

Order 173-15/16

Passage as an Emergency: 7-0 (Mavodones, Duson absent) on 3/7/2016

Effective 3/7/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING EASEMENT
FROM GREAT DIAMOND ISLAND HOMEOWNERS ASSOCIATION**

ORDERED, that an easement from Great Diamond Island Homeowners Association on portions of its land adjacent to leased land for a Transfer Station is hereby accepted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager, the Finance Director or their designee is hereby authorized to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order; and

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and to not delay the construction of the Great Diamond Island Transfer Station.

EASEMENT DEED

THIS EASEMENT DEED is delivered by **DIAMOND COVE HOMEOWNERS ASSOCIATION**, a Maine not-for-profit corporation with a mailing address of c/o Foreside Real Estate Management, 76 Elm Street, Portland, Maine 04101 ("Grantor"), and accepted by the **CITY OF PORTLAND**, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 ("City").

WHEREAS, Grantor and City have entered into a Lease Agreement for Transfer Station dated April 17, 2014, as amended by First Amendment dated September 30, 2014 and Second Amendment of even date herewith (as amended, the "Lease"), regarding a solid waste transfer and recycling facility to be constructed and operated by the City at certain leased "Premises" on Great Diamond Island in Portland, Maine and more particularly described in the Lease;

WHEREAS, the Portland Planning Authority gave Level II site plan approval of said solid waste transfer and recycling facility on May 28, 2015 (the "Planning Approval"), including approval of a final Site Plan prepared by Sebago Technics and last revised May 26, 2015 (the "Site Plan");

WHEREAS, in approving said facility, the Maine Department of Environmental Protection gave a Site Location of Development Act Minor Approval dated November 5, 2014, and also a Solid Waste License dated May 8, 2015 (collectively, the "DEP Approvals");

WHEREAS, in connection with said facility and consistent with the Planning Approval and the DEP Approvals, the City will install a stormwater filtration system, certain tree plantings and landscaping, and certain road paving, all located adjacent to but outside of the leased Premises; and

WHEREAS, Grantor has agreed to grant an easement for such purposes;

NOW THEREFORE, Grantor does hereby remise and release and forever quitclaim to the City the certain nonexclusive easements and rights of way described below, and on, under and over the real property as shown on plan attached hereto as Exhibit A, which is incorporated herein by reference.

Easement Area 1:

An easement and right of way below, on, under, and over the real property marked as "Easement Area 1" on Exhibit A for the following purposes: to install and perpetually maintain an underdrained soil filter with all necessary fixtures and appurtenances for conveying storm water and to lay, relay, replace, repair, maintain, clean and remove said filter with all necessary fixtures and appurtenances; to trim, cut down and remove trees, bushes, and other vegetation of all kinds, to remove debris and deposits of any kind and to alter and re-grade the contours of said Easement Area 1 to be consistent with the Site Plan and to such extent as in the sole judgment of the City is necessary or appropriate for any of the above purposes; and to enter upon said Easement Area 1 at any and all times for any of the foregoing purposes. Reserving to the Grantor and its successors and assigns the use and enjoyment of said Easement Area 1 and for such purposes only as will not unreasonably interfere temporarily or otherwise with the use thereof by the City, its successors and assigns for the purpose above mentioned, provided that no building or any kind of permanent structure, including, but not limited to, walls and fences, shall be erected on said easement area by the Grantor, its successors or assigns; and that the Grantor, its successors and assigns shall not remove earth from said easement without the written permission of the Grantee, its successors and assigns.

Easement Area 2:

An easement and right of way below, on, under, and over the real property marked as "Easement Area 2" on Exhibit A for the following purposes: to construct and perpetually maintain a paved driveway within Easement Area 2 for the purpose of accessing the transfer station depicted on Exhibit A and to lay, relay, replace, repair, and maintain said driveway; to plant, maintain, and replace trees along said driveway as generally depicted in "Easement Area 2" on Exhibit A; to trim, cut down and remove trees, bushes, and other vegetation of all kinds, to remove debris and deposits of any kind and to alter and re-grade the contours of said Easement Area 2 to be consistent with the Site Plan and to such extent as in the sole judgment of the City is necessary or appropriate for any of the above purposes; and to enter upon said Easement Area 2 at any and all times for any of the foregoing purposes. Reserving to the Grantor and its successors and assigns the use and enjoyment of said Easement Area 2 and for such purposes only as will not unreasonably interfere temporarily or otherwise with the use thereof by the City, its successors and assigns for the purpose above mentioned.

