

CITY OF PORTLAND, MAINE

PLANNING BOARD

Stuart O'Brien, Chair
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Sean Dundon
Bill Hall
Carol Morrissette
Jack Soley
Dave Eaton

May 27, 2015

Bateman Partners, LLC
Attention: Nathan Bateman
86 Newbury Street
Portland, ME 04101

Fay, Spofford & Thorndike- FST
Attention: Joseph Lavarriere
778 Main Street, Suite 8
South Portland, ME 04106

Project Name:	Mixed Use Retail and Office Building	Project ID:	2014-065
Address:	16 Middle Street	CBL:	020 F002001
Applicant:	Nathan Bateman		
Planner:	Shukria Wiar		

Dear Mr. Bateman:

On May 26, 2015, the Planning Board considered the mixed use retail and office building for a five story mixed use building that contains 5,305 square feet of retail use on the first floor and four professional office condominium units on the second through fifth floors (one per floor). The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance, Site Plan Ordinance and Traffic Movement Permit. The project was also reviewed against the B5-b Urban Commercial Business Zone standards of the Design Manual. The Planning Board voted unanimously 6-0 to approve the application with the following waivers and conditions as presented below.

WAIVERS

1. Street Trees

The Planning Board finds that the applicant has demonstrated that due to site constraints preventing the planting of required street trees in the right of way, the requirements of Section 14-526(2)(b)(iii) of the Site Plan Ordinance cannot be met; and the Board finds that the applicant has satisfied the waiver criteria set out in Section 14-526(2)(b)(iii)(b) with the monetary contribution to the tree fund of \$200 per tree for three (3) trees for a total of \$600. The Planning Board therefore voted unanimously (6-0, Boepple absent) to waive Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance.

2. Site Lighting:

The Planning Board voted unanimously (6-0, Boepple absent) to waive the Technical Standard, Sections 12.2.3 Illumination Levels and 12.2.5 Light Trespass, to allow three locations near the building where maximum light levels are exceeded by up to 7.1 foot candles, and to allow some minor trespass at the property boundaries that benefit the pedestrian areas.

TRAFFIC MOVEMENT PERMIT

Based upon the City of Portland's Delegated Review Authority, the Portland Planning Board voted unanimously (6-0, Boepple absent) that the proposed plan is in conformance with 23 MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits, subject to the following condition(s):

1. That the applicant shall contribute \$5,000 to an account maintained by the City that will be used to fund traffic improvements to the intersection at India/Middle Street.

SUBDIVISION REVIEW

The Planning Board voted unanimously (6-0, Boepple absent) that the plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The final plat and/or condominium plat, along with accompanying condominium documents, shall be submitted for review and approval by the Planning Authority, Department of Public Services, and Associate Corporation Counsel prior to recording.
2. That the following shall be finalized to the satisfaction of the Corporation Counsel prior to the issuance of a Certificate of Occupancy:
 - a. Public access
 - b. Building footing easements
 - c. Stormwater management agreement
3. The recording plat shall depict the building foundation and utility easements.
4. The four property corners shall have property pins set by a registered land surveyor prior to issuance to the certificate of occupancy.
5. The recording plat shall be revised noting all waivers and conditions for review and approval by the Planning Authority prior to recording. All waivers shall be recorded within 90 days of the Planning Board approval.

SITE PLAN REVIEW

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

1. The applicant shall conduct a traffic monitoring study following project occupancy at the subject intersection as it relates installation of an All-Way STOP controlled intersection. The applicant shall also contribute \$5,000.00 towards future multi-modal improvements at the subject intersection prior to the issuance of a building permit.
2. The applicant has noted that a pattern of angle collisions was identified. The applicant shall provide recommendations as it relates to mitigating the noted crash pattern prior to the issuance of a certificate of occupancy. The applicant shall be responsible for all costs associated with implementation of the mitigation strategy, if identified.
3. The applicant shall be responsible for conducting an annual survey and the Traffic Demand Plan be adjusted as necessary.
4. The Construction Management Plan shall include the final details of the temporary barrier protected sidewalk to be approved by the Department of Public Services prior to issuance of a building permit. This temporary sidewalk shall be ADA compliant and shall have MUTCD compliant signage.
5. 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 submitted Stormwater Management and Stormwater Pollution Prevention Plans (dated July 2014 and revised April 2015) and the approved plans, and meet City standards and state guidelines.

6. The applicant shall submit a sanitary sewer capacity letter from the Department of Public Services confirming that the sewer system has sufficient capacity, prior to the issuance of building permit.
7. All HVAC systems and external mechanical equipment shall meet the maximum allowable noise requirements of the zone; each unit shall submit documentation of dBA output to confirm compliance of both the unit and the building in respect of rated noise levels and cumulative noise levels, to the satisfaction of the Zoning Administrator prior to the issuance of a Building Permit for that unit.
8. The bicycle racks shall meet City's Technical Standards to be located in the right-of way.
9. The project is exactly meeting the maximum 65' building height; the architect shall confirm the height of the proposed building prior to any final Certificate of Occupancy.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report for application 2014-065 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

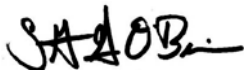
1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the 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 there are any questions, please contact Shukria Wiar at 756-8083 or via email at shukriaw@portlandmaine.gov

Sincerely,



Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. City Code, Chapter 32
3. Sample Stormwater Maintenance Agreement
4. Performance Guarantee Packet

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Shukria Wiar, Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Acting Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Lannie Dobson, Administration, Inspections Division
Brad Saucier, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Keith Gautreau, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File



PLANNING BOARD REPORT PORTLAND, MAINE

Mixed Use Retail and Office Building
16 Middle Street
Level III site Plan and Subdivision
2014-065
Bateman Partners, LLC Applicant

