

Order 184-13/14

Passage: 8-0 (Suslovic absent) on 4/7/2014

Effective 4/17/2014

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

**ORDER APPROVING LEASE AGREEMENT FOR TRANSFER STATION BY
AND BETWEEN CITY OF PORTLAND AND
DIAMOND COVE HOMEOWNERS ASSOCIATION**

ORDERED, that the Lease Agreement for a Transfer Station by and between City of Portland and Diamond Cove Homeowners Association is hereby approved in substantially the form attached hereto as Attachment 1; and

BE IT FURTHER ORDERED, that the City Manager is authorized to execute the Lease Agreement and any other related documents necessary or convenient to carry out the intent of said Agreement.

**LEASE AGREEMENT
FOR TRANSFER STATION
BY AND BETWEEN
CITY OF PORTLAND AND
DIAMOND COVE HOMEOWNERS ASSOCIATION**

THIS LEASE AGREEMENT (hereinafter this “**Agreement**”) is made as of this _____ day of February, 2014, by and between the **CITY OF PORTLAND**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "**CITY**") and **DIAMOND COVE HOMEOWNERS ASSOCIATION**, a Maine not-for-profit corporation doing business on Great Diamond Island, Maine (hereinafter "**LESSOR**").

W I T N E S S E T H:

That **LESSOR**, for and in consideration of the rent hereinafter to be paid by **CITY**, and other consideration, and the covenants and agreements hereinafter contained, to be kept and performed by **CITY**, does hereby demise, lease and let unto **CITY**, the property located at or near the ‘laundry building’ on Great Diamond Island in Portland, Maine and more particularly described in Exhibit A (hereinafter the "**PREMISES**"), to have and to hold unto said **CITY** on the following terms and conditions:

1. Term and Renewal; Commencement Date

A. The initial term of this Agreement shall begin on the Commencement Date (as hereinafter defined), and shall continue until midnight on the last day of the calendar month containing the twentieth (20th) anniversary of the Commencement Date, unless sooner terminated by either party as provided herein. This Agreement shall renew automatically for four (4) additional 20-year terms, unless either party gives the other notice of non-renewal at least 30 days before such end of the 20-year term. The grounds for non-renewal shall be the same as the grounds for termination, set out in Section 18 of this Agreement; but in addition, however, if the **CITY** fails to substantially complete the construction of a transfer station facility on the **PREMISES** in accordance with the Final Site Plan and the Final Construction Plans, each as hereinafter defined, by **February 28, 2015**, or said transfer station facility is not operational by

May 30, 2015, this Agreement shall then be automatically and immediately terminated as of that date.

B. As used herein, the “**Commencement Date**” shall mean the date on which the last of the following events shall have occurred: (i) the date on which **CITY** shall obtain site plan approval by the Portland Planning Board of the Final Site Plan (the “**Planning Board Approval**”); (ii) the date on which **CITY** shall obtain an a Portland City Council order amending the 1985 Amendment Re: Conditional Rezoning of Ft. McKinley, to allow for the proposed transfer station facility as depicted on the Final Site Plan (the “**City Council Order**”); and (iii) the date on which **CITY** shall obtain the 2014 DEP Site Location Order, as hereinafter defined in Section 7(A) below. In the event the Commencement Date shall not occur by *October 1, 2014*, this Agreement shall then be automatically and immediately terminated as of that date.

2. Rent

From and after the Commencement Date, **CITY** agrees to pay to **LESSOR** as rent for such use and occupancy of the **PREMISES** the sum of One Dollar (\$1.00) per year, payable in advance. This is a ‘net lease’, that is, the costs of constructing and operating the transfer station facility shall be borne solely by **CITY**. **CITY** will pay any fees related to the improvements which are the transfer station facility, including but not limited to permit fees, and all costs of utility services necessary for the operation of the transfer station facility. **CITY** will not pay any real estate taxes on the **PREMISES**, but shall be responsible for any taxes or assessments on the building or improvements constructed by **CITY** at the **PREMISES**.

3. Purposes

(A) **CITY** shall use the **PREMISES** solely for the development, construction (including landscaping) and maintenance of a transfer station facility to provide trash compaction, recycling services, and short term storage of trash and materials to be recycled, within the screened improvements to be built on the **PREMISES**. Only trash and materials to be recycled that have been generated on Great Diamond Island or Little Diamond Island will be so processed at said transfer station facility. **CITY** will not knowingly or intentionally store or process hazardous waste on the **PREMISES**. **CITY** will not be permitted to build any improvements on the **PREMISES** other than those shown on the Final Site Plan and Final Construction Plans for this transfer station facility .

(B) There shall be no parking on the **PREMISES** unless related or incident to the trash processing and recycling, and then not overnight. There shall be no staging or storage of equipment on the **PREMISES** unless related or incident to the trash processing and recycling, and then only very short term.

(C) Subject to (i) the construction of the transfer station facility in accordance with the Final Site Plan and the Final Construction Plans and the conduct of the operation of said transfer station facility in accordance with this Agreement, and (ii) **CITY**’s obtaining the 2014 DEP Site Location Order, **LESSOR** represents to **CITY** that such purposes are permitted under the private regulation of the **PREMISES** set forth in the 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 and amended (hereinafter the “**DCHA Declaration**”).

4. Access

Appurtenant to the **CITY**'s leasehold of the **PREMISES**, **CITY** shall have a nonexclusive right to access the **PREMISES** from the “Lower Gate” and from the existing Diamond Cove Barge Landing, over the most direct, existing roadways, subject to the rules attached hereto as Exhibit C. **CITY** will repair any damage it causes to such defined access ways; and in addition, will provide limited annual general maintenance to such ways, such by as spreading several loads of gravel on said (gravel) ways, annually.

