

400-D-3  
Ray Street  
Faulbrook Woods  
Faulbrook Inc.

on Spreadsheet

**CITY OF PORTLAND, MAINE**  
**SITE PLAN REVIEW**  
**Processing Form**

*Planning Dept*

August 11, 1992  
 Date

Fallbrook, Inc.  
 Applicant *c/o Steven Guthrie*  
 167 Bayside Rd Ptld, ME 04102  
 Mailing Address  
 Boarding Health Care Facility  
 Proposed Use of Site *(Fallbrook Woods)*  
 13.33 acres /  
 Acreage of Site / Ground Floor Coverage

*off Bay St (& Allen Ave.)*  
 Address of Proposed Site  
 400-D-003, 400-F-001  
 Site Identifier(s) from Assessors Maps  
 R-3  
 Zoning of Proposed Site

Site Location Review (DEP) Required: ( ) Yes ( ) No Proposed Number of Floors 1  
 Board of Appeals Action Required: ( ) Yes ( ) No Total Floor Area \_\_\_\_\_  
 Planning Board Action Required: ( ) Yes ( ) No

Other Comments: *contact person: David Haynes 772-9392 (Land Use Consultants)*

Date Dept. Review Due: \_\_\_\_\_

*Major Site Plan Review & Subdivision review (2 lots)  
 (& conditional use appeal)*

**PLANNING DEPARTMENT REVIEW**

*4/2/93*  
 (Date Received)

- Major Development — Requires Planning Board Approval: Review Initiated
- Minor Development — Staff Review Below

	LOADING AREA	PARKING	CIRCULATION PATTERN	ACCESS	PEDESTRIAN WALKWAYS	SCREENING	LANDSCAPING	SPACE & BULK OF STRUCTURES	LIGHTING	CONFLICT WITH CITY PROJECTS	FINANCIAL CAPACITY	CHANGE IN SITE PLAN
APPROVED	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
APPROVED CONDITIONALLY						* *	* *					
DISAPPROVED												

REASONS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Attach Separate Sheet if Necessary)

*there had been conditions attached to dumpster screening & landscaping - final plan submitted 3/12 satisfies these conditions*

*Deborah G. Anderson*  
 SIGNATURE OF REVIEWING STAFF/DATE



LAND USE CONSULTANTS INC

J. David Haynes, R.L.A.  
David A. Kamila, P.E.  
Bradley H. Hare, R.L.A.  
Frederic Licht, Jr., P.E.  
John D. Roberts, P.L.S.

September 15, 1992

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

Attention: Deborah Andrews

Fallbrook Woods, Off Ray Street, Portland, Maine

Dear Board Members:

On behalf of Fallbrook, Inc., we forward herein a Site Plan Review submission for the Fallbrook Woods healthcare boarding facility located off Ray Street on Merrymeeting Drive. The enclosed plan and technical documentation have been prepared in accordance with Chapter 14, Portland Land Use Ordinance, Article V, Sections 14-521 through 14-540, Site Plan. Also, with this submission, we are seeking Conditional Use approval for development of an intermediate care facility in an R-3 zone as specified under Article III, Section 14-78 Conditional Use.

Plans and technical documentation submitted as a part of this application are as follows:

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## LAND USE CONSULTANTS INC

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- 13) Erosion and Sedimentation Control Report, prepared by Land Use Consultants, Inc., dated 9/15/92.

### Background

Fallbrook Woods is to be developed on the remaining undeveloped 122.64 acre site of the Fallbrook Condominiums. The original project known as Ray Street Town Homes contemplated construction of 98 dwelling units and was approved by the Planning Board for the Liberty Group, Inc. on September 10, 1985. Rights to develop the project were subsequently conveyed to Merrymeeting Developers, Inc. with revised Site Plan and PRUD approvals from the Planning Board on November 10, 1987. In November of 1988, Merrymeeting Developers, which was at that time experiencing financial difficulties, conveyed their rights in the project to MM II Real Estate Corporation, a subsidiary of Maine Savings Bank. MM II, or MERREAL as it was later known, then contracted with R. Risbara Construction Co., Inc. to complete construction of Phase I. Of the 32 condominium townhouses approved, 25 are completed and occupied, 3 remain unfinished, and rights to develop the last 4 have been acquired by the present applicant. Fallbrook Inc. expects to give up its right to construct the last 4 units contingent upon State and local approval to develop the proposed boarding healthcare facility.

