

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

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March 17, 2015

The Federated Companies  
Jonathan Cox  
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Miami, Florida 33137

FST Consultants  
Stephen Bushey  
778 Main Street, Suite 8  
South Portland, Maine 04106

**Project Name:** Midtown  
**Project ID:** #2014-203  
**Address:** 59 Somerset Street  
**CBL:** 34-B-2, 3, 4, 5, 22 and 34-D-3, 9, 10  
**Applicant:** FEDEQ DV001, LLC.  
**Planner:** Richard Knowland

Dear Mr. Cox,

On March 3, 2015, the Planning Board considered the Midtown development in the vicinity of Somerset Street, Chestnut Street and Elm Street. The development features approximately 445 dwelling units, 91,000 sf of retail space and a 799 space parking garage. The parking garage is being supported by funding from the City via the Sectin 108 loan program from the U.S. Department of Housing and Urban Development.

The Planning Board reviewed the proposal for conformance with the standards, outlined in the City Code, for Conditional Use approval; Subdivision approval; a Traffic Movement Permit; Site Plan approval, including Site Development of Location Act. The Planning Board voted to approve the application with the following waivers and condition(s) as presented below.

### A. CONDITIONAL USE

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board report for application #2014-203 relevant to Portland's B-7 zone, the City's Site Plan Ordinance, the City's Conditional Use Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board Hearing:

1. The Planning Board finds the proposed conditional use for the parking garage does meet the standards of B-7 Conditional Use, Sec. 14-296 (3) governing structured parking and Zoning Code Section 14-474 and therefore voted 6-0 (Eaton recused) to approve the parking garage.

## **B. TECHNICAL AND DESIGN WAIVERS**

On the basis of the application (2014-203) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for midtown site plan and subdivision (application 2014-203), including but not limited to Section VIII Technical Waivers as amended, of the report and the reviews by Thomas Errico, PE of T.Y Lin (dated January 27, 2015, Attachment 2), David Senus, P.E. of Woodard and Curran, (dated January 28, 2015, Attachment 5) , David Margolis-Pineo, Deputy City Engineer, ( dated January 7, 2015 Attachment 6), and Jeff Tarling, City Arborist (dated January 30, 2015, Attachment 8) for the Midtown Site Plan and Subdivision Plan 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 voted 6 to 0 (Eaton recused) on the following findings:

### Transportation and Street Design

#### 1. Street Grades

The Planning Board finds that the applicant has demonstrated that extraordinary conditions unique to this property exist including that the existing and anticipated flood hazards in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) and the existing building elevations across Somerset Street are at lower elevations such that relief from strict compliance with the 0.03 cross slope regulations for a local street is necessary; and the Board finds that the public interest and purposes of the land development plan are secured by the proposed variation in street grades as shown on Figure 1 – Somerset Street Schematic Maintain 18” of Freeboard adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of the Federated Companies. The Planning Board therefore waives Section 1.4.1 Street Grades of Portland’s Technical Manual to allow the roadway cross slope to be modified as shown in Figure 1.

#### 2. Vertical Alignment

The Planning Board finds that the applicant has demonstrated that extraordinary conditions unique to this property exist, including that the existing and anticipated flood hazards in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) such that the proposed alterations to Somerset Street and the existing building elevations across Somerset Street are at lower elevations; the Planning Board finds that, given these circumstances, relief from strict compliance with the requirement to maintain the vertical alignment for Crest Vertical Curves K=3- and Sag Vertical Curves K=40 for City streets is necessary to avoid undue hardship ; and that the public interest and purposes of the land development plan are secured by the proposed variation in the K value. The Planning Board waives Section 1.5 Vertical Alignment of

Portland's Technical Manual to allow K values for the sags on Chestnut Street to be 33.56 and Elm Street to be 38.89.

3. Sanitary Sewer and Storm Drain Design Catch Basins

The Planning Board finds based upon the January 7, 2015 review by David Margolis Pineo (Attachment 6) and the January 28, 2015 David Senus review (Attachment 5) that extraordinary conditions unique to this property and related to existing and potential future flooding exist or undue hardship would result from strict compliance with the Technical Standard 2.7.8, including that compliance with that standard would result in excessive piping and appurtenances in the public street; and the Planning Board finds that the proposed stormwater treatment system design requires direct connections into catch basins to comply with design guidance outlined in MaineDEP Chapter 500 BMP Manual and, the public interest is secured, and the variation is consistent with the intent of the ordinance. The Planning Board waives Section 2.7.8 Catch Basin of the Technical Manual to allow the connection of storm drain lines into a catch basin structure.

4. 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). The Planning Board therefore waives Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance and, further grants a partial reduction in the financial contribution to the tree fund due to the applicant's commensurate infrastructure investment in twenty-nine (29) raised tree wells, as presented in the application to a contribution to the tree fund of \$8,000, which is the difference between the cost for the required number of trees and the cost of the 29 raised planters.

5. Stormwater Management Standards and ME DEP Stormwater Management Flooding Standard

The Planning Board finds that the project satisfies the waiver criteria contained in Stormwater Chapter 5 Section E.2 of the City's Technical Manual relating to Stormwater Management Standards because it conveys stormwater exclusively in a piped system directly into the ocean as confirmed by David Senus' review (Attachment 5) and that the applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure. The Planning Board therefore waives Chapter 5, Section E.2 Flooding Standard of the Technical Manual that requires stormwater detention for flood control to allow the storm water to be directly piped to the ocean.

6. Soil Survey Standards – High Intensity Soil Survey

The Planning Board finds that the applicant has demonstrated that greater than 50% of the site will be developed on a filled site and remediated as a Brownfields site, which has had soil analysis done for the site and street right-of-way, and has therefore met the waiver criteria contained in the Technical Manual. The Planning Board therefore waives Section 7.1 Soil Survey Standards of the Technical Manual, as recommended by David

Margolis-Pineo (Attachment 6) and as authorized by Section 7.4.1 of the Technical Manual.

7. Street Lighting Standards

The Planning Board finds that the applicant has demonstrated that extraordinary circumstance unique to this property exist relating to its size and location and the anticipated significant increase in pedestrian activity in the area; and the Planning Board finds that the proposed LED lights, shielded fixtures for down lighting, and the separately metered circuit for the street lights secure the public interest and address the overall intent of the City's land development plan, including its lighting standards along public ways. Thus, the Planning Board waives Section 10.4 Standards for Special Lighting Districts in the Technical Manual to allow a closer spacing of light poles as shown on the site plan.

**C. B-7 DESIGN WAIVERS**

On the basis of the applications 2014-203 plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for the public hearing on March 3, 2015 for application 2014-203, including but not limited to Appendix 4 of Portland's Design Manual, B-7 Design Standard Waivers of the report for the Midtown Development Plan relevant to Portland's Design Manual 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. B-7 Standard A-4, Views and Landmarks

Recognizing the existing blockage of the Cedar Street views and partial blockage of Myrtle Street view corridors, constraints relating to building design and block configuration, as well as other factors outlined in the application and the Planning Board Report, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard A-4, Views and Landmarks, to grant a partial waiver of the requirement that new development be sited so that it does not block view corridors, to allow the midtown development to partially obstruct the Myrtle Street and Cedar Street view corridor.

2. B-7 Standard B-2, Street Connectivity

Recognizing that Cedar and Myrtle streets do not abut the subject property, and in consideration of the proposed mews providing an alternate access between Somerset Street and the trail, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore waives B-7 Standard B-2, Street Connectivity, and therefore voted 6 to 0 (Eaton recused) to grant a waiver of the requirement so that the development not be required to extend Cedar Street and Myrtle Street through the project.

3. B-7 Standard B-3, Mid-Block Permeability

Due to the proposed building form and program of midtownThree, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6-0 (Eaton recused) to partially waive B-7 Standard B-3, Mid-Block Permeability, for that portion of the block bounded by Marginal Way, Chestnut Street, Somerset Street and Elm Street in order to not require mid-block permeability of the development between Chestnut and Elm Streets at the site of midtownThree, subject to a requirement that a secondary internal circulation system is provided with the following conditions:

- i. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
- ii. That a plan for public access through the first floor of midtownThree during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street and Bayside Trail sides of midtownThree, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of midtownThree.
- iii. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible, or, to the extent required, at City expense the removal of such soils and establishment of post development grades; and for landscape, surface treatments and access ways between the northerly façade of midtownThree and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld.

4. B-7 Standard B-7, Continuity of Street Level Uses

Recognizing that there is no other location for such entrances other than on Somerset Street due to block configuration, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard B-7, Continuity of Street Level Uses, to allow service entrances and vehicular entrances on Somerset Street.

5. B-7 Standard B-11, Lighting

In order to enable an enhanced retail and pedestrian sidewalk lighting condition on Somerset Street, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused ) to waive B-7 Standard B-11, Lighting, to allow closer spacing of the street lights on Somerset Street.

6. B-7 Standard C-2 Parking Entrances

Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard C-2 Parking Entrances, to allow the entry and exit of the garage entry to be combined on Somerset Street.

7. B-7 Standard C-5, Decks and Ramps

Recognizing the shallow lots and constrained garage layout, and that the garage design incorporates a green screen on the northerly sloped side along with other architectural devices, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard C-5, Decks and Ramps, to allow visible non-horizontal ramps on the north face of the garage.

8. B-7 Standard C-8, Service, Utility and Mechanical Infrastructure

Because this project has no rear elevation, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted (6 to 0) to waive B-7 Standard C-8, Service, Utility and Mechanical Infrastructure, to not require all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

9. B-7 Standard E-3, Massing

The Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard E-3, Massing, to waive the requirement of a differentiated top to the parking garage.

10. B-7 Standard E-12: Materials

The Planning Board finds that the use of EIFS on upper stories as a subordinate material, as presented in the February 19, 2015 plans, provides a practical, durable, and energy efficient solution consistent with the intent of the ordinance, therefore the Planning Board voted 6 to 0 (Eaton recused) to waive Standard E-12 to allow the EIFS cladding, subject to the elimination of the use of EIFS on the ground floor of any building.

**D. TRAFFIC MOVEMENT PERMIT**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for Application 2014-203 relevant to the Traffic Movement Permit, Site Plan and Subdivision reviews 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:

That the plan is in conformance with the standards of the Traffic Movement Permit, as reviewed by Thomas Errico, P.E and comments submitted on January 29, 2015, and therefore voted 6 to 0 (Eaton recused) to approve the Traffic Movement permit, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The Marginal Way/Chestnut Street intersection currently meets signal warrants. A traffic signal will be installed in this location as part of this project. Given the nature of the public-private partnership to construct this project, which includes a publicly-funded parking structure, as well as the fact that the City has already collected partial funding from other nearby developments for such a signal, cost will be shared between the City and the applicant. The applicant shall contribute one-third of the cost associated with installation of a traffic signal at that location, and the City shall fund the remainder. The applicant will be responsible for the development of design plans and specifications for review and approval by the Traffic Engineer and Planning Authority.
2. The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it currently consists of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.
3. The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6

months following certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.

4. Pursuant to Chapter 305 of the MDOT Rules and Regulations, the applicant shall make a \$24,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street.
5. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$26,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor.
6. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$21,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street.
7. Somerset Street/Pearl Street – The applicant has conducted a detailed evaluation of this installation of a four-way STOP sign traffic control condition and has determined that this type of control is warranted and from a traffic operations perspective performs at acceptable levels of service following project build-out. Accordingly, in order to meet the requirements of Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall be responsible for the installation of a four-way STOP intersection. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.

**E. AMENDED OVERALL SUBDIVISION PLAT AND SUBDIVISION PLANS:**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Subdivision Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, 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 in conformance with the subdivision standards of the land use code, and therefore voted 6 to 0 (Eaton recused) to approve the subdivision plans, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:



1. The configuration of the Elm Street sidewalk frontage with the indented parking area in front of Midtown 4 will be re-designed as follows: the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building. The plans shall be revised in coordination with and in accordance with input from Public Services and the Planning Authority
2. The final plans shall be updated for review and approval to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:
  - i. Continue to improve the ramp and landing system on the NE corner of Elm Street – Somerset Street for ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
  - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);
  - iii. The applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street that will provide a direct accessible pedestrian route along Elm Street;
  - iv. The configuration of several curb ramps shall be revised for review and approval by the Traffic Engineer and Planning Authority, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
  - v. In order to bring the project into compliance with the ADA, the applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
3. All ramps/stairs/planters/retaining walls for the midtown development that are located within the street right of way shall require a license from the Portland City Council, the terms of which shall require the owner and assigns to be responsible for the maintenance, repair, and long term upkeep of such improvements. Such license shall be recorded in the Cumberland County Registry of Deeds. This responsibility shall be expressly noted on the subdivision plat and in any lease, assignment or other agreements purporting to transfer that responsibility.
4. The applicant shall provide public pedestrian access easements for all sidewalks on private property that are adjacent to the street right of way. All easements

shall be submitted for Public Services, Planning Authority and Corporation Counsel review and approval. Easements shall specify the function, responsibility of maintenance and repair, as well as ownership of all improvements. The ADA compliant accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.

5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.
6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street. These revised plans shall be submitted for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons and which meet the standards contained in Technical Manual for final review and approval by the Traffic Engineer and the Planning Authority.
9. The Applicant's submittal is in conformance with the requirements of the City's Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
  - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.
  - ii. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.
  - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services.

- iv. Applicant shall secure a license from the Portland City Council for the installation of all stormwater quality treatment units located within the public rights of way. Such license shall be recorded in the Cumberland County Registry of Deeds.
10. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
11. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unutil, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
12. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.
13. The City has agreed to design and fund the installation of the 24" storm drain pipe in Elm Street from Somerset Street to the existing 24" pipe in Elm Street. This extension of 24" pipe shall be constructed by the applicant in the course of project development, at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
14. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for Public Services review and approval prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
15. The following note shall be amended to read on all final plans: "midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN

AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED IN EXHIBIT C TO 2<sup>nd</sup> AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK”.

16. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
17. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction activity associated with the project. If the plans submitted show changes to the trail grading that are not identified as being completed by others, the applicant is responsible for the costs of those changes.
18. The applicant shall submit examples of other development projects undertaken by the applicant to confirm technical capacity to meet the standards of the subdivision ordinance for Planning Authority review and approval..
19. The Subdivision Plans and Recording Plat shall be subject to review and approval of the Planning Authority, Corporation Counsel, and Department of Public Services, including but not limited to the following:
  - i. Detailed references to labeling of easements, content and dimensions of easements, temporary construction easements, subdivision notes, maintenance and repair responsibilities, ownership of all improvements, and other relevant conditions;
  - ii. The DPS comments submitted on the Amended Subdivision /Recording Plat, dated April 10, 2013 must be met and the plan shall be stamped by a registered land surveyor.
  - iii. The applicant shall submit a deed for the proposed four foot widening of Somerset Street and the recording plat shall be revised to show the widening on the plat.
  - iv. All relevant plans and documents cited in notes shall be recorded.
  - v. The Subdivision Plat shall be revised to show property pins to be set at all locations to define the applicant’s property.
20. In the event that the elevation of Somerset Street is raised east of Pearl Street, the applicant or successor shall be responsible for removing ramps, steps and other impediments in providing a continuous at-grade pedestrian access along the front of midtown One. Applicant or successor shall also be responsible for installing new streetscape materials and amenities that achieves a continuous at-grade sidewalk with review and approval by the Planning Authority. The applicant or its successor shall also be responsible for sidewalk and related improvements within their property line along Pearl Street extension should Pearl Street extension be reconstructed in the future.

## **E. LEVEL III SITE PLAN REVIEW**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Site Plan Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, 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 in conformance with the site plan standards of the Land Use Code, Site Location of Development review and DEP Stormwater Permit, and therefore voted 6 to 0 (Eaton recused) to approve the site plan, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

### a) Transportation Standards

1. The applicant shall provide a detailed Construction Management Plan as a condition of approval. The plan shall be submitted for review and approval by Public Services prior to issuance of any City permit.
2. The configuration of the sidewalk with the indented parking area in front of Midtown 4 will degrade the pedestrian environment along the section of sidewalk. A re-design of this Elm Street frontage is required to comply with the B-7 Design Principles and Standards. Therefore, the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building.
3. The final plans shall be updated for review and approval by Public Services to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:
  - i. The ramp and landing system on the NE corner of Elm Street – Somerset Street must be revised to achieve ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
  - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);

- iii. The section of sidewalk along Elm Street between Midtown 3 and Midtown 4 does not provide a direct accessible pedestrian route (as depicted on Sheet C-2.0B) along Elm Street – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street;
  - iv. The configuration of several curb ramps shall be revised for review and approval, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
  - v. Portions of the accessible pedestrian route depicted on C-2.0B are not ADA-compliant due to reliance on crossing the flare of a curb ramp and the final plans shall be revised for review and approval – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
4. Required easements for pedestrian public access along the ADA – compliant accessible pedestrian routes located on private property shall be provided for review and approval by Corporation Counsel.
5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.
6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and that the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons for review and approval.
9. An in-line Transit Stop on Somerset Street is required and coordination with METRO is required to finalize details for the bus shelter. The proposed bus stop location does not provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location (per drawing C-2.0B). The final plans must address ADA compliance and the applicant must confirm that METRO has reviewed and approved the location.
10. The applicant shall provide a parking demand and supply analysis that demonstrates the adequacy of the proposed parking garage for the entire project as part of the TDM to be reviewed and approved by the Traffic Engineer and the Planning Authority.

11. The final plans shall be revised to provide the following:
  - i. Adequate spacing between the racks or with adequate spacing from the street or other structures, defined as spacing of 36" (min.) on center between bike hitches that are parallel to each other; spacing of 72" (min) on center between bike hitches that are in line with each other; separation of 30" (min.) on center between a bike hitch mounted parallel to a structure, wall or building; 48" (min.) on center between a bike rack mounted perpendicular to a structure, wall or building.
  - ii. The selected bike racks (shown on Sheet L4.0, the Olympia Rack) do not meet the Technical Manual standard for installation within the public right of way. These racks should be replaced with either the Bike Hitch or Downtown rack; and
  - iii. A detailed layout of the bicycle parking with the parking garage should be provided to ensure the functionality and accessibility to the clusters of 8 bike racks, with 2 clusters per level. It does not appear that the racks will be fully accessible when cars are parked immediately adjacent to the clusters.
12. The TDM Plan shall be finalized for review and approval by the Traffic Engineer and the Planning Authority. Portland Trails and METRO shall be provided the opportunity to comment on the TDM prior to approval. An annual monitoring program is required for the TDM with reports provided to the City and pursuant to which other strategies will be reviewed on an annual basis.
13. The Applicant shall be responsible for the maintenance and repair of all stairways, landings and retaining walls required by the development located within the public right-of-way along Midtown's street frontage and shall secure a license from the City Council for these improvements, which shall be recorded at the registry of deeds. This responsibility shall be noted on the both the subdivision plat and the site plan.
14. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
15. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction associated with the project.

b) Environmental Quality Standards

1. A final landscape plan shall be submitted that makes the following changes to the last plan submitted.:
  - i. Show all tree save areas, protection areas and protection measures, including physical barriers/protective fencing during construction. No construction equipment or storage shall take place near root zones.
  - ii. Specify that the landscape contractor shall properly prepare trees to be relocated to be made available to the city of Portland for reuse. Such preparation includes digging and preparing the rootball with “balled and burlap” standard. Trees shall be cared for on-site as needed for an agreed upon period of time, which includes watering and site protection in a safe location.
  - iii. All plant material shall meet the size and species requirements of the arboricultural standards of Portland’s Technical Manual, with the exception that some Dog Woods may be included in the tree mix;
  - iv. The raised granite planter for the street trees should change from saw-cut to “Thermal Top”.
  - v. Landscape plant sizes shall be 5 gallon for shrubs; green vines and perennials shall be a minimum 3 gallon size.
  - vi. The 26 Pagoda Dogwood trees on the trail side of Midtown Three should be upgraded to a larger tree species such as Yellow Birch, River Birch, Red Maple, or Swamp Oak and planted in fewer numbers, in groves if feasible.
  
2. The Applicant’s submittal is in conformance with the requirements of the City’s Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way, shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
  - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines;
  - ii. The owner/operator of the approved stormwater management system and all assignsshall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements;
  - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services; and



- iv. Applicant shall secure a license from the City Council for the installation of stormwater quality treatment units within public rights-of-way.
3. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
4. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unitol, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
5. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.
6. The City has agreed to design and fund the installation of the 24” storm drain pipe in Elm Street from Somerset Street to the existing 24” pipe in Elm Street. This extension of 24” pipe shall be constructed by the applicant in the course of project development, at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
7. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18” of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for review and approval by Public Services prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
8. The following note shall be amended to read on all final plans: “midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED

IN EXHIBIT C TO 2<sup>nd</sup> AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK ”.

c) Public Infrastructure and Community Safety Standards

- i. The final location of the hydrant to be relocated along Lancaster street shall be reviewed and approved by the Fire Department.
- ii. A Dumpster is proposed to be placed inside of Midtown Three for the trash holding area. Although this building will be provided with a full sprinkler system, a two hour separation between this space and the remainder of the building shall be required.
- iii. The new proposed curb cut and access off Elm Street to the small side of Midtown Four must be a minimum of 16’ wide for fire access. The final plans shall be revised showing the required signage and striping on the driveway indicating Fire Lane NO PARKING for review and approval.
- iv. During construction, the Fire Department requires the following:
  - i. Per NFPA 1, 16.3.4, Access for firefighting equipment.
  - ii. Per NFPA1,16.4.3, Fire Protection during construction. (Water supply )
  - iii. Per NFPA 16.4.3.3.2, Standpipe Installations in Buildings under construction.
  - iv. Per NFPA 16.7.1.6, Fire Extinguishers
  - v. Per NFPA 16.7.2, Fuel Systems.
- v. The Applicant must continue to coordinate their design with all impacted utility providers to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.

d) Site Design Standards

1. The lighting plan with the photometrics shall be subject to the Planning Authority’s review and approval.
2. Signage shall meet zoning ordinance requirements and the overall signage plan shall be subject to the Planning Authority’s review and approval.
3. References to snow storage within the Bayside Trail Corridor shall be removed from all plans and the final management of snow storage submitted for review and approval by the Planning Authority.
4. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.

5. Applicant shall submit catalog cut and or samples of exterior materials used for the retaining walls and stairs for Planning Staff review and approval.
6. The proposed development is consistent with the B-7 Design Standards subject to the following conditions of approval:
  - i. The mid-block permeability plan is subject to the following conditions of approval:
    - a. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
    - b. That a plan for public access through the first floor of Midtown Three during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street side and, when berm removal and resultant conditions permit, the Bayside Trail side of Midtown Three, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of Midtown Three.
    - c. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible or, to the extent required, at City expense the removal of such soils and establishment of post development grades; and for landscape, surface treatments and access ways between the northerly façade of Midtown Three and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld.
  - ii. The massing and building articulation Standards E-3 and E-4 are subject to the following condition of approval:
    - a. That Midtown Three revised architectural elevations and renderings shall be submitted for Planning Board review and approval to address the large expanse of undifferentiated façade, to break up the monolithic run of façade and rooftop, and to create a human scale of the building at street level.

- iii. **Standard B-4: Sidewalks and Crosswalks:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.
- iv. **Standard B-10: Encroachments:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.
- v. **Standard C-7: Bike Racks:** A detailed layout for bicycle parking within the parking garage shall be provided that ensures functionality and accessibility that meets the Technical Manual Standards to the satisfaction of the Planning Authority.
- vi. **Standard D-4: Pedestrian Amenities 2. Bus Shelters:** Bus stop location and level of ADA-compliance shall be resolved to meet the Technical Manual Standards to the satisfaction of the Planning Authority.
- vii. **Standard D-5: Public Art and other special features:** The treatment of any building location shown to potentially host public art should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.
- viii. **Standard E-12: Materials:** Final storefront design shall be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.
- ix. Prior to receiving a building permit, the applicant shall submit a final set of elevations and site plans dated March 3, 2015 or a later date that shall removal any scrivener's errors and incorporate any changes made in the plans between the initial submission and Planning Board approval.

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 #2014-203 which is attached.

## STANDARD CONDITIONS OF APPROVAL

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

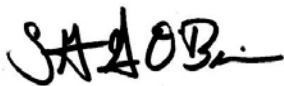
1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the 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 (207) 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 Richard Knowland at (207) 874-8725.

Sincerely,



Stuart O'Brien, Chair  
Portland Planning Board

Attachments:

1. Planning Board Report – with Staff Memos
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  
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Jeremiah Bartlett, Public Services  
David Petruccelli, Fire Department  
Craig Messinger, 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  
Robert Metcalf, Mitchell and Assoc., 70 Center Street, Portland, Me 04040



# PLANNING BOARD REPORT PORTLAND, MAINE

Midtown Development Review  
Vicinity of Somerset, Chestnut and Elm Streets  
The Federated Companies, Applicant.

<p><b>Submitted to:</b> Portland Planning Board  <b>Public Hearing Date:</b> March 3, 2015  <b>Project #:</b> 2014-203  <b>CBL:</b> 34-B-2, 3, 4, 5, 22 and 34-D-3, 9, 10</p>	<p><b>Prepared by:</b> Department of Planning and Urban Development  <b>Date Report Prepared:</b> February 27, 2015</p>
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## I. INTRODUCTION

A public hearing has been scheduled to consider a proposed mixed use development on the former Bayside rail yard property in the vicinity of Somerset Street, Chestnut Street and Elm Street. The project is called Midtown. The application name has recently been changed from The Federated Companies to FEDEQ DV001, LLC.

The previously scheduled February 3, 2015 public hearing was postponed at the applicant's request.

### Table of Contents

A Table of Contents for this report is shown below:

- I. Introduction
- II. Project Data
- III. Background
- IV. Development Scheme
- V. Staff Review Introduction
- VI. Subdivision Review (amending subdivision)
- VII. Conditional Use Review (parking garage)
- VIII. Technical and Design Waiver Review
- IX. B-7 Design Principles and Standards Waiver Review
- X. Site Plan Review (site location of development law and traffic movement permit)
- XI. B-7 Design Principles and Standards
- XII. Motions For The Board To Consider



### **Updated Submissions from January 13, 2015 to January 26, 2015**

Updated submissions received from the applicant since Board's January 13, 2015 workshop includes the following material:

- Traffic Impact Study Supplement (and other Supplemental Traffic Information (received Jan 17, 2015 with later updates)...See Exhibit 9a
- Applicant Responses to Staff Comments (dated and received Jan. 21, 2015)...See Attachment C
- Partial Updated Site Plans (dated and received Jan. 21, 2015)...See Attachment Plans and Attachment C-E for status of completed plan sheets.
- Updated Somerset Street Cross Section (updated Jan. 26, 2015)...See Attachment Civil Plans C-15.

### **Updated Submissions from February 3, 2015 to Present**

On February 20, 2015 applicant submitted a cover letter describing certain minor changes to the architectural plans and a response to staff comments on parking garage circulation issues. See Attachment CC. The most significant change to the architectural plans is a reduction of EIFS material for Midtown Three from 60% to 39% with metal siding (43%) and windows (18%) constituting the remainder of façade materials above the first floor. The architectural plan sheets reflect the name of the new project architect, THA Architects, LLC of Stratham, NH. See Architectural Plans starting on sheet 1-A101. Please refer to memorandum from Caitlin Cameron, *Summary of Midtown Design Changes*, Attachment 13.

### **Present Midtown Application**

As the Board will recall, The Federated Companies midtown proposal received a number of Planning Board development approvals on January 14, 2014. Subsequently, a law suit challenging these approvals was filed and a settlement has been reached between Federated and the plaintiff, which has resulted in significant changes to the development plan that are reflected in the new proposal.

The new application reduces the maximum residential height from 165 to 72 feet. The overall number of residential units has been reduced from 650 units to 445 units. The building footprints are virtually the same as were presented in the Master Plan and Phase I subdivision and site plan. The 700 space parking garage will add another level, bringing the total number of spaces to 801 spaces. The 400 space parking deck west of Chestnut Street has been eliminated. Retail remains a first floor use in all the buildings.

Rather than three development phases all construction takes place in one phase thus the applicant no longer seeks a Master Development Plan approval. Phase one was the only section of the development that received site plan and subdivision approval.

**Federated is not seeking an amendment to their original approval rather they are filing a new application (and related submissions) therefore the new submission must be reviewed in its entirety with all of the applicable ordinance review standards. This preserves their existing approval status for Phase I intact for the January, 2014 plan until the new plan is approved and replaces the prior plan.**

The present application identifies four buildings: Midtown One (residential building by Pearl Street); Midtown Two (parking garage); Midtown Three (residential buildings between Chestnut and Elm) and Midtown Four (residential building behind Trader Joes)

**Development Reviews**

A comparison of the Board’s January 14, 2014 approvals with the current submission is shown below. Two less approvals are required this round since the applicant no longer seeks a master development plan approval and a conditional use review for height is not necessary since all buildings are under 125 feet.

<b>P.B. Jan. 14, 2014 Approval</b>	<b>Current Submission</b>
Master Development Plan (all phases)	Applicant no longer seeking a Master Development Plan
Amend 2008 Subdivision Recording Plat	Amends the previously amended Subdivision
Conditional Use Height exceeding 125 feet Parking Garage	N.A., height less than 125 feet Yes
Technical and Design Waivers (requested waivers for all phases)	Waivers requested
B-7 Design Principles and Standards Waivers (requested waivers for all phases)	Waivers requested
Subdivision (phase one only)	Covers entire site/project
Site Plan (phase one only)	Covers entire site/project
Site Location of Development Law (Phase one)	Covers entire site/project
Traffic Movement Permit (all three phases)	Covers entire site/project
B-7 Design Principles and Standards (phase one except for granted waivers)	Covers entire site/project

**Notice**

Notice has been sent to 76 area property owners and individuals on the interested parties list. Notice was printed in the February 23, 2015 and February 24, 2015 editions of the *Portland Press Herald*.

**Planning Board Process**

The Planning Board held workshops on the Midtown development on November 12, 2014, December 9, 2014 and January 13, 2014. The initial application was submitted October 17, 2014. A public hearing originally scheduled for February 3, 2015 was postponed at the request of the applicant.

**Neighborhood Meeting**

The applicant held a neighborhood meeting on November 13, 2014. Further information on the meeting is shown on Attachment A, Exhibit 1.

**II. PROJECT DATA**

**Zoning:** B-7 Mixed Development District  
**Land Area:** 3.49 acres  
**Existing Use:** Vacant land plus a former scrap metal site

**P.B. January 14, 2014 Approval** **Current Submission**  
**Proposed Uses:**

<u>Housing</u>	Phase One	(up to 235 units)	445 units (total)
	All Phases	(650 to 850 units)	120 studios 30 1BR 195 2BR

<u>Retail</u>	Phase One	(43,617 sf)	91,500 sf (total)
	All Phases	(100,000 sf)	

<u>Parking Garage</u>	Phase One	(700 spaces)	801 spaces (in one garage)
	Phase Two	(400 spaces)	

<b>Buildings:</b>	5 residential 1 parking garage plus parking in res. bldg.	4 residential 1 parking garage
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<b>Building Height:</b>		
Tallest residential building	165 feet	72 feet
Parking garage	85 feet	92 feet

<b>Impervious Area:</b>		
Entire site	151,769 sf	150,000 sf plus

<b>Building Footprint</b>	124,570 sf	121,400 sf
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<b>Building Floor Area</b>	1,161,950 sf	750,200 sf
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<b>Parking Spaces:</b>	1,100 spaces	801 spaces
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<b>Bicycle Spaces:</b>	44 spaces on street/trail 154 internal bike room	192 spaces - parking garage
<b>Estimated Project Cost:</b>	\$150 to \$160 million \$ 45 to \$50 million (phase one)	\$85 million
<b>Subdivision:</b>	Total Land Area Existing Lots Proposed Lots	6.2 acres 9 4 (plus 2 for Bayside Trail)

### III. BACKGROUND

#### Prior Planning Board Reviews

On November 8, 2012, Federated submitted an application for various B-7 zoning and site plan amendments to facilitate the development project. The Planning Board initially held a workshop on November 27, 2012 to consider the amendments followed by four other workshops with two public hearing hearings held on March 13 and March 21, 2013. The City Council enacted the amendments on April 22, 2013.

Federated submitted a development application on May 7, 2013 and an initial workshop was scheduled on May 28, 2013. Subsequently five other workshops were scheduled to review and discuss development review issues. Two public hearings were held with the last one on January 14, 2014 resulting in development approval for phase one and a master plan approval for all phases (up to 850 dwelling units, 1100 parking garage spaces with building floor space exceeding one million SF.) Development was subsequently delayed by litigation which has resulted in the present development application.

#### Bayside Planning and Parcel History

Midtown takes place in the context of the City's ongoing efforts to implement A New Vision For Bayside (also referred to as the Bayside Plan), which has served as the policy document for revitalizing Bayside and was adopted by the City Council as an element of the City's comprehensive plan in 2000. To summarize the plan, Bayside is viewed as a dense mixed use urban district with an emphasis on housing, economic development opportunities, a walkable pedestrian environment, transit oriented development and trail/open space (Bayside Trail). The plan envisions a total build out of 940 housing units, 950,000 sq. ft. of open space and 230,000 of retail space. An excerpt of the Bayside Plan is shown as Attachment 1.

A key recommendation of the Bayside Plan was acquisition of the Bayside railroad property which the City accomplished in 2001. The railroad property includes a rail corridor from Tukey's Bridge to Forest Avenue and a much wider 7 acre (rail yard) parcel between Franklin Street and Elm Street. The City's goal in purchasing this property was to (1) establish a bicycle/pedestrian trail through Bayside linking the Eastern Prom Trail to Deering Oaks and (2) create development lots within the Bayside rail yard. The Bayside Plan also proposed relocation of the NEMR and E. Perry scrapyards. In 2009 the City was able to acquire the NEMR scrapyard and relocate their operations to Riverside Street.

In 2008 the City received Planning Board approval for a subdivision plan that divided the City's landholdings within the rail yard into 8 development lots and 2 open space lots for the Bayside Trail. Note the City acquired the NEMR scrap yard (also known as the Finkleman or Schnitzer property) which was incorporated into the subdivision.

The subdivision plan was designed within the context of a rail yard master plan which was developed for the site in 2006. The plan indicates development parcels along Somerset Street with trail/open space occupying the interior of the rail yard which is reflected on the approved subdivision plan. The land area of the trail/open space between Elm and Franklin Street totals 3.24 acres. The master plan was developed in conjunction with the Bayside Trail/Open Space Committee.

In 2006, in conjunction with a HUD funding program of approximately \$12 million in Section 108 loans, and Brownfield Economic Development Initiative (BEDI) grants, the City proposed a 700 space parking garage on the site of the NEMR scrap yard to help spur redevelopment of the rail yard and other nearby properties. The parking garage received Planning Board site plan approval but the project was never built because of cost considerations.