5. Site Plan and Facility Operation

CITY covenants and agrees:

A. that a plan of the Premises, as well as a preliminary site plan of the transfer station facility, not-yet approved by the Portland Planning Board or Planning Board staff, are attached to this Agreement as Exhibit B (hereinafter collectively, the “**Preliminary Site Plan**”);

B. that the transfer station facility will be constructed in accord with the Final Site Plan and the Final Construction Plans, including, but not limited to, the landscaping elements of such Plans, and the visual screening and any fencing elements of said Plans;

C. that in the event the **CITY** proposes to revise the Preliminary Site Plan, the **CITY** will provide **LESSOR** with a preliminary draft of the proposed revision; and in the event the proposed revision is material (as determined by City Corporation Counsel in its reasonable discretion), the **CITY** will incorporate any suggestions received by the **CITY** from **LESSOR** that are determined by **LESSOR** to be necessary for its representation in Section 3.C above and are received by **CITY** within 30 days of mailing such revision to **LESSOR**, provided that in the event such suggested changes cannot be made by the **CITY** reasonably cost effectively, or are in conflict with any requirements for the Planning Board Approval, the City Council Order, the 2014 DEP Site Location Order, or other required approvals for the transfer station facility, the parties will work in good faith to revise the Preliminary Site Plan to meet both of their respective needs; the Preliminary Site Plan (with any modifications not deemed material as determined by City Corporation Counsel in its reasonable discretion) or a revised version of it that is approved by the parties pursuant to this Section shall constitute the “**Final Site Plan**”, and the Final Site Plan is hereby incorporated by reference herein and Exhibit B shall be deemed revised accordingly;

D. that **CITY** will prepare and submit to **LESSOR** proposed construction plans for the transfer station facility and **CITY** will incorporate any suggestions made by **LESSOR** that are determined by **LESSOR** to be necessary for its representation in Section 3.C above and are received by **CITY** within 30 days of mailing of said proposed construction plans to **LESSOR**, provided that in the event such suggested changes cannot be made by **CITY** reasonably cost effectively, or are in conflict with any requirements for the Planning Board Approval, the City

Council Order, the 2014 DEP Site Location Order, or other required approvals for the transfer station facility, the parties will work in good faith to revise such proposed construction plans to meet both of their respective needs; the proposed construction plans or a revised version of them that are approved by the parties pursuant to this Section shall constitute the “**Final Construction Plans**”; and the Final Construction Plans are hereby incorporated by reference herein.

E. that the transfer station facility will be operated in accord with any operational elements of the Final Site Plan;

F. that the **CITY** will operate the transfer station facility in accord with any conditions required by the DCHA Declaration (including, without limitation, DCHA Declaration Section 4.18), the Planning Board Approval, the City Council Order, the 2014 DEP Site Location Order, and any other required approvals for the transfer station facility;

G. that under the normal course of operation, there will be no more than four to six (4-6) deliveries of waste/recycling per week by the **CITY** to the transfer station facility and, during summer months, at least one transfer of waste/recycling per week from the two transfer station hopper/compactor units off the island, and the two separate transfer station roll-off containers will be removed when full and then emptied and returned, all by appropriately sized vehicles; and

H. to operate the transfer station facility in a responsible, clean and orderly manner, and in addition to the regular removal of waste/recycling described above, to make reasonable best efforts to minimize odors emitted from the **PREMISES**.

6. Costs of Development and Maintenance of the Premises

The **CITY** shall provide all clearing, grading and construction of the transfer station facility and other development set forth in the Final Site Plan and Final Construction Plans, and otherwise all as deemed necessary by the **CITY** for its proposed use. **LESSOR** hereby consents to the crossing of the other portions of **LESSOR**'s real property as reasonably necessary for such purposes. The **CITY** shall provide all services deemed necessary to maintain the **PREMISES** in a safe condition all as deemed necessary by **CITY**.

7. Location of Structures and Use; 2013 Forest Management Plan/Manual

A All structures, site improvements and/or changes in the **PREMISES** shall be located or done in accordance with the laws, rules and regulations of all applicable federal, state and local jurisdictions. The parties acknowledge the following:

- (i) the **PREMISES** are located in the vicinity of “Compartment B” as defined in (i) a report dated March 31, 1989 and titled “Forest Management Plan for the Old Growth Softwood Stand on Diamond Cove Associates Property on Great Diamond Island, Casco Bay, City of Portland, Maine” prepared by Eco-Analysts, Inc. (the “**1989 Forest Management Plan**”) and (ii) a report dated January 19, 1989 and titled “Operations Manual for Activities Adjacent To and Within The Old Growth Stand of Trees Within The Diamond Cove Development On Great

Diamond Island” prepared by Eco-Analysts, Inc. (the “**1989 Stand Operations Manual**”);

- (ii) by Maine Department of Environmental Protection (“**DEP**”) Condition Compliance Order dated July 5, 1989 and recorded at the Cumberland County Registry of Deeds in Book 8833, Page 12 and re-recorded in Book 8902, Page 118 (the “**1989 DEP Site Location Order**”), the DEP expressly referenced both the 1989 Forest Management Plan and the 1989 Stand Operations Manual in connection with its approval of Diamond Cove Phase I; and
- (iii) for several reasons, including an infestation of hemlock woolly adelgid and concerns about dangerous fire conditions identified by Maine Licensed Foresters, **LESSOR** has engaged a Maine Licensed Forester to update and amend the 1989 Forest Management Plan and the 1989 Stand Operations Manual, and the updated and amended forest management plan and stand operations manual is attached hereto as Exhibit D (collectively, the “**2013 Forest Management Plan/Manual**”).

CITY agrees to submit such 2013 Forest Management Plan/Manual to the DEP, in connection with **CITY**’s application for approval by the DEP of the transfer station facility. This Agreement is subject to **CITY**’s obtaining a DEP Site Location modification order satisfactory to **LESSOR** (the “**2014 DEP Site Location Order**”) that (a) modifies the 1989 DEP Site Location Order by expressly replacing references to the 1989 Forest Management Plan and the 1989 Stand Operations Manual with the 2013 Forest Management Plan/Manual, and (b) confirms that the transfer station facility at the **PREMISES**, as approved by the DEP, is permitted by such 2013 Forest Management Plan/Manual. In the event the DEP shall propose revisions to the 2013 Forest Management Plan/Manual before issuing such a 2014 DEP Site Location Order, the parties will work in good faith to revise the 2013 Forest Management Plan/Manual to meet both of their respective needs and the requirements of the DEP; provided, however, that if the parties shall fail to agree on a final 2013 Forest Management Plan/Manual that is expressly incorporated into a 2014 DEP Site Location Order by **October 1, 2014**, this Agreement shall then be automatically and immediately terminated as of that date.

B. Work done on the **PREMISES** will either be conducted by a Contractor or by the **CITY**’s Department of Public Services. If the work is performed by a Contractor, the Contractor shall provide a performance bond for work performed on the **PREMISES**. **LESSOR** shall be named as co-obligee on the bond. The Contractor performing the work for **CITY** shall also procure general liability insurance in the minimum amounts of \$1,000,000 for each occurrence, and \$2,000,000 in the ‘general aggregate’ for bodily injury, death and property damage, naming **CITY** and **LESSOR** as additional insureds thereon.

