


NOTICE OF FILING OF APPEAL

RE: 7 and 11 Hutchins Court

Pursuant to G.L. c. 40A, §17, notice is hereby given that plaintiffs Noel Mann, David Morey, Will Higgins and Parker Lindberg have appealed the decision of the City of Gloucester Planning Board in regards to 7 and 11 Hutchins Court as filed in the Office of the City Clerk on March 27, 2007 to the Land Court Department of the Trial Court this 12th day of April, 2007. A copy of the complaint as filed in the Land Court is attached hereto.


Diane C. Tillotson

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

DEPARTMENT OF THE
LAND COURT NO.

NOEL MANN, DAVID MOREY, WILL HIGGINS
AND PARKER LINDBERG

Plaintiffs

VS.

PAUL LUNDBERG, JENETH FAHEY, HENRY
MCCARL, MICHAEL D. RUBIN, MARVIN
KUSHNER, MARY BLACK AND SHAWN G.
HENRY, as they are Members of the Planning Board for
the City of Gloucester, PLANNING BOARD OF THE
CITY OF GLOUCESTER, CARRIGAN
ENTERPRISES, INC. AND SUMMER HOUSE
ASSOCIATES, LLC

Defendants

COMPLAINT

Introduction

This is a complaint pursuant to G.L. c. 40A, §17 appealing the grant of a special permit for a cluster development granted to Carrigan Enterprises, Inc. and Summer House Associates, LLC (hereinafter collectively “Applicant” or “Carrigan”). A copy of the decision granting the special permit is attached hereto as Exhibit A. The complaint also seeks declaratory relief pursuant to G.L. c. 231A, challenging Carrigan’s rights to utilize Hutchins Court for the proposed project, and asking the court to invalidate the purported grant because of its failure to comply with G.L. c. 40A, §17.

The Parties

1. Plaintiff Noel Mann resides at 12 Dorset Drive, Gloucester, Massachusetts.

Plaintiff Mann is a direct abutter to the proposed project.

2. Plaintiff David Morey resides at 35 Revere Street, Gloucester, Massachusetts.

Plaintiff Morey is a direct abutter to the proposed project.

3. Plaintiff Will Higgins resides at 5 Hutchins Court, Gloucester, Massachusetts.

Plaintiff Higgins is a direct abutter to the proposed project.

4. Plaintiff Parker Lindberg resides at 10 Hutchins Court, Gloucester,

Massachusetts. Plaintiff Lindberg is a direct abutter to the proposed project.

5. Defendant Paul Lundberg resides at 22 Raven Lane, Gloucester, Massachusetts and is Chair of the Planning Board of the City of Gloucester. Defendant Lundberg voted in favor of granting the special permit.

6. Defendant Jeneth Fahey resides at 19 Grapevine Road, Gloucester, Massachusetts and is the Vice Chair of the Planning Board of the City of Gloucester. Although defendant Fahey was present at some of the hearings on the application in question, defendant Fahey was not eligible to vote and did not vote on the special permit application.

7. Defendant Henry McCarl resides at 28 Old Nugent Farm Road, Gloucester, Massachusetts and is a member of the Planning Board of the City of Gloucester. Defendant McCarl voted in favor of granting the special permit.

8. Defendant Michael D. Rubin resides at 58 Warner Street, Gloucester, Massachusetts and is a member of the Planning Board of the City of Gloucester. Defendant

Rubin attended the public hearings on the special permit application in question but abstained from the vote on the special permit application.

9. Defendant Marvin Kushner resides at 18 Atlantic Road, Gloucester, Massachusetts and is a member of the Planning Board of the City of Gloucester. Defendant Kushner voted in favor of granting the special permit.

10. Defendant Mary Black resides at 7 Riverside Avenue, Gloucester, Massachusetts and is a member of the Planning Board of the City of Gloucester. Defendant Black voted in favor of granting the special permit.

11. Defendant Shawn G. Henry resides at 32 Laurel Street, Gloucester, Massachusetts and is a member of the Planning Board of the City of Gloucester. Defendant Henry was not a member of the Planning Board during the first several public hearings on the project and accordingly was not eligible to vote and did not vote on the proposed special permit application.

12. Defendant City of Gloucester Planning Board is a quasi judicial body that is the special permit granting authority for special permits for cluster developments pursuant to Section 5.9 of the City of Gloucester Zoning Ordinance.

13. Summer House Associates, LLC has a usual address of 7 Hutchins Court, Gloucester, Massachusetts and is the record owner of the property that is the subject of the special permit and one of the applicants.

14. Defendant Carrigan Enterprises, Inc. is a Massachusetts corporation with a usual business address of 10 Revere Street, Gloucester, Massachusetts. Carrigan, together with Summer House Associates, LLC was an applicant for the project.

Facts

15. The site consists of 31.9 acres of steeply wooded land immediately abutting Langsford Pond and has an address of 7 and 11 Hutchins Court, Gloucester, Massachusetts. The proposed project is sometimes referred to as “Annisquam Woods.”

16. The proposed project consists of the construction on twenty-seven residential units with offsite parking and a total of twenty-five off street guest parking spaces. Access to the project is off the end of Hutchins Court, a narrow private road in the City of Gloucester of variable widths and grades. Two fire access roads will provide emergency access into and out of the proposed development.

17. The application for the cluster development special permit was originally filed on June 30, 2006 with the City of Gloucester City Clerk’s Office. On April 10, 2006 a preliminary plan of the cluster development was approved by the Planning Board. The original application sought 24 waivers from the rules and regulations of the Board.

18. The public hearing on the application was duly noticed and published in the Gloucester Daily Times pursuant to G.L. c. 41, §81T and G.L. c. 40A, 11.

19. The public hearing was opened on the application on July 24, 2006 and continued to August 28, 2006, September 25, 2006, October 23, 2006, November 13, 2006, December 11, 2006, January 22, 2007, February 12, 2007 and February 26, 2007, on which date the public hearing was closed and a final vote taken.

20. The City of Gloucester has a seven member planning board. Of those members, only five members of the board were eligible to vote. Of those eligible, four members,

defendants Paul Lundberg, Henry McCarl, Marvin Kushner and Mary Black voted in favor of the application and one member, defendant Michael D. Rubin, abstained.

21. The decision of the Board was filed in the Town Clerk's Office on March 27, 2007.

22. By letter dated September 11, 2006, the Board of Health suggested numerous conditions related to the project. A conditional sewer connection permit was issued by the City of Gloucester Engineering Department on June 30, 2006 and both the Fire and Police Departments indicated satisfaction with the project by letters dated December 15, 2006 and December 13, 2006 respectively.

23. Substantial changes in the project were made after the initial approval of the preliminary plan for the cluster development on April 10, 2006 by the Planning Board and also subsequent to the issuance of the conditional sewer permit and Board of Health review. Among other things, applicant entirely eliminated a secondary vehicular access and egress from the project and substituted in its place steeply graded "fire access roads." Although there was oral representation at the public hearings that these changes had been discussed with the Town Boards, there was no written confirmation of this fact in the record. In addition, defendant-applicant made multiple changes in the grading and drainage plans without full review by the Board of Health or the City's Engineering Department.

24. All of the substantial changes made by the applicant were done in the context of the original special permit application; there was never a request to withdraw the original application and substitute the revised and modified plan.

25. Because the changes were frequently submitted on the day of the public hearing in question, meaningful public comment, including comment by plaintiffs and their representatives, was difficult.

