

CITY OF PORTLAND, MAINE

PLANNING BOARD

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December 23rd, 2013

Jonathan Culley
Redfern Munjoy LLC
P.O. Box 8816
Portland, ME 04104

Project Name: Munjoy Heights
Six new buildings comprising 29 residential townhouses; one existing house on reconfigured lot

Project ID: 2013-228

Project Address: 79 Walnut Street

CBL: 12-F-2 (part), F-4, F-7, F-18; 12-G-6; 12-H-1, H-3, H-5, H-7, H-9, H-13, H-17, H-22

Applicant: Jonathan Culley, Redfern Munjoy LLC

Planner: Jean Fraser

Dear Mr Culley:

On December 17th, 2013 the Portland Planning Board considered and approved a Level III Final Site Plan and Subdivision proposal to construct a 30 "lot" residential subdivision made up of 29 new units in six 3-4 story townhouse-style buildings and one existing residential building on a reconfigured lot.

The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance and voted 6-0 (Dean absent) to approve the application with the following waivers and conditions as presented below.

WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #57-13 for application 2013-228 (Munjoy Heights, 79 Walnut Street) relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board voted 6-0 (Dean absent) to waive the Ordinance Section 14-526 (a) (4) (b) and (c) Bicycle, Motorcycle and Scooter Parking to allow the proposed parking in garages to meet the standard, subject to 9 outside bicycle parking spaces being provided along the access drive for visitors.
2. The Planning Board voted 6-0 (Dean absent) to waive the Technical Manual Section 1.7.1.5 that requires granite curbing along the full radius of the driveway entrance to allow tip down curbing to be incorporated for the sidewalk, subject to a revised design being reviewed and approved by the Planning Authority and Department of Public Services and shown on the final site plan and relevant engineering drawings prior to issuance of the building permit.

DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 57-13 for application 2013-228 (Munjoy Heights, 79 Walnut Street) relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. SUBDIVISION

The Planning Board voted 6-0 (Dean absent) that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

- i. That the applicant shall submit title insurance/title opinion regarding the rights to develop the portions of the former Sheridan and East Cove paper streets prior to release of signed Subdivision Plat, and submit evidence that the actions associated with the claims have been taken prior to the issuance of a building permit; and
- ii. That the easements and other documentation demonstrating right title and interest shall be finalized to the satisfaction of the Corporation Counsel and recorded prior to the release of the signed subdivision plat; and
- iii. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, parking limitations for units 1-11, snow removal, trail and trail connection maintenance, Condominium Association documents and relevant conditions; and
- iv. That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the 20 foot wide vehicle access lane and the trail and trail connections, to be reviewed and approved by Corporation Counsel. The documents shall also address the relevant conditions of approval and be finalized to the satisfaction of the Corporation Counsel prior to the recording of the Subdivision Plat; and
- v. That the Portland Trails Agreement shall be revised to: include snow removal, hours of use of trails, and other maintenance obligations for the connection to East Cove Street within the obligations of the Grantor/Condominium Association and to be consistent with the obligations for the rest of the easement area; address the staff and Portland Trail comments in this report; and be agreed with Portland Trails, the City's Corporation Counsel, Department of Public Services and the Planning Authority prior to the release of the signed subdivision plat, and recorded prior to the issuance of the certificate of occupancy with a copy to the Planning Authority; and
- vi. That the applicant shall add notes to the subdivision plat, condominium documents and/or unit deeds and obtain such other legal agreements/easements as are necessary, subject to the review and approval of Corporation Counsel and prior to the release of the signed subdivision plat, to secure the rights and limitations listed below:
 - That the basic arrangements shown on the draft plat and in draft easements with abutters Rando and McAdam remain as presented to reviewers (Attachment V to this Report) in the final review for the Planning Board hearing;
 - That the agreed public access (Portland Trails Easement) is maintained at all times and available for safe use year round, over the area shown in Attachment U to this Report;
 - That the minimum vehicle access of 20 feet is maintained at all times by adequate snow removal in accordance with the approved Snow Storage Plan (Plan 21 to this Report) and a specific prohibition on parking in front of the garages for Units 1-11 due to encroachment into the 20 foot circulation area required by the fire Department.
- vii. That the applicant shall post the performance guarantee required under the Housing Preservation and Replacement Ordinance prior to the issuance of a demolition permit for the demolition of the two existing residential buildings at 79 Walnut Street and 1 East Cove Street; and