C. The general public shall not be allowed by the **CITY** to have access to the transfer station facility to be built on the **PREMISES**; however, the **LESSOR** and its property management company, or the person or entity with property management responsibilities or trash pick-up responsibilities as agent for the **LESSOR**, shall be allowed access to the **PREMISES**, including the transfer station facility, for the disposal of trash and recyclables, provided that all such trash (except large items) shall be bagged as required from time to time by the **CITY**, such

as, inside the colored trash bags sold in support of its waste disposal system; and all such recyclables shall also be bagged or packaged as required by the **CITY**, from time to time.

8. Maintenance and Repairs, and Surrender Upon Termination

CITY represents that it has inspected and examined the **PREMISES** and accepts them in their present condition, and agrees that **LESSOR** shall not be required to make any improvements or repairs or provide any services whatsoever in or upon the **PREMISES** or any part thereof; **CITY** agrees to keep said **PREMISES** and the transfer station facility safe and in good order and condition at all times during the term hereof, and upon expiration of this Agreement or any sooner termination thereof, the **CITY** will quit and surrender the possession of the **PREMISES** quietly and peaceably and leave it in as good order and condition as they were at the commencement hereof. Upon such surrender of possession, the **CITY** may leave the screened improvements on the **PREMISES** provided that they then are in good order and condition (with **CITY** having performed required maintenance to date), reasonable wear and tear excepted, and shall remove any equipment and any fixtures (except as otherwise agreed by **LESSOR**), and will offer for sale to the **LESSOR** the trash compactors located within said screened improvements, at their then fair market value, given their age and condition, as determined by agreement of the parties, and if no such agreement is reached within 45 days, as determined by a valuation made by an independent third party chosen by the **CITY** and **LESSOR**. The obligations of **CITY** pursuant to this Section shall survive the expiration or termination of this Agreement.

9. Various City Commitments

A. **CITY** covenants and agrees, subject to the availability of funds, any required City Council approval, and any other required governmental approvals:

(i) When a term lease between the **LESSOR** and the **CITY** has been executed for the existing Diamond Cove Barge Landing, to make repairs to that facility or re-build that facility (in addition to the 'stop-gap' repairs already made by **CITY** prior to the date hereof), as soon as required by that facility;

(ii) to monitor animal or 'varmint' access to the waste stored on the **PREMISES**, and respond to any such access accordingly; and

B. **CITY** covenants and agrees to observe the conditions imposed by its proposed settlement in the litigation involving **LESSOR** and the Diamond Cove Barge Landing, including the conditions listed on the attached Exhibit C; in addition, **CITY** covenants and agrees not to park any vehicles overnight on the Diamond Cove ('Fort') one-half of Great Diamond Island, except in emergency circumstances. **CITY** further covenants and agrees to observe any conditions imposed by the DEP with respect to use of the Diamond Cove Barge Landing and adjacent roadways.

10. Liability

LESSOR shall not be liable for damage to or loss of property of any kind which may be lost or stolen, damaged or destroyed by fire, water or otherwise, while on the **PREMISES**. Up to the limits of, and subject to the terms and provisions of the Maine Tort Claims Act, **CITY** agrees to indemnify and save **LESSOR** harmless from all liability, loss or damage arising from any nuisance made or suffered on the **PREMISES** by **CITY**, the **CITY**'s guests, invitees, agents or servants due to any carelessness, neglect or improper conduct of any such persons; however, and by way of limitation of this indemnity and holding harmless, nothing herein is intended to, nor shall it be deemed to, waive, amend or otherwise modify any claim of immunity, any defense or any limitation of liability available to **CITY** under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq.

11. Default

In the event that **CITY** shall be in default in the performance of any of the terms, covenants, agreements or conditions herein agreed to be kept and performed by **CITY**, then in that event, **LESSOR** may terminate this Agreement as provided in Section 18 of this Agreement.

12. Hold Over

In the event that **CITY** shall hold over and remain in possession of the **PREMISES** with the consent of **LESSOR**, such holding over shall be deemed to be from month to month only, and upon all the same rents, terms, covenants and conditions as contained herein.

13. Notices

Any notices which are required hereunder, or which either **CITY** or **LESSOR** may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to **LESSOR**, Diamond Cove Homeowners Association, c/o Phoenix Management, P.O. Box 759, Saco, ME 04072 and **LESSOR**, Diamond Cove Homeowners Association Board, Great Diamond Island, Portland, ME; or addressed to **CITY**, Mark H. Rees, City Manager, 389 Congress Street, Portland, ME 04101.

14. Subletting or Assignment

The **CITY** shall not sublet the **PREMISES** or assign its rights hereunder without the express written consent of **LESSOR**.

15. Inspections and Access

The **CITY** shall allow **LESSOR** to inspect the **PREMISES**, including the transfer station facility, at all reasonable times to insure compliance with the terms and conditions herein, including but not limited to compatible uses, maintenance, safety of operations and access on common rights of way.

16. Sale of the Premises

LESSOR agrees that if, during the term of this Agreement and extension, it sells the **PREMISES**, it shall assign its obligations under this Agreement to the buyer of the **PREMISES**.

17. Recordation in Registry of Deeds

The parties agree to execute and record in the Cumberland County Registry of Deeds a Memorandum of Lease outlining the principal terms of this Agreement.

18. Termination

A. **CITY** may terminate this Agreement upon one (1) year written notice to **LESSOR**.

B. **LESSOR** may terminate this Agreement upon a one (1) year written notice for failure of the **CITY** to observe and perform any of its terms, covenants, agreements or conditions hereunder, and such failure shall not have been cured within any time period specified herein or within 90 days of written notice to do so.

19. Waiver

Waiver by either party of any default in performance by the other of any of the terms, covenants, agreements or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this Lease Agreement to be signed in its corporate name and sealed with its corporate seal by Mark H. Rees, its City Manager, thereunto duly authorized, and **DIAMOND COVE HOMEOWNERS ASSOCIATION** has caused this Lease Agreement to be signed by Matthew Hoffner, its Director and Operations Officer thereunto duly authorized, as of the day and date first set forth above.

WITNESS:

CITY OF PORTLAND

By: _____
Mark H. Rees
Its City Manager

STATE OF MAINE
CUMBERLAND, ss.