26. Section 5.9.5 of the City of Gloucester Zoning Ordinance (hereafter “Ordinance”) authorizes the Planning Board to grant a special permit for a cluster development, but only if the Board is able to find that “the proposed design and layout is superior to a conventional one in preserving open space for conservation and recreation; and preserving natural features of the land; and allowing more efficient provision of streets, utilities and other public services.” One of the enumerated considerations the Planning Board is directed to consider is “adequacy of provisions for public safety, protection from fire and flood, and maintenance of public facilities, streets, utilities and open space.” Ordinance, section 5.9.5(8).

27. The cluster development section of the Ordinance incorporates by reference the requirements for definitive subdivision plan and requires that proposed cluster developments meet those requirements “whether or not the development constitutes a subdivision.” Ordinance, section 5.9.4.1(a).

28. Section 5.9.5(a) of the Ordinance sets forth as a prerequisite for approval of a cluster development special permit that the Planning Board find that the proposed cluster development is “superior to a conventional one.”

29. Consistent with G.L. c. 41, §81R, a Planning Board may waive strict compliance with its rules and regulations “where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law.”

30. The applicant requested and the Planning Board granted a waiver from its requirement that no dead end street be longer than 500 feet. The principal roadway serving the project is a dead end road is approximately 2600 feet in length, or approximately ½ mile. The waiver was not in the public interest and should not have been granted by the Board.

31. The Board granted many waivers with respect to the design and grading of the streets and the fire roads in question. These waivers were not in the public interest.

32. The City of Gloucester is serviced by a STEP sewer system that has experienced substantial difficulty in the past several years.

33. The sewer connection permit issued by the City of Gloucester for the proposed project on June 30, 2006 was subject to several substantive conditions. The conditions imposed reflect the cities lack of confidence in the ability of the present STEP system to handle the projected flows from the project.

34. Plans for the project drainage system were uncertain and incomplete at the time of the Planning Board approval. Because of the substantial steep grades existing on the site the project should not have been approved without a definitive drainage design.

35. The sole access to the proposed project is through Hutchins Court, a narrow, steeply- graded, winding private road of variable width. Although a small portion of the project's site abuts Hutchins Court, Hutchins Court is not suitable to provide access. In addition, Carrigan has no legal right to expand usage of the private way by the addition of twenty-seven housing units.

36. G.L. c. 40A, §9 provides that a special permit issued by a special permit granting authority shall require a two-thirds vote of Boards with more than five members. In

this case the affirmative vote of five members of the Board was necessary in order to grant the special permit. Only four members of the Board voted in favor of the permit; accordingly said permit was denied.

37. The water supply from then proposed project is from an eight inch supply line that passes in front of the home of plaintiff David Morey. The City of Gloucester Water Department has recently measured the water pressure at plaintiff Morey's residence as between 10 and 12 pounds per second ("psi"). The City of Gloucester has adopted as a standard the American Water Standard of 40psi. The low water pressure condition will exacerbated by the proposed project.

38. Plaintiff Will Higgins resides at 5 Hutchins Court. The sole project access is through Hutchins Court and the proposed project plans include removal of a portion of the length of plaintiff Higgins' driveway in order to accommodate the widening of Hutchins Court in one area. Removal of a portion of plaintiff Higgins driveway will negatively impact the safety of Higgins and his family as his line of sight, already compromised, will be further impaired and the additional traffic from the proposed project will create unreasonable risk to Higgins and his family.

39. Plaintiff Parker Lindberg, who resides at 10 Hutchins Court, is located at a low point in the comparative elevations along Hutchins Court. Plaintiff Lindberg already experiences flooding at his home due to runoff from Hutchins Court. The significant and expanded paved surface in that portion of Hutchins Court proposed for widening by the proposed project plans will significantly increase the amount of storm water runoff at plaintiff

Lindberg's property and that, and the additional traffic generated by then proposed project will create an unreasonable risk of harm to Lindberg.

40. Plaintiffs are accordingly aggrieved by the decision of the defendant City of Gloucester Planning Board which was arbitrary and capricious, without legal foundation, and exceeded the scope of the Board's authority pursuant to the standards set forth in the City of Gloucester Zoning Ordinance.

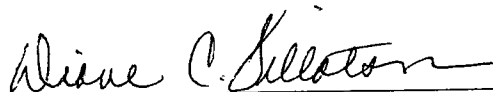
WHEREFORE, plaintiffs Noel Mann, David Morey, Will Higgins and Parker Lindberg respectfully urge this court to grant the following relief:

1. Enter an order declaring that the purported grant of the special permit for the proposed project is a nullity because the project lacked the requisite number of affirmative votes pursuant to G.L. c. 40A, §9;
2. Annul the decision of the City of Gloucester Planning Board granting the special permit and waiving requirements of its subdivision control law in order to accommodate the proposed project;
3. Enter an order declaring that the defendant Carrigan Enterprises, Inc. and Summer House Associates LLC have no right to access the proposed project through the private road known as Hutchins Court; and
4. Grant such other relief as this court deems appropriate.

Respectfully submitted,

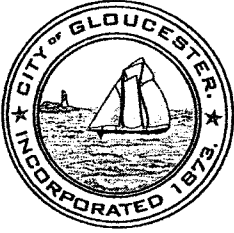
NOEL MANN, DAVID MOREY, WILL
HIGGINS AND PARKER LINDBERG

By their Attorney,



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Dated: April 12, 2007



**CITY OF GLOUCESTER
GLOUCESTER MA 01930**

CITY CLERK
GLOUCESTER, MA
07 MAR 27 PM 3:12

To: City Clerk

Date: March 26, 2006

**CLUSTER DEVELOPMENT, Section 5.9.4
CLUSTER DEVELOPMENT SPECIAL PERMIT
COMMONWEALTH OF MASSACHUSETTS**

Essex, ss

Gloucester, MA

In regards to: 7 and 11 Hutchins Court (a.k.a. Annisquam Woods)

The Planning Board of the City of Gloucester, Massachusetts, vested with the powers of subdivision control and constituting a special permit granting authority under the laws of the Commonwealth of Massachusetts, the Rules and Regulations Governing the Subdivision of Land in Gloucester, and the Zoning Ordinance of the City of Gloucester, hereby approves and adopts, by a roll call vote, four in favor (Kushner, Black, Lundberg and McCarl), none opposed, one abstention (Rubin), the following findings, conclusions and decision with regard to the application of Carrigan Enterprises, Inc. and Summer House, Associates, LLC for a Planning Board Cluster Development Special Permit to create a Cluster Development, hereinafter Annisquam Woods, pursuant to Zoning Ordinance Section 5.9, and specifically subsection 5.9.4 and the Rules and Regulations Governing the Subdivision of Land in Gloucester. The parcel of land is located at 7 and 11 Hutchins Court (Assessors Map 125, Lots 71 and 22; Map 115, Lot 30).

PROCEDURAL HISTORY / STATEMENT OF FACTS

1. The record owner of the property is Summer House, Associates, LLC of 7 Hutchins Court, Gloucester, MA 01930.
2. The applicant seeks a Cluster Development Special Permit pursuant to Section 5.9.4 of the Gloucester Zoning Ordinance and M.G.L. Chapter 40A§9 for a Definitive Cluster Development Plan of 27 units.
3. The application was filed with the City Clerk and with the Board of Health on June 30, 2006.
4. The application for a Definitive Cluster Development Plan followed the filing of a Preliminary Cluster Development Plan which Preliminary Plan was approved by the Planning Board unanimously (7 in favor, none opposed) on April 10, 2006.