- viii. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the final submitted construction, stormwater management and sediment & erosion control plans and reports (Attachments H and J and Plans 8 and 36 to this Report) and relevant City standards and state guidelines. A maintenance agreement for the stormwater drainage system shall be submitted for review and approval by Corporation Counsel and Department of Public Services prior to the issuance of a building permit, and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services.

2. SITE PLAN REVIEW

The Planning Board voted 6-0 (Dean absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

- i. That the applicant shall submit final plans to the Portland Water District for their review and approval, and forward documentation of PWD's approval to the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant may be required to install a crosswalk on Walnut Street between their driveway and Sheridan Street. The crosswalk question will be reviewed by the City's Crosswalk Committee to assess the appropriateness of a crosswalk at the subject location. If deemed to be required by the Crosswalk Committee, the applicant shall be responsible for the installation of the crosswalk with supporting features. These supporting features may include (in addition to paint markings and signs) lights for safe illumination, ADA compliant ramps, curb extensions, etc. If required, the applicant shall be responsible for submitting a plan to DPS for review and approval; and
- iii. That the applicant shall submit detailed/revise Landscape Plans to address the following, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit:
 - Mitigation of the retaining wall and other impacts for abutters or where viewed directly by abutters;
 - Resolution of the Portland Trail node locations (ie where the stairs meet the access drive/parking area) so that the stairs enter the area via a dedicated pedestrian way and the trail is more visible (to address PT comments in letter dated 12.11.2013 and Traffic review comments dated 12.11.2013); and
 - To address the City Arborist Jeff Tarling comments dated 12.12.2013 concerning planting material.
- iv. That the applicant shall provide illustrative material to show how the ramp leading to East Cove Street will appear to users and further discuss the design of this ramp with the City Arborist and Portland Trails to develop a design that meets Crime Prevention, safety and maintenance objectives, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- v. That the applicant shall submit the revised civil engineering plans to confirm that the 20 foot access width in the central drive access is flush and constructed to withstand the weight of Fire Department vehicles and their outriggers for the entire 20 foot width over the entire length of the access drive, and to address the Engineering Review comments of Dave Senus dated 12.6.2013 items 2); 3); 12); 13); 17); 18); and 19); all for review and approval by the Planning Authority prior to the issuance of a building permit; and
- vi. The applicant has noted on Plans Sheet C-32 & C-33 that Summit Engineering Services in coordination with Structural Integrity Consulting Engineers, Inc shall provide the retaining wall design, global stability analysis, and the design of the temporary soil restraint measures, as required. The referenced retaining wall designs shall be completed, stamped by a professional engineer, and submitted to the City of Portland Inspections Department and Planning Authority as part of the Building Permit process prior to construction of any retaining walls; and

- vii. That the applicant shall have the proposed street addresses for the townhomes approved by the City E-911 Addressing Officer prior to the issuance of a certificate of occupancy; and
- viii. That the applicant shall submit additional lighting information to clarify whether the proposed site lighting (including building mounted lighting) meets the City's Technical Standards; and
- ix. All signage shall be subject to separate permits through the Inspections Division, with any traffic signage subject to view and approval by the Planning authority and Department of Public Services.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report #57-13 for application #2013-228, which is attached. The standard conditions of approval are listed below.

STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be posted prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval.
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the

construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

10. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If you have any questions, please contact Jean Fraser at 874 8728 or jf@portlandmaine.gov

Sincerely,



Carol Morrissette, Chair
Portland Planning Board

Attachments:

1. Traffic Engineering Review comments dated 12.11.2013
2. Portland Trail letter dated 12.11.2013
3. City Arborist comments 12.12.2013
4. Engineering Review (Woodard & Curran) comments 12.6.2013
5. Planning Board Hearing Report #57-13 [and Attachments H, J, U and V, Plans 8, 21 and 36]
6. City Code Chapter 32
7. Sample Stormwater Agreement
8. Performance Guarantee Packet

Electronic Distribution:

Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, Planning Division Director
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Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Danielle West-Chuhta, Corporation Counsel
Jennifer Thompson, Associate Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeremiah Bartlett <JBartlett@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>
Date: 12/11/2013 4:13 PM
Subject: 79 Walnut Street - Munjoy Heights

Jean - I have reviewed the revised plans and offer the following final comments as a status report of my November 20, 2013 comments.

- * The woonerf design of the roadway sections is acceptable and I believe it will be effective in attaining the goal of a shared use facility. There appears to be some locations where bollards have been added and feedback on the need should be provided.

Status: The bollards will create maintenance difficulties, but I find conditions to be acceptable.

- * How visitor parking is accommodated on site needs further consideration given that the parking spaces will be located where pedestrian activity is expected to be high.

Status: The general location of the parking spaces is acceptable although I support adjusting the locations to better integrate with the stairs leading to the Jack Trail and East Cove Street.

- * The applicant should provide information on the radii size at Walnut Street and whether a smaller configuration will work.

Status: It is recommended that the radii be eliminated from the plans and standard tip down curbing be provided. This change deviates for City standards, but I support a waiver from our technical standards to allow for optimal sidewalk alignment along Walnut Street and to ensure easier routing of sidewalk snow plows (this subject sidewalk is a school walking route and maintenance and function are a priority).

- * A crosswalk on Walnut Street between the site drive and Sheridan Street should be considered. It is suggested that the City's Crosswalk Committee review this location and render a decisions on a crosswalk and supporting treatment. Accordingly, the project may need to incorporate inclusion of a crosswalk.

Status: The applicant may be required to install a crosswalk on Walnut Street between their driveway and Sheridan Street. The request for a crosswalk will be reviewed by the City's Crosswalk Committee in assessing the appropriateness of a crosswalk at the subject location. If deemed to be required by the Crosswalk Committee, the applicant will be responsible for the installation of the crosswalk with supporting features. These supporting features may include (in addition to paint markings and signs) lights for safe illumination, ADA compliant ramps, curb extensions, etc. If required, the applicant will be responsible for submitting a plan to DPS for review and approval.

- * The City plows the sidewalk on Walnut Street in conjunction with the school walking needs. Accordingly, the driveway entrance area will need to accommodate City sidewalk plows. The applicant shall coordinate with DPS on this issue.

Status: As noted above, tip-down curbing shall be installed and accordingly this issue has been addressed. Final plans shall be reviewed and approved by DPS.

- * The stairs to the Jack Path should also include a ramping system for bicycles.

Status: The plans have been revised and I have no further comment.

- * I have reviewed the traffic analysis report prepared by Bill Bray, P.E. and concur with the conclusions that the project will not cause traffic or safety problems to the public street system. The City has received a comment regards high vehicles speeds on Walnut Street. I will provide a response to this issue in the future.

Status: The grade of Walnut Street is such that speeds are likely high when traveling from North Street to Washington Street. The City has studied this area from a traffic perspective for many years and specific traffic safety deficiencies have not been identified. The City will continue to review traffic conditions. No action is required of the applicant.

New Comment

- * **Vehicles shall be prohibited from parking in front of garages for units 1 through 11 due to encroachment into the 20-foot circulation required by the Fire Department. I will leave it to other City staff to best determine how to ensure this restriction is noted.**

If you have any questions or comments please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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December 11, 2013

RE: Munjoy Heights

Dear Chair Morrisette and Members of the Planning Board;

Portland Trails would like to take this opportunity to offer our comments on the proposed Munjoy Heights development. Portland Trails' staff have met on several occasions with the development team and City staff to address the trail connections and overall pedestrian experience, and while we still have a few questions and concerns, we continue to be pleased with the direction the proposal has taken since the first plans.

