



March 26, 2019

(Via Email & Delivery)

JN 16.084.A

Carla Nixon, Town Planner
Town of Cumberland
290 Tuttle Road
Cumberland, Maine 04021

**Cumberland Crossing – Phase 2,
277 Tuttle Road and 228 Greely Road, Cumberland
Pre-Application Sketch Plan Submittal #2
(Map R04 Parcel 34A)**

Dear Carla:

On behalf of OceanView at Cumberland, LLC, we are pleased to present for Planning Board review, an updated Concept Sketch Plan for the development of Phase 2 of the *“Cumberland Crossing” Senior Housing Community* located between the approved Phase 1 project off Tuttle Road and Greely Road. The project encompasses the former Godsoe property located at 228 Greely Road and shown on Assessor’s Map R04-34A as described further herein.

This submittal follows up from the first Pre Application Sketch Plan meeting held on February 19th to present additional information on the access to Greely Road and seek guidance from the Planning Board on anticipated waiver requests of several road standards as discussed herein. Please refer to the initial Sketch Plan application materials dated January 28, 2019 for other relevant project information.

Enclosed are one hard copy and an electronic copy of the following materials:

- Cover letter
- Exhibit 1 – Site Photos
- Exhibit 2 – The Highlands, Topsham – Stone Gate Photos
- Exhibit 3 – Cumberland Crossing Phase 2 Concept Plan Rev. 03-26-19

1. INTRODUCTION

At the February 19th Planning Board meeting, the applicant presented the concept of a “limited through road” for Phase 2. The first section of this road, running from the end of the Phase 1 development, would provide paved roads meeting the standards of the Senior Housing Community (SHC) Overlay District and Subdivision Chapter 250 standards to serve the Phase-2 additional 52 senior cottages within neighborhoods as shown on the Concept Plan. This section of the roadway would be constructed according to the same specifications as the Phase 1 road already approved by the Board. The total project Phase 1 and 2 would provide approximately 105 units.

As the Board is aware, during development and permitting of Phase 1 of the project the Town had indicated a preference to avoid a fully functioning through-road connecting Tuttle and Greely Roads. Further, the character of the proposed development—a senior housing community—requires an

internal road system with a low impact footprint and neighborhood feel. These factors weighed against a formal public through road.

In addition, the Town Council's decision to include the former Godsoe property in the SHC was conditioned on significant development restrictions on the portion of the Godsoe lot visible from Greely Road. This included a prohibition on any new development within 500 feet of Greely Road and a requirement to maintain this so-called "Preservation Area" in its natural state. The zoning ordinance also requires that the "view of the homestead" from Greely Road, "shall remain substantially the same" as it has previously existed. Finally, "reconfiguration or modification" of the existing driveway cannot increase the size or square footage of the drive, cannot result in any significant relocation, and cannot adversely impact the general rural, undeveloped, and agrarian character of the view shed from Greely Road.

Given these restrictions and the requirements of the development, OceanView had conceptually designed the road system on the former Godsoe property to remain largely in its natural state. We had proposed a closed gate at the tree line near the proposed stream crossing, with the understanding that little or no motor vehicle use would occur between the paved residential roads and the former Godsoe house and barn. Nor did we propose any changes to the access drive from Greely Road, in order to maintain the existing view shed and to comply with the requirements of the SHC overlay zone. Instead, a gravel road and decorative gate/stone pillars were proposed to connect the end of the internal paved streets serving the cottages to the community center complex at the former Godsoe farmstead and follow the existing paved serpentine drive out to Greely Road. The intent of the gravel road section to the farm and utilizing the existing paved drive is to maintain the pastoral feel of the farmstead/future community center and not create a large residential scale road connection to Greely Road. Both the Comprehensive Plan and the SHC Zoning emphasize the importance of the preservation of the view shed from Greely Road. *Exhibit 1* provides photographs of the property to illustrate the value and natural beauty of that view shed.