The foregoing easement rights are granted and accepted on the following terms and conditions:

1. Term; Assignment. This Easement shall be coterminous with the Lease, and shall automatically expire and terminate upon the expiration or termination of the Lease. Upon expiration or termination of the Lease, the City, its successors or assigns shall, upon the

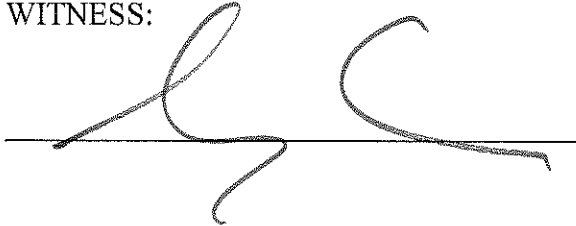
written request of Grantor, its successors or assigns, execute an affidavit in recordable form indicating that the rights under this Easement have been extinguished and that this Easement is of no further effect. The City's interest in this Easement may not be assigned separately from its interest in the Lease.

2. Use and Maintenance by City. The City shall install, maintain and replace (as necessary), during the term of this Easement, the landscaping elements, the visual screening, the stormwater filtration system, and the road paving within the easement areas as shown on the Site Plan, and shall maintain the easement areas in a responsible, clean and orderly manner and in compliance with the DEP Approvals, the Planning Approval, the DCHA Declaration (as defined in the Lease), and applicable laws, rules and regulations. The City shall use the easement areas solely in connection with the development, construction (including landscaping) and maintenance of the transfer station facility on the leased Premises in accordance with the Lease, but the easement areas may not be used by the City for any purposes other than as specifically set forth in this Easement. Without limiting the generality of the foregoing:
 - a. no trash compaction, recycling services, or storage of trash or materials may be conducted within the easement areas;
 - b. the City will not knowingly or intentionally store or process hazardous waste on the easement areas;
 - c. the City will not be permitted to build any improvements on the easement areas, other than those shown on the Site Plan ;
 - d. there shall be no parking, or staging or storage of equipment on the easement areas;
and
 - e. the general public (non-Diamond Cove residents) shall not be allowed by the City to have access to the easement areas.
3. Default. Any default by the City in the performance of any of the terms, covenants, agreements or conditions herein shall be deemed a default by the City under the Lease.


SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the said Diamond Cove Homeowners Association has hereunto caused this instrument to be signed by Matthew Hoffner, its Director and President, duly authorized, and delivered as of the 14th day of October, 2015.

WITNESS:



DIAMOND COVE HOMEOWNERS ASSOCIATION



Name: Matthew Hoffner
Its Director and President

STATE OF MAINE
CUMBERLAND, ss.

October 14, 2015

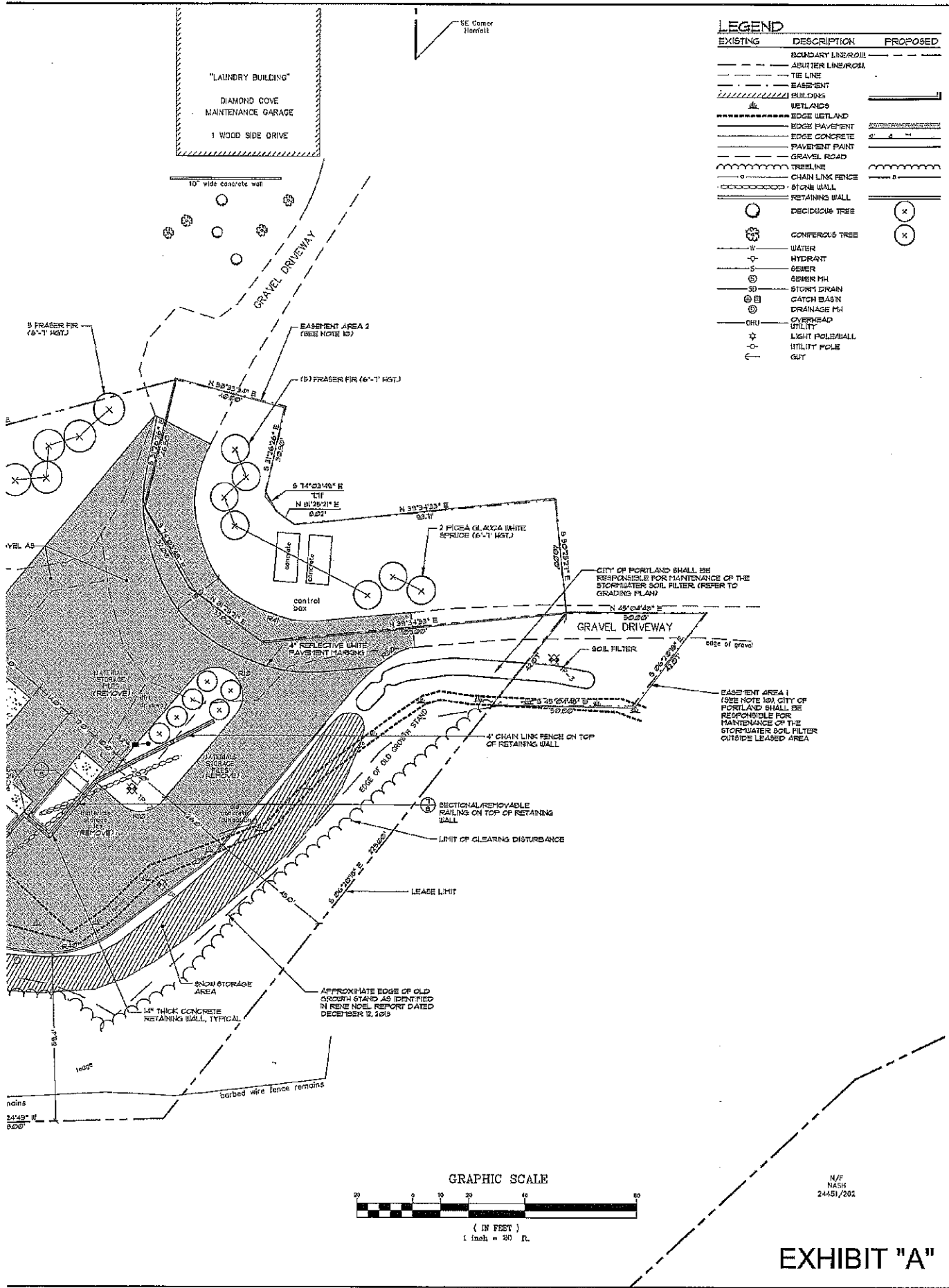
Personally appeared the above-named, Matthew Hoffner, in his capacity as Director and President of Diamond Cove Homeowners Association, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Diamond Cove Homeowners Association.

