

Project: Governors Island

Subject: Transfer Deeds

For: Governors Island Alliance

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SUMMARY OF DEED PROVISIONS, Especially Real Estate Use Covenants

General Arrangement:

1. The Quitclaim Deed from the United States to the National Trust contains all the pertinent provisions. The two other deeds are the National Trust Donation Deed to the National Park Service and the Quitclaim Deed from US to GIPEC; they incorporate by reference the covenants and easements embedded in the US to National Trust deed.
2. There are two main property owners and operators on the island:
 - a. The Governors Island Preservation and Education Corporation (GIPEC), which is the "Island Property Owner" and "Governors Island Operator" (GIO). GIPEC is a subsidiary of the Empire State Development Corp with equal State and City representation; and
 - b. The National Park Service (NPS), which is the "Monument Property Owner" and "Monument Operator" (MO).
3. Each owner/operator has the responsibility to:
 - a. Cooperate and coordinate with the other; and
 - b. Enforce the other's compliance with the restrictions and covenants and notify the other of defaults.
 - c. NPS is the enforcer of GIPEC's compliance with the deed's covenants and restrictions. GIPEC is the enforcer for its lessees.
 - d. The two owners may have successors, but the successors are restricted.
4. GIPEC, as the Governors Island property owner and operator, may convey or otherwise transfer (including leases and development rights) all or part of the Island Property provided:
 - a. The successors designate GIPEC or another State and/or City agency as a "Permitted Governors Island Operator" (GIO);
 - b. The GIO continues to be wholly-owned by the State and/or City or a subsidiary thereof; and
 - c. There is not more than one GIO at any one time.

Real Estate Use Covenants:

1. The covenants are binding upon the Island Property, Island Property Owner, and the Governors Island Operator. They are in favor of and enforceable by the Monument Operator and the GIO.

2. The general mission statement in ¶ 2.1 (a) is good and confirms the civic groups' longstanding goal for the island: "The covenants ... are intended to ensure the protection and preservation of the natural, cultural, and historic qualities ..., guarantee public access ..., promote the quality of public education, and enhance the ability of the public to enjoy Governors Island and the surrounding waterways, ..."
3. A Master Plan is required to be developed and adopted by the GIO, State and City. It shall be adopted and approved by 12/31/2007. The Master Plan Effective Date will be either the adoption date or 12/31/2012, whichever is earlier.
4. The Island Property is to be publicly accessible at all times in perpetuity. The public accessibility is subject to limitations, three of which are expected and reasonable (temporary closures, changes in locations per the Master Plan, and reasonable rules). Two of the limitations could compromise public access substantially:
 - a. Use of parts of the Island Property for the Permitted Uses; and
 - b. Available ferry service.
5. Permitted Uses on Island Property: Note that the areas and years are merely minimums; they could be increased in the master plan or actual implementation.

Use	Minimum Acres		Term Yrs	Comments
Total Island (above water)			172	
Total Public Benefit Uses			90	
Monument		22		In perpetuity
Other Public Benefit Uses		68		
Parkland	40			In perpetuity 20 Acres contiguous
Educational Uses	20			30 yrs Incl. student & faculty housing
Add'l Pub. Benefit Uses: Open space ¹ Museums, Historic Transportatn uses NonProfit cultural	approx 8			30 yrs Open space incl. esplanade, active & passive land & water-based recreational facilities; add'l to Parkland above.
Additional Permitted Uses ²			approx 82	30 yrs To be compatible w/ historic & civic character of the island.

6. The Parkland is expected to be located primarily south of Division Road. It is not clear whether the Fort Jay Glacis, Nolan Park, and Colonel's Row Green (all north of Division Road) are included in the Parkland.

¹ The Esplanade, at 25' width, would use about 7 acres.

² There is no prohibition to using some of the 82 acres for public benefit use.