We believe the following areas deserve attention as you consider the Munjoy Heights proposal:

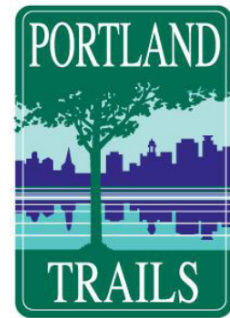
- Trail 'nodes' - We remain concerned that the two locations designated as 'guest parking' are also trail heads. These locations ('nodes') should be visible and inviting, and serve as natural meeting points which help transition between the public and private realms. It is important that they not be consistently obstructed by parked cars. While this is a constrained site, we are optimistic that there is a design or operational solution, and hope to work further with the developer in this regard. Any guidance the Planning Board can provide would be welcome as we seek to balance public safety, parking and a positive pedestrian environment.
- Year-round maintenance of the connections to East Cove and the Jack Path - We feel this should be built in to the long-term maintenance obligations of the Condominium Association, as the improvements will be on their property. This could be folded into the eventual property management contract at minor additional expense to the owners. We feel the Planning Board should require maintenance of these features so that they will be usable year round.
- Public Access Easement - Portland Trails is working with the developer to craft an easement which will allow the public to access and pass through the shared-street portions of the property to connect to the Jack Path and East Cove Street. We are comfortable with the draft easement, but need to finalize the language with the applicant.
- East Cove Street connection - this is a critical link that Portland Trails has been seeking to establish for some time, and will serve to further integrate the development with the community. We feel the developer has done his part to enable this connection. Portland Trails will continue to work with landowners along East Cove to formalize public access rights to the border of the Redfern property.

We are optimistic that the travel way and streetscape as proposed will complement the pedestrian experience as residents and visitors pass between Walnut Street and the remaining Jack Path trail section. We are particularly pleased with the Shared Street/'woonerf' concept, which seems a good fit for this short street section. Focusing on how people will use the space and encouraging active use of the 'roadway', rather than simply designing for the movement and storage of cars is a healthy approach, and we believe it will have numerous benefits for the residents and the community. We hope that this creative use of the common travel-way will set a good precedent for Portland as we seek to create more active, creative and vibrant places.

Thank you for your consideration of our comments, and for your service in making Portland a great city!



Kara Wooldrik
Executive Director, Portland Trails



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From: Jeff Tarling
To: Jean Fraser
CC: Barbara Barhydt; David Margolis-Pineo
Date: 12/12/2013 4:18 PM
Subject: URGENT Re: 79 Walnut Street Development Hearing Report
Attachments: UFUG Cover Change.pdf; Kathleen McKeon Public comment 12.4.20139 Walnut Street Development.rtf; 11.20.13 Munjoy Heights Landscape Review.rtf

Jean -

I have reviewed the recent updates / revisions to the proposed 79 Walnut Street project and offer the following comments & recommendations. (See earlier review comments for overall view points)

Landscape components update:

a) Street-trees - the project proposes 67 new trees ranging from Red Maple, London Planetree, 'Crimson Spire' Oak and Amelanchier. Approval Conditions would include the following: 27 Red Maple, 17 Amelanchier, 22 London Planetree, and one 'Crimson Spire Oak'. Recommendations: select Maple cultivar such as 'Redpointe', 'Karpick', 'Bowhall' Red Maple, the Amelanchier proposed is a good native species with wildlife values, London Planetree is the main tree planted throughout the 'Woonerf' (22 trees), unfortunately this species is on the edge of its range here in Portland. On Spring and Danforth Street most of the London Plantrees planted in the late 1970's have declined do to 'frost cracks' or the freeze / thaw cycle caused by late Winter fluctuating temperature. Since Planetrees present some risk of survival, either an alternative species or a 5 year guarantee of replacement should be considered. Several of the 'Woonerf' tree planters are sub standard in size due to space restrictions. These include: between lots 6-7, 12-13, near the parking spaces and center island. These trees planted in the Woonerf and between driveways are risky places to plant trees and have them survive especially in Northern climes with snow storage and deicing salts. Recommend removing these four trees or extending the replacement guarrenttee to five years and or insure the paving / landscape will be improved and vacant tree wells repaired.