5. Notice of a public hearing on the application was posted and published once in each of two successive weeks in the Gloucester Daily Times at least 14 days before the scheduled date of the public hearing pursuant to M.G.L. Chapter 41, §81T and Chapter 40A, §11.
6. Timely notice of the application and public hearing was sent to all parties in interest, pursuant to M.G.L. Chapter 41, §81T and Chapter 40A §11.
7. The public hearing was opened on the application on July 24, 2006, with sessions continued to August 28, 2006, continued to September 25, 2006, continued to October 23, 2006, continued to November 13, 2006, continued to December 11, 2006, continued to January 22, 2007, continued to February 12, 2007 and continued to February 26, 2007 on which date the hearing was closed and following which a final vote on the application and waivers was taken by the Planning Board on February 26, 2007. Extensions of time for the Board to make a decision were granted in writing by the applicant through February 28, 2007, and such extensions were filed with the City Clerk.
8. Minutes of the above mentioned Planning Board meetings were taken and the approved minutes are on file in the office of the City of Gloucester Community Development Department and the office of the City Clerk and are incorporated herein.
9. Plans submitted for the Cluster Development Special Permit are entitled: "Definitive Cluster Index Plan Annisquam Woods Gloucester, Mass." Prepared for Summer House, Associates, LLC by Hayes Engineering, Inc. dated June 26, 2006 as revised with final revision date of March 6, 2007, consisting of 19 sheets, hereinafter "the Plans".

FINDINGS:

The Planning Board finds that the Annisquam Woods Cluster Development incorporates and satisfies the goals and complies with the design criteria of the Cluster Development found in the Gloucester Zoning Ordinance (hereafter Cluster Development Ordinance). The Planning Board finds that, in accordance with Section 5.9.5(a) of the Cluster Development Ordinance, the proposed cluster design and layout is superior to a conventional one in (1) preserving open space, (2) preserving natural features, and (3) allowing a more efficient provision of streets, utilities and other services. A comparison of the applicant's voluntarily submitted alternative conventional plan with the proposed cluster plan, coupled with the Board's analysis of the proposed plan, supports the Planning Board's finding under Section 5.9.5(a). First, the Board finds that the proposed cluster design will preserve approximately 71% of the parcel as open space, which far exceeds the standard of 30% requirement of the Cluster Development Ordinance. Second, the Board finds that the driveways and cluster layouts were designed specifically to provide a compact development which avoids, and preserves wetland resources areas, wetland and upland habitats and other natural features, consistent with the Cluster Development Ordinance. Those natural features will be preserved and protected within the approximately 71% of the parcel that will remain as undeveloped, open space. Third, the Board finds that, by using a compact design where the development footprint is limited (unlike in a conventional plan where development extends over much of a parcel), the cluster plan allows for a more efficient use of services, such as driveways, stormwater management, and utilities.

Section 5.9.5(b) of the Cluster Development Ordinance directs the Planning Board to give particular attention to the following eight factors as the basis for its decision:

1. A harmonious integration of development with surrounding properties;
2. An overall layout and design for the best possible relationship between the development and the land;
3. Appropriately sized and configured open spaces for active and passive recreation;
4. Protection of natural features, such as streams, mature trees or clusters of trees, rock outcrops, bluffs, slopes and historic or archeological features;
5. Provision of access to open space for the physically handicapped, elderly, and children;
6. Use of open space for preserving, enhancing or providing scenic vistas;
7. Preservation of historic resources; and
8. Adequacy of provisions for public safety, protection from fire and flood, and maintenance of public facilities, street, utilities and open space.

The Planning Board finds that the applicant has effectively designed for the efficient and creative use of the land to be in harmony with its natural features and surrounding properties by conserving approximately 71% of the land as open space and by limiting development to areas outside of the wetlands resource areas and outside of their 100-foot buffer zones except in certain, limited, unavoidable areas.

The Planning Board finds that the applicant has minimized the consumption of open space, and preserved natural topography and natural features by maintaining over 22 acres of open space, by limiting the network of streets and utilities, by using a narrower paved street width, shortened driveways, shortened cul-de-sacs, and by eliminating an initially proposed connection to Tufts Lane. The Planning Board finds that the amount of cuts and fills on the site is balanced and that all driveways meet the appropriate grade standard for the street design as required in the Gloucester Rules and Regulations Governing the Subdivision of Land in Gloucester. The Board specifically finds that the elimination of a proposed connection to Tufts Lane preserves natural features in the form of an uninterrupted wildlife corridor between the offsite Langsford Pond and offsite woodlands.

In addition, the Planning Board finds that active and passive usable open spaces have been provided by providing a playground area of approximately 12,000 square feet, by using the emergency lanes for walking and jogging purposes, and by providing informal access on foot to the natural, undisturbed open space.

The Planning Board finds that the applicant's first step in the design of the Cluster Development was the protection of natural features, obtaining initially an Amended Order of Resource Area Delineation (ORAD) issued May 24, 2005 from the Gloucester Conservation Commission, and subsequently using less than one-third of the site for development while protecting the remainder, including streams, mature trees, rock

outcroppings, and slopes as open space. The Planning Board requires a conservation restriction for the perpetual protection of the conservation open space as per Section 5.9.10(e) of Cluster Development Ordinance.

The Planning Board finds that the applicant has provided open space for scenic vistas near or around Langsford Pond and adjacent wooded areas. No historic resources have been identified on the site to be preserved.

The Board finds that the Cluster Development design has incorporated fire access roads, designed improvements to the local water distribution system, and installed residential fire suppression sprinkler systems in the dwelling units. Along with the commitments of private maintenance of streets, utilities and open space by the Condominium Association, the Board finds that the design will ensure safety and protection from fire, flood, panic, and other emergencies. These provisions were reviewed by Board's independent technical consultants at Vanasse Hangen Brustlin, Inc., hereinafter VHB, and accepted by the Gloucester Fire and Police Departments.

Based on the preceding findings, the Planning Board finds that the design and layout of the Annisquam Woods Cluster Development are superior to the design and layout of a conventional subdivision in preserving open space for conservation and recreation, in preserving natural features of the land and in allowing a more efficient provision of street, utilities and other public services.

In addition, the following findings are provided:

1. **Street Design.** The Planning Board finds that the proposed street design maximizes open space, preserves natural landscaping features, and provides an efficient layout for streets by limiting the paved width of the driveways and providing fire access roads for emergency access. Relying upon the Board's independent engineering peer review of street design and traffic circulation performed by VHB, as well as the satisfaction expressed by the Fire and Police Departments through reporting and interdepartmental meetings, the Planning Board finds that there is adequate and safe sight distance and adequate and safe access for driveways identified as Driveway A and Driveway B. The Planning Board further finds that the proposed improvements on Hutchins Court benefit not just the Cluster Development but the neighborhood itself by providing bypass roadway at the steepest portion of Hutchins Court, by the widening and repaving of Hutchins Court, and by the improvement of the collection and treatment of stormwater runoff. The Board finds that the aforementioned improvements contribute to public health and safety. The Board also finds that the evidence presented by Hayes Engineering (the applicant's traffic engineer), VHB, (the Planning Board's independent traffic engineer), and the Fire and Police Departments demonstrates that the neighboring roads provide adequate and safe access to the Site.

2. **Sewer Connection:** The Planning Board finds that the applicant has received a sewer connection permit dated June 30, 2006 from the City of Gloucester Engineering Department to connect the Cluster Development to the existing municipal sewer system. The agreement entitled "Conditions for Sewer Connection Permit – Hutchins Court/Tufts Lane Development" dated June 30, 2006 is incorporated herein.

3. Water service: Based on the hydraulic analysis performed by the City of Gloucester's water consultant, Dewberry-Goodkind, Inc (Dewberry), the Planning Board finds that the overall impact of the proposed development will be favorable with the inclusion of planned piping upgrades to the existing water distribution system and looping of the water mainline from Hutchins Court through the proposed development to Tufts Lane. Also based on the referenced hydraulic analysis, the Planning Board finds that the water distribution system has existing available capacity for both domestic and fire flows for this Cluster Development.