Submitted to: Portland Planning Board
Public Hearing Date: May 26, 2015

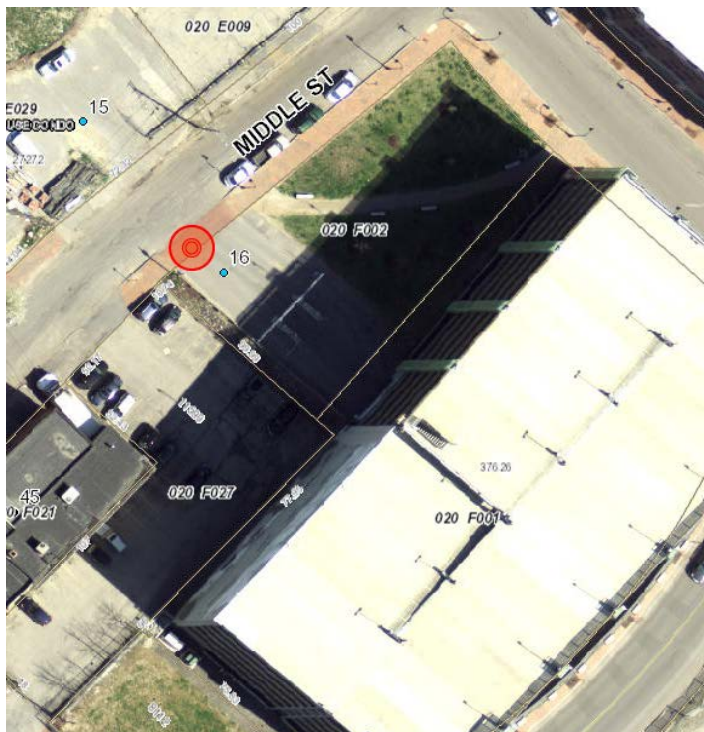
Prepared by: Shukria Wiar, Planner
Date: May 22, 2015

I. INTRODUCTION

Bateman Partners, LLC has submitted a Level III Subdivision and Site Plan Application for a review of the property located at 16 Middle Street. The applicant proposes to construct a five story mixed use building that contains 5,305 square feet of retail use on the first floor and four professional office condominium units on the second through fifth floors (one per floor). A total building floor area is 49,875 square feet, with a footprint of 7,250 square feet.

The development site is located within the B5-b zone, and the proposed development complies with the permitted uses within the zone. The proposed development site is located on the corner of Middle and Hancock Streets. Micucci's Grocery is located directly west of the property. This proposal is being reviewed by the Planning Board under the Land Use Code Section 14-497 (Subdivision Ordinance), Section 14-526 (Site Plan), and Traffic Movement Permit (delegated authority from the State). The project will also be reviewed against the B5-b Urban Commercial Business Zone standards of the Design Manual.

This parcel was designated as a potential development site for the Longfellow Residence and Retail Project, which was proposed by Riverwalk LLC. The site plan and subdivision was approved on April 25, 2006. The subdivision for the project was recorded in the Cumberland County Registry of Deeds on January 29, 2007. The Planning Board approvals for the site plan have expired for that project. The Planning Board held a workshop on this new item on June 20, 2014.



Applicant: Bateman Partners, LLC,
represented by Nathan Bateman

Consultants: Joseph A. Laverriere, P.E., Fay,
Spofford & Thorndike; David Lloyd, Archtype
Architect; John Swan, Owen Haskell, Inc; Ronald
Ward, Drummond Woodsum

Required Reviews:

Review	Applicable Standards
Subdivision (Article IV)	The term subdivision shall also include the division of a new structure into three (3) or more dwelling units within a five-year period, this application is subject to Subdivision Review under Article IV of the Land Use Code, § 14-491 – 14-520. The applicant is proposing to sell the office space as condominium units, thus subdivision review is required.
Site Plan (Article V)	This application qualifies as a Level III Site Plan requiring Planning Board approval; the application is subject to Site Plan Review under Article V of the Land Use Code, § 14-521 – 14-540.
Traffic Movement Permit	The proposed development requires a State of Maine Traffic Movement Permit (TMP) as it generates more than 100 trips. The TMP would be issued by the City under delegated authority.
Design Manual	B5-b Urban Commercial Business Zone
Waiver Requests	Applicable Standards
Street Trees – 5 trees required, 2 existing to remain Waiver of three trees through the submission of a financial contribution of \$600 (\$200/tree).	<i>Site Plan Standard (Section 14-526(b)2.b(iii))</i> , requiring street trees 30 to 45 feet apart on center
Site Lighting: Illumination Levels and Light Trespass to allow localized highs up to 7.1 foot candles in approximately three locations under wall mounted lights and two small areas of trespass along the north and east boundary.	<i>Technical Manual Sections 12.2.3 Illumination Levels and 12.2.5 Light Trespass</i> which specify a maximum illumination level of 5.0 foot candles within the site and a maximum of .1 foot candle at the property line.

II. PROJECT DATA

Existing Zoning:	B-5b
Existing Use:	Vacant Lot
Proposed Use:	Mixed Use Building
Existing and proposed number of lots:	One
Proposed number of Condominiums:	Five
Parcel Size:	12,116 sq.ft.
Impervious Surface Area: Existing:	4,850 sq. ft.
Impervious Surface Area: Proposed	11,700 sq. ft.
Impervious Surface Area: Net Change	+6,850 sq. ft.
Total Disturbed Area:	8,000 sq. ft.
Existing Building Area:	0
Proposed Building Area:	49,875 sq. ft.
Proposed Building Net Change:	49,875 sq. ft.
Existing Building Footprint:	0
Proposed Building Footprint:	7,250 sq. ft
Proposed Residential Units:	0
Building Height:	65'
Parking Spaces proposed:	140 (lease agreement in Ocean Gateway Garage)

Number of Handicapped Spaces:	<i>Provided within the Ocean Gateway Garage</i>
Bicycle Parking Spaces Existing:	0
Bicycle Parking Spaces Proposed:	22 (8 retail, 14 office)
Estimated Cost of Project:	\$8,750,000
Uses in Vicinity:	The site is adjacent to the Ocean Gateway Garage. Across Middle Street is the Bay House and across Hancock Street is the Residence Inn. Shipyard brewery is also in the vicinity of the site. Adjacent zones are C52, B6, B3, B2b.

