schedule of Casco Bay lines. This van service does not now, nor would any expansion of it, service the community in a manner which would allow us to be a viable community.

What makes a viable community? Freedom of movement for one, access to public transport including water taxi, the ability to respond to fire alarms and to socialize with others in the community, the ability for all people old and young to travel at any time of day to use the facilities in the community. Facilities such mail rooms, the store, exercise facilities, restaurant, etc. Denying our ability to use low-impact electric powered vehicles is denying our ability to enjoy freedoms standard to virtually every human being in Maine.

My parents visit yearly and were considering retiring to my home. Without a means of transport their life is not viable here. In the inclement weather common in Maine they could not even pick up their mail. They could not use transport outside the infrequently scheduled ferry service. They could not visit friends on the periphery of our community. They could not go to the store to pick up basic amenities in times of need. They could not travel to or from the mainland at any time other then the scheduled ferry service. They could not enjoy the environmentally friendly community we have become.

We simply fail to become a viable community. Is this what the city of Portland wants? To take away the viability of an environmentally friendly planned community which is an asset to the city of Portland and the State of Maine? To stifle our attempts to build the type of community we need more of to create a healthier society?

Please vote in favor of allowing us to be a viable community.

Sincerely,

Joseph A. Bauer
6A Mckinley Court

From: Laura Lucke <lucke@earthlink.net>
To: Portland.CityHall(RWK)
Date: Mon, Jun 7, 2004 9:52 PM
Subject: Amendment to Restriction 9 of Diamond Cove IR-3 Rezoning

Dear Mr. Knowland,

I am writing to support the Diamond Cove Homeowners Association's application for amendment to the zoning restrictions covering the historic district (IR-3). Though I do not own a golf cart or plan to do so in the future, I believe that this proposed change would have a number of benefits:

- * enhancing public safety by ensuring that firefighters and first responders can get to the scene of an emergency rapidly and safely;
- * fostering an environmentally sensitive approach to legitimate transportation needs within Diamond Cove;
- * recognizing the needs of the majority of the island community, which has developed for almost 20 years with the understanding that golf carts were allowed to all residents of Diamond Cove;
- * focusing the City's limited resources on issues with a significant public safety or community impact; and
- * aligning the zoning regulations with the DCHA Covenants and Restrictions, the Comprehensive Plan and the historical record.

In addition, it is difficult to imagine how the use of quiet, non-polluting golf carts and LSVs by residents of Diamond Cove on our private property infringes on the rights of anyone outside Diamond Cove.

The recent interpretation that Diamond Cove residents are not allowed to operate or store golf carts in the IR-3 zone was so subtle that it was overlooked by both the City counsel who approved the Covenants and Restrictions and also by our real estate attorney, who represented a number of Diamond Cove homeowners in the purchase of their properties.

If seasoned legal professionals were unaware of the discrepancy between the zoning regulations and the Covenants and Restrictions, it is not reasonable to state that the residents knew or should have known that there was a zoning compliance issue. I respectfully request that the Planning Board support the application for this zoning amendment and restore our community to good standing with the City. Thank you very much for your attention to this matter.

Very truly yours,

Laura M. Lucke
15D McKinley Court
Great Diamond Island

CC: Portland.CityHall(TAF)

From: "Donna & Herb" <dishrs@maine.rr.com>
To: Portland.CityHall(RWK)
Date: Mon, Jun 7, 2004 8:42 PM
Subject: diamond cove

dear mr. knowland:

re: the proposed amendment to phase 1 - conditional rezoning

my husband and i are homeowners on diamond cove and are in support of this amendment that is now before you for consideration.

we thank you in advance for your kind consideration and favorable response.

sincerely,

herbert and donna schwartz

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.693 / Virus Database: 454 - Release Date: 5/31/04

From: <FogBound1@aol.com>
To: Portland.CityHall(RWK)
Date: Mon, Jun 7, 2004 6:44 PM
Subject: Restriction #9 re;Diamond Cove-Golf Cart issue

Dear Mr. Knowland,

We have been homeowners at Diamond Cove since 1994. From the earliest days there we have owned an electric golf cart which the covenants clearly allow.

The cart has provided us(and many others)with transportation and enjoyment over the years.

Now we are presented with the possibility of losing the right of ownership of an electric vehicle which we operate on private property.

The intent of the original zoning is exceedingly clear ie;No Gas Powered Vehicles Allowed!!

Please do the fair,logical and right thing and recommend the DCHA proposal to the City Council.

Thank You

Paul & Nancy Cunningham
17 B/C
Diamond Cove

CC: Portland.gwgwia("trlucke@earthlink.net","paul@cunn...

From: <Grandpal@aol.com>
To: <rwk@portlandmaine.gov>, <jcondon@acadiabenefits.c...>
Date: Mon, Jun 7, 2004 4:52 PM
Subject: DCHA Proposed Amendment Change

Richard Knowland
Senior Planner
Planning Division
And Planning Board Members

Dear Sirs, My wife and I are year-round members on the "village" side of Great Diamond Island. Like many others on this side of the island we support the folks at Diamond Cove and believe that they should be allowed to own electric golf carts.

Several people who would be disallowed ownership are members of the Great Diamond Island Volunteer Fire Department and this is their method of transportation to the fire barn or to an actual fire.

Some people point out that there was a recent rush to obtain GEM vehicles. The reason for this sudden interest is that they were being closed out at less than a third of the original price.

We believe in "live and let live". These neighbors are entitled to the same considerations as the rest of the Diamond Cove residents.

Sincerely,

Richard and Janet Ingraham

From: "Benjamin Carr" <twoisles@earthlink.net>
To: Portland.CityHall(RWK)
Date: Mon, Jun 7, 2004 12:44 PM
Subject: Diamond Cove golf carts

Greetings, Rick:

Just adding my voice--via email--in support of the Diamond Cove effort to legalize golf carts in the historic district.

It appears to me that the earlier developers said what ever they had to say, to whomever, in order to get the go-ahead for development. The developers are gone and we owners try to pick up the pieces.

In consideration of the lower number of units and with only about 50% of owners having golf carts, it seems sensible, as well as environmentally friendly, to permit a golf cart for each historic district owner.

With the world going to hell in a hand basket, does it seem a little bizarre to you that we--island and city-- spend all this time and energy and money on issues related to golf carts?

Again, I support the proposed changes.

Respectfully, Ben Carr Unit 16H Diamond Cove

From: <RWhelan958@aol.com>
To: Portland.CityHall(TAF,RWK)
Date: Mon, Jun 7, 2004 12:09 PM
Subject: Golf Carts at Diamond Cove

Dear Mr. Knowland and Mr. Fortier,

We have been summer residents of Diamond Cove since the mid-90s and are writing in connection with the June 8 workshop concerning Phase I conditional rezoning at Diamond Cove. We are fully in support of the amendment to Restriction #9 of the 6/15/85 Conditional Rezoning that is being proposed by the Diamond Cove Homeowners Association.

From the time we moved into our home in Phase I at Diamond Cove, we have owned and operated an electric golf cart. We have found it to be extremely convenient for hauling provisions to and from the dock and even crucial when entertaining elderly guests who are not able to walk to all the sights they want to see at the Cove. Our friends who live in Phase II depend on their golf carts and low-speed vehicles for the same reasons we do and also to get to the dock, the store, and the restaurant during bad weather. The passenger vans at Diamond Cove simply cannot meet all the transportation needs of Diamond Cove residents and, as an environmental matter, we would not want them to try to. We believe that golf carts, being zero emission vehicles, are a better environmental alternative than adding vans to our fleet.

In addition to being better for the environment than larger vehicles, golf carts and low-speed vehicles are safer. Because these vehicles can't be driven as fast as trucks, we have been able to allow children to play freely around the parade ground all these years. We also know that in the event of emergency, volunteers can hop on a golf cart and be where they are needed quickly.

Diamond Cove golf carts and low-speed vehicles will have no effect on non-Diamond Cove residents as long as they are not driven outside the boundaries of Diamond Cove. We understand that our Board of Directors has a comprehensive plan to strictly enforce the travel restrictions that would contain our golf carts and low-speed vehicles. Because this is an issue that will affect only Diamond Cove, we urge you to give weight in your decision to the will of the residents of Diamond Cove and to support the proposed amendment.

Sincerely,

Kathleen M. Whelan
Robert M. Whelan, Jr.

From: "Dick Sedgewick" <ddickk@comcast.net>
To: <rwk@portlandmaine.gov>
Date: Mon, Jun 7, 2004 7:24 AM
Subject: Fw: Portland planning board

Subject: Portland planning board

We have enjoyed 50 plus summers on Great Diamond Island living by rules developed by your planning and political process-----some 20 years ago that process, in harmony with other bodies concerned with the quality of Island life within Casco Bay, enacted rules and conditions to regulate vehicular transportation within a major development to be built on the property previously occupied by Fort McKinley.

Those regulations have in fact been largely ignored, causing Island wide stress and efforts to resolve differences, without established city processes. These efforts failed.

Your board is now being asked to codify a relaxed version of your earlier work, which is said to be step one in a larger goal to remove vehicular restrictions within the new development.

On behalf of our entire family, I respectfully ask you to review the reasoning that led to the current zoning on GDI, and reject efforts to increase vehicular density on Great Diamond Island.

We thank you.

Dick and Claire Sedgewick

and our extended family including
a bevy of grand-children from 1 to 26 yrs of age

From: <HALSOED@aol.com>
To: <rwk@portlandmaine.gov>
Date: Sat, Jun 5, 2004 1:29 PM
Subject: DCHA Proposed Zoning Amendment

Richard Knowland
Senior Planner
Planning Division
City of Portland
And all Planning Board Members:

In the early to mid 1980's there were a number of organizations and individuals including the Planning Board that were concerned about the unprecedented development proposed for Great Diamond Island's Fort Mckinley. This concern was not only for Great Diamond Island but also for future projects that might impact other Casco Bay Islands.

This proposal led to a considerable effort to identify the conditions under which a development might proceed while limiting the adverse impact on the existing island culture and ecosystems. The result of this effort produced many development requirements including zoning changes and other restrictions that among other things were designed to limit vehicular traffic.

Had someone suggested in the mid 80's that the zoning restrictions and vehicular traffic agreements would be ignored and that the property owners would seek a remedy by petitioning the Planning Board for relief of the laws they ignored, that person would have been regarded as paranoid or a cynic or just a fool or all of these. Yet 15 years later that is exactly the position we find ourselves in.

To agree grant the DCHA's request for a modification to the IR3 zone would make a mockery out of the entire zoning process. To suggest that relief for electric cars is required to travel less than a mile in any direction is highly suspect.

Which gets us to the matter of intent. The intent of the zoning and agreements are clear: Limit all but the most essential traffic. The intent of the requested zoning modification is not as clear. Are we to believe that the many vehicles purchased over the last 9 or so months are for that short ride within the confines of DC's private property? It makes little sense to us. It seems more logical that the ultimate thrust will be for access to all of Great Diamond roads for these new vehicles, It would be more difficult to accomplish this if the vehicles were illegal to begin with, which indeed they are now.

Please retain the present zoning requirements for the Diamond Cove Development and send a message that zoning is not arbitrary or to be ignored because a few don't like it.

It seems unnecessary for us all to revisit this issue. We hope it will be the last time.

Very truly yours,

Selena and Harold Soederberg
42 Sunset Ave.

June 2, 2004

Planning Board
C/o Rick Knowland
City of Portland
389 Congress Street
Portland, Maine 04101

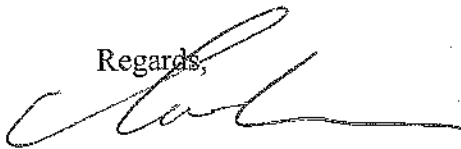
Re: Rezoning Proposal/Restriction #9

Dear Mr. Knowland,

As a taxpayer and resident of Diamond Cove, I strongly support the rezoning amendment being placed before the planning board. The mention of golf carts and Gem's should not be part of the current restriction.

Thanking you in advance for making my feeling known to the board.

Regards,

A handwritten signature in black ink, appearing to read "Michael G. Kane", written over the word "Regards,".

Michael G. Kane
Owner Unit 15B

5 June, 2004

Rick Knowland
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Amendments to Diamond Cove Zoning Rules – Great Diamond Island

Dear Mr. Knowland,

I would like to request your support for the amendment to Restriction #9 of the June 15th 1985 conditional rezoning, which will formally allow homeowners use of electric golf carts at the Diamond Cove Community.

As a year around resident I believe it would be nothing short of a travesty to deny our rights to own a low impact mode of transportation in what is a unique, historically preserved community struggling to be both economically and socially viable.

The golf cart issue is at the core of that struggle. Without the right to own an individual means of transportation, we cannot exist as a viable community.

We cannot live isolated in our homes wholly dependant on the limited transportation service provided to the community to meet the schedule of Casco Bay lines. This van service does not now, nor would any expansion of it, service the community in a manner which would allow us to be a viable community.

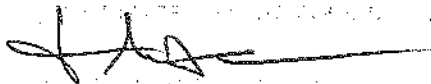
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My parents visit yearly and were considering retiring to my home. Without a means of transport their life is not viable here. In the inclement weather common in Maine they could not even pick up their mail. They could not use transport outside the infrequently scheduled ferry service. They could not visit friends on the periphery of our community. They could not go to the store to pick up basic amenities in times of need. They could not travel to or from the mainland at any time other then the scheduled ferry service. They could not enjoy the environmentally friendly community we have become.

We simply fail to become a viable community. Is this what the city of Portland wants? To take away the viability of an environmentally friendly planned community which is an asset to the city of Portland and the State of Maine? To stifle our attempts to build the type of community we need more of to create a healthier society?

Please vote in favor of allowing us to be a viable community.

Sincerely,



Joseph A. Bauer
6A Mckinley Court

WRITTEN PUBLIC COMMENT

From: Richard Frantz <rfrantz@earthlink.net>
To: Portland.CityHall(RWK)
Date: Fri, Jun 4, 2004 10:18 AM
Subject: Great Diamond/Diamond Cove/golf carts

Dear Mr. Knowland,

If peace shall ever come to Great Diamond, I feel this rezoning is a necessary first step. As you are well aware of these restrictions came about very early in the development of Fort McKinley. Through the years the Fort has taken on a dramatically different vision than first conceived-- we are now more of a year-round community with more and more families finding Diamond Cove their only home.

We pride our selves in not having cars, SUVs, or trucks. Not all have golf-carts, but those who do share them to keep the total numbers down. They are necessary however for health reasons, practical reasons and of course, social reasons. Their ownership does not impact the "Village" side of the island, especially now, and this proposal should not concern them.

I would hope you would look favorably on this proposal.

Thank you for your consideration,

Rick (Frantz)

Richard Frantz
30 B Diamond Cove
Great Diamond Island
Maine 04109

phone: 207-766-5506
fax: 207-766-3082
e-mail: rfrantz@earthlink.net

CC: Portland.CityHall(TAF)

From: <RJCONN@aol.com>
To: <RWK@portlandmaine.gov>
Date: Fri, Jun 4, 2004 7:08 AM
Subject: covenants

Rick,

My family and I are opposed to any changes in the zoning at Diamond Cove, and do not agree that the current wording allows golf carts. The original intention should be honored.

Jan & Bill Connolly

From: "Bonnie Dietz" <bonniedietz298@msn.com>
To: Portland.CityHall(RWK)
Date: Fri, Jun 4, 2004 6:38 AM
Subject: Fw: DCHA proposed amendment

----- Original Message -----

From: Bonnie Dietz<mailto:bonniedietz298@msn.com>
To: rkw@ci.portland.me.us<mailto:rkw@ci.portland.me.us> ;
taf@ci.portland.me.us<mailto:taf@ci.portland.me.us>
Sent: Friday, June 04, 2004 6:33 AM
Subject: DCHA proposed amendment

Dear Planning Board,

As a year round resident of Diamond Cove I would like to make a few comments concerning the proposed amendment that will be before the Planning Board. When my husband and I purchased our property at Diamond Cove we carefully read the Declaration and the Site Order Books. We believed that we were entitled to own one golf cart and that we were not to use the golf cart beyond the private Diamond Cove property. We have lived by that rule. We realize that some of our fellow homeowners have not been so prudent and considerate. At no time during the purchase of our property or the building process (years) did the city indicate any prohibitions or restrictions against golf carts. As a member of the Design Review Committee, Bonnie, is aware that the city has also approved many new homes that include golf cart garages. We find it disappointing and dismayed that this issue has progressed to where it is now because a few homeowners have decided to sue the city. As city taxpayers (one of the top twenty) we would like to think that the city would take action that would be fair and equitable and in the best interests of the entire Great Diamond Island Community. It seems to us that the city would be stepping beyond their role in enforcing a restriction that would deny Diamond Cove homeowners the use of their own private property. Many of the cove homeowners need a golf cart to access the common properties, pick up their mail at the administration building, meet friends, get to the pool, transport small children, etc. Has the city ever imposed a no transportation limit on any other private development? I can't imagine that it has nor would it in the future. For whatever reason, the original zoning was not clear, nor enforced appropriately from the start. The Planning Board now has an opportunity to clarify the issue and put this issue to rest. Of course we hope that common sense will prevail and golf carts will be permitted.

Thank you for your attention,
Bonnie and Jonathan Dietz

Rick Knowland - Zoning

From: <BedBagel@aol.com>
To: <RWK@PORTLANDMAINE.GOV>
Date: Thu, Jun 3, 2004 5:58 PM
Subject: Zoning

I live on Great Diamond and want the Zoning to please be enforced as it is now written in the current zoning. No golf carts or other vehicles on the other side. Hyman Deietetsky

June 3, 2004

Re: Proposed amendment to the IR-3 contract zone on Great Diamond Island

Dear Mr. Knowland and members of the Portland Planning Board,

My wife, Jeanne, and I abut the Diamond Cove property at the so-called "lower gate" on the West side of Great Diamond Island (GDI). We are year round residents. My wife's family has been coming to the Island for 45 years. I have been here for 30 years. We remember the numerous hearings and intense negotiations that took place in order for the Fort McKinley property to be developed. The original developer gave up certain rights in order for the project to proceed. The intent in creating the IR-3 zone was to not allow private ownership of motor vehicles within that zone. The exceptions to private ownership of motor vehicles within this zone are clearly stated (service vehicles, shuttle bus/vans, emergency vehicles etc.). The terms and conditions regarding motor vehicles are echoed in the "General Declaration of Covenants and Restrictions" that governs the development. They are also referred to in the DEP Site Order. The "Declaration" and DEP Order are mentioned in the deeds of the property owners at Diamond Cove. Clearly, the intent in creating this Special Contract Zone was to try and preserve and manage a fragile culture and environment. Time has not changed the culture or the environment.

How did we get to this juncture?

The amount of vehicles on GDI has reached a critical mass. This is true no matter which side of the fence you live on. All Islanders need to get their house in order. Amending a very complicated and intertwined set of regulations is not the place to start. Allowing private ownership of motor vehicles in a zone that prohibits that ownership does not send the proper signal to other parts of the City.

Is there a need for any motor vehicles in the IR-3 zone?

I believe there is a need for a limited number of motor vehicles (golf carts/low speed vehicles) in the IR-3 zone. They should be owned by the homeowners association and not privately owned. The homeowners association could make them available to first responders, fire fighters etc. This would resolve the legitimate concerns of some regarding timely response to an emergency. The limited number of carts could also fulfill the needs of the homeowners association with regard to the movement of goods and people within their development.

An ADA compliant shuttle bus/van would address the needs of the handicapped, elderly, and infirm.

There is no need to have the Historic District littered with brightly colored golf carts and low speed vehicles. There will be no cross boundary traffic. There is no need for private ownership of motor vehicles in the IR-3 zone. Please do not amend the zoning that is currently in place. Please do not allow private ownership of motor vehicles in the IR-3

zone for the sake of convenience. I hope the Planning Board can allow association ownership of a limited number of vehicles without dismantling the IR-3 zone.

Thank you for your consideration.

Gary L. and Jeanne Boylan Smith

100 Willis Street
Great Diamond Island

766-3390

From: "S. Bean" <s_bean152@hotmail.com>
To: <rwk@portlandmaine.gov>, <wrg@portlandmaine.gov>
Date: Thu, Jun 3, 2004 1:04 PM
Subject: Motor Vehicles within Historic Area of Great Diamond Island

Diamond Cove, 7A
207-766-2107
Great Diamond Island, ME. 04109-9999

3 June 2004

Richard Knowland, Senior Planner
207-874-8725
Planning Division, City Hall
389 Congress St., 4th Floor
Portland ME. 04101

Re: Your 8 June 2004 Planning Board meeting.

Dear Mr. Knowland,

Your Division is considering a request to change the restrictions on motor vehicles within the Historic Area at Diamond Cove on Great Diamond Island. I am not in favor of allowing the Diamond Cove Homeowners, who are currently violating many of their own as well as city rules and restrictions, to be released from the present rule covering motor vehicles.

I would support relaxing the prohibition of motor vehicles IF the Diamond Cove Homeowners Association is willing to become a good Island Neighbor to the City of Portland and the citizens who own property on the South Side of Great Diamond Island. This could be accomplished by the Association giving an easement to the City and the Great Diamond Island Citizens which would allow them to use the Barge Ramp on the West Side of Great Diamond Island and Westside Drive through the Lower Gate as well an easement over the Diamond Cove Dock and Diamond Avenue from the Dock through the Southerly Gate on Diamond Avenue.

If the Diamond Cove Homeowners Association is not willing to give these easements so that the City can properly provide city services to the citizens of Great Diamond and Little Diamond Islands and so that all residents can use the public ferry service to the Diamond Cove Dock then I request the City consider taking the above mentioned roads and the Barge Landing as City property, before you consider allowing motor vehicles within the Historic Area on Great Diamond Island.

Yours truly,

Schafer Bean

From: <BARBLEITER@aol.com>
To: Portland.CityHall(TAF,RWK)
Date: Thu, Jun 3, 2004 10:03 AM
Subject: Golf/GEM use at Diamond Cove

Dear Tom And Rick:

I have had a GEM at Diamond Cove since early 2002, in fact I was the first one to have one at the Cove. I choose this energy efficient environmentally sound vehicle because it met the criteria of an electric vehicle with zero emissions and minimal impact on the environment. It was also prominently featured at the PGA golf tournament that year. They are known for being extremely safe compared to a standard golf cart. The ability to have a windshield with wiper, horn, lights, heat, seatbelts and harnesses and even an optional heater had great appeal. It also made travel during the winter months feasible, often when the roads were not passable by the van because the weight on muddy roads would have been detrimental.

I was very pleased to see others find this was a safe alternative and when the opportunity came last year to support a fund raiser more arrived at the Cove.

A couple of weeks ago when we had the misfortune of having a major fire on the island, my GEM was used extensively to pick up gear and firemen. A standard cart would not have been nearly as effective and as efficient. While perhaps only a small contribution in the scale of the overall fire fighting effort, I know it was appreciated by not only the firemen but by the families that lost their homes.

I encourage you to support the passing of the proposal regarding golf carts and low speed vehicles at Diamond Cove. When I look at the many acceptable island means of transportation found throughout Casco bay that clearly have a detrimental impact on the island, I hope you will agree that these are truly GEMS!

Best regards,
Barbara Leiter
Lots 26, 27, 28 Diamond Cove

From: <Pcgleason@aol.com>
To: <RWK@portlandmaine.gov>
Date: Wed, Jun 2, 2004 9:25 PM
Subject: Proposed DCHA Zoning Amendment

Mr. Rick Knowland, Senior Planner
Planning Department
389 Congress Street, 4th Floor
Portland, Maine 04104

RE: DCHA Proposed Amendment to Condition 9

Dear Mr. Knowland:

The historical record of the debate which went on for seven years from 1984 to 1991 regarding the development of the Ft. McKinley property runs through many thousands of pages of documents would certainly contain inconsistencies, inaccuracies, contradictions and ambiguities.

We should not lean too heavily on the historical record in order to ascertain the intent of the Planning Board or the City Council in determining the zoning. We should, rather, focus on the clear and exact language of Condition 9 which prohibits the use or even temporary storage of motor vehicles in the IR 3 Zone and cites a particular motor vehicle statute which defines motor vehicles to include golf carts.

We must conclude given the amount of time and the legal investigation by the City, the intervenors and the Developer that it was no accident that this particular statute was cited and that it was indeed the City's intent to prohibit the private use of motor vehicles, including golf carts, in the IR 3 Zone.

Thank you for your attention.

Sincerely yours,

Nancy and Paul Gleason
47 Sunset Lane
Great Diamond Island
207-766-2607

From: <Judants@aol.com>
To: <pi@portlandmaine.gov>, <RWK@portlandmaine.gov>, <...
Date: Wed, Jun 2, 2004 9:14 PM
Subject: DCHA Application for Zoning Amendment

City of Portland
Planning Board Members:

We are in receipt of the DCHA Application for Zoning Amendment and Proposed Conditional Zoning Text Amendment. We request enforcement of the current zoning, agreements and covenants, not an electric gate. We oppose any changes to the current zoning restrictions, as they are written, for the numerous reasons outlined below.

1) Please review these stats in order to understand the impact the ongoing violations have on fragile Great Diamond Island.

-DC residents currently own and operate approx. 60-70 motorized vehicles (as recent as 5/30/2004 a NEV was delivered to DC)

-IR3 = 91 acres +/- and IR1 = 102 acres +/-

-The IR3 dwelling footprint surrounding the parade ground is approx. 1200' long

-There are 13,000 linear feet of roads in IR3 zone

-There can be as many as 500 residents when DC is fully developed (from DC web site)

2) To begin to tweak the text or semantics used in the Conditional Rezoning of Fort McKinley dated July 15, 1985 (#9) disregards the long range planning which resulted in this document. It also discounts the verbiage used in two DEP Site Location Orders, one dated December 10, 1986 regulating Phase I of the development (11.A) and another dated June 25, 1991 regulating Phase II (see 7.A). The March 2, 1989 Private Agreement of the Interveners is ignored as well (see 11.D.1).

3) All the above participants were prudent in preserving and protecting the historic character and cultural integrity which uniquely defines Great Diamond Island. The language of their original intent was clear and precise. When a private community consistently and repeatedly ignores and violates legal requirements does it follow that the verbiage used in those restrictions needs to be changed to reflect the noncompliant behavior?

4) Does claiming ignorance of deed restrictions, zoning regulations, unclear language text and blatant violation of Homeowner declarations and covenants constitute permission or warrant amendment to original documents? Rick Knowland attended a meeting in June 2002, with Tom Fortier and GDI residents to clarify the current motorized vehicles zoning restrictions and recommended not registering DC golf carts. Is DC the only entity unclear on these restrictions? Perhaps further education and enforcement of conditional rezoning are in order rather than amendments to clear text.

5) To amend the Conditional Rezoning document sets a precedent for every future developer, and especially to those on Great Diamond Island which has over 100 vacant acres. They only need to initially agree to any restrictions since most can and will be amended in the future. Does this dangerous message need to be sent?

6) Quote: "It [Fort McKinley] was built with tax money, maintained with tax money until it was sold in the early 1960's and may be partially restored with tax money since the project is eligible for historic preservation tax credits" (DEP Site Order 12/10/1986-16B). These were the benefits reaped by the developer in 1986.

Today, in 2004, we find the private resort development of Diamond Cove still enjoying benefits of tax money maintenance in Fire Protection and soon, Solid Waste Removal although these were clearly designed to be maintained at the owner's (DC) expense (see DEP Site Location Order 12/10/1986-#6, DEP Site Location Order 6/25/1991-#5&20, Conditional Rezoning 7/15/1985-#6&7A,B,C). Why are Portland taxpayers continuing to pay for services to a private development?

7) Rather than spend significant, nonproductive time reviewing boxes of reams of documents in order to clarify original text, intent and clear language, would it not prove more beneficial to clarify DCHA's financial capabilities to sustain this private development without future taxpayer and City of Portland intervention? Asking for the \$1000.00 application fee to be refunded speaks of a questionable operating budget, capitol reserve fund, assets and infrastructure.

Thank you once again, ten years later, for spending the time to revisit this issue.

Tony and Judy Savastano
9 Nancy Lane
Great Diamond Island, Maine
207-766-2839

CC: <jcb@mpmiaw.com>

As a resident Great Diamond, I am very much opposed to any change in the Covenants. There is no need for golf carts in this small residential resort and no space for them, especially when most prefer the pedestrian way of life.

Thank you for your consideration.

Claire Sedgewick

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Dear Rick,

I am a homeowner and lifelong summer resident of Great Diamond Island. Please do not change the zoning at Diamond Cove on Great Diamond Island. The transient population of Diamond Cove has continually failed to follow the rules set in place to protect this beautiful and peaceful community. Please do not consider a change for the convenience of a few homeowners---it will change the island forever. The island is open for all to enjoy by foot or by bicycle and we should all be working to reduce the number of vehicles there instead of promoting more. Thank you.

Sincerely,
Judy Sedgewick

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From: <Pcgleason@aol.com>
To: <RWK@portlandmaine.gov>
Date: Wed, Jun 2, 2004 9:14 PM
Subject: Porposed DCHA Zoning Amemdment

Mr. Rick Knowland, Senior Planner
Planning Department
389 Congress Street, 4th Floor
Portland, Maine 04104

RE: DCHA Proposed Amendment to Condition 9

Dear Mr. Knowland:

The historical record of the debate which went on for seven years from 1984 to 1991 regarding the development of the Ft. McKinley property runs through many thousands of pages of documents would certainly contain inconsistencies, inaccuracies, contradictions and ambiguities.

We should not lean too heavily on the historical record in order to ascertain the intent of the Planning Board or the City Council in determining the zoning. We should, rather, focus on the clear and exact language of Condition 9 which prohibits the use or even temporary storage of motor vehicles in the IR 3 Zone and cites a particular motor vehicle statute which defines motor vehicles to include golf carts.

We must conclude given the amount of time and the legal investigation by the City, the Intervenors and the Developer that it was no accident that this particular statute was cited and that it was indeed the City's intent to prohibit the private use of motor vehicles, including golf carts, in the IR 3 Zone.

Thank you for your attention.

Sincerely yours,

Nancy and Paul Gleason

From: <Comprop1@aol.com>
To: Portland.CityHall(RWK,TAF)
Date: Wed, Jun 2, 2004 10:58 AM
Subject: (no subject)

Dear Rick and Tom, As the owner of several properties at Diamond Cove I am writing to support the application of DCHA to change the golf cart rules at the Cove. This whole issue has gotten out of hand, and has become an embarrassment to those of us seeking a quiet corner of the world.

Golf carts have been a part of our transportation system since the development was established in the 80's, and they are a key part of the quiet life style of the island.

I urge the Planning Board to approve the application. Dick McGoldrick, Lots 16;13D,11 Diamond Cove

CC: Portland.gwgwia("TLucke@csmgusa.com", "michellec@di...

From: "Judy Sedgewick" <connorprisby@hotmail.com>
To: <rwk@portlandmaine.gov>
Date: Wed, Jun 2, 2004 7:08 AM
Subject: Please do not change zoning on Great Diamond.

From: "claire sedgewick" <clairesedgewick@hotmail.com>
To: <rwk@portlandmaine.gov>
Date: Tue, Jun 1, 2004 7:44 AM
Subject: FW: Delivery Status Notification (Failure)

From: <Lydia52633@aol.com>
To: <RWK@portlandmaine.gov>
Date: Wed, May 26, 2004 11:01 PM
Subject: (no subject)

Dear Rick,

It was important to me that you hear my concerns about preservation of this wonderful island called Great Diamond. As a child who summered on that island, I learned to have a great deal of appreciation for this island while small in size has a lovely blend of the ocean and the woods. Back in the sixties a visitor came to stay with my family. He had traveled a great deal and when he came to Great Diamond Island he said that what he liked so much about this island was that it was so peaceful and harmonious. The island was very much a community and people appreciated being able to come to vacation on an island where it was nice to be immersed in the lovely sounds of the song birds singing, the sounds of the ocean washing over the rocks and even the sound of the fog horns echoing over the bay. It was soothing. Now we have noise pollution from noisy vehicles and it is not harmonious and it is dangerous to anyone who is walking. I enjoy walking, but I have found that the increase in traffic has meant walking on the island no longer as pleasant as it was because you get stressed just watching out that you do not get hit by a vehicle. The Webers use their vehicles responsibly and I appreciate them and how they always offer my family a ride and are there to help us with repairs to our property. I want to see the island community remain a community of people who will work together as a team to truly care about preserving not only the ecological state of this beautiful island, but especially that everyone who owns or is thinking about owning property on Great Diamond Island will work together to keep and preserve this island in its peaceful harmonious state. Let us all work together to make Great Diamond Island be a shining reflection not only for us, but for future generations. An island divided cannot stand. No man is an island. Let us all work together to making this island very special. It is a special gem.

Sincerely,

Lydia Jewell Fardy

CC: <Grtdia@aol.com>

From: "David W. Wheeler" <dwheeler@hardinconstruction.com>
To: <rwk@portlandmaine.gov>
Date: Wed, May 26, 2004 12:34 PM
Subject: Great Diamond Vehicles

Rick:

I understand that you are soliciting input from interested parties relative to the proposed zoning amendments related to Diamond Cove's residents' ability to own and operate vehicles on Great Diamond. While I am only a very itinerant summer resident of the island, my family has been a property owner on the island since 1920.

My perspective on the vehicle issue on the island is, perhaps, a little different than some of the other residents in that I believe that all island residents/property owners should be held to the same standard and that, in general, vehicle ownership/use should be by exception rather than by rule. Rather than amending the IR-3 zoning to permit vehicle ownership, perhaps IR-2 and IR-1 should be amended to prohibit vehicle ownership (subject to limited exceptions) for all of the very real reasons (environmental, lifestyle, management) being offered as legitimate reasons to prevent vehicular proliferation at Diamond Cove.

If no one wants to go down that road (pardon the pun), I do believe that it is important that 1) the City NOT modify the zoning restrictions associated with vehicular ownership/use in Diamond Cove to mitigate vehicular proliferation and the concomitant impacts on environment, lifestyle, road maintenance and parking and 2) the City take steps to actively enforce ALL zoning restrictions and City Ordinances applicable to all areas of the island, just as they would in other rural areas of mainland Portland.

I'm sure you'll get plenty of feedback on this issue - I appreciate your willingness to listen objectively!

David Wheeler | Vice President, Program Management | Hardin Construction Company LLC
ph 404.264.2127 | fax 404.264.2113 | dwheeler@hardinconstruction.com
1380 West Paces Ferry Road, Atlanta, Georgia 30327

From: <JudySavastano@aol.com>
To: <RWK@portlandmaine.gov>
Date: Wed, May 26, 2004 11:19 AM
Subject: Zoning change communication

Rick,

First i would like to thank you for all the time and effort you have again afforded this issue.

We know that this is a tense and difficult time once again in Great Diamond's history and are grateful that those who were successfully instrumental in preserving our fragile pedestrian culture in the past, are still present today.

I understand you are accepting communication regarding the recent DCHA change in zoning request. I'm sure you know what Tony and my position is and remains, but we would like to send in a letter to the Planning Board.

Could you provide us with the names and email addresses of the Board?

Is there any better way to communicate (mail, email, call)?

Thanks again for your time. Will see you on the 8th.

Judy Savastano

MAGOVERN & SCLAFANI
111 JOHN STREET
NEW YORK, NEW YORK

10038

212-962-1450

Facsimile (212)-385-0235

FACSIMILE COVER SHEET

5/26/04
Date

PLEASE DELIVER THE FOLLOWING PAGE(S) AS SOON AS POSSIBLE

To: Mr. Rick Knowland

Facsimile Telephone Number: 207-756-8258

Confirmation Telephone Number: 212-9621450

From: Dan J. Doyle

Attorney Initials: _____ Client Number: _____

Number of Pages Including This Cover Sheet: 2

Message: Dear Mr. Knowland:

This is in response to
the notice sent to shutting
property owners on Great Diamond
Island. *D. Doyle*

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

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IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL OUR OFFICE,
DIRECT DIAL FAX NUMBER: (212)-385-0235

May 26, 2004

Re: Application to Rezone IR 3
Diamond Cove

Mr. Rick Knowland
City of Portland

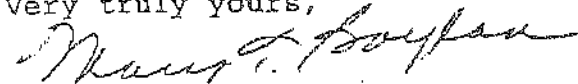
Dear Mr. Knowland:

I am opposed to any changes in the original zoning with respect to Diamond Cove on Great Diamond Island.

The original zoning regulations is based on extensive research, analysis and planning which were agreed on over a number of years. The zoning is interwoven into other permits, agreements and covenants. All of the owners of the residences located in Diamond Cove were aware of the zoning agreements and covenants when they purchased their properties.

Please keep the zoning regulations intact.

Very truly yours,



MARY T. BOYLAN
GREAT DIAMOND ISLAND
PORTLAND, MAINE 04109

Office # 212 962-1450
Home # 718 522-5382
GDI # 207 766-2086

P.S. I HAVE BEEN A RESIDENT OF GREAT
DIAMOND ISLAND FOR 45 YEARS.

From: <Marge3solo@aol.com>
To: <jduson@ci.portland.me.us>, <jcloutier@ci.portland...>
Date: Thu, May 13, 2004 4:44 PM
Subject: city council mtg-addressing the GDI vehicles

Dear Councilors,

I would like to express my appreciation for your in depth discussion of the vehicle covenant agreements and zoning restrictions on Great Diamond Island during the meeting on April 7,2004.

There were many residents present who had strong opinions about the need for such zoning restrictions. Since I am still in my winter residence in NJ, I was not able to attend, but saw a good deal on a videotaped version.

Your questions were very pointed and with good reason. The Law is the Law, and needs to be upheld by each party signing an agreement and in "good faith". The public safety committee has worked against some very strong odds with the residents at the Cove.

The zoning restrictions were never fully enforced because of the 'loose' attitude of the islanders in general, including the constables, which worked fine for many years. However, now is the time to truly support the environmental protection of this fragile 1.5 mile island, the covenants and zoning which were written and AGREED TO by the McKinley Partners 20 years ago. Long range studies were conducted by the Island Inst, CBIDA and the Audobon Soc. in conjunction with a very conscientious Portland city planner in the mid-1980s. It would be nice to know that the tax dollars we spent back then were put to good use.

Their conclusions were that an island of this size, wetlands, rocky coastal property sandy shores and fragile topsoil, would indeed be threatened by an increase in vehicular traffic. The roads used during the army occupation were maintained by the army corps of engineers, not Portland on a tight budget, and limited use of travel outside the gate, with well maintained sidewalks or boardwalks (now non-existent because of high cost) for pedestrian traffic, and safety of the pedestrians. None of this is accepted planning for the Cove and could cost the city and the developers/condo association money we probably don't have to use in this manner.

This all according to my personal historian, my grandfather, Col. P.M. Johnson, who was stationed at Fort McKinley during both WWI and WWII. He could tell a worthy Maine tale. At 86 years old he could still WALK uphill to our house on Crescent Ave (3/4 mile from the CBL dock) and dealing with chronic asthma. He used to row over from the Eastern Promenade as a boy, to enjoy the cool breezes on GDI. His father owned a grocery store on Cumberland Ave in Portland. We have invested years of devotion to Portland and especially in its recent economic recovery.

I hope my three sons will develop a love for Portland as well.

So, although the rezoning proposition is in the works, which I would expect any developer/condo association would try to change, even with the exceptions for physically handicapped and limited amount of emergency vehicles already in the zoning restrictions for IR-3, I hope that you will stand firm to protect Maine's greatest resource, it's natural beauty.

I wish that you could have seen the way we remember it, without the traffic. you are invited at any time to join me on a hot afternoon and cool off on the porch. My mother is handicapped by polio, now is suffering from post-polio

syndrome. she has always loved coming to the island, was president of DIA even with her handicap, managed to get up and down the steep hill to our cottage on Crescent Ave. Now we have golf carts zooming by with healthy young families trying to get places faster than those of us on foot or bike. There have been several accidents at the cove and at the dock involving these vehicles, and they are often not observant of the elderly person or child learning to ride a bike on a dirt road, as they are on a mission to get somewhere fast, even on one lane roads, which are shared with trucks, and shuttle vans. This way of life is available on other islands in Casco Bay, we should preserve what is truly unique about this beautiful, historic place.

Please do your best to help us maintain the beauty and quality of life on GDI. We have tried to be good citizens, follow proper channels in appealing to the city for help and hope that after all of our hard planning 20 yrs ago that it was not in vain. The Cove understands their limitations by the covenants, they are not working with us, but against what we have tried to preserve out of our love of GDI, long before condominium was a household word.

thank you again for your anticipated commitment to the safety and protection of the Portland Harbor and island communities. Our liason with the safety committee has been hard working and we appreciate councilor Duson's good deeds. We hope to have you visit with us some sunny summer day on GDI.

Sincerely,

Marjorie Johnson Solomon, Jotham Clement Johnson, Louise Johnson,

Lisbeth Johnson Harbeck, life estate

63 Crescent Ave

GDI

207-766-2415

207-846-9871 (Lisbeth H.)

973-762-2733 (MJS)



BOARD ORDER
IN THE MATTER OF

DIAMOND COVE ASSOCIATES)
Portland,)
Maine)

FINDING OF FACT
WASTE DISCHARGE LICENSE

Pursuant to the provisions of Section 414-A, Title 38, Maine Revised Statutes, the Board of Environmental Protection considered the application of DIAMOND COVE ASSOCIATES dated December 19, 1985 with its supportive data, agency review comments, testimony before the Board at a Public Hearing concerning site location issues, and other related material on file. An order dealing with that Application was tabled by the Board on September 24, 1986 to allow the applicant to amend the application. The amendments were submitted on October 14, 1986. Upon review of this matter, the Board finds the following facts:

- 1) The applicant has requested a Waste Discharge License for the discharge of 40,000 gallons per day of treated sanitary wastewaters from:
 - 134 condominium units
 - 1 75 seat restaurant
 - 6 retail shops
 - 1 18 room bed and breakfast

The project involves rehabilitation of existing structures located on Great Diamond Island in Portland. The applicant has stated that a second phase project encompassing single family house lots may be applied for as outlined in license application dated December 19, 1985. There is currently no discharge from the property except stormwater runoff.

- 2) Wastewater flow estimations in the application are based on average design criteria of the Maine State Plumbing Code and estimates of infiltration into sewers. Peak wastewater discharge is expected in the summer and should average 40,000 gpd.
- 3) Soils on the site exhibit severe restrictions on development of subsurface disposal fields, including shallow to bedrock soils, hardpan and marine clay restrictive layers, high seasonal groundwater and proximity to drainageways and perennial waterbodies. These restrictions make development of individual leach fields to treat in excess of 500-1000 gpd each unfeasible.

Four areas within the IR 3 zone on the property have been identified as having potential to support small (300-1500 gpd) volumes of wastewater which in total would equal approximately 10% of the projected waste flow.

The applicant has also identified 40 areas of suitable soils for small (300 gpd) leach fields within the IR I zone, particularly on the western peninsula, which in total would accommodate approximately 30% of the projected waste flow.

- 2 -

Development of multiple subsurface leach fields on the island would have negative environmental impacts. Avoidance of groundwater impacts and field failure in marginal soils necessitates construction of small fields, decentralizing the facilities and thus increasing terrestrial habitat modification.

Development of small subsurface fields in areas of the IR I zone west of the Parade Ground would require destruction of parts of the mature forest habitat in the area.

Utilization of all of the above areas would result in disposal of 30-40% of the wastewater generated by Phase I of the project. The remaining 25-30,000 gallons per day would still require secondary treatment and discharge.

Thus use of leach fields on the island would result in a dual treatment system of much higher complexity, on going maintenance requirements, and environmental damage without the benefit of eliminating a discharge of wastewater from the project. These considerations render the subsurface disposal option unfeasible.

- 4) The applicant proposes to install a waste treatment system consisting of septic tanks, renovated and new sewer collection systems, 5 sandfilters and liquid chlorination.
 - a) The proposed sandfilter system has been designed to adequately treat an average wastewater input of up to 57,000 gpd at a loading of 1 gallon/sq. ft/day, a conservative standard normally applied by the Department. Sandfilters are normally capable of treating hydraulic peak loadings several times the average rate of application. The projected average Phase I flow of 40,000 gallons per day will allow removal of at least one of the 5 sandfilter beds for regeneration at any time. ~~_____~~
 - This discharge will receive best practicable treatment in that the sandfilter system proposed will be capable of producing effluent in compliance with Chapter 541 of the regulations of the Bureau of Water Quality Control and Board Policy #11 "State of Maine Certification Requirements" issued June 24, 1981.
 - b) The proposal includes renovation of approximately 1900 feet of existing sewer line and installation of 4200 feet of new line. Renovation of buildings will include removal of all identifiable sources of inflow. Existing sewer lines will be sealed and repaired as necessary to reduce infiltration to levels adequate to assure adherence to license limitations on flow.
 - c) Liquid chlorination has been proposed for wastewater disinfection which will include backup equipment.
 - d) Discharge is proposed to Portland Harbor, class SB, in a minimum of 10 feet below mean low water.

- 5) The receiving waters are used for lobstering, recreation and for fish and wildlife habitat.

The Department of Marine Resources had indicated that the area is closed for shellfish harvest.

The closest commercially harvested area is in the vicinity of Mackworth Island 1-1/2 miles northwest of the proposed outfall.

Analyses based on modeling by D.E.P. staff and dye tests in the area indicate that the proposed discharge is unlikely to substantially affect marine life. Shellfish sanitation in open areas within and adjacent to Portland Harbor should not be affected. In the event of total failure of the disinfection system, there is little likelihood of measurable impact on shellfish harvesting areas.

The Department of Marine Resources has stated that the proposed discharge should generate no significant net adverse impact on marine fisheries.

Based upon these findings the Department concludes that the conditions of the proposed license will satisfy the requirements of Title 38, M.R.S.A., Section 414-A for the issuance of a Waste Discharge License, in that:

- A. The proposed discharge so licensed, by itself, or in combination with other discharges, will not lower the quality of any classified body of water below such classification.
- B) The proposed discharge as licensed, will received best practicable treatment.

THEREFORE, The Board GRANTS the application of DIAMOND COVE ASSOCIATES to discharge 40,000 gallons per day of treated sanitary wastewaters to Tidewaters of Portland, Class SB, in accordance with the attached license.

DONE AND DATED AT AUGUSTA, MAINE, THIS 10TH DAY OF DECEMBER, 1986.

BOARD OF ENVIRONMENTAL PROTECTION

BY:


PETER J. WILEY, CHAIRMAN

LAMBERT, COFFIN, RUDMAN & HOCHMAN

Attorneys at Law
477 Congress Street -14th Floor
P.O. Box 15215
PORTLAND, MAINE 04112-5215
Telephone (207) 871-7033
Telecopier (207) 871-0394

Jonathan T. Harris

E-Mail: jharris@lcrh.com
WWW: <http://www.lcrh.com>

February 7, 2001

Mr. Rick Knowland
Department of Planning and Urban Development
City of Portland
City Hall
389 Congress Street
Portland, ME 04101

RE: **Diamond Cove / General**
Our File No. 4676-1

Dear Rick:

I enclose copies of plans recorded today in the Cumberland County Registry of Deeds, amending Sheets 3 and 5 of the Plans for Phase I, Diamond Cove.

As you will recall from our discussion with Penny Littell, there was some lack of clarity about whether Departmental approval was necessary for the revisions contained in these plans. The only changes involve the interior boundaries between units within buildings. It has been our understanding in the past that Departmental approval was not required and we have not sought it in the past since the Planning Board had approved the right to declare these individual lots at some time in the future.

Nevertheless, it was my hope to have you review these before today. Unfortunately, our ability to create these units expires today and so we went ahead and recorded the plans. Although we had expected the plans to be completed a week ago, that was unfortunately not the case.

If you think that we need to obtain Departmental approval retroactively for the declaration of these previously approved lots, please let me know.

February 7, 2001
Page 2

Please feel free to call if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'Jonathan T. Harris', written over a horizontal line.

Jonathan T. Harris

JTH/cmc
Enclosure

cc: Robert S. Meyer
Penny Littell, Esq.

PLANNING BOARD REPORT #27-04

**DIAMOND COVE IR-3 CONDITIONAL ZONING AMENDMENT
GREAT DIAMOND ISLAND
DIAMOND COVE HOMEOWNERS ASSOCIATION**

Submitted to:
Portland Planning Board
Portland, Maine
July 20, 2004

Submitted by:
Rick Knowland, Senior Planner
July 15, 2004

PLANNING BOARD REPORT #6-01

**DIAMOND COVE
IR-3 CONDITIONAL REZONING AMENDMENT
MCKINLEY PARTNERSHIP LIMITED PARTNERSHIP
GREAT DIAMOND ISLAND**

Submitted to:

Portland Planning Board
Portland, Maine

February 13, 2001

I. INTRODUCTION

A public hearing has been scheduled to consider certain changes to the IR-3 conditional zone for the Diamond Cove development on Great Diamond Island. McKinley Partners Limited Partnership (developer of Diamond Cove) is the applicant. This proposal is only for the tent site (lot 44). The Stowaways zone change proposal is not being considered at this time.

As the Board will recall, on September 12, 2000 a public hearing was held to consider an IR-3 conditional zone change for lot 44. At that meeting, the Board forwarded a recommendation to the City Council on this proposal. Just prior to the November 6, 2000 City Council public hearing on this item, the applicant proposed some minor changes to the conditional zone change. The City Council decided therefore to table consideration of this item and refer this matter to the Planning Board. The changes to the lot 44 zone change are described in section II.

For background information, please review Attachment D which is the Planning Board report on the lot 44 zone change and the Stowaways zone change.

The Stowaways zone change, which was the most controversial of the two zone changes, was also tabled by the Council and is not being considered at this time. The Maine DEP has a variety of concerns regarding this proposal, which the applicant is attempting to address.

II. PROPOSED REVISIONS TO LOT 44 IR-3 CONDITIONAL ZONE

The IR-3 conditional zone change for lot 44 is exactly the same as the text originally recommended by the Planning Board except as noted below. These changes are highlighted in bold or as an alternative in the zoning text (Attachment A.)

Section 2b. References "a wooden gazebo that is used for wedding ceremonies is also on the tent site". This revision recognizes the existence of the gazebo on the site.

Section 4 Revises this section to state: "All recreation open space identified in the conditional rezoning referenced in paragraph one (1) shall remain recreation open space in perpetuity." This change simplifies this paragraph, by eliminating the requirements of a conservation easement transfer to a second party. The applicant has concerns regarding the logistics of finding an appropriate grantee that would control the conservation easement for the open space "given the broad based recreation function of the property" which also covers such areas as the Parade Ground.

Section 6 Revises paragraph a recognizing that the three sand filters are already in place and installed. Replaces the word "should" with "shall".

Revises paragraph b to require video inspection for the sewer pipe system "as needed" rather than video inspection of the entire system.

Revises paragraph c to state: "A reserve account payment, in an amount to be determined by DEP, per year shall be maintained to cover expenditures associated with the maintenance of the sewer system . . ." This would replace a specific amount (\$20,500 per year) previously referenced in this section. Since the DEP determines the appropriate amount, this total will vary.

III. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant, the policies of the comprehensive plan and the information provided in Planning Report #6-01, and/or other findings as follows:

The Board finds that:

1. The proposed IR-3 conditional zone change for lot 44 (is or is not) consistent with the policies of the comprehensive plan.

The Planning Board therefore (recommends or does not recommend) to the City Council approval for the proposed conditional rezoning.

Attachments

- A. Lot 44 (tent site) IR-3 Conditional Zoning Amendment
- B. Letter from Jonathan Harris, dated 12-18-00
- C. Written Public Comments
- D. Planning Board Report to City Council on IR-3 Zoning Amendment

**AMENDMENT TO THE CONDITIONS AND RESTRICTIONS
OF THE 1985 CONDITIONAL REZONING OF FORT MCKINLEY
"Lot 44 - The Tent Site"**

1. Except as otherwise provided herein, the conditions and restrictions imposed on the development of Fort McKinley, and as approved by the Portland City Council on July 15, 1985, shall remain in force and effect.

2. The designated Residential Lot 44, described more particularly on Exhibit A and depicted on Exhibit B (hereinafter the "tent site"), presently zoned IR-1, shall be rezoned IR-3. In addition to being subject to the conditions and restrictions of the 1985 conditional rezoning, referenced in paragraph one (1), the tent site shall be subject to the following restrictions and limitations:
 - a. The sole use of this parcel, at any one time, shall be either a residential use or the seasonal operation (May 15 through Columbus Day) of an outdoor tent site servicing private functions such as weddings, receptions, theater productions, which use may include the preparation and service of food and alcohol, the performance of music or theater productions or other functions of like kind, provided all necessary federal, state and local permits, including but not limited to a food service license, a liquor license and a special entertainment license are obtained.

 - b. The erection of a temporary, overhead tent to provide protection from the elements, tables and chairs, and related food service equipment, shall be permitted on the tent site. Structures for residential use (dwelling unit, garage) otherwise permitted by zoning shall also be allowed. However, no other structure of a temporary or permanent nature may be erected on the site.

[or Alternative b]

- The erection of a temporary, overhead tent to provide protection from the elements, tables and chairs, and related food service equipment, shall be permitted on the tent site. A wooden gazebo that is used for wedding ceremonies is also on the site. Structures for residential use (dwelling unit, garage) otherwise permitted by zoning shall also be allowed. However, no other structure of a temporary or permanent nature may be erected on the site.**
- c. The tent and related equipment located on the site shall not be located within the 75 feet of the high-water mark of any shoreland zone boundary and the uses on this lot shall otherwise comply with all federal, state and local laws and ordinances, including all environmental laws and ordinances.

- d. No other commercial or other activity, other than as specifically set forth above, shall be permitted within the boundaries of this lot.
 - e. Except as noted in paragraph b. above, no permanent structures shall be erected on this lot and the scenic beauty and natural condition of the lot shall remain.
 - f. This conditional rezoning shall inure to the benefit of the property owners and its successors and to the City of Portland, who shall be authorized to enforce its provisions.
 - g. The 1985 Conditional Rezoning and this Amendment shall be referenced in any transfer of the property, whether by deed or otherwise. This amendment shall be recorded by the Applicant in the Cumberland County Registry of Deeds (with Book and Page supplied to the City) within 30 days of its enactment by the Portland City Council.
3. The Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development shall be amended by adopting the map change amendments included as Exhibit B.
4. All Recreation Open Space identified in the Conditional Rezoning referenced in paragraph one (1) shall remain recreation open space in perpetuity. A legal transfer of the interest in this property to an appropriate grantee, whether through a conservation easement or the like, shall be executed and recorded no later than January 1, 2001, so that, notwithstanding paragraph 12 of the 1985 Conditional Rezoning referenced in paragraph one (1), the recreation open space shall forever be preserved.

[or Alternative 4]

All Recreation Open Space identified in the Conditional Rezoning referenced in paragraph one (1) shall remain recreation open space in perpetuity.

5. It is a further condition of this Amendment to the Conditional Rezoning that no later than November 1, 2000 or January 1, 2001, an application for modification and/or amendment to the Board of Environmental Protection's Site Location of Development Order (so as to bring the tent site into compliance with said Order) be submitted to the DEP (with a copy to the City). The DEP shall act on such application no later than May 15, 2001 or July 15, 2001. If, by May 15, 2001 or July 15, 2001, the tent site identified in paragraph one (1) is not in full compliance with all federal, state, and local laws, this Amendment shall become null and void.

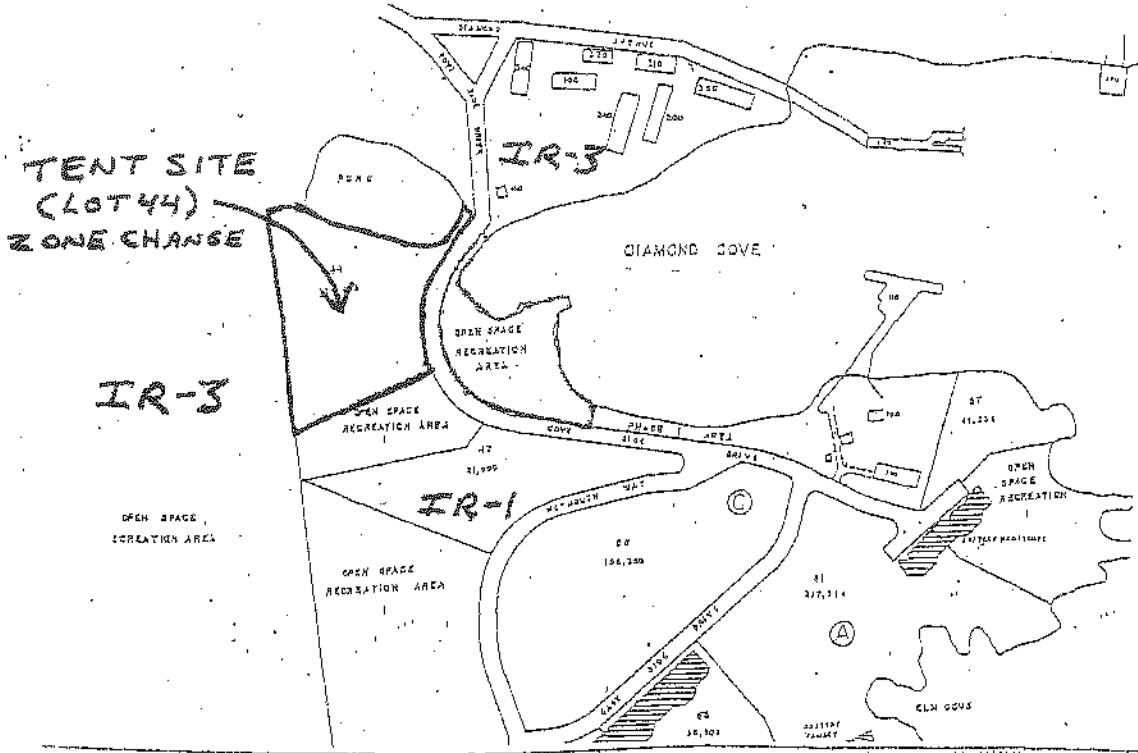
6. McKinley Partners Limited Partnership, its successor or assign, shall implement by the effective date of this Amendment the recommendations of Olver Associates, Inc. contained within its June 2000 Wastewater Treatment Infrastructure Evaluation, and the recommendations identified Portland Public Works Engineer, Anthony Lombardo, in a memo dated August 15, 2000, namely:
- a. Three sand filter beds shall be in place to treat wastewater loadings to be generated by the Diamond Cove development; and
 - b. The sewer system shall be reviewed, in detail, to locate the potential sources of inflow and infiltration. This shall be accomplished through detailed manhole inspections and, where needed, videos of the pipe system. The results shall be presented to the City of Portland Public Works Department. All inflow identified shall be removed from the system; and
 - c. A reserve account payment of \$20,500 per year shall be maintained to cover expenditures associated with the maintenance of the sewer system; and

[or Alternative c]

A reserve account payment, in an amount to be determined by DEP, per year shall be maintained to cover expenditures associated with the maintenance of the sewer system; and

- d. The present flow measurement system shall be reviewed and appropriately calibrated. The results shall be provided to the City of Portland Public Works Department.

7. Site Plan Review of the Site shall be applied for and approved by the City prior to the building or relocating of any structures on site and prior to any commercial activity on this lot in the year 2001.



LAMBERT, COFFIN, RUDMAN & HOCHMAN

Attorneys at Law
477 Congress Street -14th Floor
P.O. Box 15215
PORTLAND, MAINE 04112-5215
Telephone (207) 871-7033
Telecopier (207) 871-0394

Jonathan T. Harris

E-Mail: jharris@lcrh.com
WWW: <http://www.lcrh.com>

December 18, 2000

Joseph E. Gray, Jr.
Director of Planning and Urban Development
City of Portland
City Hall
389 Congress Street
Portland, ME 04101

RE: Diamond Cove / Petition for Conditional Change of Zoning
Our File No. 4676-26

Dear Joe:

I write in connection with the petition for a conditional change in zoning for Lot 44 (the Tent Site) at Diamond Cove passed by the Planning Board on September 12, 2000.

As you undoubtedly know, at its November 20, 2000, hearing, the City Council responded to a request by the Island Institute and remanded the petition (along with the companion petition for the "Stowaways" property) to the Planning Board. As I understand it, the purpose of the remand was two-fold: (1) to give the Island Institute time to study the proposal and (2) to allow the Island Institute to facilitate a meeting to include the developer, the owners of the Diamond Cove commercial interests, various homeowners groups, the DEP, the Island Institute, the Audubon Society, the Casco Bay Island Development Association and the City of Portland to discuss the petition. Those conditions have been fulfilled and we would like to get the petition for the Tent Site back on track.

One of the issues under study by the Island Institute was whether the consent of the Island Institute, Audubon Society, and Casco Bay Island Development Association was required. The Amended and Restated General Declaration of Covenants and Restrictions for Diamond Cove (the "Declaration") clearly provides in section 7.3.2 that such consent is required for a change of use of the Open Space Recreation Area, thereby impacting the Stowaways proposal,

but that section does not extend to the Tent Site, which is privately owned and not Open Space.¹ It is my understanding that the Island Institute, the Audubon Society and the Casco Bay Island Development Association have all concluded that their consent is not required for the changes proposed for the privately owned Tent Site, although they may participate in the hearing process.

On Wednesday, December 6, 2000, the Island Institute hosted a three hour meeting attended by all the constituencies listed above. Nobody expected a "solution" and none was reached. But everyone had an opportunity to air their positions in a respectful and responsive environment. Discussions regarding the Stowaways site are ongoing. The Tent Site does not present the same thicket of issues, so we are now requesting that the Planning Board once again approve the petition and send it on the City Council.

We are requesting several changes in the text of the Amendment that was previously approved. Some of them are related to the delay, others to our obtaining additional information on several points. I have enclosed a copy of the approved Amendment, marked up with the changes we are requesting. An explanation of the requested changes follows.

- 2.b. There is a wooden gazebo on the property that is used in connection with weddings and we would like to have it be an allowed structure.

- 4. We are requesting that the requirement that we grant a conservation easement to an appropriate grantee of all Opens Space Recreation Area be eliminated, or at least postponed until consideration of the Stowaways petition. The original conditional rezoning contains the requirement that "All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity." Since the Stowaways petition involves a change of use of open space (although not the open space referred to in the Conditional Rezoning), it would make more sense to tie that requirement to it. We have also had some trouble finding an appropriate grantee, given the broad recreation-based function of the property. Note that this requirement covers the Parade Ground among other areas at Diamond Cove.

- 5. The Olver Associates recommendations have been implemented.
 - a. The use of the words "shall be installed" in reference to the three sand filter beds was ambiguous — that is, that it could have been interpreted to mean three additional filter beds needed to be installed. The intent was clearly to meet the recommendation of the consultants, Olver Associates, that there be a

¹ A related concern was whether this section 7.3.2 created a "right, title or interest" issue; that is, whether the consents would be required even before the application could be accepted. Corporation counsel for the City of Portland concluded that it did not, although the DEP has apparently reached the opposite conclusion. In any event, this letter does not address the Stowaways petition so the is issue is not relevant here.

December 18, 2000

Page 3

total of three sand filter beds for the system and I believe substituting the words "in place" for "installed" clarifies that.

- b. The requirement that the sewer system be reviewed could have been interpreted to require video inspection of the entire pipe system. That would be unnecessary and very costly. I have proposed to modify the requirement for video inspection with "where needed."
- c. Finally, the reserve account payment has historically been \$20,500 per year, but that amount is presently being reviewed by DEP. The amount may go up and it may go down, but it is very unlikely that DEP's requirement will remain exactly the same. Since the amount will be flexible, and the reserve account payment is overseen by DEP, I have stricken the reference to a specific dollar amount and replaced it with the language "in an amount to be determined by DEP."

We would request that this matter be presented to the Planning Board as soon as possible for consideration of our meeting the requirements of the remand from the City Council and for consideration of the changes proposed herein.

Please feel free to call if you have any questions or need any additional information.

Very truly yours,



Jonathan T. Harris

JTH/
Enclosure

- cc:
- Penny Littell Esq.
 - Rick Knowland
 - Larry Clough Esq.
 - Edward Drinan
 - Stuart J. McCampbell
 - Robert Meyer
 - DEP, attention Mary Beth Richardson
 - Audubon Society, attention Jennifer Burns
 - Island Institute, attention Stefan
 - Michael Boyd, Attorney for Island Institute
 - Casco Bay Island Development Association, attention Virginia Fisher

ATTACHMENT C

From: "John W. Harper" <harper42@earthlink.net>
To: Portland.CityHall(STB),Portland.gwgwia("home@maine...
Date: Fri, Feb 9, 2001 7:20 AM
Subject: Diamond Cove, Lot 44 Rezoning Request

By US Mail to:

Portland Planning Department Office
City Hall, Fourth Floor
389 Congress Street
Portland, ME 04101

To the Portland Planning Board

We are homeowners at the Diamond Cove development, Lot 3 in Phase II, and would like to register our full support for the proposed rezoning of Lot 44 from zone IR-1 to IR-3. We support the commercial use of this lot as described and specified in the request filed by McKinley Partners, including the Sections 2b, 5 and 5 recent revisions to that filing.

The commercial interests are vital to the full development and enjoyment of Diamond Cove and provide an attractive and marketable destination and function facility for the City of Portland. As you know, the homeowners of the Diamond Cove Homeowners' Association have voted overwhelmingly for this zoning change.

John and Frances Harper
Lot 3, Diamond Cove
44 West Shore Drive
harper42@earthlink.net

CC: "John Howard" <janelux@MAINE.RR.COM>

Dear Organizations,

My husband and I own a house in Diamond Cove on Great Diamond Island. The main reasons that we decided to make the island our second home were the beauty of the island and the wonderful amenities of the Diamond Edge Restaurant. We fully support the conversion of Lot 44 (tent site) to commercial.

Sincerely,

Nancy and David Landman
24B Diamond Cove

Year round residence:

5 Chapel Oak Road
Pittsburgh, PA 15238
412-967-9049

From: Peter Macomber <pbm@macomber.com>
To: Portland.CityHall(STB)
Date: Wed, Feb 7, 2001 8:15 PM
Subject: IR-3 Zoning Amendment on Great Diamond Island

Dear Council Members:

My wife and I are homeowners (Lot 18) at Diamond Cove on Great Diamond Island. We're writing this letter to express our strong support for the zoning change for Lot 44 (the "tent site") next Tuesday before the Portland Planning Board and to urge you to support the amendment.

As a family, we have been visiting Great Diamond Island for almost 20 years, renting cottages for a month at a time. We fell in love with the unique beauty of the island, with its lifestyle, with its residents.

When we were finally able to purchase our property at Diamond Cove, we were delighted; not only because that love for the island, but also because of the commercial amenities that had become an integral part of the island - the restaurant, the general store, the Stowaways grill and the tent site (our children will hopefully someday get married and we'll want to have the ceremonies and receptions on the island).

We understand that the ability to host functions at the tent site is an integral and essential part of a first-class, full service operation like Diamond's Edge. And we think that it's important that they be able to do this without the implied threat of being shut down hanging over their heads.

If this amendment were to not be approved, we fear that the restaurant operation would be inclined to find another location more amenable or simply shut down. The results could be devastating to the Cove as well as the entire island. It would surely mean a dramatic decline in ferry service upon which we all depend; it would mean no general store (which means we'd need the ferry service even more); it would mean no summer jobs for the island kids. It would mean an end to the social center for the entire island.

We are concerned that those who say that they merely want us homeowners to be able to "control" the tent site actually have other hidden agendas. Perhaps they desire to gradually limit public access to the island and return the Cove to the status of an exclusive, snobby resort patronized by only the "right kind of people".

We like having people out on the island. We feel privileged and lucky to be able to live here and we enjoy sharing at least a little part of that with others.

We also remind you that in a vote last summer, an overwhelming majority (90-21 votes or 77%) of the homeowners expressed their support for a zoning change for Lot 44.

We are delighted to be able to call both John Howard and Peter McCullum friends. We have found them to be accommodating and open with all of the homeowners. They have worked extremely hard to be responsible and conscientious neighbors, listening to any and all concerns and taking actions to allay those concerns. They have agreed to decibel limits. They've agreed to restrict the hours of amplified music operation. They agreed to provide security and prevent attendees from wandering around the island. And they've agreed to all of these things in writing. In short, they've agreed to do whatever, within reason, is asked of them by the homeowners. We don't think that we need to "control" the commercial operations beyond these means.