4. Driveways: With the concurrence of the Gloucester Fire Chief, the Gloucester Police Department, and the Planning Board's independent technical consultant, VHB, the Planning Board finds that the design for the project's driveways is in the public interest and ensures public safety. The design of the paved emergency fire access roads allows for adequate and alternative access and egress for emergency vehicles and for residents in the event of an unusual incident. The elimination of the original proposed connection to Tufts Lane eliminates the need to use the Bennett Street access, an existing road with steep grades, and also reduces impervious area, increases open space, provides an undisturbed wildlife corridor while allowing for sufficiently wide driveways that meet appropriate road grade standards. The Board finds that additional off street guest parking spaces will reduce the probability of street parking in conjunction with the Condominium Association's ban on street parking.

DECISION:

In view of the foregoing findings, pursuant to Section 5.9.4.4 of the City of Gloucester Cluster Development Ordinance and Section 3.6 of the Rules and Regulations Governing the Subdivision of Land in Gloucester, the Planning Board hereby votes four in favor, zero opposed with one abstention, that the aforementioned property is a proper parcel to be developed under Section 5.9 (Cluster Development), that it meets all requisite criteria for a Cluster Development Special Permit, and that based specifically on the criteria of Section 5.9.5(b), the Planning Board grants the following waivers and finds that the design and layout of the Annisquam Woods Cluster Development are superior to the design and layout of a conventional subdivision in preserving open space for conservation and recreation, in preserving natural features of the land and in allowing a more efficient provision of street, utilities and other public services and grants a Cluster Development Special Permit for the Annisquam Woods Cluster Development in accordance with the terms and **CONDITIONS** stated below.

1. Special Permit Plan of Record: The applicant is required to record sheets 1: Definitive Cluster Index Plan 1 of 5; and Definitive Cluster Plan sheets 2 through 5, of the approved plans dated June 26, 2006 with revision dates through March 6, 2007, at the Southern Essex District Registry of Deeds along with the Planning Board Cluster Development Special Permit decision, Master Deed and Declaration of Trust.

2. Documentation: When documentation is required to be provided to City officials as a condition of approval, the submittal, or notice of the submittal and a description of its contents, shall be provided to the City Planning staff for the Cluster Development Special Permit record.

3. Release of Units: Prior to release of the performance guarantee covenant, the applicant may request the release of particular units, and the Planning Board will issue a certificate of compliance determining that improvements necessary to adequately serve requested units are satisfactory following Section 3.8.3 of the Rules and Regulations Governing the Subdivision of Land in Gloucester, Massachusetts (hereinafter Subdivision Regulations), treating "lots" as "units".

4. As-Built Plan: Prior to the final release of the performance guarantee covenant, a registered professional engineer hired by the applicant shall provide a written certification to the Planning Board that construction is in compliance with this decision and to-scale as-built plan, which shall be stamped and signed by a professional engineer and shall also be provided as part of the certification.

5. The Order of Conditions issued February 8, 2007 by the Gloucester Conservation Commission or any such Final Order of Conditions issued by the Massachusetts Department of Environmental Protection relative to the state Wetland Protection Act, and the City of Gloucester Wetland Ordinance for proposed work at Hutchins Court shall be incorporated herein by reference.

6. Conservation Restriction: Conservation open space will be protected by a recorded Conservation Restriction. Pursuant to Section 5.9.10(e)(1), the perpetual Conservation Restriction will be recorded with the Condominium Master Deed and conveyed to the Condominium Association. In the alternative, the Planning Board shall allow a conveyance of the conservation restriction to a non-profit conservation organization pursuant to Section 5.9.10(e)2.

7. Board of Health Approval: The Board of Health's approval of the Cluster Development with conditions dated September 11, 2006 is incorporated by reference. The specific approval conditions are incorporated in the conditions listed herein and attached as "Exhibit A".

8. Sewer Connection Permit: All terms and conditions of a Sewer Connection Permit, dated June 30, 2006 are incorporated into this Special Permit and attached as "Exhibit B".

9. Stormwater Management. All terms, procedures, reporting and conditions included in the Operation and Maintenance Plan, Annisquam Woods dated June 26, 2006 are incorporated herein and attached as "Exhibit C". Such procedures shall apply to all stormwater conveyance and detention components indicated on the Plans, including the drainage infrastructure improvements to Hutchins Court and associated detention basin.

10. Fire Suppression: All units shall be provided with residential sprinklers for fire suppression installed in accordance with applicable NFPA standards. The Master Deed and Declaration of Trust shall include specification of operation and maintenance of such residential sprinklers.

11. Responsibility of Condominium Association for Maintenance Activities: A maintenance plan, incorporating all conditions of this Decision shall be a part of the recorded condominium documents. All maintenance activities shall be the responsibility of the owner/applicant until the Condominium Association is formally established and the City of Gloucester Planning Board receives written notice and record of such establishment at which time all maintenance activities shall become the sole responsibility of the Condominium Association. The maintenance requirements shall include road and emergency fire access road maintenance, snowplowing of roads and fire access roads, operation and maintenance of the on-site sewer system, private trash removal, stormwater operation and maintenance, maintenance of the fire suppression systems, operation and maintenance of common lighting shown on the Plans, and canine waste management (collectively "Maintenance Requirements"). In view of the Planning Board's interest in creating for the City separate enforcement rights with and against the owner/applicant until the date that the Condominium Association is established as aforesaid, and thereafter with and against the Condominium Association, to ensure compliance with and enforcement to the Maintenance Requirements, it shall be a condition of this Decision, and by each purchaser of a unit recording its deed to its respective unit, the owner/applicant until the date that the Condominium Association is formally established, and the Condominium Association thereafter, shall both be deemed to have agreed and accepted that (a) it will perform and comply with all Maintenance Requirements during the respective time periods that each shall be responsible for the Maintenance Requirements as aforesaid, and (b) if there is a material breach of this agreement to perform and comply with the Maintenance Requirements and said breach affects public health or safety, which breach is not cured with reasonable promptness under the circumstances, the City by way of the Planning Board shall have the right (but not the obligation), along with other possible enforcement rights, including without limitation those enforcement rights set forth in M.G.L.c.40A §7 and M.G.L.c.41 § 81w, to file a lawsuit against the then responsible party on account of the breach of said agreement and to seek specific performance of the agreement as aforesaid. Upon recording of the condominium documents, the Condominium Association shall execute a document in recordable form assuming the foregoing responsibilities. The agreement shall be delivered to the City of Gloucester prior to the issuance of any occupancy permit. By agreeing to and accepting the foregoing agreement as aforesaid, the owner/applicant and Condominium Association do not waive any defense, factual, legal or otherwise, to any proceeding or lawsuit. These rights in the Planning Board are in addition to the rights identified in condition 14 below.

12. Affordable Housing: In keeping with the goals of the Gloucester Community Development Plan 2001, the applicant has agreed to provide three new affordable housing units, either on site or off site, at a sales price consistent with State guidelines for the sale of affordable housing units and pursuant to the most recent income guidelines established by the U.S. Department of Housing and Urban Development. The applicant shall provide one new affordable housing unit for sale at the time of the sale of the last market rate unit in each of the three clusters of the development.

13. The Special Permit under Section 5.9.4 Definitive Cluster Development shall not take effect until notice is recorded with the Southern Essex District Registry of Deeds for Essex County by the recording of a copy of the Decision and appropriate plan sheets. The

fee for such notice shall be paid by the owner. Prior to the recording of the Decision and Plans with the Registry of Deeds, the applicant shall have the seal of the City affixed to the Decision. Proof of recording shall be provided to the Planning Department.