February ____, 2014

Personally appeared before me the above-named Mark H. Rees, City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of Portland.

Before me,

Notary Public/Attorney-at-Law

WITNESS:

**DIAMOND COVE HOMEOWNERS
ASSOCIATION**

By: _____
Matthew Hoffner
Its Director and Operations Officer

STATE OF MAINE
CUMBERLAND, ss.

February ____, 2014

Personally appeared before me the above-named Matthew Hoffner, Director and Operations Officer of Diamond Cove Homeowners Association, and made oath that the foregoing is his free act and deed and the free act and deed of Diamond Cove Homeowners Association.

Before me,

Notary Public/Attorney-at-Law

Exhibit A

Leased Land for Proposed Transfer Station on Land
of Diamond Cove Homeowners Association

A certain lot or parcel of land located on Great Diamond Island, City of Portland, Cumberland County, State of Maine, being more particularly described as follows:

Commencing at the southeasterly corner of land now or formerly of Jesse S. and Evelyn C. K. Harriott (Book 25439 Page 248; City of Portland Tax Map Lot 83E-B-7).

Thence N 45° 05' 04" E two hundred seventy-two and ninety-nine hundredths feet (272.99') along the southeasterly boundary line of said land of Harriott to the northeasterly corner of said Harriott land and the southwesterly street line of Wood Side Drive.

Thence S 44° 54' 56" E one hundred seventy-nine and twenty-seven hundredths feet (179.27') along said southwesterly street line of Wood Side Drive to an angle point in said street line.

Thence S 40° 52' 40" W two hundred nineteen and forty-nine hundredths feet (219.49') through land now or formerly of Diamond Cove Homeowners Association (Book 24560 Page 106; City of Portland Tax Map Lot 83E-B-1) to a point in a gravel driveway or roadway and the **Point of Beginning**. Said Point of Beginning also being located S 60° 23' 34" E two hundred two and seventy-three hundredths feet (202.73') from said southeasterly corner of said land now or formerly of Harriott.

Thence continuing through said land now or formerly of said Diamond Cove Homeowners Association by the following courses and distances:

S 6° 20' 18" E two hundred twenty-nine and zero hundredths feet (229.00') to a point;

S 43° 24' 45" W one hundred eight and zero hundredths feet (108.00') to a point;

S 84° 09' 35" W one hundred sixty-six and zero hundredths feet (166.00') to a point;

N 4° 24' 42" W one hundred sixty-one and fifty hundredths feet (161.50') to a point;

N 30° 03' 59" E one hundred forty and fifty hundredths feet (140.50') to a point in a gravel driveway or roadway, said point being located S 8° 09' 38" E one hundred forty-one and ninety-two hundredths feet (141.92') from said southeasterly corner of said land now or formerly of Harriott;

S 31° 26' 26" E forty-six and fifty hundredths feet (46.50') to a point in a gravel driveway or roadway;

S 74° 03' 49" E thirty-two and zero hundredths feet (32.00') to a point in a gravel driveway or roadway;

N 81° 25' 21" E thirty-two and zero hundredths feet (32.00') to a point in a gravel driveway or roadway;

N 39° 34' 33" E one hundred nine and zero hundredths feet (109.00') to the Point of Beginning.

Said lot of land containing 55,050 square feet (1.3 acres), more or less.

Bearings herein are referenced to Grid North. All deed book numbers refer to the Cumberland County Registry of Deeds.

Reference is made to a plan entitled "Proposed Transfer Station Site – Lease Limit Boundary Plan, Woodside Drive, Diamond Cove, Great Diamond Island, Portland, Maine", dated September 4, 2013, on file in the City Engineer's Archives, Department of Public Services, 55 Portland Street, Portland, Maine.

(Description by City of Portland, William G. Scott, P.L.S. 2239, September 4, 2013)

Exhibit C

SPECIAL RULES REGARDING PARKING AND ANTI-IDLING POLICIES FOR USE OF THE BARGE LANDING OWNED BY DIAMOND COVE HOMEOWNERS ASSOCIATION

Note: Exceptions to the following rules will be made for emergency vehicles and/or emergency situations. These rules do not supersede other DCHA policies pertaining to the barge landing that are now in effect or that may be implemented in the future by the DCHA.

Parking and Loading/Off-loading of Vehicles:

Vehicles may be parked temporarily only in the following permitted parking area prior to and following a scheduled barge delivery:

On the cement pad located to the east of the barge landing on Wood Side Drive, between the hours of **9:00 a.m. to 5:00 p.m. only**.

All vehicle operators shall comply with the vehicle anti-idling policy that is used by the City of Portland for its own vehicles.

Days/Hours of Operation:

- Days of operation for City vehicles will be **Monday through Saturday** only.
- Days of operation for other non-DCHA vehicles (i.e., vehicles servicing the public side of the Island) will be **Monday through Friday** only.
- Hours of operation for City vehicles and other non-DCHA vehicles will be from **7:00 a.m. to 8:00 p.m. Monday-Friday and 7:00 a.m. to 6:00 p.m. on Saturday**.
- DCHA vehicles (i.e., vehicles servicing DCHA property or property of DCHA members) are not subject to these hours and days of operations restrictions.

Reports of Non-Compliance:

Any reports of non-compliance of these rules shall be reported to the City of Portland's Island and Neighborhood Liaison, who shall provide notice of any or all said reports to the DCHA.

The DCHA reserves the right to revoke permission to use the barge landing from non-DCHA vehicles or any operator thereof deemed to be in violation of any of these rules.



SOUTHERN MAINE FORESTRY SERVICES, INC.

P.O. Box 910 • North Windham, Maine 04062

Addendum to Forest Management Plan

for

Old Growth Stand

Diamond Cove Home Owners Association

Great Diamond Island

Portland, Maine

Prepared by:

Rene D. Noel, Jr. ACF
Maine Licensed Forester
December 12, 2013

Purpose

I have been engaged to:

1. More accurately locate the bounds of the old growth stand and mark edge of this stand.
2. Assess the impact of the hemlock woolly adelgid (*Adelges tsugae*) on the Hemlocks with the stand.
3. Identify those trees which pose potential hazards to life or property should they fail.
4. Identify those hemlocks in suitable condition so that treatment with an insecticide will extend their lives.
5. Estimate scope of work needed to mitigate fire danger and aesthetic impact of the loss of hemlock from the stands.
6. Address the proposed trash transfer station impact on the old growth stand.