Again, we strongly urge you to support this zoning amendment.

Sincerely,
Pam & Peter Macomber

--

Peter Macomber
pbm@macomber.com
207-772-1208

From: <curulla@wtco.net>
To: Portland.CityHall(STB)
Date: Wed, Feb 7, 2001 7:36 PM
Subject: Rezoning of Lot#44 at Diamond Cove

Dear Council Members:

As homeowners at Diamond Cove, Unit 56-B, we respectfully seek approval in favor of rezoning Lot#44 to commercial. Please note that our unit is located in The Quartermasters area, closest to the site, and we look forward to its continued commercial use.

Sincerely, Anthony and Claudette Curulla

From: <Tim_Burris@candle.com>
To: Portland.CityHall(STB)
Date: Wed, Feb 7, 2001 1:10 PM
Subject: Re proposed rezoning of Lot 44 at Diamond Cove

Dear Planning Board Members,

Please allow my wife and me to register our support for the proposed rezoning of Lot 44 at Diamond Cove from residential to commercial.

Lisa and I greatly appreciate the contribution made by Peter and John to our way of life. In addition to providing islanders with one of the area's finest eating establishments, they have shown themselves to be sensitive to the needs and concerns of homeowners in the way they run their business. In short, they have been excellent neighbors.

We believe that a 'Yes' vote on the proposed rezoning is of vital importance to their continued profitability. We urge you to consider all the facts, and hope, in the light of those facts, that you will grant their request.

Respectfully submitted,

Lisa Moore and Timothy Burris
13H

From: "Karen G Anable" <anable@us.ibm.com>
To: Portland.CityHall(STB),Portland.gwgwia("home@maine...
Date: Tue, Feb 6, 2001 11:29 AM
Subject: PORTLAND PLANNING BOARD MEETING 2/13/01

To those concerned:

I would like to express my support for maintaining the operation of the restaurant at Diamond Cove.

Thank you.

Karen G. Anable
68 East shore

z/OS Information Development Planning
2D18/708-2, Mail: P384, IBM, Poughkeepsie, NY
anable@us.ibm.com ANABLE@IBMUSM10
(845) 435-5821 T/L 295-5821, FAX:(845)432-9405

----- Forwarded by Karen G Anable/Poughkeepsie/IBM on
02/06/2001 10:38 AM -----

Michael & Annette Kane <MAJKANE@AOL.COM>@LISTS.DIGILOGIC.COM on 02/05/2001
06:08:55 PM

Please respond to Diamond Cove Homeowners <DIAMONDCOVE@LISTS.DIGILOGIC.COM>

Sent by: Diamond Cove Homeowners <DIAMONDCOVE@LISTS.DIGILOGIC.COM>

To: DIAMONDCOVE@LISTS.DIGILOGIC.COM
cc:
Subject: PORTLAND PLANNING BOARD MEETING 2/13/01

DOUG--POST TO THE SERVER

TO ALL HOMEOWNERS

It appears that the HOMEOWNERS VOTE (88-22) is to be heard by the Portland Planning Board on 2/13/01. This ongoing process that has been brought about

by a small group on the island continues to hold the restaurant operation hostage. The time is now for all those who support the JOHN, PETER, ED, RICHARD AND ALL THE WONDERFUL STAFF OF DIAMOND EDGE, to let the individuals and agency involved know that your vote is not to be cast aside. Take the time to write, e-mail or even make a phone call. My message is especially sent to those of you that are away from the island. It would be sad for you

and your families to return and find the pleasures of the restaurant only a memory. The names & address are as follows: THE ISLAND INSTITUTE
ATTN: PHILIP CONKLING
386 MAIN STREET

PO BOX 648
ROCKLAND, MAINE 04841-0648
EMAIL: pconkling@islandsnstitute.org

CASCO BAY ISLAND DEVELOPMENT ASSOC.
C/O VIRGINIA FISHER
PO BOX 7631
PORTLAND, MAINE 04112

MAINE AUDUBON
ATTN: ANNE HAYDEN
22 GILSLAND FARM ROAD
PO BOX 6009
FALMOUTH, MAINE 04105
EMAIL: home@maineaudubon.org

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ATTN: MARYBETH RICHARDSON, PROJECT MGR.
312 CANCO ROAD
PORTLAND, MAINE 04103
EMAIL: marybeth.richardson@state.me.us

PORTLAND PLANNING BOARD
CITY OF PORTLAND
389 CONGRESS STREET
PORTLAND, MAINE 04101

PORTLAND CITY COUNCIL
389 CONGRESS STREET
PORTLAND, MAINE 04101
EMAIL: stb@ci.portland.me.us

Your support will begin to put an end to the waste of emotional and financial resources that has occurred in our paradise.

From: <Jkenly007@aol.com>
To: Portland.CityHall(STB),Portland.gwgwia("MaRybeth.r...
Date: Tue, Feb 6, 2001 11:27 AM
Subject: diamond cove

Please note that we are in favor of converting lot 44 to commercial use and have voted thus along with a great majority on the island. We love the cove and want you mainlanders to enjoy it with us. Weddings, parties, and dining are a wonderful way for us to share with you. thank you, David and Jackie Kenly 30A

From: "Maas, Thomas E." <MaasjreT@bp.com>
To: "Philip Conkling (E-mail)" <pconkling@islandinstitut...>
Date: Tue, Feb 6, 2001 11:08 AM
Subject: Lot 44, Diamond Cove, Great Diamond Island

Sirs and Madams:

This letter is in support of the proposal coming before the Portland Planning Board on February 13th to change the designation of Lot 44 of Diamond Cove on Great Diamond Island from residential to commercial.

My wife and I are property owners at Diamond Cove, owning Lot 40 which directly overlooks the Cove itself and the pier. We are presently in the planning stages of building a permanent residence on that site with hopes of breaking ground later this year for our retirement home. Our home site is probably the closest residential site to the actual docking area where ferry boats and private vessels dock to let off visitors who would frequent both the restaurant and the Lot 44 function site.

We feel that the commercial uses of Lot 44 greatly enhance the uniqueness of the island in general and provide an ambiance found in few places around the world. Having a number of off-island Maine residents, as well as many non-residents of Maine, attend social functions on this site, provides numerous opportunities to draw visitors from far and wide to Portland to not only enjoy and appreciate its natural beauty but to provide enhanced economic inputs to the entire city and metropolitan area. We believe that the enhanced ferry service to the island, justified by the many functions at this site, provides a unifying means to bring the many diverse segments of Portland closer together as a community. We also believe that without this zoning change, the restaurant business on the island would be eliminated resulting in a loss of sales tax revenue directly and, through a diminution in property values of the residential properties on the island, would result in a decrease in property taxes to the City of Portland and other taxing bodies.

With the proper supervision and safeguards, we believe that the use of Lot 44 as a commercial site for social functions under the control of the restaurant operations on the island has been and will continue to be a great asset for Portland and Great Diamond Island. The presence of the restaurant together with its social function site presents, in our opinion, an enhancement to the quality of life in Portland and, obviously, on the island. With the diligence and concern of its proprietors under the watchful eyes of the residents, the Diamond Cove Homeowners Association and other concerned organizations, the benefits of this commercial operation can continue to be realized with minimal impact to the island and its natural attributes and beauty. We as property owners, taxpayers and future full-time residents of the island and Portland, desire for this commercial operation to continue.

We ask that you and the various organizations you represent look favorably upon and support the request to redesignate Lot 40 as commercial.

Respectfully yours,

Irene and Thomas Maas
700 Sylvan Place
Batavia, Illinois
and
Lot 40, Diamond Cove

CC: "John Howard (E-mail)" <janelux@MAINE.RR.COM>

From: Greywood / John & Alex Wallner <jawall@gwi.net>
To: Portland.CityHall(STB),Portland.gwgwia("marybeth.r...
Date: Tue, Feb 6, 2001 10:51 AM
Subject: Diamond Cove: Support of conversion of Lot 44 to commercial

Feb. 6, 2001

We would like to express our support for the conversion of Lot 44 (Tent Site) to commercial. It is our understanding that the commercial owners have complied with the necessary requirements. We bought our residence at Diamond Cove with the understanding that the tent site was part of the Diamond's Edge operations. We feel it is absolutely necessary for the economic well-being of the Restaurant and therefore of our community. One of the many benefits of the commercial operations is increased summer ferry service. In the summer of 2000, the Diamond Cove community passed an overwhelming majority vote in support of the Restaurant and Lot 44 commercial use. We hope this positive vote will have bearing on your decision. We ask you to please support the majority's wishes.

Respectfully,

John and Alexandra Wallner
54A and 54B

From: Dion Johnson <djducks@attglobal.net>
To: Portland.CityHall(STB)
Date: Sun, Feb 4, 2001 10:24 PM
Subject: Lot 44, Tent Site, Ft McKinley

Portland City Council
Dear Sir/Madam;

We write as owners of Quarters 13B, Ft McKinley, Diamond Cove, Great Diamond Island.

Reference: Zoning Amendments on Great Diamond Island:

Tent Site Zone Change (Lot 44)

We strongly recommend that this site*s zoning be changed from residential to commercial. This area has served as a place servicing private functions and public performances since prior to our purchasing our house at the Fort. We expect the area to be used for such activities in the foreseeable future and find these activities to be desirable use of the property.

We hope that the above referenced application will be approved.

Sincerely,

Dion and Jenny K. Johnson

From: Jackie Bell <jbell@gwi.net>
To: Portland.CityHall(STB)
Date: Sun, Feb 4, 2001 9:56 PM
Subject: Lot 44 on Diamond Cove

February 4, 2001

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

Dear Planning Board Members:

I urge the Planning Board to vote to change the designation of Lot 44 at Diamond Cove on Great Diamond Island from residential to commercial. In a vote that was taken last year, the residents of Diamond Cove voted overwhelmingly in favor of this move. I have attached a copy of the email message announcing the results of that poll. You will see that the vote in favor of tent site (Item #1) which sits on Lot 44 was 90 for and 21 against. Unfortunately, for the last few months most of the agencies involved in this zoning request have heard only from that small group who voted against the request. Before you make a decision, I hope you will also take the time to hear and read the letters from those of us who consider the entire restaurant operation an asset to the island and the community. We were the first year-round residents of Diamond Cove. Every homeowner who came after us bought their property with Diamond's Edge Restaurant and its functions in place. We only seek to keep the atmosphere we all bought into.

In the last seven years that Diamond's Edge Restaurant and the tent site have been in operation, it has hired many local Portland residents, hired homeowners and their children, greatly increased the ferry service, and added to the revenues of Casco Bay Lines by increasing not only passenger traffic but freight as well. The operation has been good for Portland economy by buying goods and services from local vendors and fishermen. They also contribute to the tax base for the city of Portland and provide revenues to the Homeowners' Association of Diamond Cove. In addition to providing a unique destination restaurant for the city to enjoy, they are a successful business operation and have been good neighbors in the community. I believe that this past July, the first time this issue was before the Board, you also received letters of support from local vendors. I urge you to listen to their views in addition to those of the overwhelming majority of homeowners and Great Diamond Island neighbors..

Thank you for your consideration of this request on behalf of the Diamond Cove community.

Sincerely yours,

Jacalyn B. Bell
Resident, Diamond Cove
Building #27-The Jail

Attachment

CC: Portland City Council, 389 Congress St, Portland, ME 04101 Email:
stb@ci.portland.me.us

The Island Institute, Attn: Philip Conkling, 386 Main St, P. O. Box 648, Rockland, ME

04841-0648 Email: pconkling@islandinstitute.org

Casco Bay Island Development Assoc., c/o Virginia Fisher, P. O. Box 7631, Portland, ME 04112

Maine Audubon, Attn: Anne Hayden, 22 Gilsland Farm Rd., P. O. Box 6009, Falmouth, ME 04105 Email: home@maineaudubon.org

Department of Environmental Protection, Attn: Marybeth Richardson, Project Manager, 312 Canco Rd., Portland, ME 04103 Email: marybeth.richardson@state.me.us

Corrected Voting Results July 2, 2000

Subject: Corrected Voting Results July 2, 2000

Date: Sun, 2 Jul 2000 14:19:25-0400

From: Diamond Cove Homeowners Association Board of Directors <dcfogg@NXI.COM>

Reply-To: Diamond Cove Homeowners <DIAMONDCOVE@LISTS.DIGILOGIC.COM>

To: DIAMONDCOVE@USTS.DIGILOGIC.COM

Due to attempting to publish the results of the balloting as quickly as possible an error was made in tabulating results. Please accept apologies for any inconvenience this may have caused. The only item to change from did not pass to pass was item 5, Tent site use restrictions. Please see the corrected results below.

Corrected voting Results July 2, 2000

To: Diamond Cove Homeowners

From: Board of Directors of the Diamond Cove Homeowners Association

Re: Corrected Results of vote July 2, 2000

On Sunday, July 2, 2000, homeowners of Diamond Cove voted on five items with the following results:

- Item 1. Tent site - Passed (90 for, 21 against)
- Item 2. Art Gallery - Did not pass (47 for, 64 against)
- Item 3. Stowaways - Passed (84 for, 27 against)
- Item 4. Mule Barn - Did not pass (76 for, 35 against)
- Item 5. Tent Site Use Restrictions - Passed (86 for, 25 against)

1 of 1
07/02/20002:22 PM

CC: Portland.gwgwia("marybeth.richardson@state.me.us",...

Author: Sandra Millay at MPGRMT

Date: 2/3/01 3:05 PM

Priority: Normal

TO: pconkling@islandinstitute.org at INTERNET, home@maineaudubon.org at INTERNET,
marybeth.richardson@state.me.us at INTERNET, stb@ci.portland.me.us at INTERNET

CC: janelux@maine.rr.com at INTERNET

Subject: Planning Meeting 2/13/01 Our Support

----- Message Contents -----

To All It May Concern,

Let this message serve as our formal show of support for the change of
Lot 44 from Residential to a Commercial site, at Diamond Cove on Great
Diamond Island.

We are owners of Lot 7 and will soon be building our home on this
site. When we bought into this community it was with the full
understanding and desire to have the Restaurant and it's tent site
functions to be a part of our community. We would like you to vote in
favor of the change.

Thank you for your time and consideration in this matter

Respectfully,

Jim & Sandra Millay

A handwritten signature in dark ink, appearing to be a stylized representation of the names Jim and Sandra Millay. The signature is written in a cursive, somewhat abstract style with overlapping loops and lines.

February 7, 2001

30A Diamond Cove
Great Diamond Island
ME 04109-9999

207-766-0004

Portland Planning Board
City of Portland
389 Congress St.
Portland ME 04101

Re: Zoning change for Lot 44 (tent sight) at Diamond Cove.

Dear Planning Board,

Living in 30A, Quartermasters Building directly to the side of the restaurant my husband and I support the Change in zoning for Lot 44 to commercial.

We moved to an island , but do not want to be where there are no people, which is why we chose the unit we did. The ability of the restaurant, to use the Tent Sight (Lot 44) as commercial last summer, allowed our college aged son to live and work on the island during the summer. It was a great experience for him. And we hope such employment opportunities would continue for the other young adults on the island. But this can only happen with a change in zoning for Lot 44 which we support.

Yours truly,

Jackie Kenly cc Ethel Beason

Dave & Jackie Kenly

Diamond Cove, 7A
Great Diamond Island ME 04109-9999

207-766-2107
FAX 766-2991

7 February 2001

Portland Planning Board
City of Portland
389 Congress St.
Portland Me 04101

Re: Rezoning Lot #44 at Diamond Cove to commercial.

Dear Planning Board,

As a homeowner, with my husband, of 7A Diamond Cove, I am in favor of the change in zoning for Lot #44 to commercial from residential.

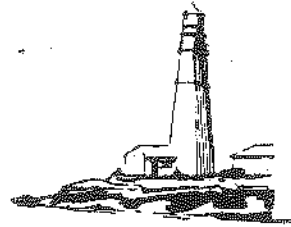
The restaurant and the use of Lot #44 as commercial operations were in existence when we came to Diamond Cove in the summer of 1995. Lot #44 was used for a Theater area, Lobster Bakes, and other outdoor activities. These things brought life to a very small community. We feel that Lot 44 continues to do this today and would like see it continue as a commercial enterprise allowing many people to see and enjoy the island and its beauty in Casco Bay.

Yours truly,

Ethel R Bean

Ethel R. BEAN

Casco Bay Island Development Association, Inc.
P.O.Box 3373, Portland, Maine 04104.



February 7, 2001

Portland Planning Board
Room 209
City Hall

CBIDA supports the Amendment to the Conditions and Restrictions of the 1985 Conditional Rezoning of Fort McKinley, "Lot 44--The Tent Site".

CBIDA is aware of the disagreement among Diamond Cove's residents about the "Tent Site" operation, however, the vast majority of the homeowners voted in favor of the "Tent Site" last summer.

The homeowners are presently involved in the process of electing directors for their association, which will run Diamond Cove. The revenue from the "Tent Site" will be very helpful (we would think necessary) to the association in helping pay for the upkeep of the "common properties" and other expenses associated with running the project.

The "Tent Site" operation is a seasonal operation and the people who will be running it have done their best to address homeowners' concerns. Visitors to the site will be escorted by security to the "Tent Site" from the Diamond Cove wharf, the noise level will be monitored and a decibel level is included in the revised plan submitted to the DEP.

The recreation open space will remain in perpetuity, and McKinley Partners Limited Partnership will implement the recommendations of Oliver Associates, Inc and the Portland Public Works Engineer for the Wastewater Treatment Infrastructure.

CBIDA urges you to accept the proposed amendments and allow the zone change from the IR-1 to the IR-3 zone.

Virginia Fisher
Virginia Fisher, president CBIDA

Diamond Cove, 7A
Great Diamond Island ME 04109-9999

Phone 207-766-2107
FAX 207-766-2991

7 February 2001

Portland Planning Board
City of Portland
389 Congress St.
Portland Me 04101

Re: Diamond Cove Zoning change for Lot 44 (the Tent Sight)

Dear Planning Board,

Please allow the zoning change from IR-1 to IR-3 so that the commercial operation that we enjoy can legally continue.

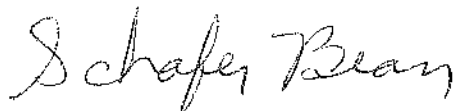
When I first saw Diamond Cove in 1995 I fell in love with the potential for community and life style. My wife and I purchased our home a month or two after our first visit and have been happy here until the possibility that the commercial operations might be shut down, became known. We are year around residents. The Tent Sight was operating when we first looked at the development and we considered it an asset.

On 2 July 2000 ninety-two percent (92%) of the property owners at Diamond Cove voted on the commercial operations. Eighty-one percent (81%) were in favor of continuing the "Tent Sight".

I would like you to consider favorably the change from residential to commercial zoning for Lot 44 (the Tent Sight) that is proposed for our community.

Thank you for your consideration in this matter.

Yours truly,



W. Schafer BEAN

To: the Portland Planning Board, City of Portland

Tue, Feb 6, 2001 10:52 AM

From: Greywood / John & Alex Wallner <jawall@gwi.net>

To: <pconkling@islandinstitute.org>, <home@maineaudubon.org>, <marybeth.richardson@state.me.us>, <stb@ci.portland.me.us>

Date: Tuesday, February 6, 2001 10:51 AM

Subject: Diamond Cove: Support of conversion of Lot 44 to commercial

Feb. 6, 2001

We would like to express our support for the conversion of Lot 44 (Tent Site) to commercial. It is our understanding that the commercial owners have complied with the necessary requirements. We bought our residence at Diamond Cove with the understanding that the tent site was part of the Diamond's Edge operations. We feel it is absolutely necessary for the economic well-being of the Restaurant and therefore of our community. One of the many benefits of the commercial operations is increased summer ferry service. In the summer of 2000, the Diamond Cove community passed an overwhelming majority vote in support of the Restaurant and Lot 44 commercial use. We hope this positive vote will have bearing on your decision. We ask you to please support the majority's wishes

Respectfully,

John and Alexandra Wallner
54A and 54B

February 6, 2001

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

Dear Board Members:

This letter is in support of the proposal coming before the Portland Planning Board on February 13th to change the designation of Lot 44 of Diamond Cove on Great Diamond Island from residential to commercial.

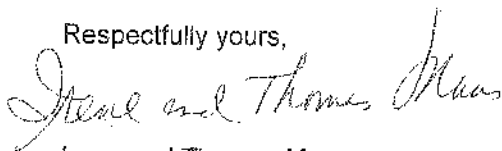
My wife and I are property owners at Diamond Cove, owning Lot 40 which directly overlooks the Cove itself and the pier. We are presently in the planning stages of building a permanent residence on that site with hopes of breaking ground later this year for our retirement home. Our home site is probably the closest residential site to the actual docking area where ferry boats and private vessels dock to let off visitors who would frequent both the restaurant and the Lot 44 function site.

We feel that the commercial uses of Lot 44 greatly enhance the uniqueness of the island in general and provide an ambiance found in few places around the world. Having a number of off-island Maine residents, as well as many non-residents of Maine, attend social functions on this site, provides numerous opportunities to draw visitors from far and wide to Portland to not only enjoy and appreciate its natural beauty but to provide enhanced economic inputs to the entire city and metropolitan area. We believe that the enhanced ferry service to the island, justified by the many functions at this site, provides a unifying means to bring the many diverse segments of Portland closer together as a community. We also believe that without this zoning change, the restaurant business on the island would be eliminated resulting in a loss of sales tax revenue directly and, through a diminution in property values of the residential properties on the island, would result in a decrease in property taxes to the City of Portland and other taxing bodies.

With the proper supervision and safeguards, we believe that the use of Lot 44 as a commercial site for social functions under the control of the restaurant operations on the island has been and will continue to be a great asset for Portland and Great Diamond Island. The presence of the restaurant together with its social function site presents, in our opinion, an enhancement to the quality of life in Portland and, obviously, on the island. With the diligence and concern of its proprietors under the watchful eyes of the residents, the Diamond Cove Homeowners Association and other concerned organizations, the benefits of this commercial operation can continue to be realized with minimal impact to the island and its natural attributes and beauty. We as property owners, taxpayers and future full-time residents of the island and Portland, desire for this commercial operation to continue.

We ask that you and the various organizations you represent look favorably upon and support the request to redesignate Lot 40 as commercial.

Respectfully yours,



Irene and Thomas Maas
700 Sylvan Place
Batavia, Illinois
and
Lot 40, Diamond Cove

Robert M. & Kathleen M. Whelan
6 Moore Road
Wayland, MA 01778

February 6, 2001

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

Re: Lot 44 (Tent Site) on Diamond Cove, Great Diamond Island

To Whom It May Concern:

We understand that on February 13, 2001, the Portland Planning Board will consider, and vote upon, the conversion of the above – referenced property from a residential site to a commercial site. We are writing today to express our complete endorsement of this conversion, as well as our hope that you and your organization will support this conversion as well.

Our family has owned property on Diamond Cove since 1995, and we have benefited greatly from all of the commercial operations, including the tent site, that John Howard and Peter McCullum have operated on the island. Both John and Peter are extremely sensitive to the needs of the Diamond Cove homeowners, and we believe they enjoy (and have for many years enjoyed) the support of the vast majority of the homeowners. We know how integral the tent site is to John and Peter conducting a successful enterprise on Diamond Cove, and how impossible it would be for them, or anyone else for that matter, to continue to operate on the island without access to this site. Their loss would have significant negative consequences, in our opinion, not only to the Diamond Cove community, but also to many others who have visited and enjoyed the amenities our beautiful island offers.

We respectfully request that you look favorably upon the application to convert Lot 44 to commercial use. Thank you for your consideration.

Sincerely,



Robert & Kathleen M. Whelan

Michael & Annette Kane
6 Meadow Lane
Auburn, NH 03032

February 5, 2001

Portland Planning Board
City of Portland
389 Congress Street
Portland, Me. 04101

Re: Zoning amendment Diamond Cove Lot #44

We wish to go on record that we are in favor of the proposed re-zoning of Lot #44 located at Diamond Cove, Great Diamond Island, Maine from residential to commercial. As taxpayers and residents of Diamond Cove unit 15b, we ask that this planned re-zoning from IR-1 to IR-3 be approved.

Sincerely,



Michael G. Kane



Annette A. Kane



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

February 5, 2001

Mary Beth Richardson, Project Manager
State of Maine
Bureau of Land and Water Quality
Department of Environmental Protection
312 Canco Road
Portland, Maine 04103

Re: **Proposed Commercial Use of Lot 44
Diamond Cove**

Dear Ms. Richardson,

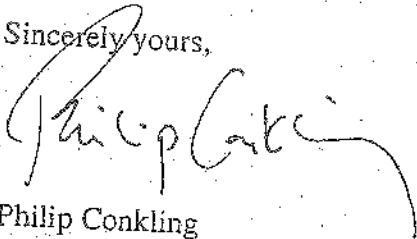
The Island Institute has seen and reviewed the application for the proposed change of use of Lot 44 of Phase II of the Diamond Cove project.

Our primary concerns regarding the recent issues which have surfaced over additional development at Diamond Cove have centered around the use of areas of the shoreline that were originally set aside as open space during the long review process of the application between 1986 and 1991. When we learned of the existence of the "Stowaway Beach Bar" in the open space area of the shoreland zone, we were concerned because a precedent could be established to alter other areas of the open space that we had earlier all agreed would not be subject to changes of use.

Although there are a host of issues surrounding the change of use in the Phase II portion of the development specifically on Lot 44, the Island Institute believes this is an issue that is best left up to the Diamond Cove Homeowners Association to work out with the commercial interests. We have been assured by you and your staff that waste water from a commercial lot here could be handled adequately by the existing system and therefore this change of use would not pose a risk to the water quality of the receiving waters of Casco Bay. We believe that most of the issues with regard to noise, cost-sharing and rights of privacy, while acutely important to the islanders do not create an over-riding public interest issue that would cause us to intervene.

Based on the above, we waive any right to object to the proposed change of use in the instance of Lot 44.

Sincerely yours,



Philip Conkling
President

PWC/jet

cc Anne Hayden
Maine Audubon
22 Gilsland Farm Road
P. O. Box 6009
Falmouth, ME 04105

Virginia Fisher
Casco Bay Island Development
P. O. Box 7631
Portland, ME 04112

Tom Fortier
City of Portland
389 Congress Street
Portland, ME 04101

Margaret McCloskey
Assistant Attorney General
State of Maine
17 State House Station
Augusta, ME 04333-0017

Jonathan Harris
Lambert, Coffin, Rudman & Hochman
477 Congress Street, 14th Floor
P. O. Box 15215
Portland, ME 04112-5215

88 Fessenden St.
Portland, ME 04103

Portland Planning Board
City of Portland
389 Congress St.
Portland, ME 04101

February 5, 2001

RE: IR-3 Zoning Amendment on Great Diamond Island

Dear Board Members:

My wife and I are homeowners (Lot 18) at Diamond Cove on Great Diamond Island. We're writing this letter to express our strong support for the zoning change for Lot 44 (the "tent site") next Tuesday before the Board and to urge you approve the amendment.

As a family, we have been visiting Great Diamond Island for almost 20 years, renting cottages for a month at a time. We fell in love with the unique beauty of the island, with its lifestyle, with its residents.

When we were finally able to purchase our property at Diamond Cove, we were delighted; not only because that love for the island; but also because of the commercial amenities that had become an integral part of the island – the restaurant, the general store, the Stowaways grill and the tent site (our children will hopefully someday get married and we'll want to have the ceremonies and receptions on the island).

We understand that the ability to host functions is an integral and essential part of a first-class, full service operation like Diamond's Edge. And we think that it's important that they be able to do this without the implied threat of being shut down hanging over their heads.

If this amendment were to not be approved, we fear that the restaurant operation would be inclined to find another location more amenable or simply shut down. The results could be devastating to the Cove as well as the entire island. It would surely mean a dramatic decline in ferry service upon which we all depend; it would mean no general store (which means we'd need the ferry service even more); it would mean no summer jobs for the island kids. It would mean an end to the social center for the entire island.

We are concerned that those who say that they merely want us homeowners to be able to "control" the tent site actually have other hidden agendas. Perhaps they desire to gradually limit public access to the island and return the Cove to the status of an exclusive, snobby resort patronized by only the "right kind of people".

We *like* having people out on the island. We feel privileged and lucky to be able to live here and we enjoy sharing at least a little part of that with others.

We also remind you that in a vote last summer, an overwhelming majority (90-21 votes or 77%) of the homeowners expressed their support for a zoning change for Lot 44.

We are delighted to be able to call both John Howard and Peter McCullum friends. We have found them to be accommodating and open with all of the homeowners. They have worked extremely hard to be responsible and conscientious neighbors, listening to any and all concerns and taking actions to allay those concerns. They have agreed to decibel limits. They've agreed to restrict the hours of amplified music operation. They agreed to provide security and prevent attendees from wandering around the island. And they've agreed to all of these things in writing. In short, they've agreed to do whatever, within reason, is asked of them by the homeowners. We don't think that we need to "control" the commercial operations beyond these means.

Again, we strongly urge you to support this zoning amendment.

Sincerely,
Pam & Peter Macomber

A handwritten signature in cursive script, appearing to read "Pam Macomber". The signature is written in dark ink and is positioned below the typed name "Pam & Peter Macomber".



February 4, 2001

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

Dear Sirs,

I am a resident and property owner on Great Diamond Island. My home is on the east end of the island in a section developed by McKinley Partners called Diamond Cove.

For the past 18 months, the residents of Diamond Cove have been working to have an orderly transition from a property managed by the developer, to one of self-government. Although there are a number of different views regarding structure and management, a vast majority (approx 80%+?) of the homeowners have voted for a continuation of the restaurant operation owned by John Howard. Not only did the homeowners vote for the restaurant, but we also voted to maintain the operation on the tent site (Lot #44) as well as the small operation by the beach called Stowaways.

A very small but vocal minority of homeowners would have you believe that this is not the case. Please review the minutes from previous homeowner meetings and you will understand that this change is fully supported by the majority of the residents and should be approved.

I would ask you to fully support the request to change the zoning from residential to commercial for Lot 44.

Thank you for your time and support.

Matthew Hoffner
President



215 Gingrich Drive
Accokeek, MD 20607
4 February 2001

Chairman, Portland Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

We write as owners of Quarters 13B, Ft McKinley, Diamond Cove, Great Diamond Island.

Reference: Zoning Amendments on Great Diamond Island:

Tent Site Zone Change (Lot 44)

We strongly recommend that this site's zoning be changed from residential to commercial. This area has served as a place servicing private functions and public performances since prior to our purchasing our house at the Fort. We expect the area to be used for such activities in the foreseeable future and find these activities to be desirable use of the property.

We hope that the above referenced application will be approved.

Sincerely,


Dion and Jenny K. Johnson

cc Mayor, Portland, Maine
McKinley Partners Limited Partnership
P.O. Box 266
Lyme, NH 03768
John Howard
PO Box 7472
Portland, ME 04112

February 4, 2001

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

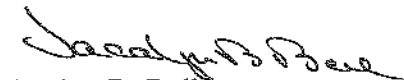
Dear Planning Board Members:

I urge the Planning Board to vote to change the designation of Lot 44 at Diamond Cove on Great Diamond Island from residential to commercial. In a vote that was taken last year, the residents of Diamond Cove voted overwhelmingly in favor of this move. I have attached a copy of the email message announcing the results of that poll. You will see that the vote in favor of tent site (Item #1) which sits on Lot 44 was 90 for and 21 against. Unfortunately, for the last few months most of the agencies involved in this zoning request have heard only from that small group who voted against the request. Before you make a decision, I hope you will also take the time to hear and read the letters from those of us who consider the entire restaurant operation an asset to the island and the community. We were the first year-round residents of Diamond Cove. Every homeowner who came after us bought their property with Diamond's Edge Restaurant and its functions in place. We only seek to keep the atmosphere we all bought into.

In the last seven years that Diamond's Edge Restaurant and the tent site have been in operation, it has hired many local Portland residents, hired homeowners and their children, greatly increased the ferry service, and added to the revenues of Casco Bay Lines by increasing not only passenger traffic but freight as well. The operation has been good for Portland economy by buying goods and services from local vendors and fishermen. They also contribute to the tax base for the city of Portland and provide revenues to the Homeowners' Association of Diamond Cove. In addition to providing a unique destination restaurant for the city to enjoy, they are a successful business operation and have been good neighbors in the community. I believe that this past July, the first time this issue was before the Board, you also received letters of support from local vendors. I urge you to listen to their views in addition to those of the overwhelming majority of homeowners and Great Diamond Island neighbors..

Thank you for your consideration of this request on behalf of the Diamond Cove community.

Sincerely yours,



Jacalyn B. Bell
Resident, Diamond Cove
Building #27-The Jail

Attachment

CC: Portland City Council, 389 Congress St, Portland, ME 04101
The Island Institute, Attn: Philip Conkling, 386 Main St, P. O. Box 648, Rockland, ME 04841-
Casco Bay Island Development Assoc., c/o Virginia Fisher, P. O. Box 7631, Portland, ME 04112
Maine Audubon, Attn: Anne Hayden, 22 Gilsland Farm Rd., P. O. Box 6009, Falmouth, ME 04105
Department of Environmental Protection, Attn: Marybeth Richardson, Project Manager, 312 Canco Rd.,
Portland, ME 04103

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85 CLINTON STREET
PORTLAND, MAINE 04103
(207) 775-3374

Herbert & Donna Schwartz

February 3, 2001

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

Re: Diamond Cove / "STOWAWAYS"

TO WHOM IT MAY CONCERN:

Please be advised that we are homeowners at Diamond Cove and we fully support the conversion of Lot # 44 (tent site) to commercial.

One of the reasons that we purchased on Diamond Cove was because of the commercial properties that existed there. We did not want to be on an island that had no amenities or too many. Diamond Cove had just the right balance. If the commercial properties are done away with we may seriously consider going elsewhere.

We thank you for your kind consideration in this matter.

Most Sincerely,

Herbert & Donna Schwartz

Herbert & Donna Schwartz

.....

Subject: Corrected Voting Results July 2, 2000

Date: Sun, 2 Jul 2000 14:19:25 -0400

From: Diamond Cove Homeowners Association Board of Directors <dcfogg@NXI.COM>

Reply-To: Diamond Cove Homeowners <DIAMONDCOVE@LISTS.DIGILOGIC.COM>

To: DIAMONDCOVE@LISTS.DIGILOGIC.COM

Due to attempting to publish the results of the balloting as quickly as possible an error was made in tabulating results. Please accept apologies for any inconvenience this may have caused. The only item to change from did not pass to pass was item 5, Tent site use restrictions. Please see the corrected results below.

Corrected Voting Results July 2, 2000

To: Diamond Cove Homeowners

From: Board of Directors of the Diamond Cove Homeowners Association

Re: Corrected Results of Vote July 2, 2000

On Sunday, July 2, 2000, homeowners of Diamond Cove voted on five items with the following results:

- Item 1. Tent site - Passed (90 for, 21 against)
- Item 2. Art Gallery - Did not pass (47 for, 64 against)
- Item 3. Stowaways - Passed (84 for, 27 against)
- Item 4. Mule Barn - Did not pass (76 for, 35 against)
- Item 5. Tent Site Use Restrictions - Passed (86 for, 25 against)

Earl and Joyce Klein
98 Seal Cove Lane
Diamond Cove
Great Diamond Island, Me 04109

February 2, 2001

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

RE: DIAMOND COVE LOT 44 REZONING

We strongly encourage you to approve the rezoning of Diamond Cove Lot 44 from residential to commercial. Use of this lot for functions catered by Diamonds Edge restaurant is essential to the vitality of our island community.

Our daughter was married and held her wedding reception on Lot 44 in September 1999. We fell in love with Diamond Cove, purchased a lot here, and completed construction of our new home in October 2000. Many in our community have similar stories about their introduction to Diamond Cove.

Please respect the wishes of the vast majority of Diamond Cove property owners. Allow us, and the many visitors to our community, to benefit from the fine service provided by our friends John and Peter.

Thank you for your consideration

Very truly yours,

Earl and Joyce Klein
207 766 2260

Diamond Cove
Great Diamond Island, Me 04109
Feb. 1, 2001

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

I have just read a copy of the January 30 proposal in regard to rezoning of Lot # 44 at Diamond Cove on Great Diamond Island.

There are several reasons why I feel this would be a bad idea.

Over the past several summers the leased tent site has become the scene of increasingly noisier and less regulated functions. One needs only to try to get off the ferry to cross the (homeowner owned) dock in an attempt to get home on a summer evening to understand. Last summer I was verbally accosted by a very loud, large person who seemed to have consumed a great deal of alcohol. He made threatening gestures toward me, and I was afraid he was going to hit me. Although the dock is posted to prohibit the use of alcohol there, patrons from the tent site and restaurant are seen with glasses and bottles in hand. Alcohol induced behavior, even without alcohol present, creates a hazard for all, when that behavior is taking place on a dock.

From May to October large catered events for hundreds of patrons are held during weekday evenings on Lot # 44. 3 or 4 weddings may occur during a summer weekend. Loudly amplified music and rowdy patrons have become part of our once quiet island.

My home, at 630' from "the tent site", is the closest. Each summer since 1997, the decibel level and duration of the music has seemed to increase. On summer evenings the noise has been so loud one can't carry on a normal conversation in the yard or on the porch. With all the windows down and doors closed, the beat of the music can still be felt within my home.

During the summer of 2000, activities at the tent site were greatly curtailed because of resident complaints. Even then, incidents occurred. An agreed upon curfew of 8:00 p.m. was followed within two days by amplified music playing well past 10:00. McKinley Partners, the developer who will soon be leaving, fined the restaurant for excessive noise.

I have the greatest respect for John Howard and Peter McCallum, and believe they made sincere efforts during last summer to reduce the noise. My greatest concern is that, even with their best efforts, definitions of "Noxious or Offensive Activity" (including noise) in our Declaration are being violated. ({Please see 4.16)

I fear that decibel level regulations are unenforceable, and that the way the agreement (to change Lot # 44 from residential to commercial) is written could easily cause enough confusion to enable noise to continue or be quickly resumed.

I am also concerned about what will happen here in the long run if rezoning takes place. John and Peter seem to be willing to work with the homeowners; I'm not sure subsequent owners of the commercial properties will be.

Although you will, no doubt, be receiving letters in support of rezoning, I believe you will find that many of them are from new part time home owners who have not experienced the long term, escalating effects of several summers worth of noise. For those of us who have owned homes here 5 years or more, and who make this our permanent residence, the changes here have been overwhelming.

In 1994 Diamond Cove, when I first came to it, was just emerging as a new community that had been set in place with many needed safeguards for its protection. Reassured by the role played by several groups toward the thoughtful and well-planned development of the island, I purchased my home here in 1996. At retirement it became my year round home.

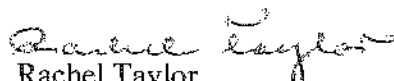
Diamond Cove is the home I chose because it embodied the beauty of nature, Maine ocean, old growth forests, wildlife and a chance for personal safety and peace. I purposely chose not to live in the Old Port, nor to participate in that particular life style.

Now that the function and event season is past, the island has returned for a short time to what it can be. The birds have come back to their feeders, a cow moose has taken up residence here. Loons come into the cove, and an eagle has been spotted in the interior of the island.

I respectfully request that the Portland Planning Board look once again at what can be done to help Diamond Cove remain an island community where its beauty and integrity can be preserved.

Thank you for any help you may be able to give.

Sincerely,


Rachel Taylor
(766-5197)
rachdev@gateway.net

cc: Portland City Council

February 1, 2001

Ed & Deborah Wolak
Great Diamond Island
Diamond Cove, Unit 17E
Portland, ME.

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

Re: Diamond Cove, Application to Change Residential Lot #44 to
Commercial Lot, Diamond's Edge Restaurant, Great Diamond Island

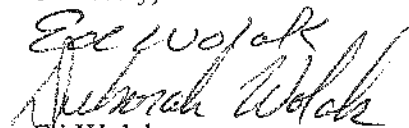
Dear Sir or Madam:

It is our understanding that the above application comes before the Planning Board once again for your consideration on the 13th of February. As homeowners in this development, we would like to urge your support for this very important matter.

The change applied for is critical to the future operation of Diamond's Edge Restaurant as well as the financial stability of Diamond Cove. The restaurant pays assessments to our association and generates many additional ferry passengers, making more ferry service economically viable to island residents. This operation is a gem, not only to the residents of Diamond Cove and Great Diamond Island, but also to the Greater Portland Community. This past summer, we met people from all over the United States, as well as Europe. All expressed delight at the wonderful opportunity this operation made possible to visit Portland's Great Diamond Island. The Diamond Cove Homeowners Association voted overwhelmingly to support Diamond's Edge Restaurant in their application to obtain a zone change for Lot #44.

Please support the island residents, Diamond Cove Homeowners Association and Diamond's Edge Restaurant on this very important zone change.

Sincerely,



Ed Wolak
Deborah Wolak
Unit 17E - Diamond Cove

Cc: The Island Institute, Attn.: Philip Conkling
Casco Bay Island Development, Attn.: Virginia Fisher
Maine Audubon, Attn.: Anne Hayden
Department of Environmental Protection, Attn.: Marybeth Richardson

Christina D. Philibotte
25 Lamson Road
Mont Vernon, NH 03057

February 1, 2000

Portland Planning Board
City of Portland
389 Congress St.
Portland, ME 04101

Re: Conversion of Lot 44 - Diamond Cove, Great Diamond Island

Dear Portland Planning Board:

As a New Hampshire resident, a Maine tourist, and having had recently discovered Diamond's Edge Restaurant and all of its entities, I support the conversion of Lot 44 to a commercial property.

Tourism in Maine, as you of course know, is a vibrant and central aspect of its character and economy. After visiting Diamond Cove under the auspice of Diamond's Edge Restaurant, I discovered a comparatively little known, yet important historical site. I found Fort McKinley to be impeccably preserved and a visually breathtaking representation of the military, architectural, and social history of Maine and the country. I was offered a tour of the site prompted by Diamond's Edge Restaurant and later visited the museum and Gallery; the fervor of the community to give their home it's due worth was sincere and charming,--a true attribute of Maine tourism.

Surely, you too are proud of this site. I am an advocate of environmental and historical preservation; I commend Maine for its proactive political and social stance concerning such issues. I believe by not converting this site to a commercial property, tourists and Maine residents would be denied their right to enjoy Fort McKinley and its surrounding beauty. Without the exposure and numerous benefits the 4-star restaurant offers Fort McKinley from extended ferry service to providing a truly memorable dining experience and every little girl's fairytale wedding, and of course offering a controlled atmosphere in which to visit, will Fort McKinley reasonably endeavor in its preservation? Without public exposure, how is public support possible? Will financial support of environmental protection of this habitat persist? What Diamond's Edge Restaurant brings to the table is critical in uniting business with environmental protection and historical preservation.

I welcome the opportunity to further discuss any questions or concerns; I can be contacted at the given address or at (603) 672-1338. I appreciate this opportunity to voice my opinion. Diamond's Edge Restaurant is a unique tourist attraction, and an advocate to the environmental protection and historical preservation of Fort McKinley; please support the conversion of Lot 44.

Sincerely Yours,



Christina D. Philibotte

Barbara G. Leiter
Diamond Cove General Delivery
Great Diamond Island, ME 04109
(207) 766-5424

January 31, 2001

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

Dear Planning Board Members:

I am once again writing to ask your support of the proposed zoning changes requested by McKinley Partners for Diamond Cove, Great Diamond Island that will come before you on February 13, 2001. I was very pleased with your unanimous Board support shown in the previous meeting on this site. Clearly, you listened and responded to what the majority of the homeowners desired, and had shown by their own overwhelming vote of support.

Although I feel confident that you will not forget the tremendous support shown for this project, I can't help but be concerned. When I hear that a very small group claims they are representing the majority of the homeowners, and that the majority is in opposition to the change in zoning, I become very alarmed.

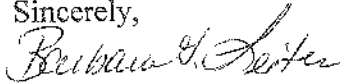
To my knowledge, there were only four families owning homes here on the Island when the restaurant and its related facilities were first established. As for the rest of us, we all bought our homes well aware of the restaurant operation. In fact, its amenities and ambience added to the charm of Diamond Cove, and represented the type of atmosphere that drew many of us into being homeowners and residents.

The owners and operators of Diamonds Edge Restaurant have always been concerned and responsible neighbors. As a homeowner who owns three adjacent lots with a home on the Cove, having been a year round resident for over four years, I consider myself knowledgeable of the restaurant's impact on our community. I can categorically say that the restaurant has never been a problem for me. Quite the contrary, I am often the beneficiary of wonderful music and laughter from families and the members of our community who are celebrating special events. I look forward to these professionally run events through the few short months of the summer. I know for a fact that Mr. Howard and Mr. McCullum, the owners and operators of the restaurant, constantly monitor the effects that their events have on the homeowners, and they frequently contact me to inquire about their impact on my area.

It would be a sorry state of affairs if an insignificant number of homeowners, clearly a minority, succeeded in closing down our Island restaurant. The loss of the restaurant would have dire impact on our community. I believe that the summer ferry schedule would be dramatically reduced without the restaurants support, jobs would be lost (many of our community's children work in the restaurant), and that public access previously enjoyed by those using the facilities would come to an end. Diamond Cove would be a very different community from what we all bought into. I believe that property values would plummet. I for one would be inclined to move on.

I urge all Planning Board Members to continue to support the requested zoning change and let us continue to enjoy the life style that we have had since purchasing at Diamond Cove.

Sincerely,



Barbara G. Leiter

Year round resident, owner of Lots 26, 27, 28, and significant taxpayer

Cc: The Island Institute, Attn: Phil Conkling
Casco Bay Island Development Association, c/o Virginia Fisher
Maine Audubon, Attn: Ann Hayden
Department of Environmental Protection, Attn: Marybeth Richardson
Portland City Council Members

*John & Elizabeth Serrage
38 Reef Road
Cape Elizabeth, ME 04107*

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

Dear Sir or Madam,

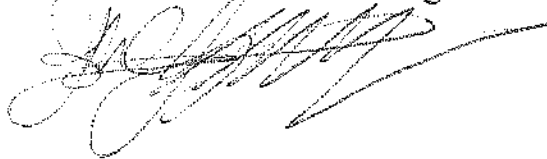
We have been homeowners at Diamond Cove for about six years. Our home is situated quite close to the restaurant and the other areas in question. We support the zoning change for Lot 44 from residential to commercial use. We have never been bothered by the noise from any activity at the tent site. In fact, it gives us some pleasure to know that we are helping to provide such a beautiful setting for one of life's great ceremonial events.

We also realize that the use of the tent site is necessary for the existence of a quality restaurant on the island. The restaurant provides essential services to the residents. It is also an attraction that draws new homeowners to Diamond Cove.

Finally, we do not think anyone would want to build a home on that site as it is too exposed. In fact, we would not like to see a home on that site as that would really disturb the area around it that is part of the common property, the trout pond and surrounds.

Sincerely,

John and Elizabeth Serrage

A handwritten signature in black ink, appearing to be a cursive representation of the names John and Elizabeth Serrage, written over a horizontal line.



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

DEPARTMENT ORDER
IN THE MATTER OF

*CC: B. Barbydt
R. Knowlton
File*

RECEIVED
MAY 08 2011
PLANNING DEPARTMENT

HOWARD FINKEL
Portland, Cumberland County
SHORELINE STABILIZATION
L-13160-4D-AD-N (approval)

) NATURAL RESOURCES PROTECTION
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of HOWARD FINKEL 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: 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. In Board Order L-13160-L3-G-N, dated June 25, 1991, the Board approved the development of Phase II which consisted of a 39-lot residential subdivision. The Department has issued a number of subsequent revisions and amendments to the project since the original approvals. 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 owns an approximately 1.1-acre lot with 300 feet of shoreline. There are two portions of the shoreline that are undergoing erosion as a result of wave and wind action. In order to stabilize the areas of erosion, the applicant proposes to construct a rock riprap system in two separate areas that are identified as Area A and Area B. The cumulative length of the riprap will measure 120 linear feet and will range in height from eight feet to 10 feet, and 292 square feet of intertidal area of the coastal wetland will be altered.

In order to construct the riprap system in both areas, the applicant proposes to secure two layers of geotextile fabric to the shoreline. An initial layer of riprap that measures six inches in diameter will be placed over the geotextile fabric. The second layer of riprap will be placed over this surface and will consist of riprap that measures approximately 16 inches in diameter. In Area A, the riprap will be constructed with a 1 3/4: 1 slope and will alter approximately 292 square feet of intertidal area. In Area B, the applicant proposes to cut back the top of the bank to achieve a 1 1/2: 1 slope, which will minimize direct impacts to the coastal wetland for this portion of the project. During construction, the site will be accessed from the upland and the applicant intends to take measures to protect the trees located at the top of the bank. The project site is located on West Shore Road on Great Diamond Island in Casco Bay in the City of Portland.

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

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 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of HOWARD FINKEL to construct a shoreline stabilization system as described above, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

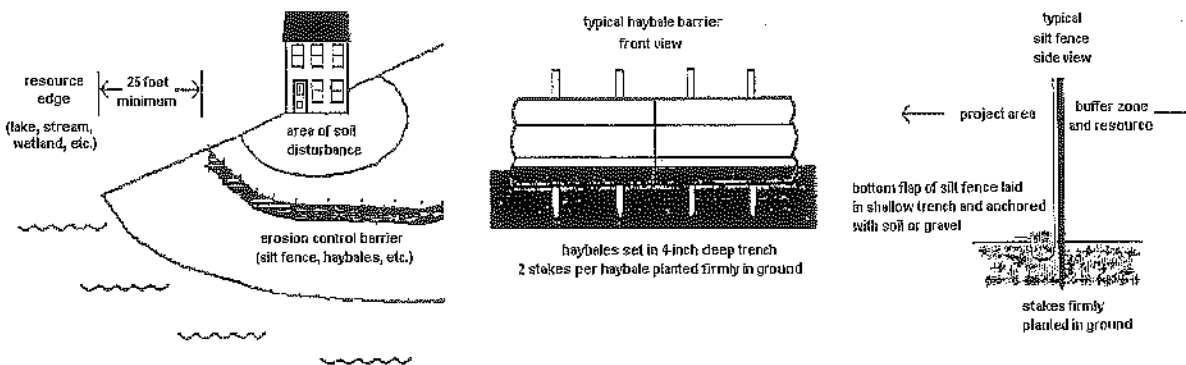
- 1. Standard Conditions of Approval, a copy attached.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit-by-rule.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



D

during Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

Gary C. Wood, Esq.
May 17, 2010
Page 2

cc: Joseph E. Gray, City Manager, City of Portland
Richard Knowland, Senior Planner, City of Portland
Ronald Ward, Esq., The Inn at Diamond Cove, LLC
Judy Sedgewick, President, Diamond Island Association

K:\D\Diamond Island Association (10437)\2010-05-17 JNK to Wood re transportation plan.doc

The Inn at Diamond Cove
 Job No. 2769
 Water Quality Filter 1 & 2

Stage-Storage Table						
Elevation	Surface Area	Average Stage Area	Void Percentage	Stage Volume	Cumulative Volume	Comments
97.5	32 ft ²				0 ft ³	Filter Bottom
		32 ft ²	33%	16 ft ³		
99	32 ft ²				16 ft ³	Filter Surface
		41 ft ²	100%	4 ft ³		
99.1	49 ft ²				20 ft ³	
		57 ft ²	100%	6 ft ³		
99.2	65 ft ²				26 ft ³	
		74 ft ²	100%	7 ft ³		
99.3	83 ft ²				33 ft ³	
		93 ft ²	100%	9 ft ³		
99.4	103 ft ²				42 ft ³	
		117 ft ²	100%	12 ft ³		
99.5	130 ft ²				54 ft ³	Outlet Elev.
		143 ft ²	100%	14 ft ³		
99.6	156 ft ²				68 ft ³	
		169 ft ²	100%	17 ft ³		
99.7	183 ft ²				85 ft ³	

Required Storage Volume¹: 52 CF
 Storage Volume Provided: 54 CF
 Required Filter Area²: 31 SF
 Filter Area Provided: 32 SF
 Storage Depth: 0.5 ft

Notes:

1. Required Storage Volume = 1" x Impervious Area + 0.4" x Landscaped Area
2. Required Filter Area = 5% Impervious Area + 2% Landscaped Area

The Inn at Diamond Cove
 Job No. 2759
 Water Quality Filter 1 & 2

Drawdown Time					
Water El.	Depth (ft)	Stage Volume (cf)	Head (ft)	Orifice Flow (cfs)	Drawdown Time (hr)
97.5	0	16	3	0.00	10.98
99	0.1	4	3.1	0.00	2.77
99.1	0.2	6	3.2	0.00	3.86
99.2	0.3	7	3.3	0.00	4.93
99.3	0.4	9	3.4	0.00	6.10
99.4	0.5	12	3.6	0.00	7.50
99.5					
Total					36.12

The orifice diameter is designed to result in a total drawdown time of 24-48 hrs.
 Orifice Flow = $CA(2gh)^{1/2}$

Orifice Dia. 3/32 in.
 Orifice Area 4.7937E-05 ft²
 Acceleration of Gravity, g 32.174 ft/s²
 Orifice Coefficient, C 0.6
 Filter Surface to Orifice 3 ft

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

Witness

By: Philip J. Guarino
Philip J. Guarino, its President

Witness

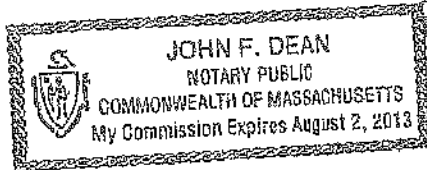
By: John Burge
John Burge, its Secretary

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

PAUsers\acalogni\DC\HA\Garden\2Amd16c.doc

Commonwealth of Massachusetts
Middlesex, ss.

On this 13th day of August, 2007, before me, the undersigned notary public, personally appeared

Philip J. Guarino
proved to me through satisfactory evidence of identification, which were MAD, 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 02:19:03P
Cumberland County
Pamela E. Lovley

PLANNING BOARD REPORT #28-08

**PROPOSED IR-3 CONDITIONAL ZONING AMENDMENTS
DIAMOND COVE, GREAT DIAMOND ISLAND
THE INN AT DIAMOND COVE, LLC**

**Submitted to:
Portland Planning Board
Portland, Maine
May 27, 2008**

**Submitted by:
Richard Knowland, Senior Planner**

May 23, 2008



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 permittees) 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 (BOD₅) 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 BOD₅ 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.



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

WARRANTY DEED

McKINLEY PARTNERS LIMITED PARTNERSHIP, a Maine limited partnership with a mailing address of P.O. Box 266, Lyme, New Hampshire 03768 ("Grantor"), for consideration paid, grants to DIAMOND COVE HOMEOWNERS ASSOCIATION, a Maine nonprofit corporation with a mailing address of Diamond Cove, Great Diamond Island, Portland, Maine 04109 ("Grantee"), with Warranty Covenants, certain real estate situated on Great Diamond Island in the City of Portland, County of Cumberland and State of Maine, more particularly described in Schedule A attached hereto and incorporated by reference herein.

IN WITNESS WHEREOF, McKinley Partners Limited Partnership has caused this instrument to be executed and delivered this 10th day of November, 2006.

McKINLEY PARTNERS LIMITED PARTNERSHIP, a Maine limited partnership

By: Useppa North Corp.
Its duly authorized general partner

By: Stuart J. McCampbell
Stuart J. McCampbell, President

Judith D. Vincenti
Witness

MAINE REAL ESTATE EXAMINER

STATE OF NEW HAMPSHIRE
GRAFTON, ss.

November 8th, 2006

Then personally appeared before me the above-named Stuart J. McCampbell, President of its general partner, Useppa North Corp., and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said McKinley Partners Limited Partnership.

Before me,

Judith D. Vincenti
Notary Public/Attorney-at-Law

JUDITH D. VINCENTI
Notary Public - New Hampshire
My Commission Expires April 7, 2009

SEAL

SCHEDULE A

Certain real estate situated on Great Diamond Island in the City of Portland, County of Cumberland and State of Maine, with all buildings and improvements situated thereon, more particularly described as follows:

Conveyance

First Parcel:

A certain lot or parcel of land, with the buildings thereon, being a portion of an island known as Great Diamond Island, formerly known as Great Hog Island, situated in Casco Bay, City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point located at the intersection of the prolongation, northwesterly, of the southwesterly line of Longfellow Street, so-called, as shown on a plan of land of the Diamond Island Association, recorded in the Cumberland County Registry of Deeds in Plan Book 4, Page 42, and the high water mark, said point being the northwesterly corner of the hereinafter described Fourth Parcel; thence S 30° 12' E, by said prolongation northwesterly of the southwesterly line of Longfellow Street and by said southwesterly line of Longfellow Street, 819.55 feet to the northwesterly line of Sunset Avenue as shown on the above-described plan; thence S 62° 55' W by the said northwesterly line of Sunset Avenue, 433.67 feet to a stone monument in the northeasterly line of Willis Street; thence N 37° 52' W by the said northeasterly line of Willis Street and by the prolongation northwesterly of the said northeasterly line of Willis Street, 904.4 feet to the high water mark; thence in a generally northeasterly direction by said high water mark 588 feet, more or less; to the point of beginning, and containing 9.783 acres of land, more or less, as shown on a plat entitled "9.783 Acres to be Acquired by Declaration of Taking" filed August 11, 1942 District Court and recorded in said Registry of Deeds in Plan Book 28, Page 30.

Second Parcel:

A certain parcel of land, with the buildings thereon, situated at the northeast end of said Great Diamond Island between Diamond Cove on the southeast and Casco Bay on the North, containing 40 acres, more or less, bounded and described as follows:

Beginning at a point at the northwest corner of said Diamond Cove marked by the insertion of a copper bolt in the rock; thence from said point in a direction N 34° W a distance of 110 rods to Casco Bay; thence by said Bay and by said Cove to the point of beginning, including all the land on Great Diamond Island lying northeast of the above-described land, as shown on a plat of "Great Hog Island, copy of Ansons Plan with Subdivision upon it" by E.C. Jordan, C.E., January 1880; and recorded in said Registry of Deeds in Plan Book 4, Page 24.

Third Parcel:

A certain lot or parcel of land, with the buildings thereon, situated at the northeast end of said Great Diamond Island between Diamond Cove on the northwest and the sea on the southeast, containing 30 acres, more or less, bounded and described as follows:

Beginning at a point at the southwest corner of said Diamond Cove marked by the insertion of a copper bolt in the rock; thence S 50° W 12 rods to a point; thence South a distance of 87 rods to the sea; thence by the sea and by said Diamond Cove to the point of beginning, including all the land on Great Diamond Island lying easterly of said line, together with the shore and all the privileges and appurtenances belonging to said land, as shown on a plat of "Great Hog Island, Copy of Ansons Plan with Subdivision upon it" by E.C. Jordan, C.E., January 1880, and recorded in said Registry of Deeds in Plan Book 4, Page 24.

Fourth Parcel:

A certain lot or parcel of land, with the buildings thereon, being a portion of said Great Diamond Island, containing 113 acres of land, more or less, bounded and described as follows:

Beginning at a monument set on the easterly line of South Government Street, which is also the westerly line of the hereinbefore described Third Parcel. Said monument is located at the junction of the easterly line of South Government Street and the southwesterly line of Zephyr Street as delineated upon a plan of land of Great Diamond Island recorded in said Registry of Deeds in Plan Book 6, Page 4.

Thence northerly by said easterly line of South Government Street to an angle in said street opposite Lot No. 469 on said plan; thence northeasterly by the sideline of South Government Street to the high water mark in Diamond Cove; thence northerly following the high water mark around said Diamond Cove to a point which is opposite to and in the prolongation of the northeasterly line of North Government Street as delineated on said plan.

Thence northerly to a bolt in the bank, which bolt is on the northeasterly line of said North Government Street and on the southwesterly line of the hereinbefore described Second Parcel; thence northerly by the northeasterly line of said North Government Street to the high water mark in Casco Bay; thence westerly following the high water mark in said Casco Bay to a point opposite and in the prolongation of the westerly line of Longfellow Street as delineated on said plan; thence southerly by the prolongation of the westerly line of said Longfellow Street and by said westerly line of Longfellow Street to Diamond Avenue; thence southerly by the said prolongation of the westerly line of Longfellow Street across Diamond Avenue to a point on the southerly line of said Diamond Avenue and on the northerly side of Lot No. 411 as delineated on said plan; thence northeasterly by the southerly line of Diamond Avenue to the southwesterly side of Zephyr Street; thence southerly by said southwesterly line of Zephyr Street to the point of beginning. Being all that tract of land on Great Diamond Island, including all streets, avenues, ways, parks, public land and flats adjacent thereto, lying between the southwesterly line of

Longfellow and Zephyr Streets and the land belonging to the United States of America as delineated on said plan.

Meaning and intending to describe and convey and hereby conveying four contiguous parcels comprising one block of land.

Exceptions for Declared Lots

Excepting from the above-described premises, those certain lots, together with the buildings and improvements thereon, situated on Great Diamond Island in the City of Portland, County of Cumberland and State of Maine and being listed below as shown on a Plan entitled "Diamond Cove, Great Diamond Island, Portland, Maine, Plan of Diamond Cove," dated September 27, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 181, Page 36, as amended by Plan dated August 30, 1990, and recorded in said Registry of Deeds in Plan Book 187, Page 37, and as further amended by plans dated February 21, 1994 and recorded in said Registry of Deeds in Plan Book 194, Pages 58 and 59, and as further amended by plan dated March 8, 1994 and recorded in said Registry of Deeds in Plan Book 194, Page 67, and as further amended by plan dated December 5, 1994 and recorded in said Registry of Deeds in Plan Book 194, Page 437, and as further amended by plan dated June 10, 1998 and recorded in said Registry of Deeds in Plan Book 198, Page 188, and as further amended by plan dated June 1, 1999 and recorded in said Registry of Deeds in Plan Book 199, Page 341, and as further amended by plan dated July 1, 1999 and recorded in said Registry of Deeds in Plan Book 199, Page 340, and as further amended by plans dated February 5, 2001, and recorded in said Registry of Deeds in Plan Book 201, Pages 36 and 37, and as further amended by plans recorded on August 22, 2002 in Plan Book 202, Pages 526-28 (as amended, the "Phase I Plan"), to which Phase I Plan and the record thereof reference can be made for a more particular description of the following excepted premises: Lots 1A, 1B, 2, 3, 4, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 12, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 18, 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 20, 21A, 21B, 22, 23A, 23B, 24A, 24B, 25A, 25B, 26, 27, 29, 30A, 30B, 30C, 32, 34, 46A, 46B, 46C, 46D, 46E, 46F, 46G, 46H, 46I, 46J, 46K, 46L, 46M, 46N, 47A, 47B, 48A, 48B, 54A, 54B, 55A, 55B, 56A, 56B, 56C, 56D, 69, 70, and 78.

Also excepting those certain lots or parcels of land, together with the buildings and improvements thereon, situated on Great Diamond Island in the City of Portland, County of Cumberland and State of Maine and being listed below as shown on a Plan entitled "Amended Recording Plat, Diamond Cove Phase II, Great Diamond Island, Portland, Maine, dated July 9, 1991, and recorded in the Cumberland County registry of Deeds in Plan Book 191, Pages 143 through 145, as amended by plans dated December 15, 1998 and recorded in said registry of deeds at Plan Book 198, Pages 389 and 390 (as amended, the "Phase II Plan"), to which Phase II Plan and the record thereof reference can be made for a more particular description of the following excepted premises: Lots 2, 3, 4, 5, 7, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 39, 40, 41, 42 (which includes both 42A and 42B), 44, 47, 56, 57, 61, 63, 66, 67, 58, and 69.

Reference to Declaration

The above described premises are conveyed together with and subject to the covenants, conditions, restrictions, rights, easements, charges, liens and other matters set forth or referred to in an Amended and Restated General Declaration of Covenants and Restrictions dated December 17, 1993, and recorded at said Registry of Deeds in Book 11277, Page 322, including Exhibit A thereto, 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 (the "Second Supplement"), 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").

Statement of Intent

Meaning and intending to convey and hereby conveying all of the Common Properties (including, without limitation, the Open Space Recreation Areas and the Homeowners' Reserve Areas, and Common Buildings 11, 31, 45, 60, and 84), as defined in the Declaration and depicted on the Phase I Plan and the Phase II Plan; together with all rights and easements appurtenant to the Common Properties (including, without limitation, the right to enforce Homeowners' Reserve Easements depicted on the Phase II Plan).

Being a portion of the premises conveyed to McKinley Partners Limited Partnership by deed of Diamond Cove Associates dated December 17, 1993 and recorded in said Registry of Deeds in Book 11199, Page 237.

Further reference is made to an Assignment of Declarant Rights from Diamond Cove Associates to McKinley Partners Limited Partnership, dated December 17, 1993 and recorded in said Registry of Deeds in Book 11199, Page 247.

Fixtures

Also conveying and granting hereby as part of the realty and as property transferred hereunder, all of the following articles now on said premises or used in connection therewith: All plumbing, heating, lighting, refrigerating, ventilating and air conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, tanks, motors, sprinkler and fire extinguishing systems, door bell and alarm systems, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, built-in cases, counters, trees, hardy shrubs and perennial flowers, and other equipment, machinery, furniture and

furnishings, fixtures and articles of personal property now owned by Grantor and now affixed to, placed upon or used in connection with the operation of said premises.

References to DEP Site Orders

The premises conveyed herein are subject to the terms and conditions of the following State of Maine Department of Environmental Protection Orders:
dated December 10, 1986 and recorded in said Registry of Deeds in Book 7585, Page 112;
dated December 9, 1987 and recorded in said Registry of Deeds in Book 8848, Page 314;
dated May 10, 1989 and recorded in said Registry of Deeds in Book 8772, Page 161;
dated July 5, 1989 and recorded in said Registry of Deeds in Book 8833, Page 12,
re-recorded in said Registry of Deeds in Book 8902, Page 118;
dated October 12, 1989 and recorded in said Registry of Deeds in Book 8964, Page 155;
dated February 8, 1990 and recorded in said Registry of Deeds in Book 9109, Page 292;
dated June 25, 1991 and recorded in said Registry of Deeds in Book 9641, Page 287;
dated January 31, 1994 and recorded in said Registry of Deeds in Book 11280, Page 312;
dated March 28, 1994 and recorded in said Registry of Deeds in Book 11385, Page 5;
dated June 4, 1997 and recorded in said Registry of Deeds in Book 13131, Page 332;
dated March 26, 1999 and recorded in said Registry of Deeds in Book 14686, Page 280;
dated September 3, 1999 and recorded in said Registry of Deeds in Book 15044, Page 282;
dated May 17, 2001 and recorded in said Registry of Deeds in Book 16401, Page 256;
dated May 17, 2001 and recorded in said Registry of Deeds in Book 16401, Page 270;
dated June 4, 2001 and recorded in said Registry of Deeds in Book 16459, Page 349;
dated June 11, 2001 and recorded in said Registry of Deeds in Book 16459, Page 343;
dated June 11, 2001 and recorded in said Registry of Deeds in Book 16470, Page 341;
dated June 11, 2001 and recorded in said Registry of Deeds in Book 16877, Page 285;
dated June 15, 2001 and recorded in said Registry of Deeds in Book 16536, Page 258; and
dated June 19, 2003 and recorded in said Registry of Deeds in Book 20049, Page 7.

Military Landfill Area Restriction

This property is conveyed subject to the restriction that the portion of the Open Space Recreation Area within the area described below and depicted on the sketch attached hereto as Exhibit 1, which is a former landfill used by the United States Military, shall not be developed, excavated, regraded or otherwise disturbed, as required by the Site Location Order of the Department of Environmental dated December 9, 1987, recorded in the Cumberland County Registry of Deeds in Book 8848, Page 314:

Beginning at a common corner between Lot 26 and the Open Space Recreation Area, at a point where two tie lines intersect the boundary, being plus or minus 30 feet westerly from the edge of the Atlantic Ocean, as shown on the Phase II Plan, Sheet 1 of 3; thence with the boundary between Lot 26 and the Open Space Recreation Area, S 87° 23' 22" W 50 feet to a point; thence N 27° W 100 feet to a point; thence N 50° E 100 feet to a point; thence S 83° 07' 44" E 62.43 feet to a point; thence S 16° 45' 12" W 150 feet to the place of beginning.