14. In granting this permit, the Planning Board has relied upon the oral and written representations made by the applicant and its representatives in documents submitted in support of its application at the public hearing on the application. Failure to comply with any conditions, regulations or limitations imposed by the Planning Board shall be deemed sufficient grounds for revoking the permit after notice and hearing being given to the person holding the permit or operating and maintaining the activity permitted in accordance with Section 1.4.2.2 (f) of the Zoning Ordinance.

15. This Cluster Development Special Permit shall lapse two (2) years from the date of issuance if a substantial use thereof has not sooner commenced except for good cause. The date of issuance shall be the date this decision has been filed with the Office of the City Clerk, which shall not include such time required to pursue or await the determination of any appeal. In the event of any appeal, the 2-year period shall run from the date of the Planning Board's endorsement of the plan or the filing of a certificate as to the final resolution of an appeal.

16. Each finding, term and condition of this decision is to be severable and any invalidity of any finding, term or condition of the decision shall not be held to invalidate any other findings, term or condition of this decision.

SPECIFIC CONDITIONS OF APPROVAL:

1. Affordable housing: The City of Gloucester does not have an inclusionary affordable housing requirement for a Cluster Development. The applicant has voluntarily agreed to provide three new affordable housing units, either on site or off site, at a sales price consistent with State guidelines for the sale of affordable housing units and pursuant to the most recent income guidelines established by the U.S. Department of Housing and Urban Development. The applicant shall provide one new affordable housing unit for sale at the time of the sale of the last market rate unit in each of the three clusters of the development.

Conservation requested conditions:

2. No chemical herbicides, pesticides, fertilizers or road de-icers are to be used on the property, including both open space and developed areas. This condition shall be reflected in the recorded condominium documents, unit deeds, and recorded Conservation Restriction.

3. The applicant shall install visible markers to delineate the conservation-restricted areas identified on the plans and described in supporting documents. The design and installation of such markers at reasonable intervals and at angle points shall be approved by the Planning Director and perpetually maintained by the Condominium Association, so that residents and people performing work on the site, such as contractors and maintenance workers, will be able to identify the protected conservation areas. The applicant shall provide an information area near the

recreational open space with a mounted plan indicating the resources areas, conservation methods, volunteer conservation opportunities and applicable environmental regulations. Information requested by the Board of Health shall be similarly posted.

4. The applicant shall place and maintain straw bales or siltation barriers along the sloped areas on Hutchins Court and in accordance with the issued Order of Conditions by the Gloucester Conservation Commission prior to any blasting and/or excavation until such time all disturbed areas are stabilized and stormwater infrastructure is installed and operational.

5. Materials from landscaping activities shall not be stockpiled in the conservation-restricted areas. This prohibition shall be reflected in the condominium documents.

Sewer Conditions:

6. All terms and conditions of a Sewer Connection Permit, dated June 30, 2006 are incorporated into this Special Permit. All required studies outlined in said permit shall be forwarded to the Planning Board.

7. In addition to the expenses collected in the condominium budget for routine operation and maintenance costs, the applicant shall establish a segregated reserve account in the amount of \$10,000.00 to be held by the Condominium Association for the sole purpose of maintenance and repair of the sewer system. Documentation of the establishment of the account shall be provided to the Planning and Engineering Departments. The Applicant and subsequently the Condominium Association shall be required to maintain a constant \$10,000.00 minimum balance in the reserve account for such maintenance and repair.

8. The condominium documents shall require an ongoing contract with an approved Operations & Maintenance provider for the operation and maintenance and repair of all component parts of the sewer system and sewer connection.

Condominium Association Conditions:

9. The applicant shall include in the Condominium documents the following language: No modifications of any of the conditions of the approval of the Cluster Development that are required to be incorporated into the Declaration of Trust shall be allowed without hearing and approval by the Board of Health and/or the Planning Board. Such Condominium Association shall be formed in accordance with M.G.L. 183A.

10. The Condominium Association (or the applicant/owner until the development of the Condominium Association) shall be responsible for the maintenance and removal of snow from of Driveway "A", Driveway "B", the bypass section of Hutchins Court and the emergency fire access roads. Snow shall be stored in the designated snow storage areas.

11. Condominium documents shall reflect a prohibition against parking on driveways and fire access roads and non-emergency vehicular travel on fire access roads. Sign shall be erected and maintained by the owner/applicant and thereafter the Condominium Association indicating such parking and access prohibitions.

Board of Health Conditions:

12. The applicant shall provide at each cluster a mechanism similar to the "Dogiport", a description of which has been filed with the Planning Board and Board of Health. The Dogiport will contain biodegradable bags for canine waste and a receptacle for the collection of canine waste. The waste shall be picked up weekly with the private trash collection. The condominium documents shall reflect this condition.

13. The applicant shall incorporate a mosquito control plan for detention ponds used on site as a part of the Stormwater Management Plan. The mosquito control plan shall monitor the duration of standing water in the detention basins during the active mosquito season (April to October) and if standing water remains more than 72 hours in one or more of the detention basins, the Condominium Association shall use an environmentally friendly method such as B. T. I. Mosquito Dunks for control.

14. Maintenance and the three times per year testing to quantify nitrogen concentrations being discharged from the detention basins, monitoring, and reporting as described in the Operations and Maintenance Plan Annisquam Woods Gloucester, Massachusetts dated June 26, 2006 and incorporated into the application as Section 11 shall be followed until such time that the Condominium Association reasonably demonstrates that the best management practices (BMPs) have been constructed and function as designed, and in no event less than two years after the construction of the BMPs. At such time, the condominium may demonstrate to the Board of Health that the BMPs function as designed and obtain the Board's approval, after public hearing, to reduce or eliminate the frequency of monitoring. The applicant shall incorporate the requirements of the Operations and Maintenance Plan dated June 26, 2006 into the recorded condominium documents.

15. Impervious surface will not be increased in the common areas of the condominium. Impervious area will not be increased within the limited common areas or the exclusive use areas beyond that provided in the final drainage calculations for the project without compliance with Section 1.3.3(g) of the City of Gloucester Zoning Ordinance relative to Drainage and Grading Requirements.

16. A warning notice that refers to the potential risks from exposure to mosquitoes, in a scale and using language approved by the Gloucester Health Department, must be posted within the immediate proximity of the playground or in another location that is easily accessible to the residents and their guests.

17. The dwelling unit water service must meet American Waterworks standards and comply with the design requirements of the Rules and Regulations Governing the Subdivision of Land, §4.5 Water and Water Mains. Fire flow testing shall be performed by the owner/applicant and pressure confirmed by the Fire and

Engineering Departments prior to the issuance of the first occupancy permit. Water pressure shall be retested by the owner/applicant and confirmed by the Fire and Engineering Departments upon completion of the project.

18. Prior to the transfer of title of any unit within the Cluster Development, the owner shall obtain from the Board of Health a certification that the required Operation and Maintenance of the Stormwater Management System has been completed and the inspection report filed within one year of the date of the transfer of the Unit.

Other Conditions:

19. The final revised plan shall indicate a reduction to 27 residential units with the removal of the southeastern most structure from Cluster 2, a total of twenty-five (25) off street guest parking spaces, and a reduction of the grade of Fire Access Road "B" to 15%, all of which were proposed by the applicant at the hearing of February 26, 2007.

20. An onsite pre-construction meeting shall be held at least 10 days in advance of any clearing or construction of any improvements referenced in the Plans, with staff of the Gloucester Planning, Conservation, Health and Engineering Departments to define the limits of work, sequence and inspection schedule. The applicant shall request such meeting in writing to the City Engineer, Director of the Department Public Works and the Planning Director. The applicant shall have the centerline of driveways and fire access roads and conservation open space limits clearly staked. Minutes of the meetings shall be prepared by the Planning Department.