## LAND USE CONSULTANTS INC

Planning Board approvals required by Fallbrook, Inc. to construct this project include Site Plan and Conditional Use as well as a new Recording Plat for filing at the CCRD to supersede the prior sectional recording approved May 1990. Approvals from the Department of Environmental Protection include a Transfer of Permit and an Amended Site Location of Development. Also, a Nationwide 26 filing to alter less than an acre of wetlands will be submitted to the Army Corp of Engineers.

### Project Description

Fallbrook Inc. proposes to construct a single story boarding healthcare facility for the elderly called Fallbrook Woods. Lot coverage including building, paving and roads is 1.49 acres or 11.8 percent of the 12.64 acre site. The 27,600 sq. ft. building is triangular in plan with a central open landscaped courtyard. The 28-room facility is designed for both single or double bed occupancy as need may dictate. It is anticipated that ten (10) staff personnel will operate and maintain the facility during the day with fewer personnel at night. The main entry is located in the center of the front side with a reception area, office, lounge, laundry, library, kitchen and other common facilities flanking. Residents rooms are located within the other two sides of the triangular building. A dining/activity room, nurses station, as lounge are located at the three corners.

### Access vs. Parking

Access to the facility is from Ray Street over Merrymeeting Drive, a private way. Merrymeeting Drive, a 24-foot paved road, will be extended approximately 450 feet from its current length of 580 feet (1030 ft. total). In addition, a 16-foot wide gravel road for emergency access will be constructed from Ray Street, opposite Nevada Avenue, around the rear of the building to the end of Merrymeeting Drive.

Vehicles will enter the site from Merrymeeting Drive via a one-way looped driveway with an entrance drop-off area. Short service drives are provided to each end of the building. Perpendicular parking for 21 cars is provided off the entry loop and the service drives with 3 of the spaces adjacent to the front entry designated for handicapped use.

### Utilities

- 1) Water: Water service will be provided by extending the existing 8 inch main in Merrymeeting Drive to the end of the proposed road extension. At this point, a hydrant will be installed adjacent to the road and a service lead will be

LAND USE CONSULTANTS INC

run to the mechanical room at the southwest corner of the building. This service will be used for domestic water as well as to charge the building's sprinkler system.

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- 3) Telephone, Electric, CATV: These services will be extended underground from existing services along Merrymeeting Road to the end of new road construction. From here underground service leads will be run to the building mechanical room.
- 4) Sanitary Service: An existing combined sanitary/stormwater line extends up Ray Street between Jersey and Nevada Avenues, terminating with a manhole and 12 inch V.C. stub.

The existing Fallbrook condominiums utilize a gravity system exiting the units and discharging to a pump station on the northeast side of the property. From here the wastewater is pumped to a gravity sewer in Allen Avenue via an easement across land now or formerly of Libby.

To service this project, we propose to extend the Ray Street sewer to a point opposite the proposed emergency access road. From here a gravity service lead will be extended along the emergency access road to the rear of the building.

- 5) Storm Water: The proposed site encompasses portions of two separate watersheds. The first watershed drains westerly toward the abutting "Residences" condominium project into an existing culvert.

The second watershed encompasses the southern portion of the proposed healthcare facility and remaining site. This watershed drains via an existing intermittent stream toward the corners of Ray Street and Florida Avenue. At this point it discharges into the combined sanitary/stormwater system in Ray Street via a 10 inch CMP inlet.