In 2008 the City entered into a purchase and sales agreement with Maine Health (Bayco) to redevelop the rail yard lots west of Chestnut Street (lots 1, 2 and 3). Maine Health proposed a 98,000 sq. ft. office building, a 700 space parking garage and future development of the remaining lots. Although the project received Planning Board site plan approval, the development did not move forward.

After receiving Planning Board approval, the City initiated construction of the Bayside Trail in the Fall of 2009 from Tukey's Bridge through the rail yard to Elm Street. The trail utilized the footprint of the trail/open spaces lots denoted in the 2006 subdivision plan. Construction continued into the following year and the trail was completed in the summer of 2010.

Following extensive negotiations, the City and Federated entered into a purchase and sales agreement for the rail yard subdivision development parcels.

#### **IV. DEVELOPMENT SCHEME**

##### **A. Development Program**

The new Midtown proposal has been downsized from the previously approved master plan in terms of dwelling units (650 units to 445 units), maximum residential building height (165 feet to 72 feet) and parking garage spaces (1100 spaces to 800 spaces). Total building square footage has been reduced to 750,200 sf.

First floor retail is proposed in all of the residential buildings as well as the parking garage. Rather than three phases, the development will be constructed in one. Individual building footprints are virtually identical to the previous plan. The only section of Midtown previously receiving site plan and subdivision approval was the Chestnut Street to Pearl Street block. The entire site did receive a Master Development Plan approval but in the new application the developer is not seeking this approval.

The new application identifies four buildings: Midtown One (residential building by Pearl Street); Midtown Two (parking garage); Midtown Three (residential buildings between Somerset and Elm) and Midtown Four (residential building behind Trader Joes)

**A. Chestnut Street to Pearl Extension Street Block**

From a building layout perspective this section of the development appears identical to the original plan. A residential building and a parking garage are proposed in this block. In the original proposal up to 235 dwellings were proposed in Midtown One.

**1. Midtown One**

*Residential Building* - The residential building is located on the corner of Somerset Street and the projected footprint of Pearl Street extension. The building mass has been configured in a L-shape to avoid a large rectangle cube. The residential building is setback 10 feet from Somerset Street while the parking garage is proposed at the street line. A pedestrian access (mews) 30 feet wide has been sited between the parking garage and the residential building which provides a trail connection from Somerset Street. A plaza or court yard is proposed between the building and the Bayside Trail. Both spaces are privately owned but with public access.

Eighty residential units are proposed with 15 studio apartments, 40 one bedroom apartments and 25 two bedroom apartments. Net retail space is 7,500 SF. Gross building area is 90,600 SF.

There will be retail doors along Somerset Street. Rather than 15 stories (165 feet), the residential building will be 6 stories (72 feet) with retail on the first floor and 5 residential floors above.

The applicant is using the projected footprint of Pearl Street extension as a driveway for the residential building. The primary public pedestrian entrance to the residential building is along Pearl Street extension at the far end of the building where a drop off area has been created by the entrance.

**2. Midtown Two**

*Parking Garage* - The second building in this block is the parking garage (labeled Midtown Two) which occupies the space between the mews and Chestnut Street. The parking garage will be increased in height from 85 feet to 92 feet to accommodate an additional level of parking which will increase the parking garage capacity from 705 spaces to 801. The 400 space parking structure in the Chestnut to Elm block is proposed to be eliminated. The parking garage continues to have retail on the first floor (32,000 SF). The garage is served by a single driveway on the far easterly side of the garage along Somerset Street.

The parking garage has 7 levels of parking but has a two story appendage about 10 feet in width that provides a retail presence and a stepped back building mass along Chestnut Street. The building is 320 feet long. Retail is proposed along the entire frontage of

Somerset Street (except for the driveway opening and stair tower) and appears to cover a significant percentage of the garage's Bayside Trail frontage. Total gross building area is 266,500 SF.

**B. Chestnut Street to Elm Street Block**

The new Midtown Three and Midtown Four are located in this block. This section previously received master development plan review but did not receive subdivision and site plan approval.

Original Proposal - This section (Phase Two) originally included first floor retail with a 400 space parking garage sandwiched between two residential buildings (projected 320 to 370 housing units). A Phase Three building behind Traders Joes on Elm Street was proposed with a projected 150 to 180 housing units. All three buildings were proposed in the vicinity of 165 feet high.

**1. Midtown Three**

Midtown Three features a one story retail building that extends 430 feet along Somerset Street. Mounted on top of the base are two separate five story residential buildings containing a total of 260 housing units, one of which is oriented toward Somerset Street with the second oriented toward the Bayside Trail. The two buildings are configured with an interior court yard in which 16 units per floor (or 80 units) will have windows facing each other across a court yard that measures 18 feet 7 inches wide over a span of 260 feet. See Attachment Architectural Plans 3-A102. While there is no zoning requirement regarding minimum setbacks within court yards it does raise quality of life issues for future residents. For example, the Bayside Village student housing project has a similar court yard concept but the interior distance between the two buildings generally exceeds 30 feet (up to 50 feet) except for a small pinch point of 15 feet. We have suggested that the 430 foot long building profile along Somerset Street be split in two buildings which would improve the residential environment, reduce the apparent building mass and provide mid-block permeability. The project architect indicates that such a change would increase costs. (See further discussion of this issue in the B-7 Design Standards and Subdivision, below).

Unit mix includes 90 one bed room units and 170 two bed room units. Retail space totals 44,000 SF. Gross building area is 289,000 SF.

**2. Midtown Four**

Midtown Four incorporates a building on Elm Street behind Trader Joes. It is described as having first floor retail (8,000 sf) with 5 floors of residential above. The building will have 105 studio or loft apartments with a lobby entry facing Elm Street. Applicant is proposing to add new parking spaces on Elm Street and creating a new service driveway on the Trader Joes side of the building.

**C. Bayside Trail**

The Midtown proposal requires reorganization of the Bayside Trail between Chestnut Street and Pearl Street. A 230 foot section of the Bayside Trail east of Chestnut Street will be relocated to accommodate the parking garage. The remainder of the trail also shifts to the north resulting in a 5 foot buffer to the DHS (Fore River Company) fence/property line. See Attachment Landscape Plans L2.2. The trail width largely remains unchanged at 16 feet but applicant is adding a minimum 7.5 foot wide strip of concrete pavers between the parking garage and the trail. Near the mews and residential building courtyard area, the modular paver treatment is extended further into trail corridor resulting in a visual connection between public and privately owned space. An elliptical granite block seating wall provides a further amenity to the area. The trail near Pearl Street is shown at 12 feet. That should be increased in width to the desired 16 feet.

The grade of the Bayside Trail will be raised to provide an at-grade access to the mews by midtown one. Previously identified issues regarding drainage associated with the trail re-location and raising the grade have been addressed.

One of the challenges of the Midtown project was finding an appropriate space for the transformers for Midtown One and Two since there was no obvious area on site short of putting the transformers underground. A number of siting options were reviewed but after much consideration an off-site location has been selected adjacent to the Department of Human Services parking lot fence near the Bayside Trail and Pearl Street extension. While technically on the trail corridor it appears to be best location for the transformers in terms of aesthetic issues. The applicant submitted several sketches depicting the transformers and a future extension of Pearl Street to Marginal Way to determine if there was a significant conflict. A review of these sketches indicates the transformer location is compatible with a Pearl Street extension. The transformers will be enclosed in a metal ornamental fence.

**D. Raising Grade of Somerset Street and Somerset Street Improvements**

As discussed in previous workshops the developer plans to elevate Somerset Street so the first floor of all Midtown buildings is above the flood hazard elevation of Back Cove. The Back Cove flood hazard zone elevation is 10 feet and although the Bayside has a similar elevation, it is still classified as outside the 100 year flood hazard area based on the latest FEMA issued maps. In the interests of addressing potential sea rise and flood hazard concerns in the future, the applicant is proposing a first floor elevation of 12 feet for all the buildings. Since Somerset Street has an existing elevation in the 8 to 10 feet range there is a significant grade difference to overcome in providing handicap access into the first floor of each building. This grade difference is unlikely to be addressed on the site or within the sidewalk area so the City commissioned Haley & Aldrich geotechnical consultants to undertake a feasibility study of raising the Somerset Street grade to address flooding conditions and accommodate the needed first floor elevation.



Filling or raising the grade of Somerset Street has implications regarding utility line compaction, street improvements and drainage as well as impacts on surrounding properties. Haley & Aldrich concluded that it is feasible to raise the elevation of Somerset Street. A key report recommendation is the use of a special concrete material which is much lighter than fill typically used in street construction. This avoids the problem of excessive weight on utility lines when additional fill is added to the street.

Street Cross Section – The applicant revised the Somerset Street cross section which is shown as Attachment Civil Plans C-2. The plan addresses the following considerations:

1. The street design follows the geotechnical recommendations referenced in the Haley & Aldrich report. See Exhibit 15.
2. The design accommodates a first floor building elevation of 12 feet while providing handicap access into all midtown buildings along Somerset Street. At the extreme ends of the project site near Pearl Street extension and Elm Street) where the elevation is lower than remaining sections of Somerset Street, handicap landings and steps are required to reach elevation 12. Should Somerset Street be raised in the future east of Pearl Street Extension, the stairs and ramps can be removed.
3. The raising of the street grade allows the parking garage to be shifted a few feet closer to the street which gives more breathing space for the Bayside Trail (minimum 27 feet 7 inches) and provides a 14 foot wide sidewalk along Somerset Street in front of the parking garage. Previously an extended parking garage setback from Somerset Street was needed to address grade issues
4. The street design accommodates potential impacts of other abutting properties (Oakhurst Dairy truck parking lot and Noyes brick storage building). The Noyes storage building wall has no setback and is located on the street right-of-way edge. To elevate Somerset Street the grade along this building must be raised several feet. This is not expected to have an adverse impact on the structural integrity of the building.
5. To accomplish on-street parking and an appropriate width sidewalk, the right of way width was increased from 50 feet to 54 feet. The additional property for the increased right-of-way came from the midtown property.

During the initial review, the Planning Board approved the elevated Somerset Street design from Pearl Street to Chestnut Street which paralleled the first phase of the project. The street design between Chestnut and Elm proved more complicated. FST (applicant's engineer) submitted a number of proposals to address drainage and grading concerns expressed by the Noyes family who own the brick warehouse between Chestnut and Elm. Mr. Noyes' primary concern was that the new street elevation was higher than the current elevation which he believes increases the risk of flooding for his building although the first floor elevation will still be above the adjacent grade of the street.

The FST design required certain waivers in street design standards (between Chestnut and Elm) to address this concern but the City was not comfortable supporting these waivers during the initial review. Although the Pearl to Chestnut street design was approved by the Board, the Chestnut to Elm section was left as a condition of approval.

Subsequently the Department of Public Services met with Planning staff and development review consultants to discuss street design waivers for the street adjacent to the Noyes building. These discussions concluded the City could support certain design exceptions (waivers) for the Somerset Street cross section between Chestnut and Elm as stated below:

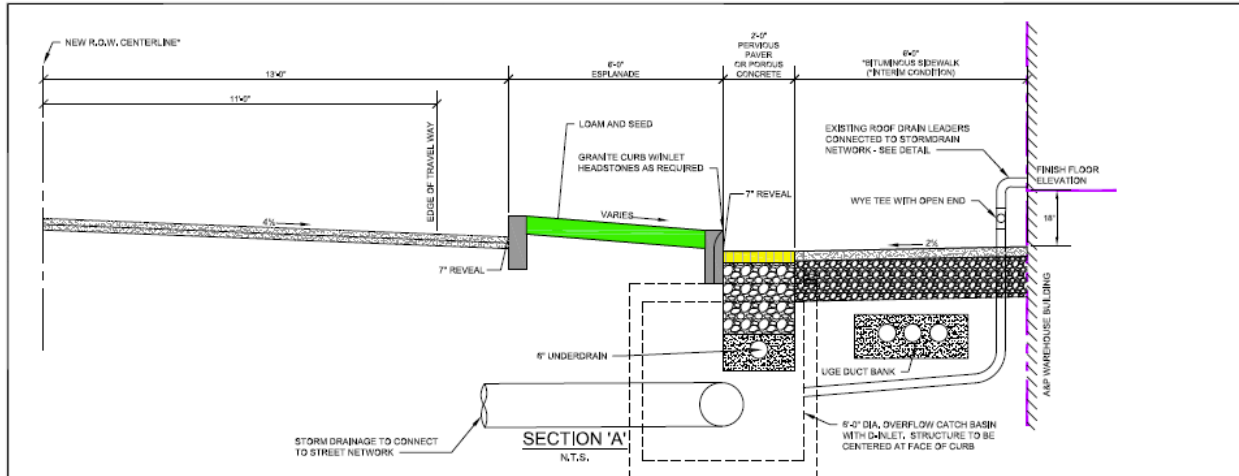
- Curb reveal of 6 inch (minimum) in lieu of City Standard of 7 inches. Note: Curb reveal should be the same height along entire block and on both sides of street to aid in future pavement milling and/or overlay projects.
- Sidewalk cross slope of 0.5% minimum in certain unique locations and 2% maximum in lieu of City Standard of 2%; okay for certain areas to exceed 2% cross slope (up to 4% max) so long as there is 5 feet wide accessible route with 2 % maximum cross slope at that location.
- Roadway cross slope of 4% maximum in lieu of City Standard of 2%, should be consistent across full width of any travel lane or parking lane (no offset crown or offset gutter line; crown should be at road centerline and gutter line should be at curb edge or along parking lane edge)
- The City would consider alternative drainage structures (alternatives from City Standards) in the Somerset Street Right-of-Way to accommodate roof drains, building access ways, and foundation drainage along the Noyes warehouse building. These structures should be designed and proposed by the midtown Applicant in consultation with the Noyes family and their engineering/legal counsel. Maintenance of drainage structures that are proposed to accommodate the needs of the adjacent private property shall not be the responsibility of the city; the Midtown applicant will be required to identify maintenance requirements and responsible parties (along with development of applicable maintenance agreements).

Presently there is an existing 24 inch storm drain in Elm Street by Trader Joes that connects into an existing Back Cove stormwater outfall. As discussed at the last workshop, extension of a 24 inch storm drain to Somerset Street would provide a larger capacity pipe to drain stormwater from Somerset Street and significantly improve stormwater issues by the Noyes property. The City has agreed to pay for the installation of this storm drain improvement.

#### Current Somerset Street Cross Section Proposal

More recently City staff and FST (developers consultant) have met and discussed a street cross section alternative that would address the Noyes family concern of maintaining an 18 inch freeboard of first floor space above the adjacent grade of Somerset Street. This is the design concept proposal presently before the Board. This cross section eliminates on-street parking along the Noyes warehouse side of Somerset Street to accommodate this design but in the event the warehouse is converted to a future use needing at grade access (such as retail), it is believed on-street parking can be introduced in the future. Drainage structures and curbing have been strategically placed to facilitate this change should it occur. The cross section is shown as

Attachment Civil Plans C-15, and excerpted below. The cross section is a design concept thus the engineering plans submitted by the applicant do not currently reflect the layout, grading, drainage and materials illustrated in this concept. The final design of the plan would need to be subject to review and approval by the City. The abutters have requested an opportunity to review and comment on the final grading plan as well, which has been incorporated into the proposed condition of approval.



**D. Architectural Design and B-7 Design Standards**

Architecture related material submitted by the applicant includes the following:

- Building elevations (updated Feb. 19, 2015) including façade plans, ground floor plans, typical floor plans and roof plans by THA Architects – Attachment Architectural Plans - 1-A101 to 4-A201

- Building elevations (pre-Feb. 2015) submission including façade plans, ground floor plans, roof plans and signage plans - Attachment Architectural Plans - A101 to A800.

- B-7 Design Standard Responses – Exhibit 17 and Attachment B-C.

- Computer generated rendering of Midtown Three building façade perspective (dated Dec 1, 2014) - Attachment B-5.

- Pedestrian Wind Conditions/Assessment – Attachment B-5

- Shadow Study – Exhibit 17

- Updated Contextual Rendering (Jan. 29, 2015) – Architectural Plans

- Exterior materials – Dryvit color samples (on file)

The submission states that the architectural design of all buildings will be “modern industrial” incorporating twentieth and twenty-first century materials and sensibilities derived from industrialized production and building techniques. The building designs are intended to both of their time and timeless – to bridge the century from the neighborhood’s railroad/industrial past to its mixed use residential future”.

The latest architectural plans are dated February 19, 2015. The most significant change to the drawings relates to Midtown Three which now has an exterior material composition of metal siding (43%), EIFS (39%) and windows (18%) above the first floor visible from the public realm. The previous submission had a 60% EIFS façade coverage.

The parking garage façade is framed by precast panels and precast finishes as the dominant material but there is less glazing than the other buildings except for the first floor retail space. A dominant feature of the façade is a green screen which will be planted with vegetation. The green screen contrasts with precast concrete material of the façade which helps provide visual relief for the 320 foot long façade. EIFS is shown as a detail material above the first floor retail window units.

The applicant is requesting a number of waivers to the B-7 design standard issues. A discussion of the more significant waiver requests such as mid-block permeability (standard B-3) and building materials (standard E-12) are provided below and in the B-7 Design Principles and Standards of this report.

### **1. Mid-block Permeability (Standard B-3)**

Midtown Three features a one story retail building that extends 430 feet along Somerset Street. Mounted on top of the base are two separate five story residential buildings containing a total of 260 housing units, one of which is oriented toward Somerset Street with the second oriented toward the Bayside Trail, as described above.

Staff suggested that the 430 foot long building profile along Somerset Street be split in two buildings which would improve the residential environment, reduce the building footprint while providing full mid-block permeability. The project architect indicates that such a change would increase costs and reduce the unit count and is not advancing such a concept at this time.

The B-7 Design Standards require mid-block permeability as presented in Standard B-3 below.

Mid-Block Permeability. *“Development shall incorporate mid-block permeability that is perpendicular to Marginal Way, and where feasible that is parallel to Marginal Way, in order to encourage building footprints that are in scale with the existing traditional pattern of development in Portland (emphasis added). These corridors shall be developed as street extensions, service alleys with public access, pedestrian corridors, trail access plazas and pocket parks. These corridors shall be designed for the pedestrian first, with limited vehicular accessibility...”*

The standard further states: *“A primary circulation system shall be developed through streets, alleys, sidewalks and trails. A secondary circulation system shall be provided internally within buildings for public use through the use of fully functioning entrances on all street sides of a building, and internal lobbies and corridors that permeate through the ground floor of a building...”*

Mid-block permeability achieves several critical urban design goals as stated in Standard B-3. Passages help organize blocks to encourage building footprints in scale with the existing traditional development in Portland. They also support a pedestrian network by enhancing opportunities for connectivity. As applied to Midtown Three, the subject building is 430 feet long, which we observed earlier could benefit from a midblock split.

To get a sense of dimensions, below is a sample of well-known buildings on the peninsula. The Civic Center at 430 feet long is believed to be the longest peninsula building with the exception of certain institutional buildings such as hospitals, parking garages and the St John Street shopping center. Bayside Village predates B-7 standards.

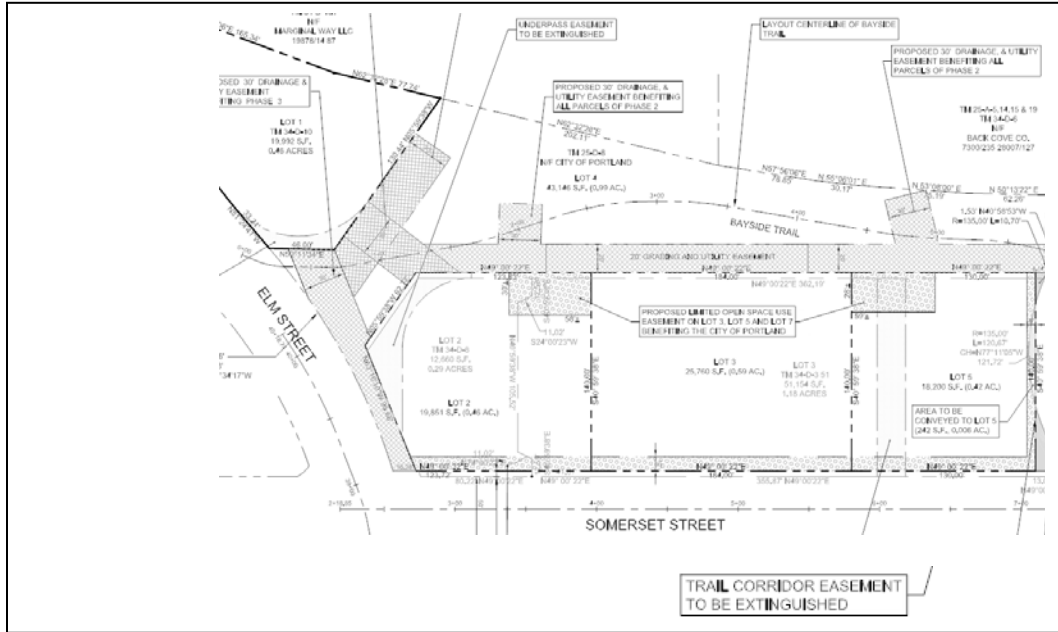
Civic Center (Spring Street dimension)...430 feet  
Bayside Village (Marginal Way dimension)...340 feet  
Thomas Block (Commercial Street dimension)...190 feet  
One Portland Square (Union Street dimension)...160 feet  
Portland City Hall (Congress Street dimension)...225 feet  
100 Middle Street (Middle Street dimension)...240 feet  
One Post Office Square (Congress Street dimension-entire block)...330 feet

Mid-block permeability was achieved in the Pearl to Chestnut block with the mews but was not provided in the Chestnut to Elm block. The applicant previously requested a waiver from this standard for Midtown Three. In the earlier review the Planning Board voted to remove the easement for a passageway from the subdivision with general concurrence that some midblock access would be provided in a subsequent site plan review.

The northerly side of the building is adjacent to a berm which is part of the Bayside Trail open space. The berm contains contaminants from the Bayside Rail Yard and the Midtown Three site which are considered to be a lower level contaminant (lead, coal ash). A note on the site plan indicates the berm will be removed (by others) so it will no longer pose an obstacle for midblock permeability.

The Planning Board's January 14, 2014 Midtown approval letter for the amended subdivision plan featured the following condition of approval:

5. That the passage easement between Chestnut and Elm be removed on the Amended Overall Subdivision Plat provided that a pedestrian passage be provided in the Phase Two site plan between the two residential towers in Phase Two or through one of the residential structures.



20' wide x 20' high x 140' long "Trail Corridor Easement" located on lot 2 about 125' west of Chestnut Street, removed from subdivision subject to condition, January, 2014

The original passageway easement was an internal easement which was 20 feet wide and 20' high. It is the Planning Department's recommendation that an internal public pedestrian passage easement be provided between Chestnut and Elm as a condition of granting the B-7 Design Standard B-3 waiver request, or, if a waiver is deemed not needed, as a condition of approval. Applicant most recently has stated they are withdrawing the waiver request because they believe their internal permeability proposal and the existing trail alignment west of Midtown Three meets the standard. Staff notes although they may be able to meet the "secondary" or internal requirement referenced in the above standard, applicant's plan does not meet the "primary circulation" standard such as an alley if the building was split in two. Please see the excerpt from the applicant's response to staff comments on this subject, below. Section XII of this report includes a waiver motion for the "primary circulation" standard provided certain conditions are met regarding the "secondary access".

The Board must determine whether the proposal meets B-7 Design Standard B-3, either in a fully sufficient manner as argued by the applicant in the excerpt below, or whether the proposal partially does or does not meet the standard with the proposed secondary access provision and a waiver is or is not justified for the primary mid-block permeability standard. As written, the proposed secondary means of access lacks specificity. We acknowledge that its exact placement might need to remain flexible, but the parameters and terms of use of the access should be more carefully spelled out.

In the previous staff report we stated that the Board needed to make a finding that the proposed provision for an internal passage meets the condition of the January, 2014 subdivision amendment "That the passage easement between Chestnut and Elm be removed... provided that a pedestrian passage be provided in the Phase Two site plan

*between the two residential towers in Phase Two or through one of the residential structures”* The plans had been changed to the extent that the previously proposed garage with two residential towers above has been replaced by a retail first floor structure with two 5-story residential structures above. Upon further consideration Corporation Counsel has determined that such a finding is not necessary since the mid-block permeability standard is being reviewed in the context of a new proposal. As a result a previously drafted motion entitled “Compliance With January 2014 Subdivision Condition of Approval” has been removed as an approval motion.

The proposed condition of approval for mid-block permeability addresses the staff concerns about the terms and details of the access through the building, while recognizing that these details are dependent on the end user/tenant of the first floor. The proposed condition therefore allows for review of those aspects prior to a certificate of occupancy of the first floor, and also addresses the trail side improvements and berm removal, and associated cost allocations between the applicant and the City. The City has agreed to pay for the costs associated with the removal of the berm containing contaminated soils to the extent that such soils cannot be used as fill under the project foundations, which usage appears to be unlikely based on the latest information available.

While reliance is placed on the trailhead and adjacent publicly accessible space as substantial evidence that this standard is satisfied, however, an additional effort is also being made to incorporate a reasonable approach to secondary permeation through the interior of midtownThree. A note on the revised plans will read as follows:

**AS SECONDARY MEANS OF PROVIDING MID-BLOCK PERMEABILITY, APPLICANT IS AGREEABLE TO LOCATING STOREFRONTS ON THE FRONT AND BACK PORTION OF THE BUILDING, PRECISE SIZE, NUMBER AND LOCATION TO BE DETERMINED, SOMEWHERE WITHIN THE MIDDLE 50% OF THE STRUCTURE, ALLOWING FOR PHYSICAL AND VISUAL PERMEABILITY.**

This approach, as noted in the Design Manual itself, is common throughout Downtown Portland. One and Two Monument Square, the buildings connecting Monument Way with Free Street, Reny’s Department Store, Starbucks on Congress Street in the Hay Building, the building at 37 Exchange Street (former home of the JavaNet coffee house and most recently home to the Thirsty Pig), the Time and Temperature Building, and One City Center, likely amongst others, all successfully use this approach to enable the high-quality urbanism we expect to create with this development. Therefore, while we believe the basic standard is satisfied in a very straightforward manner by the trailhead alone, we are amenable to fostering further permeation as described above.

To summarize and conclude, the position advanced is that, upon further consideration, as an alternative to the previous waiver request we believe the standard for mid-block permeability is in fact satisfied perfectly and directly already by existing conditions, which the plan note described above will only serve to amplify as opposed to being necessary in its own right to satisfy.

Excerpt from Applicant’s Response to Planning Staff  
Comments, Re: Mid-Block Permeability – Vic. of midtownThree; January 21, 2015

## **2. Building Materials (Standard E-12)**

Applicant is requesting a waiver to use EIFS and light metal panels as the primary exterior material of the midtown buildings. A waiver request to use vinyl siding has been withdrawn. Applicant's waiver request is explained in detail in Attachment C-B and Exhibit 23.

The standard states that "facades visible from public rights of way shall use natural and authentic building materials that are expected to last 50 years". Materials such as "*brick, stone, concrete and other masonry products, wood, glass and high quality metals such as steel, titanium and copper*" fall within that category. This standard further states "*materials such as thin gauge metal panels, exterior insulations and finish systems (EIFS), panelized "thin brick", vinyl siding, or stucco on Styrofoam or a similar backing shall not be used on facades visible from public rights of way.*"

EIFS has had an uneven reputation as a quality and durable exterior material. Changes within the EIFS industry has resulted in a redesigned product that has apparently addressed moisture concerns. What is clear from reading various articles on the subject is that a properly installed EIFS application is much improved over those installed in the 1990s or before. In a study conducted by the Oak Ridge National Laboratory between January 2005 and June 2007 EIFS was found to have the "best performing cladding" in relation to thermal and moisture control. An article reported "this study was intended to measure only the moisture and thermal performance of these wall assemblies – there are other criteria design/construction professionals and building owners will take into consideration when selecting materials for their projects".

What is not known is the documented longevity of EIFS in terms of a quality exterior building surface as expressed in the B-7 standard ("expected to last 50 years"). The only newly constructed building of note in downtown Portland that has used an EIFS like material is the Portland Harbor Hotel. Dryvit has probably been used as an accent piece in small applications in some buildings on the peninsula. The Maine Historical Society Building (489 Congress Street) was remodeled with a drivit-like exterior.

The durability is one concern about EIFS. The other is about its character. While some EIFS may be acceptable as part of the exterior, the Board needs to make a determination about what level of EIFS is acceptable. The Department is comfortable with the applicant's present proposal, which has reduced the extent of EIFS on midtown<sup>3</sup> in the latest drawing set received on February 20, 2015. Caitlin Cameron's memo describes the changes in façade materials in this latest submission.

A sample of periodicals providing background information on EIFS is shown as Attachment 11.

## **3. Multi-family Standard**

While the Midtown project will be reviewed under the extensive B-7 design standards, it is also subject to the standards in the Design Manual for multiple family dwellings. The standards and a commentary on the project's compliance with these standards follow.



**(i) TWO-FAMILY, SPECIAL NEEDS INDEPENDENT LIVING UNITS, MULTIPLE-FAMILY, LODGING HOUSES, BED AND BREAKFASTS, AND EMERGENCY SHELTERS:**

**(1) STANDARDS.** Two-family, special needs independent living units, multiple-family, lodging houses, bed and breakfasts, and emergency shelters shall meet the following standards:

a. Proposed structures and related site improvements shall meet the following standards:

1. *The exterior design of the proposed structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;*

**Comment:** This standard is largely redundant with the more extensive B-7 Design Standards. Please refer to the memo from Caitlin Cameron dated December 1, 2014, from the December 9 workshop packet and the B-7 standards analysis contained in this report. The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;

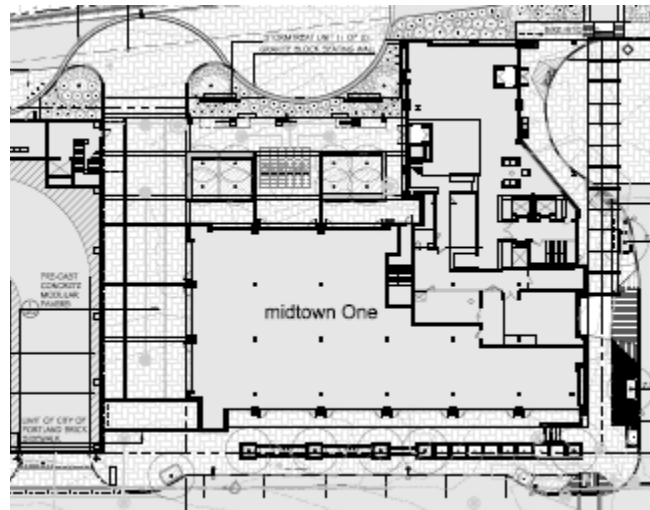
2. *The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;*

**Comment:** Please refer to the B-7 design review memo cited above. In general, the buildings are placed close to the street and the retail first floor use and storefront architecture create a positive relationship of buildings to the public street.

3. *Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space*

*for residents, play areas, and planting strips along the perimeter of proposed buildings;*

**Comment:** The predominant open space for this development is the Bayside Trail, which was developed for the purpose of providing a recreation and transportation facility and amenity for the community as a whole and for these parcels in particular. In addition to the off-site trail, there is proposed on site a 30' wide x 150' long mews connecting Somerset Street to the trail and a 40' x 78' courtyard in the ell of Midtown One, adjacent to the trail. (See figure below) The mews and courtyard are attractively detailed and landscaped, and will be a positive complement to the Bayside Trail. We have recommended that a midblock passage be provided in Midtown Three, with direct access to the trail. Assuming appropriate working details of a Midtown Three passage are provided, a more positive integration with and access from all buildings to the Bayside Trail, along with the proposed Mews and Courtyard of Midtown One and Two, the open space standard is achievable.

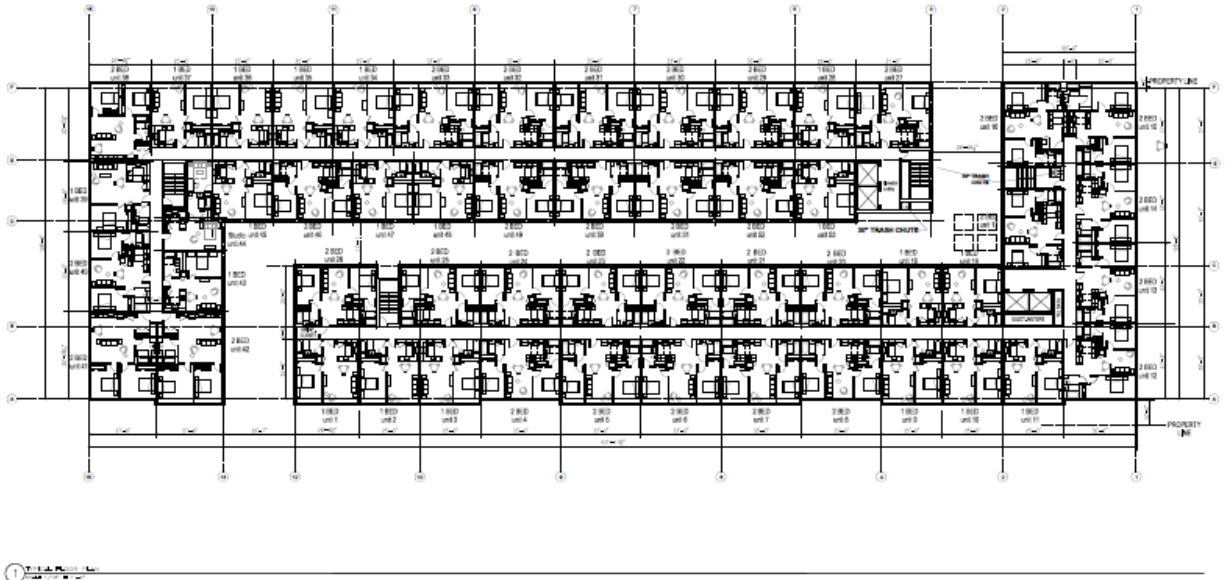


Mews and Courtyard Area

4. *The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;*

**Comment:** This standard mirrors to some extent the requirements of the B-7 Design Standards, specifically the Purpose Statement #4 and Standard A-1, which reference “access to light and air”. Midtown One and Four are designed with all units facing exterior views with ample sunlight and air. Midtown Three is comprised of

two long (346' x 55') 'L'-shaped buildings above the retail first floor, (see floor plan below) Subject to verification with the architects, we understand that each dwelling has a sufficient amount of windows. The Department's position is that Midtown Three meets this standard for sunlight and air.



Midtown Three Typical Floor Plans

5. *The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;*

**Comment:** The parking is contained within the garage of Midtown Two which has retail on the first floor, with a green screen on a portion of the façade facing the trail, both of which effectively screen the adjacent sidewalks and properties from the parked cars. A single 24' driveway serves the garage, which minimizes the visual impact of the parking facility. See the B-7 design review for a review of the parking garage.