III. EXISTING CONDITIONS

The existing site was previously developed with a building associated with the American Hoist & Derrick Company; however, this building was razed with only remnants of the foundation visible on the site. After demolition, the site was graded to create a grassed open space area with several small trees, benches, and gravel walking path that traverses the site. The Middle Street access drive to the Ocean Gateway Garage crosses the southwesterly side of the site through a 50’ wide access easement.



The land area slopes northwest to southeast towards the Ocean Gateway Garage parcel with approximately four (4) feet of grade differential.

This parcel was designated as a potential development site for the Longfellow Residence and Retail Project, which was proposed by Riverwalk LLC and approved in 2006. The Planning Board approvals for the site plan have expired for that project and Bateman Partners, LLC has obtained an option to purchase this separate parcel.

IV. PROPOSED DEVELOPMENT

The proposed development site is located on the corner of Middle Street and Hancock Street Extension. Ocean Gateway Garage is located directly southeast of the property. The proposal seeks to develop the property with a five story mixed-use development that will contain two retail units on the first floor and four office condominium units on the second through fifth floors with one unit per floor. The ground floor of the building has a footprint of 7,250 square feet with 5,305 square feet of retail space.



Both retail spaces have primary entrances fronting on Middle Street. The office units have a ground floor lobby with elevator access and a primary entrance fronting on Middle Street toward the western corner of the building.

The Applicant proposes to provide both retail tenants and office units with 140 spaces of existing parking in the

abutting Ocean Gateway Garage. There is no direct garage access from within the proposed building. The upper floors of the building are proposed to cantilever over the 50 foot wide driveway access leading to the garage.

Public utilities including water, sewer, natural gas, power and communications are readily available in the area. Electricity will be installed underground.

V. PUBLIC COMMENT

The legal ad appeared in the Portland Press Herald on May 18th and May 19th and was posted on the web site for the public hearing. A total of 125 notices were sent to property owners and the interested citizen list.

The applicant held the required neighborhood meeting on June 12th, 2014 and the neighborhood packet is included as part of the Applicant's submission, Attachment 3G.

As of the writing of this report, there have been no public comments received. For the workshop back in June of 2014, there were eight different submissions of public comment received by the Planning Office, one letter and 7 emails. To summarize, 7 submissions from residents of the Bay House expressed concerns regarding loss of green space, shadowing, and wind as a result of the proposed development; and have requested shadow and wind studies, and City consideration for purchase of the lot for green space. The letter expressed concerns regarding availability of short term parking for area businesses, visibility at the Middle and India Streets intersection, and availability of handicapped parking spaces.

VI. RIGHT, TITLE AND INTEREST AND FINANCIAL/TECHNICAL CAPACITY

- a) The owner of the property is Eight Middle Land Company, LLC. The applicant has provided a copy of a Memorandum of Purchase Option Agreement with the property owner as well as the Quitclaim Deed with Covenant of the property owner, recorded at the Cumberland County Registry of Deeds (Book 30623 Page 314), which demonstrates their right, title and interest in the property.
- b) The estimated cost of the development is \$8,750,000. The applicant has submitted a letter from Michael P. O'Reilly of Bangor Savings Bank, dated May 2nd, 2014, stating the bank has a "high degree of interest in providing construction financing for the project" and has successfully worked with the Applicant in the past as demonstration of their financial and technical capacity to complete the proposed development.

VII. ZONING ASSESSMENT

ZONING REVIEW – Marge Schmuckal, Zoning Administrator, 6/3/14

This project for a 5 story building with 1st floor retail and offices above is located in the B-5b zone. On May 13th, the architect e-mailed me information concerning the average grade and the height of the building. The project exactly met the maximum 65' building height. The architect will need to confirm that height prior to any final Certificate of Occupancy with the Code Enforcement Officer.

The project is meeting all other dimensional requirements including the maximum front yard setback. It is noted that under section 14-332.1(g) there are no parking requirements under zoning for projects in the B-5 zone which I believe to include the B-5b.

All the HVAC system shall meet the maximum noise requirements of the B-5 zone. The zoning office will need verification that the sound levels are being met. All spec sheets shall address noise outputs in decibels.

VIII. DEVELOPMENT REVIEW

A. SITE PLAN SUBMISSION REQUIREMENTS (Section 14-527) and SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (Section 14-496)

The applicant has submitted a recording plat. The final plat will need to be revised to reflect any waivers and conditions of approval that relate to the subdivision plan. Any waivers granted must be recorded at the Registry

of Deeds within 90 days of a Planning Board decision.

In addition, the applicant is working with Jennifer Thompson, Associate Corporation Counsel, on the appropriate documentation needed on the plat and accompanying declaration or condominium documents for the underlying condominium ownership entities for the proposed project. A condition of approval is proposed that the final plat and/or condominium recording plat will be submitted for review and approval by the Planning Authority and Associate Corporation Counsel prior to recording. The declaration and condominium documents be submitted and is being reviewed by the Associate Corporation Counsel.

The final easements to provide public access and building footing easements shall be reviewed and approved by Corporation Counsel. The applicant and staff are working together to finalize the final language for the easements.

David Margolis-Pineo, Deputy City Engineer, has requested that the four property corners shall have property pins set by a registered land surveyor prior to issuance to the certificate of occupancy permit.

B. SUBDIVISION STANDARDS (Section 14-497)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's Subdivision Ordinance and applicable regulations. Staff comments are listed below.