Field Work

Using a handheld GPS receiver (Delorme Earthmate PN-60) data was collected to map the edge of the old growth stand. To do this the stand was perambulated and pink plastic ribbon was hung to mark the edge of the stand. I recommend that boundary be marked permanently. Painting boundary trees, signs or posts and signs are various options. Also gathered was GPS locations of trees that were judged to be potential hazards. These were marked with orange plastic flagging should last a couple of years but they should be marked with paint if they are not to be felled soon. Finally hemlocks that were in locations that were significant to the aesthetics of the area and judged to be in suitable condition that insecticide treatment would allow them to retain vigor were identified. Separate individual stems were located by GPS and marked with blue flagging. Small groves of trees around the tennis courts and along Diamond Avenue are identified solely on the included map.

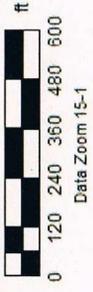
Report

The forest management plan prepared in 1989 gives an excellent description of the stand, soils, terrain, and other physical features. That work has not been recreated in this report. There has been little change in the forest other than a small amount of wind damage and other natural mortality. The hemlock woolly adelgid infestation and its effect is the primary change in forest conditions.

Diamond Cove Home Owner Assoc.
Common Area Shown in Red
Portland Parcel Map Shown in Purple



drawn by:
Rand D. Noss, Jr. ACF
Municipal Licensed Forester # 025
November 20, 2015
Not a legal survey



Data use subject to license.
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www.delorme.com

Diamond Cove Home Owner Assoc.
 Common Area Shown in Red
 Portland Parcel Map Shown in Purple
 GPS Bounds of Old Forest



drawn by:
 Rene D. Noel, Jr. ACF
 Maine Licensed Forester # 325
 November 20, 2013
 Not a legal survey

Data use subject to license.
 © DeLorme, XMap® 7.
 www.delorme.com

★
 MN (15.5° W)

ft
 0 140 280 420 560 700
 Data Zoom 15-4

This area totals 15.58 acres and is a mapping of my judgement of the old growth stands boundary to the drip edge of the crowns of the trees identifying the edge of the stand. This is the accepted definition of a stand boundary. The old growth was determined by me based on size, branching, stem and bark characteristics which indicate old age for the various species. It contains some area in gravel roads which is consistent with the 1989 map. The acreage stated in 1989 was 17.43 acres and this includes a 35 foot buffer where the old growth is bordered by younger forest.

Compartment Map from 1989 Plan

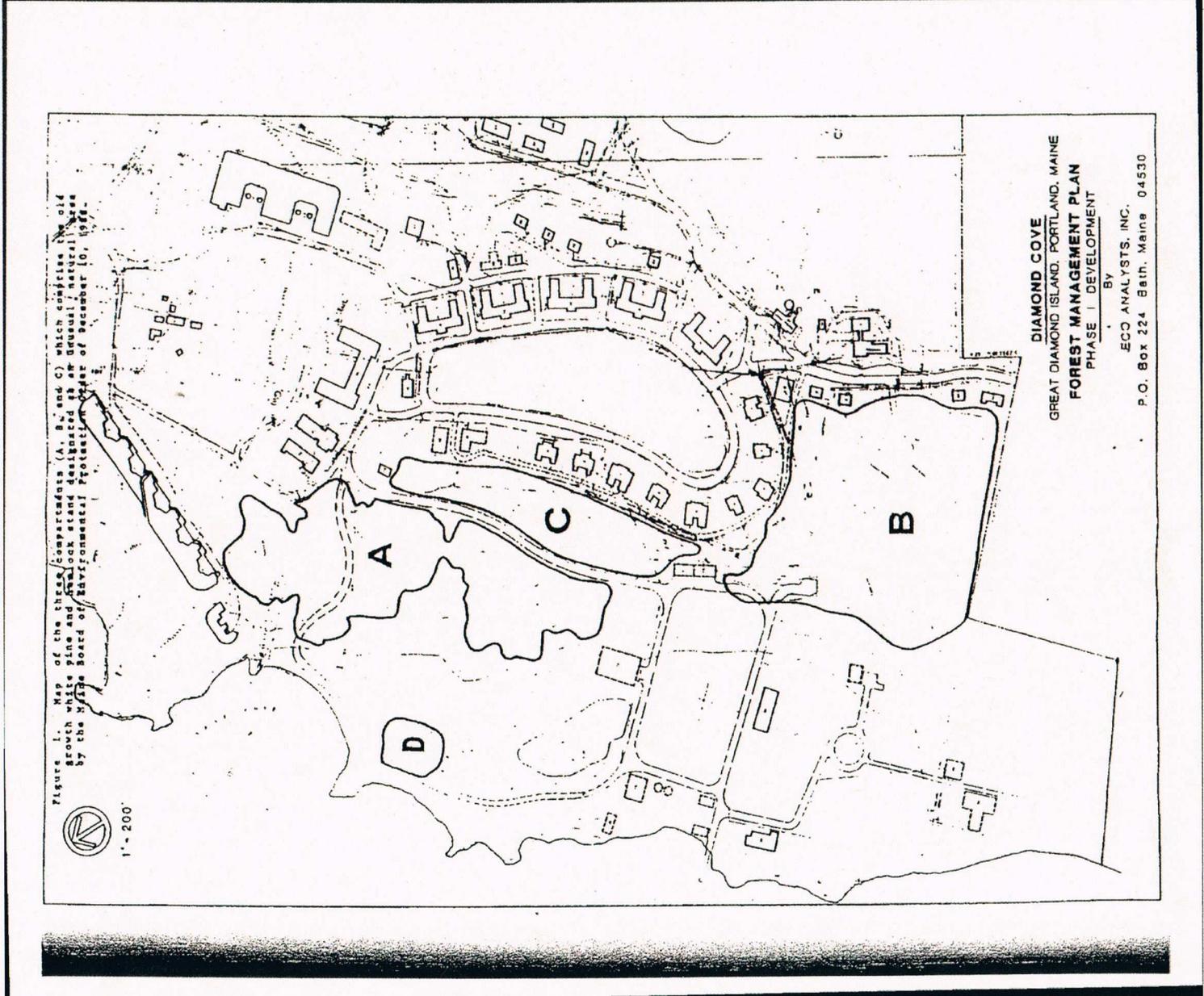


Figure 1. Map of the three compartments (A, B, and C) which comprise the old growth white pine and spruce-fir stand designated as an unusual natural area by the State Board of Environmental Protection on December 10, 1988.