Our initial proposal did not, however, prohibit emergency access to the development from Greely Road. The proposal would indeed provide a connection providing access from either Tuttle or Greely Roads in an emergency situation without creating an obvious and open "cut through road" for residents to use. Cumberland Crossing, while a private community for seniors, will provide open access to Cumberland residents for walking, hiking and cross country skiing through the open space areas and sidewalks and is not a "gated community" in the traditional sense. It should also be recognized that a senior community will generate approximately 1/3 of the traffic of a traditional residential subdivision.

The project team received memos from the Fire Chief and Police Chief relative to the type of road standards desired (width, paved verses gravel, type of gate, etc.) and have subsequently met to further discuss options for providing suitable road standards. We respect the positions of public safety on the desire for a full paved road. However, without compromising public safety we are suggesting a means to meet all of the above objectives as discussed below.

2. CONCEPT PLAN PROPOSED ROAD STANDARDS:

(Refer to the attached Concept Plan, *Exhibit 3* for reference.)

The SHC Ordinance Chapter 315-28.4 (I) provides standards for road design within a Senior Housing Community. Roads shall meet Chapter 250 Article VI¹ Table 2 subcollector standards and residential streets greater than 50 vpd and the specific standards provided in 315-28.4 (I) (2). Relevant standards include:

- Roads serving subdivisions of 200 to 500 average daily trips.
- Maximum dead end length is 2,500 feet when serviced by public water.
- Pavement width of 18 feet if serving less than 10 homes/units.
- Pavement width of 20 feet (no curb) or 22 feet (with curb)
- 21 inch base/subbase gravels.
- 2 foot gravel shoulders.
- Minimum centerline radius of 100 feet.

Cumberland Crossing is proposing a private road system providing the ability to connect between Tuttle Road and Greely Road without encouraging “cut through” traffic. We feel the use of the approximately 1,300 foot gravel connection to the community center will serve several purposes and provide first responder access from both the Cumberland and North Yarmouth ends of the project. In the context of public safety it should be emphasized that *all cottage units will include individual fire suppression systems*. The gravel road extension would:

1. Maintain the rural farm character.
2. Provide a “gateway” of stone pillars and decorative gate *to be fixed in an open position* to signify the exiting of the formal cottage neighborhoods from the south and provide a statement to occasional curious public from the north that this is a private neighborhood without formally restricting access.
3. Provide a gravel base and road buildup with gravel or reclaim surface of a maximum 22 feet in width to allow passage of two vehicles and emergency equipment.
4. The applicant would maintain the gravel road and all interior roads and sidewalks. Furthermore, senior residents *demand* a high level of road/walk maintenance ensuring the gravel road would be kept plowed and well maintained to ensure safe access for large emergency equipment. (The applicant has been successfully maintaining many miles of roads in their Falmouth and Topsham developments for decades.)
5. Parking would be prohibited along the gravel road. All proposed parking for the community center would be in separate lots.
6. We would work with public safety to provide a suitable location to turn fire apparatus around as well as to determine final project hydrant locations.

Secondly, we are proposing that the existing 500+/- foot portion of the Godsoe paved drive to Greely Road remain and be improved for emergency response as follows:

1. The current paved width is 14-14.5 feet with 1-2 foot+/- shoulders. The applicant would propose to provide additional gravel/grass shoulders if required. We believe the road was built

¹ 02-20-19 Subdivision Chapter 250 updates revised to Article X.

to a high standard of base gravels and includes under drains and historically saw use with fully loaded horse trailers on a regular basis.

2. We would work with the Fire Chief to make any modifications in the curvilinear geometry to accommodate fire and rescue vehicles allowing for winter conditions. (i.e. widen the most westerly compound curve as needed. The remainder of the road has centerline radii exceeding the SHC Ordinance requirements.)
3. Provide a bituminous overlay.
4. Provide Town required private road signage and appropriate way finding signage for visitors and public safety.