1. Will Not Result in Undue Water and Air Pollution (Section 14-497 (a) 1), and Will Not Result in Undue Soil Erosion (Section 14-497 (a) 4)
David Senus, P.E. Woodard and Curran, has reviewed the erosion and sediment control plan and finds the proposal to meet city standards. The staff finds the proposed project in conformance with this standard.
2. Sufficient Water Available (Section 14-497 (a) 2 and 3)
3. The project site does not currently have existing water service. There is an 8-inch diameter ductile iron water main on the west side of India Street and a public fire hydrant located across the street from the site. In a letter dated March 19, 2014 (Attachment 10), the Portland Water District confirms that they will be able to serve the proposed project. The staff finds the proposed project in conformance with this standard.
4. Will Not Cause Unreasonable Traffic Congestion (Section 14-497 (a) 5)
Tom Errico, P.E. Ty Lin has reviewed the proposal and his complete review is listed under the site plan standards. The proposed project is not anticipated to cause unreasonable traffic congestion. The staff finds the proposed project is in conformance with this standard.
5. Will Provide for Adequate Sanitary Sewer and Stormwater Disposal (Section 14-497 (a) 6), and Will Not Cause an Unreasonable Burden on Municipal Solid Waste and Sewage (Section 14-497 (a) 7)
The City of Portland has not confirmed that the sewer system has sufficient capacity; a letter from Mr. Brancely with Department of Public Services will be required. David Senus, P.E. Woodard and Curran, has reviewed the stormwater management plan finds the proposal to meet city standards (Attachment 3). The staff finds the proposal is in conformance with this standard.
6. Scenic Beauty, Natural, Historic, Habitat and other Resources (Section 14-497 (a) 8)
The proposal site is not within an historic district and is in an urban neighborhood surrounded by a variety of residential building types. The proposed building does not impact the natural beauty of the area or adversely affect any significant wildlife habitat, rare or irreplaceable natural areas, or any public access to the shoreline. The staff finds the proposal in conformance with this standard.
7. Easements
The applicant is proposing two locations for public access easements to allow a public sidewalk to cross onto the private property. There will also be an utility easement on the site. The applicant will also need an

easement for the building footing into the public right-of-way. The staff finds the proposal in conformance with this standard subject to the following conditions of approval:

- The final easement language for the walks, utility, and building footings must be reviewed and approved by Corporation Counsel.
- The final plat shall depict these easements.

8. Comprehensive Plan (Section 14-497 (a) 9)

Goals and policies from the Comprehensive Plan which are relevant to the proposed map amendment have been included below:

Portland Housing Goal: Maintain and enhance the livability of Portland’s neighborhoods as the City grows and evolves through careful land use regulations, design and public participation that respects neighborhood integrity.

Policies

- Encourage innovative new housing development, which is designed to be compatible with the scale, character, and traditional development patterns of each individual residential neighborhood.
- Encourage new housing development in proximity to neighborhood assets such as open space, schools, community services and public transportation.
- Ensure the integrity and economic value of Portland’s neighborhoods.

9. Financial Capability (Section 14-497 (a) 10)

The estimated cost of the development is \$8,750,000. The applicant has submitted a letter from Michael P. O’Reilly of Bangor Savings Bank, dated May 2nd, 2014, as demonstration of their financial and technical capacity to complete the proposed development.

C. SITE PLAN STANDARDS (Section 14-526)

The application has been reviewed and commented on by staff for conformance with the relevant review standards of Portland’s Site Plan Ordinance and applicable regulations.

A. Transportation Standards

1. Impact on Surrounding Street Systems

The proposed development requires a Traffic Movement Permit (TMP) and the City has delegated authority to conduct the TMP reviews. Tom Errico, PE, consulting Traffic Engineer has had a scoping meeting on June 25, 2014. Mr. Errico’s, Consulting Traffic Engineer, has reviewed the traffic movement permit and the final application submittal submitted on February 6, 2015; his comments are the following:

- I would like to gain a better understanding of the possible tenant types as it relates to the ground floor retail spaces. The applicant should provide information on anticipated retail uses.

Status: The trip generation analysis was based upon a specialty retail use and seems representative of the project. I find the trip generation to be acceptable and would note that if traffic generation is significantly higher than predicted in the traffic study, the applicant would be required to modify their Traffic Movement Permit.

- The applicant conducted a Multi-Way STOP sign controlled warrant analysis at the India Street/Middle Street intersection. The conclusion was that while volumes met criteria, the delay on the minor street did not meet criteria. I need to continue to review analysis at this location as it relates to traffic control and improvement needs.

Status: The applicant shall conduct a traffic monitoring study following project occupancy at the subject intersection as it relates installation of an All-Way STOP controlled intersection. The applicant shall also contribute \$5,000.00 towards future multi-modal improvements at the subject intersection. I would note that the project is projected to add 46 vehicles in the AM peak hour and 48 vehicles in the PM peak hour.

- The applicant conducted a traffic capacity evaluation at the India Street/Fore Street intersection and concluded that excellent levels of service conditions are predicted for both existing and post-development conditions. Several years ago a traffic signal was programmed for installation, but given current conditions a traffic signal does not appear warranted. The applicant should provide an opinion as to whether a traffic signal would be warranted following project completion.

Status: Based upon my review of traffic information, a traffic signal does not appear to be warranted. I have no further comment.

- The India Street/Fore Street intersection is classified as a High Crash Location. I will continue to review and provide any suggested requirements.

Status: The applicant has noted that a pattern of angle collisions was identified. As a condition of approval the applicant should provide recommendations as it relates to mitigating the noted crash pattern. The applicant will be responsible for all costs associated with implementation of the mitigation strategy, if identified.

