



Planning & Urban Development Department

*Jeff Levine, AICP, Director**Ann Machado, Zoning Administrator*

July 9, 2015

Three Palms Design Build, LLC
c/o Vincent Mona
16 Running Tide Road
Cape Elizabeth, ME 04107

Re: Northern Half of House Island - 110-A-001-001 (the "Property") - I-B Island Business Zone with a Shoreland Overlay

Dear Mr. Mona,

This letter is in response to the actions that you have taken on your property that are in violation of the City of Portland's Land Use Ordinance. The Property is located in the I-B zone and almost entirely within the Shoreland Zone. § 14-449(c)(4)(a) outlines what is allowed regarding the cutting or removal of vegetation within seventy-five feet of the highest annual tide or upland edge of a coastal wetland. In this section vegetation is defined as "all live trees, shrubs and other plants including without limitation, trees both over and under 4 inches in diameter measured at 4 ½ feet above ground level". § 14-449(c)(4)(a)(iii) also states "existing vegetation under three (3) feet in height and other groundcover, including leaf litter and the forest duff layer, shall not be cut". You are allowed to maintain legally existing nonconforming cleared openings, but you are not allowed to enlarge such areas.

I made a site visit on June 29, 2015 with Jennifer Harris and Michael Morse from the Maine Department of Environmental Protection to determine if clearing had taken place within the seventy-five foot setback of the Shoreland Zone. We observed that clearing of vegetation had taken place within this zone. We identified five cleared areas of particular concern. Three are located on the east side of the Property and two are located on the west side of the Property (Exhibit A). Area 1 measured approximately 45' long x 56' deep; area 2 measured approximately 270' long x 65' deep, area 3 measured approximately 40' long x 20' deep, area 4 could not be measured easily but it was even with the cove heading north towards an existing opening; and area 5 measured approximately 200' long x 20' deep. Within area 3 we found the stumps of ten trees that had been cut. We did not take pictures of area 1, but I have included pictures of areas 2-5 (Exhibit B).

When we spoke to you at the conclusion of our site visit you told us that you were only reseeding what "had been cleared by the previous owner". You told us that you purchased the Property on October 1, 2014. A Google Earth aerial photo of the Property taken on September 27, 2014 (Exhibit C) shows the vegetation that existed when you purchased the Property which was subsequently cleared. You have since admitted in an email to Jennifer Harris (Exhibit D) that you did clear the areas but that it was the



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invasive plant (black swallowwort). Any clearing without permission is not allowed and native species like bayberry and sumac also were cleared.

You need to bring the Property into compliance. To achieve this you will need to replant the areas that were cleared within the seventy-five foot buffer strip of the Shoreland Zone. You have thirty days from the date of this letter to submit a Site Plan Application to the Planning and Urban Development Department. As part of the Site Plan Application, you will need to provide a stamped survey that shows all site features. The seventy five foot setback from the highest annual tide must be located as well as the existing planted areas and the cleared areas including any stumps. You also need to submit a planting plan that shows the number and type of plants that you are planting in the cleared areas. These plants must be native species. I have included a DEP Information Sheet titled "Guidelines for Restoration Plan for Shoreland Clearing Violations" (Exhibit E). Your actions, and failure to bring your property into compliance are violations of City Code, for which the City may fine you from \$50-\$500 a day for each day you fail to comply. At this point the City is not seeking fines for your violation. However, if you fail to submit a Site Plan Application within 30 days, and fail to bring the Property into compliance, the City will begin assessing fines against you.

You have the right to appeal my decision concerning this matter. If you wish to exercise your right to appeal, you have thirty days from the dated of this letter in which to appeal. If you choose to file an appeal, please contact this office for the necessary paperwork.

Please feel free to contact me with any questions.

Yours truly,

A handwritten signature in black ink, appearing to read "Ann B. Machado".

Ann B. Machado

Zoning Administrator

Planning and Urban Development Department

City of Portland Maine

amachado@portlandmaine.gov

207.874.8709

Cc. Jeff Levine, Director of Planning and Urban Development
Barbara Barhydt, Development Review Services Manager
Michael Morse, Maine Department of Environmental Protection
Jennifer Harris, Maine Department of Environmental Protection
Corporation Counsel