Conditions:

* Diversify Red Maple planting as 'recommended' in earlier comments. This would include Yellow Birch, Swamp White Oak, Eastern Larch all species that provide a broader range of wildlife interest / seed source.

*ALL trees must meet city standards: 2.5" caliper for street / shade trees and 2" caliper for ornamental trees like the Amelanchier.

* Plantree - Alternate species or 5 year guarrenttee

* Reduce 4 of the London Planetrees in 'Woonerf' due to limited root zone, planter space and / or extend replacement to five years.

b) Landscape: The proposed landscape treatment contains very little turf areas and a large percentage of planted landscape in the non-built areas.

Conditions:

- * Shrub planting - Upgrade the Bearberry (AU) from 1 Gallon to 3 Gallon plant size to ensure greater coverage,
- * ALL plant types and sizes MUST contain quantities recently shown as "TBO" on a final landscape plan.

Recommendation:

Further consider reducing the non-native shrub count such as the proposed 65 Lilac shrubs and unknown amount of Hydragea (TBD) proposed, to further diversify the wildlife values & native plant types: consider Aronia, Kalmia, Itea, Rhodora, Viburnum or other native plants as alternatives. The landscape plan as proposed DOES include an extensive number of native Winterberry (289) and Blueberry (198) Bayberry (167).

TREE SAVE / OPEN SPACE / SCENIC VALUES -

Response on 'clear cutting' and loss of open space from my earlier review comments cover this:

"Due to it's hillside location and elevation the proposed Munjoy Heights project is visible from a number prominent locations: Back Cove, Baxter Boulevard, I-295 Northbound are some of the locations where the change from existing tree line to buildings will alter the overall skyline and character of Portland's Munjoy Hill. The scale or height of the proposed residential units in relationship to the scale of the landscape when installed will take several years to grow into view. Ideally, a mixture of staggered building heights vs the straight line row might have helped to interrupt the skyline view as shown in the recent perspective."

a) Tree replacement & scenic values - In review of the existing tree survey conducted by Southern Maine Forestry the majority of species on site were invasive Norway Maple. This stand has a **low ecological value (compared to native woodlands) but a high scenic & moderate environmental value (shade for cooling the urban heat island on this Westerly exposure)**. Tree-saves and replacement trees to achieve similar to existing is challenging given the sites compact shape, steep slopes and building density. Recent view shed perspectives show the amount of change. Quantitative values and achievable goals to address "scenic beauty" loss are unclear. This is partially due to the sites prominence and limitations due to size and slope. Tree-save areas are very limited and restricted to the corners and edges of the proposed project. Tree replacement given the space available with the density proposed is projected in the recent landscape plan.

Recommendations would include a review of tree specie types and sizes to best meet environmental, ecological and scenic values. Native plant species are highly recommended for the edges and spaces outside of the "Woonerf" planting.

Species include: Yellow Birch, Red Maple, Amelanchier, and trying to introduce a few conifers

and fruit trees. This could be accomplished by 'tweaking' slightly the proposed tree list by the project team and the City Arborist. 'Tree Save' areas should follow recommendations restricting or limiting site work with tree protection measures including fencing, root zone protection and practices such as cleanly cutting damaged roots. This is typically shown on the final plan and included in the pre-construction meeting.