2. Access and Circulation

a. Site Access and Circulation

The site has frontage along Hancock and Middle Streets. The primary pedestrian doors to the first floor uses and the upper floor offices are accessed from the Middle Street sidewalk. No new vehicle access drives are proposed. The applicant is proposing to lease parking from the adjacent Ocean Gateway Garage, which has a driveway entrance and exit off Middle Street. The proposed building is cantilevered over the garage entrance way.

b. Sidewalks and Street Right-of-way

The applicant is proposing to construct new sidewalks along Middle and Hancock Streets. There is a sidewalk that extends to the building face along Hancock Street, which is on private property. The Planning staff is unclear on the benefit of the planters versus a wider and consistent sidewalk along Middle Street. Caitlin Cameron, Urban Designer, has reviewed the design of the building and offers the following recommendations:

Staff requests that landscaping shown adjacent to retail facades be removed, especially on Middle Street. Although staff recognizes the intent was to ameliorate the inability to provide street trees in these locations, staff is not in support of placing landscaping between sidewalk and active ground floor facades. A wider sidewalk and easy access to the ground floor uses are preferred. City Arborist is amenable to removing the proposed landscaping.

The applicant has eliminated the planters from the site plan.

The applicant is proposing a grease trap per Department of Public Services requirement. The location of the grease trap has been moved to avoid the conflict with straddling the property line, thereby eliminating the need for an easement from the abutting property owner. As requested, the size of the grease trap has been increased to 1,000 gallons and the detail has been updated to reflect the City's standard requirements for grease traps.

3. Public Transit Access

The public transit access standard applies to projects that have in excess of 20,000 square feet and where the following criteria are met:

- i. The development is proposed along an existing public transit route on a local principal or minor arterial roadway, as shown in the Federal Street Classification Map provided in Section 1 of the Technical Manual.
- ii. The nearest existing transit shelter and/or bus pullout on the route is ¼ mile (1,320 feet) or more away from the closest primary building on the site, measured along rights-of-way.

The total floor area for the proposed structure is 49,875 sq. ft. While it exceeds the 20,000 sf threshold, Middle Street is not on a transit route and thus this standard does not apply. The staff notes that Metro Route 8 and 8a provide service on India Street, which is approximately 300 feet from the site.

4. Parking

a. Location & Required Number of Vehicle Parking Spaces

The Applicant has submitted a copy of Parking Lease agreement between Ocean Gateway Garage LLC and Eight Middle Land Company, LLC (property owner) for 140 parking spaces to serve the proposed development. As the upper 4 floors of the development are to be office units (condominiums), not lease tenants of the building, it unclear how the existing lease agreement can guarantee parking requirements will be met by future owners of the office units.

Additionally, per the lease agreement, the 140 spaces will not be designated so staff is unable to determine if handicapped parking requirements have been met.

The B-5b zone does not have a requirement for parking. Mr. Errico, Traffic Engineer, has reviewed the parking demand for this project and finds the amount of parking spaces to be acceptable. See his comment below:

- The applicant will be satisfying parking demand for the project by leasing 124 parking spaces for the Middle Street project and 44 parking spaces for the Fore Street project in the Ocean Gateway garage and this supply meets zoning requirements. The traffic study notes that 239 parking spaces will be deeded from the garage and clarification should be provided. My initial reaction is an adequate parking supply will be provided, but how parking will be integrated into a TDM Plan needs to be assessed.

Status: I find parking conditions to be acceptable and I have no further comment.

b. Location & Required Number of Bicycle Parking Spaces

The plans show bicycle rack along the sidewalk leading to the parking garage near the utility room and there are bike racks proposed near the entrances to the building. There was some concern about the security and safety of the seven bicycle racks next to the garage driveway. A lighting plan has been provided to address these concerns. The plan now shows this area to be fully lit.

There are two bike racks being proposed at each entrance on Middle Street and Hancock Street for a total of four racks. These racks are in the right-of-way and will become the City infrastructure. The bike racks shall meet City standards to be located in the right-of way.

5. Transportation Demand Management (TDM)

The traffic demand management plans are required for projects in the B-7 zone, commercial and institutional uses with over 50,000 square feet, or commercial or institutional uses designed to accommodate 100 or more employees or students. The proposed building is in the B-5b zone and is just under the size threshold with 49,875 square feet. It has been determined that a TDM plan is needed during the TMP scoping. Mr. Errico has reviewed the TDM plan and offers the following comment:

- A TDM plan shall be provided for review and comment.

Status: I have reviewed the TDM Plan and find it to be acceptable. The applicant will be responsible for conducting an annual survey and adjust the Plan as necessary. I have no further comment.

B. Environmental Quality Standard

1. Preservation of Significant Natural Features

The site was previously developed and the structure was demolished. The site was stabilized with grass, a few trees, and several benches. There are no significant natural features on the site.

2. Landscaping and Landscape Preservation

Jeff Tarling, City Arborist, reviewed the initial plan on May 30th and his comments are below:

Both of these projects 185 Fore Street and 16 Middle Street need to have three trees planted at each site. At 16 Middle Street three trees along the Middle Street frontage. Due to the recent tree problems at a nearby project that was unable to plant 8 trees due to underground utilities, we have six NEENA tree grates and guards in the City's possession that can be used for this project. It will offer uniformity. We can work with the project team to decide on the recommended tree type. Need to review the sunlight and space availability.

In response to initial staff comment the Applicant met with City Arborist Jeff Tarling to assess the site conditions for street trees. Together they arrived at proposing to install planters along the building instead of street trees. As noted above, the Planning staff question whether the planters along Middle Street are appropriate and whether maintaining a wider sidewalk is preferable. Currently based on Ms. Cameron's comments, the planters have been removed and Mr. tarlinf has agreed with this approach at a staff meeting. Two street trees will remain on Hancock Street and a waiver will be required for the trees that cannot be provided on site.