21. A landscaping plan shall be submitted for approval by the Planning Board, which meets the minimum requirements of Sections 4.10.2 through 4.10.4 of the Subdivision Regulations for the area between the existing Hutchins Court and the bypass driveway between stations 7+00 to 10+00 of the Plans.

22. The construction of all improvements associated with the Plans shall be subject to the inspection provisions of Sections 3.7 and 5.1 and Form K of the Subdivision Rules and Regulations.

23. Guardrails shall be installed between station 14+25 to 17+50 on the right side of Driveway "A" and on the northerly side of cul-de-sac of Driveway "A" between the intersection of Fire Access "B" and the parking area at the terminus of the Driveway "A". A wooden or steel guardrail detail shall be provided and approved by the Planning Director.

24. Delivery of construction materials and heavy equipment shall limited to the hours of 8:00am and 4:30pm, Monday through Saturday. No rock hammering or rock drilling is permitted on Saturdays, Sundays, or Holidays. All construction equipment shall be stored on the applicant's property and off of the existing Hutchins Court.

25. Driveways "A" and "B" shall be named and units numbered as approved by City of Gloucester Fire and Engineering Departments.

WAIVERS GRANTED:

Section 5.9.6 of the Zoning Ordinance directs the applicant to comply with all of the design criteria and improvement requirements of the Rules and Regulations Governing the Subdivision of Land in Gloucester, MA. The design criteria and improvement requirements of the Subdivision Rules and Regulations are found in Section IV Design and Improvement Requirements for an Approved Subdivision. The submittal requirements for a Definitive Cluster Development are found in Section 5.9.4.1 of the Zoning Ordinance. Section 5.9.4.1(c) refers the applicant to Section 3.2.1 of the Subdivision Rules and Regulations. Pursuant to Section 3.2.1(p), the applicant may seek a waiver of strict compliance with the Rules and Regulations. The Planning Board finds that it has the authority to waive strict compliance with the requirements of these Subdivision Rules and Regulations and incorporating all the above finds that the requested waivers are in the public interest and not inconsistent with the Subdivision Control Law or the intent of the Cluster Development Ordinance.

1. Section 3.2.4(v) Contents

A waiver from the location of existing trees within 20 feet of exterior line of driveway. The purpose of the requirement is to evaluate the potential preservation of significant or specimen trees located within 20 feet of a dedicated right-of-way. With the absence of a dedicated right-of-way and the reduction of the paved width, the footprint of the driveways and sidewalk is greatly reduced. Portions of the proposed structures themselves are at points closer than the area that would traditionally be disturbed in the right-of-way. Additionally, substantial areas outside the paved width are within the proposed dedicated open space. The Board finds that there is significant preservation of existing trees throughout the site in addition to compliance with street tree planting requirements of Section 4.10.3 of the Subdivision Rules and Regulations.

2. Section 4.3.1(h) - Centerline Radius

A waiver from a minimum centerline radius of 150 feet. Based upon evidence presented by the Board's independent engineer, the Fire and Police Departments, and the applicant's engineer, the Planning Board finds that the proposed minimum centerline radius of 100 feet for Driveway "A" ensures public safety in conjunction with the recommended signage and the design speed and will provide safe and adequate access.

3. Section 4.3.2(a) - Width

A waiver from providing a right-of-way of not less than 50 feet for a minor street. The Planning Board finds that the elimination of a dedicated right-of-way allows for the siting of dwelling units in closer proximity to the driveways and maximizes the preservation of open space, and that it is in the public interest to provide more open space and less impervious area in a Cluster Development. The Board's independent technical consultant concluded that the design provides safe and adequate access to the proposed dwelling units.

4. Section 4.3.2(b) - Width of Pavement

A waiver from providing a paved minimum width of 26 feet. The Planning Board finds that the lesser paved width of 20 feet for Driveway A when combined with the off street guest parking reduces impervious area and stormwater generation, compacts the footprint of the Cluster Development, is consistent with the existing road network, and provides safe and adequate access.

5. Section 4.3.4(a) - Dead End Streets

A waiver from the requirement of a maximum length of a dead end street of 500 feet is requested. As stated herein, with the concurrence of the Gloucester Fire Chief, the Gloucester Police Department, and the Planning Board's independent consultant, the Planning Board finds that the design for the project's driveways is in the public interest and ensures public safety. The design of paved emergency fire access roads allows for adequate and alternative access and egress for emergency vehicles and for residents in the event of an unusual incident. The elimination of the connection to Tufts Lane eliminates the need to use Bennett Street, an existing road with steep grades, and also reduces impervious area, increases open space, and provides an undisturbed wildlife corridor while allowing for sufficiently wide driveways which meet appropriate grade standards. The Board finds that public safety is protected with the reduction in fire access road grade, the ban on parking on the fire access roads, the installation of residential fire suppression systems in the dwelling units, local water distribution improvements, and the increase in the number of off street guest parking spaces.

6. Section 4.6.2(c)

A waiver from 4 feet of cover over drain pipes. The Planning Board finds that a minimum of 2 feet of cover over drain pipes is sufficient with the use of upgraded pipe class and is a standard engineering practice.

7. Section 4.6.2(e)

A waiver from a maximum distance of 300 feet between catch basins. The Planning Board finds that a maximum distance of 340 feet is acceptable based upon the recommendation of its independent engineering review as to the standard engineering practice to allow this waiver.

8. Section 4.6.2(h)

A waiver from maintaining stormwater velocities between 2 and 10 fps in drain pipes. The Planning Board finds with the concurrence of its independent engineering review that the proposed maximum velocity of 12.5 fps is not inconsistent with subdivision design and is in the public interest.

9. Section 4.7.1 – Sidewalks

A waiver from the requirement of providing a sidewalk on both sides of a minor street and separated from pavement area by a seeded strip (4.7.1a). The Planning Board has the discretion to determine whether one, two or no sidewalks are required on a lane. Driveway B is classified as a lane and the Planning Board finds that one sidewalk is sufficient given the reduced speeds and low traffic volume. As to Driveway A, the Board finds that there is no public safety issue with granting a waiver to have one sidewalk given the reduced speeds and low

traffic volume. One sidewalk will limit the footprint of the Cluster Development and provide safe pedestrian circulation between clusters and to common areas.

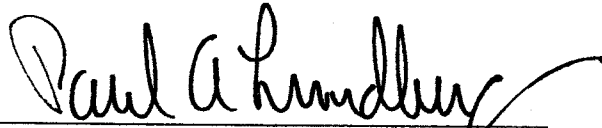
10. Section 4.10.2 - Grass Plots

A waiver from the requirement of providing a grass plot beyond the paved section of the driveway. The Planning Board finds that the significant amount of preserved open space and protected conservation area allows for the elimination of the grass plots adjacent to the driveways without any affect on public health and safety.

11. Appendix A-1.

A waiver from the Gloucester Stormwater Policy. The Planning Board finds that compliance with the Department of Environmental Protection stormwater management standards satisfies the Gloucester Stormwater Policy.

ADOPTED BY THE PLANNING BOARD

A handwritten signature in black ink, reading "Paul A. Lundberg". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Paul A. Lundberg, Planning Board Chairman

Dated: March 26, 2007

**OFFICE OF THE CITY CLERK
9 DALE AVENUE
GLOUCESTER, MA 01930
(978-281-9720)**

I, ROBERT D. WHYNOTT, City Clerk for the City of Gloucester, hereby certify that this Decision of the City of Gloucester Planning Board for an Approval of a Cluster Development Special Permit for Carrigan Enterprises, LLC and Summer House Associates, LLC, at a site located at 7 & 11 Hutchins Court (Assessors Map 125, Lot 71 and 22; Map 115, Lot 30) is a true and accurate copy of the decision, which decision is filed in the City Clerk's office, and that 20 days have elapsed since the filing of such decision, and I further certify that no notice of appeal concerning that decision has been filed in said office.