Review update -

Land Bank & Local 'open space' - The existing 'Jack Path' improved by Portland Trails and the City of Portland was listed as a 'Priority' by the Portland Land Bank Commission. The fragmented open lots were not included. The proposed project does continue the spirit of the 'Jack Path' through the development in a more urban, built environment. While on a regional level 'in-filling' of residential development is encouraged both in the State of Maine's "Beginning With Habitat" program and US Forest Service's "Forests on the Edge" recommendation in order to hopefully save more habitat valuable rural / sub-urban lands. The proposed development does remove a great percentage of existing vegetation on Munjoy Hill adjacent to the Eastern Promenade. "Scenic Beauty" loss does occur on a local level and from easterly views from Baxter Boulevard vicinity including I-295 Northbound as it travels through Portland. Determining the weight of these values from an emotional viewpoint and a quantitative value are unknown to the extent of the current ordinance language. The existing tree evaluation included in the project package appears to be accurate. Field visit noted a large Sugar Maple and Apple all within the driveway area along with several American Elm trees. Invasive plants that entered the site after past land clearing and development including grading dominates the site with a large percentage of Norway Maple and Japanese Knotweed.

Recommendation: increase the native plant percentage of proposed landscape planting, noted above, to improve wildlife values. Future considerations: determine threshold values to 'Scenic Beauty', local habitat with Planning Board and Land Bank.

Tree Save areas should follow city standard guidelines for protection. This includes limit of work signage and construction fencing, storage of materials

Background information on habitat and forest loss on a regional scale, See info links:

<http://www.fs.fed.us/openspace/fote/maine-casestudy-ew-062506.pdf>

http://www.beginningwithhabitat.org/toolbox/compplan_topics.html

To be effective, a comprehensive planning committee should regularly ask itself: "will this set of measures in fact encourage most of the development during the next decade to locate in growth areas, and away from rural areas?" -Comprehensive Planning: A Manual for Maine Communities ([http://mainegov-](http://mainegov-images.informe.org/spo/landuse/docs/compplanning/2005manual_mediumres.pdf)

[images.informe.org/spo/landuse/docs/compplanning/2005manual_mediumres.pdf](http://mainegov-images.informe.org/spo/landuse/docs/compplanning/2005manual_mediumres.pdf))

http://www.beginningwithhabitat.org/toolbox/compplan_guide.html

http://www.beginningwithhabitat.org/toolbox/stand_density.html

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MEMORANDUM



TO: Jean Fraser, Planner
FROM: David Senus, P.E.
DATE: December 6, 2013
RE: Munjoy Heights, Final Level III Site Plan Application

Woodard & Curran has reviewed the Final Level III Site Plan Application for the proposed infill residential development located at 79 Walnut Street in Portland, Maine. The project consists of the development of 29 townhouse style residences.

Documents Reviewed by W&C

- Stormwater Management Report, revised November 27, 2013, prepared by Acorn Engineering, Inc. on behalf of Redfern Properties, LLC
- Engineering Plans, Sheets C-01, C-02, C-10, C-20, C-30, C-31, C-32, C-33, C-40, C-41, C-42, C-43, C-44, C-45, & C-46, revised December 2, 2013 (detail sheets revised December 4, 2013), prepared by Acorn Engineering, Inc. on behalf of Redfern Properties, LLC
- Stamped Boundary Survey, dated November 11, 2013, prepared by Nadeau Land Surveys, on behalf of Redfern Properties, LLC
- Letter from Acorn Engineering to City Planning Office dated December 4, 2013 providing response to comments contained in Woodard & Curran's 11/20/2013 memo
- Email from Will Savage to Woodard & Curran dated December 5, 2013 identifying additions to Civil Plans since previous submittal

Comments

The following comments are listed in the numerical order of the November 20, 2013 memorandum prepared by Woodard & Curran and the associated December 4, 2013 response letter from Acorn Engineering. Previous comments and responses are not included for brevity.