Intertidal Zone

Also hereby conveying all of the Grantor's right, title and interest in and to the adjacent intertidal zone, defined as that area lying between the sidelines of the above-described premises extended seaward to the mean low water mark; said intertidal area being subject, however, to the rights of the United States of America, and the public generally in and to that portion of the premises lying below the mean high water mark of Diamond Cove, Casco Bay and/or the Atlantic Ocean.

Piers and Landing

Also hereby conveying all of the Grantor's right, title and interest in all piers, wharfs, docks and other improvements and appurtenances to the above-described property, including without limitation, the Stone Pier (also known as the Moon Garden), the Pier, and the landing that constitutes the extension of Diamond Avenue, all as shown on Sheet 3 of the Phase I Plan, as amended, and the so-called barge landing; but not including the floating docks, ramps, fixtures, fasteners, anchors, hardware, utility fixtures, pipes, pilings and other tangible personal property that constitute the Marina at Diamond Cove.

Rights of the Declarant

Also hereby conveying all of the Grantor's right, title and interest as the Declarant under the Declaration, including (without limitation) the "Rights Reserved by the Declarant" as described in Section 7.6 of the Declaration, and all rights reserved by Grantor, as Declarant, in the Second Supplement and the Third Supplement.

Matters of Record

The premises conveyed herein are conveyed together with all easements and rights appurtenant thereto and subject to all matters of record, including without limitation:

1. Rights and easements granted to the Portland Water District by deed of the United States of America, acting by and through the Administrator of General Services, dated September 20, 1955 and recorded in said Registry of Deeds in Book 2254, Page 97;
2. Rights and easements of the Portland Water District as set forth in the following deeds:
(a) deed from the United States of America, acting by and through the Administrator of General Services, to Michael A. Montalbano, dated November 22, 1961 and recorded in said Registry of Deeds in Book 2649, Page 156; (b) deed of Michael A. Montalbano dated March 21, 1962 and recorded in said Registry of Deeds in Book 2594, Page 458; and (c) deed of the United States of America, acting by and through the Department of the Navy, dated April 30, 1962 and recorded in said Registry of Deeds in Book 2670, Page 274;

3. Rights and easements granted to Central Maine Power Company in an instrument dated March 5, 1987 and recorded in said Registry of Deeds in Book 7779, Page 186;
4. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company in an instrument dated February 14, 1989 and recorded in said Registry of Deeds in Book 8680, Page 105;
5. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company in an instrument dated July 10, 1989 and recorded in said Registry of Deeds in Book 8839, Page 267;
6. Rights and easements granted to Central Maine Power Company and New England Telephone and Telegraph Company in an instrument dated October 7, 1994 and recorded in the said Registry in Book 11675, Page 226;
7. Terms and Conditions as set forth in a Development Contract (Residential Electric Service Contract) between Central Maine Power Company and McKinley Partners Limited Partnership dated October 7, 1994 and recorded in the said Registry in Book 12040, Page 101;
8. Terms and Conditions as set forth in a Development Contract (Residential Electric Service Contract) between Central Maine Power Company and McKinley Partners Limited Partnership dated October 7, 1994 and recorded December 6, 1995 in the said Registry in Book 12247, Page 148;
9. Rights and easements granted to Central Maine Power Company and New England Telephone & Telegraph Company in an instrument dated March 22, 1999 and recorded in the said Registry of Deeds in Book 14717, Page 69;
10. Rights and easements that have been granted to Central Maine Power Company and New England Telephone & Telegraph Company in an instrument dated May 11, 1999 and recorded in the said Registry of Deeds in Book 14818, Page 241;
11. Amendment to Portland City Code Section 14-49 (Zoning Map) re: Conditional Rezoning of Ft. McKinley dated July 15, 1985 and recorded in said Registry in Book 8928, Page 263;
12. Terms and conditions as set forth in Affidavit of Joseph E. Gray, Jr., Director of Planning and Urban Development for the City of Portland, dated May 24, 1990 and recorded in the said Registry in Book 9221, Page 61;
13. Rights or claims of others, if any, in and to that portion of the premises within the bounds of the cemetery shown on the Phase I Plan, together with the rights of ingress and egress thereto;
14. Subject to the rights of the public to view and study the batteries and standing military facilities on Great Diamond Island, including those on the conveyed premises, as described in Section 7.10 of the Declaration;

15. Subject to the terms and conditions of certain easements set forth in a Warranty Deed from McKinley Partners Limited Partnership to Diamond's Edge, LLC dated December 17, 1999 and recorded at said Registry in Book 15231, Page 179, as appurtenant to Lots 29, 32, and 34 conveyed therein for access to said Lots and for utility lines and pipes to service the Lots, and as appurtenant to Lot 34 for the common use of public restrooms. (With respect to the "exclusive use easements" mentioned in said Warranty Deed, reference is made to the Release of Easement from Diamond's Edge, LLC dated September 3, 2002, recorded at said Registry of Deeds in Book 18125, Page 241.)

16. Subject to and benefitting from the terms and conditions of an unrecorded Sublease Agreement dated December 17, 1999, by and between McKinley Partners Limited Partnership and Diamond's Edge, LLC, a Memorandum of which is recorded in the Cumberland County Registry of Deeds in Book 15375, Page 234, as amended by Amendment to Sublease Agreement dated September 17, 2001, with an Amendment to Memorandum of Lease being recorded at said Registry of Deeds in Book 16898, Page 314.

17. Subject to and benefitting from the following agreements with Yoursamine LLC:
(a) Ground Lease for Lot 69 dated July 26, 2002, a Memorandum of which Ground Lease being recorded at the Cumberland County Registry of Deeds in Book 17939 Page 232; (b) Ground Lease for Lot 70 dated July 26, 2002, a Memorandum of which Ground Lease being recorded at said Registry of Deeds in Book 17939, Page 240; and (c) Sewage Easement Agreement dated July 26, 2002, recorded at said Registry of Deeds in Book 17939, Page 248.

18. Subject to and benefitting from the terms and conditions of a Ground Lease with Diamond's Edge LLC for land adjacent to Lot 29 (effective date Sept. 1, 2002), a Memorandum of which Ground Lease being recorded at the Cumberland County Registry of Deeds in Book 18195, Page 241.

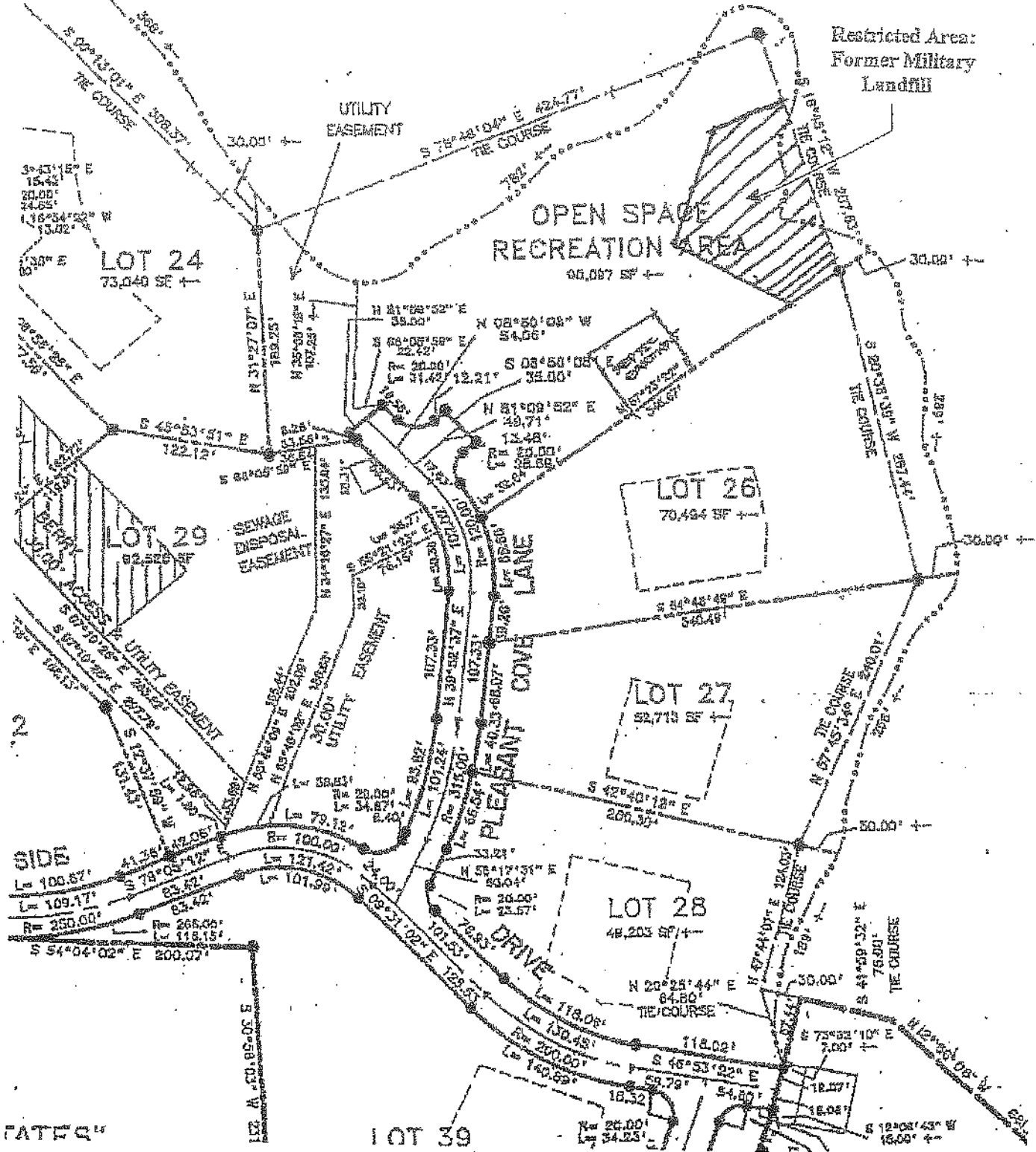
EXHIBIT 1

Doc# 74397 Blk#24560 Pg# 113

Received
Recorded Registrar of Deeds
Nov 13, 2006 10:17:55A
Cumberland County
John B O'Brien

PLEASANT COVE

Restricted Area:
Former Military
Landfill



"PATE"

LOT 39

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.

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. LEBMAN (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, their 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 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 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 services² 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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The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 1

Stage-Storage Table						
Elevation	Surface Area	Average Stage Area	Void Percentage	Stage Volume	Cumulative Volume	Comments
97.5	42 ft ²				0 ft ³	Filter Bottom
		42 ft ²	33%	21 ft ³		
99	42 ft ²				21 ft ³	Filter Surface
		56 ft ²	100%	5 ft ³		
99.1	67 ft ²				26 ft ³	
		82 ft ²	100%	8 ft ³		
99.2	97 ft ²				35 ft ³	
		115 ft ²	100%	11 ft ³		
99.3	132 ft ²				46 ft ³	
		151 ft ²	100%	15 ft ³		
99.4	170 ft ²				61 ft ³	
		185 ft ²	100%	19 ft ³		
99.5	200 ft ²				80 ft ³	Outlet Elev.
		219 ft ²	100%	22 ft ³		
99.6	239 ft ²				102 ft ³	
		281 ft ²	100%	28 ft ³		
99.7	323 ft ²				130 ft ³	

Required Storage Volume¹: 70 CF
 Storage Volume Provided: 80 CF
 Required Filter Area²: 42 SF
 Filter Area Provided: 42 SF
 Storage Depth: 0.5 ft

Notes:

1. Required Storage Volume = 1" x Impervious Area + 0.4" x Landscaped Area
2. Required Filter Area = 5% Impervious Area + 2% Landscaped Area

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 1

Drawdown Time					
Water El.	Depth (ft)	Stage Volume (cf)	Head (ft)	Orifice Flow (cfs)	Drawdown Time (hr)
97.5					
	0	21	3	0.00	8.16
99					
	0.1	5	3.1	0.00	2.10
99.1					
	0.2	8	3.2	0.00	3.11
99.2					
	0.3	11	3.3	0.00	4.27
99.3					
	0.4	15	3.4	0.00	5.55
99.4					
	0.5	19	3.5	0.00	6.70
99.5					
Total					29.90

The orifice diameter is designed to result in a total drawdown time of 24-48 hrs.
 Orifice Flow = $CA(2gh)^{1/2}$

Orifice Dia. 1/8 in.
 Orifice Area 8.5221E-05 ft²
 Acceleration of Gravity, g 32.174 ft/s²
 Orifice Coefficient, C 0.6
 Filter Surface to Orifice 3 ft

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 2

Stage-Storage Table						
Elevation	Surface Area	Average Stage Area	Void Percentage	Stage Volume	Cumulative Volume	Comments
98.9	45 ft ²				0 ft ³	Filter Bottom
		45 ft ²	33%	22 ft ³		
98.4	45 ft ²				22 ft ³	Filter Surface
		65 ft ²	100%	5 ft ³		
98.5	65 ft ²				28 ft ³	
		75 ft ²	100%	7 ft ³		
98.6	85 ft ²				35 ft ³	
		96 ft ²	100%	10 ft ³		
98.7	106 ft ²				45 ft ³	
		116 ft ²	100%	12 ft ³		
98.8	126 ft ²				56 ft ³	
		133 ft ²	100%	13 ft ³		
98.9	140 ft ²				70 ft ³	Outlet Elev.
		151 ft ²	100%	15 ft ³		
99	161 ft ²				85 ft ³	
		171 ft ²	100%	17 ft ³		
99.1	181 ft ²				102 ft ³	
		191 ft ²	100%	19 ft ³		
99.2	200 ft ²				121 ft ³	

Required Storage Volume¹: 70 CF
 Storage Volume Provided: 70 CF
 Required Filter Area²: 42 SF
 Filter Area Provided: 45 SF
 Storage Depth: 0.5 ft

Notes:

1. Required Storage Volume = 1" x Impervious Area + 0.4" x Landscaped Area
2. Required Filter Area = 5% Impervious Area + 2% Landscaped Area

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 2

Drawdown Time					
Water El.	Depth (ft)	Stage Volume (cf)	Head (ft)	Orifice Flow (cfs)	Drawdown Time (hr)
95.9	0	22	3	0.00	8.69
98.4	0.1	5	3.1	0.00	2.11
98.5	0.2	7	3.2	0.00	2.84
98.6	0.3	10	3.3	0.00	3.56
98.7	0.4	12	3.4	0.00	4.26
98.8	0.5	13	3.5	0.00	4.81
98.9					
Total					26.28

The orifice diameter is designed to result in a total drawdown time of 24-48 hrs.
 Orifice Flow = $CA(2gh)^{1/2}$

Orifice Dia. 1/8 in.
 Orifice Area 8.5221E-05 ft²
 Acceleration of Gravity, g 32.174 ft/s²
 Orifice Coefficient, C 0.6
 Filter Surface to Orifice 3 ft

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 3

Stage-Storage Table						
Elevation	Surface Area	Average Stage Area	Void Percentage	Stage Volume	Cumulative Volume	Comments
96.5	225 ft ²				0 ft ³	Filter Bottom
		225 ft ²	33%	111 ft ³		
98	225 ft ²				111 ft ³	Filter Surface
		318 ft ²	100%	32 ft ³		
98.1	411 ft ²				143 ft ³	
		438 ft ²	100%	44 ft ³		
98.2	465 ft ²				187 ft ³	
		487 ft ²	100%	49 ft ³		
98.3	508 ft ²				236 ft ³	
		534 ft ²	100%	53 ft ³		
98.4	560 ft ²				289 ft ³	
		578 ft ²	100%	58 ft ³		
98.5	595 ft ²				347 ft ³	Outlet Elev.
		617 ft ²	100%	62 ft ³		
98.6	638 ft ²				408 ft ³	
		670 ft ²	100%	67 ft ³		
98.7	703 ft ²				475 ft ³	
		744 ft ²	100%	74 ft ³		
98.8	785 ft ²				550 ft ³	
		818 ft ²	100%	82 ft ³		
98.9	851 ft ²				632 ft ³	

Required Storage Volume¹: 347 CF
 Storage Volume Provided: 347 CF
 Required Filter Area²: 208 SF
 Filter Area Provided: 225 SF
 Storage Depth: 0.5 ft

Notes:

1. Required Storage Volume = 1" x Impervious Area + 0.4" x Landscaped Area
2. Required Filter Area = 5% Impervious Area + 2% Landscaped Area

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 3

Drawdown Time					
Water El.	Depth (ft)	Stage Volume (cf)	Head (ft)	Orifice Flow (cfs)	Drawdown Time (hr)
96.5					
	0	111	3	0.00	10.89
98					
	0.1	32	3.1	0.00	3.06
98.1					
	0.2	44	3.2	0.00	4.15
98.2					
	0.3	49	3.3	0.00	4.53
98.3					
	0.4	53	3.4	0.00	4.90
98.4					
	0.5	58	3.5	0.00	5.23
98.5					
Total					32.75

The orifice diameter is designed to result in a total drawdown time of 24-48 hrs.
 Orifice Flow = $CA(2gh)^{1/2}$

Orifice Dia. 1/4 in.
 Orifice Area 0.00034088 ft²
 Acceleration of Gravity, g 32.174 ft/s²
 Orifice Coefficient, C 0.6
 Filter Surface to Orifice 3 ft

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 4

Stage-Storage Table						
Elevation	Surface Area	Average Stage Area	Void Percentage	Stage Volume	Cumulative Volume	Comments
96.5	264 ft ²				0 ft ³	Filter Bottom
		264 ft ²	33%	131 ft ³		
98	264 ft ²				131 ft ³	Filter Surface
		429 ft ²	100%	43 ft ³		
98.1	594 ft ²				173 ft ³	
		642 ft ²	100%	64 ft ³		
98.2	690 ft ²				238 ft ³	
		736 ft ²	100%	74 ft ³		
98.3	783 ft ²				311 ft ³	
		830 ft ²	100%	83 ft ³		
98.4	877 ft ²				394 ft ³	
		920 ft ²	100%	92 ft ³		
98.5	963 ft ²				486 ft ³	Outlet Elev.
		994 ft ²	100%	99 ft ³		
98.6	1,025 ft ²				586 ft ³	
		1,057 ft ²	100%	106 ft ³		
98.7	1,089 ft ²				691 ft ³	
		1,121 ft ²	100%	112 ft ³		
98.8	1,154 ft ²				803 ft ³	

Required Storage Volume¹: 433 CF
 Storage Volume Provided: 486 CF
 Required Filter Area²: 259 SF
 Filter Area Provided: 264 SF
 Storage Depth: 0.5 ft

Notes:

1. Required Storage Volume = 1" x Impervious Area + 0.4" x Landscaped Area
2. Required Filter Area = 5% Impervious Area + 2% Landscaped Area

The Inn at Diamond Cove
 Job No. 2769
 Bioretention Cell 4

Drawdown Time					
Water El.	Depth (ft)	Stage Volume (cf)	Head (ft)	Orifice Flow (cfs)	Drawdown Time (hr)
98.5					
	0	131	3	0.00	8.17
98					
	0.1	43	3.1	0.00	2.64
98.1					
	0.2	64	3.2	0.00	3.89
98.2					
	0.3	74	3.3	0.00	4.39
98.3					
	0.4	83	3.4	0.00	4.88
98.4					
	0.5	92	3.5	0.00	5.33
98.5					
Total					29.29

The orifice diameter is designed to result in a total drawdown time of 24-48 hrs.
 Orifice Flow = $CA(2gh)^{1/2}$

Orifice Dia. 5/16 in.
 Orifice Area 0.00053263 ft²
 Acceleration of Gravity, g 32.174 ft/s²
 Orifice Coefficient, C 0.6
 Filter Surface to Orifice 3 ft

ATTACHMENT C

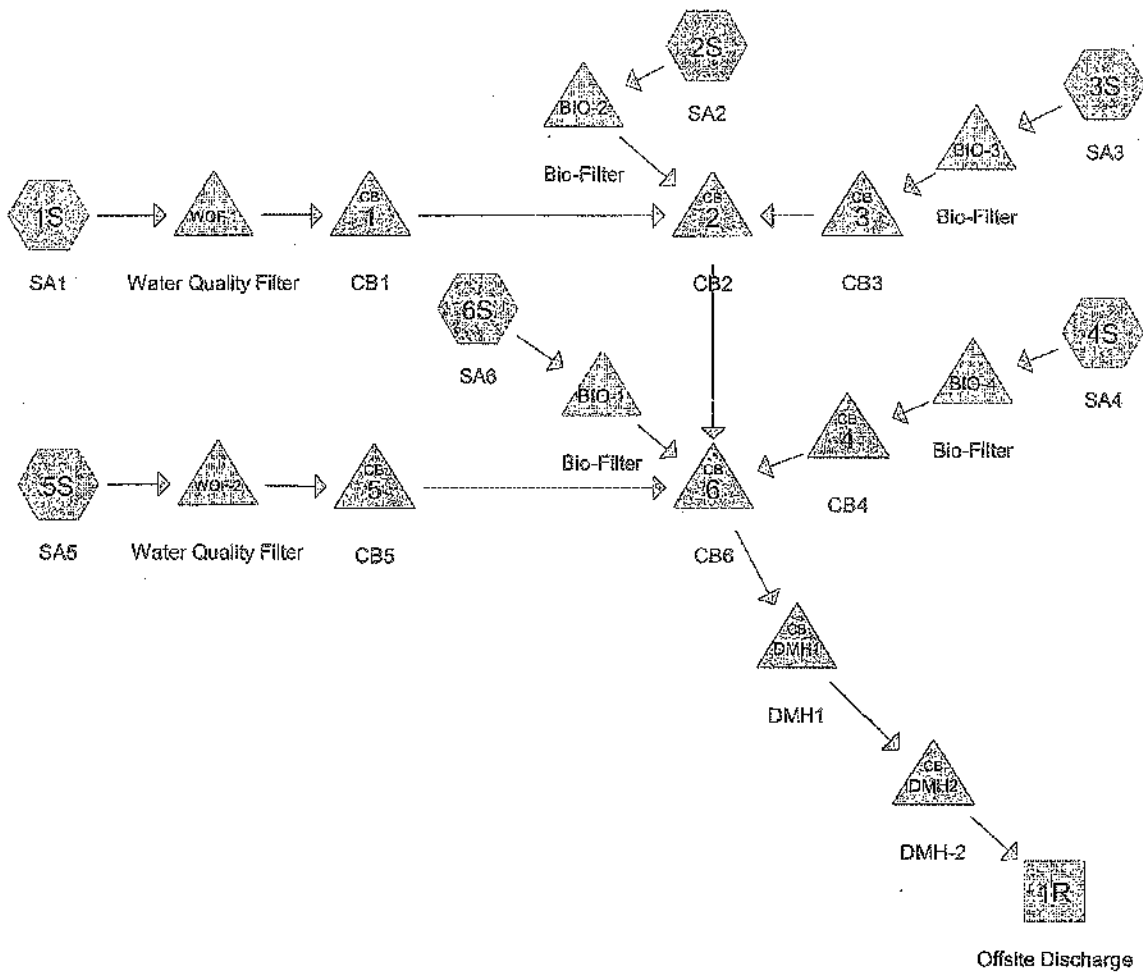
General Standard Calculation (Treatment Percentages)

The Inn at Diamond Cove
 Job No. 2769
 General Standard Calculations

Watershed ID	Total Area	Impervious Area	Landscaped Area	Developed Area	% Treated	Weighted Impervious Area % Treated	Weighted Developed Area % Treated
Building Addition	2,998 SF	2,998 SF	0 SF	2,998 SF	100%	30.33%	16.50%
1	866 SF	456 SF	410 SF	866 SF	100%	4.62%	4.77%
2	1,291 SF	543 SF	748 SF	1,291 SF	100%	5.50%	7.11%
3	7,742 SF	1,773 SF	2,522 SF	4,295 SF	100%	17.95%	23.65%
4	8,650 SF	2,742 SF	2,571 SF	5,313 SF	100%	27.76%	29.25%
5	866 SF	456 SF	410 SF	866 SF	100%	4.62%	4.77%
6	1,291 SF	543 SF	748 SF	1,291 SF	100%	5.50%	7.11%
7	1,244 SF	369 SF	875 SF	1,244 SF	0%	0.00%	0.00%
TOTAL	25,146 SF	9,878 SF	8,284 SF	18,162 SF		96.26%	93.15%

ATTACHMENT D

TR-20 Computations (HydroCAD)



Drainage Diagram for Post-Hydro_REV2-6-09
 Prepared by DeLuca-Hoffman Associates, Inc., Printed 2/9/2009
 HydroCAD® 8.50 s/n 000734 © 2007 HydroCAD Software Solutions LLC

Time span=1.00-30.00 hrs, dt=0.01 hrs, 2901 points

Runoff by SCS TR-20 method, UH=SCS

Reach routing by Dyn-Stor-Ind method - Pond routing by Dyn-Stor-Ind method

Subcatchment 1S: SA1 Runoff Area=866 sf 52.66% Impervious Runoff Depth=2.07"
Flow Length=15' Slope=0.0500 '/ Tc=1.5 min CN=91 Runoff=0.06 cfs 0.003 af

Subcatchment 2S: SA2 Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=1.98"
Flow Length=30' Slope=0.0400 '/ Tc=2.9 min CN=90 Runoff=0.08 cfs 0.005 af

Subcatchment 3S: SA3 Runoff Area=7,742 sf 22.90% Impervious Runoff Depth=1.59"
Flow Length=113' Tc=15.8 min CN=85 Runoff=0.24 cfs 0.024 af

Subcatchment 4S: SA4 Runoff Area=8,850 sf 30.98% Impervious Runoff Depth=1.66"
Flow Length=99' Tc=3.7 min CN=86 Runoff=0.43 cfs 0.028 af

Subcatchment 5S: SA5 Runoff Area=866 sf 52.66% Impervious Runoff Depth=2.07"
Flow Length=15' Slope=0.0500 '/ Tc=1.5 min CN=91 Runoff=0.06 cfs 0.003 af

Subcatchment 6S: SA6 Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=1.98"
Flow Length=30' Slope=0.0400 '/ Tc=2.9 min CN=90 Runoff=0.08 cfs 0.005 af

Reach 1R: Offsite Discharge Inflow=0.08 cfs 0.030 af
Outflow=0.08 cfs 0.030 af

Pond 1: CB1 Peak Elev=94.85' Inflow=0.01 cfs 0.001 af
12.0" x 53.0' Culvert Outflow=0.01 cfs 0.001 af

Pond 2: CB2 Peak Elev=94.28' Inflow=0.05 cfs 0.014 af
12.0" x 59.0' Culvert Outflow=0.05 cfs 0.014 af

Pond 3: CB3 Peak Elev=94.61' Inflow=0.04 cfs 0.010 af
12.0" x 24.0' Culvert Outflow=0.04 cfs 0.010 af

Pond 4: CB4 Peak Elev=94.69' Inflow=0.03 cfs 0.011 af
12.0" x 20.0' Culvert Outflow=0.03 cfs 0.011 af

Pond 5: CB5 Peak Elev=94.85' Inflow=0.01 cfs 0.001 af
12.0" x 53.0' Culvert Outflow=0.01 cfs 0.001 af

Pond 6: CB6 Peak Elev=93.62' Inflow=0.08 cfs 0.030 af
12.0" x 49.0' Culvert Outflow=0.08 cfs 0.030 af

Pond BIO-1: Bio-Filter Peak Elev=99.53' Storage=65 cf Inflow=0.08 cfs 0.005 af
Outflow=0.07 cfs 0.004 af

Pond BIO-2: Bio-Filter Peak Elev=98.91' Storage=117 cf Inflow=0.08 cfs 0.005 af
Outflow=0.02 cfs 0.002 af

Pond BIO-3: Bio-Filter Peak Elev=98.52' Storage=586 cf Inflow=0.24 cfs 0.024 af
Outflow=0.04 cfs 0.010 af

Pond BIO-4: Bio-Filter Peak Elev=98.52' Storage=770 cf Inflow=0.43 cfs 0.028 af
Outflow=0.03 cfs 0.011 af

Pond DMH1: DMH1 Peak Elev=93.03' Inflow=0.08 cfs 0.030 af
12.0" x 61.0' Culvert Outflow=0.08 cfs 0.030 af

Pond DMH2: DMH-2 Peak Elev=92.32' Inflow=0.08 cfs 0.030 af
12.0" x 34.0' Culvert Outflow=0.08 cfs 0.030 af

Pond WQF-1: Water Quality Filter Peak Elev=99.51' Storage=87 cf Inflow=0.06 cfs 0.003 af
Outflow=0.01 cfs 0.001 af

Pond WQF-2: Water Quality Filter Peak Elev=99.51' Storage=87 cf Inflow=0.06 cfs 0.003 af
Outflow=0.01 cfs 0.001 af

Summary for Subcatchment 1S: SA1

Runoff = 0.06 cfs @ 12.02 hrs, Volume= 0.003 af, Depth= 2.07"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 2S: SA2

Runoff = 0.08 cfs @ 12.04 hrs, Volume= 0.005 af, Depth= 1.98"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 3S: SA3

Runoff = 0.24 cfs @ 12.22 hrs, Volume= 0.024 af, Depth= 1.58"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
1,773	98	Paved parking & roofs
2,521	84	50-75% Grass cover, Fair, HSG D
3,448	79	Woods, Fair, HSG D
7,742	85	Weighted Average
5,969		Pervious Area
1,773		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
13.5	38	0.0100	0.05		Sheet Flow, Woods: Light underbrush n= 0.400 P2= 3.00"
1.8	26	0.2700	0.24		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.5	49	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
15.8	113	Total			

Summary for Subcatchment 4S: SA4

Runoff = 0.43 cfs @ 12.06 hrs, Volume= 0.028 af, Depth= 1.66"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
2,742	98	Paved parking & roofs
2,571	84	50-75% Grass cover, Fair, HSG D
3,537	79	Woods, Fair, HSG D
8,850	86	Weighted Average
6,108		Pervious Area
2,742		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
3.1	43	0.1800	0.23		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.6	56	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
3.7	99	Total			

Summary for Subcatchment 5S: SA5

Runoff = 0.06 cfs @ 12.02 hrs, Volume= 0.003 af, Depth= 2.07"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 6S: SA6

Runoff = 0.08 cfs @ 12.04 hrs, Volume= 0.005 af, Depth= 1.98"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 2-YEAR Rainfall=3.00"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Reach 1R: Offsite Discharge

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth > 0.75" for 2-YEAR event
Inflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af
Outflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af, Atten= 0%, Lag= 0.0 min

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Summary for Pond 1: CB1

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 0.88" for 2-YEAR event
Inflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af
Outflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af, Atten= 0%, Lag= 0.0 min
Primary = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Peak Elev= 94.85' @ 12.45 hrs
Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.01 cfs @ 12.45 hrs HW=94.85' TW=94.25' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.01 cfs @ 1.02 fps)

Summary for Pond 2: CB2

Inflow Area = 0.227 ac, 28.00% Impervious, Inflow Depth = 0.74" for 2-YEAR event
 Inflow = 0.05 cfs @ 13.00 hrs, Volume= 0.014 af
 Outflow = 0.05 cfs @ 13.00 hrs, Volume= 0.014 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.05 cfs @ 13.00 hrs, Volume= 0.014 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.28' @ 13.00 hrs
 Flood Elev= 99.20'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.17'	12.0" x 59.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 93.58' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.05 cfs @ 13.00 hrs HW=94.28' TW=93.61' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.05 cfs @ 1.66 fps)

Summary for Pond 3: CB3

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 0.70" for 2-YEAR event
 Inflow = 0.04 cfs @ 13.02 hrs, Volume= 0.010 af
 Outflow = 0.04 cfs @ 13.02 hrs, Volume= 0.010 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.04 cfs @ 13.02 hrs, Volume= 0.010 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.61' @ 13.02 hrs
 Flood Elev= 98.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.51'	12.0" x 24.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.04 cfs @ 13.02 hrs HW=94.61' TW=94.28' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.04 cfs @ 1.52 fps)

Summary for Pond 4: CB4

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth > 0.64" for 2-YEAR event
 Inflow = 0.03 cfs @ 13.35 hrs, Volume= 0.011 af
 Outflow = 0.03 cfs @ 13.35 hrs, Volume= 0.011 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.03 cfs @ 13.35 hrs, Volume= 0.011 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Peak Elev= 94.69' @ 13.35 hrs
 Flood Elev= 97.50'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.60'	12.0" x 20.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.40' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.03 cfs @ 13.35 hrs HW=94.69' TW=93.62' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.03 cfs @ 1.43 fps)

Summary for Pond 5: CB5

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 0.88" for 2-YEAR event
 Inflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af
 Outflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.85' @ 12.45 hrs
 Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.01 cfs @ 12.45 hrs HW=94.85' TW=93.59' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.01 cfs @ 1.02 fps)

Summary for Pond 6: CB6

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 0.75" for 2-YEAR event
 Inflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af
 Outflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 93.62' @ 13.19 hrs
 Flood Elev= 99.60'

Device	Routing	Invert	Outlet Devices
#1	Primary	93.48'	12.0" x 49.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 92.99' S= 0.0100 '/ Cc= 0.900 n= 0.012

Primary OutFlow Max=0.08 cfs @ 13.19 hrs HW=93.62' TW=93.03' (Dynamic Tailwater)
 ↑1=Culvert (Barrel Controls 0.08 cfs @ 1.92 fps)

Summary for Pond BIO-1: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 1.98" for 2-YEAR event
 Inflow = 0.08 cfs @ 12.04 hrs, Volume= 0.005 af
 Outflow = 0.07 cfs @ 12.06 hrs, Volume= 0.004 af, Atten= 5%, Lag= 1.3 min
 Primary = 0.07 cfs @ 12.06 hrs, Volume= 0.004 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.53' @ 12.06 hrs Surf.Area= 212 sf Storage= 65 cf

Plug-Flow detention time= 146.2 min calculated for 0.004 af (73% of inflow)
 Center-of-Mass det. time= 56.1 min (862.6 - 806.5)

Volume	Invert	Avail.Storage	Storage Description
#1	99.00'	109 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
99.00	42	0	0
99.10	67	5	5
99.20	97	8	14
99.30	132	11	25
99.40	170	15	40
99.50	200	18	59
99.60	239	22	81
99.70	323	28	109

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.07 cfs @ 12.06 hrs HW=99.53' TW=93.61' (Dynamic Tailwater)
 ↳1=Orifice/Grate (Weir Controls 0.07 cfs @ 0.58 fps)

Summary for Pond BIO-2: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 1.98" for 2-YEAR event
 Inflow = 0.08 cfs @ 12.04 hrs, Volume= 0.005 af
 Outflow = 0.02 cfs @ 12.40 hrs, Volume= 0.002 af, Atten= 75%, Lag= 21.2 min
 Primary = 0.02 cfs @ 12.40 hrs, Volume= 0.002 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.91' @ 12.40 hrs Surf.Area= 143 sf Storage= 117 cf

Plug-Flow detention time= 247.2 min calculated for 0.002 af (46% of inflow)
 Center-of-Mass det. time= 131.1 min (937.6 - 806.5)

Volume	Invert	Avail.Storage	Storage Description
#1	96.90'	166 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.90	45	33.0	0	0
98.40	45	100.0	68	68
98.50	65	100.0	5	73
98.60	85	100.0	7	80
98.70	106	100.0	10	90
98.80	126	100.0	12	102
98.90	140	100.0	13	115
99.00	161	100.0	15	130
99.10	181	100.0	17	147
99.20	200	100.0	19	166

Device	Routing	Invert	Outlet Devices
#1	Primary	98.90'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.02 cfs @ 12.40 hrs HW=98.91' TW=94.24' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.02 cfs @ 0.37 fps)

Summary for Pond BIO-3: Bio-Filter

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 1.59" for 2-YEAR event
 Inflow = 0.24 cfs @ 12.22 hrs, Volume= 0.024 af
 Outflow = 0.04 cfs @ 13.02 hrs, Volume= 0.010 af, Atten= 84%, Lag= 47.9 min
 Primary = 0.04 cfs @ 13.02 hrs, Volume= 0.010 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.52' @ 13.02 hrs Surf.Area= 604 sf Storage= 586 cf

Plug-Flow detention time= 272.2 min calculated for 0.010 af (44% of inflow)
 Center-of-Mass det. time= 151.0 min (989.1 - 838.1)

Volume	Invert	Avail.Storage	Storage Description
#1	96.50'	858 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.50	225	33.0	0	0
98.00	225	100.0	338	338
98.10	411	100.0	32	369
98.20	465	100.0	44	413
98.30	508	100.0	49	462
98.40	560	100.0	53	515
98.50	595	100.0	58	573
98.60	638	100.0	62	635
98.70	703	100.0	67	702
98.80	785	100.0	74	776
98.90	851	100.0	82	858

Device	Routing	Invert	Outlet Devices
#1	Primary	98.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.04 cfs @ 13.02 hrs HW=98.52' TW=94.61' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.04 cfs @ 0.47 fps)

Summary for Pond BIO-4: Bio-Filter

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth = 1.66" for 2-YEAR event
 Inflow = 0.43 cfs @ 12.06 hrs, Volume= 0.028 af
 Outflow = 0.03 cfs @ 13.35 hrs, Volume= 0.011 af, Atten= 92%, Lag= 77.4 min
 Primary = 0.03 cfs @ 13.35 hrs, Volume= 0.011 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.52' @ 13.35 hrs Surf.Area= 974 sf Storage= 770 cf

Plug-Flow detention time= 305.7 min calculated for 0.011 af (39% of inflow)
 Center-of-Mass det. time= 182.2 min (1,005.4 - 823.2)

Volume	Invert	Avail.Storage	Storage Description
#1	96.50'	1,069 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.50	264	33.0	0	0
98.00	264	100.0	396	396
98.10	594	100.0	43	439
98.20	690	100.0	64	503
98.30	783	100.0	74	577
98.40	877	100.0	83	660
98.50	963	100.0	92	752
98.60	1,025	100.0	99	851
98.70	1,089	100.0	106	957
98.80	1,154	100.0	112	1,069

Device	Routing	Invert	Outlet Devices
#1	Primary	98.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.03 cfs @ 13.35 hrs HW=98.52' TW=94.69' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.03 cfs @ 0.44 fps)

Summary for Pond DMH1: DMH1

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 0.75" for 2-YEAR event
 Inflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af
 Outflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 93.03' @ 13.19 hrs
 Flood Elev= 99.90'

Device	Routing	Invert	Outlet Devices
#1	Primary	92.89'	12.0" x 61.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 92.28' S= 0.0100 /' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.08 cfs @ 13.19 hrs HW=93.03' TW=92.32' (Dynamic Tailwater)
 1=Culvert (Barrel Controls 0.08 cfs @ 1.93 fps)

Summary for Pond DMH2: DMH-2

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 0.75" for 2-YEAR event
 Inflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af
 Outflow = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.08 cfs @ 13.19 hrs, Volume= 0.030 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 92.32' @ 13.19 hrs
 Flood Elev= 97.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	92.18'	12.0" x 34.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 84.00' S= 0.2406 /' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.08 cfs @ 13.19 hrs HW=92.32' TW=0.00' (Dynamic Tailwater)
 1=Culvert (Inlet Controls 0.08 cfs @ 1.27 fps)

Summary for Pond WQF-1: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 2.07" for 2-YEAR event
 Inflow = 0.06 cfs @ 12.02 hrs, Volume= 0.003 af
 Outflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af, Atten= 83%, Lag= 25.8 min
 Primary = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.51' @ 12.45 hrs Surf.Area= 132 sf Storage= 87 cf

Plug-Flow detention time= 267.0 min calculated for 0.001 af (42% of inflow)
 Center-of-Mass det. time= 147.5 min (948.2 - 800.7)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.01 cfs @ 12.45 hrs HW=99.51' TW=94.85' (Dynamic Tailwater)
 ↳1=Orifice/Grate (Weir Controls 0.01 cfs @ 0.30 fps)

Summary for Pond WQF-2: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 2.07" for 2-YEAR event
 Inflow = 0.06 cfs @ 12.02 hrs, Volume= 0.003 af
 Outflow = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af, Atten= 83%, Lag= 25.8 min
 Primary = 0.01 cfs @ 12.45 hrs, Volume= 0.001 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.51' @ 12.45 hrs Surf.Area= 132 sf Storage= 87 cf

Plug-Flow detention time= 267.0 min calculated for 0.001 af (42% of inflow)
 Center-of-Mass det. time= 147.5 min (948.2 - 800.7)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Post-Hydro_REV2-6-09

Type III 24-hr 2-YEAR Rainfall=3.00"

Prepared by DeLuca-Hoffman Associates, Inc.

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Primary OutFlow Max=0.01 cfs @ 12.45 hrs HW=99.51' TW=94.85' (Dynamic Tailwater)

↳ 1=Orifice/Grate (Weir Controls 0.01 cfs @ 0.30 fps)

Time span=1.00-30.00 hrs, dt=0.01 hrs, 2901 points
 Runoff by SCS TR-20 method, UH=SCS
 Reach routing by Dyn-Stor-Ind method - Pond routing by Dyn-Stor-Ind method

Subcatchment 1S: SA1	Runoff Area=866 sf 52.66% Impervious Runoff Depth=3.69" Flow Length=15' Slope=0.0500 1' Tc=1.5 min CN=91 Runoff=0.10 cfs 0.006 af
Subcatchment 2S: SA2	Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=3.59" Flow Length=30' Slope=0.0400 1' Tc=2.9 min CN=90 Runoff=0.14 cfs 0.009 af
Subcatchment 3S: SA3	Runoff Area=7,742 sf 22.90% Impervious Runoff Depth=3.09" Flow Length=113' Tc=15.8 min CN=85 Runoff=0.48 cfs 0.046 af
Subcatchment 4S: SA4	Runoff Area=8,850 sf 30.98% Impervious Runoff Depth=3.19" Flow Length=99' Tc=3.7 min CN=86 Runoff=0.82 cfs 0.054 af
Subcatchment 5S: SA5	Runoff Area=866 sf 52.66% Impervious Runoff Depth=3.69" Flow Length=15' Slope=0.0500 1' Tc=1.5 min CN=91 Runoff=0.10 cfs 0.006 af
Subcatchment 6S: SA6	Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=3.59" Flow Length=30' Slope=0.0400 1' Tc=2.9 min CN=90 Runoff=0.14 cfs 0.009 af
Reach 1R: Offsite Discharge	Inflow=0.96 cfs 0.091 af Outflow=0.96 cfs 0.091 af
Pond 1: CB1	Peak Elev=94.95' Inflow=0.10 cfs 0.004 af 12.0" x 53.0' Culvert Outflow=0.10 cfs 0.004 af
Pond 2: CB2	Peak Elev=94.54' Inflow=0.52 cfs 0.043 af 12.0" x 59.0' Culvert Outflow=0.52 cfs 0.043 af
Pond 3: CB3	Peak Elev=94.86' Inflow=0.44 cfs 0.033 af 12.0" x 24.0' Culvert Outflow=0.44 cfs 0.033 af
Pond 4: CB4	Peak Elev=95.01' Inflow=0.58 cfs 0.037 af 12.0" x 20.0' Culvert Outflow=0.58 cfs 0.037 af
Pond 5: CB5	Peak Elev=94.95' Inflow=0.10 cfs 0.004 af 12.0" x 53.0' Culvert Outflow=0.10 cfs 0.004 af
Pond 6: CB6	Peak Elev=93.99' Inflow=0.96 cfs 0.091 af 12.0" x 49.0' Culvert Outflow=0.96 cfs 0.091 af
Pond BIO-1: Bio-Filter	Peak Elev=99.55' Storage=69 cf Inflow=0.14 cfs 0.009 af Outflow=0.13 cfs 0.008 af
Pond BIO-2: Bio-Filter	Peak Elev=98.95' Storage=122 cf Inflow=0.14 cfs 0.009 af Outflow=0.13 cfs 0.006 af
Pond BIO-3: Bio-Filter	Peak Elev=98.61' Storage=638 cf Inflow=0.48 cfs 0.046 af Outflow=0.44 cfs 0.033 af

Pond BIO-4: Bio-Filter Peak Elev=98.63' Storage=879 cf Inflow=0.82 cfs 0.054 af
Outflow=0.58 cfs 0.037 af

Pond DMH1: DMH1 Peak Elev=93.40' Inflow=0.96 cfs 0.091 af
12.0" x 61.0' Culvert Outflow=0.96 cfs 0.091 af

Pond DMH2: DMH-2 Peak Elev=92.69' Inflow=0.96 cfs 0.091 af
12.0" x 34.0' Culvert Outflow=0.96 cfs 0.091 af

Pond WQF-1: Water Quality Filter Peak Elev=99.54' Storage=91 cf Inflow=0.10 cfs 0.006 af
Outflow=0.10 cfs 0.004 af

Pond WQF-2: Water Quality Filter Peak Elev=99.54' Storage=91 cf Inflow=0.10 cfs 0.006 af
Outflow=0.10 cfs 0.004 af

Summary for Subcatchment 1S: SA1

Runoff = 0.10 cfs @ 12.02 hrs, Volume= 0.006 af, Depth= 3.69"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 10-YEAR Rainfall=4.70"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n=0.150 P2= 3.00"

Summary for Subcatchment 2S: SA2

Runoff = 0.14 cfs @ 12.04 hrs, Volume= 0.009 af, Depth= 3.59"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 10-YEAR Rainfall=4.70"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n=0.150 P2= 3.00"

Summary for Subcatchment 3S: SA3

Runoff = 0.48 cfs @ 12.21 hrs, Volume= 0.046 af, Depth= 3.09"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 10-YEAR Rainfall=4.70"

management entity that will be coordinating this function including providing a van service, security and maintaining the exterior of the building.

Use of Dedicated Open Space for Swimming Pool and Food/Beverage Building

A swimming pool and gazebo (food service/beverage) building are proposed behind the Double Barracks building. This area is referenced as dedicated open space in the original conditional zoning.

Paragraph 1 (development limited) of the original conditional zoning states: "All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity". See Attachment 2-1.

The proposed amendment references that the swimming pool and food/service building will occupy "dedicated open space."

Newly Constructed Building

Applicant proposes a newly constructed food/beverage service building next to the swimming pool. A phrase in paragraph 1 of the original conditional zoning states "...there shall be no construction or development of any new principal building or structure on the Premises." See Attachment 2-1.

The proposed building is relatively small and might be considered an accessory use, but given the language and intent of the original conditional zone text, the text has been amended to reference that this building is newly constructed

V. Applicant's Conditional Zoning Amendment

The Applicant's proposed conditional zoning amendment is shown below in its entirety and on Attachment 1-A.

THIS AMENDMENT, approved this ___ day of _____, 2008 with respect to the Conditions and Restrictions appearing in the Conditional Rezoning of Ft. McKinley dated January 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263.

"Notwithstanding the terms of the IR-3 zoning text generally applicable to the Premises, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and that portion of the Open Space, all depicted on the site plans dated May ___, 2008, submitted herewith to the City Of Portland, Maine, all may be redeveloped into condominium hotel units including reasonable and customary on-site services, limited to the owners, their guests, tenants in residence and members of the Diamond Cove Homeowners Association. For purposes on this Amendment, "condominium hotel units" shall mean residential condominium units, each of which contains separate kitchen and bath facilities, are separately owned and which participate in centralized management and rental agreements providing, among other things, rentals of varying duration to the general public. The

Double Barracks may include up to a maximum of twenty (20) condominium hotel units, and the Hospital may include up to a maximum of twelve (12) condominium hotel units, all of said units so created to become members of the separate condominium association established for these two rehabilitated buildings, and each will also be considered a "lot" within the Diamond Cove Homeowners Association.

The approved rehabilitation 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 an Exhibit hereto. The recording of the within Amendment shall be deemed to amend the Conditions and Restriction recorded in Book 8928, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit."

VI. City Version of Conditional Zoning Amendment

At the request of the Planning Board, staff has updated the existing Diamond Cove conditional zoning text reflecting the applicant's proposal but with revisions; the previously approved golf cart amendment; and some editing of the existing text that is outdated. This is shown as Attachment 2-B. At Tuesday's meeting we can provide an overview of the changes. In terms of amendments that impact the applicant's proposal the most significant revisions were made to paragraph 1 (development limited to); paragraph 8 (water transportation services); and paragraph 9 (restrictions on motor vehicles)

VII. Important Issues Associated with the Conditional Zoning

Wastewater Treatment and Capacity

The capacity of the existing sanitary waste treatment system on Diamond Cove is a critical issue. We have requested documentation from the applicant whether the existing system is capable of serving the proposed use including documentation from the Maine DEP. For the last workshop, the applicant submitted a letter from Joseph Laverriere of DeLuca-Hoffman Assoc. suggesting a small surplus of wastewater capacity based upon a review of 2006 wastewater flows.

The Diamond Cove project has evolved over a period of time. Originally a community wastewater treatment system was designed to accommodate 134 condominium units, 5 commercial uses and a portion of the single-family subdivision. However during the regulatory review process, it was determined that the single-family lots should have on-site septic systems and thus they were never connected into the wastewater treatment system. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000, Diamond Cove had only 62 occupied condominium units. In 2000, a third sand filter was installed accommodating what was believed to be a total build-out of only 77 units and providing for increased wastewater flows from the Diamond Cove restaurant. The sand filter treatment system has an outfall pipe in Casco Bay, which is licensed by the Maine DEP. 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.

Diamond Cove's wastewater treatment is complicated by significant water infiltration, which increases the amount of water that must be treated by the sand filter system. This has obvious implications on the amount of water discharged into Casco Bay through the overboard discharge. Addressing the infiltration issue may increase the present capacity of the wastewater treatment system to accommodate additional units within the DEP license requirements. We have heard that in 2006 a portion of the pipe system was rehabilitated to decrease infiltration. However, we have not seen any documentation regarding this and Mr. Laverriere's letter of April 29, 2008, does not mention these improvements.

We have forwarded Mr. Laverriere's letter to Michael Demerest of the Maine DEP. His initial response was that infiltration had not been adequately addressed.

Subsequent to that comment, Mr. Demerest has sent a letter to the applicant requesting further information on the project to determine if the proposal fits within the limits of the wastewater treatment license. See Attachment 2-F. On Friday we received an updated letter from Mr. Laverriere (Attachment 1-N).

A Homeowners Association Within an Association and a Separate Lot

It appears the applicant intends to create a homeowners association for this project while retaining membership in the overall Diamond Cove Homeowners Association. The applicant intends to create a separate lot for the Double Barracks building. This seems unusual in that Diamond Cove and the IR-3 zone was conceived as a planned unit development with the restoration of existing buildings and the remaining land as common open space. The creation of a separate lot for the Double Barrack building (including swimming pool area) on a separate lot will not make or break the planned unit development but it does represent a deviation from the original concept of Diamond Cove.

Transportation Service

Transportation is a sensitive issue on Great Diamond Island particularly on the southerly (or public side) of the island. Private automobiles are not permitted with the IR-3 conditional zone. As the Board may recall in 2004, the Diamond Cove Homeowners Assoc. requested an amendment to the conditional zone to allow golf carts/electric vehicles. A zoning amendment was passed but with enforcement provisions to insure that non-service vehicles don't cross the property line into the southerly end of the island.

The applicant intends to operate a separate van transportation service from the van run by the Diamond Cove Homeowners Assoc. (DCHA).

The applicant states: "The Project will have its own transportation needs and facilities quite apart from those provided by the 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”.

The above statement states an intent that the southerly landing will not be used but is not necessarily a guarantee. Since there are fewer ferry stops at the Diamond Cove pier than the southerly ferry there are likely to be occasions when hotel users may be tempted to travel to the southern pier. The applicant at the last workshop indicated that hotel owners, guests, and employees will be using the Diamond Cove pier for transportation purposes.

We have revised paragraph 8 of the conditional zoning amendments (staff version, Attachment 2-B-6) requiring that the owner of the Double Barracks and Hospital shall provide water transportation to and from Diamond Cove. Paragraph 9 has been revised (staff version, 2-B-7) stating “...no occupant of the Double Barracks or Hospital building shall be permitted to utilize water transportation from the southern side of the Island unless such occupant(s) walks to or from the southern pier.”

Commercial Uses Near Diamond Cove Ferry Landing

The original development plan for Diamond Cove focused on commercial uses near the ferry landing. The plan projected 5 commercial uses including a restaurant and store near this area.

The proposed inn is proposed near the parade ground, which is a departure from the original concept. The inn has its own swimming pool and small bar/service building. While it could be argued that an inn is closer to a residential use than a commercial use, people should be aware of this change. If this represents a disconcerting change to Diamond Cove residents, the workshop and public hearing process provides a forum for such concerns.

Condominium Hotel Floor Plan

The applicant has submitted a floor plan for the 3 floors of the building. A cover letter accompanying the plans indicates there are 6 one bedroom units, 6 two bedroom units and 8 three bedroom units. It appears all of the two bedroom and three bedroom units have separate and connecting doorways between the bedrooms and hallways thus raising the question of whether these are “lock-out” units. Is this a 20 unit condominium hotel or is it a 34 unit hotel? An analysis of wastewater demand can determine the impact of this use (including the number of bedrooms) on the capacity of the project wastewater treatment system. However in the interest of full disclosure, the Board should be aware there could be the equivalent of 34 hotel “units” rented in the Double Barracks building.

We are not suggesting that further zoning text amendments are required only that there could be more people using the facility than a typical 20-unit hotel.

VIII. Land Use Policy Implications

The primary policy document for the islands is **Portland Islands Land Use and Zoning Study**, which was adopted by the City Council (1985) as an element of the City Comprehensive Plan. It was the first comprehensive land use and zoning plan for the islands. The original Diamond Cove conditional zoning was enacted pursuant to this plan. The renovation of the existing Fort McKinley buildings within Diamond Cove was anticipated and was provided for in the approved conditional zone.

The summary and goal statement of the island comprehensive plan is expressed below:

The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), the people who reside and work there. The City's land use policies and regulations should reflect this essential difference.

The overall land use goal is to balance future growth and development on the islands to preserve those essential natural, physical, and social factors that contribute to the islands unique value and character.

The purpose of the IR-3 Island Residential Zone as expressed in the comprehensive plan is shown below:

The purpose of the IR-3 would be to allow for planned unit development in a manner compatible with both the natural and built environment. Parcels should not be rezoned to IR-3 unless an applicant can demonstrate that a development plan for the site can meet a series of detailed location and performance standards and is part of a contract or conditional rezoning. These standards would provide guidance to the City on whether a specific site would be appropriate for an IR-3 rezoning.

The comprehensive plan discussion for the IR-3 Contract-Conditional Zoning is shown below:

All IR-3 rezoning should be subject to contract or conditional zoning. Contract zoning is critical to the IR-3 rezoning process in that if a development plan for a proposed rezoning met the IR-3 review standards, the City would require that the zone change be subject to certain conditions through contract zoning that would insure that the final development for the site was in conformity with the land use policies represented in the IR-3 standards. This zoning tool can insure that the representations and assertions of a particular zone change application and development plan that served as the basis for granting the rezoning, are formally carried out in the context in which it was approved. Given the sensitive environmental issues and development constraints on the islands, it is not in the interest of the City to approve an IR-3 without appropriate assurances that the

ultimate development for the site appropriately addresses such development constraints.

The purpose section of the IR-3 Zone (zoning text sec. 14-145.13) is shown below. See also Attachment 2-H, which includes the purpose section of the IR-3 zone and the review standards discussed below.

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 above paragraph also includes sec. 14-145.13(e), which states:

- (e) The development plan should have the capability of meeting the development review standards of sec. 14-145.16.

Although Diamond Cove is an existing IR-3 conditional zone and the hotel condominium proposal represents an amendment to the conditional zone text, the hotel condominium proposal should demonstrate the “capability” of meeting these standards. Without evidence of such capability, we risk that the proposed change is inconsistent with these standards and policy intent of the comprehensive plan.

A discussion of review standards particularly relevant to this application is provided below that should be considered in the context of the zone change proposal.

Sanitary Waste. The sanitary waste standard sec. 14-145.16 [c] is shown below:

- (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 sewage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal and local water quality and groundwater standards.

The applicant has submitted information on wastewater capacity for the sanitary waste system but the applicant has not identified a solution to the infiltration issue. See previous discussion and starting on page 5. The applicant should identify in writing a solution or solutions that would demonstrate the capability of meeting this standard.

Recreation and Open Space. The applicant intends to use land area for the swimming pool and service building on land designated as dedicated open space.

Sec. 14-145.16(g) of the IR-3 development standards (recreation and open space) states:

“All open space on the site shall be functionally integrated into the development plan by virtue of such features as passive and recreational opportunities, accessibility to residents, preservation of natural site amenities and resources...”

It is our understanding that this land now owned in common by DCHA will be owned by The Inn at Diamond Cove. Given the size and location of this open space it is unlikely this loss of land (as common area) will adversely affect open space resources within Diamond Cove.

Environmentally Sensitive Areas. The construction of the swimming pool and service building will result in disturbance to an area designated as open space behind the Double Barracks building. Sec. 14-145.16(f) of the IR-3 development standards (environmentally sensitive areas) states:

“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.”

The site disturbance caused by the swimming pool and service building is relatively minor in the context of the total open space being conserved within the Diamond Cove IR-3 property. The “significant resources” cited in the above standard has been preserved on other locations of the Diamond Cove site. It is unlikely this particular site would be rated as significant in terms of its natural features. The amount of vegetation likely to be disturbed within the footprint of the swimming pool/service building area is minimal in the context of the total vegetation preserved for the Diamond Cove development.

Staff has re-read an environmental assessment study filed with the original zone change application. The hotel proposal seems consistent with the impacts associated with the original Diamond Cove development except for the loss of a few trees for the swimming pool area.

IX. Other Issues

There are certain development issues related to the project that are better classified as site plan related issues. These issues can be explored during the site plan review process assuming the zone change is approved. These issues are discussed below.

Mainland Parking. A letter has been received from the Portland Harbor Hotel indicating “the Portland Harbor Hotel, acting as Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor hotel has adequate excess parking available through both its on and off parking leases”. This information will need to be submitted during the site plan review process.

Solid Waste Disposal. By terms of the original conditional zoning text (paragraph 6) Diamond Cove is responsible for providing its own solid waste service. At some point

Public Works voluntarily provided this service. In discussing the Double Barracks and Hospital proposal with Michael Bobinsky (Director of Public Services) he indicates the City will not be able to provide solid waste service for these new buildings.

Emergency Services. A concern had been expressed that the three story Double Barracks are too tall to be serviced by the existing fire truck on Great Diamond Island. It is our understanding that the building will have sprinklers and a central fire alarm system. Staff attended a great Diamond Island Advisory meeting in which Fire Chief Fred LaMontagne was asked about fire protection issues for this building. His response was that sprinklers were a better fire suppression tool than a fire truck.

X. Development Review

If the conditional zoning amendment were to pass, conversion of the Double Barracks buildings will likely require subdivision and site plan review.

It appears the project qualifies for review of an amendment to the subdivision plan because the number of units proposed (20) exceeds the number of units shown on the original subdivision plan (14) for this building. This would not qualify for staff review since the number of units is being increased within the building.

Site plan review for a change in use for the Double Barracks is likely. Since the building (27,386 sq ft) exceeds 10,000 sq ft of floor area, Planning Board review would be required. The same would apply to the Hospital if a specific renovation proposal comes forward.

Pending further information this is our initial interpretation of the development review process of this project.

The Double Barracks and Hospital buildings are located in the Fort McKinley local historic district and will require Historic Preservation Committee review and approval of the exterior renovation.

XI. Next Steps

- 1. A public hearing has been scheduled for this application. The Planning Board is requested to make a recommendation to the City Council on this proposal.**

XII. Motions for the Board to Consider

On the basis of plans and information submitted by the applicant and the information contained in Planning Report #28-08, and testimony presented at the Planning Board public hearing, the Board finds:

The proposed amendment to the Diamond Cove conditional zone (is or is not) in conformance with the City of Portland Comprehensive Plan and therefore

(recommends or does not recommend) approval of the proposed conditional zoning to the City Council.

Attachments

1 Applicant Submissions

- 1-A Proposed Conditional Zoning Amendment with map
- 1-B Zoning Amendment Application, dated 4-08-08
- 1-C Cover letter dated 4-08-08
- 1-D Memorandum from The Inn at Diamond Cove dated 4-29-08
- 1-E Property Purchase and Sale Agreement
- 1-F Diamond Cove Homeowners Assoc. Agreement regarding The Inn at Diamond Cove dated 8-13-07
- 1-G Letter from Joseph Laverriere (DeLuca-Hoffman) on wastewater treatment capacity dated 4-29-08
- 1-H Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 5-29-08
- 1-I Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 4-29-08
- 1-J Letter from Gerard Kiladjian (Portland Harbor Hotel) on mainland parking dated 4-29-08
- 1-K Letter from David Lloyd (Archetype) regarding sprinkler and code requirements dated 4-28-08
- 1-L Floor layout plan
- 1-M Bateman Partners LLC development experience
- 1-N Letter from Joseph Lavierriere (DeLuca Hoffman Assoc) on wastewater capacity dated 5-22-08
- 1-O Letter from Bank North

2 Staff Comments/Submissions

- 2-A Maps
- 2-B Updated Draft Conditional Zoning Text prepared by City Staff dated 5-22-08
- 2-C Letter from Alexander Jaegerman to Ronald Ward dated 8-15-07
- 2-D E-mail from Richard Knowland to Ronald Ward dated 4-9-08
- 2-E E-mail from Richard Knowland to Ronald Ward dated 4-11-08
- 2-F Letter from Michael Demarest, Maine DEP, dated 5-21-08
- 2-G The Inn at Diamond Cove brochure received in Planning Office in 2007
- 2-H IR-3 Zoning Text
- 2-I Diamond Cove original conditional zoning text

3 Written Public Comments

PLANNING BOARD REPORT #32-08

**PROPOSED IR-3 CONDITIONAL ZONING AMENDMENTS
DIAMOND COVE, GREAT DIAMOND ISLAND
THE INN AT DIAMOND COVE, LLC**

**Submitted to:
Portland Planning Board
Portland, Maine
June 24, 2008**

**Submitted by:
Richard Knowland, Senior Planner**

June 24, 2008

Post-Hydro_REV2-6-09

Type III 24-hr 10-YEAR Rainfall=4.70"

Prepared by DeLuca-Hoffman Associates, Inc.