The majority of the developed run-off will be diverted into the combined system in Ray Street. Detention basins will be utilized to regulate post-development peak flows to pre-development levels. Unlike the prior stormwater designs, detention basins will be situated outside a wetland areas consistent with current environmental standards. Reference is made to the stormwater Management and Wetland Delineation Reports submitted herein.

LAND USE CONSULTANTS INC

Financial and Technical Capability

Fallbrook, Inc. is headed by principals Stephen Guthrie and Robert Feeney. This team is experienced and qualified to offer healthcare services. Steve Guthrie is a professional financial consultant and Vice President with Shearson Lehman Brothers in Portland. Bob Feeney is an experienced healthcare professional being Administrator and an owner of Falmouth Manor, a residential care facility for the elderly, located on Winn Road, Falmouth.

Fallbrook, Inc. has engaged Land Use Consultant, Inc. and Architectural Design Concepts, Inc. to meet technical requirements of the project. LUC is responsible for site engineering and permitting with ADC providing building design and construction administration services.

Estimated project cost is \$1,500,000, which is to be financed through the Maine Health and Higher Education Facility Authority. Assuming timely approvals from the City and DEP, construction is expected to start in late fall 1992 with completion in late spring 1993.

We trust the contents of this submission meet the City's requirements for Site Plan Review. In that regard, we look forward to a workshop meeting with the Board on September 29, 1992. In the meantime, please feel free to call with questions or for follow-up information if required.

Very truly yours,



J. David Haynes  
President

JDH:lm

Enclosures:

cc: Mr. Robert Feeney  
Mr. Stephen Guthrie  
Mr. George Razoyk, Architect

CITY OF PORTLAND, MAINE  
M E M O R A N D U M

**TO:** Chair and Members of the Planning Board  
**FROM:** Natalie L. Burns, Associate Corporation Counsel  
**DATE:** September 5, 1990  
**RE:** Fallbrook Sectional Recording

At the public hearing on this matter, the Board raised an issue concerning the proposal for approval of a sectional recording. The applicant has stated that it wishes to have a phased approval for this development in order to replace the current performance guarantee with a separate guarantee for each phase as it is developed. The Board was concerned about the possible need for a vacation of the previously approved recording plat before the performance guarantee for the entire project could be returned.

As a preliminary matter, it should be noted that the process for vacation of subdivision plats is created through section 14-496(4) of the Portland City Code. There is no subdivision vacation process established by state statute. The primary purposes of the ordinance are to undo the previous approval, thereby returning the land to its previous state, and to clarify the title in the undeveloped land. The ordinance makes specific provision for the passage of title in vacated streets, alleys and public easements to the owners of lots which abut the dedicated areas. In addition, the vacation extinguishes all public rights in such areas. The vacation order must be filed in the Registry of Deeds in order to provide notice to subsequent purchasers. Any person who has already purchased property in the subdivision must sign the document vacating the subdivision. This process closely follows the state statute concerning the vacation of public streets, 23 M.R.S.A. §3027.

The concerns raised by this application relate in part to the timing of an approval for phasing of a subdivision which has already posted a performance guarantee and which has already commenced construction of one or more of the phases. This procedure has been utilized in two previous subdivisions, Parsons Pond and Appleledge. Both of those projects, like this one, involved approved PRUD's which had posted guarantees for the entire development, or for a larger phase. While Parsons Pond also sought a revision to the previously approved plan which resulted in a reduction of the number of units that would ultimately be built, Appleledge sought a rephasing that reduced the number of units to be built in some of the phases, but retained the same of number of units overall in the final project. Once the sectional recording has been approved, the



City holds the recording plat indicating the phased approval until the applicant posts the required performance guarantees for the phase or phases which are to be developed next or which are currently being developed. The previous performance guarantee is also held by the City until the new guarantees are posted.