1" = 200'

DIAMOND COVE
GREAT DIAMOND ISLAND, PORTLAND, MAINE
FOREST MANAGEMENT PLAN
PHASE I - DEVELOPMENT

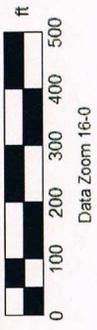
By
ECO ANALYSTS, INC.
P.O. Box 224 Bath, Maine 04530

Diamond Cove Home Owner Assoc.
Old Growth Compartments
Yellow line approximate 1989 mapping
Green line 2013 GPS mapping



drawn by:

Rene D. Noel, Jr., ACF
Maine Licensed Forester # 325
December 3, 2013
Not a legal survey



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Diamond Cove Home Owner Assoc.
Common Area Shown in Red
Portland Parcel Map Shown in Purple
GPS Bounds of Old Forest Coarse Pattern Green
Other Commonly Owned Forest Fine Pattern Green

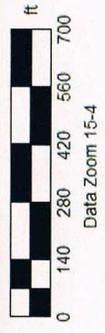


Proposed Transfer Station

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North Arrow
MN (15.5° W)



Damage by Hemlock Woolly Adelgid

All of the hemlock are showing signs of damage from adelgid feeding. I would estimate that on the average, the hemlock have about 50% of normal foliage density. Hemlock is a significant component of Compartment A, (39.9%), Compartment B, (75.3%) and Compartment C, (23.4%) Compartment D (0%). There are also some understory sapling and small pole size hemlock that were not inventoried and are not included in these numbers.

With out insecticide treatment it can be anticipated that mortality of the hemlock will approach 100%. Based on 1989 inventory and my observations there would be about 300 tons of biomass contained in these trees. That would be about 10 tractor trailer loads of material. About a third or 100 tons would be in fine to medium size fuel which is of concern in a wildfire situation.

There is the option of harvesting all the hemlock and removing them from the island.

Hemlock is not particularly valuable as timber. Considering the cost of utilizing this material by shipping it to the mainland and the impact of heavy equipment needed to remove it I do not recommend this option.

The second option is to fell the stems as they die and treat the fine and medium size fuel to make it less flammable. Within 100 feet of any structure I recommend chipping branches and tops with a portable chipper. In areas over 100 feet from buildings branches and tops should be cut up so they lie within a foot or two of the ground. This treatment will hasten their decay and the close proximity to the ground will keep the moisture content up in the fuel making it less flammable.

Current Hazards

Fourteen stems, 3 hardwoods and 13 hemlock were judge as currently being hazardous and located where they could damage people or property should they fail. They are marked with orange flagging. I did not get an estimate from arborists on the cost of dropping and treating these stems.

The three hardwoods are the most difficult to remove. A white birch, a red maple and a large sugar maple located at the eastern edge of Compartment C are all fairly close to residential buildings and are not easy to remove. The large sugar maple is located between two buildings and contains a considerable amount of rot. It will be somewhat of a challenge to remove. The weight of the large limbs indicate they are likely to fall towards the building to the trees north.

The hemlocks are located that they can likely be felled away from improvements.

I did not get estimates from arborists on the cost of removing these stems but I would estimate a mainland cost in the \$5,000 to \$10,000 range. My experience with transporting men and equipment is it adds significantly to the cost.

Future Mortality

Based on the inventory in the 1989 plan it appears there are 250 large hemlock in the three compartments. I have identified approximately 99 that can be treated and their lives extended for as long as the association is willing to continue treatment. These were either marked with blue flagging (individual stems) or are located in small groves shown on included map. That leaves approximately 150 trees that are likely to die in the next 5 to 10 years if adelgid feeding damage remains at current levels. Or in other words there will be about 20 trees per year that will need to be dropped, limbed and limbs cut up or chipped.

Trees that are not near buildings or other improvements can be dropped by a professional logger limbed and slash treated less expensively than by a licensed arborist. I would estimate the cost for this sort of work to be about \$100 per tree plus transport cost.

Trees near buildings and improvements should be taken down by a licensed arborist who is skilled and insured for in this work. A two man arborist crew with truck and chipper is being billed in the \$300 per hour range. I would estimate they can fell and chip branches from two to four trees per day.

I recommend the Association budget an amount annually to do a certain amount of this work. Arborists' slow season is usually winter and this is the most suitable time to do this sort of work in this community. It may be possible to negotiate some discount from regular fees with a long term contract.

Replanting

Where the hemlock is in decline more light is reaching the forest floor. Seedlings and saplings are already responding to this increase light. In many areas this natural reseeding will replace the forest. In those areas that this does not occur or where it is destroyed during felling and fuel reduction activities of dying hemlock I recommend planting white pine and red oak. Both are native to the island, grow well in that environment and are trees that are well rooted and wind firm in windy conditions. There are numerous young stems, seedlings and saplings already established. Where and how many replacement trees will be needed will depend on how many are destroyed in the felling process. Where sizable areas (600 sq. ft or more of open ground is my recommendation) of regeneration are destroyed I recommend planting at the spacing described. There is no ratio between trees cut and trees planted.

I recommend seedlings be planted spaced about twelve feet apart. The oak should be protected with a five or six foot tree shelter to assure they grow above a height that will be browsed by deer. Large seedlings or transplants are recommended as these will more quickly grow out of reach of deer. Four or five year old pine transplants and oak seedlings a minimum of 24" tall are recommended. Depending on quantity, this size stock is available for \$3.00 to \$10.00 per seedling.

Invasive Plants

The plant community on the island includes a large number of invasive species. Honeysuckle, bittersweet, barberry and Japanese knotweed are those noted which are likely invade disturbed forested areas. These species are very aggressive and have the potential to dominate a site preventing native vegetation from reestablishing itself. Controlling these species is difficult. It is possible to control small infestations by uprooting the plants. However, such mechanical control is labor intensive and needs to be repeated annually to remove sprouts from broken roots and new seedlings. Herbicides are much more efficient. Glyphosate the active chemical in Roundup brand yard products will control all of these. The woody species can be controlled with either a foliar application later in the growing season or by treating the surface of cut stumps within a day or two of the stems being cut. Japanese knotweed is easiest to treat with a foliar application. Ideally this should be done at the time of flowering. Stems are hollow and stems can be cut and treated by pouring herbicide into the hollow stem but this is very time consuming on all but smallest infestations.