3. WAIVERS OF ROAD STANDARDS REQUIRED:

Article XIII, Section 250 of the Subdivision Ordinance provides that the Board may waive certain performance standards, including road standards, if “special circumstances” exist, provided that any waiver not “have the effect of nullifying the intent and purpose of the Comprehensive Plan,” other Town ordinances, and provided that the project will provide for public safety.

The subdivision standards exist to balance competing goals. With regard to road access, the standards encourage street designs that “reduce traffic speeds and promote interconnectivity.” The standards also seek to preserve scenic views, protect rural character, and to provide “flexibility of design in order to promote environmentally sensitive and efficient uses of land.”²

To accomplish the above we would respectfully request the following waivers of the Subdivision or SHC Zoning Standards:

- A. Waiver of paved surface of 22 foot gravel road (1,300 feet+/-).
- B. Waiver of width of the 500 foot portion of the former Godsoe driveway to 14 feet paved (with “fattened” curve sections as required for public safety) and widen shoulders.

We recognize that there are varying opinions on the road standards. However from a planning and Smart Growth perspective we feel the proposal with requested waivers accomplishes the goal of a through road –without encouraging high volumes of through traffic while providing for public safety access from either end of the project. Further, this design complies with the strict development restrictions in the SHC Overlay zoning district, maintains the important view shed and character of the 500 foot preservation area along Greely Road, and provides for the preservation of existing scenic views and the rural character of the Greely Road area.

If a full standard 22 foot through road were to connect to Greely Road, due to the limitations of both location and geometrics of the Godsoe driveway - that approach would require a full subdivision road access across the open field to Greely Road with the Godsoe drive remaining as a separate, second access to the community center. We believe this is not necessary to provide access to emergency vehicles, would encourage access to the development from Greely Road, would have a negative impact on the view corridor, and would likely be adverse to the SHC Overlay preservation standards.

² Subdivision Ord. Art. I, § 250-1.



We thank staff and the Planning Board for their patience and for consideration of our proposal. We look forward to discussing the access approach with the Planning Board at the April Planning Board meeting to gain feedback on our future formal preliminary plan submittal.

In the meantime should you have any comments or questions please do not hesitate to contact Chris Wasileski or me.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Licht". The signature is fluid and cursive.

Frederic (Rick) Licht, PE, LSE
Principal

Encl: As Noted

Cc: Chris Wasileski; OceanView at Cumberland LLC
John B. Wasileski; OceanView at Cumberland, LLC
Christian Haynes; SeaCoast Management Company
David Haynes; SeaCoast Management Company
Scott Anderson; Verrill Dana LLP
Chris Belanger; Belanger Engineering
Rex Croteau; Titcomb Associates
Diane Morabito, PE, PTOE; James Sewall Assoc.