In addition to the City process for sectional recordings, state law requires that the planning board review revisions or amendments to approved subdivisions and that the register of deeds indicate on the original recording plat that it has been superseded. This requirement ensures that subsequent purchasers of property within a subdivision will know about changes to the original approval.

Vacation was not recommended for this project since the applicant has indicated its desire to complete the project, probably through sale to a developer after completion of the first phase. If the applicant or a successor to the applicant decides to use the land for a different purpose, vacation will be required at that time. Since there are no streets that are dedicated for use of the public, a vacation order would extinguish the rights of owners of units within the development in the vacated areas, unless another agreement has been made as part of the condominium documents.

The Board also raised a question concerning the effect bankruptcy would have upon the letter of credit. The letter of credit is an agreement between the bank and the City that the bank will pay amounts to the City if the public improvements are not completed as approved. According to 11 U.S.C.A. §109, a bank cannot be a creditor and therefore does not undergo the bankruptcy procedures set forth in federal law. Instead, control of the bank passes to a federal agency, which assumes the obligations of the bank. In addition, these obligations are insured in much the same fashion that deposits are. Even if the developer, a wholly owned subsidiary of the bank, is subject to federal bankruptcy laws, payment to the bank for a letter of credit is not likely to be set aside as a preferential transfer because the letter of credit does not qualify as "a transfer of property of the debtor to or for the benefit of a creditor... for or on account of an antecedent debt owed by the debtor before such transfer was made." 11 U.S.C.A. §547. The letter of credit is more appropriately viewed as a contemporaneous exchange that is in payment of a debt incurred in the ordinary course of business or financial affairs of the company contracting for the letter of credit, since the letter of credit is required by the City before building permits can be issued. This type of transfer is not regarded as a preferential transfer and for that reason cannot be avoided by a trustee in bankruptcy.

*Natalie L. Burns*

Natalie L. Burns  
Associate Corporation Counsel

CITY OF PORTLAND

February 2, 1990

Chris Goucher  
Maine Savings Bank  
One Maine Savings Plaza  
Portland, Maine 04101

Re: Fallbrook Condominium, Letter of Credit #12888-1

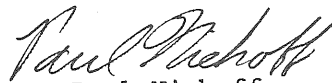
Dear Mr. Goucher:

I am sure you are aware the completion date in the Letter of Credit for the Fallbrook Condominium (formally - Ray Street, Planned Unit Development) was February 1, 1990. Obviously, in light of the market conditions the project has not been completed as originally approved by the Planning Board.

We have not received any correspondence (to my knowledge) since Rocco C. Risbara's letter of October 30, 1989. At that time, I explained to the Risbara's that we could not reduce the Letter of Credit because the entire project had been approved as one phase and guaranteed as such.

The City would like to be informed as to the Bank's status regarding revisions, phasing, etc., of the project. Please contact Richard Henry or myself as soon as possible, so we may clarify the situation. I can be reached at 874-8838.

Sincerely,

  
W. Paul Niehoff  
Materials Engineer

WPN/bjm

pc: R. Bruce Ringrose, City Engineer

✓ Richard Henry, Planning

Rocco C. Risbara, Jr., Risbara Construction Co., Inc.  
197 U.S. Route 1,  
P.O. Box 485  
Scarborough, Maine 04074

Edward A. Dox, Assistant Vice President  
Maine Savings

**MERREAL**  


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**Corporation**  


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August 22, 1990

Mr. Richard Henry  
 Portland Planning Department  
 City Hall  
 389 Congress Street  
 Portland, Maine 04101

Re: Fallbrook Sectional Recording

Dear Rich:

At the July 31, 1990 Planning Board workshop on Merreal's sectional recording request at Fallbrook, several questions were raised regarding the impact of the sectional recording on the existing homeowner's association. This letter will address those questions.

For the Board's information, attached please find a copy of the revised Public Offering Statement, revised to reflect the change of ownership. At the outset, please note that the Condominium Declaration has not been amended since it was first recorded other than to reflect the addition of certain units to the condominium as units were built and declared as part of Phase I.