Robert D. Whynott, City Clerk

Date



CITY OF GLOUCESTER

Health Department
 3 Pond Road, City Hall Annex
 Gloucester, Massachusetts 01930
 PHONE: 978-281-9771 · Fax: 978-281-9729
 EMAIL: healthdept@ci.gloucester.ma.us
 WEBSITE: www.ci.gloucester.ma.us



Public Health
 Protect. Promote. Prevent.

Paul Lundberg, Planning Board Chairperson
 City of Gloucester Community Development Department
 3 Pond Road
 Gloucester, MA 01930

September 11, 2006

Re: Definitive Subdivision Plan for "Annisquam Woods" (Map 30, Lot 115; Map 125, Lot 71; and Map 125, Lot 22) Gloucester, Massachusetts.

Dear Mr. Lundberg:

The Definitive Subdivision Plan for "Annisquam Woods" submitted by Hayes Engineering, Inc., located at the above address, dated 6/26/06 and received by the Health Department on 6/30/06 has been approved by the Board of Health at its meeting on 9/7/06. Please note that the applicant granted a plan extension from the Board of Health until 9/11/06. The following are recommendations to the Planning Board for the proposed development as well as future use of the above referenced property:

- There shall be no modifications of any Board of Health condition incorporated into the Condominium Association documents (with revisions described herein) without prior approval from the Board of Health.
- As stated within the "Proposed Condominium Document Provision" dated 8/28/06:
 - A management plan must be established regarding the conservative use of fertilizers and a prohibition on the use of pesticides, herbicides, and deicers.
 - The Condominium Association's year round contract with a grounds maintenance service must include the assignment of the ultimate responsibility for the immediate collection and sanitary disposal of pet waste.
 - Detention basins, if any, must be designed to drain of standing water in 72 hours, or otherwise control mosquitoes in an environmentally acceptable fashion.
 - A mechanism must be established for the removal of snow.
 - A mechanism must be established to perform annual water quality testing to include three (3) nitrate nitrogen tests per year at the three (3) BMP structures (or relevant outfall points) which receive stormwater flow from the dwelling units. Annual inspections and water quality testing must be submitted to the Health Department and the Conservation Commission Agent.

RECEIVED

SEP 13 2006

COMMUNITY
 DEVELOPMENT

- A mechanism must be established to ensure that both impervious surfaces and surfaces that hold standing water do not increase after the development is complete.
- In addition to the “Proposed Condominium Document Provision” referenced above:
 - A warning notice that refers to the potential year round risks from exposure to mosquitoes, in a scale and using language approved by the Health Department, must be posted within the immediate proximity of the playground. A similar notice must be posted in the mail room or in another location that is easily accessible to the residents and their guests.
 - The Condominium Association must have a contract in force with an O&M provider to correct problems that might arise with the septic tank for the sanitary sewer system.
 - The house water service must meet American Waterworks standards. The demands of the development must not adversely affect the current house water service pressure available in the neighborhood.
 - A stipulation must be established that Title cannot pass on any parcel or unit without proof that the required Operation and Maintenance for the stormwater collection and detention system has been performed.
 - A nutrient loading study must be performed to determine how the development will affect the watershed and wetlands.

The Health Department requires the following conditions for the proposed development as well as future use of the property:

- As required by “Rules and Regulations Governing Subdivision of Land in Gloucester, Massachusetts”, Section 3.2.1.1, the Planning Board shall review the nutrient loading study performed by the applicant (Section 10 of the above referenced application) and the stormwater calculations to determine how the development will affect the watershed and wetlands.
- As stated within the “Proposed Condominium Document Provision” dated 8/28/06. Operation and Maintenance of the stormwater infrastructure must include street sweeping, deep sump catch basin inspections, and inspections of the stormwater infiltration and overflow structures.
- In addition to the “Proposed Condominium Document Provision” referenced above, stormwater management must be performed in perpetuity, a minimum of twice per year unless otherwise approved by the Gloucester Board of Health.

- Certification (in a format approved by the City of Gloucester Legal Department) that Stormwater Management Operation and Maintenance has been performed as described in the Condominium Association documents (with revisions described herein) within one year of the Title transfer, requires the signature of either the Health Department Director or a Sanitarian. Best efforts will be made to have this certification signed within 3 business days if all appropriate maintenance reports have been delivered to the Health Department. Should circumstances not allow this time frame, the certification shall be signed as soon as is possible.

Please contact Jack Vondras, Health Department Director at 978-281-9771 if you have any questions.

Sincerely,

Claudia Schweitzer

Claudia Schweitzer
Board of Health Chairperson

cc: Summer House, Associates, LLC and Carrigan Enterprises, Inc., P.O. Box 6056,
Gloucester, MA 01930
Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880
Rubin and Rudman LLP, c/o Peter Feuerbach, 50 Rowes Wharf, Boston, MA
02110
Michele Harrison, 63 Middle Street, Gloucester, MA 01930
Board of Health
Jack Vondras, Health Department Director
File

CONDITIONS FOR SEWER CONNECTION PERMIT -
HUTCHINS COURT/TUFTS LANE DEVELOPMENT

ISSUED TO OWNER, SUMMER HOUSE ASSOCIATES, LLC,
AND APPLICANT, CARRIGAN ENTERPRISES, INC.
(CITY OF GLOUCESTER ASSESSORS MAP 115, LOT 30, MAP 125, LOT 71)

1. Evaluation of Capacity and Flow Testing:

(a) The Owner/Applicant shall prepare an engineering report describing the results of flow and pressure testing in the STEP sewer system which report shall be subject to the reasonable technical satisfaction of the City. Within fifteen (15) business days of receiving the report, the City Engineer shall confirm in writing whether the City is satisfied with the report. If the City does not state its dissatisfaction, with technical reasons therefore, in writing within the fifteen business day review period, the Owner/Applicant shall notify the City Engineer in writing of the expiration of the fifteen business days and the City Engineer shall acknowledge that there has been no response. The City shall then be deemed to be satisfied with the report, and the Owner/Applicant may design and operate its sewer connection accordingly and in compliance with this permit. Business days shall exclude all Saturdays, Sundays and legal holidays.

(b) The work plan for the engineering report shall designate agreed upon locations for testing for flow and pressure. The Owner/Applicant is responsible for all testing costs including the costs of an independent engineer (not to exceed \$5,000) to assist the City in reviewing the work plan and the report.

(c) The Owner/Applicant shall design and operate its sewer connection in accordance with accepted engineering practices and to address flow and pressure concerns, if any, identified in the engineering report. If the report demonstrates that the sewage flow of the cluster development can be accommodated in the STEP sewer system only during specified off-peak hours, the Owner/Applicant shall be, and hereby is, authorized to discharge its sewage to the STEP system only during those off-peak hours. In the event that the report demonstrates that there is no additional capacity in the STEP system, this sewer connection permit shall not be effective at that time, however, the

Owner/Applicant shall have the right to present a second report from an independent engineer/expert on the capacity issue within 90 days of the date of submittal to the City of the first report. If a second independent report is presented which shows there is capacity, then the Owner/Applicant and the City shall confer to reconcile the reports and reinstate this permit.

2. Control of Odors: The Owner/Applicant shall aerate its cluster development sewage holding tank(s) on-site to control odors in the sewage it discharges to the City STEP sewer. In the alternative, the Owner/Applicant in lieu of on-site aeration of its tank(s) may elect to contribute a share of the costs of the planned City odor control improvements to the STEP sewer system components located in the Washington Street/Goose Cove area. This contribution, if elected by the Owner/Applicant, shall be based on a present worth analysis of the operation, maintenance, and renewal and replacement costs of the proposed aeration system over its anticipated useful life, as the same may be agreed upon by the parties.