- b. *Two-family or multiple-family dwellings shall not be converted to lodging houses unless all units in the building have been vacant for at least one (1) year prior to the date conversion is sought or unless the individual multiple-family units are less than one thousand (1,000) square feet in size. In no event shall any single-family dwelling in the R-5 or R-6 zone be converted in whole or in part to a lodging house.*

**Comment:** Not applicable.

## V. STAFF REVIEW INTRODUCTION

The application and supporting documents have been reviewed for conformance with the review standards of the ordinances referenced in this report by City staff from the Departments of Planning and Urban Development, Fire Safety, Public Services, Parking and the Corporation Counsel's Office. The plans have also been reviewed by consulting engineers for civil engineering and traffic. Review comments are referenced below.

Tom Errico, Traffic Review Consultant...Attachment 2

John Peverada, Parking Manager...Attachment 3

Bruce Hyman, Transportation Program Manager...Attachment 4

David Senus, Engineering Review Consultant...Attachment 5

David Margolis-Pineo, Deputy City Engineer...Attachment 6

Jeff Tarling, City Arborist...Attachment 7

Keith Gautreau and Craig Messinger, Portland Fire Department...Attachment 8

## VI. SUBDIVISION REVIEW

The Midtown development incorporates 445 dwelling units on 4 lots including 80 units on lot # 7 (Midtown One), 260 units on lot # 3(Midtown Three) and 105 units on lot #1 (Midtown Four). The parking garage (Midtown Two) is on lot #6.

A subdivision plan for the Bayside Rail Yard was approved by the Planning Board in 2008. See Attachment Civil Plans. The subdivision included land from the Bayside Rail Yard as well as the NEMR scrap yard property which the city acquired from the owner. The plan was heavily influenced by the Bayco (Maine Health) development that planned to purchase all lots west of Chestnut Street. The original subdivision included two lots for the Bayside Trail and seven development lots.

As part of the Jan 14, 2014 Midtown approval, the 2008 subdivision plan was amended reconfiguring most of the lots as well as other revisions. This resulted in a consolidation of development lots from 7 to 4 but with the same number of lots for the trail. The subdivision plan was approved but not recorded.

With a full build-out of the Midtown development, three of the development parcels are now proposed to have dwelling units which triggers subdivision review. Previously only Midtown One (up to 235 units) had housing units as part of the initial “first phase”. A number of the easements shown on the 2014 approved subdivision plan have been or will need to be reconfigured as part of the current approval. Presumably the arrangements for mid-block permeability should be referenced on the subdivision plan since it is an integral part of the approval.

Comments on the recording plat are highlighted later in this section.

### **Subdivision Standards**

Subdivision review standards (sec. 14-497) are shown below. The review standards are summarized below in *italics*, with planning staff comment and analysis following in regular font.

1. *Will not result in undue water or air pollution;*

The site plan, grading and utility plans are designed to adequately address stormwater quality and to minimize pollution from the site. See the Site Plan Review section of this report for further discussion. Undue air pollution is not anticipated.

- 2.3. *Has sufficient water available for the reasonably foreseeable needs of the subdivision and will not cause unreasonable burden on an existing water supply;*

The Portland Water District indicates there is sufficient capacity to serve the development. See Attachment B-2 and Site Plan Review section of this report.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;*

The site is designed to minimize erosion and has incorporated an appropriate stormwater management plan for the site. See Site Plan Review section of this report.

The applicant has requested a waiver from the high intensity soil survey, due to the fact this is a filled site that has been disturbed for environmental remediation. In addition geotechnical analysis has been performed related to the raising of Somerset Street which has guided the recommendations of the street design.

5. *Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highway or public roads existing or proposed;*

The project is designed to be consistent with a MDOT Traffic Movement Permit. The traffic impacts of the project are discussed in the Site Plan Review Section of this report.

See also comments from Tom Errico (Attachment 2) and David Margolis-Pineo (Attachment 6).

6. *Will provide for adequate sanitary waste and storm water disposal and will not cause an unreasonable burden on municipal services if they are utilized;*

Sanitary waste from the development will connect into an existing sewer main in Somerset Street (midtown one, two and three) and Elm Street (midtown four). Excess storm water from the site will be directed into a separate storm sewer in Somerset Street. A new 24 inch storm drain line will be extended from Somerset Street to an existing 24 inch line in Elm Street by Trader Joes that will reduce stormwater impacts on the Noyes warehouse building.

Stormwater management is more thoroughly addressed in the Site Plan Review portion of this report.

See also comments of David Margolis-Pineo, Deputy City Engineer, shown on Attachment 6.

7. *Will not cause an unreasonable burden on the ability of the city to dispose of solid waste and sewage if municipal services are to be utilized;*

Solid waste is to be privately handled and disposed of. See Exhibit 19. Sewage is addressed above and in the Site Plan Review section of this report.

8. *Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or by the city, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;*

Except for the footprint of the Bayside Trail and related green space, the site is void of any natural beauty, irreplaceable natural areas, natural habitat or aesthetic qualities. Applicant has contacted several state and federal agencies regarding potential impacts of the project on natural resources. The Maine Department of Conservation (Natural Areas Program) indicates there are no known rare botanical features documented in the project area. The Maine Department of Inland Fisheries and Wildlife states that their records

“indicate no occurrences of rare, threatened, or endangered animal species within the project area”. The US Department of Interior indicates that no federally listed or proposed threatened and endangered species under the jurisdiction of the US Fish and Wildlife Service are known to occur in the project area, with the exception of occasional, transit bald eagles. See Exhibit 16.

Past industrial activities (rail yard, scrap yard) of this site including filling of Back Cove removed such natural qualities many years ago. The Maine Historic Preservation Commission concluded there will be no historic properties affected by the proposed undertaking by Section 106 of the National Historic Preservation Act. The site is not located within a local historic district nor a historic landmark in close proximity to the site.

The Bayside Trail is an important green space resource for the site and the neighboring area. Although the footprint of the trail is proposed to be shifted the developer will be responsible for rebuilding the trail and replacing the trail amenities displaced by construction.

9. *Is in conformance with the land development plan or its successor;*

The site is zoned B-7 in compliance with the Comprehensive Plan and proposed uses permitted in the B-7 zone. The plan is in conformance with A New Vision For Bayside by incorporating the plan’s principles including strengthening Bayside’s role as an urban gateway; providing economic and employment opportunities; improving the walkability of the district; increasing housing units; providing structured parking rather than surface parking, reinforcing a transit oriented development concept for Bayside; remediating a brownfields site and redeveloping a former scrap yard. See Attachment 1.

10. *The subdivider has adequate financial and technical capacity to meet the standards of this section;*

The applicant has submitted a letter from HFF, a mortgage banking company, regarding financial capacity . The letter (dated Nov. 3, 2014) states that the “borrower has the financial capacity and relevant experience to acquire financing for the midtown project in Portland, ME., as revised, the estimated cost of which is +/- \$85M.” See Exhibit 4.

Note that a revised development application was filed on January 9, 2015 changing the applicant’s name from The Federated Companies to FEDEQ DV001, LLC to “avoid clerical issues with signing documents in the future”.

The applicant’s technical consultants are referenced in the applicant’s submissions. The most recent submission (Feb 20, 2015) indicates THA Architects of Stratham, N.H. is new the project architect.

Staff previously requested technical capacity information regarding other development projects the applicant has developed. This information was submitted for the original development but has not been submitted for the present application.

11. *Water Quality and Shoreland Zoning;*

Stormwater quality is addressed in the Site Plan Review section of this report. The site is not in a shoreland zone.

12. *Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;*

The project is served by public water and public sewer.

13. *Is or is not in a flood-prone area, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps;*

Back Cove has a flood plain elevation of 10 feet while the project site has a present elevation in the 8 to 10 range. The developer is proposing a first floor building elevation of 12 feet for the project. The proposed raising of Somerset Street will allow the developer to achieve this goal.

At this time the Midtown development is outside a flood hazard zone and is in compliance with applicable regulations. The latest FEMA map indicates the site is in a 500 year zone not a 100 flood hazard zone. Should the proposed map change be enacted in the future, Midtown has provided a reasonable building elevation to address this concern.

14. *All potential wetlands within the proposed subdivision shall be identified on any maps;*

There are no wetlands on the site.

15. *Any river, stream or brook within or abutting the proposed subdivision shall be identified on any map;*

Such features do not exist on the site.

#### Subdivision Recording Plat Comments

Applicant has submitted an updated subdivision recording plat. See Attachment Civil Plans C-1.2. Staff is recommending that the review of the subdivision plat be subject to Planning, Public Services and Corporation Counsel review and approval prior to Planning Board signature. The subdivision plat needs to be stamped by a licensed surveyor. Easement language needs to be reviewed. The subdivision easement notes and general notes need to be fully vetted. For example easement note 2A references an easement for snow removal activities over the entire Bayside Trail corridor which raises concerns. The configuration of proposed easements needs to



checked. Certain easements shown on the plan may more appropriately be handled as a license. A deed is required for the proposed four foot widening of Somerset Street plus the widening needs to be graphically shown on the plat. Private responsibility for maintenance of the stairs and retaining walls as well maintenance of stormwater quality systems needs to be shown on the plat.

## VII. CONDITIONAL USE REVIEW

Parking garages are a conditional use in the B-7 zone. The Midtown Two building is a parking garage and thus subject to this review.

Conditional use review standards are shown in *italics*, with planning staff comment and analysis in regular font.

### **B-7 Parking Garage Use Standards**

Structured parking in the B-7 zone is required to meet B-7 section 14-296(3) and the Zoning Code, section 14-474.

#### **1. B-7 Section 14-296(3). Conditional Use**

*1. Structured parking provided that:*

*a. Parking located in the B-7 zone shall adhere to the following conditions:*

*i. The first floor of any parking structure shall contain one or more permitted uses (not conditional uses) found in section 14-295 along all primary street frontages (excluding frontage dedicated to entrances, lobbies, and stair towers). Such first floor space shall be provided with a minimum of nine (9) foot floor to ceiling clearance height and a minimum twenty-five foot depth (measured from the exterior building wall); **or***

This standard is met. First floor garage space will be retail along Somerset Street and Chestnut Street. It appears that the floor to ceiling height meets the minimum height requirement of nine feet. The depth of the parking garage retail space exceeds 25 feet.

*ii. The parking structures shall be set back at least thirty-five feet from the primary street right-of-way. The land located between the parking structure and the street right-of-way may not be occupied by surface parking, and shall be designated for future use development. Such land between the garage and the street shall not by lease or other prohibition be encumbered against future development. The land shall be provided with all stubbed utilities and other provisions needed to accommodate further development; **or to accommodate; or***

Not applicable. Project met *paragraph i* above.

- iii. *The parking structures shall be designed with a façade (to a height of the first two floors) that enhances the pedestrian experience as described in the City of Portland B-7 bayside design standards.*

A review of the submitted building elevations indicates a façade with a design that enhances the pedestrian experience at the first two floors of the building along Somerset Street and Chestnut Street. Note project already met the requirements of this section under paragraph *i* above.

## **2. Zoning Code, Section 14-474**

*The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. The Board shall find that this standard is satisfied if it finds that:*

- a. *The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and*

The proposed use is a parking garage which in itself does not generate a traffic or parking demand rather it serves the needs of the surrounding uses which generate the need for parking. The garage will provide for the parking needs of midtown as well as other surrounding properties in the area.

Except for the parking garage driveway there is no external pavement since the parking spaces are located within a building.

A traffic impact study has been submitted (Exhibit 9). See Site Plan, Transportation Section of this report.

The use as a parking garage and location in a business zone (B-7) are such that the impacts of this use are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.

- b. *The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area;*

The parking garage will be served by a public sewer.

Applicant is proposing external light fixtures that will be required to meet Technical and Design Standards regarding glare and photometric levels.

Applicant should demonstrate that the lower wall or screen at each parking garage level sufficiently screens motor vehicle headlight glare. Likewise the internal parking garage lights need to be non-glaring.

With the exception of commercial restaurant kitchen equipment, no permanently installed combustion equipment or appliances are proposed at midtown therefore the only anticipated emissions will be general residential ventilation.

The use does not generate noise other than motor vehicles which are part of commercial district activities.

The use in and of itself does not generate dust or litter.

This use does not appear to generate known adverse impacts upon health, safety or welfare of the public or surrounding area. Traffic and circulation safety issues are discussed in Site Plan, Transportation section.

- c. *The design and operation of the proposed use, including but not limited to landscaping, screening, signs, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.*

All proposed refuse and recycling containers will be held within the midtown buildings awaiting pick-up. Material storage is not associated with the proposed use.

The parking garage will have 9 trees along Somerset, 4 trees along Chestnut, 4 trees along the Bayside Trail including ornamental plantings at the northeast corner of the parking garage by the trail.

Vehicle parking is screened by the parking garage structure.

Signage is proposed along three sides of the parking garage and will be subject to Planning Authority review and approval.

Deliveries to serve the first floor retail will take place curb side or possibly within the parking garage if a small vehicle.

Trash or material storage takes place within the building.

In totality the above factors will not have a substantially greater affect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

VIII. Technical and Design Waiver Review

Civil Engineering Waivers from Attachment J ( Exhibit 23), as updated with Part 2 Waiver Request for Civil Design Prepared by FST Engineers (Knowland submission, dated January 21, 2015) and Part 3 for Landscaping and Landscap Preservation prepared by Mitchell & Associates

Section 1 - Transportation and Street Design

Technical Standard	Waiver Criteria	Description of Change	Applicant's Request	Review Comments
<p><b>1.4.1 Street Grades (page 3):</b> <i>The cross slope for local streets shall be 0.03. The cross slope for other street classifications shall be 0.02.</i></p>	<p>Section 14-526 (f) General Waiver: Except for the requirements set forth in section 14-526 (a)--(d) for which individual waiver criteria are provided, the Reviewing Authority if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.</p>	<p>The traverse street grades required for this project are provided on Drawing 3.9 which is a tabulation of street grades by 25 foot stations. The proposed transverse street grades are shown for Somerset Street in an area from centerline to 19 feet right; from centerline to 12 feet left; and from 12 feet left to 19 feet left. Illustrative cross sections shown on Drawings C-10.1 illustrate those grades. Drawing C-7.0 provides a typical cross section showing warping of the area from 12 to 19 feet right.</p>	<p>Applicant's submission, Exhibit 23, page 4. The project will require the reconstruction of Somerset Street. The building will be set at elevation 12.0 to be 2 feet above the higher flood hazards anticipated to increase over time. There are existing buildings with finish floors, entrances, and exits at lower elevations. The Federated plan for the midtown project has extensive ground floor retail which requires flush accessible entrances. On the other hand, there are existing buildings across the street (most notably the "Noyes" property with existing floors and entrance elevations which will not change. Because the buildings on either side of the street are near or on the right of way, some variation from transverse slopes and location of the street crown from the City's typical cross section within the street right of way will be required.</p>	<p>David Senus Review- Jan. 28, 2015: The project will require the reconstruction of Somerset Street. The building will be set at elevation 12.0 to be 2 feet above the higher flood hazards anticipated to increase over time. There are existing buildings with finish floors, entrance, and exits at lower elevations. The Federated plan for the midtown project has extensive ground floor retail which requires flush accessible entrances. On the other hand, there are existing buildings across the street (most notably the "Noyes" property with existing floors and entrance elevations which will not be changed). Because the buildings on either side of the street are near or on the right of way, some variation from transverse slopes and location of the street crown from the City's typical cross section with the street right of way will be required. <b>Staff Recommendation: Given the unique circumstances relating to the location of this property in a flood zone, the desire to both address existing flood conditions and improve flood conditions in the future, and the need to account for impacts on abutting properties, deviation from the typical street grade seems necessary. Staff supports a waiver from roadway cross slope standard in accordance with the concepts presented on Figure 1- Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of the The Federated Companies.</b></p>
<p><b>1.5 Vertical Alignment (pages 3 and 4):</b> <i>Vertical Alignment: Parabolas at grade changes (K values) The K values corresponding to the minimum vertical curve lengths for the above street classifications and vertical curve types (sag curve or crest curve) are as follows: (excerpt for Collector Street only)</i> <i>Collector Streets</i> <i>Crest Vertical Curves: K = 30</i> <i>Sag Vertical Curves: K = 40</i></p>	<p>Section 14-526 (f) General Waiver.</p>	<p>The profiles for the streets are shown on Drawings C-8.0 and C-8.1. These show minor variations from the "K" values required by the City of Portland from the value of 30 required in the crests and 40 required in the sags for a collector street. The reduced crest in Somerset Street on the Pearl Street end will reduce the amount of rework when Pearl Street and the Whole Foods end of Somerset are raised.</p>	<p>Applicant's submission, Exhibit 23, page 5. The profiles for the reconstruction of Chestnut, Somerset, Elm, and Pearl Streets are included in the Plan Documents. Minor Variations from the City Standards for the "K" values (30 and 40 for crests and sags) will be requested. It is anticipated, the variation of the K value for the sags on Chestnut Street is expected to have a "k" value of 33.56 and Elm Street is expected to have a value of 39.89.</p>	<p>Tom Errico Review- Jan. 7, 2015: The applicant has requested the following waiver: "The profiles for the reconstruction of Chestnut, Somerset, Elm, and Pearl Streets are included in the Plan Documents. Minor Variations from the City Standards for the "K" values (30 and 40 for crests and sags) will be requested. It is anticipated, the variation of the K value for the sags on Chestnut Street is expected to have a "k" value of 33.56 and Elm Street is expected to have a value of 39.89". <b>Staff Recommendation: Given the street design needed in order to mitigate current and future flooding on this site and the overall design proposed to address those concerns as they relate to this property and abutting properties, it appears to Mr. Errico that the unique circumstances required by the waiver provision exist and that the geometric design details (K Factor) of Somerset Street, Pearl Street, and Chestnut Street to be acceptable consistent with the overall land development plan of the City. Tom Errico, P.E. supports the approval of this a waiver.</b></p>

Section 2- Sanitary Sewer and Storm Drain Design Standards				
Technical Standard	Waiver Criteria	Description of Change	Applicant's Request	Review Comments
<b>2.7 Catch Basins, 2.7.8</b> (page 82) <i>No storm drain lines, with the exception of field inlets and underdrains, shall be connected into a catch basin structure.</i>	Section 14-526 (f) General Waiver.	The stormwater design is to connect the proposed project storm lines into the catch basins within the street right of way, rather than install a separate connection to the stormwater main in the street.	Representatives from the City of Portland have indicated the technical standards are being revised and will remove this restriction. If the standards have been revised, this waiver will not be required. The waiver is very important to avoid excessive piping and appurtenances in the public streets.	David Margolis-Pineo Review- Jan. 7, 2015: The City is receptive of allowing stormwater treatment connections to catchbasins. David Senus review- Jan. 28, 2015: Support waiver to allow drain line connections into catch basin structures. The proposed stormwater treatment system design requires direct connections into catch basins to comply with design guidance outlined in MaineDEP Chapter 500 BMP Manual. <b>Staff Recommendation: Given this state requirement and the fact that the State has in fact approved the system as a best management practice, Staff believes that the Applicant has demonstrated sufficiently unique circumstances relating to this property and this proposed system to justify a waiver of the City's usual requirements.</b>
Section 4. Landscaping and Landscape Preservation Standards				
Ordinance or Technical Standard	Waiver Criteria	Description of Change	Applicant's Request	Review Comments
<b>Site Plan Ordinance, Section 14-526 -2 b (iii) Street Trees:</b> <i>All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees shall be planted in the right of way, as specified in Section 4 of the Technical Manual. Street trees shall be of a species identified on the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee. <b>Technical Standard 4.6 Street Trees, 4.6.1 Residential Development:</b> Multi-family residential: Multi-family residential developments shall provide a minimum of one tree per unit, planted in the City right of way unless otherwise approved and spaced thirty (30) to forty-five (45) on center. Cross reference B-7 D Open Space and Public Realm Standards and Waiver Requests</i>	<b>Waiver, Site Plan Ordinance 14-526 2 (b) iii (b):</b> Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the planting of street trees in the front yard, within ten feet of the property line. Existing preserved healthy trees that are six (6) inches or more in caliper and are on the site within ten (10) feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees.	The applicant is proposing raised planting beds for the 29 trees is proposing a total of 115 trees along the streets and the Bayside Trail. Midtown 1: 8 trees with 3 raised granite planters; Midtown 2: 21 trees; 13 with raised granite planters in right of way, 5 raised granite planters on private land, 3 trees in Chestnut island; Midtown 3 : 20 trees, 13 with raised granite planters in public way, 7 replacement trees; midtown 4 : 3 trees.	Applicant is requesting a waiver of the requirement for providing one street tree per residential unit. Maximum number of residential units is 445. A total of 97 trees, not including replaced street trees along Elm St., are being provided along Chestnut, Somerset, Pearl and along the Bayside Trail. The request is based upon the enhanced planting method that includes 4 FT x 8 FT raised granite planting beds and a structural system below grade that provides for an expanded root zone that is approx. 60% larger than typical street tree planting area. There are 29 planters located along the street frontages and the cost to install improvements for these trees well exceeds the fee in lieu for the additional 349 trees.	Jeff Tarling, City Arborist, review dated January 30, 2015. Jeff Tarling estimates that the cost for each raised planter is \$2,000, thus the total cost of the raised planters is roughly \$58,000. The financial contribution to the City's tree fund for each street tree is \$200, thus the total amount for the required number of street trees for the residential units would be \$66,000 (formula: 445 units - 115 street trees= 330 X \$200 = 66,000). The City Arborist recommends granting the waiver subject to a financial contribution to the street tree fund of \$8,000, which is the difference between the cost for the required number of trees and the cost of the 29 raised planters.

Section 5 Portland Stormwater Management Standards and Maine DEP Chapter 500 Stormwater Management				
Technical Standard	Waiver Criteria	Description of Change	Applicant's Request	Review Comments
<b>Stormwater Chapter 5 Section E.2, Technical</b>	<b>Waiver Criteria</b>	<b>Description of Change</b>	<b>Applicant's Request</b>	<b>Review Comments</b>
<b>Stormwater Chapter 5 Section E.2, Technical Manual, pg 149:</b> <i>Flooding Standard: If a project results in 3 acres or more of impervious area or 20 acres or more of developed area, requires review pursuant to the site law, or is a modification of any size as described in Section 16 of this Chapter, the flooding standard must be met. Stormwater management systems for these projects must detain, retain, or result in the infiltration of stormwater from 24-hour storms of the 2-year, 10 year, and 25-year frequencies such that the peak flows of stormwater from the project site do not exceed the peak flows of stormwater prior to undertaking the project.</i>	Waiver of Flooding Standard: (a) Discharge to the ocean, a great pond, or a major river segment. A waiver is available for a project in the watershed of the ocean, a great pond, or a major river segment provided the applicant demonstrates that the project conveys stormwater exclusively in sheet flow, in a manmade open channel, or in a piped system directly into one of these resources. " The applicant shall also demonstrate that any piped or open-channel system in which the runoff will flow has adequate capacity and stability to receive the project's runoff plus any off-site runoff passing through the system. "	The location of the site within the watershed results in a condition where passing flow from this area as soon as possible allows capacity to free up to receive and convey flows from upstream areas (refer to the Stormwater Management Report filed with the Master Plan).	Applicant's Attachment Waiver Requests Civil Site Issues, Exhibit 23, page 5. The requirements include stormwater detention for flood control. The applicant is requesting a waiver to the requirement for detention as part of the Stormwater Management Plan. The location of the site within the watershed results in a condition where passing flow from this area as soon as possible allows capacity to free up to receive and convey flows from upstream areas.	David Senus, P.E. review, January 28 2015: Support waiver from Flooding Standard. <b>The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure. Staff Recommendation: Therefore, the proposal appears to meet the waiver requirements necessitating adequate capacity of piped systems, etc.</b>

Section 7 Soil Survey Standards (Technical Manual, Chapter 7, page 209)				
Technical Standard	Waiver Criteria	Description of Change	Applicant's Request	Review Comments
<b>7. Soil Survey Standards. 7.1 Applicability:</b> <i>Development proposals required to submit soil surveys include: Level III site plans as defined in the site plan standards of the land use code; Subdivisions as defined in the subdivision standards of the Land Use Code except for those projects which do not involve construction of significant new infrastructure; and other projects where the review authority determines that unusual conditions specific to the site warrant a high intensity soil survey. 7.4 Submissions Class A: where phosphorous control measures in include wet ponds, infiltration and buffer strips. Subdivisions where subsurface wastewater disposal is proposed. Class B: subdivisions where lots less than 2 acres, more than 20 lots, and no on-site wastewater disposal is proposed and new city streets are proposed. Includes Condominiums, commercial and industrial developments that are greater than 3 acres of new non-vegetated service. Class C; subdivisions with lots greater than 2 acres and on-site subsurface is proposed. Class D: all other developments.</i>	Class D (Medium Intensity) Soil Survey (page 211): In the event that greater than 50 % of a proposed development site is currently developed, an applicant may petition the Planning Authority to accept a lower class soil survey. The Planning Authority shall review the request, and their decision on the appropriate level of mapping shall be final.	The request for a waiver from the high intensity soil survey is made because the site is on filled land, has been heavily disturbed as part of environmental cleanup measures and will be nearly impervious after development. The City has the recent Haley & Aldrich report for the work they commissioned to examine the impact of raising Somerset Street as well as past reports for previous development proposal for this site.	The applicant is requesting a waiver from the City of Portland's requirement to provide a high intensity soil survey. This request is made after considering that the site is on fill land, the site has been heavily disturbed as part of environmental cleanup measures over the past several years, the site will be nearly impervious after development such that hydrologic soils rating is not a significant issue.	The City also has had soil assessments conducted by John Tewey of the brownfields site. <u>David Margolis-Pineo review, January 7, 2015:</u> This department is agreeable to the requested waiver to delete the high intensity soil survey. <b>Staff Recommendation: The applicant has submitted evidence that there have been sufficient soil evaluations and thus, the Staff supports granting this waiver of the Technical Standard.</b>

IX. B-7 Design Principles and Standards Waiver Review

<b>PRINCIPLE A URBAN DESIGN</b>	
<i>B-7 Design Standard Provisions</i>	<i>Applicant's Requested Waiver</i>
<p><b>Principle A: Urban Design</b>  <b>Standard A-4 Views and Landmarks:</b> (<i>City's Design Manual, Appendix 4, page 5</i>).  <i>View corridors to buildings and natural resources help to define the character of Bayside. New development shall be designed with consideration for its impact on significant views and view corridors as shown on the Downtown Height Study and the Bayside Height Overlay Map, as well as other important views as may be identified during the City's development review process. View corridors shall be highlighted with significant architecture and quality materials. New development shall be sited so that it does not block view corridors. Taller portions of structures shall step back out of the view corridor. Roof top appurtenances shall not be visible form view corridors, nor shall they obscure important landmarks. Additionally, development along corridors on the east-west axis through Bayside shall be evaluated to maximize sun and light.</i></p>	<p><b>Views and Landmarks: (Request submitted December 1, 2014)</b>                      The applicant requests a limited variance of the requirements to provide open view corridors along north-south streets for the reasons stated below. As noted, the project as a whole complies with the intent to keep street views open.</p> <p>The existing blockage of the Cedar Street and partial blockage of Myrtle Street view corridors, which are constraints relating to building design and lot configuration, as well as other factors are extraordinary conditions of the midtown site. The topmost story of the proposed buildings may intrude slightly into these view corridors. If the applicant were required to lower these buildings undue hardship might result from such strict compliance. Substantial justice will be done and the public interest will be secured with the variation in that the open sky and distant views will be preserved. This variation will allow the garage building, midtownTwo, and the residential building, midtownThree, to minimally obstruct the Myrtle and Cedar Street view corridors without compromising the quality of the distant views.</p> <p><b>Staff Comment:</b>                      Planning Staff supports the request for waivers of the view corridors for Cedar Street and Myrtle Street.</p>
<b>PRINCIPLE B ACCESS AND CIRCULATION</b>	
<i>B-7 Design Standard Provisions</i>	<i>Applicant's Requested Waiver</i>
<p><b>Principle B: Access and Circulation</b>  <b>Standard B-2: Street Connectivity</b> (<i>City's Design Manual, Appendix 4, page 7</i>).  <i>The prevailing pattern of streets on the Portland peninsula runs parallel and perpendicular to the waterfront. This pattern is expressed in relatively short blocks, buildings with small footprints and narrow facades, reasonable walking distances between blocks, and frequent opportunities to turn corners or move from one street to parallel streets. Extension of the street grid pattern will ensure that the massing of new development is consistent with the traditional scale and urban patterns of</i></p>	<p><b>Street Connectivity: (Request submitted December 1, 2014)</b>                      The applicant requests a waiver from the extension of street grid pattern that the public interest may be secured with this variance.</p> <p>That Cedar and Myrtle streets do not abut the subject property is an extraordinary condition of these sites not applicable to sites where these streets do abut. The applicant's proposed mews provides an alternate access between Somerset Street and the trail; the applicant has designed the project to extend Pearl Street; and the applicant proposes enhanced open access to the trail at Elm and Somerset streets.</p> <p>Undue hardship would result from strict compliance, substantial justice will be done, the public interest will be secured with this variation, and the variation is consistent with the intent to the ordinance in that the existing street grid of Bayside has been preserved and will be substantially enhanced.</p>

<p><i>Portland, project view corridors, provide opportunities for sun and airflow, enable efficient and flexible vehicular and pedestrian circulations, and provide opportunities for service alleys. New development shall coordinate with, intersect, and extend existing streets and sidewalks at multiple access points.</i></p> <p><i>See the Downtown height Study and the Bayside Height Overlay Map for key view corridors and potential street extensions. As land use and development opportunity allow, Somerset Street shall be extended west towards Forest Avenue.</i></p>	<p><b>Staff Comment</b></p> <p>Planning Staff supports the request for waiver of the extension of Myrtle and Cedar Streets</p>
<p><b>Principle B Access and Circulation</b>  <b>Standard B-3:Mid-Block Permeability</b> (City’s Design Manual, Appendix 4, page 7).  <i>Development shall incorporate mid-block permeability that is perpendicular to Marginal Way, and where feasible that is parallel to Marginal Way, in order to encourage building footprints that are in scale with the existing traditional pattern of development in Portland. These corridors shall be developed as street extension, service alleys and public access, pedestrian corridors, trail access, plazas and pocket parks. These corridors shall be designed for the pedestrian first, with limited vehicular accessibility. These corridors shall not be designed solely as access to parking or loading areas, and shall be designed to be handicap accessible, well lit, paved in concrete, brick or stone, and appropriately landscaped. Asphalt surfaces shall not be allowed. (Wharf Street in the Old Port is an example of a desired level of design for this type of public way).</i>  <i>A primary circulation system shall be developed through streets, alleys, sidewalks and trails. A secondary circulation system shall be provided internally within buildings for public use through the use of fully functioning entrances on all street sides of a building, and internal lobbies and</i></p>	<p><b>Mid-Block Permeability: (Request submitted December 1, 2014)</b></p> <p>The applicant requests a very limited variance of the requirements to incorporate mid-block permeability perpendicular to Marginal Way, only in the block between Chestnut and Elm Streets, for the reasons stated below. As noted in both the detailed response to individual B-3 requirements, and the applicant’s memo, both of which are attached, the project as a whole complies with all requirements except for a limited instance where continuity of street pattern is blocked by existing buildings and current development patterns.</p> <p>We note that the Board recognized, in a finding concerning a previous project proposed for the site that, in relevant park, a street extension of Myrtle Street would not be required between Somerset St. and the Bayside Trail because: <i>”Myrtle street [does]not abut the subject property,...[and therefore] the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore...[the board granted] a waiver of the requirement that the development be required to extend... Myrtle Street through the project.”</i></p> <p>The same extraordinary circumstances pertain with respect to this waiver request for variance of the requirement for mid-block permeability: the continuity of a path or pedestrian desire line north-south from the Bayside neighborhood to Marginal Way is blocked by the A&amp;P warehouse (Noyes storage building forming a continuous frontage along the south side of Somerset St. From Chestnut to Elm Streets), a contaminated soil berm along the trail that directly abuts the property, a chain link fence, and parking lots on the north side of the trail. With no natural desire line for pedestrians, a connection of Somerset St to the trail perpendicular to Marginal Way would serve little if any pedestrian traffic, and the unused passage could become a security nuisance.</p> <p>In other sites surrounded or abutted by open land or cross-streets, the creation of street extensions or mid-block connections would serve the useful purpose of encouraging further extension as adjacent blocks are developed – this is simply not the case with the midtownThree block.</p> <p>Hardship form strict compliance with this requirement would result from two issues: the need to secure a seldom used passage, and the inflexibility of leasing program resulting from creating a passage separating the leasable floor area into two distinct and unconnected areas of floor space.</p> <p>Granting of a waiver from the requirements for a street extension, service alley, or pedestrian corridor through the</p>



*corridors that permeate through the ground floor of a building, unless the building program precludes such design and cannot be modified to meet this requirement due to small scale or security reasons.*

*Many larger buildings in Downtown Portland have incorporated frequent opportunities to pass through the interiors of street-level spaces. This element is important to the liveliness and accessibility of retail businesses and cultural amenities. The development or redevelopment of larger sites, and the potential assembly of more than one block or parcel through the discontinuance of intervening streets, shall carefully consider this characteristic pattern of pedestrian circulation.*

midtownThree block is the minimum condition to relieve the applicant's hardship in this extraordinary circumstance.

Substantial justice would be done by this variance in relieving the applicant of undue hardship in this extraordinary circumstance.

The public interest would be secured in that new continuous retail frontage will be developed on Somerset Street and doors to access this retail will be provided on the trail side; not having a designated and dedicated passage will allow flexibility in retail leasing that will allow the diverse mix of first-class tenants that will make this a successful, pedestrian-friendly environment.

The applicant also proposes to create a broader open space and protected view corridor on its private land at Em Street between midtownThree and Four which will additionally facilitate passage from Somerset St to the trail.

The requested limited waiver does not nullify intent or purpose of the Ordinance which is to develop a pedestrian friendly retail "Main Street" for Bayside.

There will no adverse effect on section 14-536 regulated issues of a) transportation, b) environmental quality, c) public infrastructure and community safety standards, d) site design standards (massing, ventilation, wind, shadow, snow and ice loading, view corridors, historic resources, exterior lighting, noise and vibrations, signage and way finding); or of zoning-related design standards (except for B-7 Standard B-3 from this limited variance is sought).

The lack of a through block passage will not have any effect on the value or utility of nearby private property; in fact the development of midtown is expected to have a positive impact on the value of all neighboring properties through raising the streets and trail above flood level and by brining 500 or more new resident to the district.

The variance of standard B-3 in the particularly instance of midtownThree is the minimum non-compliance necessary to overcome the hardship of this extraordinary circumstance.

There no adverse environmental effects associated with this variance.