In order to answer the Board's questions, I have indicated the question posed and the answer below:

1. How many units will there be in each phase?

Assuming that units 29-32 are moved into Phase IV as requested, the phasing will be as follows:

Phase	# Units	% of Total
I	28	28.57%
II	30	30.61%
III	20	20.41%
IV	20	20.41%
	-----	-----
	98 units	100%

2. When will the existing homeowners be able to assume control of the Association?

**MERREAL**  
**Corporation**

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Richard Henry  
August 22, 1990  
Page 2

Pursuant to Section 9.3 of the Declaration, the Declarant (Merreal) has the right to appoint and remove members to the Board of Directors, thereby exercising effective control of the Association, until the earlier of: i) five years after the date of conveyance of the first unit (in this case, 4/21/94); or ii) 60 days from the date of conveyance of 75% of the units which are or may be declared (in this case, after the sale of the 74th unit (.75 x 98 = 74)). If Phases II - IV are not constructed, the homeowners would assume control of the Association no later than 4/21/94.

3. How will the future phases merge with Phase I?


Pursuant to Article 8 of the Declaration, the Declarant reserved the right to add up to 88 additional units to the condominium. Pursuant to this authority, should the Declarant add units to the condominium in Phase II, those unit owners would become part of the Association. As required by the Declaration, a budget would be established for the entire Association and dues allocated accordingly. As such, the two construction phases would "merge" from a technical perspective into one Association although they would be separated by a future phase (Phase IV). This aspect of the development has not changed since the original approvals were granted.

4. What happens if other phases are not constructed?

Pursuant to Article 8 of the Declaration, the Declarant reserved certain development rights including, as was pointed out above, the right to add units to the condominium. Article 8 further provides that these development rights must be exercised, if at all, within 7 years of the date of Declaration. Unless the development period were extended, which would require a unanimous vote of the unit owners, these development rights would be lost. At that point, the Declarant would lose his/her right to add those units to the condominium and the land would either lie dormant or be put to some other permitted use. If Phases II - IV are not completed or declared within this 7 year period, the Association would continue to exist and would be made up entirely of unit owners in Phase I.

I believe that this answers all of the questions regarding the Association raised by the Planning Board at the July 31st workshop. If you have any additional questions, please feel free to contact either myself or Patricia Harrington at Land Use Consultants.

Sincerely,



Jeffrey A. Nathanson  
Senior Asset Manager

Enclosure

cc: Patricia Harrington



LAND USE CONSULTANTS INC

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David A. Kamila, P.E.  
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Very truly yours,



J. David Haynes  
President

JDH:lm

Enclosures:

cc: Mr. Robert Feeney  
Mr. Stephen Guthrie  
Mr. George Razoyk, Architect

QUITCLAIM DEED  
WITH COVENANT

KNOW ALL MEN BY THESE PRESENTS that MERREAL CORP., a corporation organized and existing under the laws of the State of Delaware, formerly named MM II Real Estate Corporation, and with a place of business at Portland, in the County of Cumberland and State of Maine, for consideration paid, hereby grants to FALLBROOK, INC., a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105, with Quitclaim Covenants, certain real estate situated in Portland, County of Cumberland and State of Maine, more particularly bounded and described as follows:

A certain parcel of land situated Westerly of Ray Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the southeasterly corner of Fallbrook, a Condominium at a point on the Westerly sideline of land now or formerly of John N. Jr. and Glennis E. Fitzpatrick (Book 2773, page 224);

Thence, S 13°-05'-20" E by the land of Fitzpatrick 110.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 76°-54'-40" E by the land of Fitzpatrick 256.90 feet to a point on the Westerly sideline of Ray Street marked by 5/8" iron rod set;

Thence, S 16°-25'-15" E by the sideline of Ray Street 1.42 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Ivan G. and Edwina F. Callahan (Book 2997, page 486);