3. Water Quality, Storm Water Management and Erosion Control

David Senus, PE, Woodard and Curran, reviewed the initial plan and his comments are included as Attachment 1. The plans have been revised and Mr. Senus has review of the latest submission and plans are meeting stormwater standards. The applicant will need to enter a stormwater maintenance agreement, which the applicant is working on.

C. Public Infrastructure and Community Safety Standards

1. Consistency with Master Plans

This property falls within the Eastern Waterfront and as such, is subject to the Master Plan and Design Guidelines for the Eastern Waterfront. The project is consistent with applicable guidelines as outlined

below but especially meets the intent of the Master Plan as an infill development project of mixed-use of commercial and office space and with shared parking infrastructure. The project does not impact public view corridors or access to the waterfront.

A3. Sidewalks – the project maintains the current sidewalk widths; street trees are provided on Hancock Street though would also be desirable on Middle Street; Street lights will be maintained on Middle Street; Bicycle parking is provided near building entrances.

A6. Underground Utilities – All utilities associated with this project are underground.

A8. Bicycle Safety – The project provides bicycle parking on-street near building entrances. The bike racks shall meet City Technical Standards to be located in the right-of way.

B1. Contextual Design – The infill nature of this development regulates the size and mass of the building footprint. The surrounding buildings vary in scale, use, and form and the proposal is able to transition both in scale and architecture expression between the garage and smaller, historic buildings like Micucci's. The building meets the street edge and creates a desirable street wall. The building entrances are oriented to the street. The ground floor uses storefront design principles and adds to the pedestrian environment.

The India Street Sustainable Neighborhood Plan is being developed and has not been adopted at this date however, this project falls within the intent of that planning process in that it adds to the active street wall of Middle Street, is of a desirable height and scale, and shares parking infrastructure rather than creating more parking space.

2. Public Safety and Fire Prevention

a) Crime Prevention through Environmental Design

The applicant has submitted a lighting plan. Safety along the path behind the building and where the bicycle racks are proposed were of concern. The lighting plan is now showing adequate illumination of these areas.

b) Adequate Emergency Vehicle Access

Captain Chris Pirone, Fire Department had requested the Fire Department Access shall have an unobstructed vertical clearance of not less than 13 feet 6 inches. The Applicant has responded that "A minimum clearance of 13'-6" will be provided beneath the portion of the building constructed over the driveway connection to the Ocean Gateway Garage" and is reflected in the A2.1 Buildings Elevations Plan drawings.

c) Consistency with Public Safety Standards

The Applicant did respond to Fire Department staff comment. Comments regarding the Construction Management Plan were added by the Applicant to drawing C1.1 General Notes and Legend. Captain Keith Gautreau has reviewed the Applicant's responses to Fire Department comments from June 1, 2014 and is satisfied.

Mr. Errico, Traffic Engineer has also reviewed the Construction Management Plan and finds it acceptable with the following comment:

The construction management plan for 18 Middle Street is acceptable. It should be noted that all temporary sidewalk facilities need to be ADA compliant and have MUTCD compliant signage. Additionally, final review and approval of the Middle Street roadway width (22

feet) will be required by DPS staff before construction begins. I would also note that the temporary sidewalk must be ADA compliant.

d) Availability and Adequate Capacity of Public Utilities

The City of Portland has not confirmed that the sewer system has sufficient capacity; a letter from Mr. Brancely with Department of Public Services will be required.

e) Trash and Recycling

The Applicant has stated that waste will be collected by building custodial staff and hauled via roll-off containers for temporary storage within the trash room as soon on the site plan.

D. Site Design Standards

1. Massing, Ventilation and Wind Impact

The project as proposed does not trigger the requirement for an assessment of the wind impact. At the workshop, the Planning office had received public comment raising concerns about the impacts. As of this writing this report, no additional public comments have been submitted.

Shadows

The project as proposed does not trigger the requirement for a shadow study. At the workshop, the Planning office had received public comment raising concerns about the impacts of shadows on the Bay House. As of this writing this report, no additional public comments have been submitted.

2. Snow and Ice Loading

According to the applicant, due to the proposed site development proposal, very little snow removal will be required (i.e. majority of site will be covered with building with flat rooftop). Snow removal from the sidewalk along the rear of the building will be towards the adjacent open lawn area. Any snow removal from the entrance to the parking garage will be towards the southwest side of the site. If necessary, snow will be hauled away from the site.

3. View Corridors

The proposed building does not block any designated view corridors.

4. Historic Resources

The site is not within a Historic District and it is not within 100 feet of a historic preservation district. As part of the India Street neighborhood planning effort, an India Street district is being considered, which does not incorporate this site in the concept.

5. Exterior Lighting

The Applicant has provided more detail in the electrical site plan including photometrics for proposed lighting. The plan is showing three different fixtures being proposed for the site. The fixtures are supposed to be full-cut offs. These fixtures are not anticipated to cause undue glare or problems to sensitive areas.

Safety along the path behind the building and where the bicycle racks are proposed were of concern. The lighting plan is now showing adequate illumination of these areas. Having said this, the plan is not meeting the City's standard of foot candles at the property lines and a waiver of the cutoff fixture requirement is provided in the motions.

6. Noise and Vibration

All heating, ventilation and air conditioning equipment (HVAC), air handling units (AHU), emergency generators, and similar equipment will have to be shown on the plans and meet state and federal emissions requirements. The mechanical equipment should be located to the interior of the

site, away from abutting residential properties and be screened from view from any public street and from adjacent sites by structure walls, evergreen landscaping, fencing, masonry wall or a combination thereof. This information will have to be submitted for review.

7. Signage and Wayfinding

This standard is not required for this project.