Printed 2/9/2009

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Area (sf)	CN	Description
1,773	98	Paved parking & roofs
2,521	84	50-75% Grass cover, Fair, HSG D
3,448	79	Woods, Fair, HSG D
7,742	85	Weighted Average
5,969		Pervious Area
1,773		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
13.5	38	0.0100	0.05		Sheet Flow, Woods: Light underbrush n= 0.400 P2= 3.00"
1.8	26	0.2700	0.24		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.5	49	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
15.8	113	Total			

Summary for Subcatchment 4S: SA4

Runoff = 0.82 cfs @ 12.05 hrs, Volume= 0.054 af, Depth= 3.19"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 10-YEAR Rainfall=4.70"

Area (sf)	CN	Description
2,742	98	Paved parking & roofs
2,571	84	50-75% Grass cover, Fair, HSG D
3,537	79	Woods, Fair, HSG D
8,850	86	Weighted Average
6,108		Pervious Area
2,742		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
3.1	43	0.1800	0.23		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.6	56	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
3.7	99	Total			

Summary for Subcatchment 5S: SA5

Runoff = 0.10 cfs @ 12.02 hrs, Volume= 0.006 af, Depth= 3.69"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 10-YEAR Rainfall=4.70"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 6S: SA6

Runoff = 0.14 cfs @ 12.04 hrs, Volume= 0.009 af, Depth= 3.59"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Type III 24-hr 10-YEAR Rainfall=4.70"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Reach 1R: Offsite Discharge

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 2.28" for 10-YEAR event
 Inflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af
 Outflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af, Atten= 0%, Lag= 0.0 min

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Summary for Pond 1: CB1

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 2.50" for 10-YEAR event
 Inflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af
 Outflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.95' @ 12.03 hrs
 Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.09 cfs @ 12.03 hrs HW=94.95' TW=94.40' (Dynamic Tailwater)
 ↑1=Culvert (Outlet Controls 0.09 cfs @ 1.96 fps)

Summary for Pond 2: CB2

Inflow Area = 0.227 ac, 28.00% Impervious, Inflow Depth = 2.27" for 10-YEAR event
 Inflow = 0.52 cfs @ 12.27 hrs, Volume= 0.043 af
 Outflow = 0.52 cfs @ 12.27 hrs, Volume= 0.043 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.52 cfs @ 12.27 hrs, Volume= 0.043 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.54' @ 12.27 hrs
 Flood Elev= 99.20'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.17'	12.0" x 59.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 93.58' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.52 cfs @ 12.27 hrs HW=94.54' TW=93.99' (Dynamic Tailwater)
 ↑1=Culvert (Outlet Controls 0.52 cfs @ 2.88 fps)

Summary for Pond 3: CB3

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 2.20" for 10-YEAR event
 Inflow = 0.44 cfs @ 12.28 hrs, Volume= 0.033 af
 Outflow = 0.44 cfs @ 12.28 hrs, Volume= 0.033 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.44 cfs @ 12.28 hrs, Volume= 0.033 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.86' @ 12.28 hrs
 Flood Elev= 98.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.51'	12.0" x 24.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.44 cfs @ 12.28 hrs HW=94.86' TW=94.54' (Dynamic Tailwater)
 ↑1=Culvert (Outlet Controls 0.44 cfs @ 2.71 fps)

Summary for Pond 4: CB4

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth = 2.17" for 10-YEAR event
 Inflow = 0.58 cfs @ 12.12 hrs, Volume= 0.037 af
 Outflow = 0.58 cfs @ 12.12 hrs, Volume= 0.037 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.58 cfs @ 12.12 hrs, Volume= 0.037 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Peak Elev= 95.01' @ 12.12 hrs
 Flood Elev= 97.50'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.60'	12.0" x 20.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet invert= 94.40' S= 0.0100 /' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.58 cfs @ 12.12 hrs HW=95.01' TW=93.96' (Dynamic Tailwater)
 ↑ 1=Culvert (Barrel Controls 0.58 cfs @ 2.86 fps)

Summary for Pond 5: CB5

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 2.50" for 10-YEAR event
 Inflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af
 Outflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.95' @ 12.03 hrs
 Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet invert= 94.27' S= 0.0100 /' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.09 cfs @ 12.03 hrs HW=94.95' TW=93.81' (Dynamic Tailwater)
 ↑ 1=Culvert (Barrel Controls 0.09 cfs @ 1.99 fps)

Summary for Pond 6: CB6

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 2.28" for 10-YEAR event
 Inflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af
 Outflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 93.99' @ 12.25 hrs
 Flood Elev= 99.60'

Device	Routing	Invert	Outlet Devices
#1	Primary	93.48'	12.0" x 49.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet invert= 92.99' S= 0.0100 /' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.96 cfs @ 12.25 hrs HW=93.99' TW=93.40' (Dynamic Tailwater)
 ↑ 1=Culvert (Outlet Controls 0.96 cfs @ 3.47 fps)

Summary for Pond BIO-1: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 3.59" for 10-YEAR event
 Inflow = 0.14 cfs @ 12.04 hrs, Volume= 0.009 af
 Outflow = 0.13 cfs @ 12.06 hrs, Volume= 0.008 af, Atten= 3%, Lag= 0.9 min
 Primary = 0.13 cfs @ 12.06 hrs, Volume= 0.008 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.55' @ 12.06 hrs Surf.Area= 218 sf Storage= 69 cf

Plug-Flow detention time= 103.0 min calculated for 0.008 af (85% of inflow)
 Center-of-Mass det. time= 38.8 min (828.8 - 790.0)

Volume	Invert	Avail.Storage	Storage Description
#1	99.00'	109 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
99.00	42	0	0
99.10	67	5	5
99.20	97	8	14
99.30	132	11	25
99.40	170	15	40
99.50	200	18	59
99.60	239	22	81
99.70	323	28	109

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.13 cfs @ 12.06 hrs HW=99.55' TW=93.89' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.13 cfs @ 0.71 fps)

Summary for Pond BIO-2: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 3.59" for 10-YEAR event
 Inflow = 0.14 cfs @ 12.04 hrs, Volume= 0.009 af
 Outflow = 0.13 cfs @ 12.05 hrs, Volume= 0.006 af, Atten= 1%, Lag= 0.6 min
 Primary = 0.13 cfs @ 12.05 hrs, Volume= 0.006 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.95' @ 12.05 hrs Surf.Area= 150 sf Storage= 122 cf

Plug-Flow detention time= 155.0 min calculated for 0.006 af (70% of inflow)
 Center-of-Mass det. time= 63.2 min (853.2 - 790.0)

Volume	Invert	Avail.Storage	Storage Description
#1	96.90'	166 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

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Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.90	45	33.0	0	0
98.40	45	100.0	68	68
98.50	65	100.0	5	73
98.60	85	100.0	7	80
98.70	106	100.0	10	90
98.80	126	100.0	12	102
98.90	140	100.0	13	115
99.00	161	100.0	15	130
99.10	181	100.0	17	147
99.20	200	100.0	19	166

Device	Routing	Invert	Outlet Devices
#1	Primary	98.90'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.13 cfs @ 12.05 hrs HW=98.95' TW=94.41' (Dynamic Tailwater)
 ↳ 1=Orifice/Grate (Weir Controls 0.13 cfs @ 0.71 fps)

Summary for Pond BIO-3: Bio-Filter

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 3.09" for 10-YEAR event
 Inflow = 0.48 cfs @ 12.21 hrs, Volume= 0.046 af
 Outflow = 0.44 cfs @ 12.28 hrs, Volume= 0.033 af, Atten= 7%, Lag= 3.9 min
 Primary = 0.44 cfs @ 12.28 hrs, Volume= 0.033 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.61' @ 12.28 hrs Surf.Area= 642 sf Storage= 638 cf

Plug-Flow detention time= 152.1 min calculated for 0.033 af (71% of inflow)
 Center-of-Mass det. time= 60.3 min (879.3 - 819.0)

Volume	Invert	Avail.Storage	Storage Description
#1	96.50'	858 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.50	225	33.0	0	0
98.00	225	100.0	338	338
98.10	411	100.0	32	369
98.20	465	100.0	44	413
98.30	508	100.0	49	462
98.40	560	100.0	53	515
98.50	595	100.0	58	573
98.60	638	100.0	62	635
98.70	703	100.0	67	702
98.80	785	100.0	74	776
98.90	851	100.0	82	858

Device	Routing	Invert	Outlet Devices
#1	Primary	98.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.44 cfs @ 12.28 hrs HW=98.61' TW=94.86' (Dynamic Tailwater)
 ↑1=Orifice/Grate (Weir Controls 0.44 cfs @ 1.06 fps)

Summary for Pond BIO-4: Bio-Filter

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth = 3.19" for 10-YEAR event
 Inflow = 0.82 cfs @ 12.05 hrs, Volume= 0.054 af
 Outflow = 0.58 cfs @ 12.12 hrs, Volume= 0.037 af, Atten= 29%, Lag= 4.0 min
 Primary = 0.58 cfs @ 12.12 hrs, Volume= 0.037 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.63' @ 12.12 hrs Surf.Area= 1,042 sf Storage= 879 cf

Plug-Flow detention time= 165.9 min calculated for 0.037 af (68% of Inflow)
 Center-of-Mass det. time= 69.9 min (874.6 - 804.7)

Volume #1	Invert	Avail.Storage	Storage Description
	96.50'	1,069 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.50	264	33.0	0	0
98.00	264	100.0	396	396
98.10	594	100.0	43	439
98.20	690	100.0	64	503
98.30	783	100.0	74	577
98.40	877	100.0	83	660
98.50	963	100.0	92	752
98.60	1,025	100.0	99	851
98.70	1,089	100.0	106	957
98.80	1,154	100.0	112	1,069

Device #1	Routing	Invert	Outlet Devices
	Primary	98.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.58 cfs @ 12.12 hrs HW=98.63' TW=95.01' (Dynamic Tailwater)
 ↑1=Orifice/Grate (Weir Controls 0.58 cfs @ 1.16 fps)

Summary for Pond DMH1: DMH1

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 2.28" for 10-YEAR event
 Inflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af
 Outflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 93.40' @ 12.25 hrs
 Flood Elev= 99.90'

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Device	Routing	Invert	Outlet Devices
#1	Primary	92.89'	12.0" x 61.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 92.28' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.96 cfs @ 12.25 hrs HW=93.40' TW=92.69' (Dynamic Tailwater)
 ↑1=Culvert (Inlet Controls 0.96 cfs @ 2.42 fps)

Summary for Pond DMH2: DMH-2

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 2.28" for 10-YEAR event
 Inflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af
 Outflow = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.96 cfs @ 12.25 hrs, Volume= 0.091 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 92.69' @ 12.25 hrs
 Flood Elev= 97.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	92.18'	12.0" x 34.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 84.00' S= 0.2406 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.96 cfs @ 12.25 hrs HW=92.69' TW=0.00' (Dynamic Tailwater)
 ↑1=Culvert (Inlet Controls 0.96 cfs @ 2.42 fps)

Summary for Pond WQF-1: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 3.69" for 10-YEAR event
 Inflow = 0.10 cfs @ 12.02 hrs, Volume= 0.006 af
 Outflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af, Atten= 2%, Lag= 0.6 min
 Primary = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.54' @ 12.03 hrs Surf.Area= 140 sf Storage= 91 cf

Plug-Flow detention time= 164.4 min calculated for 0.004 af (68% of inflow)
 Center-of-Mass det. time= 69.6 min (854.3 - 784.7)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

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Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices	
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate	Limited to weir flow C= 0.600

Primary OutFlow Max=0.09 cfs @ 12.03 hrs HW=99.54' TW=94.95' (Dynamic Tailwater)
 ↑ i=Orifice/Grate (Weir Controls 0.09 cfs @ 0.64 fps)

Summary for Pond WQF-2: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 3.69" for 10-YEAR event
 Inflow = 0.10 cfs @ 12.02 hrs, Volume= 0.006 af
 Outflow = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af, Atten= 2%, Lag= 0.6 min
 Primary = 0.10 cfs @ 12.03 hrs, Volume= 0.004 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.54' @ 12.03 hrs Surf.Area= 140 sf Storage= 91 cf

Plug-Flow detention time= 164.4 min calculated for 0.004 af (68% of inflow)
 Center-of-Mass det. time= 69.6 min (854.3 - 784.7)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices	
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate	Limited to weir flow C= 0.600

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Primary OutFlow Max=0.09 cfs @ 12.03 hrs HW=99.54' TW=94.95' (Dynamic Tailwater)
1=Orifice/Grate (Weir Controls 0.09 cfs @ 0.64 fps)

Time span=1.00-30.00 hrs, dt=0.01 hrs, 2901 points
 Runoff by SCS TR-20 method, UH=SCS
 Reach routing by Dyn-Stor-Ind method - Pond routing by Dyn-Stor-Ind method

Subcatchment 1S: SA1	Runoff Area=866 sf 52.66% Impervious Runoff Depth=4.47" Flow Length=15' Slope=0.0500 '/ Tc=1.5 min CN=91 Runoff=0.12 cfs 0.007 af
Subcatchment 2S: SA2	Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=4.36" Flow Length=30' Slope=0.0400 '/ Tc=2.9 min CN=90 Runoff=0.16 cfs 0.011 af
Subcatchment 3S: SA3	Runoff Area=7,742 sf 22.90% Impervious Runoff Depth=3.83" Flow Length=113' Tc=15.8 min CN=85 Runoff=0.59 cfs 0.057 af
Subcatchment 4S: SA4	Runoff Area=8,850 sf 30.98% Impervious Runoff Depth=3.94" Flow Length=99' Tc=3.7 min CN=86 Runoff=1.00 cfs 0.067 af
Subcatchment 5S: SA5	Runoff Area=866 sf 52.66% Impervious Runoff Depth=4.47" Flow Length=15' Slope=0.0500 '/ Tc=1.5 min CN=91 Runoff=0.12 cfs 0.007 af
Subcatchment 6S: SA6	Runoff Area=1,291 sf 42.06% Impervious Runoff Depth=4.36" Flow Length=30' Slope=0.0400 '/ Tc=2.9 min CN=90 Runoff=0.16 cfs 0.011 af
Reach 1R: Offsite Discharge	Inflow=1.53 cfs 0.121 af Outflow=1.53 cfs 0.121 af
Pond 1: CB1	Peak Elev=94.97' Inflow=0.11 cfs 0.005 af 12.0" x 53.0' Culvert Outflow=0.11 cfs 0.005 af
Pond 2: CB2	Peak Elev=94.61' Inflow=0.68 cfs 0.057 af 12.0" x 59.0' Culvert Outflow=0.68 cfs 0.057 af
Pond 3: CB3	Peak Elev=94.92' Inflow=0.58 cfs 0.044 af 12.0" x 24.0' Culvert Outflow=0.58 cfs 0.044 af
Pond 4: CB4	Peak Elev=95.12' Inflow=0.88 cfs 0.049 af 12.0" x 20.0' Culvert Outflow=0.88 cfs 0.049 af
Pond 5: CB5	Peak Elev=94.96' Inflow=0.11 cfs 0.005 af 12.0" x 53.0' Culvert Outflow=0.11 cfs 0.005 af
Pond 6: CB6	Peak Elev=94.17' Inflow=1.53 cfs 0.121 af 12.0" x 49.0' Culvert Outflow=1.53 cfs 0.121 af
Pond BIO-1: Bio-Filter	Peak Elev=99.55' Storage=70 cf Inflow=0.16 cfs 0.011 af Outflow=0.16 cfs 0.009 af
Pond BIO-2: Bio-Filter	Peak Elev=98.95' Storage=123 cf Inflow=0.16 cfs 0.011 af Outflow=0.16 cfs 0.008 af
Pond BIO-3: Bio-Filter	Peak Elev=98.63' Storage=651 cf Inflow=0.59 cfs 0.057 af Outflow=0.58 cfs 0.044 af

Pond BIO-4: Bio-Filter

Peak Elev=98.67' Storage=922 cf Inflow=1.00 cfs 0.067 af
Outflow=0.88 cfs 0.049 af

Pond DMH1: DMH1

Peak Elev=93.56' Inflow=1.53 cfs 0.121 af
12.0" x 61.0' Culvert Outflow=1.53 cfs 0.121 af

Pond DMH2: DMH-2

Peak Elev=92.84' Inflow=1.53 cfs 0.121 af
12.0" x 34.0' Culvert Outflow=1.53 cfs 0.121 af

Pond WQF-1: Water Quality Filter

Peak Elev=99.54' Storage=92 cf Inflow=0.12 cfs 0.007 af
Outflow=0.11 cfs 0.005 af

Pond WQF-2: Water Quality Filter

Peak Elev=99.54' Storage=92 cf Inflow=0.12 cfs 0.007 af
Outflow=0.11 cfs 0.005 af

Summary for Subcatchment 1S: SA1

Runoff = 0.12 cfs @ 12.02 hrs, Volume= 0.007 af, Depth= 4.47"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 2S: SA2

Runoff = 0.16 cfs @ 12.04 hrs, Volume= 0.011 af, Depth= 4.36"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n= 0.150 P2= 3.00"

Summary for Subcatchment 3S: SA3

Runoff = 0.59 cfs @ 12.21 hrs, Volume= 0.057 af, Depth= 3.83"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
1,773	98	Paved parking & roofs
2,521	84	50-75% Grass cover, Fair, HSG D
3,448	79	Woods, Fair, HSG D
7,742	85	Weighted Average
5,969		Pervious Area
1,773		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
13.5	38	0.0100	0.05		Sheet Flow, Woods: Light underbrush n= 0.400 P2= 3.00"
1.8	26	0.2700	0.24		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.5	49	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
15.8	113	Total			

Summary for Subcatchment 4S: SA4

Runoff = 1.00 cfs @ 12.05 hrs, Volume= 0.067 af, Depth= 3.94"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
2,742	98	Paved parking & roofs
2,571	84	50-75% Grass cover, Fair, HSG D
3,537	79	Woods, Fair, HSG D
8,850	86	Weighted Average
6,108		Pervious Area
2,742		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
3.1	43	0.1800	0.23		Sheet Flow, Grass: Dense n= 0.240 P2= 3.00"
0.6	56	0.0100	1.50		Shallow Concentrated Flow, Grassed Waterway Kv= 15.0 fps
3.7	99	Total			

Summary for Subcatchment 5S: SA5

Runoff = 0.12 cfs @ 12.02 hrs, Volume= 0.007 af, Depth= 4.47"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
456	98	Paved parking & roofs
410	84	50-75% Grass cover, Fair, HSG D
866	91	Weighted Average
410		Pervious Area
456		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.5	15	0.0500	0.16		Sheet Flow, Grass: Short n=0.150 P2= 3.00"

Summary for Subcatchment 6S: SA6

Runoff = 0.16 cfs @ 12.04 hrs, Volume= 0.011 af, Depth= 4.36"

Runoff by SCS TR-20 method, UH=SCS, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Type III 24-hr 25-YEAR Rainfall=5.50"

Area (sf)	CN	Description
543	98	Paved parking & roofs
748	84	50-75% Grass cover, Fair, HSG D
1,291	90	Weighted Average
748		Pervious Area
543		Impervious Area

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
2.9	30	0.0400	0.17		Sheet Flow, Grass: Short n=0.150 P2= 3.00"

Summary for Reach 1R: Offsite Discharge

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 3.04" for 25-YEAR event
 Inflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af
 Outflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af, Atten= 0%, Lag= 0.0 min

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Summary for Pond 1: CB1

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 3.28" for 25-YEAR event
 Inflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af
 Outflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.97' @ 12.03 hrs
 Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.11 cfs @ 12.03 hrs HW=94.97' TW=94.45' (Dynamic Tailwater)
 ↳1=Culvert (Outlet Controls 0.11 cfs @ 2.01 fps)

Summary for Pond 2: CB2

Inflow Area = 0.227 ac, 28.00% Impervious, Inflow Depth = 3.02" for 25-YEAR event
 Inflow = 0.68 cfs @ 12.23 hrs, Volume= 0.057 af
 Outflow = 0.68 cfs @ 12.23 hrs, Volume= 0.057 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.68 cfs @ 12.23 hrs, Volume= 0.057 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.61' @ 12.22 hrs
 Flood Elev= 99.20'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.17'	12.0" x 59.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 93.58' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.68 cfs @ 12.23 hrs HW=94.61' TW=94.09' (Dynamic Tailwater)
 ↳1=Culvert (Outlet Controls 0.68 cfs @ 2.97 fps)

Summary for Pond 3: CB3

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 2.94" for 25-YEAR event
 Inflow = 0.58 cfs @ 12.24 hrs, Volume= 0.044 af
 Outflow = 0.58 cfs @ 12.24 hrs, Volume= 0.044 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.58 cfs @ 12.24 hrs, Volume= 0.044 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.92' @ 12.24 hrs
 Flood Elev= 98.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.51'	12.0" x 24.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.58 cfs @ 12.24 hrs HW=94.92' TW=94.61' (Dynamic Tailwater)
 ↳1=Culvert (Outlet Controls 0.58 cfs @ 2.80 fps)

Summary for Pond 4: CB4

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth = 2.92" for 25-YEAR event
 Inflow = 0.88 cfs @ 12.09 hrs, Volume= 0.049 af
 Outflow = 0.88 cfs @ 12.09 hrs, Volume= 0.049 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.88 cfs @ 12.09 hrs, Volume= 0.049 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs

Peak Elev= 95.12' @ 12.09 hrs
 Flood Elev= 97.50'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.60'	12.0" x 20.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.40' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.88 cfs @ 12.09 hrs HW=95.12' TW=94.16' (Dynamic Tailwater)
 1=Culvert (Barrel Controls 0.88 cfs @ 3.12 fps)

Summary for Pond 5: CB5

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 3.28" for 25-YEAR event
 Inflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af
 Outflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af, Atten= 0%, Lag= 0.0 min
 Primary = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.96' @ 12.03 hrs
 Flood Elev= 99.80'

Device	Routing	Invert	Outlet Devices
#1	Primary	94.80'	12.0" x 53.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 94.27' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=0.11 cfs @ 12.03 hrs HW=94.96' TW=94.04' (Dynamic Tailwater)
 1=Culvert (Inlet Controls 0.11 cfs @ 1.37 fps)

Summary for Pond 6: CB6

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 3.04" for 25-YEAR event
 Inflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af
 Outflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af, Atten= 0%, Lag= 0.0 min
 Primary = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 94.17' @ 12.11 hrs
 Flood Elev= 99.60'

Device	Routing	Invert	Outlet Devices
#1	Primary	93.48'	12.0" x 49.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 92.99' S= 0.0100 '/' Cc= 0.900 n= 0.012

Primary OutFlow Max=1.53 cfs @ 12.11 hrs HW=94.17' TW=93.56' (Dynamic Tailwater)
 1=Culvert (Outlet Controls 1.53 cfs @ 3.74 fps)

Summary for Pond BIO-1: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 4.36" for 25-YEAR event
 Inflow = 0.16 cfs @ 12.04 hrs, Volume= 0.011 af
 Outflow = 0.16 cfs @ 12.06 hrs, Volume= 0.009 af, Atten= 2%, Lag= 0.8 min
 Primary = 0.16 cfs @ 12.06 hrs, Volume= 0.009 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.55' @ 12.06 hrs Surf.Area= 221 sf Storage= 70 cf

Plug-Flow detention time= 92.5 min calculated for 0.009 af (87% of inflow)
 Center-of-Mass det. time= 35.7 min (820.4 - 784.7)

Volume	Invert	Avail.Storage	Storage Description
#1	99.00'	109 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
99.00	42	0	0
99.10	67	5	5
99.20	97	8	14
99.30	132	11	25
99.40	170	15	40
99.50	200	18	59
99.60	239	22	81
99.70	323	28	109

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.16 cfs @ 12.06 hrs HW=99.55' TW=94.10' (Dynamic Tailwater)
 ↑1=Orifice/Grate (Weir Controls 0.16 cfs @ 0.75 fps)

Summary for Pond BIO-2: Bio-Filter

Inflow Area = 0.030 ac, 42.06% Impervious, Inflow Depth = 4.36" for 25-YEAR event
 Inflow = 0.16 cfs @ 12.04 hrs, Volume= 0.011 af
 Outflow = 0.16 cfs @ 12.05 hrs, Volume= 0.008 af, Atten= 1%, Lag= 0.6 min
 Primary = 0.16 cfs @ 12.05 hrs, Volume= 0.008 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.95' @ 12.05 hrs Surf.Area= 151 sf Storage= 123 cf

Plug-Flow detention time= 139.2 min calculated for 0.008 af (75% of inflow)
 Center-of-Mass det. time= 55.4 min (840.1 - 784.7)

Volume	Invert	Avail.Storage	Storage Description
#1	98.90'	166 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.90	45	33.0	0	0
98.40	45	100.0	68	68
98.50	65	100.0	5	73
98.60	85	100.0	7	80
98.70	106	100.0	10	90
98.80	126	100.0	12	102
98.90	140	100.0	13	115
99.00	161	100.0	15	130
99.10	181	100.0	17	147
99.20	200	100.0	19	166

Device	Routing	Invert	Outlet Devices
#1	Primary	98.90'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.16 cfs @ 12.05 hrs HW=98.95' TW=94.46' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.16 cfs @ 0.76 fps)

Summary for Pond BIO-3: Bio-Filter

Inflow Area = 0.178 ac, 22.90% Impervious, Inflow Depth = 3.83" for 25-YEAR event
 Inflow = 0.59 cfs @ 12.21 hrs, Volume= 0.057 af
 Outflow = 0.58 cfs @ 12.24 hrs, Volume= 0.044 af, Atten= 2%, Lag= 1.9 min
 Primary = 0.58 cfs @ 12.24 hrs, Volume= 0.044 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.63' @ 12.24 hrs Surf.Area= 655 sf Storage= 651 cf

Plug-Flow detention time= 132.9 min calculated for 0.044 af (77% of inflow)
 Center-of-Mass det. time= 50.6 min (863.6 - 813.0)

Volume	Invert	Avail.Storage	Storage Description
#1	96.50'	858 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
96.50	225	33.0	0	0
98.00	225	100.0	338	338
98.10	411	100.0	32	369
98.20	465	100.0	44	413
98.30	508	100.0	49	462
98.40	560	100.0	53	515
98.50	595	100.0	58	573
98.60	638	100.0	62	635
98.70	703	100.0	67	702
98.80	785	100.0	74	776
98.90	851	100.0	82	858

Device	Routing	Invert	Outlet Devices
#1	Primary	98.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.58 cfs @ 12.24 hrs HW=98.63' TW=94.92' (Dynamic Tailwater)

↑1=Orifice/Grate (Weir Controls 0.58 cfs @ 1.16 fps)

Summary for Pond BIO-4: Bio-Filter

Inflow Area = 0.203 ac, 30.98% Impervious, Inflow Depth = 3.94" for 25-YEAR event
 Inflow = 1.00 cfs @ 12.05 hrs, Volume= 0.067 af
 Outflow = 0.88 cfs @ 12.09 hrs, Volume= 0.049 af, Atten= 12%, Lag= 2.2 min
 Primary = 0.88 cfs @ 12.09 hrs, Volume= 0.049 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 98.67' @ 12.09 hrs Surf.Area= 1,068 sf Storage= 922 cf

Plug-Flow detention time= 145.2 min calculated for 0.049 af (74% of inflow)
 Center-of-Mass det. time= 58.5 min (857.2 - 798.7)

Volume	Invert	Avail.Storage	Storage Description		
#1	96.50'	1,069 cf	Custom Stage Data (Prismatic) Listed below (Recalc)		
Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)	
96.50	264	33.0	0	0	
98.00	264	100.0	396	396	
98.10	594	100.0	43	439	
98.20	690	100.0	64	503	
98.30	783	100.0	74	577	
98.40	877	100.0	83	660	
98.50	963	100.0	92	752	
98.60	1,025	100.0	99	851	
98.70	1,089	100.0	106	957	
98.80	1,154	100.0	112	1,069	

Device	Routing	Invert	Outlet Devices	
#1	Primary	98.50'	15.0" Horiz. Orifice/Grate	Limited to weir flow C= 0.600

Primary OutFlow Max=0.88 cfs @ 12.09 hrs HW=98.67' TW=95.12' (Dynamic Tailwater)

↑1=Orifice/Grate (Weir Controls 0.88 cfs @ 1.34 fps)

Summary for Pond DMH1: DMH1

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 3.04" for 25-YEAR event
 Inflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af
 Outflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af, Atten= 0%, Lag= 0.0 min
 Primary = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 93.56' @ 12.11 hrs
 Flood Elev= 99.90'

Device	Routing	Invert	Outlet Devices
#1	Primary	92.89'	12.0" x 61.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 92.28' S= 0.0100 1/ S Cc= 0.900 n= 0.012

Primary OutFlow Max=1.53 cfs @ 12.11 hrs HW=93.56' TW=92.84' (Dynamic Tailwater)
 ↑ 1=Culvert (Outlet Controls 1.53 cfs @ 3.85 fps)

Summary for Pond DMH2: DMH-2

Inflow Area = 0.480 ac, 31.15% Impervious, Inflow Depth = 3.04" for 25-YEAR event
 Inflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af
 Outflow = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af, Atten= 0%, Lag= 0.0 min
 Primary = 1.53 cfs @ 12.11 hrs, Volume= 0.121 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 92.84' @ 12.11 hrs
 Flood Elev= 97.30'

Device	Routing	Invert	Outlet Devices
#1	Primary	92.18'	12.0" x 34.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 84.00' S= 0.2406 1/ S Cc= 0.900 n= 0.012

Primary OutFlow Max=1.53 cfs @ 12.11 hrs HW=92.84' TW=0.00' (Dynamic Tailwater)
 ↑ 1=Culvert (Inlet Controls 1.53 cfs @ 2.77 fps)

Summary for Pond WQF-1: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 4.47" for 25-YEAR event
 Inflow = 0.12 cfs @ 12.02 hrs, Volume= 0.007 af
 Outflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af, Atten= 2%, Lag= 0.6 min
 Primary = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.54' @ 12.03 hrs Surf.Area= 141 sf Storage= 92 cf

Plug-Flow detention time= 147.9 min calculated for 0.005 af (73% of inflow)
 Center-of-Mass det. time= 60.8 min (840.4 - 779.6)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Primary OutFlow Max=0.11 cfs @ 12.03 hrs HW=99.54' TW=94.97' (Dynamic Tailwater)
 1=Orifice/Grate (Weir Controls 0.11 cfs @ 0.68 fps)

Summary for Pond WQF-2: Water Quality Filter

Inflow Area = 0.020 ac, 52.66% Impervious, Inflow Depth = 4.47" for 25-YEAR event
 Inflow = 0.12 cfs @ 12.02 hrs, Volume= 0.007 af
 Outflow = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af, Atten= 2%, Lag= 0.6 min
 Primary = 0.11 cfs @ 12.03 hrs, Volume= 0.005 af

Routing by Dyn-Stor-Ind method, Time Span= 1.00-30.00 hrs, dt= 0.01 hrs
 Peak Elev= 99.54' @ 12.03 hrs Surf.Area= 141 sf Storage= 92 cf

Plug-Flow detention time= 147.9 min calculated for 0.005 af (73% of inflow)
 Center-of-Mass det. time= 60.8 min (840.4 - 779.6)

Volume	Invert	Avail.Storage	Storage Description
#1	97.50'	136 cf	Custom Stage Data (Prismatic) Listed below (Recalc)

Elevation (feet)	Surf.Area (sq-ft)	Voids (%)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
97.50	32	33.0	0	0
99.00	32	100.0	48	48
99.10	49	100.0	4	52
99.20	65	100.0	6	58
99.30	83	100.0	7	65
99.40	103	100.0	9	74
99.50	130	100.0	12	86
99.60	156	100.0	14	100
99.70	183	100.0	17	117
99.80	200	100.0	19	136

Device	Routing	Invert	Outlet Devices
#1	Primary	99.50'	15.0" Horiz. Orifice/Grate Limited to weir flow C= 0.600

Post-Hydro_REV2-6-09

Prepared by DeLuca-Hoffman Associates, Inc.

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Type III 24-hr 25-YEAR Rainfall=5.50"

Printed 2/9/2009

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Primary OutFlow Max=0.11 cfs @ 12.03 hrs HW=99.54' TW=94.96' (Dynamic Tailwater)
↑1=Orifice/Grate (Weir Controls 0.11 cfs @ 0.68 fps)

ATTACHMENT E

**Inspection & Maintenance Manual for
Stormwater Management System**

**INSPECTION AND MAINTENANCE MANUAL
FOR STORMWATER MANAGEMENT AND
RELATED STORMWATER FACILITIES**

**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**

FEBRUARY 2009

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ATTACHMENTS

Attachment A - Sample Inspection Logs

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I. INTRODUCTION

Relatively complex stormwater management facilities are commonly installed in development projects including institutional and educational facilities. The complexity and goals of these systems vary with the nature of the receiving water, as well as the type of development. Runoff from developed areas of the project contains a number of contaminants, especially those emanating from rooftops, paved or lawn areas. This runoff can contain a significant amount of non-point contaminants which can have an adverse impact on the receiving waters. Source control and the installation of wet ponds, infiltration galleries and water quality units, many times combined with vegetated buffer strips and other best management practices, can significantly reduce the non-point pollution discharge from the developed area. These measures are particularly important to projects in sensitive water bodies and of concern if impacts to groundwater are proposed.

The effectiveness of water quality management provisions and other components of the stormwater management system is dependent on their design, upkeep, and maintenance to assure they meet their intended function over an extended period of years. It is critical that the stormwater management facilities are inspected on a regularly scheduled basis, and that maintenance is performed on an as-needed basis. It must also be recognized that the effectiveness of these facilities, and their maintenance requirements, are related to the stormwater drainage facilities which collect and transport the flow to the ponds or treatment measures. Thus, maintenance should be directed to the total system, not just the pond.

The purpose of this document is to define in detail the inspection and maintenance requirements deemed necessary to assure that the stormwater management facilities function as intended on a long-term basis. Subsequent sections identify individual maintenance items, give a brief commentary on the function of and need for the item, a description of the work required, and a suggested frequency of accomplishment. While the suggested programs and schedules must be adapted to specific projects, the material presented should provide guidance for a successful long-term program.

A. GUIDELINES OVERVIEW

A summary of the individual components of stormwater management facilities has been prepared. The format used in the summary is as follows:

Preface: A general description of what function/benefit the element is intended to provide. This is a short summary and not intended to provide the design basis which can be found in other sources.

Inspection: This section provides the inspection requirements for the individual component.

Maintenance: This section provides general information on the routine maintenance requirements of this element.

Frequency: This section outlines the best judgment of the designer of the system as to the frequency of maintenance.

Comments: This section provides any particular comment on the site-specific features of this element. This is a summary only. The owner/operator should review the design drawings and documents carefully to understand the particular elements of the project. The end of this section should allow for the owner/operator to make notes on the specific program. This may include the selected maintenance procedure, cross-references to applicable design drawings, etc.

A list of the individual inspection/maintenance elements is provided in the table of contents. The guidelines are proposed for initial use with adjustments made as appropriate based upon specific project experience.

II. PROJECT OVERVIEW

Key permits issued on the project include:

- MeDEP Site Location of Development Amendment
- City of Portland Site Plan Review

The permit applications for the project will include the design information for the stormwater system.

A copy of the permits and Stormwater Management Report should be appended to this manual as Attachment B. The Owner/Operator of the stormwater management system should review these permits for a general description and background of the project, as well as any specific permit conditions or requirements of the project.

The Inn at Diamond Cove LLC has retained DeLuca-Hoffman Associates, Inc. to provide civil engineering services for The Inn at Diamond Cove project. DeLuca-Hoffman Associates, Inc. has prepared the design for the stormwater management facilities and may be contacted at:

DeLuca-Hoffman Associates, Inc.
778 Main Street, Suite 8
South Portland, Maine 04106
(207) 775-1121

It is recommended the preparer of the plan be contacted with any particular questions on the design intent or similar issues.

The applicable plans/design documents which apply to the project are:

1. Civil Site Plans/Permit Applications;

The Inn at Diamond Cove
Great Diamond Island, Portland, Maine
Prepared by DeLuca-Hoffman Associates, Inc.;

2. Erosion Control/Sedimentation Control Plan for The Inn at Diamond Cove Project;

3. Stormwater Management Report for The Inn at Diamond Cove Project;
4. Maintenance of Common Facilities Plan for The Inn at Diamond Cove Project.

A copy of these documents should be retained with this manual.

III. STANDARD INSPECTION/MAINTENANCE DESCRIPTIONS

The following narratives describe the inspection/maintenance descriptions for the Stormwater Management area. These Operation and Maintenance (O&M) procedures will complement scheduled routine maintenance of the pavement areas.

A. VEGETATION IN POND

Preface: Typically, ponds constructed for stormwater management will have an earthen bottom. Aquatic vegetation will often become established in such ponds. It will be more prevalent in ponds with silty soils and ponds with relatively impermeable liners and less prevalent in granular soils. This vegetation is beneficial as it assists in nutrient removal, provides wildlife habitat, and assists in side slope stability through its root structure.

Proper maintenance is important because, if the vegetation proliferates beyond acceptable levels, it can become a detriment to the pond function. Dying vegetation may also accumulate on the pond bottom where it will release nutrients back into the water, and may lower oxygen levels. If allowed to accumulate it will lessen pond volumes over time.

Inspection/Monitoring: The extent of aquatic vegetation associated with the retention pond should be monitored. A photographic record of growth may be useful.

Maintenance: Judgment must be used to determine a proper balance between desirable growth levels and excessive growth. This will be gained by experience. If excessive growth is observed it should be cut back and removed on an annual basis.

Removal of excessive growth should be accomplished in the late fall or early winter. When ice forms sufficiently to walk on, the vegetation extending above the ice level should be cut and removed from the pond. The material should be disposed of in accordance with applicable ordinances. The material can sometimes be composted, particularly if the municipality operates such a facility.

Frequency: Inspect and document aquatic vegetation growth and wildlife use annually in late summer or early fall at the end of the growing season. Cutting and removal of growth will depend on its density. Removal on a 1-to-3 year frequency will be typical.

Removal of Cutting: Cuttings of undesirable excessive vegetation should be removed from the pond areas and composted or otherwise disposed of.

Comments: The Owner desires to encourage and promulgate vegetation in the wetland. Removal and/or cutting of vegetation should be limited to the

circumstances above and shall be done solely to maintain proper function of the overall stormwater management system.



VEGETATION PROVIDES WATER QUALITY TREATMENT AND AESTHETIC ENHANCEMENT OF THE POND

B. STORMWATER INLETS

Preface: The success of any stormwater facility relies on the ability to intercept stormwater runoff at the design locations. Stormwater inlets may include catch basins, open culverts, culverts with bar screens, and field inlets. Inlets exist throughout the system at the points of collection as well as at the outlet of many ponds. Bar racks are common on many inlet locations which intercept an open channel. This section is directed at maintenance of the actual inlet point. A later section addresses more substantive maintenance of the structures and conveyance facilities.

Inspection: The inspection of inlet points will need to be coordinated with other maintenance items. These include:

- > roadway/parking lot maintenance areas
- > building maintenance areas
- > grounds maintenance

The key elements of the inspection are to assure the inlet entry point is clear of debris and will allow the intended water entry.

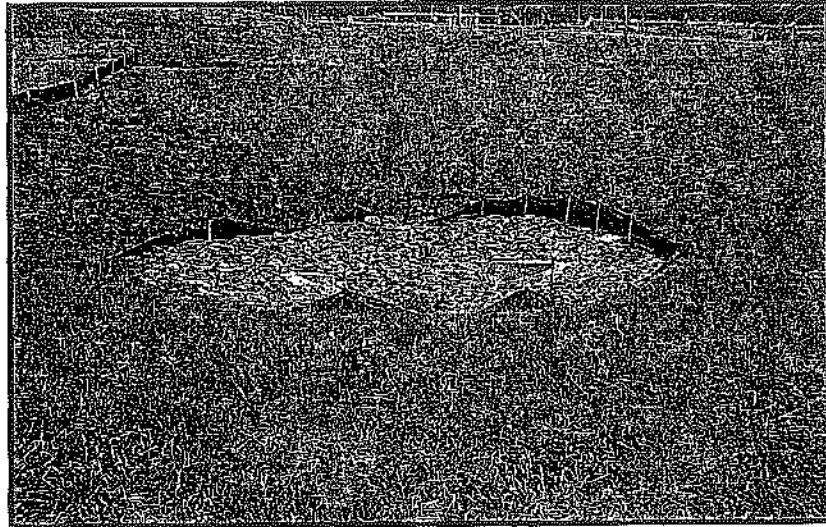
Maintenance: The key maintenance is the removal of any blockage which restricts the entry of stormwater to the inlet. The removed material should be taken out of the area of the inlet and placed where it will not reenter the runoff collection system. Snow should be removed from inlets in parking lots/roadway areas. Grass clippings and leaves should be bagged and removed particularly near the yard inlets near the building.

Frequency: All inlets should be inspected on a monthly basis, and after/during significant storm events. A campus walk is suitable for most inlets but off-road inlets and pond structures require more rigorous inspection.

Maintenance/Inspection Responsibility:

Maintenance Personnel: The maintenance personnel will perform the normal maintenance/inspections of the inlets and culvert crossings.

Comments: Maintenance of inlets is critical on this project.



POORLY STABILIZED INLET ALLOWS ENTRANCE OF DEBRIS AND REDUCED CAPACITY



STABILIZED INLETS REDUCE DEBRIS ACCUMULATION AND MAINTAIN DESIGN CAPACITY

C. TRIBUTARY DRAINAGE SYSTEM

Preface: Stormwater from the project area will be directed to a conveyance system which transports the flow to the retention pond or water quality filters. This conveyance system will be principally a piped drain system. Sediment which accumulates in the ponds is carried by the drainage system. Maintenance of this system can play a major role in the long-term maintenance costs and the effectiveness of the pond system and water quality filters.

Inspection: The tributary drainage system should be periodically inspected to assure that it is operating as intended, and that its carrying capacity has not been diminished by accumulations of debris and sediment or other hydraulic impediments. On piped systems the inlets must be inspected to ensure the rims are set at the proper elevation to optimize flow entry and are not clogged with leaves or other debris. (See prior section for inlet location data.) The inlet basins are normally equipped with sumps which will remove large sediment particles from the flow stream with hooded outlets.

The level of sediment in the sumps should be checked to assure their effectiveness. Pipelines connecting the inlets should be checked to determine if siltation is occurring. This will be most critical on drain lines laid at minimal slopes. This can usually be accomplished by a light-and-mirror procedure.

In some projects most of the stormwater is carried in open swales, channels, or ditches. These conveyance channels may be riprapped or vegetated, depending on the gradient and expected flow velocities. These facilities must be inspected to ensure debris or sedimentation does not reduce their carrying capacity. Excess vegetative growth must also be noted. The surface protection for the channels, either stone or vegetation, must be inspected to insure its integrity. Any areas subject to erosion should be noted.

Maintenance: Maintenance of the storm drainage system must assure that it continues to serve its design function on a long-term basis, and that its operation does not transport excessive sedimentation to any downstream detention pond, or the receiving waters. Elevations on the rim of catch basins should be adjusted as needed to assure optimal water entry. Depending on the frost susceptibility of the soil, the rims may become elevated over time causing flow to circumvent the inlet. When the sump in an inlet reaches half of the normal three-foot depth, the sediment should be removed. This will typically be every 1 to 3 years, depending on the tributary drainage area and the amount of sand utilized for winter ice control. Catch basin cleaning would normally be accomplished with vacuum trucks contracted as a maintenance service. The removed material must be disposed of at an approved site for such materials.

If sediment in the pipeline exceeds 20% of the diameter of the pipe, it should be removed. This may be accomplished by hydraulic flushing, or by mechanical means. If hydraulic flushing is used the downstream conditions should be analyzed. In general a sump or sediment trap should be used where it can be flushed into the detention pond, since it will reduce pond volume and hasten the time when it must be cleaned.

Vegetated ditches or swales should be mowed at least monthly during the growing season. Larger brush or trees must not be allowed to become established in the channel. Any vegetation cut in the ditch area should be removed from the site. Any areas where the vegetation fails will be subject to erosion and should be repaired and revegetated. Any rip rap that becomes displaced should be replaced and chinked to assure its stability.

Frequency: The piped drainage system should be inspected on an annual basis. Adjustment of inlet rim elevations should be on an as-needed basis. Cleaning catch basin sumps and pipelines will depend on the rate of accumulation. Typically, catch basin sumps should be cleaned on a 1-to-3 year cycle. Pipeline cleaning schedules will be more variable. Open, vegetated swales should be mowed at least monthly during the growing season. Debris should be removed as required to maintain hydraulic capacity.

Maintenance/Inspection Responsibility:

Maintenance Personnel: The Inn at Diamond Cove Maintenance Personnel.

Special Services: The owner may elect to contract with an independent agent for cleaning of catch basins, sumps, and pipelines. Remedial source control measures may be performed by the owner or an outside service depending upon the nature of the particular situation.

Comments: Maintenance of inlets is critical on this project.

D. STORMWATER OUTLETS

Preface: The outlets of all closed storm drain systems are provided with some level of erosion control, which typically includes a riprap apron to dissipate energy from the concentrated discharge.

Inspection: Stormwater outlets should be inspected for movement of riprap materials to ensure the integrity of the structural measure is maintained. In addition, the interface between the riprap apron and vegetated channel or receiving area should also be inspected for any signs of erosion.

Maintenance: Repair riprap aprons if movement or loss of stone is discovered. In addition, the riprap material should be adjusted or extended if necessary to stabilize any areas of observed erosion within the receiving area.

Frequency: It is recommended stormwater outlets be inspected on an annual basis.

E. VEGETATED SWALES

Preface: Vegetated swales are often used to convey stormwater. Swales can be intended to be:

1. Mowed and maintained
2. Reverted to wetlands
3. Naturalized

Inspection: Swales should be inspected for erosion and sedimentation.

Maintenance: Eroded or silted channels need to be repaired when discovered. If erosion is a problem, the swale design should be examined. Likewise, if situation is a continued problem, the upgradient conditions should be reviewed.

Frequency: It is recommended vegetated swales be inspected quarterly until vegetation is established and a year after installation. Thereafter, if no problems have been noticed, the frequency can be decreased to once a year.

Design Guidelines: The vegetated swale should consider channel cover at the time of concentration as well as several years after construction.

Design computations should state the assumed channel of vegetation and provide the basis for the Manning's or other roughness coefficient and for design.

F. WATER QUALITY FILTERS (UNDERDRAINED SOIL FILTER BASIN)

Preface: The grassed underdrain filter area is intended to provide stormwater quality measures for the site.

Biofilters (Rain Garden/Sand Filters): The biofilter is intended to capture and filter the runoff from most storm events. Historic rainfall events (generally over 2 inches in a 24-hour period) will flood the filter and flow through the overflow. After a hard rain, the biofilter will be surcharged and take 24 to 36 hours to drain.

Potential Signs of Failure or Restricted Performance: The evidence of failure or restricted performance would be stressed vegetation and extended drawdown periods for the filter.

Inspection: The biofilter should be inspected when normal landscape maintenance is performed and formally twice a year. Formal inspection should include checking the underdrain connection and orifice at the control manhole, inspecting the ground surface near the pipe or inlets to the filter to check for evidence of sediment, and inspection of bottom area for matting and unwanted vegetative litter.

Maintenance: Any sediment near the inlet pipes and undesirable leaf or vegetative litter should be removed from the filter. The vegetation should be maintained similar to other landscaping on the site and needed to remove invasive plants. Harvesting and pruning of excessive growth will need to be done occasionally. Fertilization is not recommended.

The mulch and surface of the filter should be raked with a deep tine twice a year. The top several inches of the filter soil shall be replaced with fresh material when water ponds on the surface of the bed for more than 72 hours. Aeration is recommended as a first step but if this is unsuccessful the filter may need to be reconstructed. The removed sediments should be disposed of in an acceptable manner. Filters with grass cover should be mowed no more than 2 times per growing season to maintain grass heights less than 12 inches. The filter material

in the pond should be inspected to assure it is not blocked or restricted or that there is sediment to the extent that its flow characteristics may be altered.

G. SUMMARY CHECKLIST

The above described inspection and maintenance items have been summarized on a checklist in Attachment C.

IV. PROGRAM ADMINISTRATION

A. GENERAL

A reliable administrative structure must be established to assure implementation of the maintenance programs described in the foregoing section. Key factors that must be considered in establishing a responsive administrative structure include:

1. Administrative body must be responsible for long-term operation and maintenance of the facilities.
2. Administrative body must have the financial resources to accomplish the inspection and maintenance program over the life of the facility.
3. The administrative body must have a responsible administrator to manage the inspection and maintenance programs.
4. The administrative body must have the staff to accomplish the inspection and maintenance programs, or must have authority to contract for the required services.
5. The administrative body must have a management information system sufficient to file, retain, and retrieve all inspection and maintenance records associated with the inspection and maintenance programs.

If any of the above criteria cannot be met by the entity assigned inspection and maintenance responsibilities, it is likely that the system will fail to meet its water quality objectives at some point during its life. While each of the above criteria may be met by a variety of formats, it is critical to clearly establish the assigned administrative body in a responsible and sustainable manner.

B. RECORD KEEPING

Records of all inspections and maintenance work accomplished must be kept and maintained to document facility operations. These records should be filed and retained for a minimum 5-year time span. The filing system should be capable of ready retrieval of data for periodic reviews by appropriate regulatory bodies. Where possible, copies of such records should also be filed with the designated primary regulatory agency for their review for compliance with permit conditions. Typical inspection and maintenance record forms are attached hereto as Attachment A.

C. CONTRACT SERVICES

In some instances or at specific times, the Maintenance Personnel may not have the staff to conduct the required inspection and/or maintenance programs as outlined in this document. In such cases the work should be accomplished on a contractual basis with a firm or organization that has the staff and equipment to accomplish the required work.

The service contract for inspection and maintenance should be a formal, well written legal document which clearly defines the services to be provided, the contractual conditions that will apply, and detailed payment schedules. Liability insurance should be required in all contracts.

Undoubtedly each administrative body and its personnel will prepare the actual service contract and procurement procedures to fit the needs for the project.

ATTACHMENT B

Water Quality Filter and Bioretention Cell Sizing Calculations

ATTACHMENT A

Sample Inspection Logs

MAINTENANCE DEPARTMENT
 THE INN AT DIAMOND COVE, PORTLAND, MAINE

 STORMWATER MANAGEMENT
 UNDERDRAIN SOIL FILTER BASIN
 ANNUAL INSPECTION & MAINTENANCE LOG

FACILITY:		YEAR:
LOCATION:		CONTRACTOR:
FUNCTION:		INSPECTOR:
DATE OF INSPECTION:		DATE OF MAINTENANCE
ITEM IDENTIFICATION	DESCRIPTION OF CONDITIONS	MAINTENANCE ACCOMPLISHED
VEGETATION		
BERMS		
SPILLWAY		
GENERAL COMMENTS:		

MAINTENANCE DEPARTMENT
 THE INN AT DIAMOND ISLAND, PORTLAND, MAINE

STORMWATER MANAGEMENT
 GENERAL STORMWATER INFRASTRUCTURE
 ANNUAL INSPECTION & MAINTENANCE LOG

FACILITY:		YEAR:	
LOCATION:		CONTRACTOR:	
FUNCTION:		INSPECTOR:	
DATE OF INSPECTION:	DESCRIPTION OF CONDITIONS	MAINTENANCE ACCOMPLISHED	DATE OF MAINTENANCE
ITEM IDENTIFICATION			
STORMWATER INLETS			
PAVEMENT SWEEPING			
POND BERMS			
VEGETATION IN PONDS			
SEDIMENT FOREBAY			
SEDIMENT MONITORING/			
GENERAL COMMENTS:			

MAINTENANCE DEPARTMENT
 THE INN AT DIAMOND COVE, PORTLAND, MAINE
 STORMWATER MANAGEMENT
 UNDERDRAINED SOILS FILTER BASIN
 MONTHLY INSPECTION & MAINTENANCE LOG

FACILITY:		YEAR:				
LOCATION:		CONTRACTOR:				
FUNCTION:						
MONTH	DAY	INSPECTOR	WATER DEPTH	OVERFLOW WEIR		WEIR CONDITION
				CLEAR	DEBRIS	
JANUARY						
FEBRUARY						
MARCH						
APRIL						
MAY						
JUNE						
JULY						
AUGUST						
SEPTEMBER						
OCTOBER						
NOVEMBER						
DECEMBER						
LIST SPECIAL MAINTENANCE UNDERTAKEN:						

MAINTENANCE DEPARTMENT
 THE INN AT DIAMOND COVE, PORTLAND, MAINE
 STORMWATER MANAGEMENT
 UNDERDRAINED SOILS FILTER BASIN
 SEMI-ANNUAL INSPECTION & MAINTENANCE LOG

SEMI-ANNUAL INSPECT 1.2	FACILITY:
DATE:	LOCATION:
INSPECTOR:	FUNCTION:
SPILLWAY CONDITION:	
OUTLET CONDITION	

FORE BAY SUMP	EST. DEPTH SED.	REMOVED? Y/N	EST. VOL. CY	WHERE DISPOSED OF	STRUCTURAL CONDITION

DESCRIBE CONDITIONS FOUND & MAINTENANCE ACCOMPLISHED:

ATTACHMENT B

Maintenance of Common Facilities or Property

MAINTENANCE OF COMMON FACILITIES OR PROPERTY

Overview

The site will be owned and maintained by the Inn at Diamond Cove LLC, contact Roger Shoemaker, Director of Facilities at (207) 712-3113.

The facilities to be maintained include:

- Stormwater Management Systems
- Pavement areas
 - Pavement Repair
 - Snow Removal
 - Ice Removal
- Onsite Utilities
- Mowing
- Litter Control
- Landscaping

Related Sections

Section 12 – Stormwater Management Report (Flooding and General Standards)
Section 14 – Erosion & Sedimentation Control Report (Basic Standards)

Appendix

Appendix A – Routine Maintenance Checklist

APPENDIX A

Routine Maintenance Checklist

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

**Annual Routine Maintenance Checklist
Summary for Calendar Year**

Parking/Lots	
Spring Sweeping	Date: _____
Fall Sweeping	Date: _____
Restriping (Yes/No)	Date: _____
Crack Sealing (Yes/No)	Date: _____
Turf and Yard Areas	
Fertilizer Application:	Type:
Dates:	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Weed/Grub Control	
Dates:	Type:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Landscaping	
Item:	Date:
Replacement of Dead Material	Date: _____
Annual Plantings	Date: _____
Insect Control	Date: _____
Pruning	Date: _____
Staking for Winter	Date: _____
Utilities	
Water Hydrants:	Date:
Date Pumped Out and Winterized	Date: _____
Date Returned to Summer Operation	Date: _____
Propane Supply:	Date:
Inspection of Site Area Repairs Noted	Date: _____

Sewer

Manhole Inspection: (SMH 1)	Date/Observation: _____
	Date/Observation: _____

Storm Drain, Manhole and Catch Basin Inspection

DMH 1	Date/Observation: _____
DMH 2	Date/Observation: _____
CB 1	Date/Observation: _____
CB 2	Date/Observation: _____
CB 3	Date/Observation: _____
CB 4	Date/Observation: _____
CB 5	Date/Observation: _____
CB 6	Date/Observation: _____

ATTACHMENT C

Summary Checklist

Inspection and Maintenance Items

ACTIONS NECESSARY TO BRING FACILITY INTO COMPLIANCE:

REQUIRED MODIFICATIONS TO STORMWATER POLLUTION PREVENTION PLAN (MUST BE IMPLEMENTED WITHIN 7 DAYS OF INSPECTION):

CERTIFICATION STATEMENT:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the systems, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature

Typed Name

Title

Date

Environmentally Sensitive Areas. The construction of the swimming pool and service building will result in disturbance to an area designated as open space behind the Double Barracks building. Sec. 14-145.16(f) of the IR-3 development standards (environmentally sensitive areas) states:

“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.”

The site disturbance caused by the swimming pool and service building is relatively minor in the context of the total open space being conserved within the Diamond Cove IR-3 property. The “significant resources” cited in the above standard has been preserved on other locations of the Diamond Cove site. It is unlikely this particular site would be rated as significant in terms of its natural features. The amount of vegetation likely to be disturbed within the footprint of the swimming pool/service building area is minimal in the context of the total vegetation preserved for the Diamond Cove development.

Staff has re-read an environmental assessment study filed with the original zone change application. The hotel proposal seems consistent with the impacts associated with the original Diamond Cove development except for the loss of a few trees for the swimming pool area.

IX. Other Issues

There are certain development issues related to the project that are better classified as site plan related issues. These issues can be explored during the site plan review process assuming the zone change is approved. These issues are discussed below.

Mainland Parking. A letter has been received from the Portland Harbor Hotel indicating “the Portland Harbor Hotel, acting as Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor hotel has adequate excess parking available through both its on and off parking leases”. This information will need to be submitted during the site plan review process.

Solid Waste Disposal. By terms of the original conditional zoning text (paragraph 6) Diamond Cove is responsible for providing its own solid waste service. At some point Public Works voluntarily provided this service. In discussing the Double Barracks and Hospital proposal with Michael Bobinsky (Director of Public Services) he indicates the City will not be able to provide solid waste service for these new buildings.

Emergency Services. A concern had been expressed that the three story Double Barracks are too tall to be serviced by the existing fire truck on Great Diamond Island. It is our understanding that the building will have sprinklers and a central fire alarm system. Staff attended a great Diamond Island Advisory meeting in which Fire Chief Fred LaMontagne was asked about fire protection issues for this building. His response was that sprinklers

were a better fire suppression tool than a fire truck. He indicated that sprinklers and a central fire alarm system would be required for the building.

X. Development Review

If the conditional zoning amendment were to pass, conversion of the Double Barracks buildings will likely require subdivision and site plan review.

It appears the project qualifies for review of an amendment to the subdivision plan because the number of units proposed (20) exceeds the number of units shown on the original subdivision plan (14) for this building. This would not qualify for staff review since the number of units is being increased within the building.

Site plan review for a change in use for the Double Barracks is likely. Since the building (27,386 sq ft) exceeds 10,000 sq ft of floor area, Planning Board review would be required. The same would apply to the Hospital if a specific renovation proposal comes forward.

Pending further information this is our initial interpretation of the development review process of this project.

The Double Barracks and Hospital buildings are located in the Fort McKinley local historic district and will require Historic Preservation Committee review and approval of the exterior renovation.

XI. Motions for the Board to Consider

On the basis of plans and information submitted by the applicant and the information contained in Planning Report #32-08, and testimony presented at the Planning Board public hearing, the Board finds:

1. The proposed amendments to the Diamond Cove conditional zone text (Attachment 1-A or 2-A) (is or is not) in conformance with the City of Portland Comprehensive Plan and therefore (recommends or does not recommend) approval of the proposed text amendments zoning to the City Council
2. The Planning Board also (recommends or does not recommend) approval to the City Council of revisions to the original 1985 Diamond Cove conditional zoning text (Attachment B-2) which includes an editing of outdated language and previously passed amendments (golf cart amendments)

Attachments

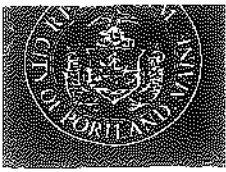
1 Applicant Submissions

- 1-A Proposed Conditional Zoning Amendment (Supplemental Conditions and Restrictions)
- 1-B Zoning Amendment Application, dated 4-08-08
- 1-C Cover letter dated 4-08-08
- 1-D Memorandum from The Inn at Diamond Cove dated 4-29-08
- 1-E Property Purchase and Sale Agreement
- 1-F Diamond Cove Homeowners Assoc. Agreement regarding The Inn at Diamond Cove dated 8-13-07
- 1-G Letter from Joseph Laverriere (DeLuca-Hoffman) on wastewater treatment capacity dated 4-29-08
- 1-H Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 5-29-08
- 1-I Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 4-29-08
- 1-J Letter from Gerard Kiladjian (Portland Harbor Hotel) on mainland parking dated 4-29-08
- 1-K Letter from David Lloyd (Archetype) regarding sprinkler and code requirements dated 4-28-08
- 1-L Floor layout plan
- 1-M Batman Partners LLC development experience
- 1-N Letter from Joseph Laverriere (DeLuca Hoffman Assoc) on wastewater capacity dated 5-22-08
- 1-O Letter from Bank North

2 Staff Comments/Submissions

- 2-X Maps
- 2-A Staff Version of Applicant's Proposed Conditional Zoning Amendment (Supplemental Conditions and Restrictions)
- 2-B Staff Version of Comprehensive Update of Original 1985 Conditional Zoning
- 2-C Letter from Alexander Jaegerman to Ronald Ward dated 8-15-07
- 2-D E-mail from Richard Knowland to Ronald Ward dated 4-9-08
- 2-E E-mail from Richard Knowland to Ronald Ward dated 4-11-08
- 2-F Letter from Michael Demarest, Maine DEP, dated 5-21-08
- 2-G The Inn at Diamond Cove brochure received in Planning Office in 2007
- 2-H IR-3 Zoning Text
- 2-I Diamond Cove original conditional zoning text

3 Written Public Comments



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www.portlandmaine.gov

Corporation Counsel
Gary C. Wood

August 30, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adolf
Mary E. Costigan

Board of Directors
Diamond Cove Homeowners Association
C/O Edie Hale
Dirigo Management Co.
One City Center
Portland, Maine 04101

Re: Use of Diamond Cove Barge Landing

Dear Board Members:

I am writing in regard to the use of the Diamond Cove barge landing. It has recently been brought to the City's attention that the Diamond Cove Homeowners Association (DCHA) is enforcing a section of the Diamond Cove Traffic Management Plan that limits the number of new non-Cove home projects that will be given barge landing access to three homes per calendar year. Michael and Nancy Burton have written to the DCHA asking for an exemption in order to build a fourth home on the non-Cove side of the island and have asked the City to write a letter supporting their request.

As a member of the DCHA, the City supports the Burton's request for access to the barge landing for the delivery of building materials for the construction of their home on Great Diamond Island. However, please note that the section of the Diamond Cove Traffic Management Plan that the Board is citing in its enforcement of a three-home limitation was not approved or supported by the City in its DCHA membership capacity. More importantly, it has not been accepted by the City in its independent status as a party to various agreements and approvals, including, but not limited to land use approvals that apply to the property within the Diamond Cove development. By letter dated October 25, 2006 to John Dietz, President of the Diamond Cove Homeowners Association, Lee Urban, the City's Director of Planning and Development, informed Mr. Dietz that the traffic plan complies with the conditional zone agreement, except for that portion of the plan that addresses the use of the barge landing by the public and governmental entities.

In supporting the Burton's request, the City is not waiving any rights to continue its review of the Traffic Management Plan and to reject any and all portions, including a limitation on the number of non-Cove home projects that are given barge landing access, that are inconsistent with the conditional zone agreement and any other agreements and approvals, and any amendments thereto.



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life * www.portlandmaine.gov

Corporation Counsel
Gary C. Wood

August 30, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adolf
Mary E. Costigan

Board of Directors
Diamond Cove Homeowners Association
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In supporting the Burton's request, the City is not waiving any rights to continue its review of the Traffic Management Plan and to reject any and all portions, including a limitation on the number of non-Cove home projects that are given barge landing access, that are inconsistent with the conditional zone agreement and any other agreements and approvals, and any amendments thereto.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



Mary E. Costigan
Associate Corporation Counsel

cc: Michael and Nancy Burton
Janet Ingraham
Judy Sedgewick
Mike Murray
Mike Bobinsky
Alex Jaegerman



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Planning and Development Department
Lee D. Urban, Director

October 25, 2006

John Dietz, President
Diamond Cove Homeowners Association
Diamond Cove
Great Diamond Island, ME 04109

Re: Traffic Management Plan Submitted to City of Portland on March 21, 2005

Dear John:

I hope you will excuse the City's delay in responding to the proposed traffic management plan. This is plan that your organization filed in order to comply with the Council Order issued on April 7, 2004. By that Council Order, the Great Diamond Island golf cart controversy was resolved along with several other issues.

Gary Wood, the City's Corporation Counsel, told me that he met with you and Tom Fortier a couple of weeks ago to discuss the barracks and hospital building. That meeting reminded Gary that the City needed to provide your organization with a formal response to that plan.

Gary also told me that this compliance issue came up during the island tour this past Summer and that he promised island residents that he would review the issue and consult with me about the status of the traffic plan.

I have reviewed the traffic plan submitted by the Diamond Cove Homeowners Association for compliance with the Council's Order, and I conclude that it complies in all respects with the Council Order and the attachment referenced in that Order except for one component. The one component that I will not confirm or approve is the component that addresses the use of the barge ramp on Diamond Cove property by the public and governmental entities for the purpose of providing service to the public (westerly) side of the island outside the property owned by Diamond Cove. Apparently, there is a significant remaining disagreement regarding the rights of governmental entities and the public to use that ramp for services to the public/westerly side of the island, and I respectfully suggest that we leave that issue for resolution at a later date, if necessary.

I understand that, from the City's perspective, the current use that is being made of that ramp for the public/westerly side of the island is working; and I hope that it is also working for your Association. I read your proposed plan as reserving the right to challenge that use at some point in the future if you deem such a challenge appropriate or necessary.

In issuing this opinion, I have consulted with Gary. If you have any questions about this opinion, please feel free to call either him or me.

I understand that the golf cart compromise has worked out, and we all hope that it will continue. We also look forward to working with the Diamond Cove Homeowners Association on other projects in the near future, notably the double barracks and hospital building issues.

Thank you for your ongoing consideration and cooperation.

Sincerely,



Lee D. Urban

Director of the Planning and Development
Department

cc: Bill Robitzek, Diamond Island Association
Councilor William Gorham
Joseph Gray, City Manager
Larry Mead, Assistant City Manager
Gary Wood, Corporation Counsel
Michael Bobinsky, Public Works Director
Tom Fortier, Island/Neighborhood Administrator

DIAMOND COVE TRAFFIC MANAGEMENT PLAN
Great Diamond Island, Maine

1) OWNERSHIP AND USE OF PRIVATE VEHICLES

- a. The definition of a Private Vehicle is as follows: electrically powered golf cart, neighborhood electric vehicle, electric personal assistive mobility device (a/k/a human transporters), low-speed vehicles as currently described in 29-A M.R.S.A. Section 101, or any similar vehicle.
- b. Ownership of Private Vehicles will be limited to one (1) such vehicle per unit. There are 82 units in the IR-3 zone and 39 units in the IR-1 zone. This allows for a total private vehicle ownership of 121 vehicles.
- c. All ownership and use of such Private Vehicles will be in accordance with the rules, bylaws and covenants of Diamond Cove, the stipulations of the "Amendment to Conditional Zoning Agreement Referenced in Order 42-84/85" of the City of Portland, Maine, dated August 16, 2004, and the statutes, rules and regulations of the City of Portland, Maine, and the State of Maine, governing such vehicles.
- d. All Private Vehicles shall be registered as required by the City of Portland, Maine. The process that the City has established is as follows. The Diamond Cove unit owner or his representative will go to Portland City Hall, room 102, and purchase a registration sticker which will be red in color. The sticker shall be affixed to rear bumper or fender so as to be easily visible from the roadway. No more than 82 permits will be issued for private vehicles residing in the IR-3 zone and no more than 39 permits will be issued for private vehicles residing in the IR-1 zone.
- e. Private Vehicles shall be operated by a properly licensed driver who would be allowed to drive on public roads in the State of Maine.
- f. Maximum speed for any vehicle on Diamond Cove property is 15 miles per hour.

2) TRAFFIC FLOW AND PARKING

- a. Private Vehicles shall only be operated and normally parked on established and recognized streets and roadways within the boundaries of Diamond Cove. Winter parking and storage will be off road to allow for snow removal.
- b. No private vehicle will be permitted to cross though either the upper gate or lower gate nor are they allowed to drive on the southerly side of the island.

- c. Diamond Cove is private property and no vehicles from the southerly side will be allowed to cross through the gates and drive on Diamond Cove property unless it is a permitted service or emergency vehicle.
- d. Pedestrian traffic from the southerly side of the island is permitted only through the upper gate. Diamond Cove residents, their guests, and their tenants are exempt from this restriction.
- e. No Private Vehicle shall be driven or parked so as impede pedestrian flow.
- f. No Private Vehicle shall park within 15 feet of an intersection or fire hydrant.
- g. Private Vehicles must park so as to not impede passage of emergency or common service vehicles.
- h. Periodically Private Vehicles will be permitted to go off roadways, but must remain inside the boundaries of Diamond Cove, to transport materials, make property repairs, or in times of emergency.

3) COMMON TRANSPORTATION VEHICLES

- a. Common Transportation Vehicles are exempt the restriction on crossing through the gates and driving on the southerly side of the Island. All designated exempt vehicles shall obtain approval as such from the City of Portland Island Liaison or the Office of the Corporation Counsel.
- b. Common Transportation Vehicles must obtain and display a yellow sticker with the designation "Island Use Only" per the city registration system. This sticker does not restrict the use of this vehicle only to the Island, but is used as a means to identify the vehicle as exempt while on the Island.
- c. Common Transportation Vehicles shall be comprised of vehicles for two purposes. One would be for the transportation of passengers. The types of vehicles for this purpose would be vans, shuttle buses, stretched golf cart or SUV's. The other use would be to transport freight. The types of vehicles for this purpose would be pickup trucks or panel vans.
- d. Common Transportation Vehicles will be operated only by DCHA authorized personnel.
- e. Common Transportation Vehicles will operate on a fixed schedule to coincide with the ferry schedule to transport people and freight to and from the ferry boats, on an on-call basis to serve the needs of the residents and their guests, and as required for the general operation of Diamond Cove.

- f. Common Transportation Vehicles will operate within the boundaries of Diamond Cove only on established streets, roadways, and driveways to private residences. Outside Diamond Cove boundaries on the southerly side of the Island Common Transportation Vehicles will go to the State Pier, or City facilities (trash receptacles, etc.), or other destinations by the most appropriate direct route. Occasionally, Common Transportation Vehicles will be removed from the Island for repairs and maintenance.
- g. Periodically Common Transportation Vehicles will be permitted to go off roadways to transport materials, make property repairs, or in times of emergency.

4) OTHER EXEMPT VEHICLES

- a. Certain service vehicles, that either provide services to both sides of the Island or need to access the ferry on the southerly side of the Island to conduct their business, are designated exempt vehicles.
- b. Other Exempt Vehicles must obtain and display a yellow sticker with the designation "Island Use Only" per the city registration system. This sticker does not restrict the use of this vehicle only to the Island, but is used as a means to identify the vehicle as exempt while on the Island.
- c. All said exempted vehicles shall obtain approval as such from the Board of Directors of DCHA and the City of Portland Island Liaison or the Office of the Corporation Counsel.
- d. These vehicles are provided gate keys to permit passage through the gates for purposes of business or emergency and not to pass through the gates for any other purpose. Misuse of the key may result in termination of exempt status.

5) TRANSPORTATION TO AND FROM FERRY BOATS OF PEOPLE HAVING SPECIAL NEEDS

- a. The passenger shuttle bus/van will be employed if the special needs of the passenger can be met with this vehicle.
- b. If the passenger shuttle bus/van cannot meet the needs of passenger or passengers, DCHA will provide a golf cart to transport this person.

6) CONSTRUCTION, SUPPLY-DELIVERY, AND SERVICE VEHICLES LANDING AT THE DIAMOND COVE BARGE LANDING

Diamond Cove Barge Landing: The Barge Landing at Diamond Cove is part of the DCHA common grounds and is located on private property. In the spirit of being a good neighbor, and to allow the city time to establish an alternate barge landing site on public property, DCHA will permit the below described traffic to use the barge landing for a reasonable period of time. After that time, only Diamond Cove owned vehicles or vehicles providing services for DCHA will be allowed usage of the barge landing.

Advance notice:

In order for road traffic to be monitored and delivery trucks to take the best route to their destination, all homeowners, contractors and non-resident users must notify the management company when a barge is scheduled. Failure to contact the management company's property manager may result in failure of deliveries or services.

All barge traffic needs to be coordinated through Dirigo Management 24 hours in advance. The cell phone number of Sterling Davis, the on-site manager, is (207) 712-3113 and the phone number of Dirigo's main offices is (207) 871-1080.

Fee schedule:

DCHA new home construction fee for road usage and barge landing maintenance is \$2,000 per unit payable upon application for construction.

Vehicles with a non-Diamond Cove destination will be subject to payment of a flat fee of \$50 per barge for road usage and barge landing maintenance.

Homeowners (or their General Contractor) requesting the delivery vehicles will be responsible for payment and checks should be made payable to the Diamond Cove Homeowners Association, with the notation (on the memo line) that the fees are for use of the Diamond Cove barge landing. The barge fee must be paid—at the latest—upon the barge's arrival. Failure to schedule a barge landing in advance and/or to pay the applicable fee will result in refusal of permission to offload the barge and/or passage through the Diamond Cove gates.

Fees are subject to change upon 60 days notice.

Allowed Road Access:

All vehicles with a non-Diamond Cove destination must exit the barge landing and turn right immediately on to West Shore Drive and exit Diamond Cove property through the Lower Southerly Gate. Any vehicle, not conducting business in Diamond Cove, that traverses the Parade Ground or any roadway on Diamond Cove not on West Shore Drive

between the barge landing and the Lower Southerly Gate will be subject to a minimum fine of \$1,000.00.

Loading and offloading of vehicles:

Because the barge landing is located in the direct line of sight of several existing homes, every effort should be made to minimize the amount of time vehicles making authorized deliveries are at the landing. When barging off and on the island, drivers must stay with vehicles. The Diamond Cove barge landing is for arrival and departure only; it is not a staging area.

Limited number of new home projects:

To minimize the impact to Diamond Cove roads, and to respect the feelings of those DC homeowners whose properties abut the route to be taken to the southern end of the island, a limit of three non Diamond Cove new home projects will be allowed barge landing access in a given calendar year—on a first-come, first-served basis.

Proof of registration and insurance:

All vehicles entering Diamond Cove barge landing must be properly registered and insured as required by the State of Maine.

Road posting:

Occasionally, the extreme nature of our climate requires that the Diamond Cove Homeowners Association and their property management company post the roads and thereby preclude traffic across them for one or more classes of vehicles, as conditions warrant. This usually occurs in early spring, but may occur at other times of the year.