Exhibit 1.0
Godsoe Farm and Preservation Area View Shed from Greely Road

• REFERENCE : 10/2018 R LICHT PHOTOS



▪ PREPARED FOR:
**OCEANVIEW AT
CUMBERLAND
SENIOR COMMUNITY
PHASE 2**

▪ TITLE:
**GODSOE FARM
PHOTOS**

▪ SCALE: NA
▪ DATE: 03-26-18

JOB NO:
16.084

EX. 1.1

• REFERENCE : 10/2018 R LICHT PHOTOS



BELANGER
ENGINEERING
CONSULTING ENGINEERS



LICHT
ENVIRONMENTAL DESIGN, LLC

▪ PREPARED FOR:
**OCEANVIEW AT
CUMBERLAND
SENIOR COMMUNITY
PHASE 2**

▪ TITLE:
**GODSOE FARM
PHOTOS**

▪ SCALE: NA
▪ DATE: 03-26-18

JOB NO:
16.084

EX. 1.2



Exhibit 1.3
Aerial -Godsoe Farm From the Northwest

• REFERENCE : 03, 2019 C. HAYNES



▪ PREPARED FOR:
**OCEANVIEW AT
CUMBERLAND
SENIOR COMMUNITY
PHASE 2**

▪ SCALE: NA
▪ DATE: 03-26-18

▪ TITLE:
**HIGHLAND GREEN,
TOPSHAM GATE**

▪ JOB NO:
16.084

EX. 2.1

• REFERENCE : 03, 2019 C. HAYNES



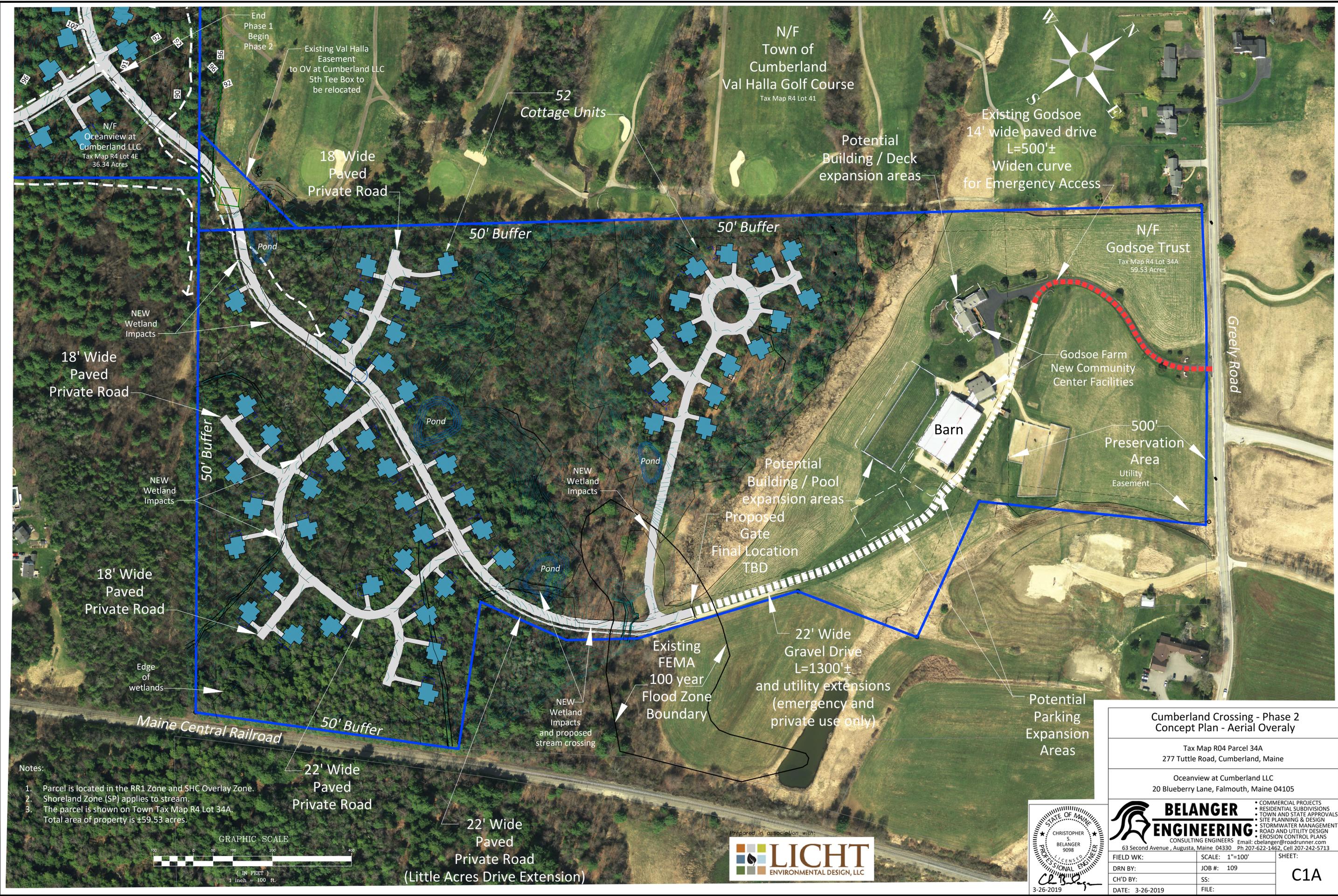
▪ PREPARED FOR:
**OCEANVIEW AT
CUMBERLAND
SENIOR COMMUNITY
PHASE 2**

▪ SCALE: NA
▪ DATE: 03-26-18

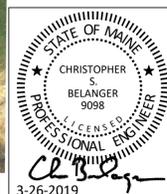
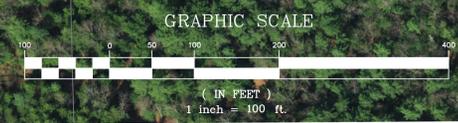
▪ TITLE:
**HIGHLAND GREEN,
TOPSHAM GATE**

▪ JOB NO:
16.084

EX. 2.2



- Notes:
1. Parcel is located in the RR1 Zone and SHC Overlay Zone.
 2. Shoreland Zone (SP) applies to stream.
 3. The parcel is shown on Town Tax Map R4 Lot 34A. Total area of property is ±59.53 acres.



Cumberland Crossing - Phase 2 Concept Plan - Aerial Overlay		
Tax Map R04 Parcel 34A 277 Tuttle Road, Cumberland, Maine		
Oceanview at Cumberland LLC 20 Blueberry Lane, Falmouth, Maine 04105		
BELANGER ENGINEERING CONSULTING ENGINEERS 63 Second Avenue, Augusta, Maine 04330 Ph 207-622-1462, Cell 207-242-5713		
FIELD WK:	SCALE: 1"=100'	SHEET:
DRN BY:	JOB #: 109	C1A
CH'D BY:	SS:	
DATE: 3-26-2019	FILE:	

Verrill Dana^{LLP}

Attorneys at Law

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March 26, 2019

Town of Cumberland Planning Board
c/o Paul Auclair, Chair
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

**Re: OceanView at Cumberland, LLC; Cumberland Crossing-Phase 2
Zoning Opinion**

Dear Members of the Planning Board:

On behalf of the applicant, OceanView at Cumberland, LLC (“OceanView”), the following is an analysis of OceanView’s legal and administrative “standing” to pursue Planning Board approval for Phase 2 of Cumberland Crossing (the “Project”).