Before me,


Notary Public/Attorney **JUDE A. CLUFF**
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 27, 2020

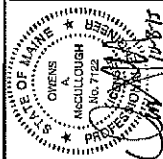
Print Name

Exhibit A



LEGEND

EXISTING	DESCRIPTION	PROPOSED
---	BOUNDARY LINE/ROLL	---
---	ADJUTER LINE/ROLL	---
---	TIE LINE	---
---	EASEMENT	---
---	BUILDINGS	---
---	WETLANDS	---
---	EDGE WETLAND	---
---	EDGE PAVEMENT	---
---	EDGE CONCRETE	---
---	PAVEMENT PAINT	---
---	GRAVEL ROAD	---
---	TREELINE	---
---	CHAIN LINK FENCE	---
---	STONE WALL	---
---	RETAINING WALL	---
○	DECIDUOUS TREE	○
⊗	CONIFEROUS TREE	⊗
⊕	WATER	⊕
⊖	HYDRANT	⊖
⊗	SEWER	⊗
⊙	SEWER MH	⊙
⊚	STORM DRAIN	⊚
⊛	CATCH BASIN	⊛
⊜	DRAINAGE MH	⊜
⊝	OVERHEAD UTILITY	⊝
⊞	LIGHT POLE/WALL	⊞
⊟	UTILITY POLE	⊟
⊠	GUY	⊠



DATE	BY	STATUS
10-18-15	ISSUED AS EXHIBIT "A"	
05-26-15	RESUBMITTED TO CITY	
3-2-15	RECEIVED PER PLANNING STAFF REVIEW	
10-27-14	RECEIVED TO CHECK LIGHTING FEATURE LOCATIONS	
09-5-14	SUBMITTED TO DEP	
08-18-14	ISSUED FOR PRELIMINARY REVIEW	
02-05-14	ISSUED FOR CLIENT REVIEW	

SEBAGO TECHNICAL SERVICES
 WWW.SEBOGOTECHNICAL.COM
 75 Main Street, Suite 100, Portland, ME 04101
 Tel: 207-763-5458
 Fax: 207-763-5459

PROJECT NO. | FIELD BOOK | DESIGN | CHECK | DRAWN
 05405 | | CAM | CAM | BAR

SITE PLAN
 OF:
GREAT DIAMOND ISLAND TRANSFER AND RECYCLING FACILITY
 PORTLAND, MAINE
 FOR:
CITY OF PORTLAND
 55 PORTLAND STREET
 PORTLAND, MAINE 04101

DATE: 01-29-14 SCALE: 1" = 20'

SHEET 2 OF 9

EXHIBIT "A"