Exceptions:

City vehicles

Dinosaur Enterprises

Suburban Propane

Portland Water District

Verizon

CMP

Satellite or Cable TV

(Energy - utilities)

The Diamond Cove Homeowners Association and their property management company reserve the right to exclude vehicles of any category, including those listed as exceptions above, as circumstances warrant.

Original Version October 12, 2004

This version amended March 21, 2005

Order 33-04/05

Given first reading: 8/2/04

Amended and Passed: 8/16/04 6-0 (Geraghty, O'Donnell, Cohen absent)

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO CONDITIONAL ZONE AGREEMENT
REFERENCED IN ORDER 42-84/85
RE: CONTRACT FOR REZONING FOR PROPERTY
IN THE VICINITY OF
DIAMOND COVE/GREAT DIAMOND ISLAND**

WHEREAS, on July 15, 1985, the Portland City Council approved a Conditional Rezoning of property located on Great Diamond Island, formerly known as Fort McKinley (hereinafter sometimes referred to as the "Site");

WHEREAS, on May 18, 2004, the Diamond Cove Homeowner's Association filed an application to amend the Conditional Rezoning to allow electric golf carts to be operate exclusively within the Site;

WHEREAS, on July 20, 2004, the Portland Planning Board recommended the approval of the amendment to the Conditional Rezoning conditioned on some further limitations with regard to number of allowed golf carts and further provisions regarding enforcement; and

WHEREAS, the City Council hereby finds and declares that the said amendments to the Contract Rezoning would be pursuant to and consistent with the City's Comprehensive Plan;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Portland, Maine, in the Council assembled, as follows:

Section 9 and Section 13 of the Contract Zone Agreement in Order 42-84/85 is hereby amended as follows:

Section 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-A M.R.S.A. Section 101(42), but including snowmobiles and all-terrain vehicles, shall be operated or stored, temporarily or otherwise, on the Premises; provided that nothing contained herein shall be deemed to restrict electrically powered golf carts, neighborhood electrical vehicles, electric personal assistive mobility devices (a/k/a human transporters), low-speed vehicles as currently defined in 29-A M.R.S.A. Section 101, or any similar vehicles.

Each unit is entitled to one vehicle (i.e. electrically powered 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) but in any event, the total number of such vehicles on the Site shall not exceed eighty-two (82).

Within sixty (60) days of approval of this amendment by the Portland City Council, Diamond Cove Homeowners Association shall file a transportation management plan with the City's Planning Authority that includes but is not limited to a description of the process for allocating vehicle permits; a description of the means and methods of providing transportation for the disabled on the island; a restriction that confines permitted vehicles to established roadways that are presently within the Association property; a description of available common transportation service vehicles and how they will be managed for the needs of residents and visitors; and a description of how construction, supply-delivery and service vehicles from outside the island including barge ingress and egress routes to the island are managed.

This paragraph is otherwise governed by the terms and conditions contained within the attached document entitled "Conditions Restricting Use of Diamond Cove Motor Vehicles Outside of Diamond Cove" which document is incorporated by reference.

13. Breach. In the event DCHA or any successor should fail to utilize the **PROPERTY** in accordance with this Agreement, or in the event of DCHA's breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code which would otherwise be applicable to property situated in the IR-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law and seek the remedies authorized by that law.

In addition, if such enforcement action should result in a finding that DCHA has breached the Agreement, then either the Portland Planning Board, or at the request of the Planning Authority, or the City Council on its own initiative, may act either to modify the Agreement or to rezone the **PROPERTY**.

**PROPOSED CONDITIONS
RESTRICTING USE OF DIAMOND COVE MOTOR VEHICLES
OUTSIDE OF DIAMOND COVE
IF PLANNING BOARD APPROVES PROPOSED AMENDMENT
TO ALLOW GOLF CARTS IN IR-3 ZONE ON GREAT DIAMOND ISLAND**

1. No vehicle shall pass from Diamond Cove to the southerly part of Great Diamond Island, except as permitted herein. **DCHA** will take the following steps to enforce the existing restrictions on motor vehicle traffic entering or exiting the southerly boundary of the Diamond Cove property:
 - (a) **DCHA** will immediately close and lock the so-called "lower gate" at the Diamond Cove property line on West Shore Drive, to prohibit vehicular traffic from entering or exiting through this gate. **DCHA** will place a means to open this gate with first responders on the island, selected fire company officers, and the fire truck and ambulance to ensure that the gate can be opened quickly in an emergency. Said means will be subject to the approval of the Portland Fire Chief or his designee. **DCHA** will also provide the City's Department of Public Works with a means to open this gate for the purpose of accessing any facility within the Diamond Cove property used by DPW pursuant to an agreement with **DCHA**.
 - (b) **DCHA** will secure the so-called "upper gate" on Diamond Avenue in the same manner as the lower gate. Only a pedestrian access gate shall remain permanently open.
 - (c) Only vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, (hereinafter sometimes referred to as "Exempted Vehicles") will be provided by **DCHA** with the means to open the lower gate and/or the upper gate and only these vehicles may pass to the southerly part of Great Diamond Island. **DCHA** will arrange to open the lower gate for these vehicles in order to use the barge landing on **DCHA** property from which these vehicles may pass to and from the southerly part of Great Diamond Island or remain within the Cove pursuant to Cove regulations.
 - (d) **DCHA** will institute a registration and approval process for Exempted Vehicles that are permitted to open the lower gate and/or the upper gate and exit the southerly boundary of the Diamond Cove property. Vehicles approved by **DCHA** must also be approved by the City Office of Code

Enforcement. If **DCHA** determines that an application meets the definition of Exempted Vehicles set forth in Section 1(c) above, then **DCHA** may provide the operator with a key and a prominent exemption decal provided by the City shall be placed on the vehicle. Any such operator will be required to sign a statement (a) agreeing that the key would be used only with the specified vehicle and only for the specified exempted purpose, and (b) acknowledging the right of **DCHA** and the City to impose fines and to revoke gate privileges for violations of the foregoing use restrictions. **DCHA** will identify any such approved operator/vehicle on a list of exemptions to be kept on file at the office of the Diamond Cove site manager (currently Dirigo Management Company, One City Center, 4th Floor, Portland, Maine), which list and any amendments thereto shall also be provided to the City's Office of Code Enforcement.

- (e) Notwithstanding any other state or local law, any non-exempted vehicle must be annually registered with the City and must display in a clearly visible manner a license plate provided by the City with a clearly visible number in the same manner and location required by State law for license plates on motor vehicles. **DCHA** shall provide the City with a list containing the names and addresses of the registered owner of each such vehicle and the license plate number of the vehicle within thirty (30) days of the date upon which the Council approves the amendment to allow golf carts in the IR-3 zone and within ten (10) days for any subsequently registered vehicles.
- (f) **DCHA** will levy fines for violations of the foregoing restrictions, consistent with the Diamond Cove Declaration, in cases when an operator of a motorized vehicle of any kind (including golf carts and electric personal assistive mobility devices, aka human transportors) is found to pass south of the southerly boundary of the Diamond Cove property for any purpose other than those set forth for Exempted Vehicles. In the event of apparent violations, the site manager will be directed to send a letter identifying the date and time in question to the holder of the key and notify the City. The holder of the key will have the opportunity to respond to explain the circumstances of the boundary crossing. Non-conforming crossing of the gate would result in a penalty, imposed by the **DCHA** Board on the holder of the key. Initially, penalties would be as follows: First offense – \$50 fine; second offense – \$100 fine; third offense – \$200 fine and revocation of crossing privileges. Nothing in this paragraph shall be construed or applied to prevent the City from bringing separate enforcement actions for violations.
- (g) Any other language in this contract zone agreement notwithstanding such violations may, in the City's discretion, be prosecuted as Land Use violations pursuant to 30-A M.R.S.A. § 4452 and Rule 80K of the Maine

Rules of Civil Procedure. In all cases the registered owner of a non-exempted vehicle shall be liable for any violations and sanctions unless the registered owner provides clear and convincing evidence showing that the use at the time of the violation was unauthorized by him or her.

(h) **DCHA** will immediately provide notice to all of its members of the foregoing policies and procedures.

2. Nothing contained herein shall be deemed to grant any third party rights. Without limiting the generality of the foregoing, nothing contained herein shall be deemed to entitle any third party with the means of opening either the upper gate or the lower gate without **DCHA** approval.

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

**Stormwater Management System
Maintenance Program
Summary Checklist**

Item	Commentary	Frequency				
		Month	Quarterly	Semi-Annual	Annual	Long Term
Vegetation in Ponds	Observe extent of vegetation in fall. Cut above ice level in winter - remove.				X	
Stormwater Inlets	Assure inlet entry point is clear of debris to allow water entry.	X				
Stormwater Outlets	Assure outlet is clear of debris to allow discharge of stormwater.	X				
Tributary Drainage System	Inspect to assure that the carrying capacity has not been diminished by debris, sediment or other hydraulic impediments.				X	
Vegetated Swales	Inspect for erosion and sedimentation; repair as discovered; check design and upgradient conditions as indicated by needed repairs.		X			
Water Quality Filters	Check for stressed vegetation and extended drawdown periods. Check underdrain connection and orifice at control manhole. Inspect ground surface near pipe or inlets to the filter for sediment; inspect bottom area for matting & vegetative litter.			X		

**SEEDING PLAN
LAWN AREAS**

Project _____ The Inn at Diamond Cove
 Site Location _____ Great Diamond Island, Portland, Maine
 _____ Permanent Seeding _____ Temporary Seeding

1. Area to be seeded: _____ +/- 0.12 _____ Acres, OR _____ 5 _____ M Sq. Ft.
 2. Instructions on preparation of soil: Prepare a good seed bed for planting method used.

3. Apply lime as follows: _____ #/acres, OR 138 #/M Sq. Ft. or per soil test

4. Fertilize with _____ pounds of _____ N-P-K/ac. OR _____ pounds of 10-20-20 N-P-K/M Sq. Ft. or per soil test

5. Method of applying lime and fertilizer: Spread and work into the soil before seeding.
 6. Seed with the following mixture:

- 35% Kentucky Bluegrass
- 35% Creeping Red Fescue
- 20% Chewings Fescue
- 10% Perennial Ryegrass

7. Mulching instructions: Apply at the rate of _____ pounds per M. Sq. Ft. _____ tons per acre. OR

Amount Unit #, Tons, Etc.

8. TOTAL LIME _____ 138 #/1000 sq. ft.

9. TOTAL FERTILIZER _____ 20 #/1000 sq. ft.

10. TOTAL SEED _____ 5.0 #/1000 sq. ft.

11. TOTAL MULCH _____ 115 #/1000 sq. ft.

12. TOTAL other materials, seeds, etc. _____

13. REMARKS

- Recommended seeding dates April 15 to June 15 and August 15 until October 15. Permanent seeding should be made prior to October 15 or as a dormant seeding after the first killing frost and before the first snowfall. If seeding cannot be done within these seeding dates, temporary seeding and mulching shall be used to protect the site. Permanent seeding shall be delayed until the next recommended seeding period.

- Fertilizer requirements shall be subject to actual test results of the topsoil used for the project. The Contractor shall be responsible for providing topsoil test results for pH and recommended fertilizer application rates to the Owner. pH should be between 5.5 and 8.0.

- Seed mixture shall be fresh, clean, new crop seed. Seed may be mixed by an appropriate method on the site or may be mixed by the dealer. If the seed is mixed on the site, each variety shall be delivered in the original containers bearing the dealer's guaranteed analysis. If seed is mixed by the dealer, the Seeding Contractor shall furnish to the Owner the dealer's guaranteed statement of the composition of the mixture and the percentage of purity and germination of each variety.
- Seed shall be purchased from a recognized distributor and shall test to a minimum percentage of 95% for purity and 85% for germination.
- All loam shall have compost or peat ad admixtures to raise the organic content to 8%.

SEEDING PLAN
SHADY AREAS

Project _____ The Inn at Diamond Cove

Site Location _____ Great Diamond Island, Portland, Maine

_____ X Permanent Seeding
_____ Temporary Seeding

1. Area to be seeded: ± 0.07 Acres, OR $\frac{3}{3}$ M Sq. Ft.

- For use in shaded, semi-shaded, or woodland edge areas.

2. Instructions on preparation of soil: Prepare a good seed bed for planting method used.

3. Apply lime as follows: _____ #/acres, OR $\frac{138}{138}$ #/M Sq. Ft. or per soil test

4. Fertilize with _____ pounds of _____ N-P-K/ac. OR _____ pounds of $\frac{20}{10-20-20}$ N-P-K/M Sq. Ft. or per soil test

5. Method of applying lime and fertilizer: Spread and work into the soil before seeding.

6. Seed with the following mixture:

- 50% Creeping Red Fescue
- 25% Chewings Fescue
- 25% Perennial Ryegrass

7. Mulching instructions: Apply at the rate of _____ pounds per M. Sq. Ft. OR _____ tons per acre. OR

Amount Unit #, Tons, Etc.

8. TOTAL LIME 138 #/1000 sq. ft.

9. TOTAL FERTILIZER 20 #/1000 sq. ft.

10. TOTAL SEED 4.0 #/1000 sq. ft.

11. TOTAL MULCH 115 #/1000 sq. ft.

12. TOTAL other materials, seeds, etc.

13. REMARKS

- Recommended seeding dates April 15 to June 16 and August 15 until October 15. Permanent seeding should be made prior to October 15 or as a dormant seeding after the first killing frost and before the first snowfall. If seeding cannot be done within these seeding dates, temporary seeding and mulching shall be used to protect the site. Permanent seeding shall be delayed until the next recommended seeding period.

- Fertilizer requirements shall be subject to actual test results of the topsoil used for the project. The Contractor shall be responsible for providing topsoil test results for

pH and recommended fertilizer application rates to the Owner. pH should be between 5.5 and 8.0.

- Seed mixture shall be fresh, clean, new crop seed. Seed may be mixed by an appropriate method on the site or may be mixed by the dealer. If the seed is mixed on the site, each variety shall be delivered in the original containers bearing the dealer's guaranteed analysis. If seed is mixed by the dealer, the Seeding Contractor shall furnish to the Owner the dealer's guaranteed statement of the composition of the mixture and the percentage of purity and germination of each variety.
- Seed shall be purchased from a recognized distributor and shall test to a minimum percentage of 95% for purity and 85% for germination.
- All loam shall have compost or peat ad admixtures to raise the organic content to 8%.

Sample Certification and Inspection Forms

APPENDIX B

STORMWATER POLLUTION PREVENTION PLAN

INSPECTION REPORT

PROJECT INFORMATION

Project Name: The Inn at Diamond Cove
Address: Great Diamond Island
#46 McKinley Ct.
Portland, Maine 04109

INSPECTOR INFORMATION

Inspector Name: _____
Firm: _____
Title: _____
Qualifications: _____

INSPECTION SUMMARY

Date of Inspection: _____
Major Observations: _____

THE FACILITY IS IN COMPLIANCE WITH THE STORMWATER POLLUTION PREVENTION PLAN WITH THE FOLLOWING EXCEPTIONS:



Strengthening a Remarkable City, Building a Community for Life

www.portlandmaine.gov

Corporation Counsel
Gary C. Wood

August 30, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adoff
Mary E. Costigan

Board of Directors
Diamond Cove Homeowners Association
C/O Edie Hale
Dirigo Management Co.
One City Center
Portland, Maine 04101

Re: Use of Diamond Cove Barge Landing

Dear Board Members:

I am writing in regard to the use of the Diamond Cove barge landing. It has recently been brought to the City's attention that the Diamond Cove Homeowners Association (DCHA) is enforcing a section of the Diamond Cove Traffic Management Plan that limits the number of new non-Cove home projects that will be given barge landing access to three homes per calendar year. Michael and Nancy Burton have written to the DCHA asking for an exemption in order to build a fourth home on the non-Cove side of the island and have asked the City to write a letter supporting their request.

As a member of the DCHA, the City supports the Burton's request for access to the barge landing for the delivery of building materials for the construction of their home on Great Diamond Island. However, please note that the section of the Diamond Cove Traffic Management Plan that the Board is citing in its enforcement of a three-home limitation was not approved or supported by the City in its DCHA membership capacity. More importantly, it has not been accepted by the City in its independent status as a party to various agreements and approvals, including, but not limited to land use approvals that apply to the property within the Diamond Cove development. By letter dated October 25, 2006 to John Dietz, President of the Diamond Cove Homeowners Association, Lee Urban, the City's Director of Planning and Development, informed Mr. Dietz that the traffic plan complies with the conditional zone agreement, except for that portion of the plan that addresses the use of the barge landing by the public and governmental entities.

In supporting the Burton's request, the City is not waiving any rights to continue its review of the Traffic Management Plan and to reject any and all portions, including a limitation on the number of non-Cove home projects that are given barge landing access, that are inconsistent with the conditional zone agreement and any other agreements and approvals, and any amendments thereto.

between the barge landing and the Lower Southerly Gate will be subject to a minimum fine of \$1,000.00.

Loading and offloading of vehicles:

Because the barge landing is located in the direct line of sight of several existing homes, every effort should be made to minimize the amount of time vehicles making authorized deliveries are at the landing. When barging off and on the island, drivers must stay with vehicles. The Diamond Cove barge landing is for arrival and departure only; it is not a staging area.

Limited number of new home projects:

To minimize the impact to Diamond Cove roads, and to respect the feelings of those DC homeowners whose properties abut the route to be taken to the southern end of the island, a limit of three non Diamond Cove new home projects will be allowed barge landing access in a given calendar year—on a first-come, first-served basis.

Proof of registration and insurance:

All vehicles entering Diamond Cove barge landing must be properly registered and insured as required by the State of Maine.

Road posting:

Occasionally, the extreme nature of our climate requires that the Diamond Cove Homeowners Association and their property management company post the roads and thereby preclude traffic across them for one or more classes of vehicles, as conditions warrant. This usually occurs in early spring, but may occur at other times of the year.

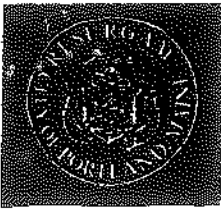
Exceptions:

City vehicles
Dinosaur Enterprises
Suburban Propane
Portland Water District
Verizon
CMP
Satellite or Cable TV

The Diamond Cove Homeowners Association and their property management company reserve the right to exclude vehicles of any category, including those listed as exceptions above, as circumstances warrant.

Original Version October 12, 2004

This version amended March 21, 2005



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Planning and Development Department
Lee D. Urban, Director

October 25, 2006

John Dietz, President
Diamond Cove Homeowners Association
Diamond Cove
Great Diamond Island, ME 04109

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Corporation Counsel
Gary C. Wood

August 30, 2007

Associate Counsel
Elizabeth L. Boynton
Penny Littell
James R. Adolf
Mary E. Costigan

Board of Directors
Diamond Cove Homeowners Association
C/O Edie Hale
Dirigo Management Co.
One City Center
Portland, Maine 04101

Re: Use of Diamond Cove Barge Landing

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DIAMOND COVE TRAFFIC MANAGEMENT PLAN
Great Diamond Island, Maine

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- b. Ownership of Private Vehicles will be limited to one (1) such vehicle per unit. There are 82 units in the IR-3 zone and 39 units in the IR-1 zone. This allows for a total private vehicle ownership of 121 vehicles.
- c. All ownership and use of such Private Vehicles will be in accordance with the rules, bylaws and covenants of Diamond Cove, the stipulations of the "Amendment to Conditional Zoning Agreement Referenced in Order 42-84/85" of the City of Portland, Maine, dated August 16, 2004, and the statutes, rules and regulations of the City of Portland, Maine, and the State of Maine, governing such vehicles.
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- f. Maximum speed for any vehicle on Diamond Cove property is 15 miles per hour.

2) TRAFFIC FLOW AND PARKING

- a. Private Vehicles shall only be operated and normally parked on established and recognized streets and roadways within the boundaries of Diamond Cove. Winter parking and storage will be off road to allow for snow removal.
- b. No private vehicle will be permitted to cross though either the upper gate or lower gate nor are they allowed to drive on the southerly side of the island.

- c. Diamond Cove is private property and no vehicles from the southerly side will be allowed to cross through the gates and drive on Diamond Cove property unless it is a permitted service or emergency vehicle.
- d. Pedestrian traffic from the southerly side of the island is permitted only through the upper gate. Diamond Cove residents, their guests, and their tenants are exempt from this restriction.
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- a. Common Transportation Vehicles are exempt the restriction on crossing through the gates and driving on the southerly side of the Island. All designated exempt vehicles shall obtain approval as such from the City of Portland Island Liaison or the Office of the Corporation Counsel.
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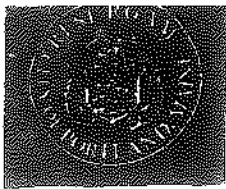
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Planning and Development Department
Lee D. Urban, Director

October 25, 2006

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I understand that, from the City's perspective, the current use that is being made of that ramp for the public/westerly side of the island is working, and I hope that it is also working for your Association. I read your proposed plan as reserving the right to challenge that use at some point in the future if you deem such a challenge appropriate or necessary.

In issuing this opinion, I have consulted with Gary. If you have any questions about this opinion, please feel free to call either him or me.

I understand that the golf cart compromise has worked out, and we all hope that it will continue. We also look forward to working with the Diamond Cove Homeowners Association on other projects in the near future, notably the double barracks and hospital building issues.

Thank you for your ongoing consideration and cooperation.

Sincerely,



Lee D. Urban

Director of the Planning and Development
Department

cc: Bill Robitzek, Diamond Island Association
Councilor William Gorham
Joseph Gray, City Manager
Larry Mead, Assistant City Manager
Gary Wood, Corporation Counsel
Michael Robinsky, Public Works Director
Tom Fortier, Island/Neighborhood Administrator

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Rick Knowland - dinosaur zone change

From: Rick Knowland
To: Danielle West-Chuhta
Date: 10/18/2012 5:14 PM
Subject: dinosaur zone change
CC: Alex Jaegerman; Barbara Barhydt

Danielle, Below are some concepts that should be integrated into the Dinosaur conditional zone.

All equipment shall be located on the site not within a street or other property.

Applicant shall submit documentation of all applicable permits and licenses received from federal, state and local agencies regarding fuel storage and dispensing operations. Copies of submitted applications and permits including the Maine State Fire Marshal's Office shall be submitted to the City. An Oil Spill Prevention, Control and Countermeasure (SPCC) Plan shall also be submitted to the City. The SPCC Plan shall be reviewed and approved by the Planning Authority. Revisions or amendments to the SPCC Plan shall be submitted to the Planning Authority for review and approval.

A copy of all SPCC Plan inspection and testing records shall be made available to the Planning Authority upon request.

Do we need some type of sketch or plan that shows us where the equipment will be located on the property?

The applicant shall also submit to the Planning Authority

The applicant shall also submit to the Planning Authority all applications submitted to the

Copies of submitted applications

Such documents shall also include

Such documents shall also include all submitted applications to these agencies

Development Review, Wednesday, September 26, 2012

October 9, 2012	
Workshop 3:30 p.m.	• Canal Plaza Hotel – 433 Fore St.; Cow Plaza, LLC. #2012-558
Public Hearing 7:00 p.m.	• Congregation Etz Chaim, Synagogue, 267 Congress St. #2012-556
October 23, 2012	
Workshop 3:30 p.m.	
Public Hearing 7:00 p.m.	• Canal Plaza Hotel – 433 Fore St.; Cow Plaza, LLC. #2012-558 • Canal Landing, 40 West Commercial, New Yard, LLC #2012-575
November 13, 2012	
7:00 AM Public Hearing	• 118 Sunset Ave. (GDI); Cond./Contract Rezoning; Dinosaur #2012-576

AGENDA

PROJECTS FOR ADMINISTRATIVE AND BOARD REVIEW

A. Preliminary Plans

1. 433 Fore Street...nd

B. Final Plans

1. 765 Warren (new loading docks/parking) urgently need final review comments.....jf
2. Baxter Blvd CSO trail work- comments pl.....jf

C. Issues, Administrative Authorizations, Curb Cuts

1. 94 Walton Street and 19 Ellsworth Street - admin authorization....bb
2. Debrief LedgeWood Dr subdiv, incl ? re Lot #14 proceeding in advancejf
3. Browne Trading update.....jf
4. Dinosaur pb follow-up workshop...rk
= need to meet with Dumb to go over conditions
= 3/11/12
5. cccc...David, are the revised plans acceptable? rk
= find regulations
= screens

D. Distribution of Plans

1. 119 Exchange Street - Guy Gannet Building Redevelopment - Hotel, 119 Development LLC - new plan
2. 56 Commercial Street - Rnovation & Addition, Casco Bay Island Transit District, Applicant- new plan
3. Bay House Final Stamped Plans....bb
4. Approved plans for 75 Industrial Way...jf
5. Eldridge Lumber Yard -site improvements - new plan

TRANSPORTATION STANDARDS:

1. Impact on Surrounding Street Systems
 - i. Safety and Congestion
 2. Access and Circulation
 - i. Site Access and Circulation
 - ii. Loading and Servicing
 - iii. Sidewalks
 - iv. Public Transit Access
 - i. waiver
 3. Parking
 - i. Location & Required # of Vehicle Parking Spaces
 - ii. Location & Required # of Bicycle Parking Spaces
 - i. Waiver
 - iii. Motorcycle and Scooter Parking
 - iv. Snow Storage
4. Transportation Demand Management (TDM)
 - i. Major development in B-7 zone or otherwise required
 - ii. TDM Standards

ENVIRONMENTAL QUALITY STANDARDS:

1. Preservation of Significant Natural Features
 - a. Significant natural features
 - b. Habitat Connectivity
 - i. Waiver provision
 - ii. Parking Lot Landscaping (2 trees or 1 tree & 3 shrubs/5spaces)
 - iii. Street Trees – all development
 - i. Waiver
2. Landscaping & Landscape Preservation
 - a. Landscape Preservation
 - i. Limit Disturbance
 - ii. Preserve 30% in setbacks
 - iii. Protection during Construction
 - i. Waiver
 - b. Site Landscaping
 - i. Landscaped Buffers (screening, understory planting 6 shrubs/45ft, I and B zones, Buffer
 3. Water Quality/ Stormwater Management/Erosion Control
 - a. General requirements – All Development
 - b. Basic, General and Flooding Standards
 - c. Urban Impaired Stream Watersheds
 - d. Single and two family homes
 - e. Groundwater protection
 - f. Sanitary sewage disposal

PUBLIC INFRASTRUCTURE AND COMMUNITY SAFETY STANDARDS:

1. Consistency with Related Master Plans
 - a. Consistency w/ Council Approved Master Plans
 - b. Continuance of off-premises infrastructure
2. Public Safety & Fire Prevention
 - a. CEPTD
 - b. Emergency Access
3. Availability and Adequate Capacity of Public Utilities
 - a. Infrastructure Capacity
 - b. Underground electrical service
 - c. New or Utility Upgrades
 - d. Sanitary collection and treatment
 - e. Fire Prevention
 - c. Trash and Recycling

SITE DESIGN STANDARDS:

1. Massing, Ventilation and Wind Impact
 - a. Bulk, location or height
 - b. Shadows
 - c. Snow and Ice Loading
 - d. View corridors
2. Historic Resources
 - a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts
 - b. Development adjacent to designated landmarks, historic districts or historic landscape districts
 - c. Preservation &/or Documentation of Archaeological Resources
 - i. Waiver Criteria
3. Exterior Lighting
 - a. Site Lighting
 - b. Architectural and Specialty Lighting
 - c. Up-lighting
 - d. Street Lighting
4. Noise and Vibration
 - a. Zoning- Based Requirements
 - b. HVAC and Mechanical Equipment
5. Signage and Wayfinding
 - a. General Provision
 - b. Historic Preservation
 - c. Commercial Signage and Directional Traffic Signage
 - i. Waiver Criteria
6. Zoning-Based Design Standards
 - a. B3, B5, B5-b, B7, B6, EWPZ, RP Zone, B1, B1-b, B2, B2-b Zones, USM Overlay Zone
 - b. Residential Developments
1. Residential Development in the following districts: PRUDS in the R3, R5 and R5a zones; Multiple family and multiplex developments in the R5 zone; Small residential lot development of single family homes in the R5 zone; Multiple family and multiplex development in the R6 zone on lots of 10,000 square feet or less.
2. Residential Development of the following types: Manufactured housing parks; Two-family and multiple family housing not already specified above; Special needs independent living units; Lodging houses; Bed and breakfasts; Emergency Shelters.

land use policy section of the report
small issue challenge to find space for non-resident

public services has a site on Diamond Ave that
they lease from the DIA for storage of their
equipment. There were discussion/negotiation
and Dinoware about Dinoware moving to the Public Jc
between the City, DIA
We were told these discussions w.

June 29, 2012

Public Session

R. WARD learns things the way things have been since 1988
doing it well for 24 years is part of the landscape

deal had fallen apart

reasoning is already underway when the reasoning

what are the terms of the deal? what would the reasoning
be? zoning violation being pursued by the city

have no idea whether DIA would lead to a deal ^{no idea of the terms}

Ren passes out his latest version of text

* is not seeking a permanent facility

treats it as self-evident ^{OK} to add in permit regulations

Public Comments

E. Weber property owner

shows photo of rural rock

shows blow up photos view from across

shows beauty and landscape value of the tr

they had to deal with trucks no worse than highway side and more
53rd container are for more dangerous
upper rock parts

Jason ___ 12th August supports proposal fuel business is an essential utility
like cars, power, golf carts, mowers, heat pumps

Frank Campbell no worse for 75 years truck don't affect productivity or
life

Robert Harris read the packet what is going on / and some planning
perspective greater discussion is it good policy
could a larger truck be allowed?
vehicles being stored rather than fires
this service is a necessity for the island

John Corder volunteer fire dept. 2 fire trucks 1 combination also
to heat the fire burn a critical element for providing public safety

Paul Claxson operation requires at people on south side to continue
water operation safety and course operations & staff should
indicate what are the requirements what do they have to be in compliance
this issue would be settled

Nancy Gleason Pres of DIA was secretary of DIA

generally supports the fuel business

her, hazardous materials, handling, safety on
sprawling of other business around the island
whether it be of DPW site or Weber that this is
considered to be an unusual zoning that would be
replicated in the future

no other business zones are created

all 3 services Kerowin, oil and gas would be continued
DIA did offer the site but Dinovore indicated lack of
interest but the DIA wanted the business to stay in
business

Ted Weber DPW site was licensed to the city. Property owner

has to apply for the change DPW site was not an option

submit the city license

* Collin Cavero to do a JPC plan will also apply for a
state fire marshal permit

Jason
Susan Smith J2 year 10 year you need mention her

creditor of pi

has worked with since 2006

for years city contracts the services at some point

city equipment was stored

DIA unhappy about the scattering of equipment around the

island so consolidation of equipment on the island

meeting Orange Hill also

DIA June 21, 2012 before the June 24, 2012 city council
and discuss water return city needs

DIA ~~meeting~~ presentation their proposal they are willing
to do a lease meeting #36

any form the choice of the
shar

sales and return

low adjustment will be low

a long term process of having a fuel system looking to the future

Barry Weber

there is only one secondary containment that has been out of
16 fuel containers

DIA improved out system

show photos

NO Dead River, Dam East, Iron, and Brown

check with city clerk

have always checked with the fire dept. they have always left
as problem

have a double well gas tank

3 out of 16 are problematic happy to oblige with demands

but need to follow what the requirements are

provides service to all the islanders

Methuen Lee McKinley Court year round

have saved people a lot of money for houses that would have
floors

→ Dickson Webber are their neighbors June 11
undependable

Tommy Robinson moved on the island in 1990

got their heavy fuel in 55 gal drums

3 or 4 vehicles bent the 55 gal containers

that was 22 years ago

9 years run on 500
down can

a lot of d.c. houses need fuel more plans for development
from
first the applicat

o they are not the only fuel suppliers on the island
second propane companies serve the island

why did they stop providing propane?

Suburban Propane will be gone over

She talked to the Coast Guard & no fuel regulations on a

gasoline and a water tax; no state regulation on water tax
transporting gasoline

there was a petition

has carried her 55 gal kerosene herself

- block truck caught fire this summer

- need to run a safe operation
- kerosene & kerosene be available

~~**~~ Next step public hearing

uses spell out residential use -

shows Mr. Horn comments about the future use - if the

is a necessity ^{zone} shouldn't disappear

not looking at who is getting food

* would like something for the Fire Dept on this ^{Chief or his designee}
site any issues or concerns

Patrick V. a critical service it must mesh with the

comp plan

should stick with land use issues only

with the right list of conditions can be harmonious with

the comp plan

B. H. an alignment of the plan

would hate to let an opportunity go by

there is an adventure to go to the DPW site

↳ there would not be a succession issue should Tom

decide not to continue the

participation if it's a vital business

losing an opportunity

agree with the Board's comment

Carol M. grandfather's case to mind

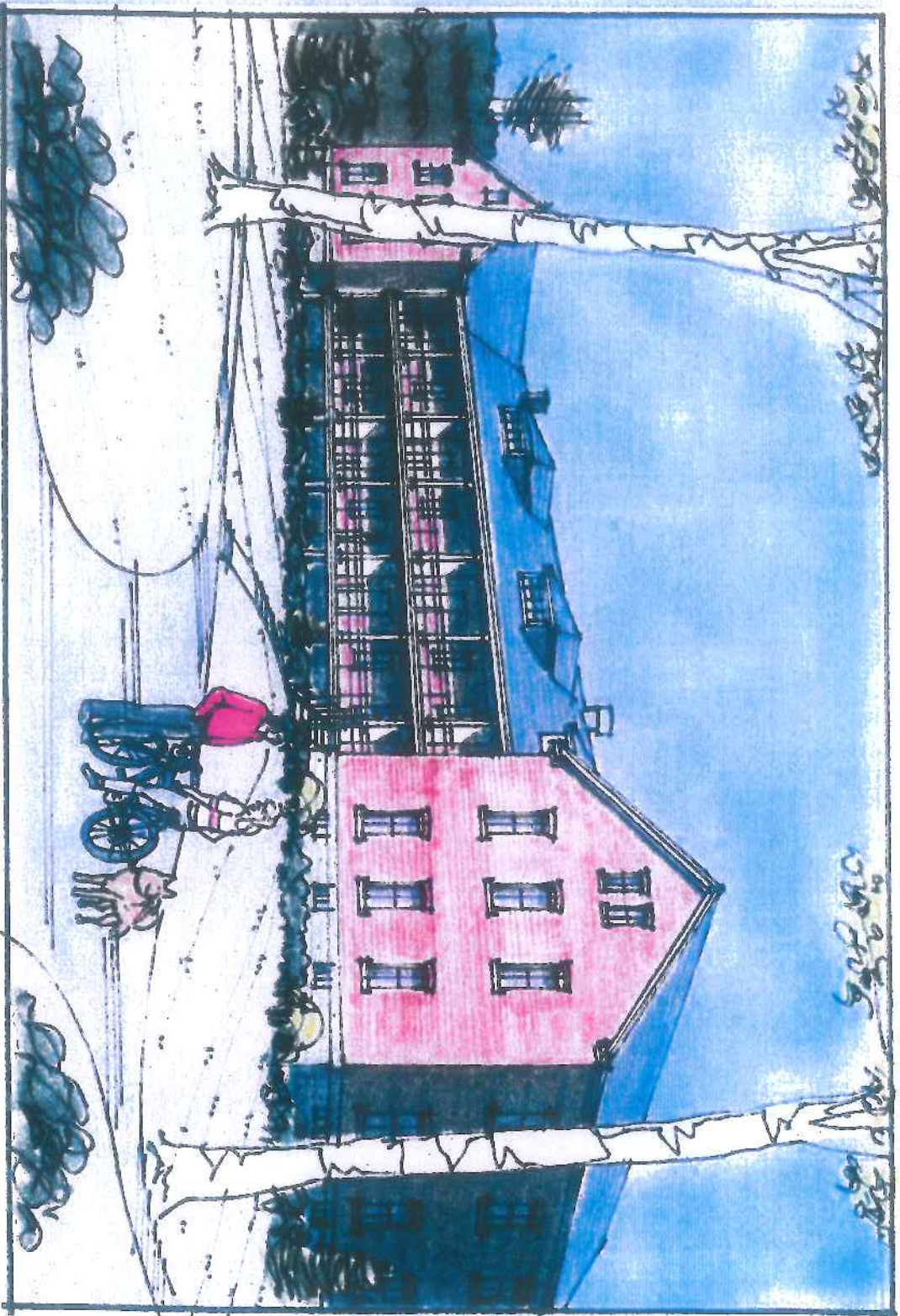
relocating to DPW site agree with B. H.

but relocation is not before the applicant

in the perfect world this use would go to DPW site

Weber trucks are ^{safer} safer on their site which is why they prefer
their site

Architect Rendering - Double Barracks

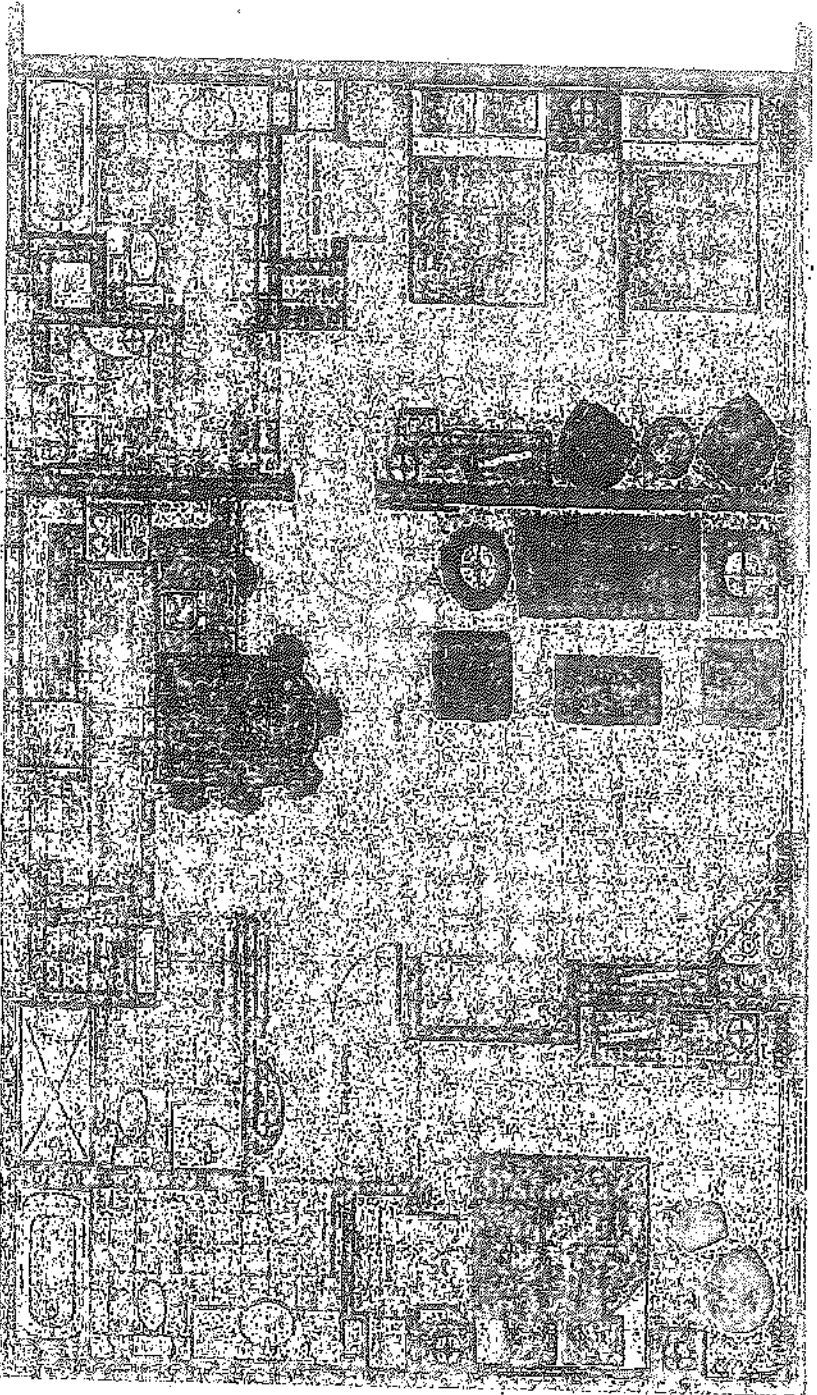


Facade facing the parade ground

Confidential -- Solely for the Use of
DCHA Homeowners

Inn at Diamond Cove: A Two Bedroom Unit

Example

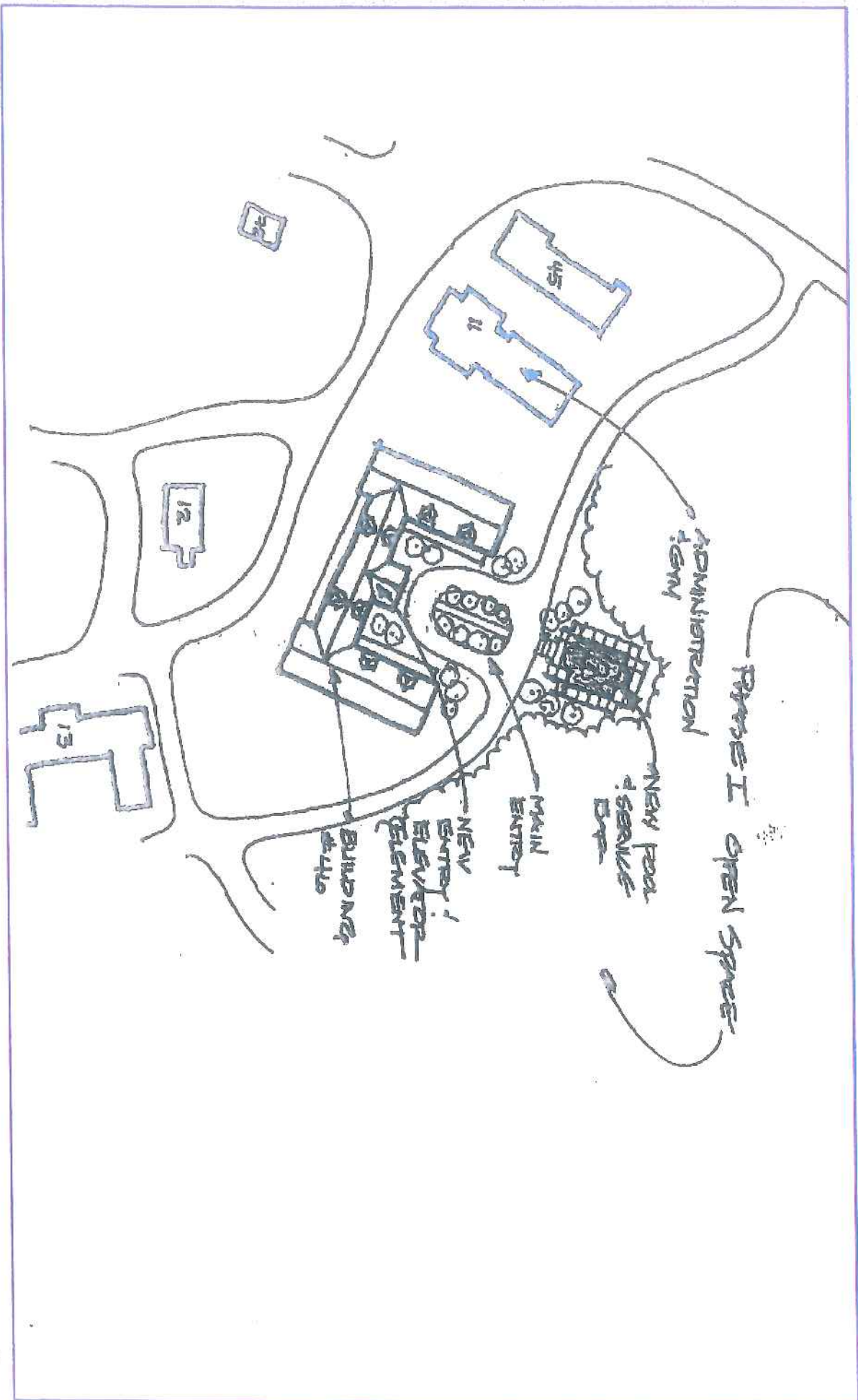


HALLWAY BATHROOM

Confidential -- Solely for the Use of

DCHA Homeowners

Inn At Diamond Cove Site Plan



Confidential -- Solely for the Use of
DCHA Homeowners

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 as 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.

**Memorandum
Department of Planning and Development
Planning Division**



To: Chair Tevanian and Members of the Portland Planning Board

From: Richard Knowland, Senior Planner

Date: Prepared on: April 18, 2008
Prepared for: April 22, 2008 Workshop

Re: **The Inn at Diamond Cove, LLC; Conditional Zoning Amendment
Diamond Cove, Great Diamond Island**

I. Introduction

A workshop has been scheduled to consider an amendment to the existing Diamond Cove conditional zoning on Great Diamond Island. The applicant is The Inn at Diamond Cove, LLC.

This proposal would allow the renovation and conversion of the “Double Barrack” building and the “Hospital Building” into residential hotel condominiums. These buildings represent the last significant brick structures not renovated in the Fort McKinley complex. The buildings are deteriorated (particularly the Double Barracks) and this proposal is viewed as the best chance to save these buildings in the near term. The Double Barracks (27,386 sqft) and the Hospital (15,900 sqft) have the largest floor area of any brick building at Diamond Cove.

The proposed zoning amendment is shown on Attachment 1-C. A vicinity map is shown on Attachment 2-A

336 notices were sent to area property owners. All property owners on Great Diamond Island were sent notice of the workshop.

II. Commonly Asked Questions About Diamond Cove

Before discussing the zoning amendment, we thought it helpful to provide answers to 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 land forms 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-G.

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

Yes, the original conditional zoning has been amended twice.

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 beach-front bar (Stowaways) was not approved.

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

III. Background of Proposed Zoning Amendment

The IR-3 conditional zoning amendment is proposed by The Inn at Diamond Cove LLC. The applicant would like to convert the existing Double Barracks and Hospital buildings into a residential hotel condominium. A detailed summary of the proposed use is shown on Attachment 2-E.

A residential hotel condominium is not recognized in the zoning ordinance. In their submission the applicant states that “the two buildings are substantially deteriorated and a collapse of either would not be unexpected.” The applicant views the conditional zoning amendment as an opportunity to renovate these buildings, which has not been possible in the past. Given the deteriorated conditions of these buildings, residential uses have not proven financially feasible. These buildings are the last significant brick buildings within the Fort McKinley complex that have not been renovated. They are also the largest brick buildings in the complex. Renovation of the Fort McKinley buildings was initiated 20 plus years ago.

The City of Portland acquired these two buildings in 2004 for non-payment of property taxes. The City has solicited requests for proposals from developers in the past but this has attracted little interest given the deteriorated conditions of the buildings particularly the Double Barracks. In 2007, the City entered into an option agreement with the applicant to purchase the Double Barracks and Hospital.

In terms of physical development the applicant is proposing the following:

- Renovation and conversion of the Double Barracks building (up to 22 units) and Hospital building (up to 12 units) into residential hotel condominiums;
- An addition is proposed to the rear of the Double Barracks building; and
- A plaza area, swimming pool and food/beverage service building is proposed behind the Double Barracks building.

IV. Applicant's Conditional Zoning Amendment

The Applicant's proposed conditional zoning amendment is shown below in its entirety and on Attachment 1-C.

THIS AMENDMENT, approved this ___ day of _____, 2008 with respect to the Conditions and Restrictions appearing in the Conditional Rezoning of Ft. McKinley dated January 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263.

Said Conditions and Restrictions are hereby amended to include as a new Section 9(a) – Those buildings designated as Building 19 (“Hospital”) and Building 46 (“Double

Barracks”), the immediate grounds attendant thereto and that portion of the Open Space, all depicted on the site plans submitted to the City of Portland, Maine may be redeveloped as residential hotel condominium units including reasonable and customary on-site services, limited to the owners, their guests, tenants in residence and members of the Diamond Cove Homeowners Association. The Double Barracks may include up to a maximum of twenty-two (22) residential condominium units and the Hospital may include up to a maximum of twelve (12) residential condominium units, all of said units so created to become members of the condominium association established for these two rehabilitated buildings, and each will also be considered a “lot” within the Diamond Cove Homeowners Association. Each of the condominium units may include *inter alia*, separate kitchen facilities and may elect to be managed and rented by a centralized management entity established for that purpose.

V. Staff Review of Applicant’s Conditional Zoning Amendment

Based on a review of the applicant’s submission, staff has concluded several revisions to the conditional zoning text are necessary to accomplish the applicant’s development proposal. The text changes involve the following: (1) referencing a residential condominium hotel use as a permitted use, including a definition of the use; (2) use of dedicated open space for a swimming pool and bar/service building; and (3) permitting a newly constructed building. The applicant’s text amendment should be revised to more specifically address these issues. The text and format of the submission will likely need to be changed.

Residential Hotel Condominium Use

The applicant is proposing a hotel residential condominium use for the Double Barracks building and the Hospital building. A hotel residential condominium is not a recognized use in the zoning ordinance. In an earlier discussions with the applicant the use was described as an inn. However as each unit will have kitchen facilities this is inconsistent with the zoning definition of an inn. See excerpt of the inn definition from sec-14-47 below:

Inn: “A building used for more or less temporary occupancy of individuals, who are lodged with or without meals, having ten (10) but no more than fifty (50) rooms. Guest rooms shall not contain separate kitchen facilities...”

Marge Schmuckal, Zoning Administrator, has reviewed this issue and has confirmed the presence of kitchen facilities disqualifies this use as an inn.

The applicant indicates “this project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with limited common amenities”. The condominium units will apparently be sold to investors and the individual units rented for public use similar to a hotel or inn room. There is a management entity that will be coordinating this function including providing a van service, security and maintaining the exterior of the building.

A proper zoning amendment to the conditional zoning should be drafted referencing the hotel residential condominium use along with a definition of the proposed use.

Use of Dedicated Open Space for Swimming Pool and Food/Beverage Building

A swimming pool and gazebo (food service/beverage) building are proposed behind the Double Barracks building. This area is referenced as dedicated open space in the original conditional zoning.

Paragraph 1 (development limited) of the original conditional zoning states: "All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity". See Attachment 1-G-2 and 1-G-8.

The proposed amendment should reference this change.

Newly Constructed Building

Applicant proposes a newly constructed food/beverage service building next to the swimming pool. A phrase in paragraph 1 of the original conditional zoning states "...there shall be no construction or development of any new principal building or structure on the Premises." See Attachment 1-G-2.

The proposed building is relatively small and might be considered an accessory use but we believe given the language and intent of the original conditional zone text that the proposed amendment should reference this change.

VI. Other Issues Associated with the Conditional Zoning

Wastewater Treatment and Capacity

The capacity of the existing sanitary waste treatment system on Diamond Cove is a critical issue. We have requested documentation from the applicant whether the existing system is capable of serving the proposed use including documentation from the Maine DEP. As of the writing of this report, the applicant has submitted a chart indicating apparent wastewater flows but this is not a stand-alone document. This document appears to suggest a small surplus of wastewater capacity. Insufficient information has been submitted to date on this important issue.

The Diamond Cove project has evolved over a period of time. Originally a community wastewater treatment system was designed to accommodate 134 condominium units, 5 commercial uses and a portion of the single-family subdivision. However during the regulatory review process, it was determined that the single-family lots should have on-site septic systems and thus they were never connected into the wastewater treatment system. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000 Diamond Cove had only 62 occupied condominium units. In 2000 a third sand filter was installed accommodating what was believed to be a total build-out of only 77

units and providing for increased wastewater flows from the Diamond Cove restaurant. The sand filter treatment system has an outfall pipe in Casco Bay, which is licensed by the Maine DEP. 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.

Diamond Cove's wastewater treatment is complicated by significant water infiltration, which increases the amount of water that must be treated by the sand filter system. This has obvious implications on the amount of water discharged into Casco Bay through the overboard discharge. Addressing the infiltration issue may increase the present capacity of the wastewater treatment system to accommodate additional units within the DEP license requirements.

Wastewater treatment is a threshold issue and insufficient information has been received to date.

A Homeowners Association within an Association and a Separate Lot

It appears the applicant intends to create a homeowners association for this project while retaining membership in the overall Diamond Cove Homeowners Association? Applicant should clarify the relationship between the two organizations. The applicant intends to create a separate lot for the Double Barracks building. This seems unusual in that Diamond Cove and the IR-3 zone was conceived as a planned unit development with the restoration of existing buildings and the remaining land as common open space. Applicant should explain.

Transportation Service

Transportation is a sensitive issue on Great Diamond Island particularly on the southerly (or public side) of the island. Private automobiles are not permitted with the IR-3 conditional zone. As the Board may recall in 2004, the Diamond Cove Homeowners Assoc. requested an amendment to the conditional zone to allow golf carts/electric vehicles. A zoning amendment was passed but with enforcement provisions to insure that non-service vehicles don't cross the property line into the southerly end of the island.

The applicant intends to operate a separate van transportation service from the van run by the Diamond Cove Homeowners Assoc. If both the inn and Diamond Cove run separate vans, there will be occasions when 2 vans will travel between Diamond Cove and the southerly ferry landing to transport passengers. These services should be consolidated into one van. Residents on the southerly end of the island have expressed concerns (where there are few vehicles) about excessive vehicle traffic and vehicles parked at the southerly ferry landing.

Mainland Parking

Developer should indicate how mainland parking for inn guests will be accommodated.



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

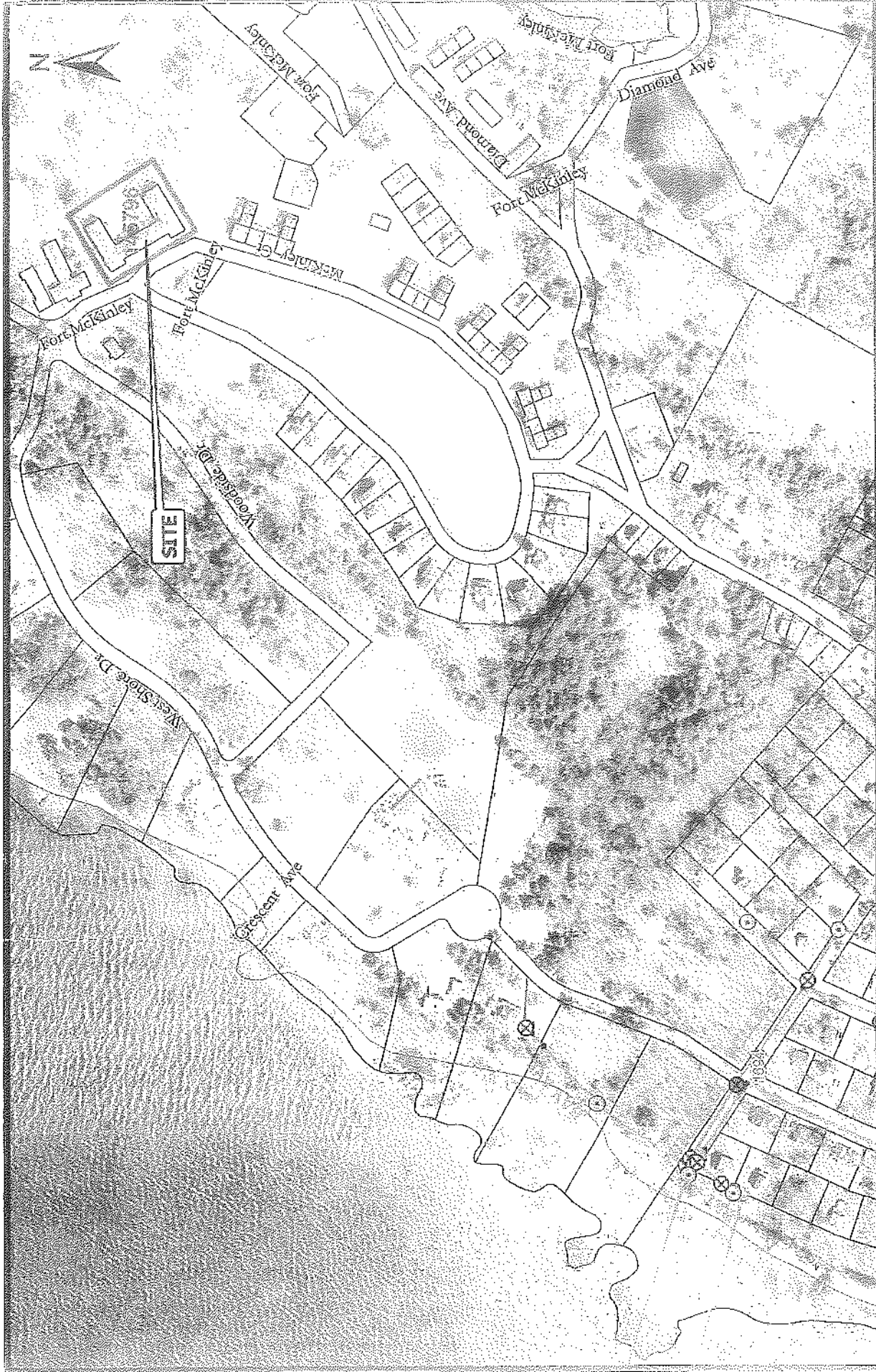
cc: Stuart Rose, DEP/SMRO
Mary Beth Richardson SMRO
Robert Whelan, President, DCHA
Aaron Bateman, Phoenix Mgmt.
Joseph Laverriere, P.E

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) 764-6477
FAX: (207) 764-1507



Service Associated Assets:

- 1" Dom. Service:
- SV W/O#:
- Service Valve:
- Bugger #:

Notes:

Inspector: _____ (Please Return to Thomas Whitney)

Date Inspected: _____ GPS _____ Redlined _____

Fort McKinley

Great Diamond Island

PORTLAND WATER DISTRICT
 225 Douglass Street
 Portland, ME 04104

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

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NFPA 385

Standard for

Tank Vehicles for Flammable and Combustible Liquids

2007 Edition

This edition of NFPA 385, *Standard for Tank Vehicles for Flammable and Combustible Liquids*, was prepared by the Technical Committee on Transportation of Flammable Liquids. It was issued by the Standards Council on December 1, 2006, with an effective date of December 20, 2006, and supersedes all previous editions.

This edition of NFPA 385 was approved as an American National Standard on December 20, 2006.

Origin and Development of NFPA 385

This standards project was initiated in 1926, and the first edition of NFPA 385 was officially adopted in 1929. NFPA 385 was revised in 1933, 1948, 1953, 1954, 1955, 1957, 1958, 1959, 1960, 1963, 1964, 1966, 1971, 1974, 1979, 1985, 1990, 2000, and 2006. Editions prior to 1948 had different titles.

The 2000 edition incorporated the following amendments:

- (1) Revised requirements for warning signs, in 3.4.5
- (2) Revised requirements for fire extinguishers for tank vehicles, in 6.3.1

The 2007 edition incorporates the following amendments:

- (1) Revised definitions to correlate with NFPA 30, *Flammable and Combustible Liquids Code*
- (2) Correction of an error in 6.3.1 (now 9.3.1) related to fire extinguisher rating
- (3) Complete editorial revision to comply with the *Manual of Style for NFPA Technical Committee Documents*

Technical Committee on Transportation of Flammable Liquids

Wade C. DeMatte, *Chair*
Hillsborough County Fire Rescue, FL [E]

John L. Conroy, National Tank Truck Carriers Inc.,
VA [U]
John R. Mahan, Jr., Loss Prevention Consultants, Inc.,
MS [SE]
James R. Mitchell, KSE, Inc., MA [SE]
Jeff Sines, Truck Trailer Manufacturers Association,
VA [M]

Jacob Waldschmidt, City of Kenosha Fire Department,
WI [E]
Michael E. Wilson, American Insurance Services Group,
NJ [I]

Robert P. Bezedenti, NFPA Staff Liaison

This list represents the membership at the time the Committee was balloted on the final text of this edition. Since that time, changes in the membership may have occurred. A key to classifications is found at the back of the document.

NOTE: Membership on a committee shall not in and of itself constitute an endorsement of the Association or any document developed by the committee on which the member serves.

Committee Scope: This Committee shall have primary responsibility for documents on safeguarding against the fire and explosion hazards associated with over-the-road transportation of flammable and combustible liquids in tank vehicles and in portable tanks and containers.

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NFPA 805

Standard for

Tank Vehicles for Flammable and
Combustible Liquids

2007 Edition

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NOTICE: An asterisk (*) following the number or letter designating a paragraph indicates that explanatory material on the paragraph can be found in Annex A.

Changes other than editorial are indicated by a vertical rule beside the paragraph, table, or figure in which the change occurred. These rules are included as an aid to the user in identifying changes from the previous edition. Where one or more complete paragraphs have been deleted, the deletion is indicated by a bullet (•) between the paragraphs that remain.

Information on referenced publications can be found in Chapter 2 and Annex C.

Chapter 1 Administration

1.1 Scope.

1.1.1* This standard shall apply to tank vehicles used for the transportation of asphalt or normally stable flammable and combustible liquids with flash points below 200°F (93°C).

1.1.2 This standard shall also provide minimum requirements for the design and construction of cargo tanks and their appurtenances and shall set forth certain matters pertaining to tank vehicles.

1.1.3 The provisions of this standard shall not preclude the use of additional safeguards for tank vehicles used for the transportation of flammable and combustible liquids having characteristics that introduce additional factors such as high rates of expansion, instability, corrosiveness, and toxicity.

1.1.4 The provisions of this standard shall also apply to cut-back asphalts that have flash points below 100°F (37.8°C) and to liquids transported at temperatures elevated above their flash points.

1.1.5 The requirements for aircraft fuel servicing tank vehicles shall be in accordance with NFPA 407, *Standard for Aircraft Fuel Servicing*.

1.1.6 A tank vehicle transporting a flammable or combustible liquid in interstate service shall be considered to be in compliance with this standard while it is in interstate service if it meets the requirements of the U.S. Department of Transportation 49 CFR 171-179, "Hazardous Materials Regulations."

1.2 Purpose. The purpose of this standard shall be to provide for safe transportation of flammable and combustible liquids in tank vehicles.

Chapter 2 Referenced Publications

2.1 General. The documents or portions thereof listed in this chapter are referenced within this standard and shall be considered part of the requirements of this document.

2.2 NFPA Publications. National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471.

NFPA 10, *Standard for Portable Fire Extinguishers*, 2007 edition.

NFPA 58, *Liquefied Petroleum Gas Code*, 2004 edition.

NFPA 70, *National Electrical Code*, 2005 edition.

NFPA 407, *Standard for Aircraft Fuel Servicing*, 2007 edition.

2.3 Other Publications.

2.3.1 ANSI Publications. American National Standards Institute, Inc., 25 West 43rd Street, 4th Floor, New York, NY 10036.

ANSI Z535.1, *Safety Color Code*, 1998.

2.3.2 ASME Publications. American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

Boiler and Pressure Vessel Code, 2004.

2.3.3 ASTM Publications. ASTM International, 100 Barr Harbor Drive, Box C700, West Conshohocken, PA 19428-2959.

ASTM B 209, *Specification for Aluminum and Aluminum-Alloy Sheet and Plate*, 1996 edition.

ASTM D 5, *Test for Penetration for Bituminous Materials*, 1997 edition.

ASTM D 323, *Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method)*, 1999 edition.

2.3.4 U.S. Government Publications. U.S. Government Printing Office, Washington, DC 20402.

Title 49, Code of Federal Regulations, "Hazardous Materials Regulations," Parts 171-179.

Title 49, Code of Federal Regulations, "Rear Impact Guards and Rear End Protection," Part 393.86.

2.3.5 Other Publications.

Merriam-Webster's Collegiate Dictionary, 11th edition, Merriam-Webster, Inc., Springfield, MA, 2003.

2.4 References for Extracts in Mandatory Sections. (Reserved)

Chapter 3 Definitions

3.1 General. The definitions contained in this chapter shall apply to the terms used in this standard. Where terms are not defined in this chapter or within another chapter, they shall be defined using their ordinarily accepted meanings within the context in which they are used. *Merriam-Webster's Collegiate Dictionary*, 11th edition, shall be the source for the ordinarily accepted meaning.

3.2 NFPA Official Definitions.

3.2.1* Approved. Acceptable to the authority having jurisdiction.

3.2.2 Labeled. Equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and

concerned with product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

3.2.3* Listed. Equipment, materials, or services included in a list published by an organization that is acceptable to the authority having jurisdiction and concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

3.3 General Definitions.

3.3.1 Baffle. A nonliquidtight transverse partition in a cargo tank.

3.3.2 Bulkhead. A liquidtight transverse closure between compartments of a cargo tank.

3.3.3 Cargo Tank. For the purposes of this standard, any tank having a liquid capacity in excess of 110 gal (415 L) used for carrying flammable and combustible liquids or asphalt and mounted permanently or otherwise upon a tank vehicle. The term *cargo tank* does not apply to any container used solely for the purpose of supplying fuel for the propulsion of the tank vehicle upon which it is mounted.

3.3.4* Combustible Liquid. Any liquid that has a flash point at or above 100°F (37.8°C) and below 140°F (60°C).

3.3.5 Compartment. For the purposes of this standard, a liquidtight division in a cargo tank.

3.3.6* Flammable Liquid. Any liquid that has a closed-cup flash point below 100°F (37.8°C) and a Reid vapor pressure not exceeding 276 kPa (40 psia or 2068 mm Hg).

3.3.7* Flash Point. The minimum temperature at which a liquid or a solid emits vapor sufficient to form an ignitable mixture with air near the surface of the liquid or the solid.

3.3.8 Head. A liquidtight transverse closure at the end of a cargo tank.

3.3.9 Liquid. Any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with ASTM D 5, *Test for Penetration for Bituminous Materials*.

3.3.10 Tank.

3.3.10.1 Full-Trailer Tank. Any vehicle with or without auxiliary motive power, equipped with a cargo tank mounted thereon or built as an integral part thereof, used for the transportation of flammable and combustible liquids or asphalt, and so constructed that practically all of its weight and load rests on its own wheels.

3.3.10.2 Semi-Trailer Tank. Any vehicle with or without auxiliary motive power, equipped with a cargo tank mounted thereon or built as an integral part thereof, used for the transportation of flammable and combustible liquid or asphalt, and so constructed that, when drawn by a tractor by means of a fifth wheel connection, some part of its load and weight rests upon the towing vehicle.

3.3.11 Tank Truck. Any single self-propelled motor vehicle equipped with a cargo tank mounted thereon and used for the transportation of flammable and combustible liquids or asphalt.

3.3.12 Tank Vehicle. Any tank truck, tank full-trailer, or tractor and tank semi-trailer combination.

3.3.13* Vapor Pressure. The pressure, measured in pounds per square inch, absolute (psia), exerted by a liquid, as determined by ASTM D 323, *Standard Method of Test for Vapor Pressure of Petroleum Products (Reid Method)*.

Chapter 4 Classification of Flammable and Combustible Liquids

4.1 Scope.

4.1.1 This chapter shall establish a uniform system of defining and classifying flammable and combustible liquids for the purpose of proper application of this standard.

4.1.2 Classifications of this chapter shall apply to any liquid within the scope of, and subject to, the requirements of this standard.

4.2 Classification of Liquids. Any liquid within the scope of this standard and subject to the requirements of this standard shall be classified in accordance with this section.

4.2.1 Flammable liquids, as defined in 3.3.6, shall be classified as Class I liquids and shall be further classified in accordance with (1), (2), and (3), as follows:

- (1) Class IA Liquid. Any liquid that has a flash point below 73°F (22.8°C) and a boiling point below 100°F (37.8°C).
- (2) Class IB Liquid. Any liquid that has a flash point below 73°F (22.8°C) and a boiling point at or above 100°F (37.8°C).
- (3) Class IC Liquid. Any liquid that has a flash point at or above 73°F (22.8°C) but below 100°F (37.8°C).

4.2.2 Combustible liquids, as defined in 3.3.4, shall be classified in accordance with (1) and (2), as follows.

- (1) Class II Liquid. Any liquid that has a flash point at or above 100°F (37.8°C) and below 140°F (60°C).
- (2) Class III Liquid. Any liquid that has a flash point at or above 140°F (60°C). Class III liquids shall be further classified in accordance with (a) and (b), as follows:
 - (a) Class IIIA Liquid. Any liquid that has a flash point at or above 140°F (60°C), but below 200°F (93°C).
 - (b) Class IIIB Liquid. Any liquid that has a flash point at or above 200°F (93°C).