Thence, S 73°-34'-45" W by the land of Callahan 220.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 16°-25'-15" E by the land of Callahan 65.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 73°-34'-45" E by the land of Callahan 100.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Malcolm A. and Gail E. McDonald (Book 3614, page 219);

Thence, S 18°-02'-05" E by the land of McDonald 163.18 feet to a point marked by a 5/8" iron rod set;

Thence, N 74°25'-15" E by the land of McDonald 120.00 feet to a point on the Westerly sideline of Ray Street marked by a 5/8" iron rod set;

Thence, S 18°-35'-45" E by the sideline of Ray Street 47.17 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Donald A. and Evelyn Thompson (Book 2892, page 451);

Thence, S 71°-24'-15" W by the land of Thompson 150.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 18°-35'-45" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 71°-24'-15" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Richard E. and Carolyn Grover (Book 2895, page 492);

Thence, S 18°-35'-45" E by the land of Grover and by the land now or formerly of Raymond A. and Florence M. Sevigny (Book 2490, page 327) 72.78 feet to a point marked by a 5/8" iron rod set;

Thence, S 17°-48'-10" E by the land of Sevigny and by the lands now or formerly of Gladys A. and Kenneth V. Moody (Book 3471, page 62), Betty L. Denbow (Book 2682, page 313), Anna J. Aiken (Book 3570, page 212), David A. and Carolyn J. Matthews (Book 4483, page 163), Laura H. Clark (Book 3708, page 194), and George and Doris Castonia (Book 4960, page 286) 333.24 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Frances F. Gatchell (Book 6257, page 342);

Thence, S 71°-28'-30" W by the land of Gatchell 51.09 feet to a point marked by a 5/8" iron rod set;

Thence, S 67°-57'-00" W by the land of Gatchell and lands now or formerly of Eleanor L. and Sherry Sapko, Charles E. and Linda J. Foshay (Book 3920, page 212), Linwood J. and Ruth L. Thaxter, Charles L. Arey (Book 2320, page 55), Dorothy M. and Richard M. Butler (Book 3765, page 177), Norman C. and Caroline M. Walton (Book 2014, page 140), James P. and Lula S. Cullen (Book 2044, page 474), and Glenda R. and Roger R. Pushor (Book 4755, page 44) 481.12 feet to a point marked by a 5/8" iron rod set;

Thence, S 54°-20'-55" W by the land of Pushor 29.58 feet to a point marked by a 5/8" iron rod set;

Thence, S 45°-14'-05" W by the land now or formerly of Claire D. and Edward L. Gulick (Book 3782, page 285) and by the land now or formerly of John H. and Jeannette B. Graer (Book 2824, page 131) 186.45 feet to a stone wall intersection and the end of Wadco Street;

Thence, N 01°-01'-00" W by a stonewall 7.90 feet to the Northeasterly sideline of Wadco Street;

Thence, N 37°-18'-55" W by the sideline of Wadco Street 165.51 feet to a point marked by a 5/8" iron rod set at the Easterly sideline of Ash Street;

Thence, N 01°-28'-55" W by the sideline of Ash Street 100.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Diane M. and Richard C. Hayes (Book 3615, page 161);

Thence, N 88°-31'-05" E by the land of Hayes 98.80 feet to a stonewall;

Thence, N 01°-01'-00" W by the land of Hayes, the land now or formerly of Bertha C. Judkins, by the end of Topsham Street, and by the land now or formerly of David F. Marshall (Book 4804, page 317) 169.17 feet to a 1" iron pipe found;

Thence, N 01°-26'-15" W by the land of Marshall 125.00 feet;

Thence, S 80°-04'-05" W by the land of Marshall 100.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 01°-09'-05" E by the land of Marshall 125.00 feet to a 1" iron pipe found at the Northeast corner of the land now or formerly of Bertha C. Judkins;

Thence, S 81°-21'-30" W by the land of Judkins 56.91 feet to a 1/4" iron rod found at the Southeast corner of the land now or formerly of F. S. Plummer Co. (Book 6869, page 110);

Thence, N 07°-34'-10" E by land of F. S. Plummer Co. 592.31 feet;

Thence, S 63°-29'-00" E by Fallbrook, a Condominium 190.24 feet to a point;

Thence, N 76°-54'-40" E by Fallbrook, a Condominium 156.98 feet to the point of beginning.