7. The Additional Permitted Uses include the expected and acceptable ones anticipated by the GIA and unexpected ones that are questionable
 - a. Expected: Entertainment facilities; accessory housing for caretakers, police and fire personnel; short-term accommodations; cultural and arts facilities; hospitality use including hotel, conference, and banquet facilities; and retail, service and dining facilities.
 - b. Questionable: Extended-stay accommodations; *commercial office space*; public works; health facilities; and *other public, commercial and mixed-use purposes*.
8. Development is subject to funding availability.
9. Prohibited Uses (50 year restriction):
 - a. Residential (other than expressly permitted), industrial, casino or gaming uses, parking (except for vehicles used for maintenance, operation, and transportation of visitors), and electric power generating stations (except for the island).
 - b. Prohibited uses have a 50 year restriction period.
10. Change in Uses:
 - a. GIPEC has the right to request from the National Park Service (NPS, the Monument Operator):
 - i. A change in use of the acreage minimums in the Public Benefit Uses; or
 - ii. A change in the Additional Permitted Uses; or
 - iii. *A change to a Prohibited Use* (including a Request For Change In Public Benefit Use).
 - b. The NPS has 120 days to either:
 - i. Concur, accompanied by a Valuation of Change In Use; or
 - ii. Not concur or concur without a Valuation, in which case the change in use is prohibited.
 - c. Changes in use for which the NPS's prior concurrence is not required:
 - i. Change in Public Benefit Use to another Public Benefit Use, an Additional Public Benefit Use, or an Additional Permitted Use, provided that:
 - ii. There is no more than 10% cumulative change in the minimum acreages for Public Benefit Uses throughout the restriction periods (30 years). [4 acres could be shifted from the Parkland to other uses.]
 - d. Valuation of Change In Use is the difference between:
 - i. The difference between full market value of the Island Property *without* the requested change and the full market value *with* the change; and
 - ii. The Cumulative Operating Deficit from 1/31/2003 to the date of requested change in use, but maximum 10 years.³
 - e. If the Valuation Process finds that, notwithstanding the requested change in use, the value of the Island Property as a whole is zero or less, the NPS shall determine that the full fair market value for a requested change in use is nominal.

³ Example: If the Operating Deficit is \$10,000,000/Yr, then the difference in market values (9.d.i. above) could probably easily fall within the \$100,000,000 Cumulative Operating Deficit.

- f. The criteria for NPS to use when judging whether to concur with a GIO proposed change of use is not specified.
11. Application of Income:
 - a. The income is to be used by GIPEC for:
 - i. The Island's operation, maintenance, remediation, development, and improvement; or
 - ii. On behalf of the operations on any entity of any of its Public Benefit Uses, Additional Public Benefit Uses, and *Additional Permitted Uses*.
 - b. Payments for change of use or development rights (if any) would go into the Island's general fund.
 - c. GIPEC has a lot of flexibility on income uses.
 - d. Income remaining goes into a reserve fund.
 - e. The "sale of development rights" is not defined. It is presumed to be the sale of development rights for a particular location on the Island rather than a long-term net lease, perhaps to obtain capital up front. The transfer of unused development rights to another zoning lot as regulated by the NYC Zoning Resolution would be inapplicable because GIPEC, as a State agency subsidiary is not subject to the City's zoning law unless it voluntarily tried to use the zoning law to transfer rights off-island.
 12. Successors: The Real Estate Use Covenants run with the land for the applicable Restriction Terms: 30 years for permitted uses and 50 years for prohibited uses.

Historic Preservation Covenants:

1. Only the Governors Island National Historic Landmark District and the NYC Governors Island Historic District (both GINHL) are protected by the Historic Preservation Covenants and the GI Preservation and Design Manual.
2. Nothing is said about the appropriateness of development on the remainder of the island.

Summary Opinion:

1. The overall mission statement and State/City ownership/operator arrangement are good and meet GIA's expectations.
2. There is a lot of flexibility for GIPEC while planning, developing, financing, and managing the island; this is probably necessary in order for the island to generate revenue and eventually become nearly self-sustaining.
3. The other side of the flexibility is: The use restriction terms are relatively short – 30 years; the Request for Change provisions and Additional Permitted Uses are liberal.
4. Some of the Additional Permitted Uses could be huge loopholes for inappropriate development; especially the "other public, commercial and mixed-use purposes", such as an interim TV broadcasting tower, or who knows what else.

5. The Prohibited Uses do not include hospitals, long-term prisons, adult domiciliary care facilities.
6. The Change in Uses process, while allowing the GIO flexibility, is also a loophole. For example, parkland could be changed to educational use without the MO's concurrence – but only up to 10% of the parkland.
7. There are no bulk controls for new construction, such as floor area or height limitations. These could be included in the Master Plan.
8. There are no guidelines for appropriateness of development of the island outside the Historic Districts. These, too, could be included in the Master plan