Legal and Administrative Standing

An applicant has sufficient “title, right or interest” to seek a permit from the Board when the applicant can show that it has “the kind of relationship to the site that gives [the applicant] a legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license” it seeks. *Southridge Corp. v. Board of Env’tl Protection*, 655 A.2d 345, 348 (Me. 1995) (citing *Murray v. Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983)). The Maine Supreme Court has held that a purchase and sale agreement for the acquisition of property subject to the permit application is sufficient to confer legal standing to apply for a permit. *See Murray*, 462 A.2d at 43. The Supreme Court has even found that an unproven claim of adverse possession is sufficient. *See Southridge*, 655 A.2d at 348.

OceanView is the fee owner of the property upon which the Project will be constructed. As such, it’s “relationship to the site” is more than sufficient to confer legal standing to seek site plan and subdivision approval from the Planning Board. As such, OceanView has “title, right and interest” in the land to support the filing of its application.

Alleged Private Claims

A property owner living near the Project, Richard Doane, has raised questions about OceanView’s legal standing to apply for permits on the grounds that a restrictive covenant in a deed between OceanView and Mr. Doane allegedly places limits on traffic and/or the scope of development permitted at the Project site. For the following reasons, Mr. Doane’s questions are

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not relevant to the Board's review of the Project and, further, Mr. Doane's allegations are without merit.

It is well established under Maine law "that restrictive covenants in a deed as to the use of property are distinct and separate from the provisions of a zoning law and have no further influence or part in the administration of a zoning law." *See Whiting v. Seavy*, 159 Me. 61 (1963). Such allegations of private rights or private conflicts are irrelevant because the Planning Board's role is to ensure that the Project complies with the Town's standards. The Planning Board does not review or resolve private property disputes. As such, Mr. Doane's private allegations are not relevant to the Board's review of the Project.