The following table lists for the development as a whole the design response to each of the individual requirements of Standard B-3 Mid-Block Permeability

***"...shall incorporate... permeability.. perpendicular to marginal way."***

Response:

1. Pearl Street is extended to the Trail and allowance has been made for its future extension to Marginal Way
2. Chestnut Street has been extended across the trail to Marginal Way with a traffic calming island at the trail intersection.
3. A courtyard and mews have been created making a second entrance/egress from the garage and the access point for bicycle storage. The land south of this mews across Somerset St is currently vacant, and the existence of this permeability between Pearl and Chestnut Streets will encourage continuation of mid-block access to Kennebec and possibly Lancaster Streets as those properties are developed.
4. The midtownThree building is deliberately held back from the west property line and aligned with the building face of Elm Street to preserve the view corridor down Elm Street.
5. No Somerset Street to Bayside Trail Connector Between Chestnut Street and Elm Street is proposed because continuity is blocked by the existing storage building the berm along the trail and the chain-link property fence and grade change.

***“...shall incorporate... permeability...parallel to Marginal Way.”***

Unnecessary and infeasible as the Bayside Trail and Somerset Street are only 120 feet apart.

***“...corridors shall be developed as street extensions, service alleys, pedestrian corridors, trail access, plazas, and pocket parks...”***

1. Pearl Street is extended as a street which one day may be continuous from the top of the peninsula to Marginal Way.
2. The mews and courtyard form a pedestrian corridor and plaza.
3. The added public open space at Elm Street enhances the park-like setting of the intersection of the Bayside Trail with the Elm/Somerset Street intersection.

***“Corridors shall not be designed solely as access to parking or loading areas.”***

1. The mews is pedestrian and cyclist only.
2. Elm Street park is pedestrian and cyclist only.

***“...handicap accessible...”***

Compliant

***“...paved in brick, stone, or concrete... landscaped...asphalt... not allowed...”***

Compliant

***“...primary circulation shall be developed through streets, alleys, sidewalks, and trails.”***

Compliant through extension of Pearl Street and the Elm Street sidewalk and adjacency of Bayside Trail.

***“...secondary circulation... shall be provided internally...unless...building program precludes such design due to security reasons...”***

Not provided due to security reasons.

***“...potential assembly of more than one block or parcel through the discontinuance of intervening streets shall carefully consider... pedestrian circulation.”***

Does not apply – no discontinuance contemplated. In fact applicant is dedicating private property to public use at Pearl Street, the mews, and Elm Street, and substantially enhancing the pedestrian experience on Somerset Street.

**(Refer to Applicant’s memorandum-3 Mid-Block Permeability, Applicant’s submission, Exhibit 23 and Response to Staff comments, December 1, 2014, Exhibit 3.)**

**Staff Comment:**

This issue is also discussed in a prior section of this report on page 13. The Planning Board is being asked to consider a partial waiver of this standard. As the Board will recall a condition of approval of the subdivision amendment granted in January, 2014 which removed a 20’ wide by 20’ high by 140’ long easement through the lot on which MidtownThree is located, *“provided that a pedestrian passage be provided in the Phase Two site plan”*.

The Standard anticipates a “primary” circulation system and a “secondary” circulation system. The recently added doors on the trail side of MidtownThree imply a circulation system that is internal to the building, and therefore not a primary circulation system. Staff believes that a partial waiver from this standard is still needed.

Ideally this circulation through the building would be an arcade-style hallway, open during normal business hours, to provide passage through the building. If that is not possible, staff has a concern that the retail tenant of the space would discourage or simply not allow passage through their space by the general public. For example, some tenants might require a membership to enter the space, which would mean that the general public may not be able to use the space, or at the least may feel unwelcome there.

Staff supports a partial waiver of this standard to provide only a secondary circulation system, if the secondary system can be shown to provide an adequate substitute for the “primary “ option.. Ways of achieving this objective include a specific plan for specific access through the first floor of Midtown Three including posting that the public is welcome to travel through the space during normal business hours, good lighting and accessibility, and/or a way finding measure. As noted elsewhere, the north side of Midtown Three shows storefront facing the Bayside Trail, and will allow passage from both sides and through, but there is no plan for surface treatments between Midtown Three and the trail. The issues discussed in this paragraph are addressed as conditions of approval to the waiver request as reflected in the Motions section of this report.

The proposed condition of approval for mid-block permeability addresses the staff concerns about the terms and details of the access through the building, while recognizing that these details are dependent on the end user/tenant of the first floor. The proposed condition therefore allows for review of those aspects prior to a certificate of occupancy of the first floor, and also addresses the trail side improvements and berm removal, and associated cost allocations between the applicant and the City. The City has agreed to pay for the costs associated with the removal of the berm containing contaminated soils to the extent that such soils cannot be used as fill under the project foundations, which usage appears to be unlikely based on the latest information available.

**Principle B: Access and Circulation**  
**Standard B-7: Continuity of Street Level Uses**  
*(City’s Design Manual, Appendix 4, page 8)*  
*Continuity of pedestrian-oriented uses along street frontages, particularly A and B streets, is important to encourage pedestrian interest, movement and safety. Service entrances and vehicular entrances which interrupt the continuity of street-level uses shall not be located along A or B streets, or areas of high pedestrian activity. Where such uses are unavoidable, extraordinary care shall be taken to assure that the pedestrian environment remains both attractive and safe, and such interruptions shall be kept to a minimum in both numbers and lengths. In such instances, the pedestrian shall clearly have the priority.*

**Continuity of Street Level Uses: (request from December 1, 2014 Submission)**

The applicant requests a waiver from the prohibition of service and vehicular entrances to the buildings of midtown along Somerset and Elm streets on the basis that extraordinary conditions exist at these sites which have led to this choice and that hardship for the applicant would result from strict compliance with the standard [B-7].

The sites are relatively narrow and located between the Bayside Trail and Somerset Street. While access to the midtownOne has been successfully located on a raise portion of Pearl Street, midtown Two and Three are prevented access from Chestnut Street by the center island and slope. MidtownFour has street frontage only on Elm Street. The location of such entrances on Somerset and Elm streets is unavoidable due to block configuration. Undue hardship would result from strict compliance but substantial justice may be done, the public interest will be secured with the variation. The variation is consistent with the intent of the ordinance, in that the applicant will take care to assure that the pedestrian environment will remain attractive and safe, and required interruptions are minimized in number and length to allow a maximum of retail frontage..

**Staff Comment:**  
 Planning Staff supports the waiver.

**Principle B: Access and Circulation**  
**Standard B-11: Lighting** *(City’s Design Manual,*

**Lighting: (request from December 1, 2014 Submission)**  
 The applicant requests a waiver from strict compliance with the lighting requirements of the Technical and Design

Appendix 4, page 9).

*Street lights along public streets shall be scaled to the size, traffic volume and use that is typical for that street, as defined in the street hierarchy in Standard B-1 Streets and Alleys. Street lighting shall comply with the Technical and Design Standards and Guidelines at a minimum and may also be required to meet The Illuminating Engineering Society of North American Standards (IESNA), and the Leadership I Energy and Environmental Design (LEED) standards for light pollution. (Excerpt)*

*B-Streets: Cumberland, Lancaster, Kennebec, Somerset, Preble and Elm*

*(Bayside District Medium Scale Light- Figure X-2D, attachment 7)*

*C Streets: Parris, Hanover, Chestnut, Pearl, Portland, Oxford.*

*(Bayside District Medium Scale Residential Light Figure X-2E, attachment 7)*

**Sidewalk Lighting:** *Sidewalks shall be lit with a combination of pole mounted, building mounted, or bollard lighting, as well as light from store windows, entries and other building features. The placement of lighting fixtures shall be pedestrian scaled, downwardly directed, and shielded or reflected so as to prevent glare and excess lighting spilling onto private property or skyward.*

**Technical Manual. Chapter 10 Municipal Street Lighting Standards. Chapter 10, 10.4 Standards for Special Lighting Districts:**

Locations, Specifications and Colors:

Figure X-1 identifies the established special Street Light Districts city-wide. The following tables and Figures X-2 through X-7K illustrate the requirements for fixture type, height, layout and color for each district, according to street name.

**West Bayside:**

**Chestnut Street:** Lancaster Street to Marginal Way, **Somerset St., Preble Street and Elm Street** (Cumberland Ave to Marginal

Standards and Guidelines for the street light spacing along Somerset street on the basis that extraordinary conditions exist at this site which have led to the spacing shown on the site plan.

The street lighting has been coordinated with tree placement, existing and proposed utility structures, required service and vehicular entrance, steps and ramps, bus stop, and accessible crosswalks. The result is non-standard spacing.

The proposed lighting plan will enable and enhance retail and pedestrian sidewalk lighting conditions on Somerset Street and undue hardship might result from strict compliance. Substantial justice will be done, the public interest will be secured with the variation, and the variation is consistent with the intent of the ordinance, in that the lighting will be scaled to the size, use, and traffic volumes of the streets and trail in order to provide an efficiently-lit, attractive, pedestrian-friendly urban street.

**Staff Comment:**

**David Margolis-Pineo, DPS, Review dated January 7, 2015, revised 1/9/15.** The Department is supportive of waiver request #3 for brighter illumination, with the following conditions:

- All light fixtures shall be LED;
- All fixtures shall be shielded for down lighting and light spacing shall be per Code requirements.
- The applicant is encouraged to consider supplemental lighting on the applicant’s property.
- All proposed lighting with the street right of way will be owned and maintained by the City of Portland and shall be on a separately metered circuit.

The Planning staff suggests that a condition of approval be considered with this waiver that would require a final lighting plan and photometrics be submitted for review and approval by the Department of Public Services and the Planning Authority.

<p>Way), <b>Pearl St:</b> Lancaster to Marginal Way, <b>Kennebec, Hanover St</b> (Somerset to Marginal)          Fixture type: Bayside District Medium Scale Light (see Figure X-2C), <i>Fixture Height:</i> 19 ft 3 inch          Layout: 80 – 100 ft on center (one side only); 150 – 200 feet on center (staggered pattern on both sides of street)          Color: Silver Metallic Natural Aluminum – Tiger Drylac Old Navy Silver Y003J</p>	
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**PRINCIPLE C PARKING, LOADING AND SERVICE AREAS**

<i>B-7 Design Standard Provisions</i>	<i>Applicant's Requested Waiver</i>
<p><b>Principle C Parking, Loading and Service Areas</b>  <b>Standard C-2: Parking Entrances</b> (City's Design Manual, Appendix 4, page 10)          The entrance to parking garages shall respect the pedestrian realm and minimize the visual impact of the garage through provision of design elements such as: enhancement of the pedestrian entries; physical separation of entrances and exits; recessing the entry or extending portions of the structure over the entry; and incorporation of landscaping or artwork. The exits from parking garages shall be designed to inform the driver that s/he is entering in to a pedestrian realm. Gates shall be located interior to the building at a distance that allows cars to stack internal to the structure rather than on the street.</p>	<p><b>Parking Entrances: (request from December 1, 2014 submission)</b>          The applicant requests a waiver from the requirement to separate entrance from exit at the midtownTwo parking garage.           A single wide common curb-cut is proposed for both entry and exit from the garage. Access and exit gates are located well inside the garage to provide sufficient off-street queuing space. There will be three gates allowing double inward or outward flow at peak times. The exit will be designed to inform the exiting driver of the sidewalk pedestrian realm. Undue hardship would be caused if substantially separate ingress and exit ramps were required.           The shallow lots and constrained garage layout constitute an extraordinary condition of this site and undue hardship would result from strict compliance. Substantial justice may be done the public interest will be secured, and the variation is consistent with the intent of the ordinance, in that the pedestrian realm is favored by minimizing the number of interruptions to the retail frontage and all other requirements of the standard will be met.   <b>Staff Comment:</b>          The single entry and exit meets the intent of the standard and thus a waiver is not required.</p>
<p><b>Principle C Parking, Loading and Service Areas</b>  <b>Standard C-5: Decks and Ramps</b> (City's Design Manual, Appendix 4, page 11).  <i>Parking structures shall have horizontal decks on all levels where the decks are visible from the public rights of way. Ramps and non-horizontal parking decks shall be screened from all visible angles and shall not be permitted on facades located along or within 45 feet of a public right of way.</i></p>	<p><b>Decks and Ramps:</b>          The applicant requests a waiver from the requirement to have horizontal parking decks on all facades of the MidtownTwo garage visible from public rights of way on the basis that extraordinary conditions exist at this site, and that undue hardship for the applicant would result from strict compliance with the standard C-5.           The garage is the most efficient possible layout with five percent sloped parking ramps on the trail side and level decks on the Somerset Street side. The garage exactly fits the available site. The sloped ramps are screened with durable materials to give the façade an orthogonal appearance consisting of screens mounted in horizontal and vertical framework.           The shallow lot and constrained garage layout are the only feasible layout and undue hardship would result strict compliance by requiring substantially less efficient layouts. Substantial justice will be done, the public interest will</p>

	<p>be secure, and the variation is consistent with the intent of the ordinance, in that the unavoidable sloped ramps will be screened with façade materials with horizontal and vertical members.</p> <p><b>Staff Comment:</b> Staff has reviewed the plans and elevation drawings of the garage. The northerly (trailside) façade of the garage reveals the sloped ramps, while the southerly (Somerset Street) façade has flat or horizontal internal ramps. The northerly side adjacent to the trail is on a public right of way, so a waiver is needed. The design of this façade includes a significant “green screen” which over time will mask the non-horizontal decks sufficiently. Staff therefore supports this waiver.</p>
<p><b>Principle C Parking, Loading and Service Areas</b>  <b>Service, Utility and Mechanical Infrastructure (Standard C-8):</b> <i>City’s Design Manual, Appendix 4, Principle C, Parking, Loading and Service Areas, C-8. [Excerpt] Service, utility and mechanical infrastructure (such as...) shall be located at the rear of side of buildings, along service alleys, or in the interior of parking garages. Such uses shall not result in adverse visual and audible or other noxious impacts on adjacent properties and public streets and spaces. Areas for outdoor storage and trash collection or compaction shall not be visible from public rights of way, or located within 20 feet of any public street, sidewalk, or open space. Mechanical equipment shall be located away from pedestrian ways and seating areas to minimize noise, exhaust or visual impacts. Mechanical equipment shall not be located in the front setbacks between building and public rights-of-way. All service, utility and mechanical infrastructure shall be visually screened from adjacent uses, adjoining properties and public rights of way. [Excerpt].....</i></p>	<p><b>Service and Delivery Areas: (request from December 2014 submission)</b>  The applicant requests a waiver from the requirement that service equipment and infrastructure be located at the side or back of the buildings. The sites exhibit the extraordinary condition that there are no sides or backs- all facades are visible from the public right of way.  Except for MidtownFour, which shares a common property line with Trader Joes, all facades of the building of midtown face public rights of way- Pearl, Chestnut, Elm, and Somerset Streets, the Mews and the Bayside Trail. Where feasible, utility infrastructure will be placed interior to the buildings, where it must be located outside it will be screened from view or unobtrusively integrated with the design of the buildings.</p> <p>Because these buildings have no side or rear elevations, an extraordinary condition exists and undue hardship would result from strict compliance with these requirements. Substantial justice will be done, the public interest will be secured, and the variation is consistent with the intent of the ordinance, in that utility and mechanical infrastructure, loading docks, delivery areas, will be internal or screened as required.</p> <p><b>Staff Comment:</b>  Planning Staff supports the waiver request.</p>
<b>PRINCIPLE D OPEN SPACE AND THE PUBLIC REALM</b>	
<i>B-7 Design Standard Provisions</i>	<i>Applicant’s Requested Waiver</i>
<p><b>Principle D: Open Space and the Public Realm</b>  <b>Standard D-2: Bayside Trail</b> (<i>City’s Design Manual, Appendix 4, page 12</i>)  <i>A conceptual or final plan for the Bayside Trail</i></p>	<p><b>Bayside Trail: (request from November 14 submission)</b>  Applicant requests a partial waiver from Standard D-1 requirement that buildings adjacent to the trail have active doors in the building on facades facing the trail.  All the midtown buildings are designed with façade elements adjacent to the Bayside Trail that enhance the trail</p>

<p><i>from Franklin Arterial to Elm Street shall be considered in the review of all new development. Buildings adjacent to the Bayside Trail shall be designed so that the façades along the trail incorporate design elements that enhance the trail use such as active doors into the building, plazas, outdoor seating, and food service. The design of retail or restaurant uses shall incorporate a means of ingress and egress that is oriented to the trail. Businesses that complement the use of the trail, such as sporting goods stores, equipment rentals, coffee and ice cream shops, etc. shall orient entrances to the trail where feasible.</i></p>	<p>experience. As noted above, these facades are not designed as “back”, and they provide the important element of residential windows overlooking the trail. Food Service establishments are the planned as part of the retail leasing program for the ground floors of the all the buildings. This may provide some entrances and egresses facing the trail. The partial waiver is sought on the requirement of having “active building ingress and egress” on the portion of midtownThree facing the trail because of natural changes in grade.</p> <p><b>Staff Comments:</b> The proposed plan recognizes the importance of having active uses along the trail side of the parking garage and residential building. Both buildings will have retail storefronts along the trail including the plaza area. Portions of the retail use within the parking garage will have a grade about two feet higher than the trail which would complicate trail user access into the building. The mews and plaza enhance interaction between the development and the trail by providing mid-block connections and increased store frontage. The developer has stated that the berm will be removed behind MidtownThree which will improve the interaction of the building’s retail uses with the trail, however there is no plan at present to provide paved surfaces, landscaping, amenities, or paved access to the Bayside Trail. At minimum, it is recommended that a 15’ paved area be installed along the northerly storefront edge, approximately 155 feet long, and paved 12’ walkways be provided connecting to the Bayside Trail, one in each direction. A fully developed landscape plan is desirable in this location, with materials comparable in character and quality to those proposed for the mews and courtyard associated with MidtownOne and Two, to fully complement the Bayside Trail as envisioned by this standard. The minimum standards noted above will at least provide an engaging interface and enable the trail and the storefront and its midblock passage to function.</p> <p>The proposed condition of approval for mid-block permeability addresses the staff concerns about the terms and details of the access through the building, while recognizing that these details are dependent on the end user/tenant of the first floor. The proposed condition therefore allows for review of those aspects prior to a certificate of occupancy of the first floor, and also addresses the trail side improvements and berm removal, and associated cost allocations between the applicant and the City.</p>
<p><b>B-7 Design Standard - Standard D OPEN SPACE AND PUBLIC REALM D-3 Landscaping and Street Furniture:</b> <i>Planters, wells and tree grates: Raised planters shall be used wherever possible to increase the viability of plant materials. Such planters shall be consistent in style and character throughout Bayside. Where individual tree wells are located along streets, the wells shall be as large as possible to allow adequate water and air to the soil and root system. Where the dimensions of the sidewalk area permit, planting strips or portions of brick sidewalk set on sand shall be considered to allow an even greater area of permeable surface. Tree grates and guards</i></p>	<p>The applicant is requesting a waiver for raised planting beds associated with the ramp system located within the right of way that occur along the Somerset Street sidewalk adjacent to Pearl Street extension and Elm Street as designed.</p> <p><b>Staff Comments:</b> Jeff Tarling, City Arborist, comments pending.</p>

<p><i>shall be provided in order to assure adequate air and water access and to provide protection for trees located within pedestrian activity areas. In certain areas, where wide sidewalks exist and ample pedestrian circulation area is available, the use of granite pavers may be substituted for tree grates.</i></p>	
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<p><b>B-7 Design Standard - Standard D OPEN SPCAE AND PUBLIC REALM D-3 Irrigation and Drainage.</b> An adequate provision of a water source, irrigation system and method of drainage shall be provided for planted areas. Such areas shall also have drainage systems designed to prevent excess water accumulation or runoff onto FINAL Approved March 26, 2008 O:\PLAN\Development Design Manual\B-7 Design Standards (FINAL Approved 032608 by PB).doc 14 pedestrian walk areas. Individual tree wells shall be designed to allow adequate drainage, tying into curb line drainage systems wherever possible.</p>	<p>The applicant is requesting a waiver of the requirement for an irrigation system. All plant material selected shall conform the city standards, be selected for drought tolerance in addition, will be located in larger raised planting areas. <b>Staff Comment:</b> Jeff Tarling, City Arborist, comments pending.</p>
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<b>PRINCIPLE E: ARCHITECTURAL DESIGN</b>
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<i>B-7 Design Standard Provisions</i>	<i>Applicant's Requested Waiver</i>
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<p><b>Principle E: Architectural Design</b> <b>Standard E-12: Materials:</b> (<i>City's Design Manual, Appendix 4, page 19</i>). <i>Facades visible from public rights of way shall use natural and authentic materials that are expected to last 50 years. Predominant materials shall be brick, stone, precast concrete and other masonry products, wood, glass and high quality metals such as steel, titanium and copper. Traditional stucco on wire lath or masonry may be used. Renewable and recyclable materials approved for use by LEED Standards (Leadership in Energy and Environmental Design) may be used. Cellular PVC trim and dimensional stock shall be allowed.</i></p> <p><i>Materials such as thin gauge metal panels, exterior insulation and finish systems (EIFS),</i></p>	<p><b>Materials:</b> The applicant requests a waiver from the prohibition of EIFS and single gauge metal siding as primary façade materials for the buildings of midtown on the basis that extraordinary conditions exist at this site which have led to this choice of materials, and that hardship for the applicant would result from strict compliance with standard E. 12. An extraordinary condition present at the midtown parcels, but not generally applicable to other parcels in Bayside, is the building code requirement to establish first floor level above the FEMA 100 –yr flood elevation. This requires filling the sites and building at elevation 12.0. Coupled with the Bayside Vision intent to create pedestrian-friendly active streets, Somerset St. must be raise as well, so that sidewalks will be at this high level (and therefore protected from flooding also) and pedestrians, including the movement challenged, will be able to freely and easily access the retail space. In order to make the retail space accessible from the Bayside Trail, a major part of the trail adjacent to the project will be raised to allow direct access.</p> <p>Hardship exists as a result of this extraordinary condition in that the costs of this civil site work is distributed across only 400 dwelling units (although commitments to the work were made on the basis of nearly twice that number of dwellings, and the applicant is honoring the commitment). This in turn requires economies in all systems of building construction including structure and exterior materials. Standard E-12 requires heavy façade materials like brick, stone, or re-cast concrete and states "...thin gauge metal</p>
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*panelized “thin brick”, vinyl siding, or stucco on Styrofoam or a similar backing shall not be used on facades visible from public rights of way. Fiber-cement clapboard and shingles may be used. Fiber cement panels shall only be used on portions of the building not visible from public rights of way. Public spaces shall be constructed of permanent durable materials such as concrete, brick or stone.*

panels [and] exterior insulations finish systems (EIFS)...shall not be used on facades visible from public rights of way.” The chosen wood framing system cannot support the heavier materials and requires the lighter weight of siding materials; while fiber-cement clapboard and shingles are allowed, we don’t believe these are appropriate materials for the contemporary industrially based expression of these 6 story flat roofed residential buildings in this district.

Strict compliance with the requirements of E-12 in this instance would create undue hardship for the applicant by requiring a steel and concrete structure which is unnecessary for the buildings proposed.

The minor variance sought, to waive strict compliance and allow EIFS and light weight corrugated metal siding as primary façade materials visible from the public right of way, will provide substantial justice in recognition of the hardship caused by the expense of meeting the extraordinary condition of raising Somerset St and the Bayside Trail.

These materials have proven long term durability, can certainly last 50 years on longer, and can be used to produce buildings which contribute positively to a new identity for the neighborhood in an architectural style expressive of the time when built. The design of the buildings will be completed with functional and aesthetic architectural details, with massing and fenestration reflecting the evolving industrial context, and exploiting the important features of these materials.

EIFS particularly provides a layer of continuous insulations which meets a sustainable goal of energy efficiency by counteracting the effects of thermal bridging commonly associated with stud construction. The wood frame structures similarly support sustainability goals by sequestering carbon from the atmosphere, and by embodying far less carbon per sq ft of supported structure than a steel and concrete structure.

The public interest will be secured in that the project in total will bring an active friendly pedestrian setting and excellent streetscape to more than 1000 ft of currently unused Somerset street frontage and an equal length of trail side which will, by construction of the project, gain 24/7 “eyes on the park.”

This waiver will not nullify the intent and purpose of the Land Development Plan in that the project fully supports the intention to “recast Bayside as a productive and connected urban neighborhood” and “[provides]...entrances to apartments, shops and stores, all within walking distance.” The project as a whole (except where minor variance for waiver of specific conditions is requested) is in compliance with the requirements of, and will not nullify the intent of the Ordinance.

The impact of the midtown development on other nearby private property is certainly positive, not adverse. Bringing more than 500 new residents to the neighborhood will certainly enhance property values, and the raising of the Bayside Trail and Somerset street above flood level will enhance utility of these properties. The variance to waive strict compliance with the exterior material requirements will not have an adverse effect on the value or utility adjacent properties.

Other than the strict compliance with exterior materials listed in E-12, the building design and aesthetics will be fully in compliance with all the other Section E Architectural Design requirements of the B-7 standards, with the Land Development, and with the regulations of Article IV of the Ordinance.

These proposed façade materials have no adverse environmental effects.

The applicant respectfully requests waiver of strict compliance with the requirements of B-7 Standard E-12 and offers further justification in a memo attached hereto.

(Refer to Applicant's memorandum , Standard E-12 Waiver Applicant's December submission, Exhibit 3)

**Staff Comment:**

*The material choices and color palette are contemporary and acknowledge the industrial context but remain residential in application. Building materials for the residential buildings include architectural metals, EIFS, ground faced CMU at the ground floor, and aluminum window frames. The finish and texture of these materials were not specified in detail. The parking garage is predominantly precast concrete and green screen with the use of metal panels and screens at the circulation towers. All buildings use aluminum storefront systems at the ground floor with EIFS siding at the storefront transom. In several instances, MidtownFour uses EIFS at the ground level but not along public rights-of-way.*

*The staff memo for the 1/13 workshop stated that, while the Design Standards for the B-7 zone do not permit the use of EIFS in areas visible from a public right of way, staff could support a design where EIFS is not the predominant material (i.e. less than 50% of the exterior material surface above the first floor, not including windows.) Since EIFS is not an allowable façade cladding according to the B-7 standard E-12, a waiver is required to allow its use. Since the initial submission the applicant has reduced the amount of EIFS on the façade of Midtown Three. According to the applicant the façade now has a coverage of 39% EIFS (down from 60%), 43% metal siding and 18% windows visible from the public realm.*

*While that percentage is by necessity a guideline only, it appears to be met in MidtownOne and, possibly, MidtownFour. In MidtownThree, the previous plans fell short of the 50% goal, however the February 20, 2015 revisions have addressed this by reducing the EIFS and substituting metal siding in various locations. Staff therefore is able to support the materials waiver for this project based on the latest drawings.*

*As outlined above, staff does not support the use of EIFS on the ground level in locations visible from a public way. An approval at this time should include a condition that the storefronts should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the*

	<p><i>“predominant materials” list in Standard E-12</i></p>
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## **X. SITE PLAN REVIEW**

Site plan standards (sec. 14-526) are summarized below in *italics*, with City staff comment and analysis following in regular font.

### **A. Transportation Standards**

#### *1. Impact on Surrounding Street Systems*

The project is subject to a Traffic Movement Permit. The permit is intended to cover traffic generated for all four Midtown buildings. The current proposal is smaller than the original proposal thus projected traffic volumes are less than the originally approved project.

An updated traffic impact study has been submitted by FST (dated January 16, 2015) as well as further supplemental information on behalf of the applicant. See Exhibit 9

The report indicates the project is forecast to generate 316 trip ends and 392 trip ends during the AM and PM peak hours respectively. This trip generation is based on a 7 percent reduction taken for TDM measures.

The report forecasts that 79 vehicles will enter the site during the AM peak hour with 124 exiting for a total of 203 trips. During the PM peak hour 184 vehicles enter the site while 165 will exit the site for a total of 349 vehicles.

Sixty percent of the AM peak will be generated by housing while 60 percent of the PM peak is associated with retail.

Nine intersections were studied in the vicinity of the project site.

The report offers the following conclusions:

1. Optimization of signal timings can reduce the impacts of the site generated traffic at most of the study intersections.
2. A signal at the Marginal Way/Chestnut Street intersection is warranted.
3. Implementation of the above recommendations will mitigate the traffic impacts of midtown.

### **TRAFFIC MOVEMENT PERMIT**

Review Comments of Tom Errico, Traffic Review Consultant, regarding the Traffic Movement Permit are shown below. Mr. Errico's complete traffic review comments are shown on Attachment 2.

- The applicant has submitted a traffic study and supplemental information that is compliant with the Traffic Scoping Meeting requirements. The following summarizes the traffic recommendations for the project and therefore represent the requirements for issuance of a Traffic Movement Permit.
- The applicant will be required to install a traffic signal at the Marginal Way/Chestnut Street intersection. This intersection currently meets signal warrants and accordingly this improvement shall be installed prior to certificate of occupancy. It should be noted that the applicant will be responsible for the development of design plans and specifications for review and approval by the City.
- The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it current consist of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy. The applicant shall submit plans for review and approval.
- The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6 months following certificate of occupancy. The applicant shall submit plans for review and approval.
- The applicant shall make a \$24,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.
- The applicant shall make a \$26,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.

- The applicant shall make a \$21,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.
- Somerset Street/Pearl Street – The applicant has conducted a detailed evaluation of this installation of a four-way STOP sign traffic control condition and has determined that this type of control is warranted and from a traffic operations perspective performs at acceptable levels of service following project build-out. Accordingly, the applicant shall be responsible for the installation of a four-way STOP intersection.

Construction Management Plan: The applicant shall provide a detailed Construction Management Plan. The information provided by the applicant is insufficient. I would note that significant construction activity will be occurring along Marginal Way in 2016 and this project must account for this activity in the Plan.

2. Access and Circulation

a. *Site Access and Circulation.*

- (i) *The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site.*

Pedestrian Circulation

Brick sidewalks are proposed along the entire street frontage of the project. Sidewalk width varies depending on the location. In areas where there are significant grade issues such as the corner of Somerset/Pearl and Somerset/Elm the sidewalk is divided into two levels. Midtown One has a split sidewalk with a retaining wall/ramp in the middle with a 5 foot sidewalk along the curb and a 8 to 10 foot sidewalk along the building face. A sidewalk is provided along Pearl Street from Somerset to the project entrance and eventually connecting to the Bayside Trail. By the parking garage it is 14 feet while along Midtown Three 16 feet is provided except at the corner of Somerset and Elm where it is split by a retaining wall/ramp, the sidewalk is 10 feet along the building and 6 feet by the curb.

Along Elm Street there are several pedestrian challenges. The presence of ramp and stairways at the corner of Somerset and Elm squeezes pedestrian movement along the curb side section of the sidewalk and constrains a smooth transition for the future Bayside Trail extension that will cross Elm at Somerset. By Midtown Four, steps and retaining walls limit sidewalk width along the curb side of Elm Street which provides a connection to Back Cove and Marginal Way. Just a few feet to the north is an existing sidewalk “pinch point” by Trader Joes.

All these considerations point to addressing these issues as a whole given their close proximity and pending construction activity. Applicant has shifted the stairs by Midtown Three which provides a more rational travel path for pedestrians. The Elm Street pavement width is very wide so the curb alignment can be adjusted to increase sidewalk width. Accordingly the Trader Joes sidewalk can be widened by shifting the existing Elm Street curb alignment to the west. The City has agreed to fund this improvement. The most recent site plan shortens the parking area in front of Midtown Four since a new service driveway has been provided on the Trader Joes side of the building. To help address the limited public sidewalk width by Midtown Four, staff is suggesting that the parking spaces shown in front of Midtown Four be shifted to the south freeing up space for pedestrians in front of the building. Improvements to Elm Street will require MDOT approval since MDOT has retained control over Elm Street which the City is in the process of pursuing. Also the stairs in front of Midtown Four could be shifted in a parallel configuration with Elm Street further freeing space for public sidewalk circulation. This concept is further discussed in the Bayside Trail section below. Attachment 12 is a revision sketch provided by DPS to the applicant that depicts the desired modifications to this section of Elm Street. There is a condition of approval proposed under the site plan transportation standards to require the applicant to revise the plans in this area to conform to the City funded improvements adjacent to Trader Joe's, and to relocate the parking pocket.

The plan shows a bus shelter in front of Midtown Three on Somerset Street. The design of the bus shelter should be submitted. Staff is suggesting final location of the shelter be subject to Staff review and approval as it may be desirable to make some minor streetscape revisions in this area to improve pedestrian circulation such as shifting or consolidating a landscaped planter with a filterra unit.

Bayside Trail – The project accommodates connectivity to the Bayside Trail at several locations. A sidewalk along the easterly side of Midtown One along Pearl Street connects to the trail. A 30 foot wide mews between Midtown One and Midtown Two provides a further connection to the trail from Somerset Street. Previously the applicant had not shown connectivity in the block between Chestnut and Elm through Midtown Three. Applicant is now proposing an internal connection to trail through Midtown Three, the details of which will need to be further refined.

As in the previous plan, in order to accommodate the Midtown building footprints between Pearl and Chestnut the applicant proposes to shift the trail a few feet to the north. The trail will retain the present minimum width of 16 feet throughout the midtown project. A cross section of the trail (sheet L42) indicates a 16 foot wide trail with a 7'6" retail entry zone between the trail and the parking garage. A 5 foot landscape zone on the north side includes the trail lights and a retaining wall adjacent to the 161 Marginal Way property. The grade of the trail will be raised in this area so that there will be at grade access to the mews. The plan should have an affirmative statement that the applicant shall be responsible for all costs associated with the reconstruction of the Bayside Trail.

As discussed above staff is suggesting the proposed curb side parking on Elm Street by Midtown Four be shifted to the south in order to open up space in front of the building for a wider pedestrian sidewalk. In the general area where the parking spaces could be relocated, two underground transformers are proposed which will likely impact one or two existing street trees.

Adjacent to this area is a triangular shaped landscaped area which is a “mini-gateway” for the Bayside Trail. With these various infrastructure improvements being proposed including the proximity of Midtown Four, it is suggested that the applicant submit a revised site plan for this area so that circulation and streetscape needs can be more adequately addressed including pedestrian/bicycle movements for the Bayside Trail as well as pedestrians circulating from Midtown Four.

#### Vehicle Circulation

On-site vehicle circulation is limited to a driveway for the parking garage on Somerset Street and a service driveway for Midtown Four on Elm Street.

The developer is extending Pearl Street along the face of the residential building which provides vehicle access to a pedestrian entrance near the northerly end of the building. A vehicle drop-off area has been incorporated by the entrance which allows vehicles to turnaround and head back to Somerset Street. Pearl Street ends just short of the trail. A connection from Pearl Street to the trail is shown on the plan providing a connection for pedestrians, bicycles and CMP vehicles to service project transformers.

The latest plan shows a service truck delivery driveway on Elm Street for Midtown Four. Midtown Four is located along a sharp curve which poses challenges in terms of on-site circulation. Limiting this driveway for service deliveries only while reducing the number of on-street parking spaces balances the need for service deliveries and short term parking while addressing roadway safety concerns.