8. Zoning Related Design Standards

On Wednesday, February 25, a design review according to the *City of Portland Design Manual* Standards was performed for the revised application materials for the proposed new construction of a commercial building at 16 Middle Street. The review was performed by Caitlin Cameron, Urban Designer and Alex Jaegerman, Division Director within the Planning Division of the Department of Planning & Urban Development. The project was reviewed against the *B5b Urban Commercial Business Zones Design Standards* (Section (c) of the Design Manual) and also took into consideration the previous design review comments from 5/29/15.

Design Review Comments (*red text denotes standards that require revision*):

Standard 1a. Shared Infrastructure – Met – Project uses adjacent parking structure to meet on-site parking requirement.

Standard 1b. Relationship to Street – Building is set close to property line on all frontages including corner. *Staff requests that landscaping shown adjacent to retail facades be removed, especially on Middle Street. Although staff recognizes the intent was to ameliorate the inability to provide street trees in these locations, staff is not in support of placing landscaping between sidewalk and active ground floor facades. A wider sidewalk and easy access to the ground floor uses are preferred. City Arborist is amenable to removing the proposed landscaping.*

Staff Update: The plans have been amended based on staff comments above.

Standard 1c. Building Orientation – Met – Strong orientation to Middle Street is provided with retail frontage as well as principal building entrance. Visual transmittance of glass should be .7 or higher at ground floor.

Standard 1d. Parking Lots – Not applicable

IX. PROPOSED MOTIONS

WAIVERS

On the basis of the application (2014-065) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for the mixed-use retail and office building site plan and subdivision (application 2014-065), including but not limited to Section VIII Technical Waivers, of the report and the staff reviews relevant to Portland's Technical and Design Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. *Street Trees*

The Planning Board (*finds/does not find*) that the applicant has demonstrated that due to site constraints preventing the planting of required street trees in the right of way, the requirements of Section 14-526(2)(b)(iii) of the Site Plan Ordinance cannot be met; and the Board (*finds/does not find*) that the applicant has satisfied the waiver criteria set out in Section 14-526(2)(b)(iii)(b) with the monetary contribution to the tree fund of \$200 per tree for three (3) trees for a total of \$600. The Planning Board therefore (*waives/does not waive*) Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance.

2. *Site Lighting:*

The Planning Board (**waives/does not waive**) the Technical Standard, Sections 12.2.3 Illumination Levels and 12.2.5 Light Trespass, to allow three locations near the building where maximum light levels are exceeded by up to 7.1 foot candles, and to allow some minor trespass at the property boundaries that benefit the pedestrian areas.

TRAFFIC MOVEMENT PERMIT

That the Planning Board finds that the proposed plan [**is/is not**] in conformance with 23 MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits.

Potential conditions of approval:

- i. That the applicant shall contribute \$5,000 to an account maintained by the City that will be used to fund traffic improvements to the intersection at India/Middle Street.

SUBDIVISION PLAT

On the basis of the application (2014-065), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-202 relevant to the Subdivision Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Stormwater Permits under delegated review, and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

That the plan (**is/is not**) in conformance with the subdivision standards of the land use code, subject to the following conditions;

1. The final plat and/or condominium plat, along with accompanying condominium documents, shall be submitted for review and approval by the Planning Authority, Department of Public Services, and Associate Corporation Counsel prior to recording.
2. That the following shall be finalized to the satisfaction of the Corporation Counsel prior to the issuance of a Certificate of Occupancy:
 - a. Public access
 - b. Building footing easements
 - c. Stormwater management agreement
3. The recording plat shall depict the building foundation and utility easements.
4. The four property corners shall have property pins set by a registered land surveyor prior to issuance to the certificate of occupancy.
5. The recording plat shall be revised noting all waivers and conditions for review and approval by the Planning Authority prior to recording. All waivers shall be recorded within 90 days of the Planning Board approval.

LEVEL III SITE PLAN

On the basis of the application (2014-065), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-065 relevant to the Site Plan Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Stormwater Permits under delegated review, and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

That the plan (**is/is not**) in conformance with the site plan standards and all other applicable provisions of the land use code, subject to the following conditions:

1. The applicant shall conduct a traffic monitoring study following project occupancy at the subject intersection as it relates installation of an All-Way STOP controlled intersection. The applicant

shall also contribute \$5,000.00 towards future multi-modal improvements at the subject intersection prior to the issuance of a building permit.

2. The applicant has noted that a pattern of angle collisions was identified. The applicant shall provide recommendations as it relates to mitigating the noted crash pattern prior to the issuance of a certificate of occupancy. The applicant shall be responsible for all costs associated with implementation of the mitigation strategy, if identified.
3. The applicant shall be responsible for conducting an annual survey and the Traffic Demand Plan be adjusted as necessary.
4. The Construction Management Plan shall include the final details of the temporary barrier protected sidewalk to be approved by the Department of Public Services prior to issuance of a building permit. This temporary sidewalk shall be ADA compliant and shall have MUTCD compliant signage.
5. 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 submitted Stormwater Management and Stormwater Pollution Prevention Plans (dated July 2014 and revised April 2015) and the approved plans, and meet City standards and state guidelines.
6. The applicant shall submit a sanitary sewer capacity letter from the Department of Public Services confirming that the sewer system has sufficient capacity, prior to the issuance of building permit.
7. All HVAC systems and external mechanical equipment shall meet the maximum allowable noise requirements of the zone; each unit shall submit documentation of dBA output to confirm compliance of both the unit and the building in respect of rated noise levels and cumulative noise levels, to the satisfaction of the Zoning Administrator prior to the issuance of a Building Permit for that unit.
8. The bicycle racks shall meet City's Technical Standards to be located in the right-of way.
9. The project is exactly meeting the maximum 65' building height; the architect shall confirm the height of the proposed building prior to any final Certificate of Occupancy.