Chapter 5 Tank Vehicle Design

5.1 General.

5.1.1 Design of the tank vehicle shall give engineering consideration to the structural relationship between the cargo tank, the propulsion equipment, and the supporting members, if any, with due regard to the weight and temperature of the cargo, road performance, braking, and required ruggedness.

5.1.2 Metal thicknesses specified in this chapter shall be the minimum thicknesses dictated by the structure of the tank itself. These thicknesses shall be permitted to be increased where the tank shell is to be subjected to additional stress.

5.1.3 The general design of the cargo tank and vehicle chassis shall be arranged to give the best combination of structural characteristics and vehicle performance.

5.1.4 The design of the suspension system shall incorporate features to help ensure lateral or tipping stability when the tank vehicle is turning corners.

5.1.5 Any cargo tank designed for transporting materials at liquid temperatures above ambient temperatures shall have a metal warning plate located in a conspicuous place on the right side near the front.

5.1.5.1 The plate shall not be subject to corrosion.

5.1.5.2 The plate shall be permanently affixed to the tank or tank frame.

5.1.5.3 The following information shall be marked on the plate in characters at least 1/8 in. (12.5 mm) high by stamping, embossing, or other means of forming letters into or on the metal of the plate itself:

Maximum allowable cargo temperature
is ___°F (___°C).

5.1.5.4 The maximum allowable cargo temperature shall be specified by the manufacturer of the cargo tank.

5.1.6* Cargo tanks used for transporting flammable or combustible liquids at temperatures at or above their boiling points shall be constructed in accordance with Section 5.2.

5.1.7 Cargo tanks used for transporting flammable or combustible liquids at temperatures below their boiling points shall be constructed in accordance with the provisions of Section 5.3.

5.1.8* The material used in the construction of the cargo tanks shall be compatible with the chemical characteristics of the flammable or combustible liquid to be transported.

5.1.9 Where a single cargo tank is divided into compartments of different specification construction, each such compartment shall conform to the specification requirements concerned and be so identified with a permanent metal plate.

5.2 Cargo Tanks, Piping, and Connections Designed for Transporting Flammable or Combustible Liquids at Temperatures at or Above Their Boiling Points. Cargo tanks, piping, and connections designed for transporting flammable or combustible liquids at or above their boiling points shall be constructed in accordance with the U.S. Department of Transportation's regulations in 49 CFR 178, "Hazardous Materials Regulations," in accordance with Chapter 6 of NFPA 58, *Liquefied Petroleum Gas Code*.

5.3 Cargo Tanks, Piping, and Connections Designed for Transfer of Flammable or Combustible Liquids at Temperatures Below Their Boiling Points.

5.3.1 General.

5.3.1.1 Cargo tanks constructed after the effective date of this standard shall be constructed in accordance with Section 5.3.

5.3.1.2 Continued use of existing cargo tanks constructed in accordance with prior editions of this standard shall be permitted, but new construction according to older standards shall not be permitted.

5.3.2* Material. All sheet and plate material for shell, heads, bulkheads, and baffles for cargo tanks that are not required to be constructed in accordance with the ASME *Boiler and Pressure Vessel Code* shall meet the following minimum applicable requirements:

(1) Aluminum Alloys (AL) — Only aluminum alloy material suitable for fusion welding and complying with ASTM B 209,

Specification for Aluminum and Aluminum-Alloy Sheet and Plate, shall be used. Heads, bulkheads, baffles, and ring stiffeners shall be permitted to use O temper (annealed) or stronger tempers. Shells shall be made of materials with properties equivalent to H32 or H34 tempers, except that lower ultimate strength tempers shall be permitted to be used if the minimum shell thicknesses in Table 5.3.3.1(b) are increased in inverse proportion to the lesser ultimate strength.

(2) Steel — Steel shall meet the requirements of Table 5.3.2.

5.3.3 Thickness of Sheets, Heads, Bulkheads, and Baffles.

5.3.3.1 The minimum thicknesses of tank material shall be predicated on not exceeding the maximum allowable stress level, but in no case shall they be less than those indicated in Table 5.3.3.1(a) and Table 5.3.3.1(b).

5.3.3.2 The minimum material thicknesses contained in Table 5.3.3.1(a) and Table 5.3.3.1(b) shall be based on a maximum 7.2 lb per gal (0.86 kg/L) product weight. If the tank is designed to haul products weighing more than 7.2 lb per gal (0.86 kg/L), the gallon per inch value used to determine the minimum thickness of heads, bulkheads, baffles, or shell sheets shall be the actual section capacity required in gallons per inch multiplied by the actual product density in pounds per gallon divided by 7.2.

5.3.3.3 Where aluminum is used for cargo tanks intended to transport cargoes at liquid temperatures above 250°F (121°C), the minimum thicknesses shall be increased by 1 percent for each 10°F (5.6°C) or portion thereof above 250°F (121°C). Where the liquid temperatures are above 500°F (260°C), there shall be an additional 1 percent for each 10°F (5.6°C) or portion thereof above 500°F (260°C). Aluminum shall not be used for cargo tanks transporting cargoes at temperatures above 550°F (288°C).

5.3.4 Structural Integrity.

5.3.4.1 The maximum calculated stress value shall not exceed 20 percent of the minimum ultimate strength of the material as authorized except where ASME pressure vessel design requirements apply (see ASME *Boiler and Pressure Vessel Code, Section VIII*).

5.3.4.2 Cargo tanks shall be provided with additional structural elements as necessary to prevent resulting stresses in excess of those permitted in 5.3.4.1. Consideration shall be given to forces imposed by each of the following loads individually and, where applicable, a vector summation of any combination thereof:

- (1) Dynamic loading under all product load configurations
- (2) Internal pressure
- (3) Superimposed loads such as operating equipment, insulation, linings, hose tubes, cabinets, and piping
- (4) Reactions of supporting lugs and saddles or other supports
- (5) Effect of temperature gradients resulting from product and ambient temperature extremes (Thermal coefficients of dissimilar materials where used shall be accommodated.)

5.3.5 Joints.

5.3.5.1 All joints between tank shells, heads, baffles (or baffle attaching rings), and bulkheads shall be welded in accordance with the requirements contained in this section.

Table 5.3.2 Properties of Steel

Property	Mild Steel (MS)		High Strength Low Alloy Steel (HSLA)		Austenitic Stainless Steel (SS)	
	psi	MPa	psi	MPa	psi	MPa
Yield strength	25,000	170	45,000	310	25,000	170
Ultimate strength	45,000	310	60,000	410	70,000	480
Elongation [2 in. (50.8 mm) sample]	20%		25%		30%	

Table 5.3.3.1(a) Minimum Thickness of Heads, Bulkheads, and Baffles in U.S. Standard Gauge (Steels) or Decimal Inches (Aluminum)

Thickness	Volume Capacity in Gallons per Inch											
	10 or Less			Over 10 to 14			14 to 18			18 and Over		
	MS	HSLA, SS	AL	MS	HSLA, SS	AL	MS	HSLA, SS	AL	MS	HSLA, SS	AL
	14	15	0.096	13	14	0.109	12	13	0.130	11	12	0.151

MS: mild steel. HSLA: high strength low alloy steel. SS: austenitic stainless steel. AL: aluminum.

Table 5.3.3.1(b) Minimum Thickness of Shell Sheets in U.S. Standard Gauge (Steels) or Decimal Inches (Aluminum)

Maximum Shell Radius	Distance Between Bulkheads, Baffles, or Ring Stiffeners	Volume Capacity in Gallons per Inch											
		10 or Less			Over 10 to 14			14 to 18			18 and Over		
		MS	HSLA, SS	AL	MS	HSLA, SS	AL	MS	HSLA, SS	AL	MS	HSLA, SS	AL
Less than 70 in.	36 in. or less	14	16	0.087	14	16	0.087	14	15	0.096	13	14	0.109
	Over 36 in. to 54 in.	14	16	0.087	14	15	0.096	13	14	0.109	12	13	0.130
	Over 54 in. through 60 in.	14	15	0.096	13	14	0.109	12	13	0.130	11	12	0.151
70 in. or more, less than 90 in.	36 in. or less	14	16	0.087	14	15	0.096	13	14	0.109	12	13	0.130
	Over 36 in. to 54 in.	14	15	0.096	13	14	0.109	12	13	0.130	11	12	0.151
	Over 54 in. through 60 in.	13	14	0.109	12	13	0.130	11	12	0.151	10	11	0.173
90 in. or more, less than 125 in.	36 in. or less	14	15	0.096	13	14	0.109	12	13	0.130	11	12	0.151
	Over 36 in. to 54 in.	13	14	0.109	12	13	0.130	11	12	0.151	10	11	0.173
	Over 54 in. through 60 in.	12	13	0.130	11	12	0.151	10	11	0.173	9	10	0.194
125 in. or more	36 in. or less	13	14	0.109	12	13	0.130	11	12	0.151	10	11	0.173
	Over 36 in. to 54 in.	12	13	0.130	11	12	0.151	10	11	0.173	9	10	0.194
	Over 54 in. through 60 in.	11	12	0.151	10	11	0.173	9	10	0.194	8	9	0.216

MS: mild steel. HSLA: high strength low alloy steel. SS: austenitic stainless steel. AL: aluminum.

5.3.5.2 All welded aluminum alloy joints shall be made in accordance with accepted welding practices, and the efficiency of the joints shall not be less than 85 percent of the properties of the adjacent material. Aluminum alloys shall be joined by an inert gas arc welding process using aluminum-magnesium filler metals that are consistent with the material supplier's recommendations.

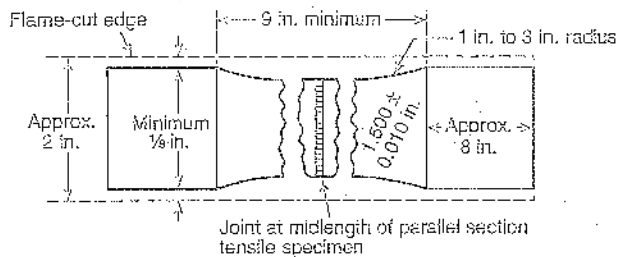
5.3.5.3 All welded joints in mild steel (MS), high strength low alloy (HSLA) steel, and austenitic stainless steel (SS) shall be

made in accordance with accepted welding practice, and the efficiency of the joints shall not be less than 85 percent of the mechanical properties of the adjacent metal in the tank.

5.3.5.4 Combinations of mild steel (MS), high strength low alloy (HSLA) steel, and austenitic stainless steel (SS) shall be permitted to be used in the construction of a single tank, provided that each material, where used, shall comply with the minimum requirements specified for the material used in the construction of that section of the tank.

5.3.5.4.1 Whenever stainless steel sheets are used in combination with sheets of other types of steel, joints made by welding shall be formed by the use of stainless steel electrodes or filler rods and the stainless steel electrodes or filler rods used in the welding shall be suitable for use with the grade of stainless steel concerned according to the recommendations of the manufacturer of the stainless steel electrodes or filler rods.

5.3.5.5 Compliance with the requirements contained in 5.3.5.2 or 5.3.5.3 for the welded joints indicated in 5.3.5.1 shall be determined by preparing, from materials representative of those to be used in tanks subject to this specification and by the same technique of fabrication, two test specimens conforming to Figure 5.3.5.5 and testing them to failure in tension.



For SI units, 1 in. = 25.4 mm.

FIGURE 5.3.5.5 Tensile Test Specimen.

5.3.5.5.1 One pair of test specimens shall represent all the tanks to be made of the same combination of materials by the same technique of fabrication and in the same shop, within 6 months after the tests on such samples have been completed.

5.3.5.5.2 The butt welded specimens tested shall be considered as qualifying other types or combinations of types of weld using the same filler material and welding process as long as parent metals are of the same types of material.

5.3.6 Supports and Anchoring.

5.3.6.1 Cargo tanks with frames not made integral with the tank (as by welding) shall be provided with restraining devices to eliminate any relative motion between the tank and the frame that could result from the stopping, starting, or turning of the vehicle. Such restraining devices shall be readily accessible for inspection and maintenance, except that insulation and jacketing shall be permitted to cover the restraining devices.

5.3.6.2 Any cargo tank designed and constructed so that it constitutes in whole or in part the structural member used in lieu of a frame shall be supported in such a manner that the resulting stress levels in the cargo tank do not exceed those specified in 5.3.4.1. The design calculations of the support elements shall include loadings imposed by stopping, starting, and turning in addition to those imposed as indicated in 5.3.4.2 using 20 percent of the minimum ultimate strength of the support material.

5.3.7 Circumferential Reinforcement.

5.3.7.1 Tanks with shell thicknesses less than $\frac{3}{8}$ in. (9 mm) shall, in addition to the reinforcement provided by the tank heads, be circumferentially reinforced with bulkheads, baffles, or ring stiffeners. Any combination of the aforementioned reinforcements shall be permitted to be used in a single cargo tank.

5.3.7.2 Circumferential reinforcement shall be located in such a manner that the maximum unreinforced portion of the shell is as specified in Table 5.3.3.1 (b) and in no case shall be more than 60 in. (1500 mm). Additionally, such circumferential reinforcement shall be located within 1 in. (25 mm) of points where discontinuity in longitudinal shell sheet alignment exceeds 10 degrees unless otherwise reinforced with structural members capable of maintaining shell sheet stress levels permitted in 5.3.6.2.

5.3.7.3 Baffles or baffle attaching rings, when used as reinforcement members, shall be circumferentially welded to the tank shell. The welding shall be not less than 50 percent of the total circumference of the vessel, and the maximum unwelded space on this joint shall not exceed 40 times the shell thickness.

5.3.7.4 Wherever double bulkheads are provided, they shall be separated by an air space. This air space shall be vented and equipped with means for drainage facilities that shall be kept operative at all times (see 9.1.8).

5.3.7.5 Where ring stiffeners are used to comply with this section, they shall be continuous around the circumference of the tank shell and shall have a section modulus about the neutral axis of the ring section parallel to the shell at least equal to that determined by the following formulas:

$$\frac{I}{C} = 0.00027 WL \text{ (MS, HSLA steel, and SS)}$$

$$\frac{I}{C} = 0.000467 WL \text{ (Al)}$$

where:

$\frac{I}{C}$ = section modulus (in.³)

W = tank width or diameter (in.)

L = ring spacing (in.), i.e., the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener

5.3.7.5.1 Where a ring stiffener is welded to the tank shell (with each circumferential weld not less than 50 percent of the total circumference of the vessel and the maximum unwelded space on this joint not exceeding 40 times the shell thickness), a portion of the shell shall be permitted to be considered as part of the ring section for purposes of computing the ring section modulus. The maximum portion of the shell to be used in these calculations shall be as given in Table 5.3.7.5.1.

5.3.7.5.2 If the configuration of an internal or external ring stiffener encloses an air space, this air space shall be arranged for venting and shall be equipped with means for drainage that shall be kept operative at all times.

5.3.8 Accident Damage Protection.

5.3.8.1 The design, construction, and installation of any appurtenance to the shell or head of the cargo tank shall be such as to minimize the possibility of appurtenance damage or failure adversely affecting the product retention integrity of the tank.

5.3.8.2 Structural members, such as the suspension subframe, overturn protection, and external rings, when practicable, shall be utilized as sites for attachment of appurtenances and any other accessories to a cargo tank.

Table 5.3.7.5.1 Portion of Tank Shell Contributing to Ring Section Modulus

Circumferential Ring Stiffener-to-Tank Shell Welds	Distance Between Parallel Circumferential Ring Stiffener-to-Tank Shell Welds	Shell Section Credit
1	—	$20t$
2	Less than $20t$	$20t + W$
2	$20t$ or more	$40t$

t : Shell thickness. W : Distance between parallel circumferential ring stiffener and shell welds.

5.3.8.3 Except as prescribed in 5.3.8.5, the welding of any appurtenance to a shell or head shall be made by attachment to a mounting pad.

5.3.8.3.1 The thickness of the mounting pad shall be not less than that of the shell or head to which it is attached.

5.3.8.3.2 The mounting pad shall extend at least 2 in. (50 mm) in each direction from any point of attachment of an appurtenance.

5.3.8.3.3 The mounting pad shall have rounded corners or otherwise be shaped in a manner to preclude stress concentrations on the shell or the head.

5.3.8.3.4 The mounting pad shall be attached by a continuous weld around the pad.

5.3.8.4 Appurtenances shall be attached to mounting pads so there will be no adverse affect upon the product-retention integrity of the tank if any force is applied to the appurtenance, in any direction, except normal to the tank, or within 45 degrees of normal.

5.3.8.5 Skirting structures, conduit clips, brakeline clips, and similar lightweight attachments, which are of a metal thickness, construction, or material appreciably less strong but not more than 72 percent of the thickness of the tank shell or head to which such a device is attached, shall be permitted to be secured directly to the tank shell or head, if each device is designed and installed so that damage to it will not affect the product retention integrity of the tank.

5.3.8.5.1 These lightweight attachments shall be secured to the tank shell by continuous weld or in such manner as to preclude formation of pockets, which could become sites for incipient corrosion.

5.3.8.6 Every cargo tank shall be provided with a rear bumper to protect the tank and piping in the event of a rear-end collision and to minimize the possibility of any part of the colliding vehicle striking the tank.

5.3.8.6.1 The bumper shall be located at least 6 in. (150 mm) to the rear of any vehicle component that is used for loading or unloading purposes or might at any time contain lading while in transit.

5.3.8.6.2 Dimensionally, the bumper shall conform to U.S. Department of Transportation regulations in 49 CFR Part 393.86, "Rear Impact Guards and Rear End Protection." Structurally, the bumper shall be designed to successfully absorb the impact of the

vehicle with rated payload (i.e., prevent damage that will cause leakage of product), with a deceleration of 2 g, using a factor of safety of 2 based on the ultimate strength of the bumper material.

5.3.8.6.3 For purposes of these regulations, such impact shall be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle.

5.3.9 Overturn Protection.

5.3.9.1 All closures for filling, manholes, or inspection openings shall be protected from damage that would result in leakage of lading in the event of overturning of the vehicle by being enclosed within the body of the tank or dome attached to the tank or by guards.

5.3.9.2 When guards are required, they shall be designed and installed to withstand a vertical load of twice the weight of the loaded tank and a horizontal load in any direction equivalent to one-half the weight of the loaded tank. These design loads shall be permitted to be considered independently.

5.3.9.2.1 The ultimate strength of the material shall be used as a calculation base.

5.3.9.2.2 If more than one guard is used, each shall carry its proportionate share of the load.

5.3.9.2.3 If protection other than guards is considered, the same design load criteria shall be applicable.

5.3.9.3 Except for pressure-actuated vents, no overturn protection is required for nonoperating nozzles or fittings less than 5 in. (125 mm) in diameter (which do not contain product while in transit) that project a distance less than the inside diameter of the fitting. This projected distance shall be permitted to be measured either from the shell or from the top of an adjacent ring stiffener provided such stiffener is within 30 in. (750 mm) of the center of the nozzle or fitting.

5.3.9.4 If the overturn protection is constructed so as to permit accumulation of liquid on the top of the tank, it shall be provided with means for drainage directed to a safe point of discharge.

5.3.10 Piping.

5.3.10.1 Product discharge piping shall be provided with protection in such a manner as to reasonably ensure against the accidental escape of contents. Such protection shall be permitted to be provided by one of the following:

- (1) A shear section shall be located outboard of each emergency valve seat and within 4 in. (100 mm) of the vessel. The shear section shall break under strain and leave the emergency valve seat and its attachment to the vessel and the valve head intact and capable of retaining product. The shear section shall be machined in such a manner as to abruptly reduce the wall thickness of the adjacent piping (or valve) material by at least 20 percent.
- (2) Suitable guards shall be capable of successfully absorbing a concentrated horizontal force of at least 8000 lb (3630 kg) applied from any horizontal direction, without damage to the discharge piping that might adversely affect the product retention integrity of the discharge valve.

5.3.10.2 The minimum allowable road clearance of any cargo tank component or protection device located between any two adjacent axles on a vehicle or vehicle combination shall be at least ½ in. (12.5 mm) for each foot separating such axles and in no case less than 12 in. (300 mm).

5.3.10.5 Hose, piping, and fittings for tanks to be unloaded by pressure shall be designed for a bursting pressure of at least 100 psi (689.5 kPa) gauge pressure, but in no case less than four times the pressure to which it might be subjected in service by the action of any vehicle-mounted pump or other device (not including safety relief valves). Any coupling used on hose to make connections shall be designed for a working pressure not less than 20 percent in excess of the design pressure of the hose and shall be designed so that there will be no leakage when connected.

5.3.10.4 Suitable provisions shall be made in every case to allow for and prevent damage due to expansion, contraction, jarring, and vibration of all pipe. Slip joints shall not be used for this purpose.

5.3.10.5 Heater coils, when installed, shall be constructed so that the breaking off of their external connections will not cause leakage of contents of the tank.

5.3.10.5 Gauging, loading, and air-inlet devices, including their valves, shall be provided with adequate means for their secure closure, and means shall also be provided for the closing of pipe connection of valves.

5.3.11 Closures for FRL Openings and Manholes.

5.3.11.1 Each compartment in excess of 2500 gal (9500 L) capacity shall be accessible through a manhole of at least 11 in. × 15 in. (280 mm × 380 mm).

5.3.11.2 Manhole and fill opening covers shall be designed to provide secure closure of the openings.

5.3.11.3 Closures shall have the structural capability to withstand an internal fluid pressure of 9 psi gauge pressure (62 kPa gauge pressure) without permanent deformation.

5.3.11.4 Safety devices shall be provided to prevent manhole and fill covers from opening fully when internal pressure is present.

5.3.12 Normal Vents for Cargo Tanks in Other Than Asphalt Service.

5.3.12.1 Each cargo tank compartment shall be provided with safety relief devices that communicate with the vapor space of the cargo tank in accordance with the requirements contained in this section.

5.3.12.1.1 Shutoff valves shall not be installed between the tank opening and any safety device.

5.3.12.1.2 Safety relief devices shall be mounted, shielded, or drained so as to eliminate the accumulation of water, the freezing of which could impair the operation or discharge capability of the device.

5.3.12.2 Each cargo tank compartment shall be provided with normal pressure and vacuum vents, each having a minimum net free cross-sectional area of 0.44 in.² (284 mm²). Pressure vents shall be set to open at a gauge pressure of not more than 1 psi (6.9 kPa). Vacuum vents shall be set to open at 6 oz (170 g).

5.3.12.3 Pressure and vacuum vents shall be designed to prevent loss of liquid in the event of vehicle overturn.

5.3.12.4 Where a cargo tank compartment is designed to be loaded or unloaded with the dome cover closed, the vent or vents described in 5.3.12.2 or additional vents shall limit the vacuum to 1 psi (6.9 kPa) and the tank pressure to a gauge pressure of 3 psi (20.7 kPa) based on maximum product transfer rate.

5.3.12.4.1 Unless effective protection against overfilling is made, the pressure vent shall also have sufficient liquid capacity to prevent the pressure from exceeding a gauge pressure of 3 psi (20.7 kPa) in case of accidental overfilling.

5.3.12.4.2 This pressure vent shall be permitted to be pressure operated or interlocked with the tank loading device and shall be designed to prevent loss of liquid through the vent under any condition of vehicle rollover attitude.

5.3.13 Emergency Venting for Fire Exposure.

5.3.13.1 The total emergency venting capacity in cubic feet/hour (cubic meters/second) for each cargo tank compartment shall be not less than that determined from Table 5.3.13.1.

Table 5.3.13.1 Minimum Emergency Vent Capacity

Exposed Area (ft ²)	Free-Air Vent Capacity (ft ³ /hr) ^a	Exposed Area (ft ²)	Free-Air Vent Capacity (ft ³ /hr) ^a
20	15,800	275	214,300
30	23,700	300	225,100
40	31,600	350	245,700
50	39,500	400	265,000
60	47,400	450	283,200
70	55,300	500	300,600
80	63,300	550	317,300
90	71,200	600	333,300
100	79,100	650	348,800
120	94,900	700	363,700
140	110,700	750	378,200
160	126,500	800	392,200
180	142,300	850	405,900
200	158,100	900	419,300
225	191,300	950	432,300
250	203,100	1000	445,000

For SI units, 1 ft² = 0.093 m²; 1 ft³ = 0.028 m³.

Note: Interpolate for intermediate sizes.

^aAt 14.7 psi (101.3 kPa) and 60°F (15.6°C)

5.3.13.2 Each cargo tank compartment shall be equipped with one or more pressure-actuated vents set to open at a gauge pressure of not less than 3 psi (20.7 kPa) and to close when the pressure drops below the 3 psi (20.7 kPa) set point.

5.3.13.2.1 The minimum venting capacity for the pressure-actuated vents shall be 6000 ft³ (170 m³) of free air per hour [measured at standard conditions of 14.7 psi (101.3 kPa) and 60°F (15.6°C)] at a gauge pressure of 5 psi (35 kPa).

5.3.13.2.2 Pressure-actuated devices shall be designed so as to prevent leakage of liquid past the device in case of surge or vehicle upset, except that they shall function in case of pressure rise under any condition of vehicle rollover attitude.

5.3.13.3 Where the pressure-actuated venting required by 5.3.13.2 does not provide the total venting capacity required by 5.3.13.1, additional capacity shall be provided by the addition of fusible venting devices, each having a minimum area of 1.25 in.² (800 mm²).

5.3.13.3.1 Such fusible elements shall be located so as not to be in contact with the tank lading under normal operating conditions.

5.3.13.3.2 The fusible vent or vents shall be actuated by elements that operate at a temperature not exceeding 250°F (120°C).

5.3.13.3.3 The venting capacity of these devices shall be rated at a gauge pressure of not more than 5 psi (35 kPa).

5.3.13.3.4 At least two such devices shall be used on any cargo tank or tank compartment over 2500 gal (9500 L) in capacity.

5.3.13.3.5 At least one such device shall be located close to each end of the cargo tank or tank compartment.

5.3.13.4* Each type and size of venting device shall be flow tested in the range specified in 5.3.13.1 through 5.3.13.3.

5.3.13.4.1 The actual rated flow capacity of the vent, in cubic feet (ft³) [cubic meters (m³)] of free air per hour at the gauge pressure in pounds per square inch (psi) [kilopascals (kPa)] at which the flow capacity is determined, shall be stamped on the device.

5.3.13.4.2 The fusible vent or vents shall have their flow rating determined at 5 psi (35 kPa) differential.

5.3.13.4.3 Flow tests shall be permitted to be conducted by the manufacturer, if certified by a qualified impartial observer, or delegated to an outside agency.

5.4 Emergency-Discharge Control.

5.4.1 Liquids Having Viscosities Less Than 45 Standard Units Saybolt (SUS).

5.4.1.1* Each outlet of a cargo tank or compartment used for transportation of Class I liquid and tanks constructed hereafter for transportation of Class II and Class IIIA liquids, having a viscosity less than 45 SUS at 100°F (37.8°C), shall be equipped with a self-closing shutoff valve designed, installed, and operated so as to ensure against the accidental escape of contents.

5.4.1.2 The shutoff valve shall be located inside the tank or at a point outside the tank where the line enters or leaves the tank.

5.4.1.3 The valve seat shall be located inside the tank or within the welded flange, its companion flange, nozzle, or coupling and shall be designed so that the valve must be kept closed except during loading and unloading operations.

5.4.1.4 The operating mechanism for the valve shall be provided with a secondary control, remote from the fill openings and discharge connections, for use in the event of accidents or fire during delivery operations.

5.4.1.5 The control mechanism shall be provided with at least one fusible element that becomes effective at a temperature not over 250°F (120°C), permitting the valve to close automatically in case of fire.

5.4.1.5.1 At least one fusible element shall be in the open where it would be exposed to the heat of a fire under the vehicle.

5.4.1.6 Each shutoff valve shall be provided with a shear section, located outboard of each emergency valve seat and within 4 in. (100 mm) of the vessel, that will break under strain and leave the emergency valve seat and its attachment to the vessel and the valve head intact and capable of retaining product.

5.4.1.6.1 The shear section shall be machined in such a manner as to abruptly reduce the wall thickness of the adjacent piping (or valve) material by at least 20 percent.

5.4.2 Liquids of Viscosities of 45 SUS or More. Each outlet of a cargo tank or compartment used for the transportation of liquids having a viscosity equal to or greater than 45 SUS at 100°F (37.8°C) shall be equipped with one of the following:

- (1) A suitable shutoff valve, located internally, designed so that the valve will remain operable if the external connection is sheared off
- (2) A front- or rear-head mounted valve securely reinforced and protected against shock or road hazards

5.5 Tests.

5.5.1 At the time of manufacture, every cargo tank shall be tested by air or hydrostatically to a minimum gauge pressure of 3 psi (20.7 kPa) or at least equal to the tank design pressure, whichever is greater.

5.5.1.1 If compartmented, each individual compartment shall be similarly tested with adjacent compartments empty and at atmospheric pressure.

5.5.1.2 Air pressure, if used, shall be held for a period of at least 5 minutes during which the entire surface of all joints under pressure shall be coated with a solution of soap and water, heavy oil, or other material suitable for the purpose, foaming or bubbling of which indicates the presence of leaks.

5.5.1.3 Hydrostatic pressure, if used, shall be done by using water or other liquid having a similar viscosity, the temperature of which shall not exceed 100°F (37.8°C) during the test, and applying pressure as prescribed in 5.5.1 through 5.5.1.2, gauged at the top of the tank, at which time all joints under pressure shall be inspected for the issuance of liquid to indicate leaks.

5.5.1.4 All closures shall be in place while test by either method is made.

5.5.1.5 During these tests, operative relief devices shall be clamped, plugged, or otherwise rendered inoperative; such clamps, plugs, and similar devices shall be removed immediately after the test is finished.

5.5.2 The test in 5.5.1 shall be repeated following alteration or repairs that involve tank integrity.

5.5.2.1 If there is any leakage or undue distortion, or if failure impends or occurs, the cargo tank shall not be placed in service unless an adequate repair is made.

5.5.2.2 The adequacy of the repair shall be determined by the same method of test.

5.6 Separation to Prevent Intermixing. Tank vehicles designed to transport Class I liquid in one or more compartments and Class II or Class III liquid in other compartment or compartments or to transport chemically noncompatible liquids shall be provided with double bulkheads and shall be equipped with separate piping, pumps, meters, and hoses for such classes of product.

5.7 Lighting.

5.7.1 Lighting circuits shall have suitable overcurrent protection (fuses or automatic circuit breakers).

5.7.2 The wiring shall have sufficient carrying capacity and mechanical strength and shall be secured, insulated, and protected against physical damage, in keeping with recognized good practice.

Chapter 6 Asphalt Tank Vehicles

6.1 **General.** Cargo tanks shall be free of water or volatile liquids before they are loaded with hot asphalt.

6.2 Vents for Cargo Tanks in Asphalt Service.

6.2.1 Each cargo tank used in asphalt service shall be provided with a vent having an effective opening at least equivalent to a nominal 2 in. (50 mm) pipe.

6.2.2 Each cargo tank for asphalt service shall be provided with a manhole having a free opening of at least 15 in. (375 mm) in diameter designed to relieve internal pressure at gauge pressure between 2 and 3 psi (between 13.8 and 20.7 kPa) or an equivalent relief device.

6.3 Overflows and Drains for Asphalt Tank Vehicles.

6.3.1 Overflow protection for asphalt tank vehicles shall be provided in the form of reservoirs or flashing around fill and vent pipes.

6.3.2 Overflow and drain pipes shall have thicknesses heavier than the tank shell and shall be designed so that hot asphalt will not spill onto tires, brakes, burner equipment, or the vehicle's exhaust system.

6.4 Burner and Burner Tubes for Asphalt Tank Vehicles.

6.4.1 Burners shall be located remotely from fuel tanks for the vehicle engine and fuel tanks for the burners, or a non-combustible shield shall be provided between the burner and the fuel tanks to prevent flashback.

6.4.2 Burner tubes shall be properly installed and maintained.

6.4.3 The bottom of internal burner tubes shall be located as low in the tank as proper design and functioning permit.

6.4.4 Instructions for the proper method of operating the burner equipment and the pumping equipment, if so equipped, shall be provided. These instructions shall accompany the vehicle at all times.

6.4.5 A warning sign or label that meets the requirements of ANSI Z535.1, *Safety Color Code*, shall be permanently attached near the burners on any tank vehicle equipped with burners and shall include at least the following information:

WARNING: This burner equipment must not be operated while the vehicle is being loaded or is in transit or when the burner tubes are not completely submerged.

Chapter 7 Marking on Tank Vehicles

7.1 Marking.

7.1.1 Every tank vehicle used for the transportation of any flammable or combustible liquids, regardless of the quantity being transported or whether loaded or empty, shall be conspicuously and legibly marked in accordance with the requirements of the U.S. Department of Transportation regulations in 49 CFR 171-179, "Hazardous Materials Regulations."

7.1.2 **Manufacturer's Certificate:** A certificate shall be procured certifying that each such cargo tank is designed, constructed, and tested in compliance with this standard. The certificate shall be signed by a responsible official of the manufacturer of the cargo

tank or from a competent testing agency and shall be retained in the files of the carrier during the time that such cargo tank is employed by the carrier, plus 1 year.

7.1.3 In addition to the certificate specified in 7.1.2, there shall be a metal plate on every cargo tank (or tank compartment if constructed to different specification).

7.1.3.1 The plate shall not be subject to corrosion.

7.1.3.2 The plate shall be located on the right side near the front, in a place readily accessible for inspection.

7.1.3.3 The plate shall be permanently affixed to the tank by soldering, brazing, welding, or other equally suitable means.

7.1.3.4 The plate shall be marked in characters at least $\frac{3}{16}$ in. (5 mm) high by stamping, embossing, or other means of forming letters into or on the metal of the plate itself at least the following information:

- (1) Vehicle manufacturer
- (2) Manufacturer's serial number
- (3) Specification identification
- (4) Date of manufacture
- (5) Original test date
- (6) Certificate date
- (7) Design pressure (psi)
- (8) Test pressure (psi)
- (9) Head material
- (10) Shell material
- (11) Weld material
- (12) Lining material
- (13) Nominal tank capacity by compartment (front to rear) (U.S. gal)
- (14) Maximum product load (lb)
- (15) Loading limits (gpm and/or psi)
- (16) Unloading limits (gpm and/or psi)

7.1.3.5 The plate shall not be painted so as to obscure the markings thereon.

7.1.4 If a cargo tank is to be altered physically to meet another specification (or to accommodate a commodity not requiring a specification tank), such combinations shall be indicated beside the specification identification.

7.1.5 Where the cargo tank has a metal certification plate for MC 306 specification, the notation "NFPA 385" shall be permitted to be added to the specification identification line on the metal plate.

Chapter 8 Auxiliary Equipment

8.1 Auxiliary Internal Combustion Engines.

8.1.1 Internal combustion engines, other than those providing propulsive power, installed or carried on a tank vehicle transporting Class I liquids for the purpose of providing power for the operation of pumps or other devices, shall meet the requirements in 8.1.2 through 8.1.3.

8.1.2 The engine air intake shall be equipped with an effective flame arrester or an air cleaner having effective flame arrester characteristics, installed and capable of preventing emission of flame from the intake side of the engine in the event of backfiring.

8.1.3 The fuel system shall be located or constructed so as to minimize the fire hazard.

8.1.3.1 Where the fuel tank is located above or immediately adjacent to the engine, suitable shielding shall be provided to prevent spillage during the filling operation or leakage from the tank or fuel system from coming in contact with the engine or any parts of the ignition and exhaust systems.

8.1.3.2 All parts of the fuel system shall be constructed and installed in a proficient manner.

8.1.4 Pumps and other appurtenances shall be so located in relation to the engine that spillage or leakage from such parts is prevented from coming in contact with the engine or any parts of the ignition and exhaust system, or adequate shielding shall be provided to attain the same purpose.

8.1.5 The engine cooling fan shall be positioned, rotated, or shielded so as to minimize the possibility of drawing flammable vapors toward the engine.

8.1.6 Where the engine is located in a position that spillage from the cargo tank or its appurtenances or from side racks might constitute a hazard, shielding shall be provided to prevent such spillage from contacting the engine or engine exhaust system and for draining such spillage away from the vicinity of the engine.

8.1.7 Where the engine is carried within an enclosed space, provision shall be made for adequate air circulation at all times to prevent accumulation of explosive vapors and to avoid overheating.

8.1.8 The exhaust system shall be constructed and installed to be free from leaks.

8.1.8.1 The exhaust line and muffler shall have adequate clearance from combustible materials.

8.1.8.2 The exhaust gases shall be discharged at a location that shall not constitute a hazard.

8.1.8.3 Where engines are carried as in 8.1.7, the exhaust gases shall be discharged outside each such enclosed space.

8.1.9 The ignition wiring shall be installed with firm connections. Spark plug terminals and all other terminals shall be insulated to prevent sparking in the event of contact with conductive materials. The ignition switch shall be of the enclosed type.

8.2 Auxiliary Electric Generators and Motors.

8.2.1 Electrical equipment installed or carried on a tank vehicle transporting Class I liquids for the operation of pumps or other devices used for the handling of product, and operating product handling accessories shall meet the requirements of 8.2.2 through 8.2.6.

8.2.2 Generators that are mounted on the engine providing propulsive power for the vehicle or an auxiliary engine or located in the immediate vicinity of such engine or its exhaust system shall be permitted to have general-purpose enclosures. Generators located elsewhere shall be provided with explosionproof enclosures.

8.2.3 Motors having sparking contacts shall be provided with explosionproof enclosures.

8.2.4 Wiring shall be adequate for maximum loads to be carried and shall be installed so as to be protected from physical damage and contact with possible product spill either by location or by being enclosed in metal conduit or other oil-resistant protective covering. Junction boxes shall be sealed.

8.2.5 Switches, overload protection devices, and other sparking equipment shall be located and enclosed as provided for generators in 8.2.2.

8.2.6 Where the generator or motor is located within an enclosed space, provision shall be made for adequate air circulation to prevent overheating and possible accumulation of explosive vapor.

8.3 Pumps and Hose.

8.3.1 Where a pump is used to deliver products, automatic means shall be provided to prevent pressure in excess of the design working pressures of the accessories, piping, and hose.

8.3.2 Each length of hose used for delivery of product by pump shall be marked to indicate the manufacturer's recommended working pressure.

8.3.3 All pressure hoses and couplings shall be inspected at intervals appropriate to the service.

8.3.3.1 With the hose extended, pressure shall be applied to the hose and couplings to the maximum operating pressure.

8.3.3.2 Any hose showing material deteriorations, signs of leakage, or weakness in its carcass or at the couplings shall be withdrawn from service and repaired or discarded.

Chapter 9 Operation of Tank Vehicles

9.1 General Operating Conditions.

9.1.1 Drivers shall be thoroughly trained in the proper method of operating tank vehicles and in the proper procedures for loading and unloading tank vehicles.

9.1.2 Tank vehicles shall not be operated unless they are in proper repair; are devoid of accumulations of grease, oil, or other flammables; and are free of leaks.

9.1.3 Dome covers shall be closed and latched while the tank vehicle is in transit.

9.1.4 No tank vehicle shall be operated with a cargo temperature above the maximum allowable cargo temperature specified on the warning sign required by 5.1.5.

9.1.5 No material shall be loaded into or transported in a cargo tank at a temperature above its ignition temperature unless properly safeguarded in a manner approved by the authority having jurisdiction.

9.1.6 Flammable and combustible liquids that are loaded at or above their boiling points or that might reach their boiling point temperatures during transit shall be loaded only into cargo tanks constructed in accordance with Section 5.2.

9.1.7* Flammable and combustible liquids shall be loaded only into cargo tanks whose material of construction is compatible with the chemical characteristics of the liquid to be transported. The flammable or combustible liquid being loaded shall also be chemically compatible with the liquid hauled on the previous load unless the cargo tank has been cleaned.

9.1.8 Class II or Class III liquids shall not be loaded into a compartment adjacent to Class I liquids unless double bulkheads are provided.

9.1.9 Chemically noncompatible material shall not be loaded into adjacent compartments unless separated by double bulkheads.

9.1.10* To prevent a hazard from a change in the flash points of liquids, no cargo tank, or any compartment thereof, that has been utilized for Class I liquid shall be loaded with Class II or Class III liquid until such tank or compartment and all piping, pumps, meters, and hose connected thereto have been completely drained.

9.1.10.1 A tank, compartment, piping, pump, meter, or hose that does not drain completely shall be flushed at the loading point with a quantity of Class II or Class III liquid equal to twice the capacity of piping, pump, meter, and hose, to clear any residue of Class I liquid from the system.

9.1.11 No repairs shall be made to any tank vehicle unless the repairs can be made without hazard, nor shall any loaded motor vehicle be repaired in a closed garage.

9.1.12 No cargo tank shall be repaired by any method employing a flame, arc, or other source of ignition unless the tank is maintained gas free or otherwise made safe in an approved manner.

9.2 Loading and Unloading Tank Vehicles.

9.2.1 Loading and unloading of tank vehicles shall be done only in approved locations.

9.2.2 The driver, operator, or attendant of any tank vehicle shall not remain in the vehicle but shall not leave the vehicle unattended during the loading or unloading process. Delivery hose, when attached to a tank vehicle, shall be considered to be a part of the tank vehicle.

9.2.3 During transfer of Class I liquids, motors of tank vehicles or motors of auxiliary or portable pumps shall be shut down during the making and breaking of hose connections.

9.2.3.1 Where loading or unloading is done without requiring the use of the motor of the tank vehicle, the motor shall be shut down throughout the transfer operations of Class I liquids.

9.2.4 Where portable pumps are used for transferring Class I liquids, the portable pumps shall comply with the applicable provisions of Section 8.1 or Section 8.2.

9.2.5 No cargo tank or compartment thereof used for the transportation of any flammable or combustible liquid or asphalt shall be loaded liquid full. Sufficient space (outage) shall be provided in every case to prevent leakage from such tank or compartment by expansion of the contents due to rise in temperature in transit and in no case less than 1 percent.

9.2.6 Delivery of Class I liquids to underground tanks of more than 1000 gal (3800 L.) capacity shall be made by means of tight connections between the hose and the fill pipe.

9.2.6.1 In all cases where underground tanks are equipped with any type of vapor recovery system, all connections required to be made for the safe and proper functioning of the particular vapor recovery process shall be made.

9.2.6.2 Such connections shall be designed to prevent release of vapors at grade level and shall remain connected throughout the loading or unloading process.

9.2.7 Where a cargo tank is filled through bottom loading, a positive means shall be provided for loading a predetermined quantity of liquid, and an automatic secondary shutoff control shall be installed in each compartment to prevent overflow.

9.2.8 The secondary shutoff control system shall be labeled as to manufacturer and type.

9.2.8.1 Any electrical system used for secondary shutoff shall be in accordance with NFPA 70, *National Electrical Code*.

9.2.9 Where bottom loading vehicles are equipped for vapor recovery and vapor recovery is not required, the tank vapor system shall be open to the atmosphere to prevent pressurization of the tank and the vapor system.

9.2.10 Where a dry disconnect vapor recovery adapter is used, provisions shall be made to ensure that the vapor recovery system is fully vented before unloading to prevent collapse of the tank. This requirement shall apply to both bottom and top loading.

9.2.11 During bottom loading of a tank equipped with a vapor recovery system, the vapor recovery connection shall be used to conduct vapor away from the loading area by using the terminal vapor recovery system or discharge standpipe or by opening the tank fill openings (manholes).

9.2.12 Where a cargo tank is filled through a top opening, the cargo tank shall be bonded to the fill stem or to some part of the rack structure that is electrically interconnected with the fill stem piping.

9.2.12.1 Bonding shall not be required when loading asphalt, crude oil, or any product containing substantial proportions of crude residuum.

9.2.12.2 Bonding shall not be required for tank vehicles used exclusively for transporting Class II or Class III liquids when loaded at locations where no Class I liquids are handled.

9.2.12.3* The bond-wire connection shall be made prior to the opening of the dome covers and shall be maintained in place during the entire filling operation.

9.2.12.4 The dome covers shall be securely closed before the bond wire is disconnected from the cargo tank.

9.2.13 No external bond-wire connection or bond-wire integral with a hose shall be required for the unloading of flammable and combustible liquids into underground tanks nor when a tank vehicle is loaded or unloaded through tight connections such as to an aboveground tank or through bottom connections.

9.2.14 Smoking on or about any tank vehicle while loading or unloading any flammable or combustible liquid shall be forbidden.

9.2.15 Extreme care shall be taken in the loading or unloading of any flammable liquid into or from any cargo tank to keep fire away and to prevent persons in the vicinity from smoking, lighting matches, or carrying any flame or lighted cigar, pipe, or cigarette.

9.2.16 No flammable or combustible liquid shall be transferred to or from any tank vehicle unless the parking brake is securely set and all other reasonable precautions have been taken to prevent motion of the vehicle.

9.3 Fire Extinguishers.

9.3.1 Each tank vehicle shall be provided with one portable fire extinguisher that has a minimum rating of 4-A: 40-B,C or with more than one portable fire extinguisher, each having a rating of 2-A: 20-B,C.

9.3.2 Ratings shall be in accordance with NFPA 10, *Standard for Portable Fire Extinguishers*.

9.3.3 Fire extinguishers shall be kept in good operating condition at all times and shall be located in an accessible place on each tank vehicle.

9.3.4 Extinguishers shall be maintained in accordance with NFPA 10, *Standard for Portable Fire Extinguishers*.

Annex A Explanatory Material

Annex A is not a part of the requirements of this NFPA document but is included for informational purposes only. This annex contains explanatory material, numbered to correspond with the applicable text paragraphs.

A.1.1.1 Normally stable materials are those having the relative capacity to resist changes in their chemical composition that would produce violent reactions or detonations despite exposure to air, water, or heat, including the normal range of conditions encountered in handling, storage, or transportation. Unstable (reactive) flammable and combustible liquids are liquids that in the pure state or as commercially produced or transported will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature.

A.3.2.1 **Approved.** The National Fire Protection Association does not approve, inspect, or certify any installations, procedures, equipment, or materials; nor does it approve or evaluate testing laboratories. In determining the acceptability of installations, procedures, equipment, or materials, the authority having jurisdiction may base acceptance on compliance with NFPA or other appropriate standards. In the absence of such standards, said authority may require evidence of proper installation, procedure, or use. The authority having jurisdiction may also refer to the listings or labeling practices of an organization that is concerned with product evaluations and is thus in a position to determine compliance with appropriate standards for the current production of listed items.

A.3.2.3 **Listed.** The means for identifying listed equipment may vary for each organization concerned with product evaluation; some organizations do not recognize equipment as listed unless it is also labeled. The authority having jurisdiction should utilize the system employed by the listing organization to identify a listed product.

A.3.3.4 **Combustible Liquid.** For classification of combustible liquids, see 4.2.2 of this standard and 1.7.3.1 of NFPA 30, *Flammable and Combustible Liquids Code*.

A.3.3.6 **Flammable Liquid.** For classification of flammable liquids, see 4.2.1 of this standard and 1.7.3.2 of NFPA 30, *Flammable and Combustible Liquids Code*. For information on test procedures and apparatus for determining flash point, see 1.7.4 of NFPA 30, *Flammable and Combustible Liquids Code*.

A.3.3.7 **Flash Point.** Flash point is a direct measure of a liquid's volatility, its tendency to vaporize. The lower the flash point, the greater the volatility and the greater the risk of fire. Flash point is determined using one of several different test procedures and apparatus that are specified in NFPA 30, *Flammable and Combustible Liquids Code*, 1.7.4.

A liquid that has a flash point at or below ambient temperature is easy to ignite and will burn quickly. On ignition, the spread of flame over the surface of such a liquid will be rapid, because it is not necessary for the fire to expend energy heating the liquid

to generate more vapor. Gasoline is a familiar example. A liquid with a flash point above ambient temperature presents less risk because it must be heated to generate enough vapor to become ignitable; it is more difficult to ignite and presents less potential for the generation and spread of vapor. A common example is home heating oil (Fuel Oil No. 2), which must be atomized to a fine mist in order for it to be easily ignited.

Certain solutions of liquids in water exhibit a flash point using the standard closed-cup test procedures but will not burn and might even extinguish a fire. To assist identifying such solutions, the following standards are helpful: ASTM D 4207, *Standard Test Method for Sustained Burning of Low Viscosity Liquid Mixtures by the Wick Test*, and ASTM D 4206, *Standard Test Method for Sustained Burning of Liquid Mixtures by the Setaflash Tester (Open Cup)*. Liquid mixtures that do not sustain combustion for a specified time at a specified temperature are considered to be noncombustible. These tests provide additional data for determining proper storage and handling of such mixtures. In a confined space, such mixtures might still create an ignitable vapor-air mixture, depending on the amount of flammable liquid in the mixture and the quantity of the spill.

Related to the flash point is the fire point. The fire point of a liquid is the temperature at which ignition of vapors will result in continued burning. As the term *flash point* suggests, the vapors generated at that temperature will flash, but will not necessarily continue to burn. The difference between flash point and fire point has some significance when conducting flash point tests (see ASTM D 92, *Standard Test Method for Flash and Fire Points by Cleveland Open Cup*, and U.S. Department of Transportation regulations in 49 CFR 173, Appendix H, "Hazardous Materials Regulations," *Method of Testing for Sustained Combustibility*). However, a closed-cup flash point is used to classify the liquid and characterize its hazard.

For more information, see ASTM E 502, *Standard Test Method for Selection and Use of ASTM Standards for the Determination of Flash Point of Chemicals by Closed Cup Methods*, and the *ASTM Manual on Flash Point Standards and Their Use*.

A.3.3.13 **Vapor Pressure.** Vapor pressure is a measure of the pressure that the liquid exerts against the atmosphere above it. Just as the atmosphere exerts pressure on the surface of the liquid, the liquid pushes back. Vapor pressure is normally less than atmospheric pressure and is a measure of the liquid's tendency to evaporate, to move from the liquid to the gaseous state. This tendency is also referred to as volatility, thus the use of the term *volatile* to describe liquids that evaporate very easily. The higher the vapor pressure, the greater the rate of evaporation and the lower the boiling point. Simply put, this means more vapors and increased fire risk.

A.5.1.6 Possible temperature rise during transfer as well as the loading temperature and altitude must be considered when determining if the flammable or combustible liquid will be transported at or above its boiling point. Where an accurate boiling point is unavailable for the material in question or for mixtures that do not have a constant boiling point, the 20 percent point of a distillation performed in accordance with ASTM D 86, *Standard Method of Test for Distillation of Petroleum Products*, can be used as the boiling point of the liquid.

A.5.1.8 In case of doubt, the supplier or producer of the flammable or combustible liquid or another competent authority should be consulted as to the suitability of the material of construction to be used.

A.5.3.2 Minimum requirements for the materials listed in Table 5.3.2 are duplicated from 49 CFR 178.345, in effect as of January 1, 1974.

A.5.3.3.4 Information on suitable methods for conducting the flow tests is provided in API 2000, *Venting Atmospheric and Low-Pressure Storage Tanks: Nonrefrigerated and Refrigerated*.

A.5.4.1.1 The 45-second viscosity limit is included for the purposes of requiring internal valves when transporting free-flowing distillate oils, such as kerosene, diesel oil, and domestic heating oil, and of excluding this requirement when transporting viscous oils such as residual fuel oil, bunker fuel oil, and asphalt products that can congeal and cause malfunctioning of the valve.

A.9.1.7 In case of doubt, the supplier or producer of the flammable or combustible liquid or other competent authority should be consulted.

A.9.1.10 To reduce the danger of static ignition when changing from Class I to Class II or Class III (switch loading), other precautions may be necessary. (See Annex B for further information.)

A.9.2.12.3 Bond wires can be insulated or noninsulated. A noninsulated wire permits ready visual inspection for continuity of bond. Insulated types should be electrically tested or inspected periodically for continuity of the entire bond circuit, including clamps and connectors.

Annex B Precautions Against Ignition by Static Electricity

This annex is not a part of the requirements of this NFPA document but is included for informational purposes only.

B.1 General Information.

B.1.1 Chapter 9 of this standard includes requirements directed at preventing the occurrence of static-caused fires or explosions in the operation of tank vehicles. This annex provides background information concerning the generation, accumulation, and release of static charges (sparks) in such operations and explains the reasons for the required precautions.

B.1.2 For a more detailed discussion of static electricity and methods for its control for the purpose of eliminating or mitigating its fire hazard, see NFPA 77, *Recommended Practice on Static Electricity*.

B.2 Static Electricity.

B.2.1 *Generation.* Static electricity almost always results from the intimate contact and subsequent separation of two substances, most often dissimilar substances. While the most widely recognized manifestations involve the separation of solids, liquid-solid separation is also a generating means and the one most important in the operation of tank vehicles.

The flow of any fluid (even water) past a surface, such as the wall of a pipe, results in the separation of electric charge. If the fluid is a conductor of electricity, such as water, the separated charges quickly reunite, and there is no conspicuous evidence that charge separation had ever occurred. But if the liquid is a poor conductor, as are many oils, this recombination may be hindered, and a persistent charge may accumulate.

If a metallic vessel insulated from its surroundings is filled in this manner, the charge carried by the liquid can be communicated to the vessel. In other words, the vessel can become "charged," or assume an electrical potential different from that

of its surroundings. If a wire connected to some other body or to earth is brought close to the vessel being filled, this charge can be released in the form of a spark.

In a somewhat different but analogous manner, a charge may accumulate on the surface of the fluid in an area remote from the vessel walls, even though the vessel is itself "grounded," and this surface charge can, under certain circumstances, be released in the form of a spark.

Both of these means of spark production are important and will be dealt with separately.

B.2.2 *Charging Tendency.* The terms *charging tendency* and *static-generating ability* have come into use in describing the capability of a fluid to generate and hold a dangerous charge of static electricity. In this annex, the word *oil* is used to typify such a fluid irrespective of origin. Actually, such fluids range from pure chemicals to complex mixtures such as kerosene and other products of petroleum; some have a charging tendency, and some do not.

The static-generating capability of any oil is influenced in a complex manner by the presence of ionizable components and the oil's electrical resistivity, as discussed in detail in NFPA 77, *Recommended Practice on Static Electricity*. Product name is not a reliable means of distinguishing one oil from another in regard to static-generating capability. Hence, the precautions listed in this document are based on the concept that all oils are suspect, with the important exception that crude oil and all materials containing more than a very small amount of the heavy residuum of crude oil distillation are known to be nonaccumulators because of their relatively high conductivity. Alcohols or other chemicals containing appreciable amounts of dissolved water and certain chemicals with low resistivities fall into the same category.

Because all oils under handling conditions have at least some small conductivity such that a charge will eventually leak off, it obviously follows that the persistence of a charge must represent an equilibrium between the generating rate and the leakage rate. Generating rate depends on the rate of motion of the fluid.

In some cases, the linear velocity of flow in a pipe is considered important from the standpoint of static generation. A special case involves pumping oil through filters, where intimate contact between the oil and the filter element is known to produce a high degree of electrification.

In either case, if the oil, after leaving the place of high generation, reaches a place involving a lesser degree of turbulence, some of the charge will leak away, or "relax." "Relaxation time" has become a consideration in many instances.

B.3 *Ignition Hazard.* The development of electrical charges does not of itself constitute a fire or explosion hazard. There must also be present a means of accumulating or storing the charge and some place (a spark gap) where the stored energy can be released in the form of a spark in the presence of a mixture that is ignitable. The hazard does not exist if any one of these three requirements—generation means, spark gap, or ignitable mixture—is absent. It follows naturally that no precautions need be taken if one of the three requirements is known to be absent and that where this is not assured, corrective measures must be directed toward eliminating one of them.

B.4 *Examples.* The following are examples of proper bonding and grounding technique:

- (1) In the filling of a tank vehicle through a top opening, a bond wire between the cargo tank and the fill stem (see 9.2.12.) will maintain the tank and the fill pipe at the same electrical potential and hence prevent a spark in an area where it is

C.1.2.2 ASTM Publications. ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

ASTM D 86, *Standard Method of Test for Distillation of Petroleum Products*, 1999 edition.

ASTM D 92, *Standard Test Method for Flash and Fire Points by Cleveland Open Cup*, 1990.

ASTM D 4206, *Standard Test Method for Sustained Burning of Liquid Mixtures by the Setflash Tester (Open Cup)*, 1989 edition.

ASTM D 4207, *Standard Test Method for Sustained Burning of Low Viscosity Liquid Mixtures by the Wick Test*, 1991 edition.

ASTM E 502, *Standard Test Method for Selection and Use of ASTM Standards for the Determination of Flash Point of Chemicals by Closed Cup Methods*, 1984.

ASTM Manual on Flash Point Standards and Their Use, 1992.

C.1.2.3 U.S. Government Publications. U.S. Government Printing Office, Washington, DC 20402.

Title 49, Code of Federal Regulations, Part 173, Appendix H, "Hazardous Materials Regulations," Method of Testing for Sustained Combustibility.

Title 49, Code of Federal Regulations, Part 178.345, 1974.

C.2 Informational References. (Reserved)

C.3 References for Extracts in Informational Sections. (Reserved)

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**Memorandum
Department of Planning and Development
Planning Division**



To: Chair Tevanian and Members of the Portland Planning Board

From: Richard Knowland, Senior Planner

Date: Prepared on: May 9, 2008
Prepared for: May 13, 2008 Workshop

Re: **The Inn at Diamond Cove, LLC; Conditional Zoning Amendment
Diamond Cove, Great Diamond Island**

I. Introduction

A second workshop has been scheduled to consider an amendment to the existing Diamond Cove conditional zoning on Great Diamond Island. The applicant is The Inn at Diamond Cove, LLC. Please refer to staff memo prepared for the April 22nd workshop for background material.

Since the April 22nd workshop the applicant has submitted a variety of material in support of the proposed conditional zoning amendment. This material includes the following:

- Revised conditional zoning text.
- Memorandum dated 4-29-08 providing a response to a variety of questions/issues posed at the last workshop. Also included are responses to Sec. 14-145.13(e), which requires IR-3 development proposals demonstrate the capability of meeting the review standards of Sec. 14-146.16. These standards are a feasibility check to determine whether IR-3 zoning proposals are appropriate.
- Letter from Joseph Laverriere (Deluca Hoffman Assoc.) regarding wastewater treatment capacity.
- Diamond Cove Homeowners Association agreement regarding the Inn at Diamond Cove (Amended and Restated Declaration of Covenants and Restrictions).
- Letter from Gerard Kiladjian (Portland Harbor Hotel) dated April 29, 2008.
- Diamond Cove agreements with various parties.

- * Letter from David Lloyd (Archetype) regarding sprinkler and code requirements dated 4-24-08.
- * Floor layout of condominium units prepared by Archetype.
- * A description of developer experience of Bateman Partners LLC.
- * Letter from BankNorth dated April 29, 2008.

II. Key Issues

Revised Conditional Zoning Text. A revised conditional zoning text has been submitted by the applicant. As requested the revised text references the number of units, provides a definition of the hotel condominium use, refers to the proposed swimming pool and service building within previously dedicated open space and notes that such buildings will be newly constructed. These references are important because the previous text did not allow newly constructed buildings and the area for the swimming pool/service building was previously designated as dedicated open space. The text provides a definition for a hotel condominium unit, which is not among the permitted uses listed in the IR-3 zone. In the last submission this use was described as a residential hotel condominium. The number of units within the double barracks has been decreased from 22 to 20. Twelve (12) units are planned for the hospital building.

Fenny Littell, Associate Corporate Counsel, is in the process of working on some minor revisions to the submission which should be available for Tuesday's workshop.

Wastewater Treatment and Capacity. As discussed in the previous staff memo the capacity of the existing sanitary waste treatment system on Diamond Cove is a critical issue. Background information on the wastewater treatment issue was presented in the previous staff memo.

Sec 14-145.16 [c] of the IR-3 development review standards requires "all sanitary waste shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewage system in compliance with federal, state and local regulations".

The applicant has submitted a letter from Joseph Laverriere of DeLuca-Hoffman Assoc. summarizing the wastewater treatment capacity at Diamond Cove. The letter states that the current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MEDEP to accept and treat 35,000 gallons per day based upon a monthly average".

Mr. Laverriere concludes "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 to provide sufficient capacity for the future renovation of the "Hospital".

We have forwarded the information submitted by Mr. Laverriere to Michael Demarest of the Maine DEP, who is the staff person for this project. Mr. Demerest states:

"I didn't get a chance to do a formal review due to other pressing matters. The bottom line still is that there has been nothing done to upgrade the piping to the treatment plant. The figures in your fax back up my concerns about inflow and infiltration being uncontrolled. I believe the Department would be satisfied only if an upgrade to the collection system was implemented as part of this multimillion dollar project."

Condominium Hotel Floor Plan. The applicant has submitted a floor plan for the 3 floors of the building. A cover letter accompanying the plans indicates there are 6 one bedroom units, 6 two bedroom units and 8 three bedroom units. It appears all of the two bedroom and three bedroom units have separate and connecting doorways between bedrooms and hallways thus raising the question of whether these are "lock-out" units. Is this a 20 unit condominium hotel or is it a 34 unit hotel? An analysis of wastewater demand can determine the impact of this use (including the number of bedrooms) on the capacity of the project wastewater treatment system. However in the interest of full disclosure, the Board should be aware that at any one time there could be 34 hotel "units" rented in the Double Barracks building.

Transportation Service. As discussed at the previous workshop the applicant intends to operate a separate van transportation service from the van run by the Diamond Cove Homeowners Assoc. Residents on the southerly end of the island have expressed concerns (where there are few vehicles) about excessive vehicle traffic and vehicles parked at the southerly ferry landing. In IR-3, a proposal is supposed to be designed primarily with a pedestrian orientation.

The applicant states: "The project will have its own transportation needs and facilities quite apart from those provided by Diamond Cove Homeowners assoc. 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, 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 which exits the Ft. McKinley site."

Since there are fewer ferry stops at the Diamond Cove pier than the southerly ferry pier, we would suggest that paragraph 9 (Restrictions on Motor Vehicles) be amended to preclude The Inn at Diamond Cove service vehicles from picking up or unloading passengers at the southerly pier unless there is a common van service that has been formed between the DCHA and the Inn for external transportation. The purpose of this provision is to consolidate van service into one unit so there are not separate van trips taking place over the southerly end of the island.

* and specifically advised not to utilize any of the site facilities

Recreation and Open Space. The applicant intends to use land area for the swimming pool and service building on land previously designated as dedicated open space.

Section 14-145.16(g) of the IR-3 development standards (recreation and open space) states:

“All open space on the site shall be functionally integrated into the development plan by virtue of such features as passive and recreational opportunities, accessibility to residents, preservation of natural site amenities and resources...”

It is our understanding that this land now owned in common by the Diamond Cove Homeowners Association will be owned by The Inn at Diamond Cove. Given the size and location of this open space it is unlikely this loss of land will adversely affect open space within Diamond Cove.

III. Other Issues

Mainland Parking. A letter has been received from the Portland Harbor Hotel indicating “the Portland Harbor Hotel, acting as Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor hotel has adequate excess parking available through both its on and off site parking leases.” We will need to research and confirm the existing parking supply of the hotel.

The original conditional zoning text did not address parking. We would suggest this issue be deferred for site plan review.

Solid Waste Disposal. By the terms of the original conditional text (paragraph 6) Diamond Cove is responsible for providing its own solid waste services. At some point the Public Works voluntarily provided this service. In discussing the double barracks and hospital proposal with Michael Bobinsky (Director of Public Services) he indicates the City will not be able to provide solid waste services for these new buildings.

Emergency Services. A concern had been expressed that the three story Double Barracks was too tall to be serviced by the existing fire truck on Great Diamond Island. It is our understanding that the building will have sprinklers and a central fire alarm system. Staff attended a Great Diamond Island Advisory meeting in which Fire Chief Fred LaMontagne was asked about fire protection issues for this building. His response was that sprinklers were a better fire suppression tool than a fire truck.

IV. Next Steps

1. Refine conditional zoning text amendments.
2. Hold a public hearing on the amendments.

Attachments

1. Applicant Submissions
 - 1-A. Proposed Conditional Zoning Text
 - 1-B. Memorandum from The Inn at Diamond Cove dated 4-29-08
 - 1-C. Letter from Joseph Laverriere (DeLuca Hoffman) on wastewater treatment capacity
 - 1-D. Diamond Cove Homeowners Association agreement regarding The Inn at Diamond Cove dated 8-13-07
 - 1-E. Letter from Gerard Kiladjian (Portland Harbor Hotel) dated 4-29-08
 - 1-F. Diamond Cove agreements with outside parties
 - 1-G. Letter from David Lloyd (Archetype) regarding sprinkler and code requirements dated 4-24-08
 - 1-H. Floor layout Plan
 - 1-I. Bateman Partners LLC development experience
 - 1-J. Letter from BankNorth dated 4-29-08
2. Staff Comments
 - 2-A. E-mail from Michael Demarest, Maine DEP
3. Written Public Comments
4. April 22, 2008 Workshop Memo

First Amendment

FIRST AMENDMENT TO CONDITIONAL REZONING
OF FT. MCKINLEY

THIS AMENDMENT, approved this ____ day of _____, 2008 with respect to the Conditions and Restrictions appearing in the Conditional Rezoning of Ft. McKinley dated January 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 8923, Page 263.

Said Conditions and Restrictions are hereby amended to include as additional paragraphs in Section 1 ("Development Limited") –

"Notwithstanding the terms of the IR-3 zoning text generally applicable to the Premises, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and that portion of the Open Space, all depicted on the site plans dated May ____, 2008, submitted herewith to the City of Portland, Maine, all may be redeveloped into condominium hotel units including reasonable and customary on-site services, limited to the owners, their guests, tenants in residence and members of the Diamond Cove Homeowners Association. For purposes of this Amendment, "condominium hotel units" shall mean residential condominium units, each of which contains separate kitchen and bath facilities, are separately owned and which participate in centralized management and rental agreements providing, among other things, rentals of varying durations to the general public. The Double Barracks may include up to a maximum of twenty (20) condominium hotel units and the Hospital may include up to a maximum of twelve (12) condominium hotel units, all of said units so created to become members of the separate condominium association established for these two rehabilitated buildings, and each will also be considered a "lot" within the Diamond Cove Homeowners Association.

The approved rehabilitation 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 an Exhibit hereto. The recording of the within Amendment shall be deemed to amend the Conditions and Restrictions recorded in Book 8923, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit."

M E M O R A N D U M

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 I 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.

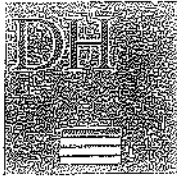
11. Emergency Services – The Double Barracks building has been designed with a central alarm and sprinkler system to meet local and state fire codes for the proposed use. See enclosed letter from Archetype dealing with Life Safety issues. The overall plan for emergency services for Ft. McKinley has been 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.