#### Review Comments of Tom Errico:

- It is requested that the applicant incorporate special pavement surface treatment in the area approaching the parking garage entry gates for added traction during winter periods given the slope of this area. Specifications shall be provided to the city for review and approval. In addition, the applicant shall be responsible for development of a parking operations management plan that will review traffic flow at the entry and exit gates to ensure the system is fully utilized from a capacity perspective and that winter operations are acceptable. The applicant shall perform a monitoring survey of operations that shall be reported 12 months after opening and annually thereafter. The applicant will be responsible for implementing improvements that respond to full usage of gate capacity or winter issues, if problems are identified.
- The revised gate layout has a transition area that entering the garage that is short and vehicles exiting the garage will block entry movement. The applicant shall revise the layout to prevent this blocking condition. [Updated Comment from Mr. Errico (Feb. 20, 2015) indicates “the applicant has revised the plan to address this comment, but given that blockage may be a problem, I would suggest that the applicant conduct a monitoring study both when the project opens and after the garage is fully occupied and be responsible for revising the entry layout if blockage problems are identified”.]



(ii) *Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.*

- Revised garage plan notes a ramp of 6% at the back of the sidewalk. I am concerned about this slope and potential impact to pedestrian safety on the sidewalk. The applicant should revise the plans to address this safety concern.
- The applicant has conducted the requested analysis and has determined that the parking garage driveway at Somerset Street will operate at an acceptable level of service when fully occupied. I would note that while the delay is not expected to be significant, vehicle queues of in excess of 250 feet (12 vehicles) are projected leaving the garage during peak conditions and will back up through the gate system.

Vehicle access on Somerset Street is limited to one driveway for the parking garages and access from Pearl Street extension. The Elm Street driveway is intended to function for service deliveries only.

Review Comments of Tom Errico:

- A detailed traffic operation analysis shall be provided at the garage entrance onto Somerset Street given that the size of the garage has increased thus traffic volumes entering and exiting would also increase during peak hours. The applicant has conducted the requested analysis and has determined that the parking garage driveway at Somerset Street will operate at an acceptable level of service when fully occupied.

See also comments on Elm Street service delivery driveway in Loading and Servicing section below:

(iii) *Drive up features*

There are no drive up features on the site except an internal gate within the parking garages.

b. *Loading and Servicing*

Service deliveries for Midtown buildings (residential and retail uses) generally takes place along the street in parking spaces or designated delivery zones (if so designated) as there is no room onsite for such activities. The exception is the residential building in midtown One which has a drop-off area along Pearl Street extension and an internal loading area (total length of the bay is about 35 feet) for smaller trucks. For Midtown Three there are two doors along Somerset Street one for trash/recycling with a second for tenant move-ins. Trucks will stay at the

curb line with equipment wheeled back and forth between the doors and the truck.

As recommended by staff, the applicant has created a new service driveway for Midtown Four on the Trader Joes side of the building. This is intended to accommodate single unit truck activity for deliveries, trash removal and other appropriate small truck deliveries. This avoids the concern of service trucks wheeling trash/recycling containers (or move-in activity) over the Bayside Trail from curb side to the building. This earlier design would have posed conflicts with trail activity and degradation of the trail surface and environment.

Since a new service driveway has been created, the applicant has decreased the length of curb side parking along Elm Street.

Review Comments of Tom Errico:

- Elm Street has a very different transportation function as compared to Somerset Street and thus street cross-sectional elements must be carefully reviewed. I would further note that the horizontal curve on Elm Street also complicates traffic safety in this area.
- The revised plan included a new driveway (on the northerly side of Trader Joes) that is intended for single-unit trucks and I find it to be acceptable. I would suggest that the on-street parking bay be shifted to the south so it does not constrain the sidewalk in front of the building. I would also suggest that the sidewalk and curbing be implemented to match the City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joes building.

c. Sidewalks

*(i/ii) All proposed developments shall provide sidewalks along all frontages in accordance with Sections 14-498 and 14-499 of the City Code and replace substandard sidewalks in substandard condition.*

Applicant proposes to construct new brick sidewalks along the entire street project frontage of Somerset, Chestnut and Elm. A brick sidewalk will be installed along the building side of Pearl Street extension though technically not a city street at this point.

Review Comments of Bruce Hyman:

In numerous locations, the project as currently designed does not meet City Technical Manual standards for ADA-compliance and does not meet the streetscape design and pedestrian accessibility standards as described by the B-7

Design Principles and Standards. See Attachment 4 for Mr. Hyman’s complete comments.

Specifics include:

- The ramp and landing system on the NE corner of Elm Street-Somerset significantly interferes with pedestrians walking along Elm Street and is not ADA-compliant. The tree in front of this ramp and landing area hinders the pedestrian access route along the street and should be relocated or eliminated. Comment has been addressed although the configuration remains non-ideal.
- The section of sidewalk along Elm Street between Midtown 3 and Midtown 4 does not provide a direct accessible pedestrian route (as depicted on Sheet C-2.0B). Pedestrians should not need to divert along the Bayside Trail for an ADA-compliant route on Elm Street.
- The configuration of several curb ramps are not ADA-compliant; they are not aligned perpendicular to the flush curb portion of the ramp.
- Portions of the accessible pedestrian route depicted on C-2.0B are not ADA-compliant due to reliance on crossing the flare of a curb ramp.
  - The ADA-compliant accessible pedestrian route relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances should be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc). With the newly reconfigured sidewalk, an updated graphic (C-2.0B) illustrating the ADA-compliant pedestrian access routes should be prepared. It is not possible to know if this comment has been addressed.
- The configuration of the sidewalk with the indented parking area in front of Midtown 4 will degrade the pedestrian environment along the section of sidewalk. A re-design of this Elm Street street frontage is desired to better comply with the B-7 Design Principles and Standards. This has been somewhat addressed see Tom Errico’s comments.

*(iii) Continuous internal walkways shall be provided between existing or planned public sidewalks adjacent to the site, transit stops and street crossings and primary building entrances on the site.*

The Bayside Trail abuts the project on the northerly side of the property. Internal connections between the trail and Somerset Street are available from the mews and Pearl Street extension. Sidewalks are also planned along Chestnut and Elm to the Bayside Trail. Applicant is planning internal access through the Midtown Three retail space from Somerset

Street to the trail. All primary building entrances are adjacent to public sidewalks. A bus stop is proposed in front of Midtown Three within a public sidewalk.

Review Comments of Tom Errico:

- The plans are not clear as to the construction of the sidewalk on the south side of Somerset Street. The applicant is suggesting that this be adjusted during final design and thus a condition of approval should be included.
- Applicant has been requested to detail pedestrian routings between generators and the parking garage and note the adequacy of facilities for providing safe and direct accommodations. Applicant has provided a graphic illustrating the routings but applicant should provide information that specifies for all routings, compliant cross slopes are provided, including driveway aprons. Applicant has requested that this information be provided as a condition of approval.

### 3. Public Transit Access

A bus shelter has been shown on the plan in front of Midtown Three near the location of an existing Metro bus stop. The exact location of the bus shelter requires further staff review and approval.

Review Comments of Tom Errico:

- The revised bus shelter location should be reviewed and approved by METRO. The City is requesting an in-line Transit Stop on Somerset Street and coordination with METRO is required to finalize details.

Review Comments of Bruce Hyman:

- The proposed bus stop location does not (per drawing C-2.0B) provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location. A note has been added to the plan but no other information/design changes made.

### 4. Parking

#### a. *Location and Required Number of Vehicle Parking Spaces*

##### (i) *Off-street parking*

According to the most recent applicant submission, the Midtown Two parking garage will accommodate 801 spaces although a figure of 828 spaces was given on the prior submission. As a development of over

50,000 square feet, the Planning Board establishes the number of required parking spaces based on the applicant's analysis as reviewed by the City Parking Manager and the consulting traffic engineer. With the Midtown parking garage, the project appears to have a surplus of parking spaces for the 445 residential units and the commercial space, but this needs to be formally documented. The final parking demand is dependent upon which commercial users are secured for the space, so the management of the parking will be part of the final TDM.

Review Comments of Tom Errico:

The applicant has not provided a parking demand analysis for the Midtown project (residential and retail space).

(ii) *Where a parking study is required, the City encourages Transportation Demand Management (TDM) strategies to be employed.*

A draft TDM plan has been submitted. See Attachment C-D.

(iii) *Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.*

The purpose of the parking garage is to serve the Midtown development as well as surrounding businesses and the general public. The parking garage is intended to be a parking resource for the area so as to avoid surface parking which would undermine the city policy of a dense urban neighborhood in Bayside. Two hundred spaces will be assigned for public turnover parking per the City/Federated Agreement.

(iv) *Parking spaces and aisles shall meet applicable dimensional standards as detailed in Section 1 of the Technical Manual.*

The parking garage has a minimum parking aisle width of 24 feet. The primary parking space dimension within the parking garage is 9ft by 18ft. Compact spaces (9ft by 16ft) totaling 109 spaces are provided on all upper floors of the garage which is within the compact space standard of 20 percent for parking facilities. The applicable dimensional standards required by this section have been met.

Review Comments of Tom Errico:

- Project meets the standard. Compact parking spaces exceed the city's dimensional standards which is acceptable.

- (v) *Parking lots, except for temporary lots to be used for less than one year, shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion.*

Not applicable.

*b. Location and Required Number of Bicycle Parking Spaces:*

Attachment Architectural Plans A101A indicates that 192 bike storage spaces will be provided within the parking garage. Also if cars are parked adjacent to the bike storage areas, it will be difficult to gain access. While this is a significant number unfortunately they are located on floors 2 through 7 (32 per floor) which is not the most convenient scenario for bicyclists. Previous plans had a bike storage room on the first floor. Bike racks are distributed at various locations outside Midtown buildings.

Bruce Hyman Review:

- The exterior bike rack locations are not designed with adequate spacing between the racks or with adequate spacing from the street or other structures.
  - The bike racks shown on Attachment Landscape Plans L4.0 (the Olympia Rack) do not meet the Technical Manual standard for bicycle racks for installation within the public right of way. These racks should be replaced with either the Bike Hitch or Downtown rack.
  - Bicycle Parking within the Parking Garage: A detailed layout should be provided to ensure the functionality and accessibility to the clusters of 8 bike racks, with 2 clusters per level. It does not appear that the racks will be fully accessible when cars are parked immediately adjacent to the clusters.

Further information should be provided to clarify the number and location of bike parking spaces as well as the project's compliance with the bike parking standard.

*c. Motorcycle and Scooter Parking.*

Six motor cycle/scooter spaces are proposed within the parking garage. The submitted TDM plan suggests 20 spaces allocated for motor cycle/scooter parking.

*d. Snow Storage.*

Submission states: "The applicant intends to contract with a local snow

removal/grounds maintenance operator who will be responsible to conduct snow removal in accordance with typical protocols in the City of Portland”.

Specific information has not been provided by the applicant regarding removal of snow from the top floor of the parking garage. This needs to be clarified. The City’s Parking Manager, John Peverada, has expressed concerns regarding structural issues that may arise if snow is stored on top of parking garages.

Attachment Plans (C.2.0) states “snow on parking decks to be plowed and stored in designated areas of the upper level on the garage. Snow melt equipment may be installed, refer to parking garage drawings”. The specifics of snow removal from the parking garage should be clarified particularly in avoiding snow loads that might jeopardize the structural integrity of the parking garage.

Also, on sheet C.2.0, in an area within the Bayside Trail corridor near Midtown One, a note states “snow storage to be removed by Federated”. The subdivision recording plat, note 2A states “an easement for snow removal activities in a location over lot 4 and lot 9”. Lots 4 and 9 constitute the Bayside Trail corridor. The notes referred to in this paragraph should be removed from the plans as staff does not support using the trail corridor for private snow storage.

5. *Transportation Demand Management (TDM):*

A TDM plan has been submitted. See Attachment C-D.

Review Comment of Tom Errico:

- The submitted TDM is draft and needs to be finalized. An annual monitoring program is required and thus other strategies will be reviewed on a year-by-year basis.

Review Comments of Bruce Hyman:

- Minimum bicycle parking is a site plan requirement according to Section 14-526 of the Land Use Code. The TDM plan may incorporate additional bicycle parking, bicycle wayfinding, and/or covered parking to further encourage bicycle use.
- While the Midtown project technically meets the minimum requirements for the quantity of bicycle parking, it does not meet the requirement that the amount and distribution of parking to help attain its stated TDM objective to encourage bicycling. Specifically, there is no long-term resident bicycle parking being provided in Midtown 1, 3 or 4.

All long-term resident bicycle parking is consolidated within the parking garage. For instance, the long-term resident bicycle parking for residents of Midtown 4 is approximately 800 feet from the bicycle parking in the parking garage (Midtown 2). The layout of the bike racks and adjacent parking needs to be examined to ensure that bike racks are accessible – it does not appear to be the case.

**B. Environmental Quality Standards**

*1. Preservation of Significant Natural Features:*

- a. Significant natural features by incorporating them into site design. Significant natural features shall be defined as:*

Past industrial activities (rail yard, scrap yard) of this site including the filling of Back Cove removed significant natural resources many years ago.

- (i) Populations of trees and plants listed on the Official List of Endangered and Threatened Plants in Maine, published by the Maine Natural Areas Program.*

The site is void of any significant vegetation.

- (ii) Habitat for species appearing on the official state or federal list of endangered or threatened animal species;*

The Maine Department of Inland Fisheries and Wildlife states their records “indicate no occurrence of rare, threatened, or endangered animal species within the project area”. The US Department of Interior indicates that no federally listed or proposed threatened and endangered species under the jurisdiction of the US Fish and Wildlife Service are known to this project area, with the exception of occasional transit eagles”. See Exhibit 16.

- (iii) High and moderate value waterfowl and wading bird habitat including nesting and feeding areas, as defined by the Department of Inland Fisheries and Wildlife;*

This site does not have these characteristics.

- (iv) Casco Bay Island Aquifers*

Not applicable.



(v) *Waterbodies*

Not applicable.

2. *Landscaping and Landscape Preservation*

a. *Landscape Preservation*

- (i) Site development shall be designed to incorporate, and limit disturbance to or removal of existing trees, as specified below. Preserved trees may be counted towards site landscaping requirements.
  - o Review Comment of Jeff Tarling:

Landscape proposes to remove and replace existing trees. The site does not have any “mature” trees on the site
- (ii) All development subject to zoning setbacks shall preserve a minimum of 30% of existing trees ten (10) inches DBH or greater within the required setback area unless trees are non-native invasive species, as identified in Section 4 of the Technical Manual, or are deemed unsalvageable by the Portland City Arborist or their designee.
  - o Review Comment: No trees of 10” DBH are on site.
- (iii) Protection during Construction: The site plan shall include adequate measures to protect vegetation to be preserved from construction impacts, in accordance with the tree preservation standards listed in Section 4 of the Technical Manual.
  - o Review Comment of Jeff Tarling:

Landscape plan proposes to remove & replace certain existing trees. The plan should show all “tree save” areas and protection areas and protection measures. This includes physical barriers/construction fencing, no construction equipment or storage near root zones. Web links for Tree Save measures referenced in memo.

Existing trees to be relocated – The project landscape contractor shall properly prepare trees to be relocated to be made available to the City of Portland for reuse. This includes digging and preparing the rootball with “balled and burlap” standard. Trees should be cared for on-site as needed for an agreed upon period of time, this includes watering and site protection in safe location.
- (iv) Waiver: Where the applicant can demonstrate that preservation of existing vegetation would compromise development of the site, the Reviewing Authority may permit the substitution of replacement landscaping in other areas of the site, and/or a financial contribution to the City of Portland

Tree Fund for an amount proportionate to the cost of trees removed, as described below: N/A

- (a) For each tree required to be preserved that is removed and is greater than 16” in caliper DBH, two (2) replacement trees of a species identified on the City of Portland Recommended Tree List shall be planted on the site as detailed in Section 4 of the Technical Manual).

Review: N/A

- (b) For each tree required to be preserved that is removed and is between ten (10) and sixteen (16) inch DBH, one (1) replacement tree of a species identified on the City of Portland Recommended Tree List shall be planted on the site as detailed in Section 4 of the Technical Manual).

Review: N/A

- (c) Where the planting of replacement trees on the site is not feasible, the applicant shall contribute an amount proportionate to the cost of required replacement trees to the City of Portland Tree Fund, as detailed in Section 4 of the Technical Manual.

Review: N/A

- (v) In addition to the provisions of this section, all development within the Shoreland Zone shall meet the requirements of Division 26, Shoreland Regulations.

Review: N/A

*b. Site Landscaping*

- (i) Landscaped Buffers:

- (a) Screening. Loading and servicing areas, dumpsters, storage areas and utility structures, except for renewable energy systems, shall be screened from view from public sidewalks, streets and adjacent properties by dense evergreen landscaping, fencing, masonry wall building walls, or a combination thereof.

- o Review Comment of Jeff Tarling:

The proposed landscape plan shows adequate buffering with the exception of the trail side of Midtown Three. The trail side of Midtown Three shows a row of 26 Pagoda Dogwood, shown as C.ALT (26) on the landscape sheet, these should be upgraded to a larger tree species. This might include: Yellow Birch, River Birch, Red Maple, Swamp White Oak (examples) planted in fewer

numbers then the 26 Dog Woods, perhaps in groves. This request is to improve the scale as the Pagoda Dogwoods mature is a low 10' in height. The City Arborist and Planning Authority is willing to work with the project team to find a compromise on the revised tree types, numbers and spacing for the trail section of Midtown Three. Also due to the number of Cornus or Dogwood species in this area planted prior to the project an alternate species is needed to add plant diversity and long term sustainability to avoid mono-culture plantings.

- (b) Understory Plantings. All development subject to required zoning setbacks shall include a minimum of six (6) shrubs per forty five (45) linear feet of all frontages as measured along the property line. A shrub shall be defined as one shrub, one ornamental grass, and/or 3 perennials. Required shrubs may be installed anywhere on the site, including a green roof, if proposed, and may be planted in any arrangement. Existing vegetation to be preserved on the site may be counted towards this requirement as detailed in Section 4 of the Technical Manual.

- o Review Comment of Jeff Tarling:

Earlier review comment mentions that plants should meet or exceed minimum sizes. All shrubs should be minimum 5 gal versus the small residential scale 3 gal size. Green wall vines shall be minimum 5 gal. minimum. All perennials should be 3 gal minimum size.

- (c) Industrial and Commercial Zones. For non-residential development proposed in an industrial or commercial zone subject to required zoning setbacks and abutting a residential zone, an evergreen, densely landscaped buffer of not less than ten (10) ft wide and six (6) ft tall is required along the side abutting the residential zone. Where site constraints prevent such a buffer from being established, the width of the landscaped buffer may be reduced but shall include architectural quality fencing of not less than six (6) ft tall and a mix of evergreen and deciduous trees spaced no further than twenty (20) ft apart along the abutting the residential zone.

Review: N/A

- (d) Buffer from Surrounding Development. All residential development shall provide and/or preserve evergreen vegetated buffers where necessary to buffer the development from detrimental impacts of existing surrounding development.

- o Jeff Tarling Review Comment:

The proposed landscape plan meets this standard provided tree & plant sizes meet standards with upgrade of pot sizes to 5 gallon for shrubs and 3 gallon for all perennials, grasses and vines.

(ii) Parking Lot Landscaping:

- (a) Developments with five (5) or more parking spaces shall include at least two (2) trees (or one (1) tree and three (3) shrubs) per five (5) parking spaces planted in landscaped islands to screen shade and break up parking. Trees and shrubs in parking lots may be in informal groups, straight rows, or concentrated in clusters as detailed in Section 4 of the Technical Manual.

Review Comment: Project proposes indoor parking garage.

- (b) Landscaped islands shall be distributed so that uninterrupted pavement does not exceed forty (40) parking spaces.

Review: N/A

- (c) Landscaped islands shall be curbed and a minimum of eight (8) feet in width, not including curbing. The incorporation of bio retention into landscaped islands is strongly encouraged.

Review Comment: The project does include bio retention features all of which should be maintained by the project including those within the public way but serves the proposed development. This includes the required maintenance and reporting aspect. (this is likely covered in the Engineering Review comments)

- (d) Vehicle display lots shall be subject to the parking lot landscaping standards of this section.

Review: N/A

- (e) Waiver: Where site constraints prevent implementation of all or a portion of required parking lot landscaping, as determined by the Reviewing Authority, the requirements may be all or partially waived and the applicant shall contribute an amount proportionate to the cost of required parking lot trees to the City of Portland Tree Fund.

Review: N/A

(iii) Street Trees:

- (a) All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees shall be planted in the right of way, as specified in Section 4 of the Technical Manual. Street trees shall be of a species identified on

the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee.

- Review Comments of Jeff Tarling:

The proposed landscape plan appears to meet the standard. Trees must be from the approved list, no Callery Pear or Lindens.

The raised granite planter for the street trees should change from saw-cut to “Thermal Top”.

- (b) Waiver. Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the planting of street trees in the front yard, within ten feet of the property line. Existing preserved healthy trees that are six (6) inches or more in caliper and are on the site within ten (10) feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees.

- Jeff Tarling Review Comment:

Applicant requests a waiver from the street tree requirement of one tree for per residential unit (445 units). Applicant is proposing 97 trees along the project street frontage including the Bayside Trail not including replaced trees along Chestnut. Applicant is proposing 29 granite planters along street frontages which exceeds the fee in lieu of the additional trees. Mr. Tarling recommends granting the waiver subject to a financial contribution to street tree fund of \$8,000, which is the difference between the cost for the required number of trees and the cost of the 29 raised planters. See Section VIII of this report Technical and Design Waiver Review for more details.

### 3. *Water Quality, Stormwater Management and Erosion Control:*

The proposed development is subject to the requirements of the city’s Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. David Senus (Development Review Consultant) has confirmed that the applicant’s submission meets the standards and requirements of these regulations. Mr. Senus’s review comments later in this section and in their entirety on Attachment 5.

Stormwater Management Overview - Although new buildings and paving treatments will be added to the site, the impervious surface increase is considered minimal if any, given the compact soil conditions from the prior scrap yard and rail yard activities. The site is

presently considered to be 95% impervious. Stormwater calculations were provided as part of the submitted Stormwater Management Report. See Exhibit 13. Stormwater detention is not required because of the existing high impervious surface coverage, capacity of the separated storm drains in the vicinity of the site and its close location to a stormwater outfall in Back Cove.

For the easterly end of the site, the project will tie into storm drain pipes (18 inch to 30 inch) in Somerset Street which convey stormwater to Franklin Street. At Franklin Street the pipe enlarges to 36 inches and later connects into a 72 inch pipe which outfalls directly into Back Cove downstream of the Franklin Street interceptor and tide gate structure. An 18 inch storm drain is also located along the Bayside Trail.

The westerly side of the site is served by a storm drain in Somerset Street which flows to Elm Street and then down to Marginal Way to a 60 inch line that discharges to Back Cove. Staff is recommending the existing 12 inch storm drain in Elm Street be replaced with a 24 inch line to help address drainage concerns expressed by the Noyes family regarding the elevation of Somerset Street.

Water Quality Overview -. Stormwater treatment for the Midtown site is accomplished in several ways. Tree-Box filters (Filterra unit) will be sited within the sidewalk area along Somerset Street (8), Chestnut Street (2) and Pearl Street ext (1) with an accompanying underground storage system. By locating the units within the street right of way and treating roadway stormwater, applicant receives credit for required on site stormwater treatment. Roof run-off from Midtown Three however will flow underground to Filterra units in Somerset Street. From the surface, the units measure 4ft by 6ft and will have small plantings in them.

An underground storm treatment unit within the Midtown plaza treats stormwater from that roof as well as the plaza and the roof of the parking garage.

An oil water separator for the internal garage floors of Midtown Two (1,000 gallon capacity) will be discharged into the Somerset Street sewer.

Stormwater associated with Midtown Four will be treated by an underground StormTreat tank which is located behind the building.

An inspection and maintenance manual for stormwater management and related facilities has been submitted. See Exhibit 13.

Sanitary Waste Overview - The project will connect into the existing 36 inch sanitary sewer in Somerset Street. Grease traps (1,000 gallon capacity) will be installed for each building. A memo (Attachment C-C) from Public Services states "the existing thirty-six, fifty-four inch and sixty-six inch reinforced concrete sewer pipes, located in Somerset Street, have adequate capacity to transport, while the Portland Water District sewage facility...has adequate

capacity to treat, the total anticipated increase in wastewater flows of 171,110 GPD, from the proposed mixed use development towers.”

Water Quality, Stormwater Management and Erosion Control (sec. 14-526(b)(3))

a. *All development must demonstrate that the proposed site improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The stormwater management plan must demonstrate the following:*

(i) *Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;*

Review Comment of David Senus:

- Standard met. The Applicant’s design incorporates numerous and appropriately located drainage inlets to collect and convey stormwater runoff draining from the project site and from adjacent lands abutting the project site into the municipal storm drain system so as not to create ponding on, or flooding of, adjacent lots. Other review comments are highlighted below.
- Bayside Trail - The following comments are specific to the proposed grading and drainage concept for the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50; refer to sheets C-3.0 and C-7.12:
  - i. The drainage concept, as proposed, provides an adequate means of collecting and conveying stormwater runoff from the midtown property, City property (Bayside Trail), and adjacent properties north of the Bayside Trail.
  - ii. The face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements will be required from the adjacent property owner to complete the work as proposed, as construction activity will be required on adjacent property to install the retaining wall and the associated grading.
- Elm Street Storm Drain - The Applicant, City, and adjacent landowners have acknowledged that drainage issues exist during certain storm events along Somerset Street, specifically in and around a low point at the Somerset Street / Elm Street intersection. A proposal has been discussed between the City and the Applicant to install a 24” storm drain pipe from the Somerset / Elm intersection to an existing 24” storm drain pipe in Elm Street, near Trader Joe’s. We recommend moving forward with the proposal to install a 24” storm drain pipe at this location. It is our

understanding that the City has agreed to pay for the installation of this pipe, and that the Applicant will provide design plans.

- Somerset Street Design - To address concerns raised by the Noyes family, owners of the properties located on the south / east side of Somerset Street between Elm and Pearl Streets, the Applicant has prepared Figure 1, *Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. See Attachment Civil Plans C-15. We have reviewed this figure with input from the City's Planning and Public Services Engineering Departments, and we recommend approving the design concepts presented on this figure. The civil engineering plans submitted by the Applicant do not currently reflect the layout, grading, drainage, and materials that are presented on Figure 1 in the Somerset Street Right-of-Way. We recommend including a condition of approval requiring that the Applicant design the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for review prior to construction.
  
- Plan Note: Numerous design plans within the Applicant's most recent submittal include a note on Somerset Street that reads "*midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND CONSTRUCTION SHALL BE COMPLETED BY OTHERS*". The aforementioned recommended condition of approval (see Comment #6) will require that the applicant design and submit Somerset Street plans for review and approval. We also understand that the City and the Applicant have entered into a cost sharing agreement which requires the Applicant to construct the improvements proposed within Somerset Street. This note should be struck from future submittals.
  - (ii) *Any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;*

Review Comment of David Senus:

Standard met. The Applicant's design does not propose to increase the volume or rate of stormwater runoff onto adjacent lots.

- (iii) *Any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the City's property; and*



Review Comment of David Senus:

Standard met. The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.

- (iv) *Any increase in volume or rate of stormwater draining from the lot into the City's separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.*

Review Comment of David Senus:

Standard met. The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.

- b. *All development, except Level I minor residential development, shall comply with the standards of Section 5 of the Technical Manual including basic, general and flooding standards, as applicable, to prevent and control the release of pollutants to waterbodies, watercourses, wetlands and groundwater, and reduce adverse impacts associated with increases or changes in flow, soil erosion and sedimentation.*

Review Comment of David Senus:

Standard met for Basic & General Standards; Waiver requested from Flooding Standard.

- c. *All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to Maine DEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.*

Review: Standard not applicable. The project is not located in the watershed of an Urban Impaired Stream.

- d. *Level I: minor residential development shall comply with basic erosion control standards, as described in Section 6 of the City of Portland Technical Manual.*

Review: Standard not applicable. The project is not a Level I minor residential development.

- e. *Development shall not pose a risk of groundwater contamination either during or post-construction, as described in Sections 5 and 9 of the Technical Manual.*

Review Comment of David Senus:

Standard met. The Applicant proposes methods for stormwater management that are designed in accordance with Section 5 of the Technical Manual to limit risk to groundwater contamination. Project is located in area of City serviced by PWD drinking water distribution system, therefore the water supply standards of Section 9 are not applicable.

- f. *Development shall provide for adequate and sanitary disposal of sewage as described in Section 2 of the Technical Manual.*

Review Comment of David Senus:

Standard met. The design incorporates acceptable means of connecting the project's sanitary sewer systems to the City's combined sewer system.

3. *Water Quality, Stormwater Management and Erosion Control:*

- a. *All development must demonstrate that the proposed site improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The stormwater management plan must demonstrate the following:*

- (i) *Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;*

Review Comment of David Senus:

Standard met. The Applicant's design incorporates numerous and appropriately located drainage inlets to collect and convey stormwater runoff draining from the project site and from adjacent lands abutting the project site into the municipal storm drain system so as not to create ponding on, or flooding of, adjacent lots.

- (ii) *Any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;*

Review Comment of David Senus:

Standard met. The Applicant's design does not propose to increase the volume or rate of stormwater runoff onto adjacent lots.

- (iii) *Any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the*

*lot being improved has the legal right to increase the flow of stormwater onto the City's property; and*

Review Comment of David Senus: Standard met. The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.

- (iv) *Any increase in volume or rate of stormwater draining from the lot into the City's separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.*

Review Comment of David Senus: Standard met. The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.

- b. *All development, except Level I minor residential development, shall comply with the standards of Section 5 of the Technical Manual including basic, general and flooding standards, as applicable, to prevent and control the release of pollutants to waterbodies, watercourses, wetlands and groundwater, and reduce adverse impacts associated with increases or changes in flow, soil erosion and sedimentation.*

Review Comment of David Senus:

Standard met for Basic & General Standards; Waiver requested from Flooding Standard.

- c. *All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to Maine DEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.*

Review: Standard not applicable. The project is not located in the watershed of an Urban Impaired Stream.

- d. *Level I: minor residential development shall comply with basic erosion control standards, as described in Section 6 of the City of Portland Technical Manual.*

Review: Standard not applicable. The project is not a Level I minor residential development.

- e. *Development shall not pose a risk of groundwater contamination either during or post-construction, as described in Sections 5 and 9 of the Technical Manual.*

Review Comment of David Senus:

Standard met. The Applicant proposes methods for stormwater management that are designed in accordance with Section 5 of the Technical Manual to limit risk to groundwater contamination. Project is located in area of City serviced by PWD drinking water distribution system, therefore the water supply standards of Section 9 are not applicable.

- f. *Development shall provide for adequate and sanitary disposal of sewage as described in Section 2 of the Technical Manual.*

Review Comment of David Senus:

Standard met. The design incorporates acceptable means of connecting the project's sanitary sewer systems to the City's combined sewer system.

C. **Public Infrastructure and Community Safety Standards**

1. *Consistency with City Master Plans:*

- a. *The proposal appears generally consistent with applicable approved master plans such as A New Vision For Bayside.*

See Attachment 1 for discussion of the Midtown's consistency with A New Vision For Bayside.

2. *Public Safety and Fire Prevention:*

- a. *The development shall incorporate the following public safety principles for Crime Prevention through Environmental Design (CPTED) into site design to enhance the security of public and private spaces and to reduce the potential for crime.*

- (i) *Natural surveillance that promotes visibility of public spaces and areas.*

All of the principle open spaces on the development are visible with clear lines of site from multiple vantage points and/or buildings with windows. The first floor retail and upper story residential units have an abundance of glazing which provides the opportunity for significant observation of outdoor activities.

The lighting plan shows a well distributed level of lighting over the public and private circulation areas of the project. Lighting issues are additionally addressed under site plan standard 14-526 (d)6. below.

- (ii) *Access control that promotes authorized and/or appropriate access to the site.*

The circulation areas around the parking garage and residential building

are accessible to the public but given the density of development and high degree of glazing found on the first floor retail and the residential tower there will be plenty of “eyes” observing the comings and goings on the site.

(iii) *Territorial reinforcement that promotes a sense of ownership and responsibility through environmental design.*

The mews and plaza are linked to the first floor retail and residential tower because of their proximity and design which promotes territorial reinforcement. Likewise these spaces are also visually and physically linked to the Bayside Trail. Pedestrian friendly first floor retail with large windows and the possibility of outside cafes also reinforces this feeling.

b. *Provide adequate emergency vehicle access to the site in accordance with City standards for street widths and turning radii, as described in Section 1 of the Technical Manual.*

The nearby street network is adequate for emergency vehicle access. The initial driveway plan of Pearl Street extension was widened at the request of the Fire Department. The first part of Pearl St is 28 feet wide while the remainder varies in width but generally there is at least 26 feet of pavement width when taking into account the surface area of the drop-off area.

A new service driveway has been added on the Traders Joes side of Midtown Four which provides a second means of access to the building as required by the Fire Dept. Comments from the Fire Dept. indicate the driveway should be widened from 15 feet to a minimum of 16 feet for fire service access.

c. *Be consistent with City public safety standards, Section 3 of the City of Portland Technical Manual, including but not limited to availability and adequacy of water supply and proximity of fire hydrants to structures.*

Comments from Acting Assistant Chief Keith Gautreau and Lt. Craig Messinger are shown as Attachment 8. They have concluded the site plan is acceptable provided their review comments are addressed. A summary of the review comments is provided below.

- A Dumpster is proposed to be placed inside of Building #3 for the trash holding area. Although this building will be provided with a full sprinkler system, we are requiring a two hour separation between this space and the remainder of the building.
- Mid-Town building #4 site plan has been updated to provide a service driveway on the Trader Joes side of the building which

provides a second means of access as required by fire access standards. The new service driveway needs to be widened from 15 feet to a minimum of 16 feet. Also signage and striping on the driveway shall be required indicating Fire Lane NO Parking.

- At this point, the PFD has not seen any current plans for Fire Alarm and/or Sprinkler systems.
- During construction, the PFD will require the following:  
Per NFPA 1, 16.3.4, Access for firefighting equipment.  
Per NFPA 1, 16.4.3, Fire Protection during construction. (Water supply )  
Per NFPA 16.4.3.3.2, Standpipe Installations in Buildings under construction.  
Per NFPA 16.7.1.6, Fire Extinguishers

Applicant has submitted supplemental information prepared by Fire Risk Assessment Inc. to evaluate the fire protection features of the general layout of the development. See Exhibit 6.

Each of the four buildings has a fire hydrant in front of it. The Pearl Street hydrant was tested in 2006 and had a static pressure of 112 psi and a residual pressure of 108 psi with a flow of 2,846 GPM according to the Portland Water District.