Managing Fire Risk

Risk of wild fire is best controlled by controlling fuel. To begin any flammable materials that collect around buildings should be removed. Porches, decks and other attached objects as well as gutters, roof valleys and other places where debris collects should have leaves and other fine fuels removed. Ideally the areas where this material collects should be screened to prevent these build ups.

Away from the building concentric rings of treatment should be applied. Nearest the building should have plant material and landscaping which is fire resistant such as green lawn, gravel or pavement. Shrubs should not be planted so they contact the building and species which are less likely to burn (hardwoods species in general) should be considered. Continuous stands of vegetation that could carry a fire should be avoided. This ring is typically the area immediately around the house lawn and other landscaped features. The next ring is more natural vegetation but in which fine fuel is not allowed to accumulate. Nor should dense stands of young stems be allowed to grow. Park like comes to mind with well space trees and understory plants and little brush or other fine flammable fuels. Typically 75 feet is recommended for this ring. The outer ring is the natural forest. Large trees do not easily burn. It takes a ladder of fuel from the ground to the crowns of large trees to ignite them. Controlling fire danger means controlling this fuel. The litter and duff layer of organic material is flammable but being on the ground maintains a fairly high moisture content and slower burning. Dead limbs and branches and small seedlings and saplings particularly softwoods are the most common fast fuels in a forest. Chipping or lopping dead material so it lays within a foot or so of the ground will hasten its decay and place it so it maintains a high moisture content. Seedlings and saplings should be spaced so there is not a continuous stand. Individual stems and small groups separated from each other are ideal. As these grow lower limbs can be pruned until the stem is free of limbs for 6 or 8 feet.

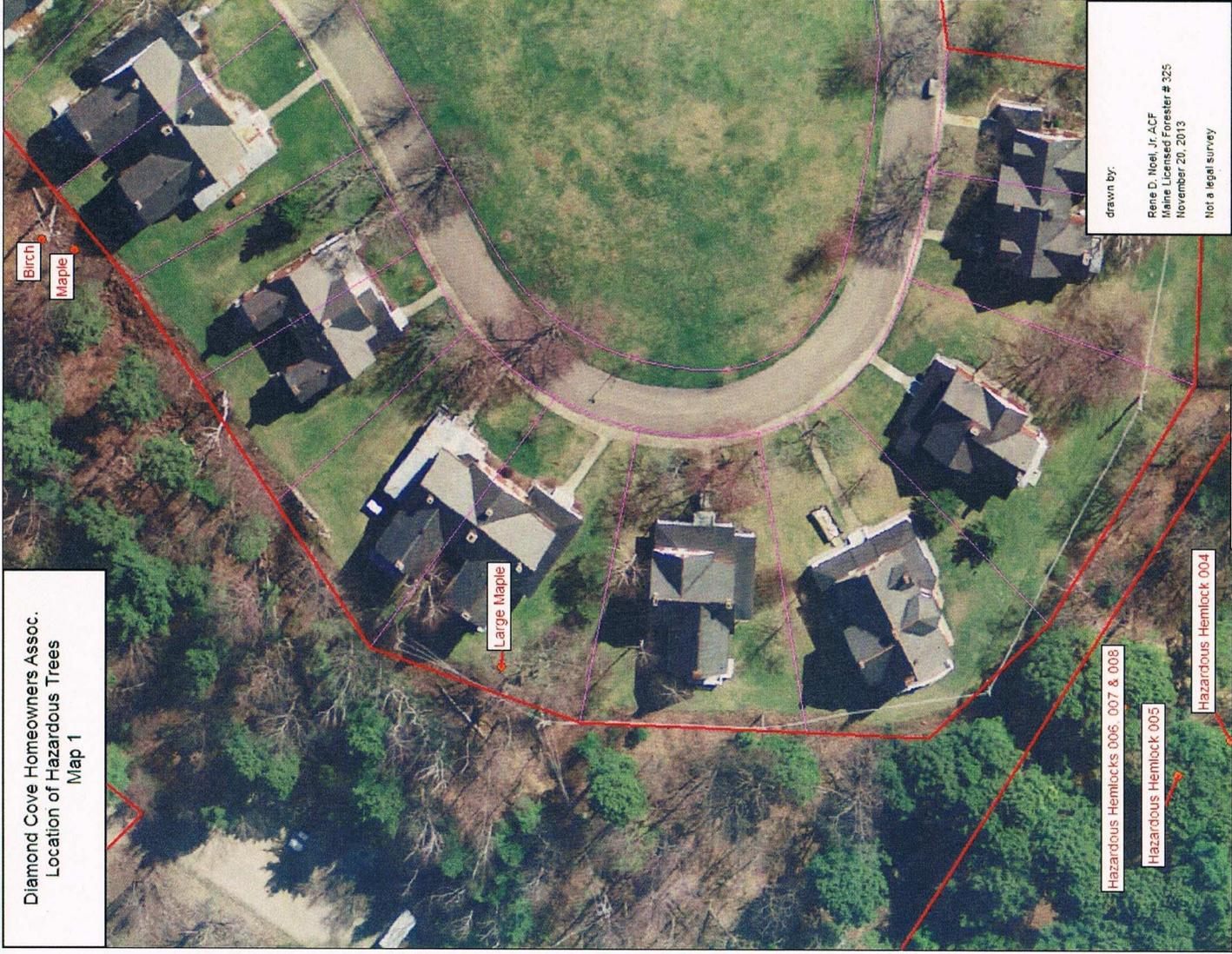
My fire training occurred in a much drier climate than Maine but I believe the guidelines would be applicable to an island situation. In that climate it was recommended that a fire resistant forest be maintained out at least two tree lengths out from any structures or improvements. In this case that means about 150 feet back from anything that should be protected from fire.

Following these recommendations does not remove all fire danger. It should, however, slow the advance of a wildfire giving time for the arrival of men and equipment that will suppress the fire.