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE B
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

- 4 SITE PLANNING AND DESIGN
- 5 ROADWAY DESIGN
- 6 ENVIRONMENTAL ENGINEERING
- 7 PERMITTING
- 8 AIRPORT ENGINEERING
- 9 CONSTRUCTION ADMINISTRATION
- 5 LANDSCAPE ARCHITECTURE

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 M&DEP (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 (MSW/WDR) 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 MSW/WDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

Mr. Richard Knowland
April 29, 2008
Page 2

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

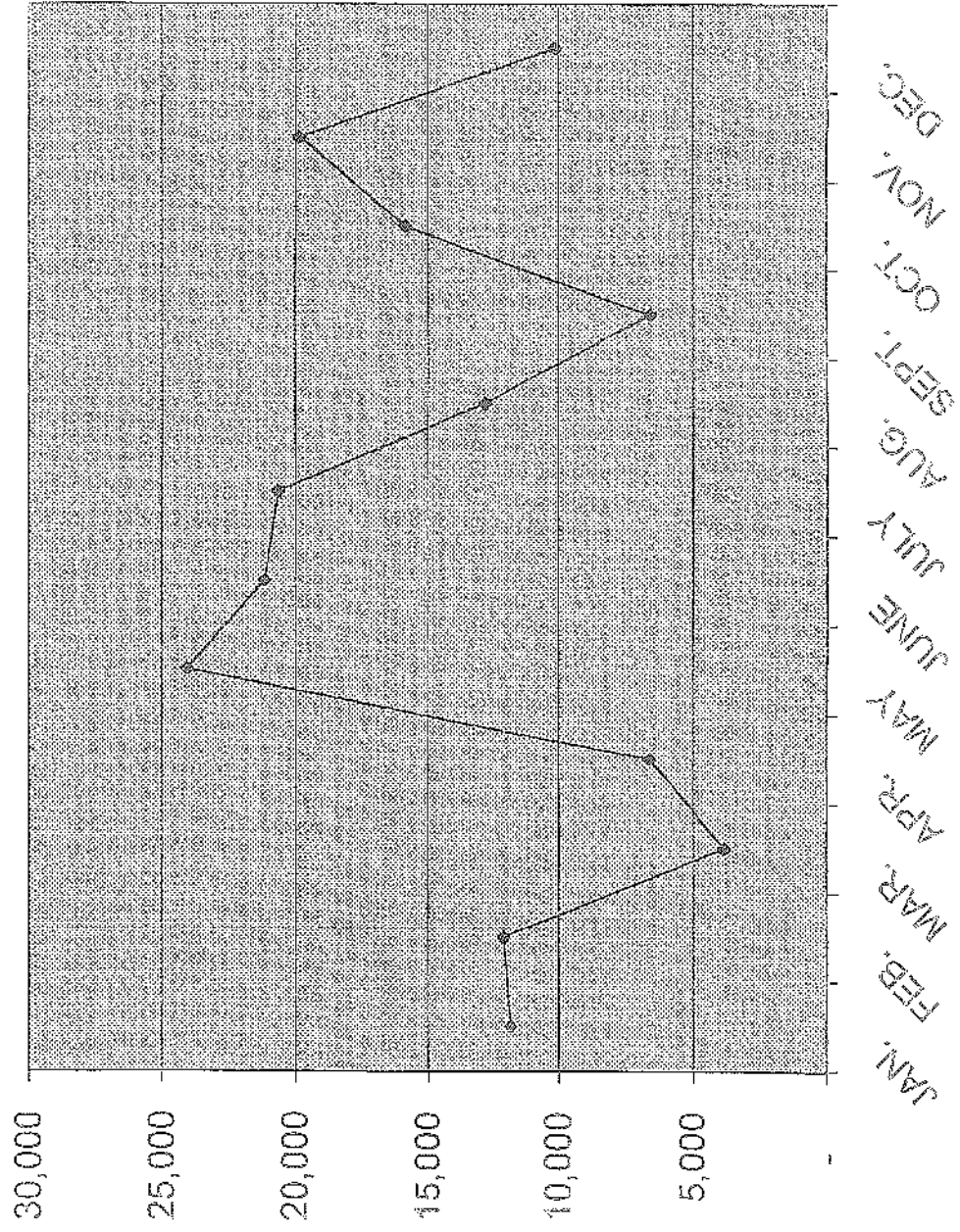
C: David Bateman – The Inn at Diamond Cove, LLC

#2?

12

24

Diamond Cove Monthly ADF (gallons)



—●— 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		6,584
5		8,916
6		8,338
7		6,273
8		7,053
9		6,824
10		6,128
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		15,304
20		12,729
21		12,586
22		21,845
23		N/A
24		7,589
25		11,202
26		7,502
27		6,081
28		6,145
29		7,393
30	Y	7,715
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		6,036
3	Y	41,970
4		40,529
5	Y	41,741
6		27,510
7		18,551
8		14,668
9		12,938
10		11,007
11		11,009
12		8,601
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		4,681
24		4,874
25		5,545
26		5,330
27		3,844
28		2,680

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		2,667
3		2,664
4		3,173
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	8,453
15		6,564
16		5,744
17		5,703
18		5,473
19		5,415
20		4,529
21		4,321
22		3,822
23		3,384
24		3,600
25		3,945
26		3,476
27		3,003
28		2,786
29		2,549
30		3,099
31		2,570

TOTAL MONTHLY FLOW	115,664	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,826	GALLONS

APRIL 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,173
2		3,013
3		2,682
4	Y	16,812
5		14,596
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		5,056
30		4,574

TOTAL MONTHLY FLOW	198,855	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,629	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	25,296
12	Y	54,843
13	Y	61,136
14	Y	37,500
15	Y	40,362
16	Y	53,483
17		32,708
18		24,137
19	Y	26,672
20		18,313
21		17,670
22		19,635
23		15,560
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	36,839
4	Y	40,353
5		25,612
6		17,350
7	Y	44,685
8	Y	67,444
9		48,094
10	Y	58,675
11		33,683
12		27,332
13		17,044
14		17,395
15		16,030
16		13,459
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	634,495	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		12,226
2		15,316
3		14,301
4		12,876
5		11,874
6		11,013
7		12,674
8		14,476
9		13,111
10		9,275
11	Y	12,349
12		22,727
13	Y	44,492
14		28,353
15		26,714
16		20,870
17		18,769
18		16,811
19		13,615
20		15,343
21		31,525
22	Y	35,589
23	Y	35,716
24		30,384
25		22,194
26		21,371
27		20,387
28		26,863
29		24,604
30		16,955
31		18,459

TOTAL MONTHLY FLOW	635,941 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	20,611 GALLONS

AUGUST 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		21,264
2		18,636
3		17,341
4		17,867
5		16,748
6		17,871
7		14,493
8		14,145
9		14,531
10		13,472
11		15,730
12		15,111
13		14,207
14		11,851
15	Y	13,340
16		10,242
17		18,971
18		4,295
19		13,761
20	Y	14,100
21		9,221
22		11,111
23		10,233
24		6,542
25		15,817
26		13,019
27		7,844
28	Y	7,523
29		6,594
30		7,314
31		6,165

TOTAL MONTHLY FLOW	396,609 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	12,794 GALLONS

SEPTEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		7,066
2		8,593
3	Y	8,883
4		10,107
5		5,209
6		4,587
7		4,568
8		12,572
9		2,781
10		5,345
11		4,545
12		6,281
13		3,133
14		4,026
15		6,376
16		7,615
17		3,850
18		7,132
19		18,248
20		7,478
21		5,558
22		4,781
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	197,778 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		7,069
4		6,462
5		3,920
6		6,049
7		6,627
8		4,389
9		4,833
10		2,874
11		17,253
12	Y	26,456
13		12,939
14		12,470
15		9,547
16		8,440
17		12,346
18		9,143
19		13,397
20	Y	31,103
21		27,608
22		25,704
23		19,054
24		12,004
25		14,586
26		12,322
27		16,193
28	Y	62,120
29		41,219
30		27,414
31		22,395

TOTAL MONTHLY FLOW	491,392 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	15,855 GALLONS

NOVEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		16,283
2	Y	12,248
3		12,405
4		9,855
5		10,474
6		8,372
7		12,890
8	Y	48,633
9		58,042
10		26,115
11		31,206
12	Y	23,750
13	Y	32,203
14	Y	60,148
15		20,858
16	Y	24,843
17	Y	34,420
18		16,794
19		22,107
20		11,288
21		12,066
22		12,678
23		16,066
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		10,618
4		8,338
5		8,751
6		8,368
7		6,421
8		5,112
9		5,288
10		6,235
11	Y	5,704
12		5,704
13	Y	4,431
14		3,473
15	Y	4,725
16	Y	7,994
17		5,131
18		4,198
19		6,057
20		6,345
21		3,038
22	Y	9,185
23	Y	23,458
24		16,550
25		18,469
26		17,737
27		16,055
28		12,979
29		18,924
30		19,313
31		17,511

TOTAL MONTHLY FLOW	313,492 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	10,110 GALLONS



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



Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street

www.dwmlaw.com

Post Office Box 9781

Portland, ME 04104-5081

ADMITTED IN ME ONLY

MEMORANDUM

- Daniel Amery*
- Harry A. Pringle*
- Richard A. Spencer*
- Gerald W. Zelin*
- Ronald N. Ward*
- David J. Backer*
- John S. Kaminski*
- William L. Plouffe*
- Jerrold A. Crouter*
- Michael E. Hight*
- Richard A. Shiray*
- Bruce W. Smith*
- Gary D. Vngel*
- E. William Stockmeyer*
- Benjamin E. Marcus*
- Melissa A. Hewey†
- Eric R. Horian†
- Jeanne M. Kincaid†
- Gregory W. Sample†
- Daniel J. Reese†
- Kaighn Smith, Jr.*
- Daina J. Nathanson*
- Edward J. Kelleher*
- S. Campbell Badger*
- Melissa L. Difeo*
- Amy K. Tchao†
- David S. Sherman, Jr.*
- Robert P. Nadsau†
- Stephen C. Jordan†
- Catherine D. Alexander†
- Brian D. Willing†
- John Lisnik, Jr.†
- Aaron M. Pratt†
- James C. Schwellenbach†
- Elizabeth D. McEvoy*
- Jeffrey T. Piampiano*
- Peter C. Felmy*
- Jessica M. Emmons*
- Jonathan M. Goodman*
- Mike K. Reynolds*
- Abigail Greene Goldman*
- Amy J. Visentin*
- Sara S. Hellstedt*

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.

Consultants

Roger P. Kelley
 Labor Relations &
 Conflict Management

Ann S. Chapman
 Policy & Labor Relations

Christopher P. O'Neil
 Governmental Affairs

Nicholas J. Opuda Ph.D.
 Special Education

Of Counsel

Harold E. Woodsum, Jr.*
 Hugh G. E. MacMahon*
 Joseph L. Deloitfield III*
 Robert L. Gips*
 Donald A. Kopp*

* Admitted in Maine
 † Admitted in New Hampshire
 ◊ Admitted in Missouri

RNW:kjl
 Enclosure

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

Witness

By: Philip J. Guarino
Philip J. Guarino, its President

Witness

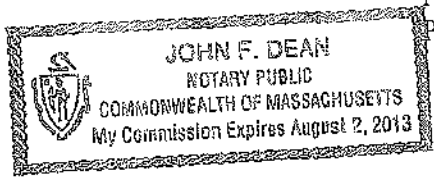
By: John Burge
John Burge, its Secretary

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

F:\Users\lacaofcagn\DC\HA\Gardon\2A.mdt6c.doc

Commonwealth of Massachusetts
Massachusetts, ss.

On this 15th day of August, 2007, before me, the undersigned notary public, personally appeared Philip J. Guarino

proved to me through satisfactory evidence of identification, which were MADE, 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 02:19:03P
Cumberland County
Frank E. Lovley

1-F-2

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.

DATED: April 10, 1991

DIAMOND COVE ASSOCIATES
BY: William L. Slouffe
WILLIAM L. SLOUFFE, ATTORNEY

DATED: April 12, 1991

MAINE AUDUBON SOCIETY
BY: Elizabeth L. Lovejoy
ELIZABETH L. LOVEJOY, ATTORNEY

DATED: April 12, 1991

ISLAND INSTITUTE & CASCO BAY
ISLAND DEVELOPMENT ASSOCIATION
BY: Jeffrey A. Thaler
JEFFREY A. THALER, ATTORNEY

DAAD041C

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

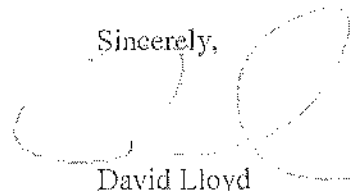
Dear Mr. Bateman,

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

Rick Knowland - FW: Diamond Cove

From: Ronald Ward <rw@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 off from the architect showing the cabinet layout of the individual condo units, totaling 70 in all. 3 are 1 bedroom, 8 2 bedroom and 3 are 3 bedroom units. We'll answer your specific question in a separate memo.

The response to your 15 point memo of 4/28 is in processing and assembly of enclosures now.

Ronald N. Ward, Esq.
 Drummond Woodsum & MacMahon
 PO Box 9781
 245 Commercial Street
 Portland, ME 04104

207-772-1841
 207-772-3627 (fax)
 rward@dwmlaw.com

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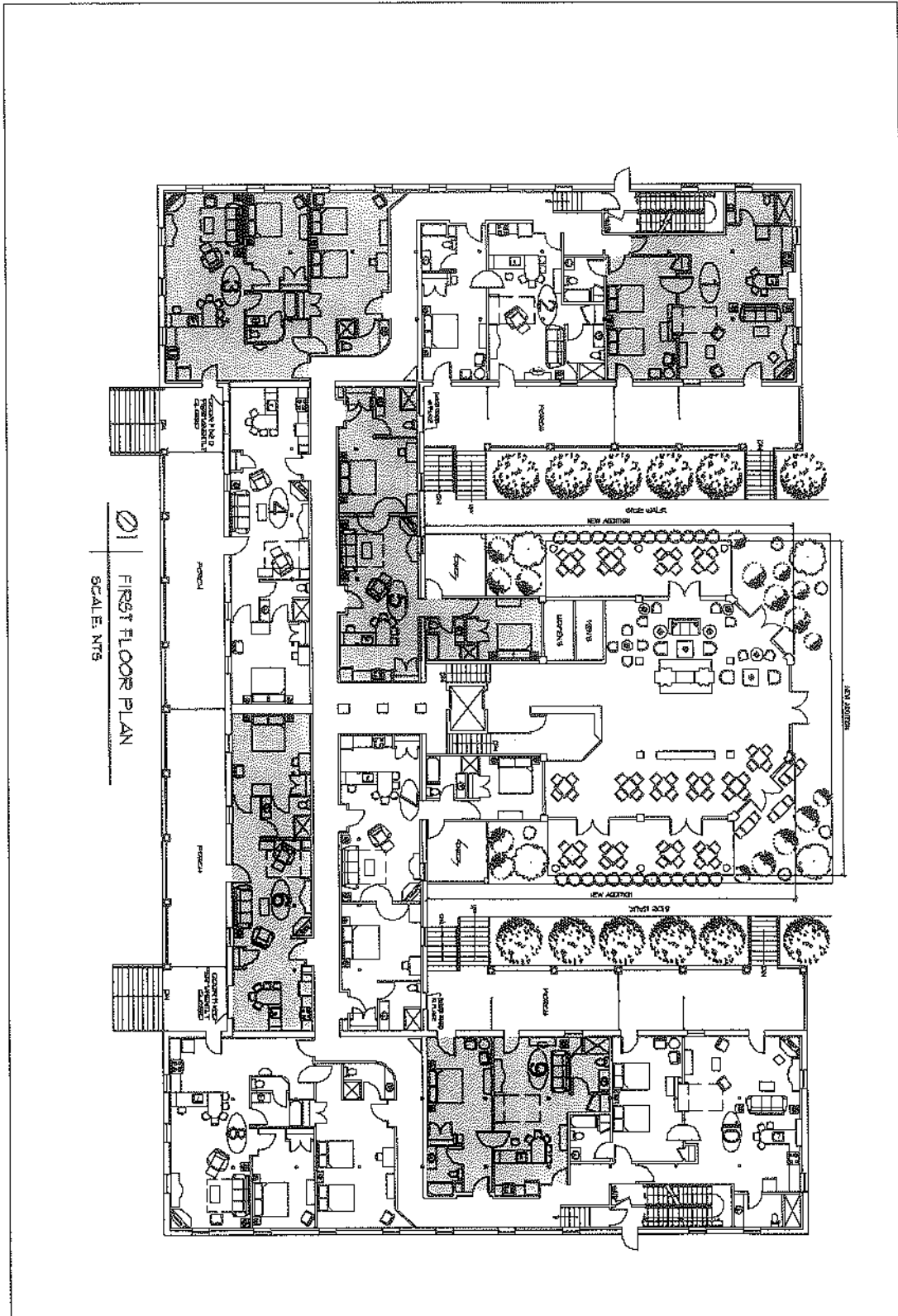
IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties 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 04104
 Tel: 207-772-2892
 Fax: 207-772-1827
 nathan@batemanpartnersllc.com

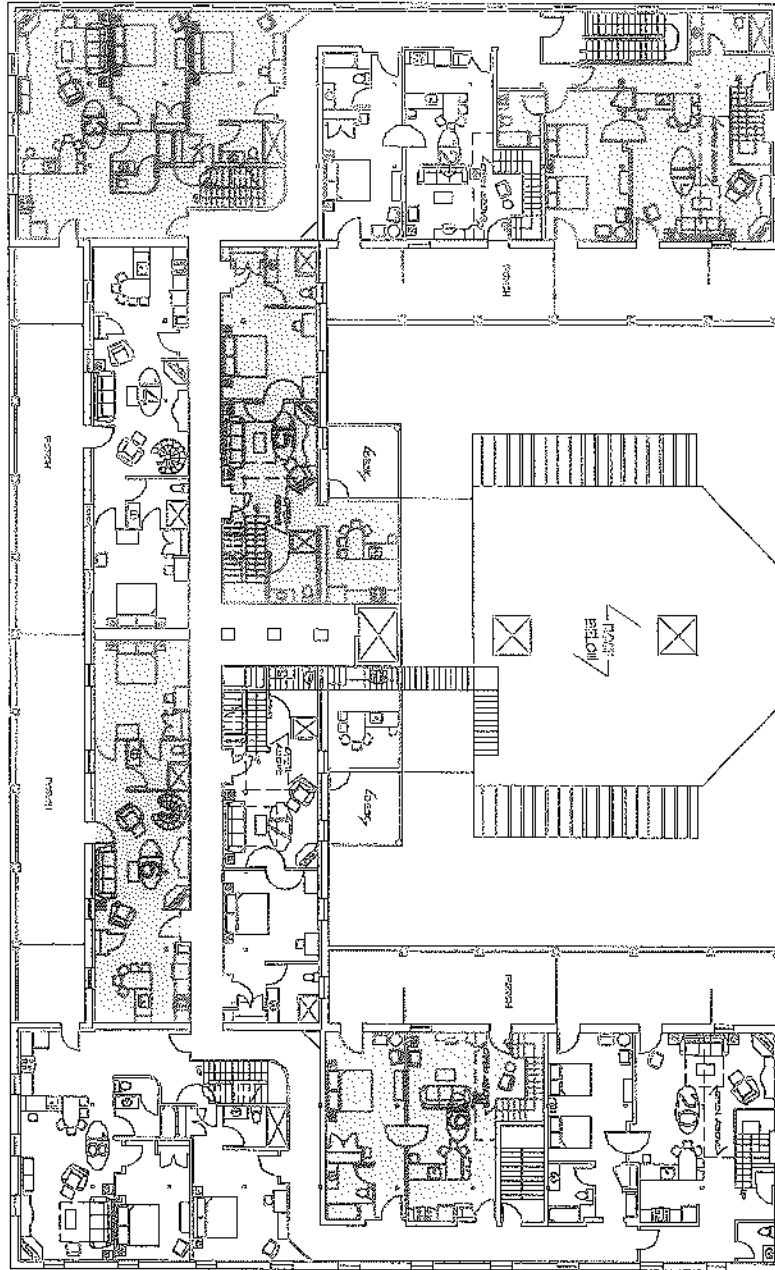
From: David Hickman [mailto:hickman@archetypepa.com]

1-H-2



A01	DATE: APR 24, 2008	SCALE: AS NOTED	DRAWING NO.: 100-100-100-100	PROJECT: The Inn at Diamond Cove, LLC	ARCHITECT: ARCHITYPE, P.A. ARCHITECTS 4000 W. 10th St., Suite 100, Miami, FL 33135 Tel: 781-234-1234 Fax: 781-234-1235	OWNER: Halteran Partners, LLC 2000 W. 10th St., Suite 100, Miami, FL 33135 Tel: 781-234-1234
	PROPOSED PLANS			DATE: 10/11		

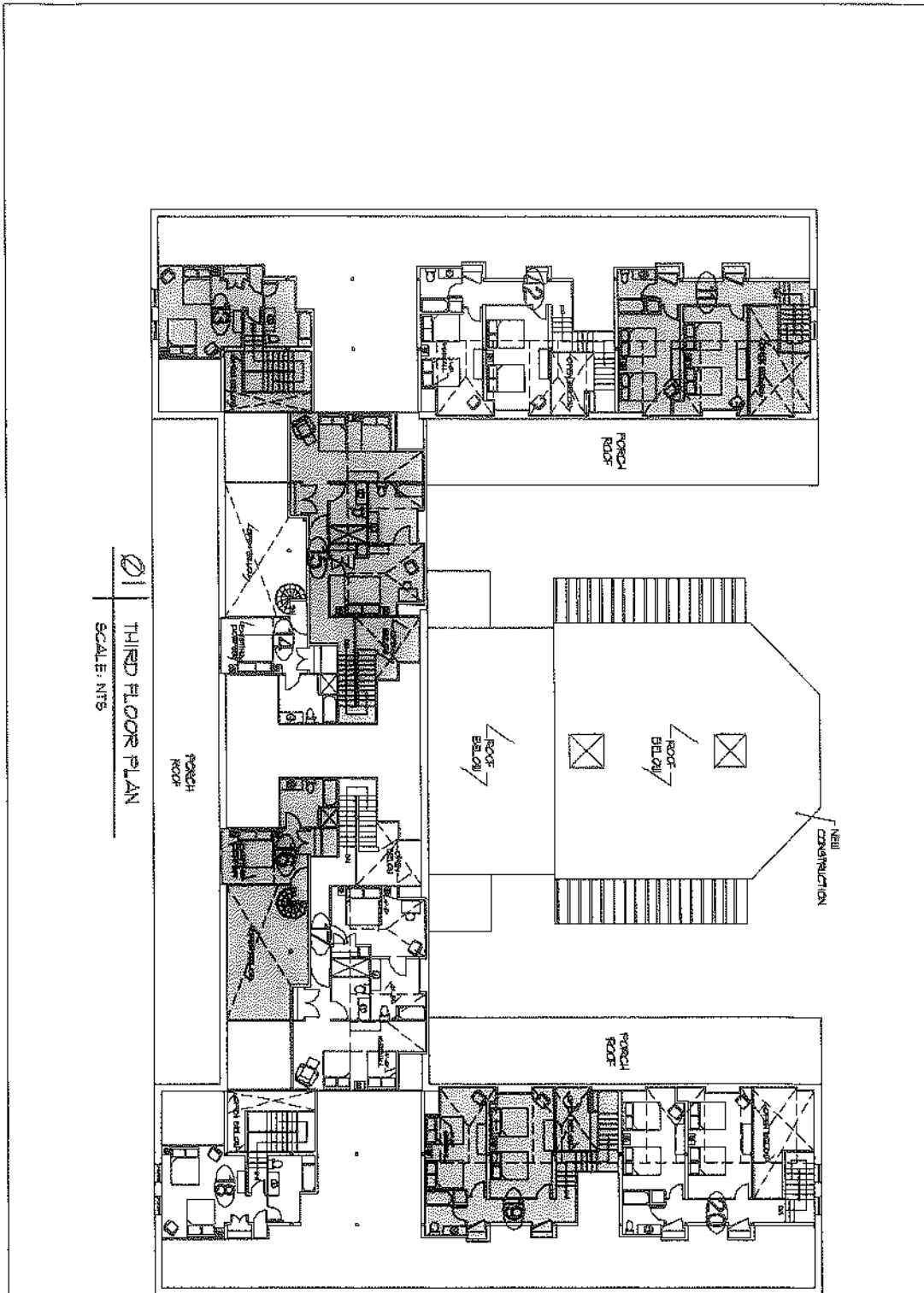
1-11-17



SECOND FLOOR PLAN
SCALE: NTS

A02	DATE: 11/24/17	PROJECT: ARCHITECTURE	REVISION: NONE	DESIGNER: Rick Knowland	OWNER: The Ivy at Diamond Cove, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS 4000 West Park Ave #200 Dallas, TX 75244	DEVELOPER: HANSON PARTNERS, L.L.C. 2600 Ross Ave Dallas, TX 75201
	PROPOSED PLANS				ISSUED FOR PERMIT		

1-14-4



THIRD FLOOR PLAN
SCALE: NTS

A03	DATE: 10.24.04	DRAWN: R. KNOWLAND	CHECKED: R. KNOWLAND	PROJECT: The Inn at Diamond Cove, LLC	ARCHITECT: ARCHITYPE, P.A. ARCHITECTS	DEVELOPER: Gateman Partners, LLC
	PROPOSED PLANS			SCALE: NTS	44 Lake Street, Harbor Springs, MI 49741 616-774-2122 Fax: 616-774-1000	140 Commercial Street Harbor Springs, MI 49741

BATEMAN PARTNERS LLC

DEVELOPERS & CONSULTANTS

100 WILMINGTON STREET
PORTLAND, MAINE 04101

TELEPHONE (207) 773-1591
FAX (207) 773-1181

Bateman Partners, LLC was created specifically to develop and manage real estate, which the principals have done since 1979. The principals 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 D) 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
- OIIM Properties, LLC 6,000 sq' medical office building
Located in Falmouth, ME 1.5 M

69.55 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
- CCCRA 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



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,

A handwritten signature in cursive script that reads 'David A. Bronson'.

David A. Bronson
Senior Vice President

Rick Knowland - RE: FW: Diamond Cove

From: "Demarest, Michael" <Michael.Demarest@maine.gov>
 To: "Rick Knowland" <RWK@portlandmaine.gov>
 Date: 5/8/2008 3:31 PM
 Subject: RE: FW: Diamond Cove

I didn't get a chance to do a formal review due to other pressing matters. The bottom line still is that there has been nothing done to upgrade the piping to the treatment plant. The figures in your fax back up my concerns about inflow and infiltration being uncontrolled. I believe the Department would be satisfied only if an upgrade to the collection system was implemented as part of this multimillion dollar project.

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
 Sent: Monday, May 05, 2008 3:53 PM
 To: Demarest, Michael
 Subject: RE: FW: Diamond Cove

Michael, Did you get my fax today?

>>> "Demarest, Michael" <Michael.Demarest@maine.gov> Monday, May 05, 2008 >>>
 (207) 287-3435

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
 Sent: Monday, May 05, 2008 11:10 AM
 To: Demarest, Michael
 Subject: RE: FW: Diamond Cove

Michael, Could you give me your fax # again? I'll try it once more.

>>> "Demarest, Michael" <Michael.Demarest@maine.gov> Monday, May 05, 2008 >>>
 I did not receive the fax.

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
 Sent: Thursday, May 01, 2008 11:33 AM
 To: Demarest, Michael
 Subject: Fwd: FW: Diamond Cove

Michael, You should have received a few minutes ago a 6 page fax (including cover sheet) on wastewater info submitted by the applicant for the diamond cove project. Attached is a floor plan on the residential hotel condos which should give you some background info on this use.

Comments on the capacity of the diamond cove wastewater to accommodate this use would be most helpful. If we could get those comments by Thursday May 8th that would be great. Thanks. My tel no is 874-8725.

>>> Ronald Ward <rnw@dwmilaw.com> Tuesday, April 29, 2008 >>>
 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.

This response to your 15 point memo of APR 29 is in processing and assembly of responses now.

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 statement 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, 1988 by and between Diamond Cove Associates, of Portland, Maine, Maine Audubon Society, of Palmouth, 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 WPDDES 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 comingling 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. Residex

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 23rd day of March, 1989.

DIAMOND COVE ASSOCIATES

By: David Bateman
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: Karin R. Tilberg
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: Richard S. Summit
Attorney

ISLAND INSTITUTE

By: Philip Conkling
Philip Conkling
Executive Director

AMENDMENTS TO AGREEMENT

The Agreement, dated March 2, 1988, 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 \$,500 p.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 ¶ 4 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, SPL, 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" (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. 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, SEP 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.

3/10/89

DIAMOND LOVE ASSOCIATES
By: [Signature]
Richard Gibson, Partner

By: [Signature]
Karin Tilberg, Esq.
Attorney
MAINE AUDUBON SOCIETY

By: _____
Attorney
CONSERVATION LAW FOUNDATION

March 9, 1989

By: [Signature]
Philip Conkling
Director
ISLAND INSTITUTE

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):

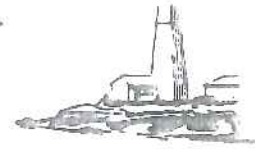
Transportation Restriction. No person or entity ever associated with the properties (described as Buildings 19 and 46) which are the subject of this amendment, including but not limited to their construction, grounds, operations, occupation, management, ownership or use of shall use, operate or cause 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.



To: Chair Tevanian, Members of the Portland Planning Board, and to
Richard Knowland, Senior Planner
Date: April 18, 2008
Re: The Inn at Diamond Cove, LLC; Conditional Zoning Amendment
Diamond Cove, Great Diamond Island

As one of the original signatories to the agreements governing the development of Fort McKinley, on Great Diamond Island, we are writing to express some concerns regarding the proposed conditional zoning amendment.

Simply stated, the process for restoring the Double Barracks and Hospital buildings to productive property generating real estate taxes and assessments can be expedited by the applicant's strict adherence to the conditions of the Audubon Agreements of 1985 that allowed any development of Fort McKinley to go forward. Those agreements run with the land and are binding upon the original owner, its successors and assigns.

Specifically, our concerns at this point include:

(1) ~~Wastewater Treatment and Capacity~~

As Mr. Knowland states in his memo to the planning board, the applicant has submitted ~~insufficient information to date to ensure that the proposed project will comply with standards.~~ We look forward to further information.

(2) ~~Transportation Services~~

- Transportation to and from the proposed development must be limited to and from the dock at Diamond Cove. This condition was part of the original agreement to protect the environment of Great Diamond Island, and it is an even more critical issue today than it was twenty years ago. The isthmus at the State Pier (southern end) has eroded, due partially to increased vehicular traffic. The proposed Inn should not be considering transportation to this dock at all for its guests/tenants or its service needs (laundry, food service, personnel, etc.).
- Mr. Ward, representing The Inn at Diamond Cove, LLC in his April 8 letter to Mr. Knowland, says that "the Inn will provide its own transportation facilities consistent with the 'transportation plan and golf cart amendments' for Diamond Cove." Transportation services at Diamond Cove are indeed a sensitive issue on Great Diamond Island, and for good reason. On August 16, 2004, the Portland City Council instructed Diamond Cove Homeowners' Association to submit a transportation plan within 60 days as a condition of the rezoning of IR3. Nearly four years have passed and the transportation plan which Mr. Ward references has not yet been approved by the City. In fact, it has not been submitted to or approved by any of the other signatories of the Audubon Agreements.

(3) ~~Common Land and New Structures~~

The plan for the Inn includes ~~new structures and the use of common land, both of which are not allowed under the Audubon Agreements.~~ These conditions were laid down to protect the historical integrity of Fort McKinley and the environment of Great Diamond Island. ~~The original owners gave up these development rights in order to gain permits for the rest of their project. The words "in perpetuity" have purpose and meaning.~~

We look forward to a successful solution for the two derelict properties at Diamond Cove. CBIDA applauds the efforts to restore these historic buildings, but expects the original agreements to be honored. We encourage you to keep the relevant and concerned parties informed: Audubon Society, Island Institute, CBIDA, and the Diamond Island Association.

Sincerely,

Robert Laughlin

President, Casco Bay Island Development Association
grtdia@aol.com 207-799-9285

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 Diamond'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
F: (207) 761-2426 ext 228
F: (207) 761-0976
jcondon@acadiabenefits.com
www.acadiabenefits.com

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**Memorandum
Department of Planning and Development
Planning Division**



To: Chair Tevanian and Members of the Portland Planning Board

From: Richard Knowland, Senior Planner

Date: Prepared on: April 18, 2008
Prepared for: April 22, 2008 Workshop

Re: **The Inn at Diamond Cove, LLC; Conditional Zoning Amendment
Diamond Cove, Great Diamond Island**

I. Introduction

A workshop has been scheduled to consider an amendment to the existing Diamond Cove conditional zoning on Great Diamond Island. The applicant is The Inn at Diamond Cove, LLC.

This proposal would allow the renovation and conversion of the “Double Barrack” building and the “Hospital Building” into residential hotel condominiums. These buildings represent the last significant brick structures not renovated in the Fort McKinley complex. The buildings are deteriorated (particularly the Double Barracks) and this proposal is viewed as the best chance to save these buildings in the near term. The Double Barracks (27,386 sqft) and the Hospital (15,900 sqft) have the largest floor area of any brick building at Diamond Cove.

The proposed zoning amendment is shown on Attachment 1-C. A vicinity map is shown on Attachment 2-A.

336 notices were sent to area property owners. All property owners on Great Diamond Island were sent notice of the workshop.

II. Commonly Asked Questions About Diamond Cove

Before discussing the zoning amendment, we thought it helpful to provide answers to some commonly asked questions about the Diamond Cove development and IR-3 conditional zoning. This information is presented below.

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

III. Background of Proposed Zoning Amendment

The IR-3 conditional zoning amendment is proposed by The Inn at Diamond Cove LLC. The applicant would like to convert the existing Double Barracks and Hospital buildings into a residential hotel condominium. A detailed summary of the proposed use is shown on Attachment 2-B.

A residential hotel condominium is not recognized in the zoning ordinance. In their submission the applicant states that "the two buildings are substantially deteriorated and a collapse of either would not be unexpected." The applicant views the conditional zoning amendment as an opportunity to renovate these buildings, which has not been possible in the past. Given the deteriorated conditions of these buildings, residential uses have not proven financially feasible. These buildings are the last significant brick buildings within the Fort McKinley complex that have not been renovated. They are also the largest brick buildings in the complex. Renovation of the Fort McKinley buildings was initiated 20 plus years ago.

The City of Portland acquired these two buildings in 2004 for non-payment of property taxes. The City has solicited requests for proposals from developers in the past but this has attracted little interest given the deteriorated conditions of the buildings particularly the Double Barracks. In 2007, the City entered into an option agreement with the applicant to purchase the Double Barracks and Hospital.

In terms of physical development the applicant is proposing the following:

- Renovation and conversion of the Double Barracks building (up to 22 units) and Hospital building (up to 12 units) into residential hotel condominiums;
- An addition is proposed to the rear of the Double Barracks building; and
- A plaza area, swimming pool and food/beverage service building is proposed behind the Double Barracks building.

IV. Applicant's Conditional Zoning Amendment

The Applicant's proposed conditional zoning amendment is shown below in its entirety and on Attachment 1-C.

THIS AMENDMENT, approved this ___ day of _____, 2008 with respect to the Conditions and Restrictions appearing in the Conditional Rezoning of Ft. McKinley dated January 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263.

Said Conditions and Restrictions are hereby amended to include as a new Section 9(a) – Those buildings designated as Building 19 ("Hospital") and Building 46 ("Double

A proper zoning amendment to the conditional zoning should be drafted referencing the hotel residential condominium use along with a definition of the proposed use.

Use of Dedicated Open Space for Swimming Pool and Food/Beverage Building

A swimming pool and gazebo (food service/beverage) building are proposed behind the Double Barracks building. This area is referenced as dedicated open space in the original conditional zoning.

Paragraph 1 (development limited) of the original conditional zoning states: "All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity". See Attachment 1-G-2 and 1-G-8.

The proposed amendment should reference this change.

Newly Constructed Building

Applicant proposes a newly constructed food/beverage service building next to the swimming pool. A phrase in paragraph 1 of the original conditional zoning states "...there shall be no construction or development of any new principal building or structure on the Premises." See Attachment 1-G-2.

The proposed building is relatively small and might be considered an accessory use but we believe given the language and intent of the original conditional zone text that the proposed amendment should reference this change.

VI. Other Issues Associated with the Conditional Zoning

Wastewater Treatment and Capacity

The capacity of the existing sanitary waste treatment system on Diamond Cove is a critical issue. We have requested documentation from the applicant whether the existing system is capable of serving the proposed use including documentation from the Maine DEP. As of the writing of this report, the applicant has submitted a chart indicating apparent wastewater flows but this is not a stand-alone document. This document appears to suggest a small surplus of wastewater capacity. Insufficient information has been submitted to date on this important issue.

The Diamond Cove project has evolved over a period of time. Originally a community wastewater treatment system was designed to accommodate 134 condominium units, 5 commercial uses and a portion of the single-family subdivision. However during the regulatory review process, it was determined that the single-family lots should have on-site septic systems and thus they were never connected into the wastewater treatment system. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000 Diamond Cove had only 62 occupied condominium units. In 2000 a third sand filter was installed accommodating what was believed to be a total build-out of only 77

Commercial Uses Near Diamond Cove Ferry Landing

The original development plan for Diamond Cove focused on commercial uses near the ferry landing. The plan projected 5 commercial uses including a restaurant and store near this area.

The proposed inn is proposed near the parade ground, which is a departure from the original concept. The inn has its own swimming pool and small bar/service building. While it could be argued that an inn is closer to a residential use than a commercial use, people should be aware of this change. If this represents a disconcerting change to Diamond Cove residents, the workshop and public hearing process provides a forum for such concerns.

VII. Land Use Policy Implications

The primary policy document for the islands is Portland Islands Land Use and Zoning Study, which was adopted by the City Council (1985) as an element of the City Comprehensive Plan. It was the first comprehensive land use and zoning plan for the islands. The original Diamond Cove conditional zoning was enacted pursuant to this plan. The renovation of the existing Fort McKinley buildings within Diamond Cove was anticipated and was provided for in the approved conditional zone.

The summary and goal statement of the island comprehensive plan is expressed below:

The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), the people who reside and work there. The City's land use policies and regulations should reflect this essential difference.

The overall land use goal is to balance future growth and development on the islands to preserve those essential natural, physical, and social factors that contribute to the islands unique value and character.

The purpose of the IR-3 Island Residential Zone as expressed in the comprehensive plan is shown below:

The purpose of the IR-3 would be to allow for planned unit development in a manner compatible with both the natural and built environment. Parcels should not be rezoned to IR-3 unless an applicant can demonstrate that a development plan for the site can meet a series of detailed location and performance standards and is part of a contract or conditional rezoning. These standards would provide guidance to the City on whether a specific site would be appropriate for an IR-3 rezoning.

The comprehensive plan discussion for the IR-3 Contract-Conditional Zoning is shown below:

original subdivision plan (14) for this building. This would not qualify for staff review since the number of units is being increased within the building.

Site plan review for a change in use for the Double Barracks is likely. Since the building (27,386 sq ft) exceeds 10,000 sq ft of floor area, Planning Board review would be required. The same would apply to the Hospital if a specific renovation proposal comes forward.

Pending further information this is our initial interpretation of the development review process of this project.

The Double Barracks and Hospital buildings are located in the Fort McKinley local historic district and will require Historic Preservation Committee review and approval of the exterior renovation.

IX. Next Steps

1. The conditional zoning text needs to be revised. Further documentation needs to be submitted on the capacity of wastewater treatment system to serve the development proposal.
2. Scheduling of a second workshop unless the Board is satisfied with the results of Tuesday's workshop.

Attachments

- 1 Applicant Submissions:
 - 1-A Cover letter, dated April 8, 2008
 - 1-B Zoning Amendment Application, dated April 8, 2008
 - 1-C Proposed Zoning Amendment
 - 1-D Maps
 - 1-E Diamond Cove Wastewater Flow Chart
 - 1-F Purchase and Sales Agreement
 - 1-G Original Diamond Cove Conditional Zoning
- 2 Staff Comments/Submissions:
 - 2-A Maps
 - 2-B Letter from Alex Jaegerman to Ronald Ward, dated August 15, 2007
 - 2-C Email from Rick Knowland to Ronald Ward, dated April 8, 2008
 - 2-D Email from Rick Knowland to Ronald Ward, dated April 11, 2008
 - 2-E The Inn at Diamond Cove brochure received in Planning Office in 2007

Ronald N. Ward

(207) 772-1941

rward@dwmlaw.com

(207) 772-5627 Fax

(800) 727-1941

245 Commercial Street
Post Office Box 9781
Portland, ME 04104-5051

www.dwmlaw.com

ADMITTED IN ME ONLY

- Daniel Amory*
- Harry R. Pringie*
- Richard A. Spencer*
- Gerald M. Zelint
- Ronald N. Ward*
- David J. Becker*
- John S. Kaminski*
- William L. Plouffe*
- Jerrold A. Crouser*
- Michael C. High*
- Richard A. Shiny*
- Bruce W. Smith*
- Gary D. Vogel*
- F. William Stockmeyer*
- Benjamin E. Marcus*
- Melissa A. Rowey**
- Eric R. Herlon**
- Jeanne M. Kincaid**
- Gregory W. Sample*
- Daniel J. Rose**
- Kaigora Smith, Jr.*
- Debra J. Nathanson*
- Edward J. Kelleher*
- S. Campbell Badger*
- Malissa L. Gilley*
- Amy K. Tchoa**
- David S. Sherman, Jr.*
- Robert P. Nadeau**
- Stephen C. Jordan**
- Catherine D. Alexander*
- Brian D. Wilking*
- John Lisnik, Jr.**
- Aaron M. Pratt**
- James C. Schweikertbach**
- Elizabeth O. McEvoy*
- Jeffrey T. Plantario*
- Peter C. Felinly*
- Jessica M. Emmons*
- Jonathan M. Goodman*
- Mika K. Reynolds*
- Abigail Greene Goldman*
- Amy J. Visentin*
- Sara S. Hellstedt*

April 8, 2008

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

RE: Double Barracks and Hospital Buildings –
Great Diamond Island

Dear Rick:

Enclosed is our application for our zoning text amendment required to go forward with the proposed Project. The development entity is The Inn at Diamond Cove, LLC, a Maine limited liability Company. David and Nathan Bateman are acting as development consultants for the investor group. I am serving as its agent.

The summary of the Project is as follows:

The two buildings in question are substantially deteriorated and a collapse of either would not be unexpected. Except for the level of deterioration, these buildings are similar to the other buildings at Ft. McKinley which have been rehabilitated over the years, beginning in the 1980s. The current request for an amendment refers to the Ft. McKinley conditional rezoning in 1986 which allowed the inner core multi-unit buildings to go forward ("Phase I"). The single family house lots ("Phase II") proceeded on a separate track and have no direct bearing on this application.

The original approvals actually anticipated uses very similar to what is now proposed. However, the development approvals are now decades old and the zoning administrator has noted an inconsistency between our proposed use and the definition of "inn" in our current ordinances. Inns, as currently defined, do not include separate kitchen facilities. This Project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with some limited common amenities. Those amenities include a swimming pool and associated food/beverage service. In order to facilitate the financing and construction of the Project, the developer has agreed to go forward with the enclosed amendment to assure conformity with the City ordinances.

Consultants

Roger P. Kelley
Labor Relations &
Conflict Management

Ann S. Chapman
Policy & Labor Relations

Christopher P. O'Neil
Governmental Affairs

Michael J. Opuda Ph.D.
Special Education

Of Counsel

Harold E. Woodsum, Jr.*
Hugh G. E. McElshon*
Joseph L. Delefield III*
Robert L. Gips*
Donald A. Kopp*

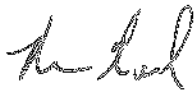
* Admitted In Maine
† Admitted In New Hampshire
○ Admitted In Missouri

The Diamond Cove Homeowners Association has voted to approve the proposed condominium hotel concept for the Double Barracks. The intentions with respect to the Hospital are yet to be detailed and finally approved by the Association but all of that will proceed assuming the Double Barracks Project is a success.

These properties have, in the past, become a struggle between the Association and the City, primarily on the issue of whether the City should have been paying assessments following the maturing of tax liens. The City earlier sent out RFP packages and received no acceptable offers. The current developer believes that it has received good cooperation from both the Association and the City and is in position to move ahead to commence construction in the summer of 2008. Assuming the zoning issues are cleared and the building permits issued before August 1, 2008, the Project will be on track to restore the Double Barracks to a productive property generating real estate taxes and assessments.

Thanks for your help in expediting all of this.

Sincerely,



Ronald N. Ward

RNW:kjl

Enclosures

cc: Bateman Partners, LLC

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street

www.dwmlaw.com

Post Office Box 9781

Portland, ME 04104-5081

ADMITTED IN ME ONLY

MEMORANDUM

Daniel Amory*
 Harry R. Pringle*
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 E. William Stockmeyer*
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 Melissa A. Newey**†
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 Mike K. Reynolds*
 Aijayal Greene Goldman*
 Amy J. Visentin*
 Sara S. Hellstedt*

TO: Portland Department of Planning and Development (Knowland)
 FROM: Ron Ward
 RE: The Inn at Diamond Cove, LLC – Great Diamond Island
 DATE: April 8, 2008

The following is a summary response to the email inquiry of April 3, 2008 from Rick Knowland. The information sought is available from a number of different sources, some of which was provided earlier in connection with the contracting with the City for the purchase of the Double Barracks (“Building 45”) and Hospital Building (“Building 19”). The developer’s consultant for this project is Bateman Partners, which can be reached at 772-2992.

1. Sewer Capacity - The sewer for the proposed project will be provided by the existing overboard discharge system. Joseph Laverriere, P.E., Senior Engineer at DeLuca-Hoffman Associates, Inc. is the consulting engineer on this issue and can provide whatever additional detail is required. For your information, attached is a chart which summarizes existing and projected flows as of August, 2007. These projections include the Double Barracks Project and will be updated to include the potential development of the Hospital. For your information, the current sewer capacity issue focuses upon infiltration into the system, rather than expansion of existing uses.

2. Existing Housing Units at Ft. McKinley – Currently 77 residential units in Phase I (originally approved for 134 units) and 39 single family lots in Phase II, with 34 houses on those lots.

3. Transportation – The inn will provide its own transportation facilities consistent with the “transportation plan and golf cart amendments” for Diamond Cove. The details of that will be agreed to with the Association, in conformance with City ordinances.

4. Diamond Cove Homeowners Association Support – See attached.

5. Map of the Ft. McKinley Complex – See attached.

Consultants

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 Conflict Management

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 Robert L. Gips*
 Donald A. Kopp*

* Admitted in Maine
 † Admitted in New Hampshire
 ‡ Admitted in Missouri

RNW:kjl
 Attachments

7. Current Zoning Designation(s):

1-3-2

Ft. McKinley Conditional Zone, January 28, 1986

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The Double Barracks Building is planned to be fully rehabilitated in accordance with historic preservation standards and supplemented with a new swimming pool and service structure, located upon the Open Space. The building itself will house up to a maximum of 22 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 rehabilitation of the Hospital remains to be detailed but would be much smaller in scope with uses substantially the same as the Double Barracks.

9. Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100')

10. Proposed Zoning: Please check all that apply:

A. _____ Zoning Map Amendment, from _____ to _____

B. X Zoning Text Amendment to ~~Supporting~~ Ft. McKinley Conditional Zone

For Zoning Text amendment, attached on a separate sheet, the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (~~example~~), and language to be added is depicted with underline (example).

C. _____ Conditional or Contract Zone

A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. Application Fee: An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below.) The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

X Fee for Service Deposit \$200.00
(This fee is required for all applications in addition to the application fee listed below)

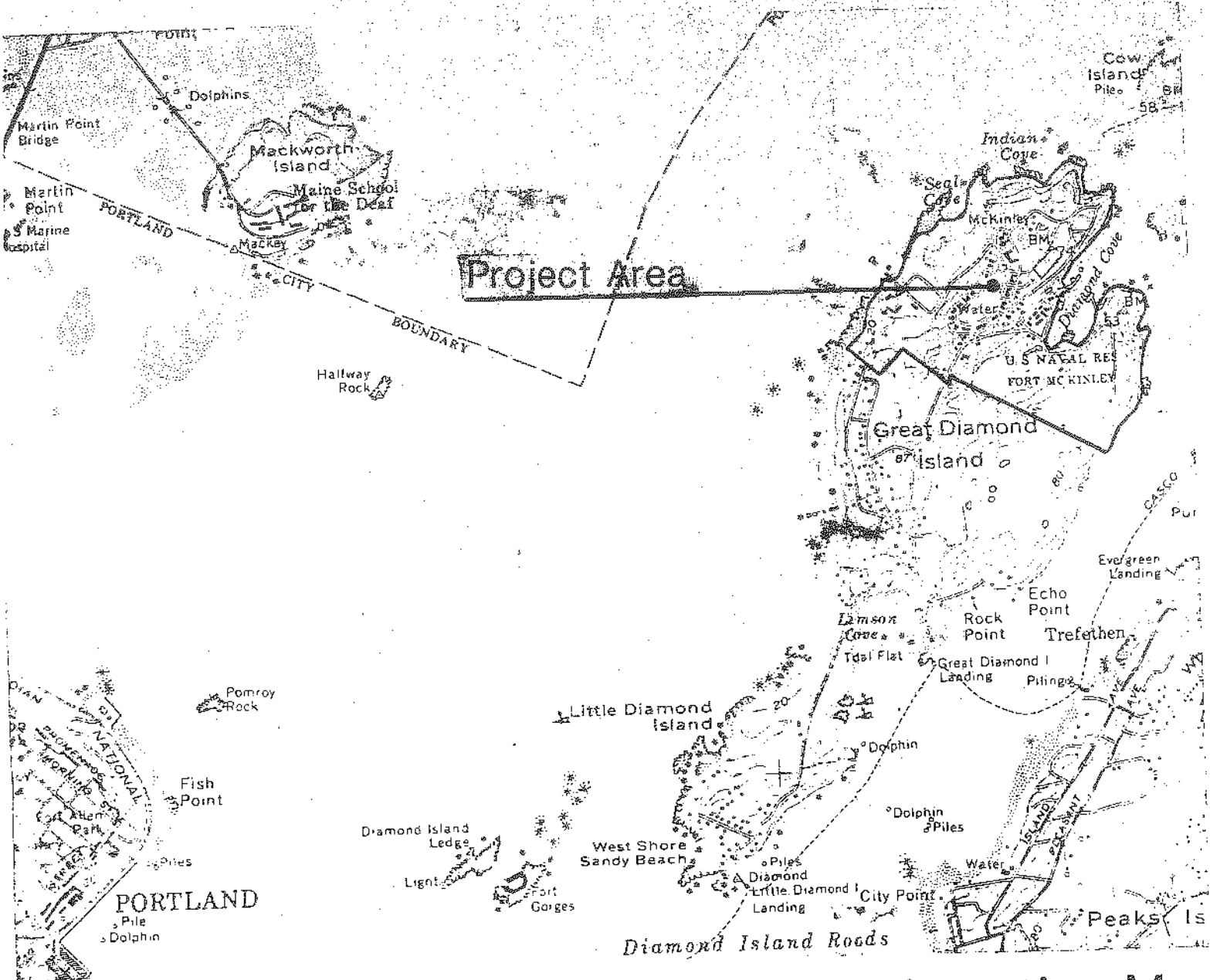
_____ Zoning Map Amendment \$2,000.00

X Zoning Text Amendment \$2,000.00

AMENDMENT TO CONDITIONAL REZONING
OF FT. MCKINLEY

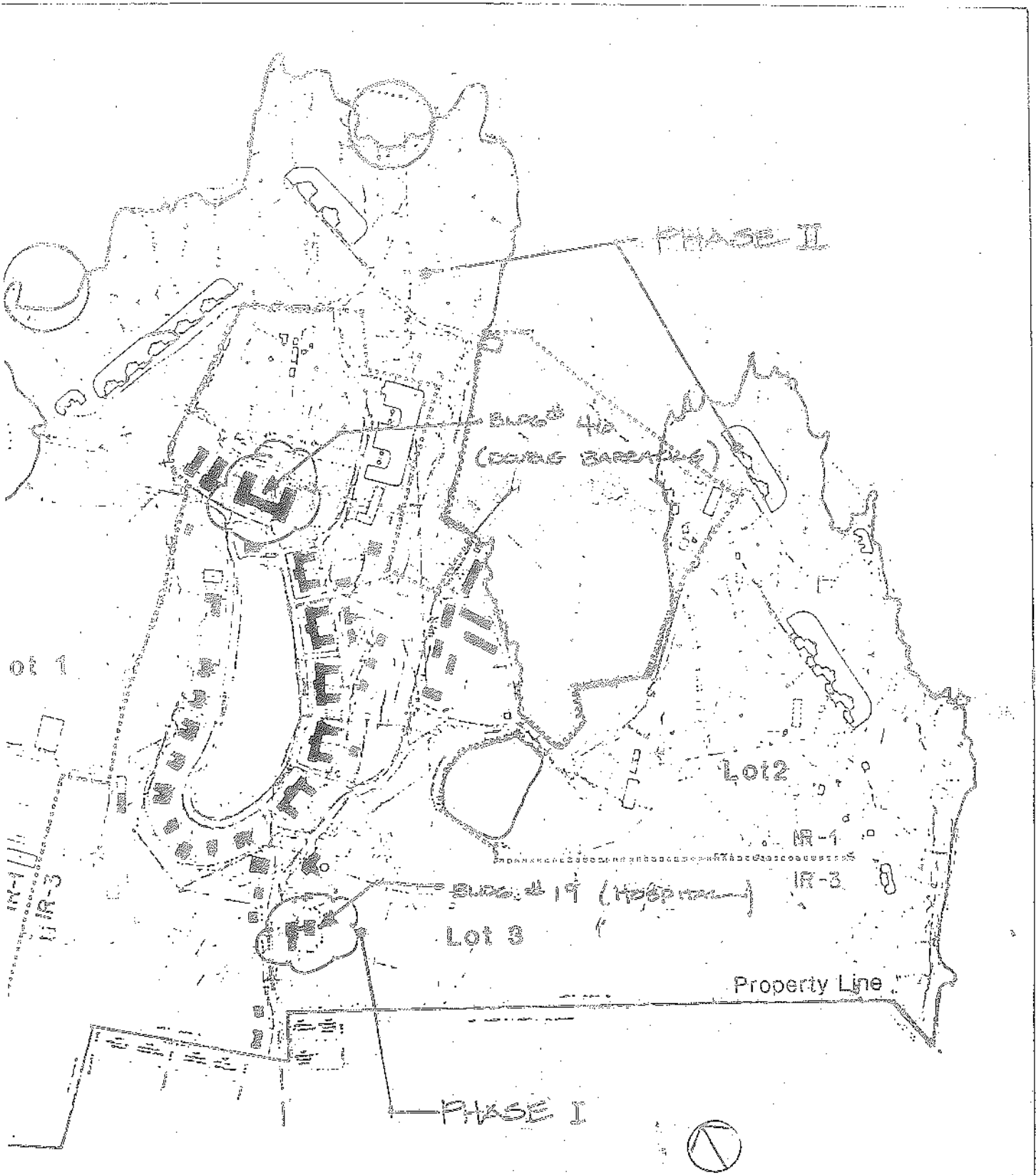
THIS AMENDMENT, approved this _____ day of _____, 2008 with respect to the Conditions and Restrictions appearing in the Conditional Rezoning of Ft. McKinley dated January 28, 1986 and recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263.

Said Conditions and Restrictions are hereby amended to include as a new Section 9(a) – Those buildings designated as Building 19 (“Hospital”) and Building 46 (“Double Barracks”), the immediate grounds attendant thereto and that portion of the Open Space, all depicted on the site plans submitted to the City of Portland, Maine may be redeveloped as residential hotel condominium units including reasonable and customary on-site services, limited to the owners, their guests, tenants in residence and members of the Diamond Cove Homeowners Association. The Double Barracks may include up to a maximum of twenty-two (22) residential condominium units and the Hospital may include up to a maximum of twelve (12) residential condominium units, all of said units so created to become members of the condominium association established for these two rehabilitated buildings, and each will also be considered a “lot” within the Diamond Cove Homeowners Association. Each of the condominium units may include, *inter alia*, separate kitchen facilities and may elect to be managed and rented by a centralized management entity established for that purpose.



Location Map
Scale 1" = 2000'





Property Plan

Scale 1" = 500'

GREAT DIAMOND ISLAND
WASTEWATER FLOWS TRIBUTARY TO OVERBOARD DISCHARGE SYSTEM
WASTE DISCHARGE LICENSE W006931-41-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)				NOTE 2
AVG. NUMBER OF PEOPLE PER EVENT	100	2	200	
ADMINISTRATION / MAINTENANCE BLDG.	2	240	480	
MARINA				NOTE 3
PUBLIC SLIPS	3	30	90	
GIFT STORE				
EMPLOYEES	2	15	30	

SUBTOTAL	24,720	GPD
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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
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TOTAL SEWER FLOW	28,500	GPD
ALLOWABLE III 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.

PURCHASE AND SALE AGREEMENT

1. PARTIES. THE CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") agrees to sell and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer") agrees to buy, upon the terms and conditions hereafter set forth, the real estate described in paragraph 2 of this Agreement.

2. DESCRIPTION. The premises to which this Agreement applies consist of certain lots or parcels of land customarily known as The Hospital Building ("Building #19") and The Double Barracks ("Building #46") located at Fort McKinley, Great Diamond Island, Portland, Maine, together with all of the appurtenant rights thereto including any rights of way, easements, licenses and permits ("Premises"). The Premises shall also include the limited common areas surrounding the buildings as anticipated by the Diamond Cove Declaration of Covenants and Restrictions. The parcel of land relating to the Double Barracks is generally depicted on the site plan shown as Schedule A, attached hereto and made a part hereof, and is also described in deeds from McKinley Partners Limited Partnership dated May 2, 2001 and recorded in the Cumberland County Registry of Deeds in Book 16290, Pages 254 and 256. The Premises may be further delineated on a survey to be provided by the Buyer.

3. DEED. The Premises are to be conveyed by a quitclaim (release) deed, which deed shall convey good and clear record and marketable title to the Premises, free from all liens, encumbrances and tenancies, except utility easements which do not materially impair the value of the Premises.

4. CONSIDERATION. The consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged, is as follows:

- a. One Dollar (\$1.00) and other good and valuable consideration;
- b. Buyer shall proceed in good faith to prepare a development plan for the Premises which shall establish commercially viable buildings taxable by the Seller in the ordinary course ("Development Plan");
- c. The Development Plan shall be submitted to the Portland Planning Board for site plan approval which may, at the option of Buyer, be submitted in phases which would reflect the Buyer's intentions to proceed separately with a development of the Double Barracks and the Hospital;
- d. Buyer shall hold Seller harmless from and against any claims for assessments by the Diamond Cove Homeowners Association with respect to that real estate conveyed to the Buyer hereunder; and
- e. Seller shall waive any claims for real estate taxes or assessments accruing through the date when certificates of occupancy have been issued for each approved unit within the Development Plan.

5. TIME FOR PERFORMANCE/DELIVERY OF DEED. Such deed and any other transfer documents shall be delivered on a date and time specified by the Buyer not more than fourteen (14) days after the date of Buyer's notice to Seller at the offices of Buyer's attorneys, Drummond, Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104-5081 (the "Closing"). Buyer shall elect to proceed to closing on the Double Barracks by given written notice to Seller on or before a date that is no later than September 14, 2007 ("Double Barracks Exercise Date") or on the Hospital Building by giving written notice to Seller on or before a date that is no later than September 14, 2008 ("Hospital Exercise Date") provided that Seller and Buyer may consensually extend the Notices of Exercise on either pursuant to written agreement signed by both. If the Buyer fails to elect to exercise its rights to purchase either or both the Double Barracks or the Hospital Buildings for any reason other than a default by the Seller hereunder, neither party shall have any further rights or claims against the other and this Agreement shall terminate without further recourse.

6. BUYER'S CONTINGENCIES. In addition to such other conditions to Closing as may be set forth herein, the obligations of Buyer under this Agreement are subject to the following contingencies which are reserved solely for Buyer's benefit and may be waived by Buyer at any time:

- a. Approval of the Development Plan by the Diamond Cove Homeowners Association;
- b. Reasonable access to the Premises to confirm its condition and qualification for development;
- c. Receipt from the Seller of all engineering reports and physical inspections in the possession of Seller; and
- d. Seller shall be obligated to provide all of the information necessary to support the issuance of standard commercial title insurance covering the Premises in amounts as reasonably determined by Buyer. Such supporting information shall be provided in a timely manner as requested by the Buyer and shall apply to the period commencing upon the date which is the assessment date for the first real estate tax lien recorded against the Premises, and continuing to the date of Closing. Buyer shall be responsible for the standard commercial title insurance premium charges.

Seller and Buyer recognize that development issues may be identified in the contract phase of this Agreement requiring some amendment to the agreements expressed herein. Seller agrees that such modifications may be negotiated by its City Manager without the need for supplemental approval by the City Council.

7. TITLE CONFORMITY; EXTENSIONS; CONDITIONS. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of the Closing the Premises do not conform with the terms and conditions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be

extended for a period of thirty (30) days. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, Buyer may either declare the obligations of the parties hereto void and this agreement shall be without recourse by either of the parties hereto, or Buyer may elect to accept such title to the Premises in its then condition as Seller can deliver.

8. RISK OF LOSS. Until delivery of title to the Premises from Seller to Buyer, risk of loss or damage to Premises by fire or otherwise shall be on Seller.

9. ADJUSTMENTS. Water and sewer use charges, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned to Seller as of the Closing. Real estate transfer taxes due on the transfer will be paid in accordance with Maine law.

10. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may pursue all available remedies, including specific performance and reasonable attorney's fees. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller may also pursue its remedies in law or in equity, recognizing that Buyer's obligation to proceed to Closing for either the Double Barracks or the Hospital is entirely discretionary with Buyer.

11. NOTICES. Except as otherwise specifically provided herein, any notice, demand or other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the 2nd business day after mailing by first-class mail, registered or certified, return receipt requested, addressed to the party at the address set forth herein. Either party may change its address for purposes hereof by giving the other party notice of a new address.

If to Seller: Joseph E. Gray, City Manager
City of Portland, Maine
389 Congress Street
Portland, ME 04101

With a copy to: Mary Costigan
Associate Corporation Counsel
389 Congress Street
Portland, ME 04101

If to Buyer: Ronald N. Ward, Agent
The Inn At Diamond Cove, LLC
P.O. Box 9781
Portland, ME 04104

12. RECORDING. This Agreement or a memorandum thereof may, at the option of either party, be recorded in the Cumberland County Registry of Deeds at the expense of the recording party.

13. MISCELLANEOUS.

- a. Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original and such counterpart shall constitute one in the same instrument. This Agreement may be transmitted between the parties by facsimile and signatures appearing on faxed instruments shall be treated as original signatures.
- b. Assignment/Successors. The rights and obligations of Buyer may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- c. Entire Agreement/Amendment. Any and all prior and contemporaneous discussions, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement. This Agreement may not be modified, waived or amended except in writing assigned by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudicial thereto.
- d. Invalid or Unenforceable Terms. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of this Agreement shall be valid and be enforced to the fullest extent permitted by law. All paragraph headings in this Agreement are for convenience of reference only and have no independent legal significance. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates hereinafter set forth.

WITNESS:

CITY OF FORTLAND, MAINE

Linda Bacon

By: Joseph E. Long
Its: City Manager

Date of Seller's acceptance of this Agreement:

May
April 4, 2007

Linda Miller

THE INN AT DIAMOND COVE, LLC

By: Ronald N. Ward
Ronald N. Ward

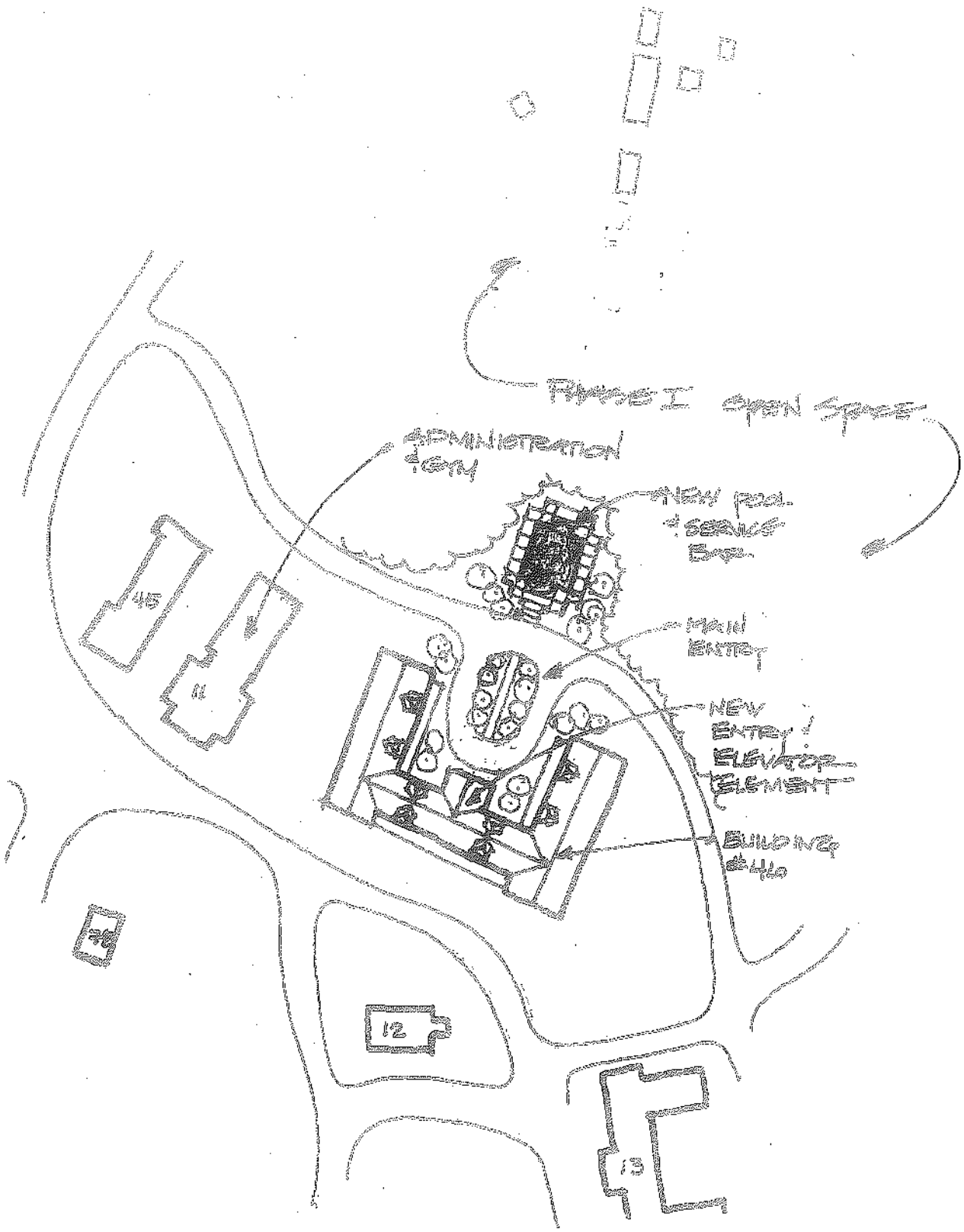
Its: Agent

Effective Date of this Agreement:

May
April 4, 2007

Schedule A

[Description of the Premises]



SITE PLAN

8/10/07

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This AMENDMENT, made as of this 13th day of September, 2007 by and between the CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer"), as follows:

RECITALS:

1. Seller and Buyer are parties to a Purchase and Sale Agreement with respect to certain real estate located at Fort McKinley, Great Diamond Island, Portland, Maine, said Purchase and Sale Agreement being dated May 4, 2007 ("P&S").
2. Section 5 of the P&S requires Buyer's notice of election to proceed to acquire the subject premises, specifying September 14, 2007 for the Double Barracks and September 14, 2008 for the Hospital.
3. Buyer has determined that its anticipated Project will require supplemental approvals by the Portland Planning Board and/or Portland City Council which, in turn, will require the submission of the appropriate applications and supporting materials.
4. Buyer will not be able to secure development financing without final and complete administrative approvals, none of which can be accomplished before September 14, 2007.
5. Seller and Buyer are agreed that it is in the best interests of both for Buyer to continue to pursue its proposed development and to do so on the basis of extended time frames.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable considerations the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

AGREEMENTS:

1. The Double Barracks Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2008.
2. The Hospital Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2009.
3. Except as specifically amended herein, the terms of the P&S are hereby ratified and reaffirmed.

IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment as of the date here and above set forth.