3. *Availability and Adequate Capacity of Public Utilities:*

Sanitary Waste

Public Services indicates there is adequate capacity to transport and adequate capacity to treat the waste flows of this project which is anticipated to generate wastewater flows of 102,194 gallons per day. All of the buildings will be served by an existing sewer in Somerset Street. See Attachment B-2.

Water

A letter from the Portland Water District confirms they will be able to serve the proposed project. Midtown One to Three will be served by an existing 16 inch water line in Somerset Street. In regard to Midtown Four, the “District will require that 350 feet of existing 6 inch main be replaced with 8 inch in Preble/Elm St. from Marginal Way”. See Attachment B-2.

Power

CMP has confirmed their ability to serve the project. See Attachment B-2. The submitted midtown site plans reflects complete underground power service on

Somerset Street from Pearl Street to Elm Street although by necessity there may be a lone pole remaining at the corner of Somerset and Pearl (south side). With the construction of the midtown project and the raising of Somerset Street this represent a unique opportunity to bury the lines.

The two pad mounted transformers behind Midtown Four have been shifted to an underground location between Midtown Four and Midtown Three near the Elm Street sidewalk/esplanade. An underground transformer is proposed on the Chestnut Street side of Midtown Three. The only pad mounted transformers will be two transformers behind Midtown One adjacent to the Bayside Trail/ 161Marginal Way office building property line. An underground transformer will be placed along the Noyes warehouse street frontage to replace an existing transformer within the warehouse.

**D. Site Design Standards**

*1. Massing, Ventilation and Wind Impact:*

- a. The bulk, location and structures or height of proposed buildings and structures shall not result in health or safety problems from a reduction in ventilation to abutting structures or changes to the existing wind climate that could result in unsafe wind conditions for users of the site and or/or adjacent public spaces.*

The minimum distances midtown buildings and or abutting buildings should not result in ventilation becoming a health or safety problem. For example, the distance between Midtown One and Two is 30 feet. The nearest offsite building to these structure is in excess of 80 feet (E.Perry maintenance building). The nearest building to Midtown Three is the Noyes warehouse building a distance of about 60 feet. Midtown Four is located a distance varying from 7 to 28 feet from the Trader Joes building.

In regard to wind conditions, a wind study was previously prepared by RWDI based upon 165 foot high buildings which did identify some potential impacts. The report suggested that winter winds from the north and northwest might cause probable discomfort for sitting activities in the courtyard if Midtown One were built. See Attachment B-4.

As the current project is less than half that height, wind impacts are expected to be significantly moderated. Submission states “it is highly improbable that pedestrians on the trail, Elm St or Somerset St in this vicinity would experience any discomfort due to wind while sitting, walking, or jogging. As no dangerous wind conditions were found for any spaces with the taller buildings so no dangerous wind conditions will result from the substantially shorter buildings.”

- b. *The bulk, location or height of proposed buildings and structures shall minimize, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to legal servitude in favor of the site being developed.*

The Midtown development abuts the Bayside Trail. At its closest point, Midtown One is 85 feet from the E. Perry scrap yard maintenance building and over 150 feet from the DHS building. Across the street from Midtown One and Two is a truck parking lot. Across from Midtown Three is a brick warehouse. Adjacent to Midtown Four is Trader Joes. All the buildings are 6 stories or 72 feet high except for the parking garage. In the surrounding context of the project site, the proposed building program and investment being made by the developer, the development is unlikely to diminish the value of neighboring structures based upon bulk, location or height.

- c. *HVAC venting systems*

Submitted materials appear to indicate that HVAC systems will be located on the roofs of proposed structures away from public spaces and residential properties.

- 2. *Shadows:*

Not applicable. This standard excludes the B-7 zone.

- 3. *Snow and Ice Loading:*

See snow storage in Transportation Section of this report.

- 4. *View corridors:*

*The massing, location and height of development shall not substantially obstruct public view corridors identified in the Downtown View Corridor Protection Plan, as provided in the City of Portland Design Manual, Appendix 1.*

The proposed development is not located within a view corridor identified in the Downtown View Corridor Protection Plan.

- 5. *Historic Resources:*

- a. *Developments affecting designated landmarks or within designated historic districts or historic landscape districts:*

Not applicable. The site does not follow within any of these categories.

- b. *Development adjacent to designated landmarks, historic districts or*



*historic landscape districts: when any part of a proposed development is within 100 feet.*

Not applicable. The site does not follow within any of these categories.

c. *Preservation and/or Documentation of Archaeological Resources.*

There are no known documented archeological resources associated with the site.

## 6. *Exterior Lighting*

### Street and Bayside Trail Lighting

Applicant is proposing to install the designated Bayside street light fixture and pole (medium height of 19 feet) along Elm Street (5 fixtures), Somerset Street (15 fixtures) and Pearl Street (2). The submission indicates these will be LED fixtures. The normal pole spacing as specified in the technical and design Standards is 80 to 100 feet on center assuming streets lights are on one side of the street. Applicant is proposing pole spacing along Somerset Street closer to a 60 foot interval and has requested a waiver according from this standard to enhance pedestrian lighting.

Applicant proposes to relocate the existing Bayside Trail lights between Chestnut and Pearl from the southerly to the northerly side of the trail in concert with raising the trail grade.

A written supplement indicates “all proposed fixtures; Bayside fixture and Bayside Trail fixture, are proposed as LED...”

### Site Lighting

An updated site lighting plan including photometrics has been submitted. See Attachment Landscape and Lighting Plans L3.1.

The plan lists the following fixtures:

S1: Holophane Bayside medium fixture mounting height: 19’3”

S2: Relocated existing Bayside Trail light fixture

S3: Kim Altitude mounting height:10’

FX1: Wall mounted Olympus MH: 9’-0”

FX2: Wall mounted Prescolite 6” LED Lite Box, MH 9’-0”

FX5: Canopy Light: Prescolite 4” LED Downlight D4LED3 MH:16’

CB: AAL CB9R Concrete Bollards 31 5/8” light center height

Midtown Two features 27 wall mounted FX 2 fixtures while Midtown One has 17 of the same fixtures with 4 FX1 fixtures by the Pearl Street entrances.

Midtown Three includes 15 apparent wall mounted fixtures (FX2?) on the Somerset and Chestnut building sides but the plan doesn’t match the light fixture

key. One light fixture is shown on the Bayside trail side. On Midtown Four 14 wall mounted light fixtures are shown but the plan doesn't match the light key.

The plan indicates that a "recessed LED stair lighting" is proposed by Midtown Four on the Elm Street side of the building. The note does not appear for the remainder of the stairways within the public right of way.

Catalog cuts need to be submitted for the wall mounted fixtures to confirm they are non-glaring and deflected downward.

A lighting plan for the parking garage has been submitted. See Attachment L3.2. The plan lists the following fixtures to be utilized for the parking garage.

- G1: Beacon Lighting Viper LED Pole Mounted Light Fixture (MH: 20")
- G2 Hubbell Loredo Series Wall Mounted LED ( MH: 8")
- G3 Hubbell Sedona Series Ceiling Mounted LED
- G4 New Star Victory 2-4 N LED Linear Luminaire (Stairwells)

Three of fixture G1 (20 foot mounting height) will be mounted on top of the parking garage. Typically about 46 G3 ceiling mounted fixtures will be installed for each floor of the garage.

Catalog cuts of the fixtures need to be submitted to confirm that they are non-glaring and deflected downward.

Exhibit 19 under exterior lighting states "exterior lighting will be located only at entrances for safety, security and a sense of welcome, and at egress and service doors as required by code. These lights will be shielded or cut-off fixtures that will emit light upwards nor into adjacent residential properties."

### Summary

A lighting and photometric plan has been submitted. Catalog cuts of the light fixtures need to be submitted except for the Bayside street light fixture and Bayside Trail fixture. The exterior photometric plans indicate that the average illumination levels for each building site (1.81 to 2.4) exceeds the technical lighting standard (section 12.2.3; illumination levels) of 1.25 for average illumination. Two of the Midtown building sites meet the maximum illumination levels while Midtown Three and Midtown Four exceeds the maximum illumination levels (7.7 and 6.8 respectively).

The previous approval referenced that the parking garage would include a motion sensor unit to address energy efficiency and public safety and that the fixtures would operate at 50% output until activated by either pedestrian or vehicle motion. The fixtures were to be mounted between the double T beam structure to allow uniform distribution while screened from exterior view. Confirmation of

whether these fixtures were to be included in the present plan was not evident in the current submission.

Given the above, we are recommending that site lighting be a condition of approval with staff review and approval. We will work with the applicant to reduce the lighting levels while recognizing the applicant's desire to have an appropriate level of light. During this process staff can approve a waiver of the site lighting standards as necessary.

The Planning Board will be processing a waiver for the spacing of street lights for the Bayside light fixture as previously discussed.

7. *Noise and Vibration*

HVAC equipment appears to be located on top of buildings in enclosed screening. No generators are shown on the site plan.

8. *Signage and Wayfinding*

A signage plan has been submitted for all four buildings with 15 sides of the buildings represented. The plan is shown on Attachment Architectural Plans A800 (signage elevations). These drawings serve as signage concepts for each façade but do not denote a final sign design for individual tenants. The drawings show signage placement on the building and a calculation in square feet for each sign.

Staff has reviewed the sign plan with Ann Machado, Zoning Specialist, for conformance with zoning requirements. Comments regarding particular signs not meeting maximum size requirements are noted below.

Unless otherwise indicated in the description that follows, proposed signs are mounted at the first floor level just above the storefront windows. Such retail signage is described as internally illuminated.

**Midtown One** – A residential identification sign (marquee mounted) is shown on the Pearl Street side of the building not to exceed 150 sf. On the Somerset Street side (south) a retail signage of up to 300 sf is proposed which exceeds the staff calculated maximum allowable size of 286 sf. Retail signage of up to 144 sf is proposed along the mews (west).

**Midtown Two** – On the Somerset Street side (south) of the building, applicant is proposing up to 620 sf of first floor retail signage which exceeds the staff calculated maximum allowable size of 480 sf. A building identification sign (200 sf) placed vertically on the stairway/elevator tower spanning four floors is proposed.

On the trail side (north), applicant is proposing up to 620 sf of first floor signage which exceeds the staff calculated allowable maximum size of 480 sf. Two upper level tenant signs are proposed (top of the building) with each sign having 100 sf.

On the Chestnut Street side (west) the first floor tenant signage of up to 860 sf exceeds the staff calculated allowable maximum size of 244 sf. A 200 sf upper level building identity sign is proposed vertically adjacent to the stair tower. A street number building sign (not to exceed 6 sf) and a parking identity sign (not to exceed 50 sf) is proposed along the Somerset Street side of the building.

**Midtown Three** – On the Somerset Street elevation, a first floor retail signage of up to 860 sf is proposed which exceeds the staff calculated maximum allowable size of 800 sf. A residential identification marquee sign is proposed not to exceed 150 sf.

On trail or north side, first floor retail signage of 160 sf is proposed. We assume this will change since the applicant at the January 13th workshop indicated the berm will be removed exposing more retail frontage to the trail. The plan should be updated if that is the case.

On the west side of the building first floor retail signage of 60 sf is proposed which exceeds the staff maximum calculation of 56 sf. The east side retail signage of 160 sf is within allowable limits.

A building street number sign (4 sf) is proposed along Somerset Street.

**Midtown Four** – On the east side, applicant proposes up to 150 sf and an additional 80 sf of retail signage while staff calculates the maximum allowable signage as 142 sf and 68 sf, respectively. On the south retail signage is proposed at 250 sf which is within allowable limits.

**Wayfinding** – Applicant has not submitted wayfinding signage but that is relatively minor issue that can be handled administratively. Signage related to the Bayside Trail will be important so the public is aware of the pedestrian passageways between Somerset Street and the trail.

**Summary:** The submitted concept signage plan indicates size and placement of proposed signs on the buildings. A number of the signs shown on the façade elevations exceed the maximum size requirements. The signage plan should be revised reflecting a signage plan in conformance with the sign ordinance unless the applicant seeks a waiver from these requirements. We are recommending that the signage plan be a condition of approval with final review and approval by the Planning Authority.

9. *Zoning Related Design Standards:*

(a)(i) *B-7 design standards: Development shall be designed to support the*

*development of dense, mixed-use neighborhoods with attractive, safe and convenient street level pedestrian environments as demonstrated by compliance with all applicable design standards listed in the Design Manual.*

The B-7 design principles and standards are addressed in section XII of this report.

## **XI. B-7 Mixed Use Urban District Zone Design Principles and Standards**

The development is subject to the B-7 Mixed Use Urban District Zone Design Principles and Standards. For the Board's convenience we have included the complete text of the standards along with staff review comments. For standards in which the applicant is requesting a waiver, the applicable text was shifted to the Requested Waivers section of this report rather than repeating the standard twice in both sections.

The Design Manual, under Review and Determination of Compliance, states the following: *“To be approved, site plans must adhere to the applicable design standards taken as a whole, and present the best design response to the standards achievable for the overall design program. A project shall be rejected as not meeting the applicable design standards if the project, taken as a whole, fails to meet or address applicable design criteria.”*

The applicant's response to the standards is shown in Exhibit 17 although the complete text of the standards is not shown.

### **I. PURPOSE**

### **II. APPLICABILITY**

### **III. PRINCIPLES AND STANDARDS**

#### **PRINCIPLE A: URBAN DESIGN**

- STANDARD A-1: **Sense of Place**
- STANDARD A-2: **Edges and Transitions**
- STANDARD A-3: **Gateways**
- STANDARD A-4: **Views and Landmarks**
- STANDARD A-5: **Pedestrian Environment**
- STANDARD A-6: **Mix of Uses**
- STANDARD A-7: **Building Orientation**

#### **PRINCIPLE B: ACCESS AND CIRCULATION**

- STANDARD B-1: **Streets and Alleys**
- STANDARD B-2: **Street Connectivity**
- STANDARD B-3: **Mid-Block Permeability**
- STANDARD B-4: **Sidewalks and Crosswalks**
- STANDARD B-5: **Green Streets**
- STANDARD B-6: **Multi-modality**
- STANDARD B-7: **Continuity of street level uses**

- STANDARD B-8: **Traffic-calming**
- STANDARD B-9: **Streetscape Design**
- STANDARD B-10: **Encroachments**
- STANDARD B-11: **Lighting**

**PRINCIPLE C: PARKING, LOADING AND SERVICE AREAS**

- STANDARD C-1: **Parking Structures**
- STANDARD C-2: **Parking Entrances**
- STANDARD C-3: **Active Uses**
- STANDARD C-4: **Back of Parking Structures**
- STANDARD C-5: **Decks and Ramps**
- STANDARD C-6: **Surface Lots**
- STANDARD C-7: **Bike Racks and Pedestrian Amenities**
- STANDARD C-8: **Service, Utility and Mechanical Infrastructure**

**PRINCIPLE D: OPEN SPACE AND THE PUBLIC REALM**

- STANDARD D-1: **Open Space Design**
- STANDARD D-2: **Bayside Trail**
- STANDARD D-3: **Landscaping and Street Furniture (private and public)**
- STANDARD D-4: **Pedestrian Amenities**
- STANDARD D-5: **Public Art**

**PRINCIPLE E: ARCHITECTURAL DESIGN**

- STANDARD E-1: **Architectural Design**
- STANDARD E-2: **Height**
- STANDARD E-3: **Massing**
- STANDARD E-4: **Articulation**
- STANDARD E-5: **Flexibility of Interior Layout**
- STANDARD E-6: **Entrances**
- STANDARD E-7: **Windows**
- STANDARD E-8: **Storefronts**
- STANDARD E-9: **Back Sides of Buildings**
- STANDARD E-10: **Rooftop Appurtenances**
- STANDARD E-11: **Fences and Walls**
- STANDARD E-12: **Materials**
- STANDARD E-13: **Transparency**
- STANDARD E-14: **Illumination**
- STANDARD E-15: **Weather Protection**
- STANDARD E-16: **Signage**
- STANDARD E-17: **Historic Buildings**
- STANDARD E-18: **Sustainable Design**
- STANDARD E-19: **Shadows**
- STANDARD E-20: **Wind**

## I. PURPOSE

The *B-7 Design Principles and Standards* are intended to guide Bayside neighborhood residents, developers, designers, City officials and staff and others in the creation of a vibrant, aesthetic and sustainable neighborhood which is dense, mixed-use, and pedestrian-friendly. The B-7 Design Standards support excellence in urban and architectural design which contributes to a strong sense of place, encourages 24-hour activity, promotes multi-modal transportation, provides public spaces and protects scenic views. The B-7 Design Standards meet the following goals:

1. Support and reinforce the goals of *A New Vision for Bayside*.
2. Accentuate Bayside as a gateway to the city by highlighting major corridors and corners.
3. Preserve the neighborhood building scale that is typical of the small blocks of Portland.
4. Extend the existing street grid and create mid-block permeability, in order to provide opportunities for multi-modal access, service alleys, public spaces, view corridors, and access to light and air. Design pedestrian oriented streets with significant landscaping.
5. Preserve view corridors toward Back Cove and the White Mountains, as well as views looking toward the spine of the Portland peninsula, as shown in the *Bayside Height Map*.
6. Create dense, mixed-use, multi-modal development that is adjacent to infrastructure, highways, jobs and educational opportunities.
7. Create spaces of various scales that are attractive to creative industries, such as art, architecture, design, film, media, music, performing arts, publishing and software design
8. Allow building heights that create space for a critical mass of people needed to make a new urban neighborhood successful. Ensure that development is human in scale at the pedestrian level.
9. Encourage architecture which expresses the aesthetic of the time in which it was built, that respects local urban design patterns, and that is compatible with adjacent traditional residential neighborhoods. The Portland Peninsula has been Maine's most urban area for several centuries and new architectural styles and materials are often introduced here. It is expected that this will continue to be the case as sites in the B-7 Zone are redeveloped.

10. Incorporate “green” design, smart growth policies, and sustainable technology into the urban design, site plan design, and architectural designs of the Bayside neighborhood.
11. Create a variety of mixed-use commercial opportunities that serve the neighborhood, city and region. Ensure that commercial development which is regional in scale, is compatible in design and massing to the adjacent traditional residential neighborhoods.
12. Provide a hierarchy of green spaces on public and private land with parks, playgrounds, plazas and trails. Ensure that the streetscape design enhances the pedestrian experience.
13. Use authentic building materials and construction methods that are of the highest quality and appropriate to an urban environment and expected to last at least 50 years.
14. Adaptively reuse existing buildings.

### III. PRINCIPLES AND STANDARDS

#### **PRINCIPLE A: Urban Design**

*All development in Bayside shall be designed to create a strong urban identity and sense of place. Buildings may be a variety of architectural styles, particularly those that are innovative and express the aesthetic of the time in which they were built, and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. These principles shall strengthen the overall sense of place, accentuate views, gateways and landmarks, establish defined boundaries and ensure sensitive transitions to surrounding neighborhoods, enhance the physical amenities of the neighborhood, and create a pedestrian oriented environment with safe and vital streets.*

**STANDARD A-1: Sense of Place.** The identity and “sense of place” of Bayside is based on design elements that contribute to the character of the district. New development shall respond to unique characteristics such as: existing patterns of design and development; opportunities to extend the street grid; changes in topography; proximity and views to significant buildings, amenities or natural features; access to light and air; connection to the pedestrian and bicycle network and public spaces; access to the regional transportation system, and opportunity for innovative design.

All development shall meet the goals of *A New Vision for Bayside*. The City’s Bayside Streetscape Subcommittee further identified characteristics which will strengthen the identity of the district such as building on the industrial heritage of the past; enhancing the artistic personality of Bayside in the future; respecting the vernacular of existing buildings; encouraging innovative architectural design that expresses the aesthetic of the time in which it was built; encouraging adaptive reuse; respecting the “patina” of age and



maintaining historic materials; strengthening the connections to adjacent neighborhoods of Bayside, Downtown, Back Cove, Deering Oaks, and the East End; preserving views; mitigating the widths of the major arterials such as Marginal Way and Franklin Arterial which border the neighborhood; highlighting Portland and Cumberland Streets as “Main Streets” to the traditional residential portions of the neighborhood; mitigating traffic/pedestrian concerns across major streets, creating mixed uses that have a neighborhood scale; creating neighborhood green spaces as places to gather; and utilizing native plant materials in landscaping.

**Staff Comment:** The development meets goals of the Bayside Plan by building new housing, remediating a brownfields site, providing a multi-level parking garage, supporting transit-oriented development, and installing new streetscape improvements that improve walkability. The project incorporates mixed uses including first floor retail with residential above. The mews and attached plaza provide gathering spaces that residents, as well as the public, can enjoy. New connections to the Bayside Trail include the mews and Pearl Street extension. The project takes the approach of providing new design elements to the neighborhood while making reference to the industrial context.

The area behind MidtownThree was recently revised to open the retail space to the Bayside Trail, while reducing or eliminating the berm in this location. As of this submission, there is not a treatment plan for the open space abutting MidtownThree and the connections to the trail. (See also *Principle D Open Space and the Public Realm*).

**STANDARD A-2: Edges and Transitions.** Transitions between larger scale, mixed use buildings and smaller-scale residential uses shall be designed so that there is a seamless connection to adjacent residential neighborhoods to ensure that these zones remain stable, quiet, and secure. This shall be achieved through the mitigation of height, massing, stepbacks, materials, and details and design of the façade at the pedestrian level. Potentially nuisance features or uses, such as dumpsters and air handlers, parking, service areas, blank walls, or backs of buildings shall not be sited or designed in a manner that forms a boundary to the residential neighborhood. Larger scale developments may use public open spaces to provide transitions to lower scale uses. [See Standard C-8 Service, Utility and Mechanical Infrastructure, and Standard E-9 Back Sides of Buildings].

**Staff Comment:** Midtown does not directly abut a residential block. The retail storefronts provide a pedestrian scale to the lower floors of the building. The project mitigates height and scale to some degree in its façade articulation and upper floor stepback strategies.

**STANDARD A-3: Gateways.** Gateways serve as landmarks, signal arrival into neighborhood and the city, and help to promote the distinct identity of Bayside. The designated gateways in Bayside are shown on the *Bayside Street Hierarchy Map*. These gateways shall be visible to and oriented to vehicular, bicycle, and pedestrian traffic; and shall be of the highest quality materials appropriate to an urban environment.

Development at designated gateways shall include elements such as dramatic architectural forms and details, public space, distinctive paving patterns and landscaping, public art, historical markers, water features, unique accent lighting, wayfinding or “welcome” signage, and crosswalks.

**Staff Comment:** Not applicable. This project is not located at one of the identified Gateways for Bayside.

**STANDARD A-4: Views and Landmarks.** View corridors to buildings and natural resources help to define the character of Bayside. New development shall be designed with consideration for its impact on significant views and view corridors as shown on the Downtown Height Study and the Bayside Height Overlay Map, as well as other important views as may be identified during the City’s development review process. View corridors shall be highlighted with significant architecture and quality materials. New development shall be sited so that it does not block view corridors. Taller portions of structures shall step back out of the view corridor. Roof top appurtenances shall not be visible from view corridors, nor shall they obscure important landmarks. Additionally, development along corridors on the east-west axis through Bayside shall be evaluated to maximize sun and light. [Also see Standard E-10 Rooftop Appurtenances].

**Staff Comment:** Applicant requests a waiver from the View Corridors and Building Stepbacks requirements of this section.

The Myrtle Street corridor will be blocked by the 7 story parking garage while the Cedar Street corridor will be blocked by the 6 story residential building, MidtownThree. The Cedar Street corridor is less impacted because there are already buildings within the view corridor, including the Noyes storage building uphill, and the student housing at Marginal Way. The Planning Staff support the request for waivers of the view corridors for Myrtle and Cedar Streets due to the existing structures partially blocking the Cedar Street views and the partial blocking of Myrtle Street.

Staff identified the approach from Elm Street to MidtownFour as a view corridor to a building that will help define the character of Bayside (as the standard calls for). The MidtownFour building should highlight its prominence in the Elm Street view corridor through its architecture. The revised architecture acknowledges and highlights this context by 1) orienting the primary entry façade of the building to face the Elm Street approach, 2) adding emphasis to this elevation of the building with additional height and a cornice line, and 3) providing façade articulation and a canopy which direct visual attention to the building entry. In order to better assess the success of these design features at meeting the standard, refer to the contextual renderings depicting how the building will be viewed coming down Elm Street.

Of additional concern is the view of MidtownFour from the Bayside Trail approach. The proposed building elevation shows a high proportion of solid,

EIFS wall facing the trail. If additional fenestration could be provided on this facade it would alleviate the concerns about the quality of building facing the public amenity of the Bayside Trail.

**STANDARD A-5: Pedestrian Environment.** Development on public streets or public spaces shall be human scale at the pedestrian level and enhance the pedestrian environment through the use of elements at the first floor such as a mix of uses; detailed facades; building materials and signage of the highest quality; fully-functioning entries oriented to the street; active windows and storefronts; awnings and weather protection; outdoor seating and sales displays; traffic calming; adequately sized sidewalks; appropriately scaled streetlights; gathering spaces; trees and landscaping; street furniture; and amenities such as public art, water features, and historical markers. [See Principle B Access and Circulation, Principle D Open Space and the Public Realm, and Principle E Architectural Design].

**Staff Comment:** All buildings including the parking garage will have retail on the first floor along street frontages. All buildings have fully functioned entries oriented to the street. Street lights (Bayside light fixture) are proposed along the project street frontage while the Bayside Trail light fixture will be retained along the trail. The project will have double the normal number of Bayside streetlight fixtures. Generally, proposed sidewalks are ample and appropriate for a pedestrian oriented environment with appropriate revisions at the Somerset and Elm corner as previously noted. Street trees are proposed along the street frontage and the trail. Benches are proposed along the street and trail. The mews and plaza as well as the granite block seating wall enhance the pedestrian experience. The retail space adjacent to the Courtyard is designed to allow entry doors, however the location of any such doors will depend upon tenant fit-out preferences.

The Bayside Trail forms the northerly edge of the project. Retail on the first floor of the garage near Chestnut Street has the possibility of entry doors, but there is no assurance of functioning doors being provided. Applicant has indicated that the berm behind Midtown Three will be removed providing potential access from the Bayside Trail with storefronts and public entry points mid-block. Details of the site treatment adjoining the Bayside Trail are a proposed condition of approval.

Of concern is the note on sheet 1-A201 that indicates any proposed storefront depicted in the plan may be substituted at the discretion of the developer for EIFS panel. In order to maintain a high quality pedestrian environment, staff recommends that any substitution of other materials for storefront glass be minimized, and that if substitutions are permitted, the substitute material should be one of the “predominant” materials listed in Standard E-12 subject to the approval of the Planning Authority.

**STANDARD A-6: Mix of Uses.** New development in Bayside shall incorporate a mix of residential, retail, commercial and open space uses of various types and scales in order to serve the neighborhood, city and the region. All new development shall be designed to allow a flexibility of use over time [See Standard E-5 Flexibility of Interior Layout].

**Staff Comment:** The development provides a mix of uses including retail and residential uses. Private open space (but publicly accessible) has been provided near the Bayside Trail such as the mews and plaza adjacent to midtown one.

**STANDARD A-7: Building Orientation.** Buildings shall be located at or near the property street line in order to provide very clear definition and character to the street. This will complement and complete the established streetwall pattern that is predominant on the Portland peninsula. The primary facades and entrances of buildings shall be oriented to streets, major pedestrian routes, or open spaces in order to enhance the pedestrian-oriented environment. The primary facades and entrances of buildings shall not be oriented toward parking lots.

**Staff Comment:** All buildings will be built within 10 feet of the street right-of-way line. Such facades are oriented to the street.

**PRINCIPLE B: Access and Circulation**

*Streets and sidewalks in Bayside shall be designed to encourage a pedestrian friendly, walkable environment. The goal is to create streets that are scaled and designed for pedestrian and bicycle use; are well landscaped; promote traffic calming; allow for mid-block permeability, and extend the pattern and scale of Portland's traditional street grid and blocks in accordance with the 1914 Atlas of the City of Portland.*

**STANDARD B-1: Streets and Alleys.** Streets and alleys shall be scaled for expected vehicle, pedestrian, bicycle, and transit activity; support mixed use development; be well landscaped; promote traffic calming; allow for on-street parking; and follow the existing scale and pattern of Portland's street grid and blocks. All development shall extend the grid as feasible. The *Bayside Street Hierarchy Map* details the hierarchy of streets.

Development along all streets, public rights of ways and open space shall incorporate the City's streetscape standards for Bayside which include specifications for sidewalks, streetlights, street furniture, fencing and walls, landscaping and signage.

**Staff Comment:** The plan reflects the City streetscape standards including brick sidewalks, street trees/planters, brick sidewalks and the Bayside street light fixture. On-street parking is proposed. Issues involving functional sidewalk width at MidtownFour and at the corner of Somerset and Elm are discussed in other sections of this report.

**STANDARD B-2: Street Connectivity.** The prevailing pattern of streets on the Portland peninsula runs parallel and perpendicular to the waterfront. This pattern is expressed in relatively short blocks, buildings with small footprints and narrow facades, reasonable walking distances between blocks, and frequent opportunities to turn corners or move from one street to parallel streets. Extension of the street grid pattern will ensure that the massing of new development is consistent with the traditional scale and urban patterns of Portland, protect view corridors, provide opportunities for sun and airflow, enable efficient and flexible vehicular and pedestrian circulation, and provide opportunities for service alleys. New development shall coordinate with, intersect, and extend existing streets and sidewalks at multiple access points. See the Downtown Height Study and the Bayside Height Overlay Map for key view corridors and potential street extensions. As land use and development opportunity allow, Somerset Street shall be extended west towards Forest Avenue.

**Staff Comment:** Applicant requests a waiver from the extension of street grid pattern requirements of this section for Myrtle Street and Cedar Street.

The Applicant has allowed for the extension of Pearl Street in its design in order to meet this standard. The proposed placement of buildings preclude extension of the street grid pattern for Myrtle Street and Cedar Street, however, the streets that would intersect the garages terminate three and two blocks respectively away from the Project and do not presently abut the applicant's property. The applicant is providing the 30' wide mews from Somerset to the Bayside Trail, which, although it does not line up with Myrtle Street, provides a good mid-block connection from Somerset Street to the Bayside Trail between Pearl and Chestnut.

**Staff therefore supports the request for a waiver from the extension of Cedar and Myrtle Streets.**

**STANDARD B-3: Mid-Block Permeability.** Development shall incorporate mid-block permeability that is perpendicular to Marginal Way, and where feasible that is parallel to Marginal Way, in order to encourage building footprints that are in scale with the existing traditional pattern of development in Portland. These corridors shall be developed as street extensions, service alleys with public access, pedestrian corridors, trail access, plazas and pocket parks. These corridors shall be designed for the pedestrian first, with limited vehicular accessibility. These corridors shall not be designed solely as access to parking or loading areas, and shall be designed to be handicap accessible, well lit, paved in concrete, brick or stone, and appropriately landscaped. Asphalt surfaces shall not be allowed. (Wharf Street in the Old Port is an example of a desired level of design for this type of public way).

A primary circulation system shall be developed through streets, alleys, sidewalks and trails. A secondary circulation system shall be provided internally within buildings for public use through the use of fully functioning entrances on all street sides of a building, and internal lobbies and corridors that permeate through the ground floor of a building, unless the building program precludes such design and cannot be modified to meet this requirement due to small scale or security reasons.

Many larger buildings in Downtown Portland have incorporated frequent opportunities to pass through the interiors of street-level spaces. This element is important to the liveliness and accessibility of retail businesses and cultural amenities. The development or redevelopment of larger sites, and the potential assembly of more than one block or parcel through the discontinuance of intervening streets, shall carefully consider this characteristic pattern of pedestrian circulation.

**Staff Comment:** This issue is also discussed in a prior section of this report starting on page 13. The Planning Board is being asked to consider a partial waiver of this standard. As the Board will recall a condition of approval of the subdivision amendment granted in January, 2014 which removed a 20' wide by 20' high by 140' long easement through the lot on which MidtownThree is located, "*provided that a pedestrian passage be provided in the Phase Two site plan*".

The Standard anticipates a "primary" circulation system and a "secondary" circulation system. The recently added doors on the trail side of MidtownThree represent a "secondary" circulation system because it is internal to the building. Staff believes that a partial waiver from this standard is therefore needed. Ideally this circulation through the building would be an arcade-style hallway, open during normal business hours, to provide passage through the building. If that is not possible, staff has a concern that the retail tenant of the space would discourage or simply not allow passage through their space by the general public. For example, some tenants might require a membership to enter the space, which would mean that the general public may not be able to use the space, or at the least may feel unwelcome there.

Staff supports a partial waiver of this standard to provide only a secondary circulation system, if the secondary system can be shown to provide an adequate substitute for the "primary" options. Ways of achieving this objective include a specific plan for specific public access through the first floor of Midtown Three including posting that the public is welcome to travel through the space through normal business hours, good lighting and accessibility, and/or a wayfinding measure. As noted elsewhere, the north side of MidtownThree shows storefront facing the Bayside Trail, and will allow passage from both sides and through, but there is no plan for surface treatments between Midtown Three and the trail. The issues discussed in this paragraph are addressed as conditions of approval to the waiver request as reflected in the Motions section of this report.

The proposed condition of approval for mid-block permeability addresses the staff concerns about the terms and details of the access through the building, while recognizing that these details are dependent on the end user/tenant of the first floor. The proposed condition therefore allows for review of those aspects prior to a certificate of occupancy of the first floor, and also addresses the trail side improvements and berm removal, and associated cost allocations between the

applicant and the City. The City has agreed to pay for the costs associated with the removal of the berm containing contaminated soils to the extent that such soils cannot be used as fill under the project foundations, which usage appears to be unlikely based on the latest information available.

Applicant is providing mid-block permeability between Pearl Street and Chestnut Street in the form of a mews. This is an excellent solution to meeting this Standard.

**STANDARD B-4: Sidewalks and Crosswalks.** The provision of all sidewalks and crosswalks shall conform to the specifications and details contained within the City's *Technical and Design Standards and Guidelines*, and the City's Crosswalk Standards at a minimum. New sidewalks along public streets shall be at least 10 feet wide measured from curb to property line where feasible, except where it can be demonstrated that site constraints preclude such width. Sidewalks that are 12-15 feet wide and bump-outs shall be provided along A and B Streets where feasible, in order to allow for amenities such as larger tree wells, landscaping, café seating, shop displays and public art. Where appropriate, crosswalks shall be transversely striped and at a minimum as wide as the sidewalk to which it connects.

**Staff Comment:** The sidewalk in front of the phase one parking garage is 14 feet wide. The residential building (MidtownOne) has 2 sidewalks at different levels because of the grade difference between Somerset Street and the first floor elevation of the building. A 6 foot wide sidewalk is provided adjacent to street curb while a 9 to 12 foot wide sidewalk is provided along the face of the building. Should this section of Somerset Street near Pearl Street be raised in the future, the ramp system could be eliminated and the sidewalk could have an overall width of 20 feet.