- 1) a), b) & c) (i.)(ii.)(iii.) – Comments adequately addressed.
- 2) a), b) & c) – Comments adequately addressed.
 - d) Sheet C-30: The access/diversion structure labeled CB-1 has two outlets, a 12" pipe and a 24" pipe. The 24" pipe connects to the Isolator Row, whereas the 12" pipe appears to connect to an adjacent standard chamber. Please clarify the intent of 12" pipe, along with the invert elevation. Because the Isolator Row is intended to remove sediment and debris from the stormwater flow, we would not anticipate that the 12" pipe invert elevation would be set the same as the 24" pipe invert elevation. If the 12" pipe is acting as a high-flow outlet, we would anticipate that the invert elevation of this pipe would be set higher than the 24" pipe.
- 3) Comment adequately addressed relative to the Underdrained Subsurface Sand Filter. The plans contain additional details on two underdrained soil filters / rain gardens. It appears these systems were designed without an impermeable liner. We request review and comment on these systems by the project's geotechnical engineer.
- 4) Comment adequately addressed. We recommend requiring a Stormwater Drainage System Maintenance Agreement as a condition of approval.
- 5) a), b), c), d) – Comments adequately addressed.
- 6) Comment adequately addressed.
- 7) Comment adequately addressed.

- 8) Comment adequately addressed.
- 9) We recommend a condition of approval stating that the Applicant shall submit final plans to the Portland Water District for review and approval, with documentation of PWD's approval forwarded to the City Planning Office.
- 10) Comment adequately addressed.
- 11) Comment adequately addressed.
- 12) The Applicant's response letter states that "All proposed trees within a 5' proximity of the sewer pipe will be planted at a depth no greater than 3' deep. Permeable landscape fabric will be used to create a root barrier around the sewer pipes". This requirement should be reflected on the Landscaping and Civil plans.
- 13) Comment mostly addressed; note that Unit #20 is missing a sewer service connection on sheet C-20.
- 14) Comment adequately addressed.
- 15) Comment adequately addressed.
- 16) Comment adequately addressed.
- 17) The details provided for the underdrained soil filters (rain gardens) on C-42 do not provide sufficient detail at the edges of the system, where the in-slope meets the driveway/walkway pavers. The in-slope should be designed with measures to avoid erosion and under-mining of the adjacent pavers. As noted in Comment #3, the soil filters are not currently designed with an impermeable liner below the underdrain. The project geotechnical engineer should review the design to ensure that the introduction of surface water to the subsurface soils will not create geotechnical concerns.
- 18) The Applicant has noted that a revised C-30 drawing will be provided to address the previous review comment; we will review upon receiving the revised C-30 plan.
- 19) In general we agree with the Applicant's proposal to provide "weep holes" at the base of the wall in lieu of a direct connection to the combined sewer in East Cove Street. The Applicant should include details and notes on the plans for the weep hole outlets to ensure that they are properly stabilized and that they do not direct concentrated flow onto adjoining properties. Per discussions with City DPS, the Applicant should design the retaining wall drainage system and weep holes to allow for a future connection to a hard-piped system if issues arise from groundwater flow. Additional notes and design details should be submitted for review and approval.
- 20) Comment adequately addressed.
- 21) Comment adequately addressed.
- 22) Comment adequately addressed.
- 23) On Sheet C-32 & C-33 the Applicant has noted that Summit Engineering Services in coordination with Structural Integrity Consulting Engineers, Inc., shall provide the retaining wall design, global stability analysis, and the design of the temporary soil restraint measures, as required. We recommend a condition of approval stating that the retaining wall designs be completed and submitted to the City as part of the Building Permit process prior to construction, and that it be stamped by a professional engineer.
- 24) Comment adequately addressed.
- 25) Comment adequately addressed.
- 26) Comment adequately addressed.



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	PUBLIC			PRIVATE		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at

_____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$_____ [amount of performance guarantee] on behalf of _____ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on _____ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ [insert: subdivision and/ or site improvements (as applicable)] approval, dated _____ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ****Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

- Attach the approval letter, condition of approval or other documentation of the required contribution.
- One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project

CHAPTER 32 STORM WATER

Art. I. Prohibited Discharges, §§ 32-1--32-15

Art. II. Prohibited Discharges, §§ 32-16--32-35

Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)