Also those easements and rights, in common with others, which are described in the below referenced documents:

(1) Easements from George and Doris Castonia dated December 20, 1985, recorded in the Cumberland County Registry of Deeds at Book 7036, Page 92;

(2) Easements from Calvin L. and Myrtle W. Gailey, dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 96;

(3) Easement from Francis Frances F. Gatchell dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 100; and

(4) Easement to the City of Portland for a turn-around at the terminus of Topsham Street and other matters shown on the Plat of Fallbrook, a Condominium, recorded in the Cumberland County Registry of Deeds in Plan Book 178, Page 66.

Meaning and intending to describe a portion of the premises conveyed to MM II Real Estate Corporation (now Merreal Corp.) by Deed of Merrymeeting Developers, Inc. dated November 29, 1988 and recorded in said Registry of Deeds in Book 8572, Page 280.

Also, an easement for all purposes in common with others over, under and along the 50 foot wide right of way shown on the Plat of Fallbrook, a Condominium, recorded in the Cumberland County Registry of Deeds in Plan Book 178, Page 66 and reserved in the Declaration of Fallbrook Condominium dated April 20, 1989 and recorded in said Registry of Deeds in Book 8730, Page 206.

Reference is hereby made to a Certificate of Amendment of Certificate of Incorporation of MM II Real Estate Corporation dated February 27, 1989 and filed with the Office of Secretary of State for the State of Delaware, a copy of which is recorded in said Registry of Deeds; and to a Deed from Merrymeeting Developers, Inc. to MM II Real Estate Corporation dated November 29, 1988 and recorded in said Registry of Deeds in Book 8572, Page 280.

IN WITNESS WHEREOF, the said MERREAL CORP. has caused this instrument to be sealed with its corporate seal and signed in its corporate name by JEFFREY M. DIGGINS, its VICE PRESIDENT thereunto duly authorized, this 20 day of December, 1991.

WITNESS:

MERREAL CORP.

Debra Manning

By: [Signature]  
Its VICE PRESIDENT

STATE OF MAINE  
CUMBERLAND, SS.

December 20, 1991

Personally appeared the above-named JEFFREY M. DIGGINS, VICE PRESIDENT of said Grantor Corporation, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Corporation.

Before me,

Debra A. Manning  
Notary Public/Attorney at Law

DEBRA A. MANNING  
NOTARY PUBLIC  
EXPIRES 06/30/1993

Print Name: \_\_\_\_\_

DAR01340

**WETLAND DELINEATION  
OF THE RAY STREET DEVELOPMENT  
IN PORTLAND, MAINE**

Submitted To:

Bill Walsh  
LAND USE CONSULTANTS  
One India Street  
Portland, Maine 04101

Submitted By:

Merridith B. Molloy  
Senior Biologist  
ECO-ANALYSTS, INC.  
P.O. Box 224  
Bath, ME 04530

September 11, 1992



**ECO-ANALYSTS INC.**  
Environmental Consultants

## 1.0 INTRODUCTION

ECO-ANALYSTS, INC. delineated wetlands in August 1992 off Ray Street in Portland, Maine at the request of Land Use Consultants. Wetland delineation is necessitated in order to comply with federal law: Section 404 of the Clean Water Act; and state law: the Natural Resources Protection Act (NRPA), and the Site Location of Development Act.