WITNESS:

CITY OF PORTLAND, MAINE

[Handwritten Signature]

By: [Handwritten Signature]
Joseph E. Gray, Jr.
Its Manager

Linda Miller

THE INN AT DIAMOND COVE, LLC

By: [Handwritten Signature]
Ronald N. Ward
Its: Agent

BK8928PG11263

7/15/85

City of Portland, Maine

BY THE CITY COUNCIL

048089

**AMENDMENT TO PORTLAND CITY CODE
SECTION 14-49 (ZONING MAP)
RE: CONDITIONAL REZONING OF FT. MCKINLEY**

WHEREAS, Diamond Cove Associates is the record owner of certain land, with the buildings thereon, situated on the northerly portion of Great Diamond Island and commonly known as the Ft. McKinley property; and

WHEREAS, in the process of a comprehensive land use study and rezoning of the Portland Islands by the City, Diamond Cove Associates requested that a portion of said property be rezoned from the R-2 Residential Zone to the IR-3 Island Residential Zone; and

WHEREAS, the Planning Board, pursuant to 30 M.R.S.A. Section 4962(1)(I), and after notice and hearing and due deliberation thereon, recommended rezoning a portion of the property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the City Council hereby finds and declares that said conditional rezoning would be pursuant to and consistent with the City's comprehensive plan and would satisfy the guidelines set forth in Section 14-145.13 of the Portland City Code, all for the reasons contained in the Planning Board's report accompanying this Amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE, IN THE CITY COUNCIL ASSEMBLED, AS FOLLOWS:

THAT, the Zoning Map of the City of Portland, Maine (1958), as amended, on file in the Office of the Director of Planning and Urban Development (incorporated into this code by Section 14-49) be further amended as shown on the attached fragmentary map entitled "Fort McKinley Property Zoning Map (Great Diamond Island)", subject, however, to the Conditions and Restrictions attached hereto.

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-3 Residential Zone to the R-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 structures 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

David Clem
10 Parkway
Hanover, New Hampshire
03755

June 27, 2008

Rick Knowland
Senior Planner
Planning Division, 4th Floor
389 Congress Street
Portland, ME 04101

Re: The Inn at Diamond Cove

Dear Mr. Knowland:

I am writing to oppose that portion of the proposal by The Inn at Diamond Cove to amend the IR-3 conditional zone for Fort McKinley to allow hotel condominiums in the Hospital building. I am not opposed to the request to convert the Double Barracks building to hotel condominiums. The character of the parade ground is distinctly different and the infrastructure more in keeping with the more intensive use.

I am the owner of Lot 22, The Pump House, which is one lot removed from the Hospital.

Sincerely,



David Clem

April 20th - 10/10/10

Monday

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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 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

(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.

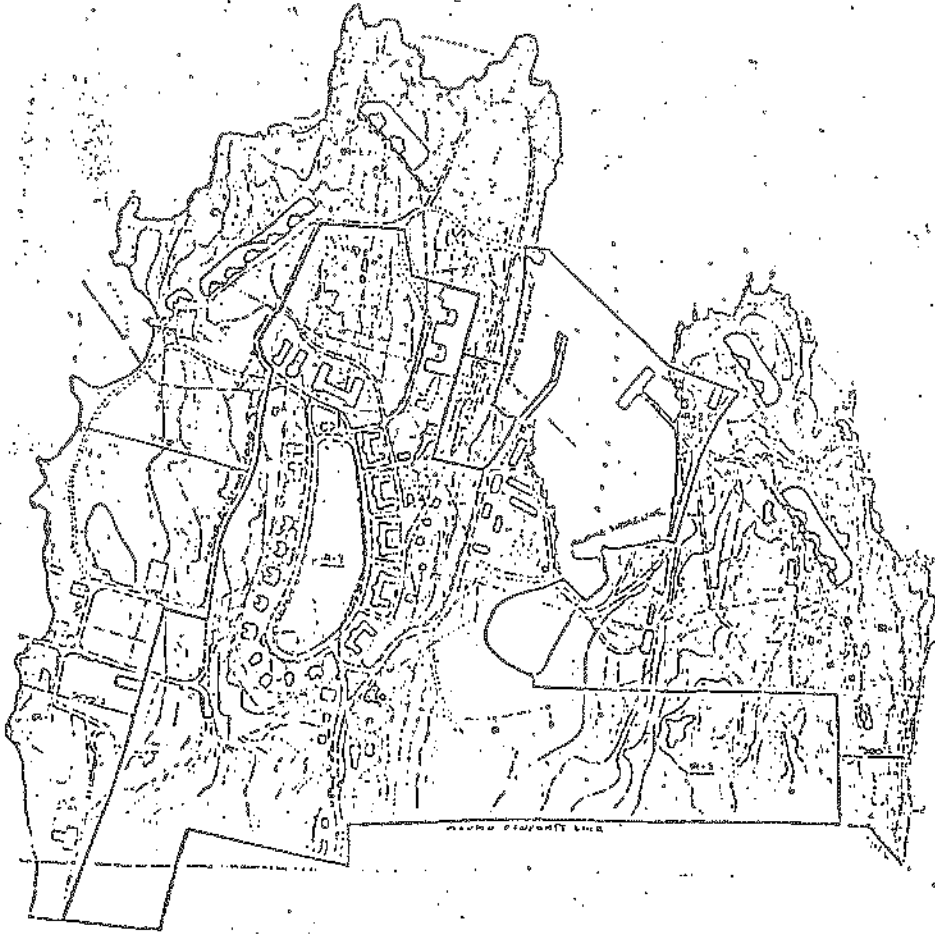
14. Declaration of invalidity. In the event that these conditions and restrictions, or any portion thereof, are declared invalid for any reason by a court of competent jurisdiction, the City shall invoke the same procedure as hereinbefore provided for breach of these conditions and restrictions.

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.

BK8928PGH269

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.
(49)

BK 8328 PG 0270

7/15/85

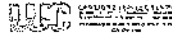
Diamond Cove

GREAT DIAMOND ISLAND

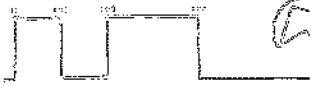
PORTLAND, MAINE

DEVELOPER: DICTAR ASSOCIATES

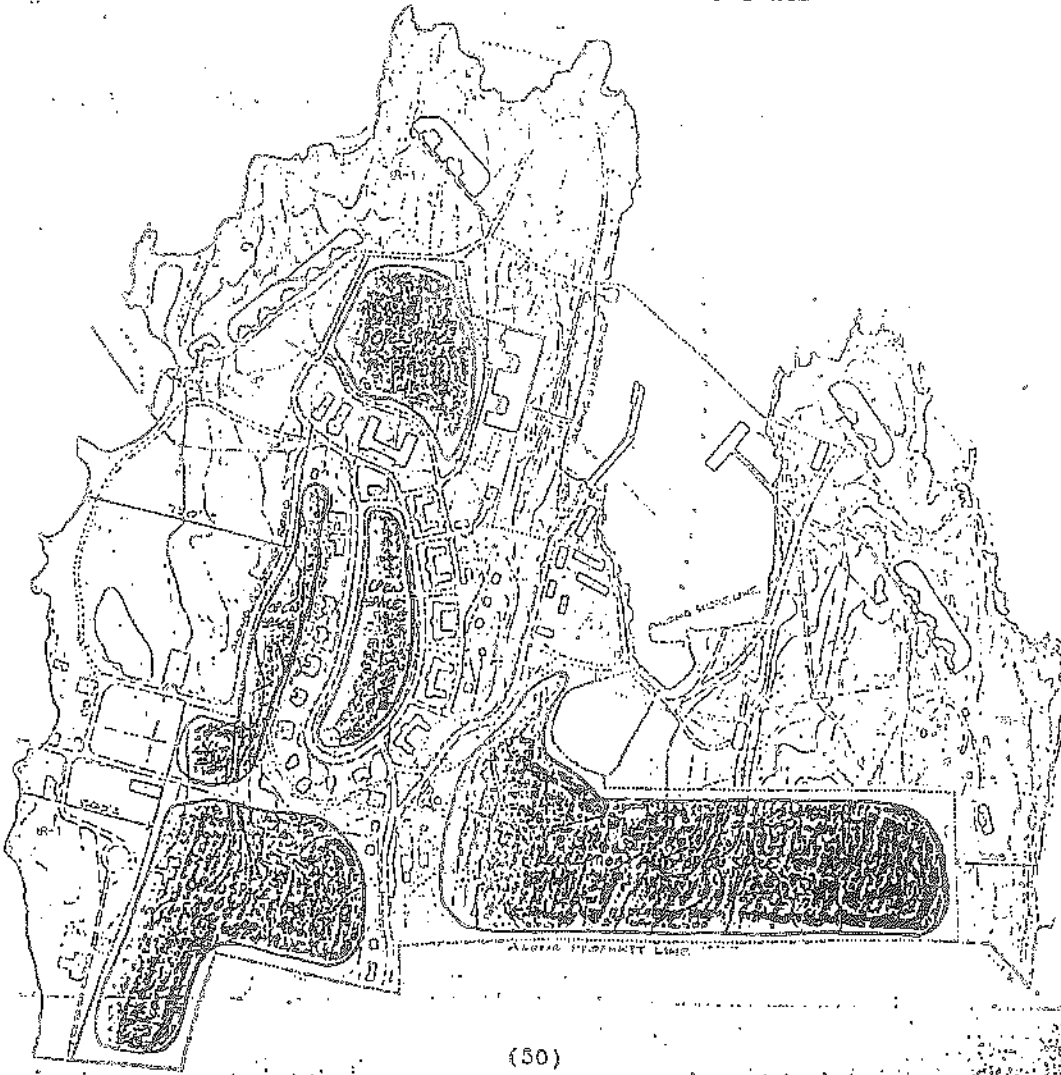
PORTLAND, MAINE



Architectural, Planning, Engineering and Interiors



DEDICATED OPEN SPACE





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

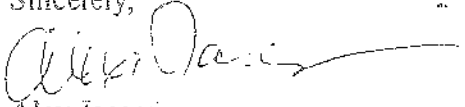
partial exemption. If there is an expansion of the sand filter system, that might also constitute a project component subject to site plan review. We cannot give a definitive ruling on these matters at this time, but if you proceed with the zoning amendment, we will scope out the subsequent reviews on 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 reference. 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 explanation 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

2-6-2

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 provision 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 be 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 explanation for this change including 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

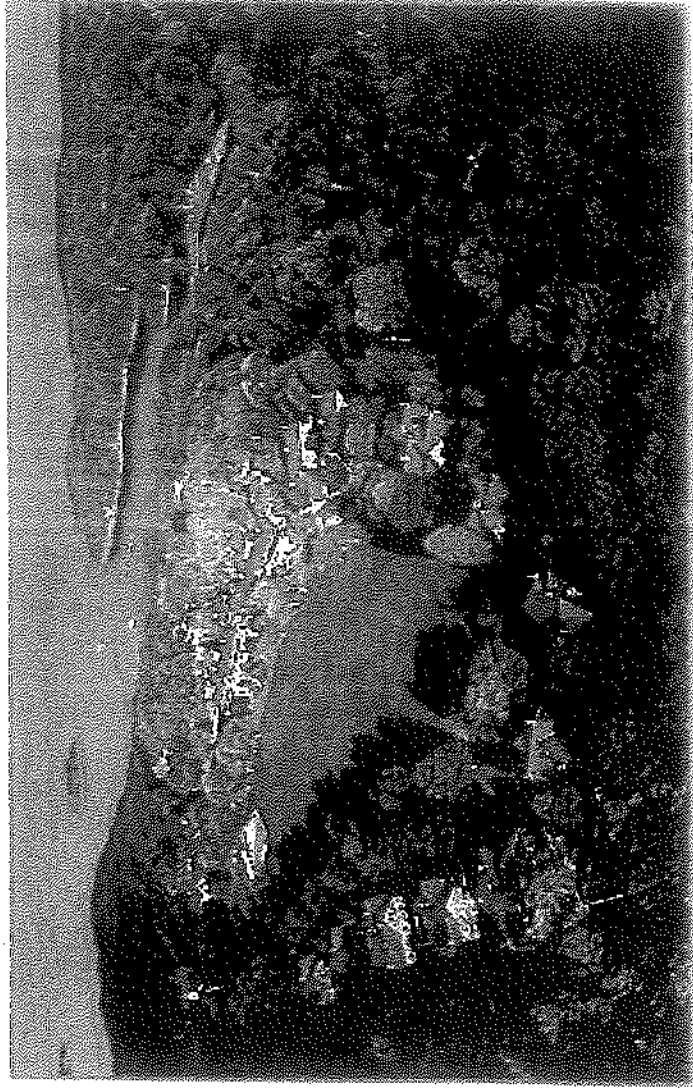
From: Rick Knowland
To: rrw@dwmlaw.com
Date: 4/11/2008 8:23 AM
Subject: Inn at Diamond Cove, LLC zoning amendment
CC: Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Mike Murray; Penny Littell

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 Infrastructure 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.

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.

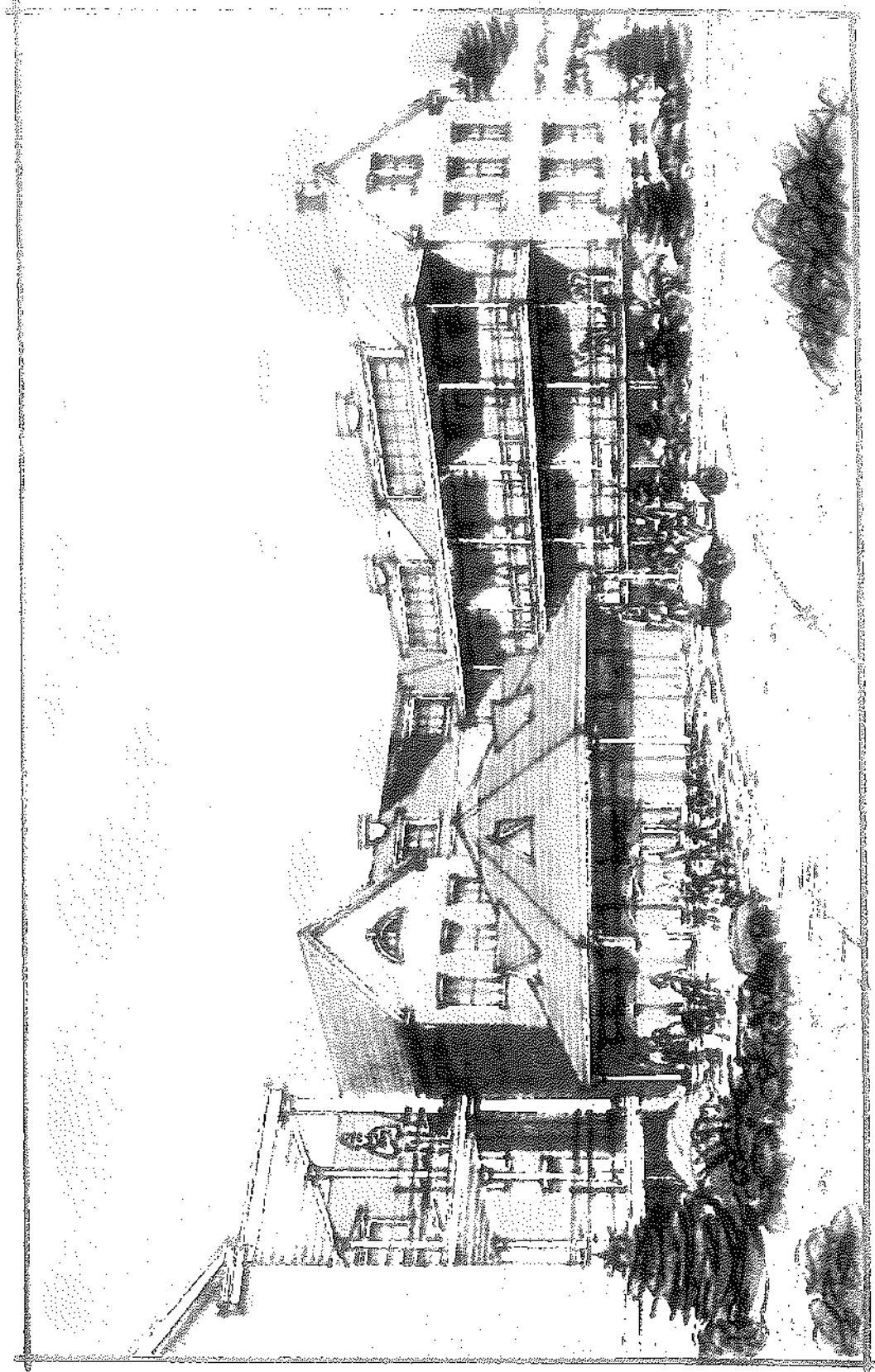
The Project - Double Barracks

- **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.hart-hotels.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 Consultant:** 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



Zoning Amendment Application
Department of Planning and Development
Planning Division and Planning Board

1. Applicant Information

The Inn at Diamond Cove, LLC
Name

c/o Ronald N. Ward, Agent
Address
P. O. Box 9781
Portland, ME 04104

207-772-2992 207-772-1881
Phone Fax

2. Subject Property

Building 46 ("Double Barracks")
Building 19 ("Hospital")

Address
Great Diamond Island

Assessor's Map 83E-F-460 (Building 46)
Assessor's Map 83B-M-159 (Building 19)
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant X Other

City of Portland, Maine
Name

389 Congress Street
Address

Portland, ME 04101-3509

207-874-8480 207-874-8497
Phone Fax

4. Billing Address:

Same as above
Name

Address

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Purchase and Sale Agreement dated May 4, 2007, as amended by
First Amendment dated September 13, 2007

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

6. Existing Use:

Describe the existing use of the subject property:

The buildings on the subject property are abandoned and grossly deteriorated.

7. Current Zoning Designation(s): FC McKinley Conditional Zone, January 28, 1986

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The Double Barracks Building is planned to be fully rehabilitated in accordance with historic preservation standards and supplemented with a new swimming pool and service structure, located upon the Open Space. The building itself will house up to a maximum of 22 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 rehabilitation of the Hospital remains to be detailed but would be much smaller in scope with uses substantially the same as the Double Barracks.

9. Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1' = 100')

10. Proposed Zoning: Please check all that apply:

A. _____ Zoning Map Amendment, from _____ to _____

B. Zoning Text Amendment to ~~Subsection~~ FC McKinley Conditional Zone

For Zoning Text amendment, attached on a separate sheet, the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. _____ Conditional or Contract Zone

A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. Application Fee: An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below.) The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

Fee for Service Deposit \$200.00
(This fee is required for all applications in addition to the application fee listed below)

_____ Zoning Map Amendment \$2,000.00

Zoning Text Amendment \$2,000.00

Daniel Amory*
 Harry R. Fringle*
 Richard A. Spencer*
 Gerald M. Zelnit
 Ronald N. Ward*
 David J. Becker*
 John S. Kaminski*
 William L. Plouffe*
 Jerrul A. Crouner*
 Michael E. High*
 Richard A. Shinnay*
 Bruce W. Smith*
 Gary D. Vogel*
 E. William Stockmayer*
 Benjamin C. Marcus*
 Melissa A. Howey**
 Eric R. Heron**
 Joanne M. Kincaid**
 Gregory W. Sampin*
 Daniel J. Rose**
 Kaighn Smith, Jr.*
 Daina J. Nathanson*
 Edward J. Kellner*
 S. Campbell Badger*
 Melissa L. Dilley*
 Amy K. Tchao**
 David S. Sherman, Jr.*
 Robert P. Nadeau*
 Stephen C. Jordan**
 Catherine D. Alexander*
 Brian D. Wilfong*
 John Usnik, Jr.**
 Aaron W. Pratt**
 James C. Schwedenbach**
 Elizabeth D. McEvoy*
 Jeffrey T. Pampiano*
 Peter C. Felinsky*
 Jessica M. Emmons*
 Jonathan M. Goodman*
 Milka K. Reynolds*
 Abigail Greene Goldinan*
 Amy J. Visentin*
 Sara S. Hellstedt*

April 8, 2008

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

RE: Double Barracks and Hospital Buildings –
 Great Diamond Island

Dear Rick:

Enclosed is our application for our zoning text amendment required to go forward with the proposed Project. The development entity is The Inn at Diamond Cove, LLC, a Maine limited liability Company. David and Nathan Bateman are acting as development consultants for the investor group. I am serving as its agent.

The summary of the Project is as follows:

The two buildings in question are substantially deteriorated and a collapse of either would not be unexpected. Except for the level of deterioration, these buildings are similar to the other buildings at Ft. McKinley which have been rehabilitated over the years, beginning in the 1980s. The current request for an amendment refers to the Ft. McKinley conditional rezoning in 1986 which allowed the inner core multi-unit buildings to go forward ("Phase I"). The single family house lots ("Phase II") proceeded on a separate track and have no direct bearing on this application.

The original approvals actually anticipated uses very similar to what is now proposed. However, the development approvals are now decades old and the zoning administrator has noted an inconsistency between our proposed use and the definition of "inn" in our current ordinances. Inns, as currently defined, do not include separate kitchen facilities. This Project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with some limited common amenities. Those amenities include a swimming pool and associated food/beverage service. In order to facilitate the financing and construction of the Project, the developer has agreed to go forward with the enclosed amendment to assure conformity with the City ordinances.

Consultants

Roger P. Kelley
 Labor Relations &
 Conflict Management

Ann S. Chapman
 Policy & Labor Relations

Christopher P. O'Neil
 Governmental Affairs

Michael J. Opeda Ph.D.
 Special Education

Of Counsel

Harold E. Woodsum, Jr.*
 Hugh C. E. MacKahan*
 Joseph L. DeLaford**
 Robert L. Gips*
 Donald A. Kopp*

* Admitted in Maine

† Admitted in New Hampshire

‡ Admitted in Missouri

The Diamond Cove Homeowners Association has voted to approve the proposed condominium hotel concept for the Double Barracks. The intentions with respect to the Hospital are yet to be detailed and finally approved by the Association but all of that will proceed assuming the Double Barracks Project is a success.

These properties have, in the past, become a struggle between the Association and the City, primarily on the issue of whether the City should have been paying assessments following the maturing of tax liens. The City earlier sent out RFP packages and received no acceptable offers. The current developer believes that it has received good cooperation from both the Association and the City and is in position to move ahead to commence construction in the summer of 2008. Assuming the zoning issues are cleared and the building permits issued before August 1, 2008, the Project will be on track to restore the Double Barracks to a productive property generating real estate taxes and assessments.

Thanks for your help in expediting all of this.

Sincerely,



Ronald N. Ward

RNW:kjl

Enclosures

cc: Bateman Partners, LLC

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street

www.dwmlaw.com

Post Office Box 9781

Portland, ME 04104-9051

ADMITTED IN ME ONLY

- Daniel Antony*
- Harry R. Pirajla*
- Richard A. Spencer**
- Gerald M. Zelnt
- Ronald N. Ward*
- David J. Bacher*
- John S. Keminski*
- William L. Plouffe*
- Jarrol A. Crouter*
- Michael E. High*
- Richard A. Shinnay*
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- Gary D. Vogel*
- E. William Stockmeyer*
- Benjamin E. Marcus*
- Melissa A. Hevey**†
- Eric R. Forlan**†
- Jessie M. Kincaid**†
- Gregory W. Sample*
- Daniel J. Rose**†
- Kaighn Smith, Jr.**
- Deino J. Nathanson*
- Edward J. Kellisher*
- S. Campbell Bulger**
- Melissa L. Ciley*
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- Peter C. Felisly*
- Jessica M. Emmons*
- Jonathan M. Goodman*
- Mike K. Reynolds*
- Abigail Greene Goldeman**
- Amy J. Visentin**†
- Sara S. Halsted**

MEMORANDUM

TO: Portland Department of Planning and Development (Knowland)
 FROM: Ron Ward
 RE: The Inn at Diamond Cove, LLC – Great Diamond Island
 DATE: April 8, 2008

The following is a summary response to the email inquiry of April 3, 2008 from Rick Knowland. The information sought is available from a number of different sources, some of which was provided earlier in connection with the contracting with the City for the purchase of the Double Barracks (“Building 46”) and Hospital Building (“Building 19”). The developer’s consultant for this project is Bateman Partners, which can be reached at 772-2992.

1. Sewer Capacity - The sewer for the proposed project will be provided by the existing overboard discharge system. Joseph Laverriere, P.E., Senior Engineer at DeLuca-Hoffman Associates, Inc. is the consulting engineer on this issue and can provide whatever additional detail is required. For your information, attached is a chart which summarizes existing and projected flows as of August, 2007. These projections include the Double Barracks Project and will be updated to include the potential development of the Hospital. For your information, the current sewer capacity issue focuses upon infiltration into the system, rather than expansion of existing uses.

2. Existing Housing Units at Ft. McKinley – Currently 77 residential units in Phase I (originally approved for 134 units) and 39 single family lots in Phase II, with 34 houses on those lots.

3. Transportation – The Inn will provide its own transportation facilities consistent with the “transportation plan and golf cart amendments” for Diamond Cove. The details of that will be agreed to with the Association, in conformance with City ordinances.

4. Diamond Cove Homeowners Association Support – See attached.

5. Map of the Ft. McKinley Complex – See attached.

Consultants

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 Labor Relations &
 Conflict Management

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 Policy & Labor Relations

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 Robert L. Gips*
 Donald A. Kupp*

* Admitted in Maine
 † Admitted in New Hampshire
 ‡ Admitted in Missouri

RNW:kjl
 Attachments

M E M O R A N D U M

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.

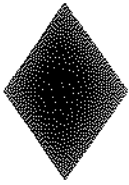
6. Development Phasing – The Double Barracks construction will go forward immediately, assuming the permits are timely issued. The Hospital is anticipated to go forward in the next building season assuming the Double Barracks phase of the Project has proven successful.

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, 1985 (“Project Conditions”). Section 1 of the Project Conditions provides that these 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



Diamond Island Association
Founded 1882

September 20, 2013

Dear City Councilor:

This letter is submitted for your consideration by the Diamond Island Association, an association of approximately 80 members who are taxpayers and homeowners on the southern side of Great Diamond Island, where the proposed rezoning will occur.

Recently the Portland City Planning Board moved to send before the council an amended application for Conditional Rezoning filed by Betsy Weber. This application asked for rezoning of her property on Great Diamond Island to allow for operation of a fuel business (Dinosaur Enterprises) in a residential area. The original application before the Planning Board asked for rezoning specific to the Weber family only. The current application before the council has been amended to provide that the property be conditionally rezoned for a fuel business, but, not as originally proposed, one limited to the Weber family. The amended application includes language "runs with the land" and allows for "successors and assigns."

There was a neighborhood meeting subsequent to the initial application to the Planning board. The application that was discussed was the initial application to the Planning Board which limited the operation of the fuel business to the Weber family, not the current application.

At the direction of its members, the Diamond Island Association supported our neighbors, the Webers, in their application to keep their family business in operation. When our members learned that the application before the City Council was no longer limited to the Weber family, they were concerned about the potential rezoning of the property for unlimited commercial purposes for operation by any commercial enterprise. With that understanding, the DIA membership passed the following motion at their annual meeting in August, which we are charged with presenting to the Portland City Council:

The Diamond Island Association strongly supported the conditional re-zoning of the Weber property for the operation of their fuel business for their family. The Diamond Island Association does not support the unconditional rezoning of the Weber property for commercial use.

The terms presented in the current application are different from the oral summary of the original application as stated at the conclusion of the Planning Board meeting. Upon review of the current application, the Board expressed the following concerns that we ask that you also consider:

1. There is no provision in the ordinance to **restrict this to a business operated by the owner operator in residence** on the property. If this rezoning is to be right in the middle of a completely residential area, that seems like a reasonable restriction for safety and aesthetic reasons.
2. We note that there are conditions that all state, federal, fire and environmental regulations be complied with. Historically, there has been no enforcement of such regulations and no follow through to make sure that conditional provisions before you are actually complied with. This is of concern to our members for fire, safety and environmental reasons. If there is a fire on the island, it could potentially destroy a significant part of the island and all the houses on it. We have a volunteer fire department which is defensive only. We cannot sue the City if our houses burn down and we have no recourse if the fuel business has not complied with statutory safety regulations or may not have adequate insurance. We are sure that no one expects or thinks that will happen, but we would be neglecting our duty to our membership if we did not expressly **request that there be diligent follow through to make sure that all safety regulations have been complied with.**

Respectfully submitted,

Diamond Island Association Board of Directors by Nancy Gleason, President

Rick Knowland - 118 Sunset Av Great Diamond Island

From: Bobby Spark <bspark@mac.com>
To: <RWK@portlandmaine.gov>
Date: 10/19/2013 1:29 PM
Subject: 118 Sunset Av Great Diamond Island

TO: Rick Knowland

Re: Proposed Conditional Zone by Dinosaur Industries for Fuel Distribution

We are property owners at Diamond Cove, Lot 66

We are IN COMPLETE FAVOR of the Proposed Conditional Zoning for Dinosaur Enterprises

Thank you

Bobby and John Spark

609-709-9231

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (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
FEBRUARY 22, 2012**

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, their 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 services² 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-two (22) hotelminium units [with the maximum number of lock out units, included as part of the twenty-two hotelminiums and not separate units, not to exceed ~~twenty-twosixteen (22+6)~~] 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. All solid waste shall be stored, collected and disposed of in accordance with the Maine Department of Environmental Protection’s September 2009 Site Location of Development Act Minor Order (the “DEP Order) for the Inn at Diamond Cove, or successive DEP Order as may be amended. To the extent that there is a conflict between City regulations and the DEP Order, the stricter provision shall apply.

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.

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.

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 Pier 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.

8. Site Plan Review. Nothing herein is intended to relieve the applicant/owner from complying with applicable standards under Site Plan Review.

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.

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.



BK 8928 PE 0264

7/15/85

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 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

- (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.

BK 8928 PG 0267

-4-

7/15/85

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.

2-I-5

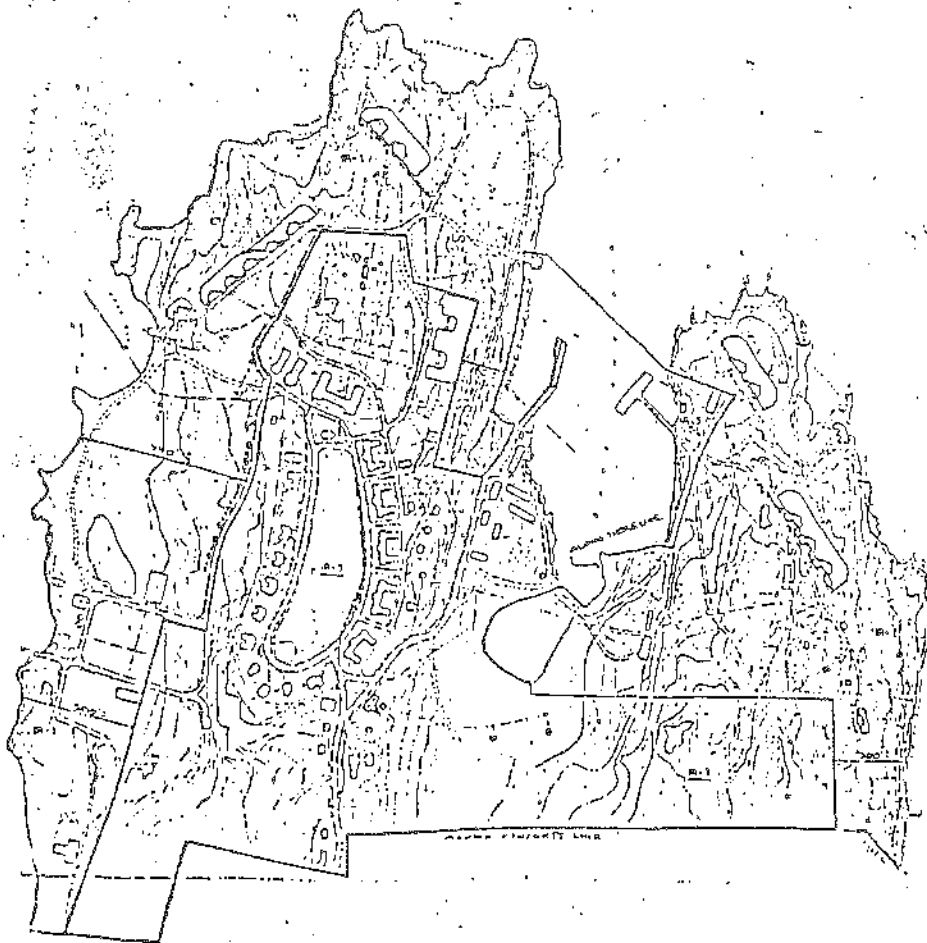
-5- BK 8928 PC 0268 7/15/85

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.

0K0920PG11269

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.
(49)

BK892B%0270

7/15/85

Diamond Cove

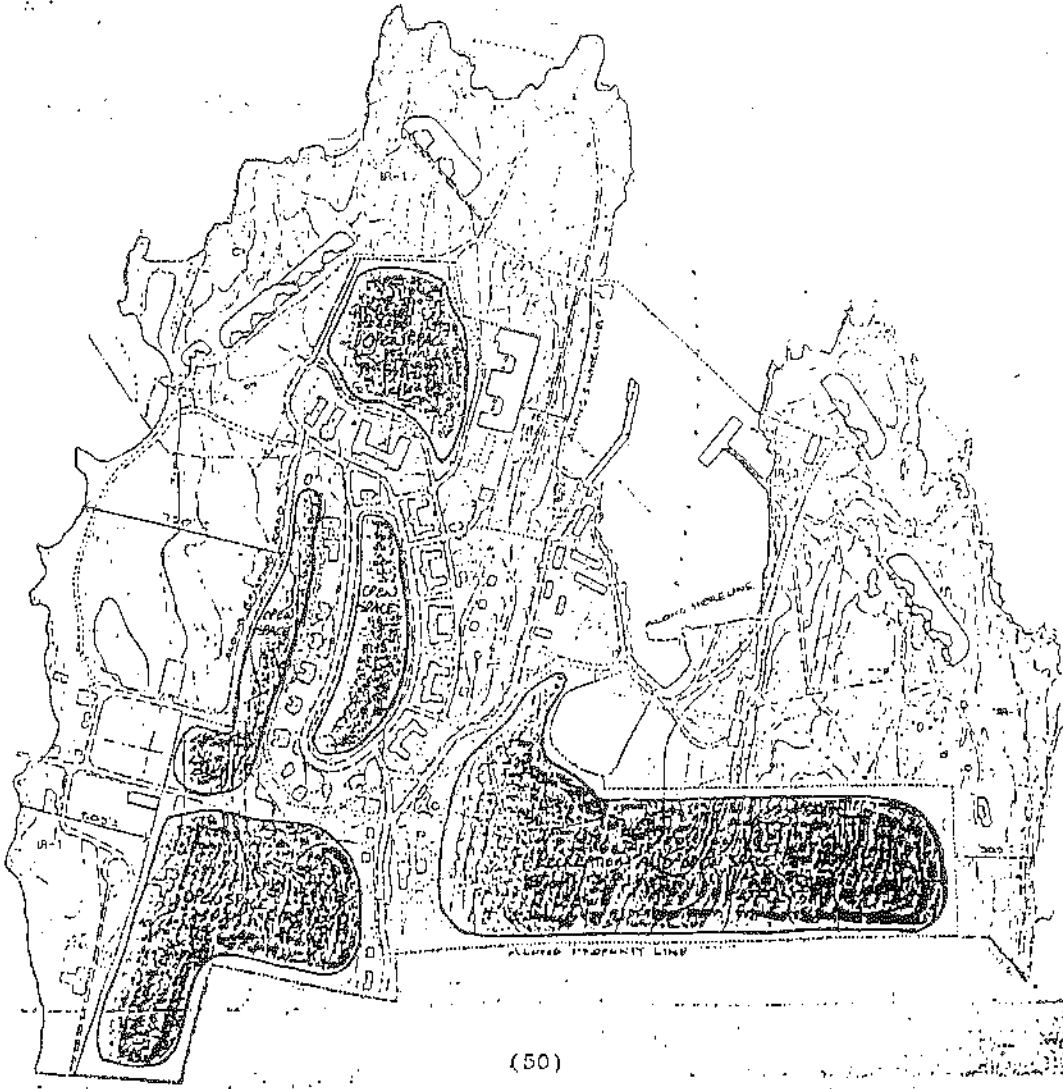
GREAT DIAMOND ISLAND
DEVELOPER: DICTAR ASSOCIATES

PORTLAND, MAH
PORTLAND, MAI

DICTAR ASSOCIATES
ARCHITECTS
1000 BROADWAY, PORTLAND, MAINE 04102
Telephone: 857-1111



DEDICATED OPEN SPACE



(50)

BK 8928 PG 0271

ANNEXMENT TO WOLFLEIGH CITY
CONF. SECTION 14-49 (ZONING
MAP) SECTION 14-49 (ZONING
MAP) RE: COMPLETION
REZONING OF FT. WOLFLEY

IN THE CITY COUNCIL

JUNE 12, 1985

Given a first reading. Public hearing held.

JUNE 24 - Public hearing held. Councilor Smith moved, seconded MacMillans 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 #88 dated July 15, 1985 is referred to this item. Titled Procs for Island Sub-division, it refers to this item.

SEAL

Jane Durgin

SEAL

Attest: *Jane Durgin*
City Clerk.

JANUARY 27, 1986

STATE OF MAINE
CUMBERLAND, ss.

Personally appeared the above-named Jane Durgin and
acknowledged the foregoing instrument to be her free
act and deed in her said capacity.

Emilie Carron
Emilie Carron

RECEIVED
RECORDS SECTION OF DEEDS
1989 SEP 28 PM 3:32
CUMBERLAND COUNTY

[Signature]



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

776 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04306
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, 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	<u>30 gpd</u>
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

PURCHASE AND SALE AGREEMENT

1. PARTIES. THE CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") agrees to sell and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer") agrees to buy, upon the terms and conditions hereafter set forth, the real estate described in paragraph 2 of this Agreement.

2. DESCRIPTION. The premises to which this Agreement applies consist of certain lots or parcels of land customarily known as The Hospital Building ("Building #19") and The Double Barracks ("Building #46") located at Fort McKinley, Great Diamond Island, Portland, Maine, together with all of the appurtenant rights thereto including any rights of way, easements, licenses and permits ("Premises"). The Premises shall also include the limited common areas surrounding the buildings as anticipated by the Diamond Cove Declaration of Covenants and Restrictions. The parcel of land relating to the Double Barracks is generally depicted on the site plan shown as Schedule A, attached hereto and made a part hereof, and is also described in deeds from McKinley Partners Limited Partnership dated May 2, 2001 and recorded in the Cumberland County Registry of Deeds in Book 16290, Pages 254 and 256. The Premises may be further delineated on a survey to be provided by the Buyer.

3. DEED. The Premises are to be conveyed by a quitclaim (release) deed, which deed shall convey good and clear record and marketable title to the Premises, free from all liens, encumbrances and tenancies, except utility easements which do not materially impair the value of the Premises.

4. CONSIDERATION. The consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged, is as follows:

- a. One Dollar (\$1.00) and other good and valuable consideration;
- b. Buyer shall proceed in good faith to prepare a development plan for the Premises which shall establish commercially viable buildings taxable by the Seller in the ordinary course ("Development Plan");
- c. The Development Plan shall be submitted to the Portland Planning Board for site plan approval which may, at the option of Buyer, be submitted in phases which would reflect the Buyer's intentions to proceed separately with a development of the Double Barracks and the Hospital;
- d. Buyer shall hold Seller harmless from and against any claims for assessments by the Diamond Cove Homeowners Association with respect to that real estate conveyed to the Buyer hereunder; and
- e. Seller shall waive any claims for real estate taxes or assessments accruing through the date when certificates of occupancy have been issued for each approved unit within the Development Plan.

5. TIME FOR PERFORMANCE/DELIVERY OF DEED. Such deed and any other transfer documents shall be delivered on a date and time specified by the Buyer not more than fourteen (14) days after the date of Buyer's notice to Seller at the offices of Buyer's attorneys, Drummond, Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104-5081 (the "Closing"). Buyer shall elect to proceed to closing on the Double Barracks by given written notice to Seller on or before a date that is no later than September 14, 2007 ("Double Barracks Exercise Date") or on the Hospital Building by giving written notice to Seller on or before a date that is no later than September 14, 2008 ("Hospital Exercise Date") provided that Seller and Buyer may consensually extend the Notices of Exercise on either pursuant to written agreement signed by both. If the Buyer fails to elect to exercise its rights to purchase either or both the Double Barracks or the Hospital Buildings for any reason other than a default by the Seller hereunder, neither party shall have any further rights or claims against the other and this Agreement shall terminate without further recourse.

6. BUYER'S CONTINGENCIES. In addition to such other conditions to Closing as may be set forth herein, the obligations of Buyer under this Agreement are subject to the following contingencies which are reserved solely for Buyer's benefit and may be waived by Buyer at any time:

- a. Approval of the Development Plan by the Diamond Cove Homeowners Association;
- b. Reasonable access to the Premises to confirm its condition and qualification for development;
- c. Receipt from the Seller of all engineering reports and physical inspections in the possession of Seller; and
- d. Seller shall be obligated to provide all of the information necessary to support the issuance of standard commercial title insurance covering the Premises in amounts as reasonably determined by Buyer. Such supporting information shall be provided in a timely manner as requested by the Buyer and shall apply to the period commencing upon the date which is the assessment date for the first real estate tax lien recorded against the Premises, and continuing to the date of Closing. Buyer shall be responsible for the standard commercial title insurance premium charges.

Seller and Buyer recognize that development issues may be identified in the contract phase of this Agreement requiring some amendment to the agreements expressed herein. Seller agrees that such modifications may be negotiated by its City Manager without the need for supplemental approval by the City Council.

7. TITLE CONFORMITY; EXTENSIONS; CONDITIONS. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of the Closing the Premises do not conform with the terms and conditions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be

extended for a period of thirty (30) days. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, Buyer may either declare the obligations of the parties hereto void and this agreement shall be without recourse by either of the parties hereto, or Buyer may elect to accept such title to the Premises in its then condition as Seller can deliver.

8. RISK OF LOSS. Until delivery of title to the Premises from Seller to Buyer, risk of loss or damage to Premises by fire or otherwise shall be on Seller.

9. ADJUSTMENTS. Water and sewer use charges, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned to Seller as of the Closing. Real estate transfer taxes due on the transfer will be paid in accordance with Maine law.

10. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may pursue all available remedies, including specific performance and reasonable attorney's fees. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller may also pursue its remedies in law or in equity, recognizing that Buyer's obligation to proceed to Closing for either the Double Barracks or the Hospital is entirely discretionary with Buyer.

11. NOTICES. Except as otherwise specifically provided herein, any notice, demand or other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the 2nd business day after mailing by first-class mail, registered or certified, return receipt requested, addressed to the party at the address set forth herein. Either party may change its address for purposes hereof by giving the other party notice of a new address.

If to Seller: Joseph E. Gray, City Manager
City of Portland, Maine
389 Congress Street
Portland, ME 04101

With a copy to: Mary Costigan
Associate Corporation Counsel
389 Congress Street
Portland, ME 04101

If to Buyer: Ronald N. Ward, Agent
The Inn At Diamond Cove, LLC
P.O. Box 9781
Portland, ME 04104

12. RECORDING. This Agreement or a memorandum thereof may, at the option of either party, be recorded in the Cumberland County Registry of Deeds at the expense of the recording party.

13. MISCELLANEOUS.

- a. Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original and such counterpart shall constitute one in the same instrument. This Agreement may be transmitted between the parties by facsimile and signatures appearing on faxed instruments shall be treated as original signatures.
- b. Assignment/Successors. The rights and obligations of Buyer may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- c. Entire Agreement/Amendment. Any and all prior and contemporaneous discussions, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement. This Agreement may not be modified, waived or amended except in writing assigned by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudicial thereto.
- d. Invalid or Unenforceable Terms. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of this Agreement shall be valid and be enforced to the fullest extent permitted by law. All paragraph headings in this Agreement are for convenience of reference only and have no independent legal significance. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates hereinafter set forth.

WITNESS:

CITY OF PORTLAND, MAINE

Linda Bean

By: Joseph E. King
Its: City of Portland

Date of Seller's acceptance of this Agreement:

~~May~~
~~April~~ 4, 2007

Linda Miller

THE INN AT DIAMOND COVE, LLC

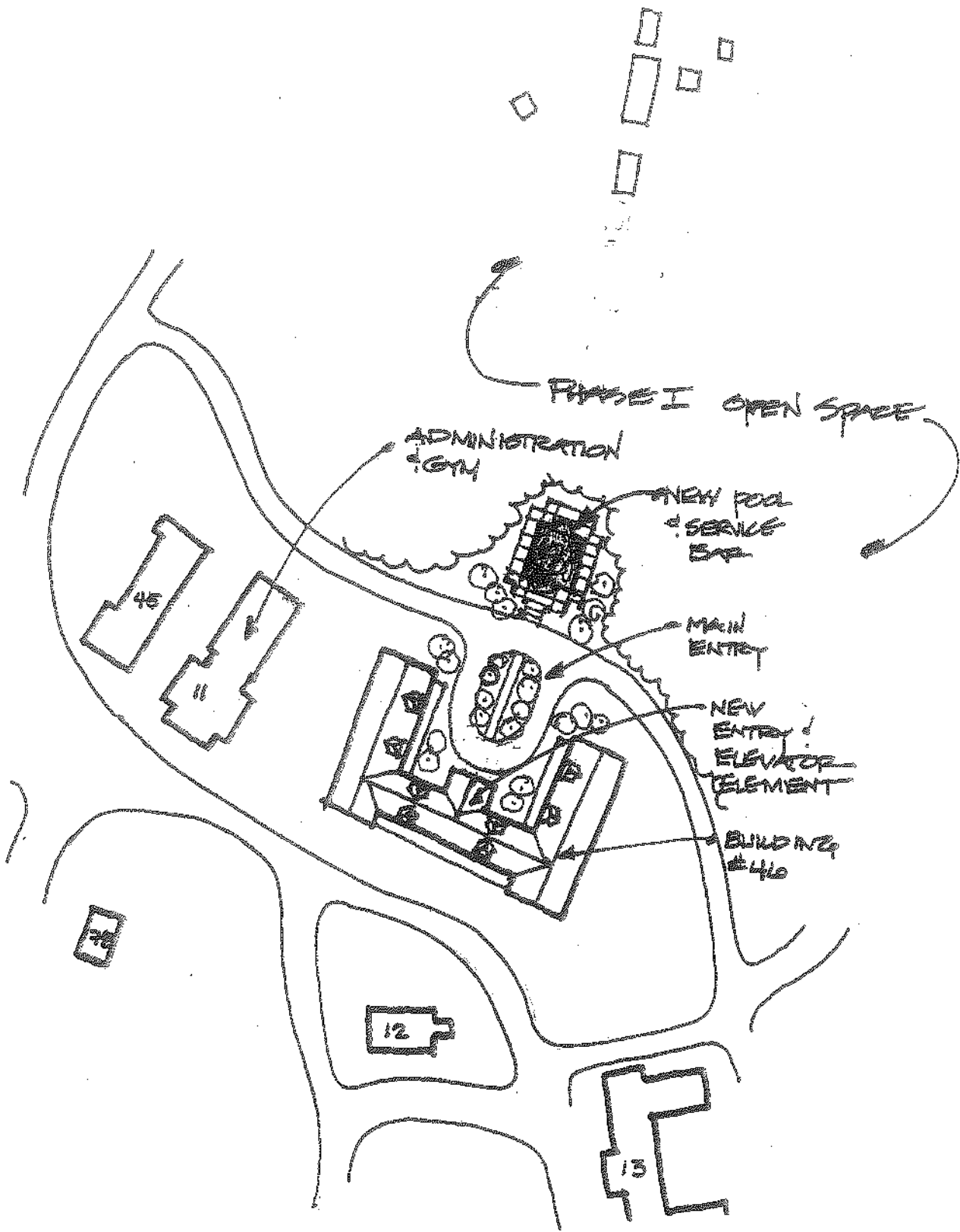
By: Ronald N. Ward
Its: Agent

Effective Date of this Agreement:

~~May~~
~~April~~ 4, 2007

Schedule A

[Description of the Premises]



SITE PLAN

2/10/67

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This AMENDMENT, made as of this 13th day of September, 2007 by and between the CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer"), as follows:

RECITALS:

1. Seller and Buyer are parties to a Purchase and Sale Agreement with respect to certain real estate located at Fort McKinley, Great Diamond Island, Portland, Maine, said Purchase and Sale Agreement being dated May 4, 2007 ("P&S").
2. Section 5 of the P&S requires Buyer's notice of election to proceed to acquire the subject premises, specifying September 14, 2007 for the Double Barracks and September 14, 2008 for the Hospital.
3. Buyer has determined that its anticipated Project will require supplemental approvals by the Portland Planning Board and/or Portland City Council which, in turn, will require the submission of the appropriate applications and supporting materials.
4. Buyer will not be able to secure development financing without final and complete administrative approvals, none of which can be accomplished before September 14, 2007.
5. Seller and Buyer are agreed that it is in the best interests of both for Buyer to continue to pursue its proposed development and to do so on the basis of extended time frames.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable considerations the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

AGREEMENTS:

1. The Double Barracks Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2008.
2. The Hospital Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2009.
3. Except as specifically amended herein, the terms of the P&S are hereby ratified and reaffirmed.

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 3.1.3 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 mortgages(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 slightly 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

Witness

By: Philip J. Guarino
Philip J. Guarino, its President

Witness

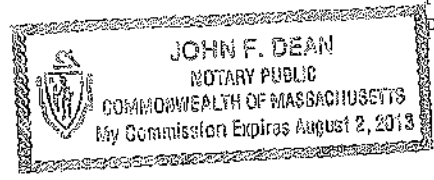
By: John Borge
John Borge, its Secretary

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

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Commonwealth of Massachusetts
Middletown, ss.
On this 13th day of August, 2007, before me,
the undersigned notary public, personally appeared
Philip J. Guarino
proved to me through satisfactory evidence of identification,
which were MAB, 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.

SEAL

Received
Recorded Registrar of Deeds
Aug 28 2007 02:19:02P
Cumberland County
Penala E. Lovley

Notary Public

Mr. Richard Knowland
April 29, 2008
Page 2

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.

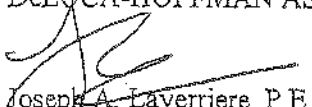
The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition 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.

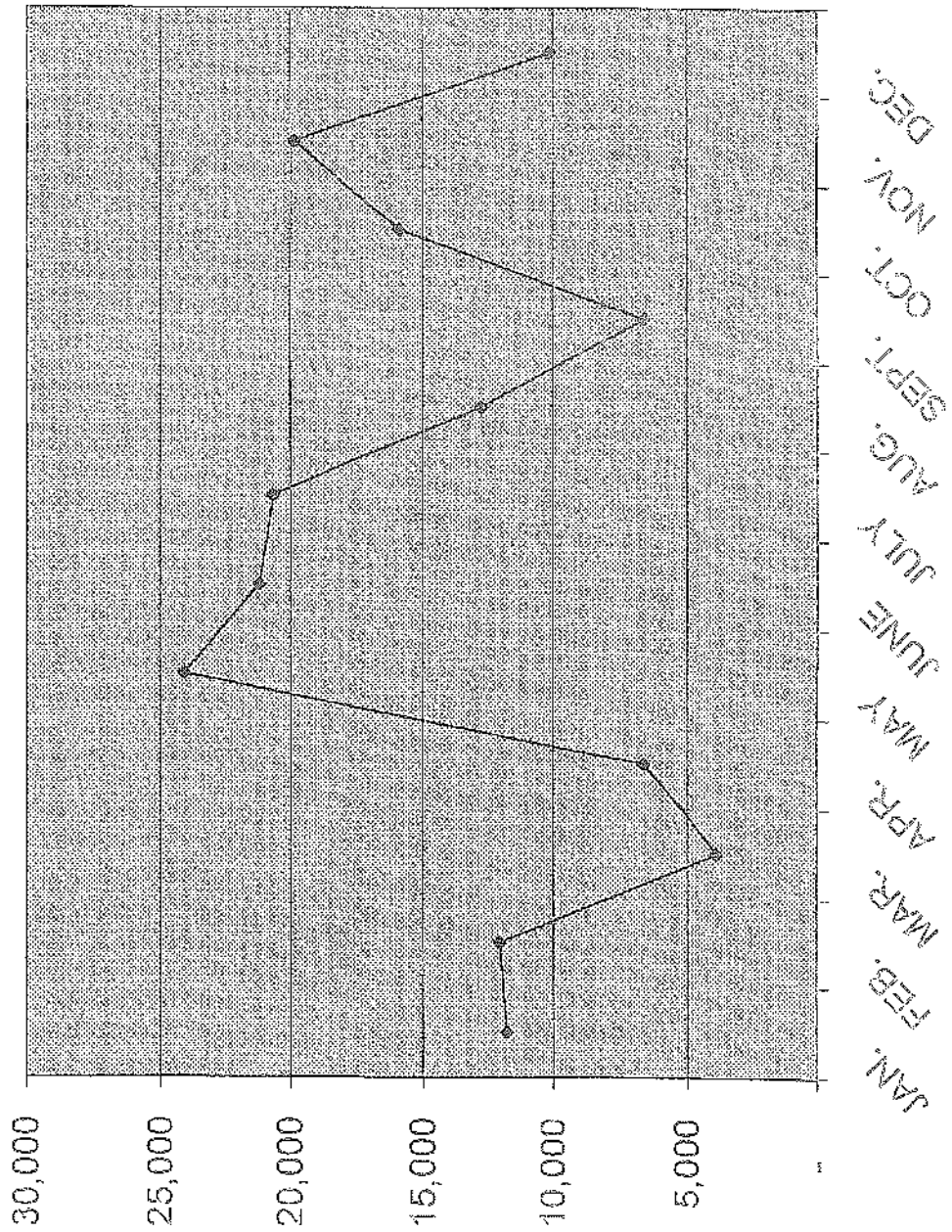

Joseph A. Laverriere, P.E.
Senior Engineer

JAL/sq/JN2769/Knowland-4-29-08

Attachments

C: David Bateman – The Inn at Diamond Cove, LLC

Diamond Cove Monthly ADF (gallons)



DIAMOND COVE
SANITARY SEWER FLOW RECORDS

JANUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		23,943
2		17,300
3		12,732
4		5,094
5		8,916
6		8,338
7		6,273
8		7,093
9		6,524
10		6,128
11		14,075
12		11,011
13		9,201
14	Y	23,946
15		19,155
16		13,632
17		11,795
18	Y	23,619
19		16,301
20		12,729
21		12,585
22		21,840
23		N/A
24		7,869
25		11,202
26		7,602
27		8,081
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		6,038
3	Y	41,970
4		40,529
5	Y	41,741
6		27,510
7		18,551
8		14,868
9		12,928
10		11,007
11		11,008
12		8,801
13		8,784
14		7,497
15		6,636
16		6,977
17		7,682
18		6,771
19		6,978
20		6,187
21		6,431
22		5,592
23		4,891
24		4,874
25		6,545
26		5,330
27		3,844
28		2,680

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		2,667
3		2,864
4		3,178
5		3,685
6		3,460
7		3,161
8		2,423
9		2,795
10	Y	2,989
11		3,088
12		2,787
13		3,963
14	Y	8,453
15		6,594
16		5,744
17		5,703
18		5,472
19		5,415
20		4,523
21		4,321
22		3,922
23		3,384
24		3,600
25		3,545
26		3,479
27		3,003
28		2,785
29		2,548
30		3,099
31		2,672

TOTAL MONTHLY FLOW	118,854 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	3,832 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		5,413
13	Y	6,437
14		7,284
15		7,450
16		6,713
17		6,664
18		5,432
19		4,936
20		3,523
21		3,872
22		5,198
23	Y	4,941
24	Y	6,303
25		2,950
26		3,605
27		3,650
28		5,021
29		6,066
30		4,574

TOTAL MONTHLY FLOW	198,855 GALLONS
TOTAL DAYS	30
AVERAGE DAILY FLOW	6,629 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	26,256
12	Y	54,843
13	Y	61,136
14	Y	37,800
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		13,948
25		13,051
26		11,272
27		11,232
28		13,820
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	36,839
4	Y	40,365
5		28,612
6		28,612
7	Y	17,353
8	Y	44,685
9		67,444
10	Y	46,094
11		56,675
12		33,883
13		27,332
14		17,044
15		17,395
16		16,030
17		13,489
18		10,180
19		10,372
20		10,853
21		8,645
22		10,019
23		10,161
24	Y	11,749
25		14,723
26		14,542
27		10,985
28	Y	10,254
29		9,083
30		12,800
31		12,311

TOTAL MONTHLY FLOW	694,496 GALLONS
TOTAL DAYS	30
AVERAGE DAILY FLOW	21,150 GALLONS

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DIAMOND COVE
SANITARY SEWER FLOW RECORDS

JULY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		13,225
2		15,915
3		14,361
4		12,875
5		11,871
6		11,015
7		12,674
8		14,476
9		13,111
10		9,075
11	Y	12,349
12		29,727
13	Y	44,492
14		28,553
15		26,711
16		20,975
17		18,769
18		15,611
19		13,615
20		15,545
21	Y	31,525
22		35,699
23	Y	35,716
24		30,364
25		22,194
26		21,371
27		20,387
28		25,863
29		24,604
30		19,933
31		18,459

TOTAL MONTHLY FLOW	625,941	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	20,211	GALLONS

AUGUST 2005

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		21,204
2		18,036
3		17,341
4		17,867
5		16,748
6		17,871
7		14,403
8		14,145
9		14,531
10		13,172
11		15,730
12		13,111
13		14,207
14		11,351
15	Y	13,340
16		10,242
17		18,971
18		4,296
19		13,761
20	Y	14,100
21		9,221
22		11,111
23		10,233
24		6,342
25		15,817
26		13,019
27		7,844
28	Y	7,623
29		5,594
30		7,314
31		6,165

TOTAL MONTHLY FLOW	396,699	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	12,794	GALLONS

SEPTEMBER 2005

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		7,086
2		8,563
3	Y	8,663
4		10,137
5		5,209
6		4,687
7		4,568
8		13,972
9		2,781
10		5,345
11		4,545
12		5,281
13		5,133
14		4,026
15		5,375
16		7,516
17		8,850
18		7,132
19		18,246
20		7,478
21		5,658
22		5,781
23	Y	4,484
24		5,422
25		5,422
26		5,422
27		4,310
28		5,891
29	Y	5,019
30		7,835

TOTAL MONTHLY FLOW	197,776	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,592	GALLONS

OCTOBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		5,268
2		7,223
3		7,066
4		6,462
5		3,920
6		6,048
7		5,627
8		4,369
9		4,833
10		2,874
11		17,263
12	Y	26,498
13		12,969
14		12,470
15		9,547
16		8,440
17		12,345
18		9,145
19		10,397
20	Y	31,103
21		27,606
22		25,704
23		19,054
24		12,004
25		14,696
26		12,322
27		16,193
28	Y	69,120
29		41,219
30		27,444
31		22,385

TOTAL MONTHLY FLOW	491,592	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	15,858	GALLONS

NOVEMBER 2005

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		16,283
2	Y	12,248
3		12,405
4		9,953
5		10,474
6		8,372
7		12,890
8	Y	43,530
9		58,945
10		26,115
11		31,206
12	Y	23,750
13	Y	32,203
14	Y	50,140
15		20,888
16	Y	24,945
17	Y	34,420
18		19,794
19		22,107
20		11,288
21		12,086
22		12,678
23		16,085
24		12,127
25		13,313
26		12,798
27		8,460
28		7,561
29	Y	6,981
30	Y	6,250

TOTAL MONTHLY FLOW	595,015	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	19,834	GALLONS

DECEMBER 2005

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1	Y	15,821
2		12,050
3		10,619
4		8,338
5		8,751
6		8,895
7		6,421
8		3,112
9		5,288
10		6,236
11	Y	5,704
12		5,704
13	Y	4,431
14		3,475
15	Y	4,726
16	Y	7,964
17		5,131
18		4,188
19		6,057
20		6,346
21		3,033
22	Y	5,136
23	Y	23,458
24		16,550
25		18,469
26		17,737
27		16,056
28		12,879
29		19,524
30		19,315
31		17,511

TOTAL MONTHLY FLOW	313,402	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	10,110	GALLONS

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street

www.dwmlaw.com

Post Office Box 9781

Portland, ME 04104-5081

ADMITTED IN ME ONLY

MEMORANDUM

TO: City of Portland Planning Department (Knowland)
 FROM: Ronald N. Ward
 RE: Ft. McKinley Settlement Agreement dated March 2, 1989
 DATE: May 19, 2008

At the initial workshop session for The Inn At Diamond Cove application on April 22, 2008, references were made by individuals announcing themselves as members of Diamond Island Association and Casco Bay Island Development Association to an agreement entered into by the former developer of the Ft. McKinley Project and their environmental groups. I researched our historical files on this development and found a single agreement which included either of these organizations, that being the Settlement Agreement dated April 12, 1991 which was joined by Casco Bay Island Development Association ("CBIDA"). I submitted that agreement with my prior memorandum dated April 29, 2008. The simple conclusion that I drew was that **the 1991 Agreement had no material bearing on the site plan review for the current Project.**

In anticipation of the Planning Board's workshop on May 13, 2008, another document was submitted by one of the Diamond Island Association members. That Agreement, a copy of which is attached hereto, was dated March 2, 1989 between the original developer, Diamond Cove Associates, and the environmental opposition, Maine Audubon Society, Conservation Law Foundation and Island Institute ("1989 Agreement").

The 1989 Agreement is even less relevant to the current site review than the 1991 Agreement, which at least included CBIDA. The 1989 Agreement deals with issues and conditions long since completed and in place. The primary issue in the 1989 Agreement is wastewater discharge and the location of the discharge pipe. It goes on to touch upon the issues of overall project density, motor vehicle access and design review, all of which have been recognized for years and are not issues in the current application.

- Daniel Amory*
- Harry R. Pringle*
- Richard A. Spencer*
- Gerald M. Zelin†
- Ronald N. Ward*
- David J. Backer*
- John S. Kaminski*
- William L. Plouffe*
- Jerrold A. Crouter*
- Michael E. High*
- Richard A. Shinay*
- Bruce W. Smith*
- Gary D. Vogel*
- E. William Stockmeyer*
- Benjamin E. Marcus*
- Melissa A. Hewey*†
- Eric R. Herlan*†
- Jeanne M. Kincaid*†
- Gregory W. Sample*
- Daniel J. Rose*†
- Kaighn Smith, Jr.*
- Dana J. Nathanson*
- Edward J. Kelleher*
- S. Campbell Badger*
- Melissa L. Ciley◊
- Amy K. Tchao*†
- David S. Sherman, Jr.*
- Robert P. Nadeau*
- Stephen C. Jordan*†
- Catherine D. Alexander*
- Brian D. Willing*
- John Lisnik, Jr.*†
- Aaron M. Pratt*†
- James C. Schwellenbach*†
- Elizabeth D. McEvoy*
- Jeffrey T. Piampiano*
- Peter C. Felinly*
- Jessica M. Emmons*
- Jonathan M. Goodman*
- Mika K. Reynolds*
- Abigail Greene Goldman*
- Amy J. Visentin*
- Sara S. Hellstedt*

Consultants

- Roger P. Kelley
Labor Relations &
Conflict Management
- Ann S. Chapman
Policy & Labor Relations
- Christopher P. O'Neil
Governmental Affairs
- Michael J. Opuda Ph.D.
Special Education

Of Counsel

- Harold E. Woodsum, Jr.*
- Hugh G. E. MacMahon*
- Joseph L. DeLafield III*
- Robert L. Gips*
- Donald A. Kopp*

* Admitted in Maine
 † Admitted in New Hampshire
 ◊ Admitted in Missouri



May 19, 2008

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While the arguments of Diamond Island Association and CBIDA were unclear from the public testimony, the inference which they appeared to deliver was that their organizations were somehow required to approve the current site application before it could be considered finally approved.

We find nothing in the 1989 or 1991 Agreements to support a conclusion that any of the parties to those Agreements have any standing to demand their specific approval before the current site plan application may be finally approved. The current Project is located entirely within Phase I of the historic development and has no impacts upon scenic vistas. All of the certifications for historic rehabilitation are either in place or are in process. The current Project does not propose to change or challenge any of the existing Agreements, it intends to abide by all Agreements, including those with the original environmental opposition, as those may have been amended over the intervening years. Diamond Island Association and CBIDA, through authorized spokespeople, clearly have the right to appear and state their views, but there is no record evidence that they have any veto power over the regulatory agencies.

With respect to review by the Maine DEP, the current approval process will include DEP review, particularly with respect to wastewater discharge.

RNW:kjl

Enclosure

cc: The Inn At Diamond Cove
Penny Littell, Esq.

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

1-11-89

the right to amend its DEP waste discharge license and the NPDES permit, as drafted or as finally issued, to provide for comingling 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.

D. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATVs etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances and designated "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. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will seek an amendment to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones.

2. DCA agrees that persons owning property on Great Diamond Island may walk to Diamond Cove and around the parade ground area. No access shall be granted until after construction is completed around the parade ground area. Guests of Island property owners shall also have this permission if they are accompanied by Island property owners or if they have been registered in advance by Island property owners. This provision shall be included in the Declaration of Covenants and Restrictions. All persons entering the property shall do so at their own risk and shall sign a release so indicating.

E. Design Review Process

1. DCA agrees that a violation of the Design Review Guidelines shall be a violation of a condition of the Site Location Order.

2. DCA agrees that no variance or waiver of conditions in the Design Review Guidelines shall be final until approved by the DEP. (The parties agree that this shall only be effective if accepted by the DEP.) DCA agrees to work with Maine Audubon Society to draft stringent variance criteria.

3. DCA agrees that the previous two provisions shall become part of the Declaration of Covenants and Restrictions and further agrees that conditions concerning scenic impacts which have been imposed by the City of Portland Planning Board and which may be imposed by the DEP shall also become part of the Declaration of Covenants and Restrictions.

4. DCA agrees to work with Maine Audubon Society to amend the Design Review Guidelines in accordance with certain changes proposed by Holly Dominic in her written comments to Maine Audubon Society dated November 7, 1988.

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 14th day of March, 1989.

DIAMOND COVE ASSOCIATES

By: *David Bateman*
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: *Karin R. Tilberg*
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: *Richard S. Emmet*
Attorney

ISLAND INSTITUTE

By: *Philip Conkling*
Philip Conkling
Executive Director

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" (~~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. 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.

DEP
RET

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

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street
Post Office Box 9781
Portland, ME 04104-5081

www.dwmlaw.com

ADMITTED IN ME ONLY

MEMORANDUM

- Daniel Amory*
- Harry R. Pringle*
- Richard A. Spencer*
- Gerald M. Zelin†
- Ronald N. Ward*
- David J. Becker*
- John S. Kaminski*
- William L. Plouffe*
- Jerrold A. Crouser*
- Michael E. High*
- Richard A. Shiner†
- Bruce W. Smith*
- Gary D. Vogel*
- E. William Stockmeyer*
- Benjamin E. Marcus*
- Melissa A. Hewey†
- Eric R. Herlan**
- Jeanne M. Kincaid†
- Gregory W. Sample*
- Daniel J. Rose**
- Keighn Smith, Jr.*
- Deine J. Nathanson*
- Edward J. Keleher*
- S. Campbell Badger*
- Melissa L. Giley◊
- Amy K. Tchao**
- David S. Sherman, Jr.*
- Robert P. Nadeau**
- Stephen C. Jordan**
- Catherine D. Alexander*
- Brian D. Willing*
- John Lisnik, Jr.**
- Aaron M. Pratt**
- James C. Schwelienbach**
- Elizabeth D. McEvoy*
- Jeffrey T. Piampiano*
- Peter C. Felmy*
- Jessica M. Emmons*
- Jonathan M. Goodman*
- Mike K. Reynolds*
- Abigail Greene Goldman*
- Amy J. Visentin*
- Sara S. Hellstedt*

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.

Consultants

Roger P. Kelley
 Labor Relations &
 Conflict Management

Ann S. Chapman
 Policy & Labor Relations

Christopher P. O'Neil
 Governmental Affairs

Michael J. Opuda Ph.D.
 Special Education

Of Counsel

Harold E. Woodsum, Jr.*
 Hugh G. E. MacMahon*
 Joseph L. DeLafelle III*
 Robert L. Gips*
 Donald A. Kopp*

* Admitted In Maine
 † Admitted In New Hampshire
 ◊ Admitted in Missouri

RNW:kjl
 Enclosure

any and all issues that may arise during these in consideration by the DEP, SEP 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.

3/10/89

DIAMOND LOVE ASSOCIATES
By: [Signature]
Richard Johnson, Partner

MAINE AUDUBON SOCIETY

By: [Signature]
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION

By: _____
Attorney

March 9, 1989

ISLAND INSTITUTE

By: [Signature]
Philip Conkling
Director