3. Limitation on Future Tie-In to STEP Sewer. The Owner/Applicant shall not allow any additional land other than the subject property and its proposed development to access or connect to the Owner/Applicant's connection or system. This restriction shall be contained in the condominium association master deed relating to this property and/or to any other deeds relating to development of this property and shall be a voluntary covenant of the Owner/Applicant in the Planning Board approval.

4. Private Ownership and Maintenance: The sewer connection referenced by this permit and all its related appurtenances including but not limited to all pipes, tanks and pumps shall be installed, owned, operated and maintained initially by the Owner/Applicant and subsequently by the condominium association for the project. If the Owner/Applicant is required by the Planning Board to create and provide for financial assurance to ensure the availability of a reasonable amount of funds to operate and maintain the sewer connection (e.g., at the election of the Owner/Applicant or the condominium association, a reserve, escrow, bond, and/or other mechanism, in a

reasonable amount as may be determined by the Planning Board and Owner/Applicant), the City Department of Public Works and City Engineer shall, in the event of the failure or refusal of the condominium association to operate and maintain the system properly, have the right to perform said operation and maintenance from said financial assurance. The City shall not expend any funds other than said financial assurance nor shall it provide services in lieu of funds. The City shall also have all the rights specified in City of Gloucester Ordinances, chapter 23, in effect as of the date of issuance of this permit as subsequently amended, to bring legal or enforcement actions against the system owners including the condominium association.

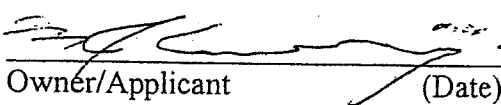
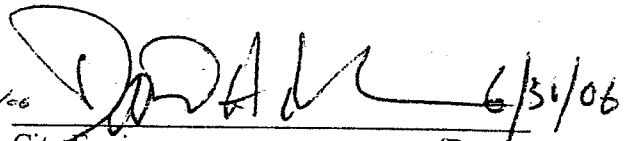
5. Septage Disposal: The Owner/Applicant and the condominium association shall utilize a registered septage hauler to pump septage from the on-site STEP tanks and shall dispose of the septage at the City's wastewater treatment plant (WWTP). The hauler shall comply with all applicable statutes, rules and regulations including but not limited to providing to the WWTP prior to discharge an acceptable laboratory certification that the septage meets all City regulations, and shall not interfere with or substantially adversely impact the operation of the City WWTP. Notwithstanding any provision to the contrary, this paragraph shall not prevent the Owner/Applicant and the condominium from using a licensed, registered and regulated facility other than the City's WWTP to dispose of its septage. If Owner/Applicant intends to dispose of its septage at another facility, it shall, for information purposes only, notify the City WWTP of the identity of the facility and the term of the contract with that facility.

6. Upon approval, this permit and its conditions shall be submitted to the Gloucester Planning Board in conjunction with Planning Board review of the development of the property.

7. This connection permit is valid only for the Owner/Applicant's proposed cluster development. However, if that development is modified by the Planning Board or any other City permit-granting board or other authority, or by the Owner/Applicant, the Owner/Applicant shall be entitled to receive, and the City shall issue, a new or modified

permit provided that the other terms of this permit are incorporated in the new or modified permit.

8. For purposes of this agreement, all notices required by this agreement shall be sent by certified mail or shall be served in person during regular business hours to the City Engineer, David Knowlton, or his designee.

	
Owner/Applicant	City Engineer
(Date)	(Date)

6/30/06

OPERATION AND MAINTENANCE PLAN
ANNISQUAM WOODS
GLOUCESTER, MASSACHUSETTS

June 26, 2006

Stormwater management facilities necessary to control runoff from the proposed Annisquam Woods development accomplish the multiple goals of mitigating peak runoff rates from the project that would otherwise occur, as well as mitigating the water quality of the associated runoff prior to that runoff reaching wetland resource areas.

Essentially, the water quality of all runoff from the proposed paved areas to be directed to the upland Best Management Practices (BMPs) will be improved by the chain of practices.

TREATMENT CHAIN

- Deep Sump Catch Basin
- Sediment Trap (forebay) or Water Quality Chamber (Stormceptor or equal)
- Extended Detention Basin

Deep Sump Catch Basin and "Stormceptor"

- Inlets should be cleaned a minimum of four times per year and inspected monthly during construction and yearly thereafter.
- All sediments and hydrocarbons should be properly handled and disposed of in accordance with local, state and federal guidelines and regulations.

Sediment Trap (Forebay)

- Trap should be cleaned four times per year and inspected monthly during construction. Removal of sediment from the forebay shall be accomplished by hand or with a backhoe, keeping the machine outside of the forebay. After construction, the forebay should be inspected on an annual basis and cleaned when necessary.
- All sediment and hydrocarbons should be handled properly and disposed of in accordance with local, state and federal guidelines and regulations.

Extended Detention Basin

- Inspections should be made after every major storm for the first few months and at least once a year thereafter to ensure structural stability and that the basin functions as designed.

- Mow side slopes, embankment and spillway during growing season at least twice yearly. Grass cuttings, debris and trash collected from the basin shall be removed from the basin and disposed of in appropriate manner. Slopes shall be maintained in a fully vegetated condition for stability. Bare areas on the slopes shall be revegetated as soon as possible after being identified.
- Remove sediment out of control structures and to original basin floor design depth after use as settling pond during construction, as needed after major storms, and at least every five years. All sediment and hydrocarbons should be handled properly and disposed of in accordance with local, state and federal guidelines and regulations.

Observations to be recorded during annual inspections in a permanent log include:

- General basin functioning condition
- Types, condition and extent of vegetative growth on slopes and within basin
- Basin slope and embankment stability problems (sloughing, erosion, cracking, tree growth)
- Sediment accumulations or erosion within or around outlet structure
- Sediment accumulations or erosion within the basin

If basin stability or outlet control function problems are noted during the inspection, they shall be recorded, brought to the attention of the party responsible for basin maintenance and appropriate City agencies (e.g. Planning Board), and immediately remedied or repaired as needed. Once all repair work has been completed, the basin shall be re-inspected.

Street Sweeping

Main access drives shall be swept annually in conjunction with the scheduled annual catch basin cleaning.

Water Quality Monitoring

A sampling and testing program will be established to quantify nitrogen concentrations being discharged from the four detention basins. Sampling will be conducted three times a year and samples will be collected from the basin outfall pipes during a rainfall event. Samples will be analyzed for total Kjeldahl Nitrogen and Nitrate/Nitrite by a Massachusetts certified testing lab.

Reporting Requirement

An annual report shall be submitted to the Board of Health, Conservation Commission and the Planning Board, including:

- The catch basin cleaning and street sweeping
- The inspection reports for the forebays and detention basins
- The water quality testing results

Owner and Maintenance Responsibilities

In the case of all proposed stormwater management facilities, during construction of the proposed stormwater management system the developer shall be the owner and party responsible for maintenance. Once the Annisquam Woods development is complete, the Condominium Association, or if none exists the property owner, will assume the responsibility of on-going maintenance.

Removal of Siltation Controls

All siltation controls, including, but not limited to, hay bales and silt fence, shall be removed, with the approval of the Conservation Commission, as soon as practical after paving, re-vegetation and total stabilization of the site. Unvegetated areas remaining in the area of the siltation controls shall be loamed and seeded with the appropriate groundcover to insure re-vegetation as rapidly as possible after the removal of the siltation controls.