## 2.0 METHODOLOGY

### 2.1 DEFINITION OF A WETLAND

As defined by the Corps of Engineers (ACE) (Fed. Register 1982) and Environmental Protection Agency (EPA) (Fed. Register 1980) a wetland is:

"Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

By this definition, soils, vegetation, and hydrology are all important considerations in wetland delineation. This multi-parameter approach is outlined in Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987).





## 2.2 HYDRIC SOILS

Hydric soils are defined as:

"Soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation" (USDA SCS 1985, as amended by the National Technical Committee for Hydric Soils (NTCHS) in December 1986).

In the field, soils are cored to a depth of 20 inches to identify the soil texture, color and presence of mottling. Soil colors are determined using the Munsell Soil Color Charts (Kollmorgan Instrument Corporation 1988). The drainage class of the soil is determined from this information according to "Guidelines for Soil Drainage Class Determination" (U.S. Army Corps of Engineers, New England Division Operational Draft August 1, 1991).

The criteria for hydric soils, as outlined in the manual, are as follows:

- a. "All Histosols except Folists;
- b. Soils in Aquic suborders, Aquic subgroups, Albolls suborder, Salorthids great group, or Pell great groups of Vertisols that are:
  - (1) Somewhat poorly drained and have a water table less than 0.5 ft from the surface for a significant period (usually a week or more) during the growing season, or
  - (2) Poorly drained or very poorly drained and have either:

- (a) A water table less than 1.0 ft. from the surface for a significant period (usually a week or more) during the growing season if permeability is equal to or greater than 6.0 in/hr. in all layers within 20 inches; or
- (b) A water table at less than 1.5 ft. from the surface for a significant period (usually a week or more) during the growing season if permeability is less than 6.0 in/hr. in any layer within 20 inches; or
- c. Soils that are ponded for long or very long duration during the growing season; or
- d. Soils that are frequently flooded for long duration or very long duration during the growing season."

### 2.3 WETLAND VEGETATION

The Maine listing of the National Wetlands Inventory (NWI) (Reed 1988) is used to determine the prevalence of hydrophytic species, i.e., those typically adapted to saturated soil conditions. This publication lists wetland plant species and ranks them by their frequency of occurrence in wetlands. The frequency rankings are as follows:

- a.) obligate (occurring in wetlands over 99%) (OBL)
- b.) facultative wetland (occurring in wetlands 67-99%)  
(FACW)
- c.) facultative (occurring in wetlands 34-66%) (FAC)
- d.) facultative upland (occurring in wetlands 1-33%) (FACU)
- e.) nonwetland (occurring in wetlands less than 1%) (UPL)

The criteria for wetland vegetation is met when the prevalence (over 50%) of the dominant species present are ranked in the obligate, facultative wetland or facultative categories. Plants rated FAC- are not considered hydrophytic according to the 1987 manual. Bryophytes (mosses and liverworts) are considered during our vegetative analysis, although they are not included on this list as they are not vascular plants. A companion list of bryophytes is forthcoming from the NWI. Gleason and Cronquist (1963) and Gleason (1952) and various other keys are used for taxonomic identification. Nomenclature is according to Reed (1988).

Many plant species have morphological, physiological and reproductive adaptations for occurrence in wetlands. Some of the morphological adaptations include buttressed tree trunks; adventitious roots; shallow root systems; inflated leaves, stems or roots; polymorphic leaves; floating leaves or stems; hypertrophied lenticels; and multitrunks or stooling.

In the field we document the vegetation in the wetland and adjacent upland according to the wetland delineation dataform (Version 24 Aug. 91). A maximum of (5) dominant species are recorded from up to six vegetative strata. The six vegetative strata, or layers, are trees; lianas; saplings; shrubs; seedlings and herbs; and mosses and liverworts. The woody overstory (trees and lianas) are observed in a 30 foot radius plot. Trees are greater than or equal to 5 inches in diameter at breast height (dbh) and 20 or more feet in height. Lianas are woody vines which