The functional widths of the sidewalks and the Somerset-Elm corner are discussed in earlier sections of this report. Bump outs and cross walks are provided at all street intersections.

In numerous locations, the project as currently designed does not meet City Technical Manual standards for ADA-compliance and does not meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards. An approval of this project should include a condition that this issue be resolved to the satisfaction of the Planning Authority. The proposed conditions of approval under the site plan transportation standards address the revisions needed to comply with this and the site plan pedestrian circulation standards. These proposed conditions also require appropriate public access easements be provided for portions of sidewalks located on private property outside of the street right of way, especially those portions critical to the ADA accessible path.

**STANDARD B-5: Green Streets.** Frederick Law Olmsted created networks of “Green Streets” in many cities in which major streets were landscaped to enhance the connection between parks and open spaces throughout a city, and were designed for both pedestrian and vehicular use. The Olmsted firm created a plan for Marginal Way as a green boulevard that would have connected Deering Oaks to the Eastern Prom. As feasible, new development shall support the opportunity to realize this historic plan, and to shall apply the principles of Green Streets to streets in Bayside. This will reinforce connections to Back Cove, Deering Oaks and the Eastern Prom.

**Staff Comment:** Applicant proposes street trees along Somerset Street and will plant additional trees along the Bayside Trail. A greenscreen will be planted along the Somerset Street and Bayside Trail façade sides of the parking garage.

**STANDARD B-6: Multi-modality.** *A New Vision for Bayside* designates all of Bayside as a transit-oriented development. All new development in Bayside shall accommodate a full range of multi-modal transportation options. New development shall create a functional and safe environment that provides a continuous travel corridor for pedestrians and bicycles which serves the same major destinations as automobiles. New development along transit corridors shall incorporate facilities for transit users. A future train station is proposed at the end of Chestnut Street at I-295. Development along Marginal Way shall be designed to address the potential for rail service.

**Staff Comment:** The project accommodates a range of multi-modal transportation options including pedestrians (wide sidewalks and connections to the trail), bicycle (bike storage and connections to the trail), vehicles (parking garage) and transit (site is on a bus line and a bus shelter is shown on the plan). The reconstruction of Somerset Street accommodates multi-modal users.

**STANDARD B-7: Continuity of Street Level Uses.** Continuity of pedestrian-oriented uses along street frontages, particularly A and B streets, is important to encourage pedestrian interest, movement and safety. Service entrances and vehicular entrances which interrupt the continuity of street-level uses shall not be located along A or B streets, or areas of high pedestrian activity. Where such uses are unavoidable, extraordinary care shall be taken to assure that the pedestrian environment remains both attractive and safe, and such interruptions shall be kept to a minimum in both numbers and lengths. In such instances, the pedestrian shall clearly have priority.

**Staff Comment:** Applicant requests a waiver from the requirement that service entrances and vehicular shall not be located along A or B (Somerset) streets or areas of high pedestrian activity. The B-7 standard recognizes that this may unavoidable in some instances. Constraints such as limited lot depth and dense development require that service and loading take activities takes place in parking areas along the street. Staff supports the waiver requested to allow vehicular entrances on Somerset Street.



**STANDARD B-8: Traffic-calming.** Development on public streets shall support traffic calming measures to the extent allowed by City and State policies and requirements at a minimum. Particular attention shall be paid to the traffic calming measures taken where the Bike Trail will cross Chestnut Street. Potential traffic calming measures include gateway treatments, corner neck-downs, narrowed travel lanes, speed tables, trees and landscaping, and transversely striped crosswalks. Crosswalks shall be at a minimum as wide as the sidewalk to which they connect.

**Staff Comment:** Proposed streetscape improvement such as street lights, street trees, sidewalk neck-downs and on-street parking along Somerset and Elm Streets contribute to traffic calming. An existing four way stop at Chestnut and Somerset Street will also help calm the additional increment of traffic associated with this development.

**STANDARD B-9: Streetscape Design.** New development in the public realm shall utilize the City's streetscape standards for Bayside which include specifications for sidewalks, streetlights, street furniture, fencing and walls, landscaping and signage in order to create a unified image of the neighborhood. This information is provided in the appendix. Privately owned, publicly accessible open spaces shall be designed to coordinate with the surrounding area by incorporating the City's standards for streetscape design elements. Streetscape design on privately owned, publicly accessible open spaces may select a different style which complements the City's standard for the area if the design of the space commands a special, unique, and equally distinctive feature.

**Staff Comment:** Proposed streetscape improvements largely follow City streetscape standards such as brick sidewalks, lighting, street lights, granite raised planters and bike hitches. Other streetscape improvements such as the granite block seating wall, modular pavers in the trail, and ornamental metal fence also help create a unified image and compliment City standards. Comments on the functional width of the Midtown Four sidewalk and Somerset-Elm corner sidewalk are discussed earlier in this report.

**STANDARD B-10: Encroachments.** Encroachments on the sidewalk shall be sited and designed to encourage pedestrian activity. The design, location, and construction or installation of such features shall be human scale, shall be appropriate in character with the surrounding buildings and open space, shall be comprised of durable and attractive materials, and shall be consistent with the City's streetscape standards. The encroachment shall not impede the visual transparency or the perceived physical interaction with the internal uses of the building.

**Staff Comment:** Encroachments within the sidewalk include raised granite planters, handicap ramps with planters, benches, street lights and benches. The materials are durable and consistent with city streetscape standards. A challenge in terms of pedestrian flow has been the placement of handicap ramps and planters to address grade issues such as in front of the Midtown One and Midtown Three at the corner of Somerset and Elm. In this case a lower level sidewalk is

provided near the street curb while a second sidewalk (at the higher level) has been provided adjacent to the residential building which encourages and promotes pedestrian activity.

There is a possibility that the Elm Street and Somerset intersection could be raised to eliminate the existing sag in Elm and match the elevated grade of Somerset Street in the future, thereby reducing or eliminating the need for ramps and stairs at the westerly end of the project but no funding source has been identified.

In numerous locations, the project as currently designed does not meet the City Technical Manual standards for ADA-compliance and does not meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards. An approval of this project should include a condition that this issue be resolved to the satisfaction of the Planning Authority.

**STANDARD B-11: Lighting.** Street lights along public streets shall be scaled to the size, traffic volume and use that is typical for that street, as defined in the street hierarchy in Standard B-1 Streets and Alleys. Street lighting shall comply with the *Technical and Design Standards and Guidelines* at a minimum and may also be required to meet The Illuminating Engineering Society of North America Standards (IESNA), and the Leadership in Energy and Environmental Design (LEED) standards for light pollution.

**Staff Comment:** The applicant will utilize the appropriate Bayside street light fixture along all street frontages as provided for in the Technical and Design Standards and Guidelines. (Note that we are in the process of updating our specification to LED versions of the Bayside lights, which should be utilized in this development.) Midtown however wishes to install more street lights at closer spacing than provided for in the standards. Applicant has requested a waiver from the normal spacing requirements. See discussion in Section 10, summarized as follows:

Higher intensity lighting is appropriate for such retail locations and the applicant sees to create a uniform appearance along the ground floor retail areas for all phases of the development. The lighting will enhance the retail streetscape surrounding Somerset Street and the Bayside Trail, as well as the public areas created within the development, and will enable nighttime use of these areas, while also creating a safer environment for these public areas at night. The applicant is proposing the Bayside standard light at a closer spacing, 60' on center, versus the Technical Manual spacing specification of 80 to 100 feet on center for one-side lighting applications. **Planning staff supports the waiver of the spacing of streetlights on Somerset Street.**

**Sidewalk Lighting:** Sidewalks shall be lit with a combination of pole mounted, building mounted, or bollard lighting, as well as light from store windows, entries and other building features. The placement of lighting fixtures shall be pedestrian scaled, downwardly directed, and shielded or reflected so as to prevent glare and excess lighting spilling onto private property or skyward.

**Staff Comment:** See above comment.

**Open Space:** Lighting along public open spaces shall be of a height in scale with the space, as determined by City staff. Privately owned, publicly accessible open spaces may select a different luminaire style which complements the City's standard for the area if the design of the space commands a special, unique, and equally distinctive feature.

**Staff Comment:** Applicant is relocating the existing Bayside Trail light fixtures and poles from the southerly side to the northerly side of the trail.

**PRINCIPLE C: Parking, Loading and Service Areas**

*Parking, loading and service areas shall be designed and located so as to present an attractive façade to neighboring use, to minimize their visual presence in the neighborhood, and to minimize the impact along pedestrian oriented streets and residential areas.*

**STANDARD C-1: Parking Structures.** Parking structures shall be designed to be compatible with adjacent uses and architecture in form, bulk, massing, articulation, and materials. These structures shall incorporate architectural design elements that provide visual interest on all sides visible from public rights of way, for the full height of the structure. The visual impact of parking garages along primary and secondary streets shall be mitigated through the use of features such as the site topography and façade articulation such as decorative metal grills, green screens with plant materials or artwork. The parking garage may incorporate “green roof” technologies. Internal lighting shall not include bare overhead lighting. The glare of headlights shall be screened from view of adjacent structures. Pedestrian level lighting shall be provided on the exterior.

**Staff Comment:** The parking garage has been designed with design features with visual interest along all 4 sides of the building so there is no “backside” to the building. The visual impact of the parking is mitigated by the presence of ground floor storefronts that extend up to the second floor as well as a green screens that break up the apparent massing of the building.

**STANDARD C-2: Parking Entrances.** The entrance to parking garages shall respect the pedestrian realm and minimize the visual impact of the garage through provision of design elements such as: enhancement of the pedestrian entries; physical separation of entrances and exits; recessing the entry or extending portions of the structure over the entry; and incorporation of landscaping or artwork. The exits from parking garages shall be designed to inform the driver that s/he is entering in to a

pedestrian realm. Gates shall be located interior to the building at a distance that allows cars to stack internal to the structure rather than on the street.

Parking structures shall have horizontal decks on all levels where the decks are visible from the public rights of way. Ramps and non-horizontal parking decks shall be screened from all visible angles and shall not be permitted on facades located along or within 45 feet of a public right of way. (Note: such space would allow for the construction of a liner building and a ten foot separation).

**Staff Comment:** Applicant requests a waiver from the requirement of separating parking garage entrances and exits.

The narrow blocks and tight spaces involved do not allow for separation of the parking entrances and exits, while providing for continuity of street level uses to the greatest degree possible as required by standard B-7. **Staff supports this waiver request.** Combining the entrance and exit lanes increases the continuity of first floor active space with negligible impact on the pedestrian environment.

**STANDARD C-3: Active Uses.** Parking structures shall incorporate liner buildings along the full front façade, or enclosed active uses on the first floors along all A and B streets (excluding frontage dedicated to entrances, lobbies, and stair towers). Such space shall be provided with a minimum of 10 foot floor to ceiling clearance height, a 25 foot depth (measured from the exterior building wall), and a column spacing that would allow commercial uses to be developed in the structure, shall the structure be adapted for such uses in the future. [See also Standard E-5 Flexibility of Interior Layout].

**Staff Comment:** Retail uses are proposed along the first floor of the parking garage.

**STANDARD C-4: Back of Parking Structures.** Parking structures that have a rear or side elevation along a right of way, pedestrian access route, trail, open space, or which can be viewed from the public right of way, must incorporate design considerations noted in Standard E-9: Back Sides of Buildings

**Staff Comment:** The parking garage has not been designed with a “back side”. The parking garage has frontage along the Bayside Trail and the mews but the façade design and materials are similar in quality as the façade design along Somerset.

**STANDARD C-5: Decks and Ramps.** Parking structures shall have horizontal decks on all levels where the decks are visible from the public rights of way. Ramps and non-horizontal parking decks shall be screened from all visible angles and shall not be permitted on facades located along or within 45 feet of a public right of way. (Note: such space would allow for the construction of a liner building and a ten foot separation).

**Staff Comment:** The applicant seeks a partial waiver of the requirement that all ramps and non-horizontal (sloped) parking decks shall be screened from all visible angles, and shall not be permitted on facades located along or within 45' of a public right of way. See Section X of this report:

Although the project is designed with the non-horizontal parking decks of the open air garage structures along Somerset Street, the shallow block configuration does not allow such decks to be completely excluded from within 45 feet of a public right of way, such as along Chestnut Street and the Bayside Trail, or completely screened from all possible visible angles, and the shallow design does not allow center located ramps and horizontal decks. To require such a design would result in a significant loss of parking spaces, would make the garages unfeasible and create undue hardship. The parking garages utilize a "green screen" design utilizing live plan material to block the openings that expose portions of the non-horizontal parking decks. This approach, while visually attractive and interesting, will not completely screen the non-horizontal decks, during periods of the year when the foliage off the plant material, however, the attractive design when pedestrian uses are most active will create a visually interesting design that adequately mitigates the conditions that this standard seeks to prevent. **Staff supports the waiver request on the basis that the design features of the parking garage façade balance out the aesthetic benefits of having all of the parking decks horizontal or completely screened.**

**STANDARD C-6: Surface Lots.**

**Staff Comment:** Not applicable. Surface parking is not proposed.

**STANDARD C-7: Bike Racks.** Bike racks shall be provided in a convenient location, proximate to the entry or entries of the building(s), either immediately adjacent to or no further than the associated motor vehicle parking, and shall be visible from the street or provided with prominent directional signage visible from the street as detailed in the Technical and Design Standards and Guidelines Manual and in compliance with the City's Off-street bicycle parking standards - *Chapter 14-332.1*

**Staff Comment:** The project technically meets the minimum requirements for the quantity of bicycle parking. However, exterior bike rack locations, spacing, and specifications do not meet the Technical Manual standards as shown. As currently shown, bicycle racks would not be accessible when cars are parked immediately adjacent. A condition of approval should involve providing detailed layout for bicycle parking within the parking garage that ensures functionality and accessibility to the satisfaction of the Planning Authority.

**STANDARD C-8: Service, Utility and Mechanical Infrastructure.** Service, utility and mechanical infrastructure (such as loading docks, delivery areas, truck parking, outdoor storage, utility meters, HVAC equipment, visible rooftop mechanicals, pipes, ducts, vents, access doors, meters, transformers and other building systems equipment,

trash collection, trash compaction, power generators, fuel tanks and similar services) shall be located at the rear or side of buildings, along service alleys, or in the interior of parking garages. Such uses shall not result in adverse visual and audible or other noxious impacts on adjacent properties and public streets and spaces. Areas for outdoor storage and trash collection or compaction shall not be visible from public rights of way, or located within 20 feet of any public street, sidewalk, or open space. Mechanical equipment shall be located away from pedestrian ways and seating areas to minimize noise, exhaust or visual impacts. Mechanical equipment shall not be located in the front setbacks between building and public rights-of-way.

All service, utility and mechanical infrastructure shall be visually screened from adjacent uses, adjoining properties and public rights of way. Screening materials, landscaping, colors, and design shall conform to those used on the building. Roof equipment shall be fully screened from street level and all view corridors by parapets, roof screens or equipment wells. Wherever possible, roof equipment shall be clustered and included in one screen. New buildings and new additions shall plan for roof equipment screens and include them in the design of the building. Garage doors and loading areas shall be screened from view of public rights of way with materials, colors and finishes that are consistent with the exterior elevations of the overall building. Loading docks shall be screened from residential uses by a minimum 8 foot high masonry wall with 10 foot wide landscaped strip. Loading ramps and service entrances with garage doors visible from primary and secondary streets shall be recessed behind the front façade of the main structure. The garage door width may be no more than 10% of the width of the building's overall façade width, except that no garage door need be reduced to less than 9 feet in width. Outdoor storage and trash collection areas visible from public streets and spaces shall be screened, recessed or enclosed with solid fences or walls. Materials, colors, and design of screening walls and fences shall conform to those used on the building.

**Staff Comment:** Applicant requests a waiver of the requirement that all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

The project fronts on streets on all sides or on the Bayside Trail, and must accommodate deliveries from public streets. As stated by the project architect, the project has been designed to have no back side, and it is impossible to locate delivery and loading areas off public streets. The applicant will establish guidelines and procedures for deliveries and loading to mitigate the effect of utilizing loading areas on public streets. In an effort to create a pedestrian friendly environment there are no handy backsides of the building where loading can take place. That being said, the applicant has created some internal loading area within the residents building but they are too small for larger tractor trailer trucks. **Staff therefore supports the waiver of building service locations.**

**PRINCIPLE D: Open Space and the Public Realm**

***Public and privately owned open spaces shall be designed to promote a visually pleasing, safe, and active environment. Opportunities to extend the City's bike and pedestrian trail system shall be maximized. Landscaping throughout the neighborhood shall be designed to complement the architecture, enhance the human scale, add seasonal interest, reinforce pedestrian circulation paths, and provide a more comfortable urban environment.***

NOTE: The *Bayside Open Space Priorities and Principles* document was adopted by the Bayside Trail and Open Space Committee on 7/24/06 and was used as a reference document in the drafting of these guidelines. This document shall be considered in the provision and design of open space in the B-7 Zone of Bayside. All new development shall consider this document for specifications on desired locations, components, and design of open space.

**STANDARD D-1: Open Space Design.** Publicly-accessible parks, plazas, and other open space shall be accessible from sidewalks and surrounding buildings. Further, publicly accessible open space shall be located and designed to allow views from the sidewalk, street, and surrounding buildings into the open space as well as outward from within the space. Pedestrian amenities such as seating, lighting, artwork, trash receptacles, etc. shall be compatible with the City's Streetscape Standards for Bayside. Streetscape design on privately owned, publicly accessible open spaces may select a different style which complements the City's standard for the area if the design of the space commands a special, unique, and equally distinctive feature. Solar access, wind protection, and landscaping shall be considered to enhance pedestrian comfort and provide a variety of sunny and shaded areas.

**Staff Comment:** The mews and plaza adjacent to the residential building are visually and physically accessible from the trail and Somerset Street. The elliptical seating wall and landscaping provides a pleasant environment for pedestrians and extends the public realm to the publicly accessible but privately owned mews and plaza. The pedestrian amenities are compatible with the streetscape standards for Bayside. The improvements to the Bayside Trail are compatible with streetscape standards for Bayside.

**STANDARD D-2: Bayside Trail.** A conceptual or final plan for the Bayside Trail from Franklin Arterial to Elm Street shall be considered in the review of all new development. Buildings adjacent to the Bayside Trail shall be designed so that the façades along the trail incorporate design elements that enhance the trail use such as active doors into the building, plazas, outdoor seating, and food service. The design of retail or restaurant uses shall incorporate a means of ingress and egress that is oriented to the trail. Businesses that complement the use of the trail, such as sporting goods stores, equipment rentals, coffee and ice cream shops, etc. shall orient entrances to the trail where feasible.

**Staff Comment:** The proposed plan recognizes the importance of having active uses along the trail side of the parking garage and residential building. Both buildings will have retail storefronts along the trail including the plaza area. Portions of the retail use within the parking garage will have a grade about two

feet higher than the trail which would complicate trail user access into the building. The mews and plaza enhance interaction between the development and the trail by providing mid-block connections and increased store frontage. The developer has stated that the berm will be removed behind MidtownThree which will improve the interaction of the building's retail uses with the trail, however there is no plan at present to provide paved surfaces, landscaping, amenities, or paved access to the Bayside Trail. At minimum, it is recommended that a 15' paved area be installed along the northerly storefront edge, approximately 155 feet long, and paved 12' walkways be provided connecting to the Bayside Trail, one in each direction. A fully developed landscape plan is desirable in this location, with materials comparable in character and quality to those proposed for the mews and courtyard associated with midtownOne and Two, to fully complement the Bayside Trail as envisioned by this standard. The minimum standards noted above will at least provide an engaging interface and enable the trail and the storefront and its midblock passage to function.

The proposed condition of approval for mid-block permeability addresses the staff concerns about the terms and details of the access through the building, while recognizing that these details are dependent on the end user/tenant of the first floor. The proposed condition therefore allows for review of those aspects prior to a certificate of occupancy of the first floor, and also addresses the trail side improvements and berm removal, and associated cost allocations between the applicant and the City.

#### **STANDARD D-3: Landscaping and Street Furniture.**

**Staff Comment:** Applicant requests a waiver of the requirement for an irrigation system.

#### **STANDARD D-4: Pedestrian Amenities.**

1. Seating. Seating along heavily used pedestrian routes shall be provided to accommodate pedestrian related activities. Placement of seating shall not obstruct pedestrian circulation, and shall assure maintenance and appropriate use. One linear foot of seating for each thirty (30) square feet of open space, or 30 linear feet of pedestrian route shall be provided within publicly accessible open space.

**Staff Comment:** Applicant is providing enough benches to meet this standard.

2. Bus shelters. Bus shelters or sheltered waiting areas along building frontages shall be provided along designate bus routes. The placement and design of shelters shall not obstruct pedestrian circulation and shall ensure maintenance and proper use. Shelters shall provide a heated waiting area wherever feasible and shall be adequately illuminated and provide seating, signage, and schedule/route information.



**Staff Comment:** A bus shelter is proposed in front of MidtownThree near an existing bus stop on Somerset Street. The bus stop should be shifted closer to the curb line as it presently could interfere with pedestrian circulation within the sidewalk. A design of the bus shelter should be submitted. METRO's approval of a bus shelter at this location should be confirmed.

The proposed bus stop location does not (per drawing C-2.0B) provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location. A note has been added to the plan but no other information/design changes made. An approval of this project should include a condition that this issue be resolved to the satisfaction of the Planning Authority.

3. Streetscape Amenities. Streetscape amenities such as trash receptacles, mailboxes, and newspaper boxes shall not create a visual appearance of clutter, shall not obstruct pedestrian circulation, shall be designed to ensure maintenance and proper use, and shall complement the character of surrounding buildings, streets and open space. Streetscape amenities shall be designed and sited so as to prevent vehicles from parking on the sidewalk.

**Staff Comment:** The proposed streetscape amenities complement the character of surrounding buildings, streets and open space. The amenities such as curb, planters and limited driveways are designed to prevent parking on the sidewalk. Comments on the functional width of the MidtownFour sidewalk and the corner of Somerset-Elm have been discussed earlier in this report.

4. Directional and Informational Signage. It is important that adequate orientation be provided in order to assure the greatest possible use of the area by pedestrians, Directional and Informational Signage shall be consistent with guidelines established within STANDARD E-16: Signage, with signage requirements of the City Land Use Code, and with other applicable City signage plans such as the results of the City's Wayfinding Study (underway in 2008), as identified during review.

**Staff Comment:** A complete directional and information plan has not been submitted but this can be handled administratively as a condition of approval.

**STANDARD D-5: Public Art and other special features.** The provision of art and other special features such as fountains and kiosks adds visual interest, a sense of creativity; and elements of discovery that enhance the pedestrian experience. All public art shall be designed and implemented in accordance with the *Guidelines for the City of Portland's Public Art Program*. The location of such features shall not obstruct pedestrian circulation and shall complement the character of surrounding buildings, streets and open space.

**Staff Comment:** Near the Somerset and Elm corner (adjacent to midtownThree) the small triangular plaza is noted as an “Urban Art Park (Commissioned Works)”. The plan indicates that the final design will be coordinated with City Staff. This is an interesting concept that should be further explored.

On the Pearl Street side of midtown one-half of the façade is labeled as a public art opportunity. On midtownThree (Elm Street side), the lower retail level is labeled as a public art opportunity. The easterly elevation of midtown four (upper stories) is noted as a public art opportunity. Staff has discussed with the applicant design team the preference for increased fenestration in residential units at these locations rather than unidentified art. Without a specific public art design drawing in hand to review, staff recommendation is that approval at this time should include a condition that the treatment of that location should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12. A specific public art opportunity could be reviewed in the future.

**PRINCIPLE E: Architectural Design**

*New development shall contribute positively to a new identity for the neighborhood as outlined in A New Vision for Bayside. New development shall create a mixed-use, pedestrian-friendly setting that contributes to the context of the surrounding urban fabric and provides a sensitive transition to adjacent residential neighborhoods. The Portland peninsula has a coherent urban fabric of traditional building forms, street grid, and streetscape design that contributes to the legibility of the city. New development in Bayside may be a variety of architectural styles, particularly those that are innovative and express the aesthetic of the time in which it was built, and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. The scale, massing and fenestration of new development shall reflect its context, include the highest quality design, materials and construction systems expected to last at least 50 years; flexible and adaptable floor plates; functional and aesthetic architectural details; sustainable and green design; and excellence in streetscape, landscape, signage and lighting which is appropriate for an urban setting in the northeastern United States.*

**STANDARD E-1: Architectural Design.** New development in Bayside may be a variety of architectural styles, particularly that which is innovative and expresses the aesthetic of the time in which it was built, and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. A respectful integration of contemporary design within the existing context shall complement, reinforce and enhance the prevailing patterns and proportions of adjacent buildings without requiring imitation or repetition.

**Staff Comment:** The design intent of the three residential buildings is to create Modern Industrial buildings in recognition of the history and character of the Bayside neighborhood. The surrounding context immediately adjacent to the project is industrial and commercial, often with utilitarian aesthetic and low building heights. Prevailing patterns come from the brick and concrete Noyes

storage building across the street as well as very recent buildings such as Intermed and the student housing on Marginal Way which employ glass, metal siding, and brick. There is very little context of mixed-use buildings at this scale. Given that context, the proposed design is contemporary and mitigates the mass and height of the buildings through articulation and material changes. The material choices and color palette are contemporary and reflect the industrial feel of the context. This project will be of unique scale and height and in part, creating a pattern language and adding new context to the neighborhood for future architecture.

**STANDARD E-2: Height.** In general, building heights shall meet the heights approved on the *Bayside Height Overlay Map*. Heights along the edges of the B-7 Zone shall transition to the scale of adjacent neighborhood development through design elements such as variations in massing; articulation of the facades in intervals that reflect existing structures or platting pattern, stepping the architecture to adjacent buildings and/or contextual proportions of building elements, use of architectural style and details such as roof lines, belt courses, cornices, or fenestration, and color or materials that derive from the less intensive zone.

The street wall heights of buildings shall be stepped back 15 feet minimum once they exceed by 50% the average height of the buildings 4 stories or taller on both side of the street within the block of the proposed site.

The design of the building top, roofline or vertical termination shall be designed to create visual interest on the skyline.

**Staff Comment:** The composition of the façade through fenestration, color, materials, and variations in the façade and massing provides visual interest that reduces the relative proportions of the building facades. MidtownThree, 430' in length, poses a massing challenge that the variations in material and roof line help mitigate.

Each building top provides some moderate variation from the base of the building and has been designed to create visual interest. These variations include height variation with circulation towers and parapets, and with architectural components such as cornices or “fin walls” and changes in materials.

**STANDARD E-3: Massing.** Large expanses of undifferentiated facade or uniform cladding are not allowed along public rights of way. The composition of a proposed building façade shall be defined by horizontal and vertical articulation, with vertical articulation being predominant, in keeping with the local context of the urban form.

New buildings that are four stories or higher shall have three components: base; middle; and top. The base provides a portion of the building with a scale and articulation that is related directly to the pedestrian. The middle portion of the building provides a pattern of fenestration and detail that lends a sense of rhythm and scale to a building both

horizontally and vertically. The top portion of the façade typically receives special treatment that terminates the building in a distinctive manner. Exceptions shall be permitted, as determined by the City's planning staff, only when a specific architectural style offers other types of facade articulation that are consistent with that style.

**Staff Comment:** The residential facades demonstrate each building has a base (retail storefronts); middle (residential block with consistent fenestration patterns and façade articulation that relates to the unit configuration) and a top (design element above the main roofline such as parapets and cornices as well as setbacks in midtownThree).

Staff support the waiver request from this Standard for the garage building, midtownTwo.

**STANDARD E-4: Articulation.** Blank, flat, unadorned, or repetitive facades shall not be allowed on facades visible from public rights of way. Facades visible from public rights of way shall incorporate design elements that break the facades into components scaled to the pedestrian, and to the context of other buildings on the street. This may be accomplished through an expression of the building's base, middle and top, vertical fenestration, variation in the planes of the façade, architectural details such as windows, doors, bays, balconies, cornices, reveals, expansion joints, trim, changes in color, texture, and material, permanent artwork, etc. The maximum length of blank or undifferentiated facades shall not exceed thirty feet horizontally or vertically and shall not exceed 15 feet horizontally or vertically along streets, primarily A and B Streets. The design elements listed above may be used to mitigate blank walls if it can be demonstrated that the program of the building precludes the use of windows or functional doors every 30 feet at the pedestrian level.

The base of the building which relates to the pedestrian realm shall be designed with a high level of detailing and material quality utilizing the options listed above. Buildings which are less than four stories must meet this standard on the entire height of the façade. Buildings that are four or five stories shall meet this standard on the first 14 feet, or the first floor at a minimum. Buildings which are six and seven stories shall meet this standard on the first 24 feet, or the first two floors at a minimum. Buildings which are eight stories or higher shall meet this standard on the first 35 feet of the building façade, or the first three levels at a minimum. A deviation shall be made from this standard only to the closest natural breaking point in the building.

All buildings shall maintain a pedestrian scale through the use of building elements at the street level such as windows, entries, commercial displays, building entries, a variety of materials, colors, ornamentation, texture, elements indicating floor-to-floor heights, appropriately scaled building materials, cornice lines, signage, awnings and canopies. Ground floor facades that face public streets shall actively engage pedestrians through such features listed above along no less than 60 percent of their horizontal length.

For interior uses which require large volumes of windowless space, every effort shall be made to contain these uses within the central portion of a site away from street fronting facades of the building. Building entrances and large windows may not be feasible in some cases, due to topographic change or windowless interior uses which cannot be located in any other portion of a site. In such situations, it is important that the design of the facades incorporate features such as those listed above.

**Staff Comment:** The proposed design allows for the opportunity for most of the facades to be active with storefront and entrances. In those places where retail frontage is not possible, alternative, active uses such as bicycle parking along the adjacent sidewalk have been incorporated. The applicant reiterated that some of the ground floor design will depend on the tenants, however, staff encourages those stretches of façade that may not have direct retail access still incorporate visibility or alternative uses in order to prevent ‘dead zones’ along the trail and mews. The plans show retail entries on most storefront facades, but the actual placement of retail entries is left indeterminate. To meet this standard, a commitment to provide at least one fully functional entry should be provided along the trail side of each building.

As the design develops, high level of detailing is encouraged to ensure that the building does not appear monolithic and monotonous from the pedestrian experience. MidtownThree has added features such as cornices, stepbacks at upper levels, and variation in materials to bring additional articulation and detail to the long facades.

There is sufficient articulation in general to meet this standard, although the garage facades pose some functional challenges for the level of detail and scale. We encourage the use of materials that have texture or dimension (such as the metal siding) to add visual interest and shadow lines to the facades. We believe that the plan meets this standard.

**STANDARD E-5: Flexibility of Interior Layout.** The interior layout of a space can impact its viability for pedestrian oriented uses. The first forty (40) feet of depth of floor area along street frontages shall be laid out to be able to accommodate retail or other pedestrian oriented uses. Placement of exterior and interior building features at the first floor level (such as columns, bearing walls, stairs, elevators, and mechanical systems) shall be designed and constructed to be flexible over time and to accommodate the broadest possible variety of layouts, or be able to be modified at reasonable cost to accommodate future pedestrian oriented uses. New commercial development shall incorporate floor plates that can accommodate different sized spaces, storefront windows with the ability to provide separate entrances from the sidewalk, and floor to ceiling heights of 14’ on the ground floor. Parking garages shall be designed to be convertible to future uses through the provision of a minimum of a 10 floor to ceiling height, if feasible.

**Staff Comment:** The residential buildings provide repetitive retail storefronts at the base for flexibility. It appears all proposed retail spaces are at least 40 feet in depth. The parking garage has structural bay spacing of 48 feet by 60 feet.

**STANDARD E-6: Entrances.** Buildings along public streets shall have the primary entrances oriented to the street. Primary entrances shall not be oriented to a parking lot or structure. If a building sits at a corner of two streets that are defined as A or B Streets, the primary building entrance shall orient to the corner unless the building program precludes such design. An exception to a corner entrance may be considered where an alternative orientation achieves a superior relationship of the building to the adjacent streets. Primary building entrances shall be fully functional in design and use and shall provide access to lobbies, elevators, stairs and common areas. Entrances shall be scaled to the overall massing of the building. Commercial and mixed use buildings shall be permeable and accessible on all sides from the public way, unless the building program precludes such design due to building scale or for reasonably necessary security purposes. Residential buildings are only required to have one entrance for security purposes.

**Staff Comment:** The applicant chose to emphasize the retail uses along Somerset Street. The result is that the primary residential entrances for MidtownOne are not oriented to the A street or the corner. For circulation and internal organization/programmatic reasons, the designers cannot change the location of the primary entrances to be closer to Somerset Street. The compromise arrived at is for a secondary entrance at the egress stair to be emphasized with a canopy, glazed storefront, and an accessible entry. MidtownTwo uses circulation towers with a taller height and different materials to emphasize entrances to the garage at the building corners. MidtownThree differentiates and emphasizes the residential entrance on Somerset Street, which is mid-block, with a canopy and architectural fin wall element using a highlight color to bring additional visibility. Because midtownThree is a long building, staff feels it is especially important for the residential entry to be discernable from the pedestrian realm. MidtownFour orients its main entrance façade to the Elm Street approach and to the Bayside Trail. This building entry, as discussed in Standard A-4 Gateways, should be emphasized at a scale proportionate with its prominence on the view corridor. This is achieved with increased height, an articulated cornice line, and a canopy.

Each building provides some storefront presence with access points on the Bayside Trail.

**STANDARD E-7: Windows.** Windows shall be located on all facades visible from public rights of way. Window style shall be appropriate to the overall building style and scaled to the overall massing. The first floor transparency along public streets and the trail shall be equal to at least 50% of the wall area between the height of 2 and 9 feet. The first floor windows and storefronts shall be transparent with active uses visible behind them. Opaque glass shall not be allowed at the first floor level [See Standard E-

13 Transparency]. Upper floors of all new buildings shall have at least 15% to 40% transparency of wall surface along public rights of way, with the range depending on program requirements. If it can be demonstrated that the building program precludes windows along first floor street frontages, then other surface details shall be used in accordance with Standard E-4 Articulation].

**Staff Comment:** The apartment buildings have windows located on all facades. The upper floors of the parking garage do not have windows but will have openings that will meet the transparency percentage standard. The retail frontage of both buildings between 2 and 9 feet above the floor exceeds 50%. All glass will have a light transmittance of over 75%.

As discussed earlier in the review, opportunities to add fenestration to residential units should be fully taken advantage of. Especially of high priority is the midtown Four East Elevation which presents two significant areas of blank wall facing the Bayside Trail. Additional fenestration could be provided on this facade and would alleviate two concerns - that of quality light and air for multi-family residential units, and the quality of building facing the public amenity of the Bayside Trail. Some of the interior-facing units of midtown Three could also potentially accommodate additional windows, eg the west-facing, interior units. The latest elevation drawings from February 20 address the missing windows shown on floor plans but not in the previous set of elevation drawings. No additional fenestration has been provided.