Attachments:

Planning Board Report Attachments

1. Traffic Engineering Review (Tom Errico, T Y Lin), comments dated May 20, 2015
2. Department of Public Services Review, David Margolis-Pineo, dated May 21, 2015
3. Civic Engineer Review, David Senus, dated April 30, 2015
4. Urban Designer Review, Caitlin Cameron, dated February 25, 2015
5. Captain Keith Gautreau, dated May 5, 2015

Public Comments

- PC1 Stephen R. Andrew of Health Education and Training Institute, dated June 4, 2014
PC2 David Smith dated June 2, 2014
PC3 Linda Guerra dated June 4, 2014
PC4 Lolisa Windover dated June 3, 2014

- PC5 Otty Merrill dated June 7, 2014
- PC6 Rick Huleatt dated June 14, 2014
- PC7 Robin McCarthy dated June 4, 2014
- PC8 Rosemary Schmidt dated June 16, 2014

Applicant's Submittal

1. Cover letter dated February 6, 2015

- A. Architectural Rendering
- B. Site Plan Application
- C. Response to Staff Comments on Preliminary Application
- D. Development Description
- E. Existing Site Photographs
- F. Owner's Association Documents
- G. Right, Title and Interest
- H. Purchase Option Agreement
- I. Lease Parking Agreement
- J. Technical and Financial Capacity
- K. Letter of Financial Capacity
- L. Construction Management Plan
- M. Stormwater Management
- N. Utilities
- O. Correspondence with Utilities
- P. Solid Waste
- Q. Fire Safety
- R. Conformity with Applicable Design Standards
- S. Verification of Proposed HVAC Equipment

2. Traffic Impact Study dated February 6, 2015

3. Cover Letter dated April 15, 2015

- A. Response to Staff Comments
- B. Revised Inspection & Maintenance Manual
- C. Fabco Stormbasin Maintenance Guide
- D. Fabco Model 10080-1 StormBasin Cartridge Filter Unit Cut Sheet
- E. Abutters Agreement by and Between Ocean Gateway Garage LLC and Eight Middle Land Company LLC
- F. Traffic Demand Management Plan
- G. Neighborhood Meeting
- H. Lighting Catalogue Cuts

Plans

- Plan1 C1 Cover Sheet
- Plan2 C1.1 General Notes & Legend
- Plan3 C2 Boundary & Topographic Survey
- Plan4 C2 Cover Sheet
- Plan5 C2.1 Amended Recording Plat 16 Middle
- Plan6 C2.1 Existing Conditions & Demolition Plan
- Plan7 C2.2 Existing Conditions & Demolition Plan
- Plan8 C2.3 Construction Management Plan
- Plan9 C3 Site Layout Plan

Plan10	C4 Grading & Drainage Plan
Plan11	C5 Utility Plan
Plan12	C6 Pavement Curb & Sidewalk Details
Plan13	C6.1 Utility & Miscellaneous Details
Plan14	C6.2 Utility & Miscellaneous Details
Plan15	C6.2 Utility Details
Plan16	E1.02 Electrical Site Plan
Plan17	L1.0 Middle Street Landscape Plan
Plan18	Landscape Plan
Plan19	16 Middle St Photometric
Plan20	A1.1 First Floor Plan
Plan21	A1.2 Typical Floor Plan
Plan22	A2.2 Building Elevations
Plan23	A2.1 Building Elevations
Plan24	A2.2 Building Elevations
Plan25	16 Middle Street
Plan26	Hancock St - View 1
Plan27	Context Perspective 1
Plan28	Context Perspective 2

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)

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

For SUBDIVISIONS

IN CONSIDERATION OF the site plan and subdivision approval granted by the Planning Board of the City of Portland to the proposed _____ (name of developments and project number) shown on the Subdivision Plat (Exhibit A) recorded in Cumberland Registry of Deeds in Plan Book ____, Page ____ submitted by _____, and associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit B) prepared by _____ (engineer/agent) of _____(address) dated and pursuant to a condition thereof, _____ (name of owner), a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of _____, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it, its successors and assigns, will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the _____ (*details of the system such as underdrained subsurface sand filter BMP system, rain gardens, storm drain pipes, underdrain pipes, catch basins*), (hereinafter referred to collectively referred to as the “stormwater system”), as shown on the _____Plan in Exhibit B and in strict compliance with the approved Stormwater Maintenance and Inspection Agreement (*insert correct name of document*) prepared for the Owner by _____ (copy attached in Exhibit C) and Chapter 32 of the Portland City Code.

Owner of the subject premises further agrees, at its own cost, to keep a Stormwater Maintenance Log. Such log shall be made available for inspection by the City of Portland upon reasonable notice and request.

Said agreement is for the benefit of the said City of Portland and all persons in lawful possession of said premises and abutters thereto; further, that the said City of Portland and said persons in lawful possession may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice and a stated time to perform, the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon said premises to maintain, repair, or replace said stormwater system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.

This Agreement shall also not be construed to allow any change or deviation from the requirements of the subdivision and/or site plan most recently and formally approved by the Planning Board of the City of Portland.

This agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear.

The Owner agrees to provide a copy of this Agreement to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

For the purpose of this agreement and release "Owner" is any person or entity who is a successor or assign and has a legal interest in part, or all, of the real estate and any building. The real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and liened if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by the agreement shall be complete on the date the notice is attached to one or more doors providing entry to any buildings and mailed by certified mail, return receipt requested or ordinary mail or both to the owner of record as shown on the tax roles on file in the City Assessor's Office.

If the property has more than one owner on the tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or liening it or create a cause of action against the City.

Dated at Portland, Maine this _____ day of _____, 2014.

(name of company)

(representative of owner, name and title)

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

Personally appeared the above-named _____ (*name and title*), and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

Notary Public/Attorney at Law

Print name: _____

Exhibit A: Subdivision Plat as recorded

Exhibit B: Approved Grading and Drainage Plan (*name of the plan showing the Stormwater System in detail*)

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

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