XMap® 7

Diamond Cove Homeowners Assoc.
Location of Hazardous Trees
Map 1



drawn by:
 Rene D. Noel, Jr., ACF
 Maine Licensed Forester # 325
 November 20, 2013
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★
 MN (15.5° W)

ft
 0 20 40 60 80 100 120
 Data Zoom 18-0

Diamond Cove Home Owner Assoc.
Location of Hazardous Trees
Map 2



drawn by:
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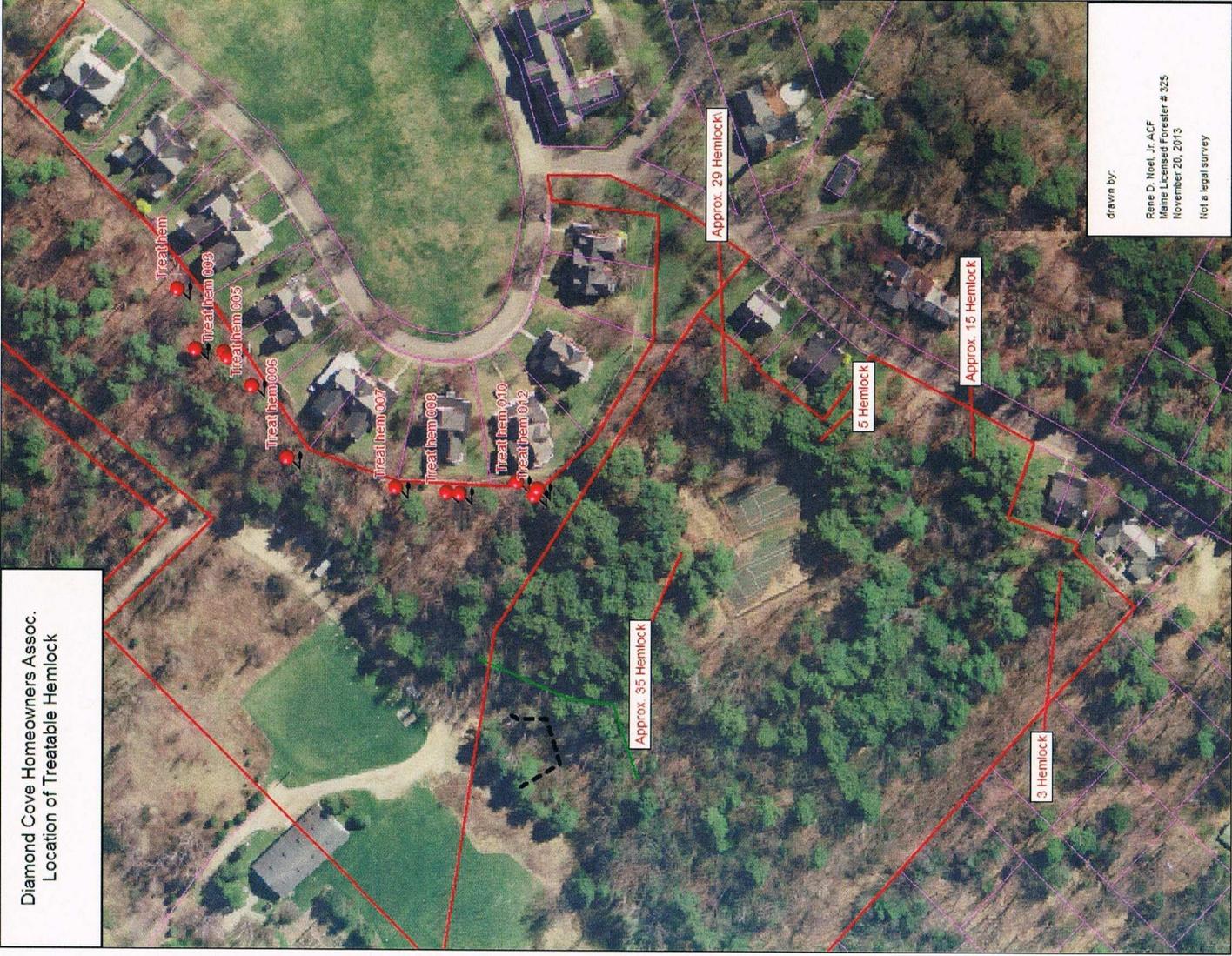
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Insecticide Treatment

The forest between McKinley Court and West Side Drive and west of Diamond Avenue and around the tennis court have 99 hemlocks that contribute greatly to the forest of that residential area. Systemic insecticides containing the active ingredient imidacloprid are effective in controlling the insect for a number of years following application. Some research has shown treatments every three or four years may be effective. Other products are in development/label phases and current product recommendations should be checked when treatments are planned.

This sort of treatment is fairly low tech. Backpack sprayers are used to either apply the chemicals to the ground or stem or granules are spread on the ground. It is necessary for the tree to absorb the chemical and translocate it to the needles. I estimate it would take a two man crew a full day to do the treatment. Depending on the cost of chemical at the time I estimate the cost of treatment to be in the \$2,000 range.

Diamond Cove Homeowners Assoc.
Location of Treatable Hemlock



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Trash Transfer Station

Most of the proposed site is in an area which appears to have not been forested 24-27 years ago when the original work for the forest management plan was undertaken. However, one corner will encroach on the old growth stand and will require the removal of one large hemlock tree. This tree is not in good condition because of adelgid feeding. As I envision the propose construction work less than 500 square feet within the old growth stand will need to be disturbed. The effect on the stand will not be noticeable. I suggest as a mitigation that buffer area to the west be expanded by a similar area. There are some large hardwood stems in this area that are 40 or 50 years younger than the oldest trees. With the anticipated loss of the hemlock due to adelgid damage these will be a natural expansion of a stand with old growth characteristics.

Summary of Recommendations/Findings:

- Use of new technology (GPS mapping) has enabled a more precise delineation of the Old Growth Forests first identified in 1989 plan (page 2)
- trees identified and marked- establish tree drip line as the exact edge on all Old Growth trees along the border of each compartment (page 4)
- Woolly adelgid damage to Old Growth hemlocks evaluated
 - Certain trees that pose a hazard to life or property marked for removal (page 8)
 - Certain trees with enough vitality remaining to benefit from insecticide application marked (page 14)
- Recommendation for DCHA to create an ongoing yearly budget to deal with the eventual death and removal of infected hemlocks (page 9)
- Replanting recommendations made for certain areas of the Old Growth stand using native species (page 9)
- Recommendations made for the proper cutting/removal/chipping of damaged/dead trees within the stand to mitigate forest fire risk (pages 8-9)
- Recommendation on limb trimming and removal of small saplings as part of good management practices (page 10)
- Recommendations on insecticide application to save viable hemlocks (page 14)
- Minimal impact to Old Growth Stand (Compartment B) due to proposed construction of trash transfer station
 - 1 infested hemlock should be removed (page 16)
 - Add 500 square feet of area to the west of Compartment B to offset any disturbance and harmonize existing Old Growth area with large hardwoods within this new area (page 16)