Further, Mr. Doane's interpretation of his deed to OceanView is incorrect. As some of the Board members may be aware, Mr. Doane conveyed a 31-acre parcel of land to OceanView as part of "Phase 1" of the Cumberland Crossing project, a project already approved by the Board. The deed conveying this land first describes the property Mr. Doane was selling, and then the restrictive covenant states,

[OceanView] its successors and assigns covenant and agree that no more than 50 single family residential dwelling units (and related amenities and common facilities, including a common community or activity building, and also including parking, utilities, drainage, detention and other site improvements) will be constructed on the above described property...

May 25, 2018, Warranty Deed from Richard W. Doane to Ocean View at Cumberland, LLC (recorded in Cumberland County Registry of Deeds at Book 34876, Page 194).

The "above described property" is the 31 acres of land once owned by Mr. Doane and conveyed to OceanView as part of Phase 1. The "above described property" does not include any portion of the so-called Godsoe property upon which the Phase 2 Project will be constructed. No deed, contract, agreement, or any other restriction exists between Mr. Doane and OceanView regarding the Phase 2 Project.

Regardless, Mr. Doane claims he can restrict the use of the former Godsoe property, or other property owned by OceanView, based on language in Mr. Doane's deed that the 50-lot restriction does not apply,

...to any dwelling units or other improvements to be constructed by [OceanView], its successors and assigns on any other *adjoining* property that [OceanView], its successors and assigns may elect to acquire.

I italicized the term "*adjoining*" because Mr. Doane's attorney is arguing that because the Phase 2 property is not "adjoining" the land conveyed by Mr. Doane this exception does not apply. The problem with this argument is that it doesn't matter whether this exception applies to the Phase 2 land, it matters whether the 50-unit cap applies. The cap only applies to the 31 acres

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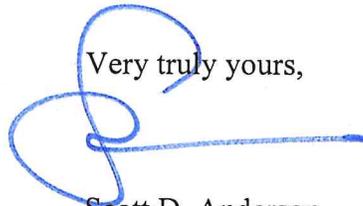
of land conveyed by Mr. Doane and it does not apply to any other parcel of land, whether adjoining or not. The "adjoining" land language was only inserted to make it clear to Mr. Doane that no development restriction would apply to the Allen property—an adjoining parcel that was publicly known to be part of the Phase 1 plan at the time OceanView was negotiating the deed with Mr. Doane.

The Board should certainly entertain general comments from Mr. Doane as it would from any Cumberland resident. Mr. Doane has no special or contractual rights, however, to comment on the Project or to request any limits on the proposed development.

We look forward to discussing any questions the Board may have about this issue.

Thank you.

Very truly yours,

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Scott D. Anderson

SDA/mtt

cc: Natalie Burns, Esq., Town Counsel
Chris Wasileski, OceanView at Cumberland, LLC
John Wasileski, OceanView at Cumberland, LLC
Christian Haynes, SeaCoast Management Company
Rick Licht, PE, LSE, Licht Environmental Design, LLC

April 2, 2019

Town of Cumberland Planning Board
290 Tuttle Road
Cumberland, ME 04021

Chairman Auclair & Board Members:

Please accept this letter in response to the March 26, 2019 letter from Scott Anderson on behalf of Ocean View. I am extremely surprised that Ocean View chose to include a letter aimed at my standing and comments in its formal application. Of equal surprise is the effort the letter makes to avoid the actual basis of our disagreement. I would prefer to focus on the many legitimate reasons the Board should have concerns about Ocean View's project as proposed, but their letter miscasts our argument and the facts in a way that requires correction for the record.

- 1) In their letter, Ocean View asserts that I am attempting to control development on the Godsoe property. Absolutely untrue. We do not oppose or seek to control development on Godsoe. As reflected in my comments to the Board in December and February, our issue is that by deed, Ocean View can only use the 31 acres they purchased from my father for up to 50 single family homes and **related** amenities. Their current proposal calls for obvious violations of these deed restrictions; Construction on the land we sold of a new road spur exclusively to access their proposed development on Godsoe; and, Traffic flow (vehicle and pedestrian) from Godsoe over the parcel to Tuttle Road.
- 2) The letter's treatment of the "adjoining properties" restriction is deeply flawed. With hindsight, we believe (and are disappointed) that Ocean View always intended to side step the deed restrictions by leaving a back door in the language they negotiated : The "adjoining properties" provision. We found their insistence on that language curious at the time, but knew the parcels that were adjoining and saw no real likelihood of a bad outcome. Ironically, it now seems all but certain that Ocean View thought Godsoe was adjoining, failing to realize until too late that Godsoe and my dad's parcel don't connect. That error leaves them with the need to explain away the restriction they crafted and unwittingly embraced. Their most recent effort to do so creates a wholly new claim; That the adjoining properties language was Ocean View's effort to make sure we knew they would develop on the Allen Property. Honestly, there is no diplomatic way to respond to this; It's simply not true. At the end of this letter you will find a timeline of events. The adjoining properties language was drafted **by Ocean View** in early 2017 and contained in the March 6, 2017 Purchase and Sale agreement between them and my dad, **six months** before they told us they were engaged in negotiations with the Allen's .
- 3) I find it somewhat perplexing that Ocean View chooses to instruct the Board relative to my status as a private citizen as I have not sought or asserted any other status?
- 4) The letter seems to lump my father and I together. The 31 acres comprising the bulk of the Cumberland Crossing project were sold by my dad to Ocean View on May 31, 2018. I hold a power of attorney for my dad (he has dementia) and negotiated on his behalf. I am also an abutter to

Cumberland Crossing and a named beneficiary of the deed restrictions in question. However, while we share common concerns and some overlapping interests, we are not one.

The deed restrictions we negotiated were the only reason my family sold to Ocean View. At the density of development involved, we felt it was critical to directly cap the number of homes on the property and by extension cap traffic, light and noise, as well as leave some green space for wildlife and aesthetics. Ocean View now desires to expand those indirect impacts and apparently seeks to convince the Board that we have no right to object. They aren't even satisfied to simply take that position and let the chips fall, but seek to massage the record to fit their version of events. We find this disappointing at best and hope you will give some weight to it when the merits of the applicant and project are being considered.

Sincerely,



Rick Doane

Timeline of Cumberland Crossing and Godsoe Issue -

- July 6, 2016 the Godsoe parcel listed on MLS
- July 25, 2016 we were contacted by Ocean View regarding my dad's parcel
- October 1, 2016 (give or take) – Our negotiations with Ocean View commence.
- November 28, 2016 the Godsoe parcel was identified on MLS as a pending sale, and on 1/18/2017 the listing was removed. That contract was with an unknown party.
- March 6, 2017 we executed a P&S (drafted by Ocean View) on my dad's land containing, among its other provisions, the deed restrictions at issue now.
- August 21, 2017 we were notified that Ocean View had put the Godsoe parcel under contract. We responded by raising the issue of access to Godsoe as an issue outside of the deal we had negotiated.
- September/October, 2017 – Ocean View begins conversation with Lonnie Allen about purchase of his property.
- November 4, 2017 – Planning Board Site Walk of Cumberland Crossing– Ocean View tells us Godsoe property is tied up in litigation with uncertain outcome.
- May 31, 2018 Closing on my dad's property (and Allen's) with deed from my dad containing the deed restrictions (unchanged) originally contained on the 3/6/17 P&S. Status of Godsoe property summarized by Ocean View as uncertain and unchanged.
- December, 2018 – Ocean View tells us they have resolved litigation, purchased Godsoe and are proceeding with development of that parcel. Our conversations were initially cordial, but when we asked whether inclusion of the Netland acreage in the overlay zone expansion implied plans for additional development flowing to Tuttle Road, things went south. Ocean View came back with the message that they would not accept any limitations on what they brought across my dad's former land, and broke off dialogue. Despite various public representations about willingness to negotiate a solution, there has been no engagement since.