**STANDARD E-8: Storefronts.** Storefronts shall be designed to accommodate doors at regular intervals, so that doors may be installed in the future as the building program changes over time. Storefront glass shall be transparent in accordance with Standard E-13: Transparency, and shall not be blocked with opaque glass, or other means. Fixed, collapsible and rolling security grills and gates shall not be allowed on display windows and doors visible from public rights of way.

**Staff Comment:** All buildings are proposed to have storefront systems at the ground floor. Storefront glass will meet the transparency standard of E-13. Of concern is the note on sheet 1-A201 that indicates any proposed storefront depicted in the plan may be substituted at the discretion of the developer for EIFS panel. Staff is not in favor of the use of EIFS at the pedestrian level on sidewalk-facing facades. This standard states that storefront glass shall be transparent and shall not be blocked with opaque glass or other means. Although staff understands the need for some design flexibility based on tenancy, the proposed note results in an uncertainty about how much storefront the project will actually have and implies that the level of storefront and transparency depicted could change an indeterminate amount. See Standard E-6 above for a recommended condition of approval that would address this issue to staff satisfaction.

**STANDARD E-9: Back Sides of Buildings.** The back sides of buildings, particularly along streets, the trail, alleys, or other pedestrian access ways, or which face an adjacent residential neighborhood, shall be designed in a manner that incorporates high quality facade materials, transparent windows, operable building entrances, and other design features that are consistent with the primary facades of the building. Exterior fire escapes, ladders, standpipes, vents, etc. shall be well maintained and painted to blend with the color of the building, or painted a dark recessive color. Utility meters, exhaust vents, etc. shall be unobtrusive and located at the side or rear of the building. See also Standard C-8: Service, Utility and Mechanical Infrastructure.

**Staff Comment:** The building has been designed with “no backside” thus the quality of design and materials is similar on all four sides of the building. Applicant states that a partial waiver is sought on the requirement of having “operable building entrances” on the back portion of the garage due to natural changes in grade and safety concerns. As stated Standard A-4, of additional concern is the view of MidtownFour from the Bayside Trail approach. The proposed building elevation shows a high proportion of solid, EIFS wall facing the trail. If additional fenestration could be provided on this facade it would alleviate the concerns about the quality of building facing the public amenity of the Bayside Trail. See also comment in Standard E-4 regarding functional entries facing the Bayside Trail, which is equally relevant under this standard.

**STANDARD E-10: Rooftop Appurtenances.** Rooftop appurtenances shall not be visible along or block view corridors, or views to specific landmark features such as the City Hall Clock Tower, Portland Observatory, the Cathedral of the Immaculate Conception or important views as may be identified during the City’s development review process. Rooftop appurtenances shall be consolidated physically or visually through unified screening. Rooftop appurtenances shall be located and designed so to appear as an integral part of the architectural character of the building on which they are located. The exterior appearance of these features shall incorporate a scale, shape and choice of materials that is consistent with the principal building.

**Staff Comment:** Roof top appurtenances (HVAC, mechanical functions, elevators) appear to be enclosed within the massing of the buildings behind parapets and therefore having a unified design with scale, shape, and materials consistent with the principle buildings.

**STANDARD E-11: Fences and Walls.** Fences and walls along public streets, trails, alleys, or public spaces shall be made of high quality, durable and weather resistant materials such as brick, stone, wood, and high grade metals. The Bayside parking lot fence detail consists of granite posts with pipe rails. This design shall be used at parking lots edges and other appropriate locations. An alternate fence design of equal or higher quality may be presented for consideration during the development review process. Ornamental fencing and walls shall be as low as possible and integrated with plant materials or other amenity wherever adequate space allows. Chain link fences, plastic fences, or fences which are rustic or rural in character, shall not be allowed anywhere that



is visible from the public right of way. Chain link fences used on areas internal to a property shall be black vinyl coated. The fence design shall not create a blank façade at the pedestrian level.

**Staff comment:** The two transformers will be enclosed with a high quality metal ornamental fence. No other fencing is proposed.

A series of low lying walls are proposed at various changes of grade that will be of masonry materials.

**STANDARD E-12: Materials.** Facades visible from public rights of way shall use natural and authentic building materials that are expected to last at least 50years. Predominant materials shall be brick, stone, precast concrete and other masonry products, wood, glass and high quality metals such as steel, titanium and copper. Traditional stucco on wire lath or masonry may be used. Renewable and recyclable materials approved for use by LEED Standards (Leadership in Energy and Environmental Design) may be used. Cellular PVC trim and dimensional stock shall be allowed.

Materials such as thin gauge metal panels, exterior insulation and finish systems (EIFS), panelized “thin brick”, vinyl siding, or stucco on Styrofoam or a similar backing shall not be used on facades visible from public rights of way. Fiber-cement clapboard and shingles may be used. Fiber cement panels shall only be used on portions of the building not visible from public rights of way. Public spaces shall be constructed of permanent, durable materials such as concrete, brick or stone.

**Staff Comment:** The material choices and color palette are contemporary and acknowledge the industrial context but remain residential in application. Building materials for the residential buildings include architectural metals, EIFS, ground faced CMU at the ground floor, and aluminum window frames. The finish and texture of these materials were not specified in detail. The parking garage is predominantly precast concrete and green screen with the use of metal panels and screens at the circulation towers. All buildings use aluminum storefront systems at the ground floor with EIFS siding at the storefront transom. In several instances, MidtownFour uses EIFS at the ground level but not along public rights-of-way.

The staff memo for the 1/13 workshop stated that, while the Design Standards for the B-7 zone do not permit the use of EIFS in areas visible from a public right of way, staff could support a design where EIFS is not the predominant material (i.e. less than 50% of the exterior material surface above the first floor, not including windows.) Since EIFS is not an allowable façade cladding according to the B-7 standard E-12, a waiver is required to allow its use. Since the initial submission the applicant has reduced the amount of EIFS on the façade of Midtown Three. According to the applicant the façade now has a coverage of 39% EIFS (down from 60%), 43% metal siding and 18% windows visible from the public realm.

While that percentage is by necessity a guideline only, it appears to be met in MidtownOne and, possibly, MidtownFour. In MidtownThree, the previous plans fell short of the 50% goal, however the February 20, 2015 revisions have addressed this by reducing the EIFS and substituting metal siding in various locations. Staff therefore is able to support the materials waiver for this project based on the latest drawings.

As outlined above, staff does not support the use of EIFS on the ground level in locations visible from a public way. An approval at this time should include a condition that the storefronts should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12

**STANDARD E-13: Transparency.** Windows shall use untinted, lightly tinted, or the minimum tint needed to meet LEED Standards. Windows that have daylighting application on all levels of the façade shall use glass with a visible transmittance (VT) value above 60% which looks clear. Any value below 60% shall not be allowed as it looks dark and/or reflective. The VT rating shall apply to the glass only, not the frame components.

**Staff Comment:** Applicant is proposing windows with a VT rating of over 75%.

**STANDARD E-14: Illumination.** Prominent building facades shall be lit by carefully designed downwash systems of appropriate color and intensity. Only historic landmarks and civic buildings shall be fully illuminated, as well as buildings which substantially contribute to the character of the street, and have sufficient ornamental detail to provide visual interest. See also STANDARD B-12 Lighting. Also see the City’s Revised Lighting Standards for Architectural Up-lighting.

**Staff Comment:** See Site Plan Review section of this report regarding lighting. Applicant proposes a string of LED lighting along parking garage green screen. Lighting is recommended to be a condition of approval.

**STANDARD E-15: Weather Protection.** Pedestrian sidewalks and walkways shall include weather protection features such as awnings or arcades a minimum of 30 feet at all entrances along A and B streets parallel to the building façade, or along at least 60% of that frontage. Canopies shall be constructed of permanent, durable materials, with glass and steel preferred.

**Staff Comment:** The Somerset St. frontage of the buildings will have awnings at the storefronts. The apartment entrances will be provided with canopies for protection.

**STANDARD E-16: Signage.**

**Staff Comment:** Applicant has submitted a master signage plan part of the site plan review process. See Site Plan Review section of this report for comments on the plan.

**STANDARD E-17: Historic Buildings.**

**Staff Comment:** Not applicable. Property is not located in a historic district.

**STANDARD E-18: Sustainable Design.**

Property that is controlled or conveyed by the City shall be developed at a minimum in a manner that is certifiable within the standards for building and neighborhood design in accordance with the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED).

**Staff Comment:** Applicant has provided LEED checklists for the buildings showing how it will be able to achieve the necessary prerequisites and credits to receive Certification.

**STANDARD E-19: Shadows.** All new development along the Bayside Trail, and all buildings in excess of 65 feet in height, shall be designed so that substantial shadow impacts on accessible open space are avoided. All development along the Trail and buildings in excess of 65 feet in height shall conduct a shadow study during the equinoxes and solstices of the year, at 9:00 am, noon, and 3:00pm. New development shall not increase the area in shadow by more than 10 percent during the period from March 21 to September 21. Shadow impacts which shall be evaluated include: 1. the amount of area of publicly-accessible open space that is shadowed; 2. the time and duration of the shadow impact within the open space; and 3. the importance of sunlight to the utility of the type of open space being shadowed.

**Staff Comment:** The applicant has submitted a shadow study (Exhibit 17) which compares the proposed development with a 65 foot development. They conclude that the development casts a minimal amount of additional shadow compared to a 65 foot building and does not exceed the maximum shadow increase of 10%, thus meeting this standard.

**STANDARD E-20: Wind.** Consideration of wind impact relating to new construction shall establish and maintain a comfortable pedestrian environment. Comfort levels for pedestrian use are related to wind speed, reflect the type of pedestrian activity that might be acceptable, and can be categorized (Melbourne's Criteria) as: 1. unacceptable and dangerous; 2. uncomfortable for walking; 3. acceptable for walking; 4. acceptable for short periods of standing or sitting; and 5. acceptable for long periods of standing or sitting.

The following factors shall be considered in evaluating whether adverse wind impacts are created: 1. Pre-development and projected post-development wind speeds and their impact on pedestrian movement; and 2. Impact of projected wind speed on the use of and comfort within existing and proposed pedestrian seating areas and other adverse impacts on the surrounding area.

**Staff Comment:** The applicant has submitted a wind analysis by RWDI, the consultants who had reviewed the prior development scheme. Recognizing that this project is substantially lower than the previous concept, the consultants conclude as follows:

“Overall, the pedestrian wind conditions for the current design are predicted to be better than those predicted by our previous assessment. Wind conditions are expected to meet the effective gust criterion and no dangerous wind conditions are predicted at any locations, including public sidewalks and Bayside Trail. Suitable wind conditions can be achieved through architectural and landscaping design for outdoor amenity spaces in the summer when these areas will typically be in use.”



## **XII. Motions for the Board to Consider**

### **A. CONDITIONAL USE**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board report for application #2014-203 relevant to Portland's B-7 zone, the City's Site Plan Ordinance, the City's Conditional Use Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board Hearing:

1. The Planning Board (**finds/does not find**) the proposed conditional use for the parking garage (**does/does not**) meet the standards of B-7 Conditional Use, Sec. 14-296 (3) governing structured parking and Zoning Code Section 14-474.

### **B. TECHNICAL AND DESIGN WAIVERS**

On the basis of the application (2014-203) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for midtown site plan and subdivision (application 2014-203), including but not limited to Section VIII Technical Waivers, of the report and the reviews by Thomas Errico, PE of T.Y Lin (dated January 27, 2015, Attachment 2), David Senus, P,E of Woodard and Curran, (dated January 28, 2015, Attachment 5) , David Margolis-Pineo, Deputy City Engineer, ( dated January 7, 2015 Attachment 6), and Jeff Tarling, City Arborist (dated January 30, 2015, Attachment 8) for the Midtown Site Plan and Subdivision Plan 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:

#### Transportation and Street Design

##### 1. Street Grades:

The Planning Board (**finds/does not find**) that the applicant has demonstrated that extraordinary conditions unique to this property exist including that the existing and anticipated flood hazards in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) and the existing building elevations across Somerset Street are at lower elevations such that relief from strict compliance with the 0.03 cross slope regulations for a local street is necessary; and the Board (**finds/does not find**) that the public interest and purposes of the land development plan are secured by the proposed variation in street grades as shown on Figure 1 – Somerset Street Schematic Maintain 18” of Freeboard adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of the Federated Companies. The Planning Board therefore (**waives/does not waive**) Section 1.4.1 Street Grades of Portland's Technical Manual to allow the roadway cross slope to be modified as shown in Figure 1.

**Staff Recommendation: Support waiver from roadway cross slope standard in accordance with the concepts presented on Figure 1 – Somerset Street Schematic Maintain 18” Freeboard adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST on behalf of The Federated Companies.**

##### 2. Vertical Alignment:

The Planning Board (**finds/does not find**) that the applicant has demonstrated that extraordinary conditions unique to this property exist, including that the existing and anticipated flood hazards

in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) such that the proposed alterations to Somerset Street and the existing building elevations across Somerset Street are at lower elevations; the Planning Board (*finds/does not find*) that, given these circumstances, relief from strict compliance with the requirement to maintain the vertical alignment for Crest Vertical Curves K=3- and Sag Vertical Curves K=40 for City streets is necessary to avoid undue hardship ; and that the public interest and purposes of the land development plan are secured by the proposed variation in the K value. The Planning Board (*waives/does not waive*) Section 1.5 Vertical Alignment of Portland's Technical Manual to allow K values for the sags on Chestnut Street to be 33.56 and Elm Street to be 38.89.

**Staff Recommendation: Thomas Errico, P.E, Jan. 7, 2015 finds the geometric design details (K Factor) of Somerset, Pearl and Chestnut to be acceptable and supports the waiver.**

### Sanitary Sewer and Storm Drain Design

#### 3. Catch Basins:

The Planning Board (*finds/does not find*) based upon the January 7, 2015 review by David Margolis Pineo (Attachment 6) and the January 28, 2015 David Senus review (Attachment 5) that extraordinary conditions unique to this property and related to existing and potential future flooding exist or undue hardship would result from strict compliance with the Technical Standard 2.7.8, including that compliance with that standard would result in excessive piping and appurtenances in the public street; and the Planning Board (*finds/does not find*) that the proposed stormwater treatment system design requires direct connections into catch basins to comply with design guidance outlined in MaineDEP Chapter 500 BMP Manual and, the public interest is secured, and the variation is consistent with the intent of the ordinance. The Planning Board (*waives/does not waive*) Section 2.7.8 Catch Basin of the Technical Manual to allow the connection of storm drain lines into a catch basin structure.

**Staff Recommendation: David Margolis-Pineo, Deputy Engineer DPS and David Senus, P.E. Woodard and Curran, recommend granting this waiver.**

### Landscaping and Landscape Preservation Standards

#### 4. 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). The Planning Board therefore (*waives/does not waive*) Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance and, further (**grants/does not grant**) a partial reduction in the financial contribution to the tree fund due to the applicant's commensurate infrastructure investment in twenty-nine ( 29) raised tree wells, as presented in the application to a contribution to the tree fund to \$8,000, which is the difference between the cost for the required number of rees and the cost of the 29 raised planters.

**Staff Recommendation: Jeff Tarling estimates that the cost for each raised planter is \$2,000, thus the total cost of the raised planters is roughly \$58,000. The financial contribution to the City's tree fund for each street tree is \$200, thus the total amount for the required number of street trees for the residential units would be \$66,000 (formula: 445 units - 115 street trees= 330 X \$200 = 66,000). The City Arborist recommends granting the waiver subject to a financial contribution to the street tree fund of \$8,000, which is the**

**difference between the cost for the required number of trees and the cost of the 29 raised planters.**

Stormwater Management Standards and ME DEP Stormwater Management

5. Flooding Standard

The Planning Board (*finds/does not find*) that the project satisfies the waiver criteria contained in Stormwater Chapter 5 Section E.2 of the City's Technical Manual relating to Stormwater Management Standards because it conveys stormwater exclusively in a piped system directly into the ocean as confirmed by David Senus' review (Attachment 5) and that the applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure. The Planning Board therefore *waives/does not waive* Chapter 5, Section E.2 Flooding Standard of the Technical Manual that requires stormwater detention for flood control to allow the storm water to be directly piped to the ocean.

**Staff Recommendation: David Senus, P.E., Woodard and Curran Civil Engineer recommends granting this waiver.**

Soil Survey Standards

6. Soil Survey – High Intensity Soil Survey

The Planning Board (*finds/does not find*) that the applicant has demonstrated that greater than 50% of the site will be developed on a filled site and remediated as a Brownfields site, which has had soil analysis done for the site and street right-of-way, and has therefore met the waiver criteria contained in the Technical Manual. The Planning Board therefore (*waives/does not waive*) Section 7.1 Soil Survey Standards of the Technical Manual, as recommended by David Margolis-Pineo (Attachment 6) and as authorized by Section 7.4.1 of the Technical Manual.

**Staff Recommendation: David Margolis-Pineo, Deputy City Engineer DPS, recommends granting this waiver.**

Street Lighting Standards

7. The Planning Board (*finds/does not find*) that the applicant has demonstrated that extraordinary circumstance unique to this property exist relating to its size and location and the anticipated significant increase in pedestrian activity in the area; and the Planning Board (*finds/does not find*) that the proposed LED lights, shielded fixtures for down lighting, and the separately metered circuit for the street light secure the public interest and address the overall intent of the City's land development plan, including its lighting standards along public ways. Thus, The Planning Board (*waives/does not waive*) Section 10.4 Standards for Special Lighting Districts in the Technical Manual to allow a closer spacing of light poles as shown on the site plan.

**Staff Recommendation: The applicant is proposing LED lights, separate metered circuitry and light shields as requested in David Margolis-Pineo's January 7, 2015 review. The Department of Public Services and the Planning Authority recommend that the waiver be granted to reduce the separation between light poles due to the unique circumstance that this area will have significantly increased pedestrian traffic and the overall lighting plan meets the intent of the lighting standards of the Technical Manual.**



### C. B-7 DESIGN WAIVERS

On the basis of the applications 2014-203 plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for the public hearing on the March 3, 2015 on application 2014-203, including but not limited to Appendix 4 of Portland's Design Manual, B-7 Design Standard Waivers of the report for the Midtown Development Plan relevant to Portland's Design Manual 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. B-7 Standard A-4, Views and Landmarks: Recognizing the existing blockage of the Cedar Street views and partial blockage of Myrtle Street view corridors, constraints relating to building design and block configuration, as well as other factors outlined in the applications and the Planning Board Report, the Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore (**waives/does not waive**) B-7 Standard A-4, Views and Landmarks, to grant a partial waiver of the requirement that new development be sited so that it does not block view corridors, to allow the midtown development to partially obstruct the Myrtle Street and Cedar Street view corridor.

**Staff Recommendation: The Planning Staff support the request for waivers of the view corridors for Myrtle and Cedar Streets.**

2. B-7 Standard B-2, Street Connectivity: Recognizing that Cedar and Myrtle streets do not abut the subject property, and in consideration of the proposed news providing an alternate access between Somerset Street and the trail, the Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore (**waives/does not waive**) B-7 Standard B-2, Street Connectivity, to grant a waiver of the requirement so that the development not be required to extend Cedar Street and Myrtle Street through the project.

**Staff Recommendation: The Planning Staff support the request for waiver of the extension of Myrtle and Cedar Streets.**

3. B-7 Standard B-3, Mid-Block Permeability: Due to the proposed building form and program of midtownThree, the Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore (**waives/does not waive**) B-7 Standard B-3, Mid-Block Permeability, for that portion of the block bounded by Marginal Way, Chestnut Street, Somerset Street and Elm Street in order to not require mid-block permeability of the development between Chestnut and Elm Streets at the site of midtownThree.

**Staff Recommendation: Staff can support a partial waiver of this standard to the extent necessary to provide only a secondary internal circulation system, provided that the following conditions of approval are met:**

- i. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
- ii. That a plan for public access through the first floor of midtownThree during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant

arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street and Bayside Trail sides of midtownThree, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of midtownThree.

- iii. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible, or, to the extent required, at City expense the removal of such soils and establishment of post development grades, landscape, surface treatments and access ways between the northerly façade of midtownThree and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld.

4. B-7 Standard B-7, Continuity of Street Level: Uses Recognizing that there is no other location for such entrances other than on Somerset Street due to block configuration, the Planning Board **[finds / does not find]** that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore **(waives/does not waive)** B-7 Standard B-7, Continuity of Street Level Uses, to allow service entrances and vehicular entrances on Somerset Street.

**Staff Recommendation: Planning Staff supports this waiver request.**

5. B-7 Standard B-11, Lighting: In order to enable an enhanced retail and pedestrian sidewalk lighting condition on Somerset Street, the Planning Board **[finds / does not find]** that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore **(waives/does not waive)** B-7 Standard B-11, Lighting, to allow closer spacing of the street lights on Somerset Street.

**Staff Recommendation: Planning Staff supports this waiver.**

6. B-7 Standard C-2 Parking Entrances: Recognizing the shallow lots and constrained garage layout, the Planning Board **[finds / does not find]** that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore **(waives/does not waive)** B-7 Standard C-2 Parking Entrances, to allow the entry and exit of the garage entry to be combined on Somerset Street.

**Staff Recommendation: The Planning Staff supports this waiver request.**

7. B-7 Standard C-5, Decks and Ramps: Recognizing the shallow lots and constrained garage layout, and that the garage design incorporates a green screen on the northerly sloped side along with other architectural devices, the Planning Board **[finds / does not find]** that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore **(waives/does not waive)** B-7 Standard C-5, Decks and Ramps, to allow visible non-horizontal ramps on the north face of the garage.

**Staff Recommendation: The Planning Staff supports this waiver request**

8. B-7 Standard C-8, Service, Utility and Mechanical Infrastructure: Because this project has no rear elevation, the Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore (**waives/does not waive**) B-7 Standard C-8, Service, Utility and Mechanical Infrastructure, to not require all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

**Staff Recommendation: The Planning Staff supports this waiver request.**

9. B-7 Standard E-3, Massing: The Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore (**waives/does not waive**) B-7 Standard E-3, Massing, to waive the requirement of a differentiated top to the parking garage.

**Staff Recommendation: Planning Staff supports this waiver.**

10. B-7 Standard E-12: Materials: The Planning Board [**finds / does not find**] that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore (waives/does not waive) B-7 Standard E-7, Materials to permit the project's current design

**Staff Recommendation: Staff supports the waiver for the present design as shown in the plans dated February 20, 2015. The design of the buildings has improved significantly since the initial submission. In particular, the applicant has done an excellent job in articulating the rooflines of the buildings and in providing a mix of building materials and good fenestration.**

#### **D. TRAFFIC MOVEMENT PERMIT**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for Application 2014-203 relevant to the Traffic Movement Permit, Site Plan and Subdivision reviews 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:

That the plan (**is/is not**) in conformance with the standards of the Traffic Movement Permit, as reviewed by Thomas Errico, P.E and comments submitted on January 29, 2015, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The Marginal Way/Chestnut Street intersection currently meets signal warrants. A traffic signal will be installed in this location as part of this project. Given the nature of the public-private partnership to construct this project, which includes a publicly-funded parking structure, as well as the fact that the City has already collected partial funding from other nearby developments for such a signal, cost will be shared between the City and the applicant. The applicant shall contribute one-third of the cost associated with installation of a traffic signal at that location, and the City shall fund the remainder. The applicant will be responsible for the development of design plans and specifications for review and approval by the Traffic Engineer and Planning Authority.

2. The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it currently consists of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.
3. The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6 months following certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.
4. Pursuant to Chapter 305 of the MDOT Rules and Regulations, the applicant shall make a \$24,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street.
5. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$26,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor.
6. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$21,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street.
7. Somerset Street/Pearl Street – The applicant has conducted a detailed evaluation of this installation of a four-way STOP sign traffic control condition and has determined that this type of control is warranted and from a traffic operations perspective performs at acceptable levels of service following project build-out. Accordingly, in order to meet the requirements of Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall be responsible for the installation of a four-way STOP intersection. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.

**E. AMENDED OVERALL SUBDIVISION PLAT AND SUBDIVISION PLANS:**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Subdivision Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, 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 of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The configuration of the Elm Street sidewalk frontage with the indented parking area in front of Midtown 4 will be re-designed as follows: the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building. The plans shall be revised in coordination with and in accordance with input from Public Services and the Planning Authority
2. The final plans shall be updated for review and approval to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:
  - i. Continue to improve the ramp and landing system on the NE corner of Elm Street – Somerset Street for ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
  - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);
  - iii. The applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street that will provide a direct accessible pedestrian route along Elm Street –;
  - iv. The configuration of several curb ramps shall be revised for review and approval by the Traffic Engineer and Planning Authority, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
  - v. In order to bring the project into compliance with the ADA, the applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
3. All ramps/stairs/planters/retaining walls for the midtown development that are located within the street right of way shall require a license from the Portland City Council, the terms of which shall require the owner and assigns to be responsible for the maintenance, repair, and long term upkeep of such improvements. Such license shall be recorded in the Cumberland County Registry of Deeds. This responsibility shall be expressly noted on the subdivision plat and in any lease, assignment or other agreements purporting to transfer that responsibility.
4. The applicant shall provide public pedestrian access easements for all sidewalks on private property that are adjacent to the street right of way. All easements shall be submitted for Public Services, Planning Authority and Corporation Counsel review and approval Easements shall specify the function, responsibility of maintenance and repair, as well as ownership of all improvements. The ADA compliant accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.
5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.

6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street. These revised plans shall be submitted for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons and which meet the standards contained in Technical Manual for final review and approval by the Traffic Engineer and the Planning Authority.
9. The Applicant's submittal is in conformance with the requirements of the City's Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
  - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.
  - ii. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.
  - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services.
  - iv. Applicant shall secure a license from the Portland City Council for the installation of all stormwater quality treatment units located within the public rights of way. Such license shall be recorded in the Cumberland County Registry of Deeds.
10. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
11. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unitil, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
12. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be

obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.

13. The City has agreed to design and fund the installation of the 24” storm drain pipe in Elm Street from Somerset Street to the existing 24” pipe in Elm Street. This extension of 24” pipe shall be constructed by the applicant in the course of project development, at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
14. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18” of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for Public Services review and approval prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
15. The following note shall be amended to read on all final plans: “midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED IN EXHIBIT C TO 2<sup>nd</sup> AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK”.
16. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
17. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction activity associated with the project. If the plans submitted show changes to the trail grading that are not identified as being completed by others, the applicant is responsible for the costs of those changes.
18. The applicant shall submit examples of other development projects undertaken by the applicant to confirm technical capacity to meet the standards of the subdivision ordinance for Planning Authority review and approval..
19. The Subdivision Plans and Recording Plat shall be subject to review and approval of the Planning Authority, Corporation Counsel, and Department of Public Services, including but not limited to the following:
  - i. Detailed references to labeling of easements, content and dimensions of easements, temporary construction easements, subdivision notes, maintenance and repair responsibilities, ownership of all improvements, and other relevant conditions;

- ii. The DPS comments submitted on the Amended Subdivision /Recording Plat, dated April 10, 2013 must be met and the plan shall be stamped by a registered land surveyor.
  - iii. The applicant shall submit a deed for the proposed four foot widening of Somerset Street and the recording plat shall be revised to show the widening on the plat.
  - iv. All relevant plans and documents cited in notes shall be recorded.
  - v. The Subdivision Plat shall be revised to show property pins to be set at all locations to define the applicant's property.
20. In the event that the elevation of Somerset Street is raised east of Pearl Street, the applicant or successor shall be responsible for removing ramps, steps and other impediments in providing a continuous at-grade pedestrian access along the front of midtown One. Applicant or successor shall also be responsible for installing new streetscape materials and amenities that achieves a continuous at-grade sidewalk with review and approval by the Planning Authority. The applicant or its successor shall also be responsible for sidewalk and related improvements within their property line along Pearl Street extension should Pearl Street extension be reconstructed in the future.

**F. LEVEL III SITE PLAN REVIEW**

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Site Plan Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, 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 of the Land Use Code, Site Location of Development review and DEP Stormwater Permit, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

a) Transportation Standards

- 1. The applicant shall provide a detailed Construction Management Plan as a condition of approval. The plan shall be submitted for review and approval by Public Services prior to issuance of any City permit.
- 2. The configuration of the sidewalk with the indented parking area in front of Midtown 4 will degrade the pedestrian environment along the section of sidewalk. A re-design of this Elm Street frontage is required to comply with the B-7 Design Principles and Standards. Therefore, the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building.
- 3. The final plans shall be updated for review and approval by Public Services to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:



- i. The ramp and landing system on the NE corner of Elm Street – Somerset Street must be revised to achieve ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
  - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);
  - iii. The section of sidewalk along Elm Street between Midtown 3 and Midtown 4 does not provide a direct accessible pedestrian route (as depicted on Sheet C-2.0B) along Elm Street – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street;
  - iv. The configuration of several curb ramps shall be revised for review and approval, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
  - v. Portions of the accessible pedestrian route depicted on C-2.0B are not ADA-compliant due to reliance on crossing the flare of a curb ramp and the final plans shall be revised for review and approval – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
4. Required easements for pedestrian public access along the ADA – compliant accessible pedestrian routes located on private property shall be provided for review and approval by Corporation Counsel.
5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.
6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and that the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons for review and approval.
9. An in-line Transit Stop on Somerset Street is required and coordination with METRO is required to finalize details for the bus shelter. The proposed bus stop location does not provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location (per drawing C-2.0B). The final plans must address ADA compliance and the applicant must confirm that METRO has reviewed and approved the location.

10. The applicant shall provide a parking demand and supply analysis that demonstrates the adequacy of the proposed parking garage for the entire project as part of the TDM to be reviewed and approved by the Traffic Engineer and the Planning Authority.
11. The final plans shall be revised to provide the following:
  - i. Adequate spacing between the racks or with adequate spacing from the street or other structures, defined as spacing of 36” (min.) on center between bike hitches that are parallel to each other; spacing of 72” (min) on center between bike hitches that are in line with each other; separation of 30” (min.) on center between a bike hitch mounted parallel to a structure, wall or building; 48” (min.) on center between a bike rack mounted perpendicular to a structure, wall or building.
  - ii. The selected bike racks (shown on Sheet L4.0, the Olympia Rack) do not meet the Technical Manual standard for installation within the public right of way. These racks should be replaced with either the Bike Hitch or Downtown rack; and
  - iii. A detailed layout of the bicycle parking with the parking garage should be provided to ensure the functionality and accessibility to the clusters of 8 bike racks, with 2 clusters per level. It does not appear that the racks will be fully accessible when cars are parked immediately adjacent to the clusters.
12. The TDM Plan shall be finalized for review and approval by the Traffic Engineer and the Planning Authority. An annual monitoring program is required for the TDM with reports provided to the City and pursuant to which other strategies will be reviewed on an annual basis.
13. The Applicant shall be responsible for the maintenance and repair of all stairways, landings and retaining walls required by the development located within the public right-of-way along Midtown’s street frontage and shall secure a license from the City Council for these improvements,, which shall be recorded at the registry of deeds. This responsibility shall be noted on the both the subdivision plat and the site plan.
14. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
15. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction associated with the project.

b) Environmental Quality Standards

1. A final landscape plan shall be submitted that makes the following changes to the last plan submitted.:
  - i. Show all tree save areas, protection areas and protection measures, including physical barriers/protective fencing during construction. No ~~no~~ construction equipment or storage shall take place near root zones.
  - ii. Specify that the landscape contractor shall properly prepare trees to be relocated to be made available to the city of Portland for reuse. Such preparation includes digging and preparing the rootball with “balled and burlap” standard. Trees shall be cared for on-site

- as needed for an agreed upon period of time, which includes watering and site protection in a safe location.
- iii. All plant material shall meet the size and species requirements of the arboricultural standards of Portland's Technical Manual, with the exception that some Dog Woods may be included in the tree mix;
  - iv. The raised granite planter for the street trees should change from saw-cut to "Thermal Top".
  - v. Landscape plant sizes shall be 5 gallon for shrubs; green vines and perennials shall be a minimum 3 gallon size.
  - vi. The 26 Pagoda Dogwood trees on the trail side of Midtown Three should be upgraded to a larger tree species such as Yellow Birch, River Birch, Red Maple, or Swamp Oak and planted in fewer numbers, in groves if feasible..
2. The Applicant's submittal is in conformance with the requirements of the City's Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way, shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
    - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines;
    - ii. The owner/operator of the approved stormwater management system and all assignsshall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements;
    - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services; and
    - iv. Applicant shall secure a license from the City Council for the installation of stormwater quality treatment units within public rights-of-way.
  3. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
  4. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unutil, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
  5. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.

6. The City has agreed to design and fund the installation of the 24” storm drain pipe in Elm Street from Somerset Street to the existing 24” pipe in Elm Street. This extension of 24” pipe shall be constructed by the applicant in the course of project development , at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
7. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18” of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for review and approval by Public Services prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
8. The following note shall be amended to read on all final plans: “midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED IN EXHIBIT C TO 2<sup>nd</sup> AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK ”.

c) Public Infrastructure and Community Safety Standards

- i. The final location of the hydrant to be relocated along Lancaster street shall be reviewed and approved by the Fire Department.
- ii. A Dumpster is proposed to be placed inside of Midtown Three for the trash holding area. Although this building will be provided with a full sprinkler system, a two hour separation between this space and the remainder of the building shall be required.
- iii. The new proposed curb cut and access off Elm Street to the small side of Midtown Four must be a minimum of 16’ wide for fire access. The final plans shall be revised showing the required signage and striping on the driveway indicating Fire Lane NO PARKING for review and approval.
- iv. During construction, the Fire Department requires the following:
  - i. Per NFPA 1, 16.3.4, Access for firefighting equipment.
  - ii. Per NFPA 1, 16.4.3, Fire Protection during construction. (Water supply )
  - iii. Per NFPA 16.4.3.3.2, Standpipe Installations in Buildings under construction.
  - iv. Per NFPA 16.7.1.6, Fire Extinguishers
  - v. Per NFPA 16.7.2, Fuel Systems.
- v. The Applicant must continue to coordinate their design with all impacted utility providers to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.

d) Site Design Standards

1. The lighting plan with the photometrics shall be subject to the Planning Authority's review and approval.
2. Signage shall meet zoning ordinance requirements and the overall signage plan shall be subject to the Planning Authority's review and approval.
3. References to snow storage within the Bayside Trail Corridor shall be removed from all plans and the final management of snow storage submitted for review and approval by the Planning Authority.
4. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
5. Applicant shall submit catalog cut and or samples of exterior materials used for the retaining walls and stairs for Planning Staff review and approval.
6. The proposed development is consistent with the B-7 Design Standards subject to the following conditions of approval:

The mid-block permeability plan is subject to the following conditions of approval:

- a. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
- b. That a plan for public access through the first floor of Midtown Three during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street side and, when berm removal and resultant conditions permit, the Bayside Trail side of Midtown Three, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of Midtown Three.
- c. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible or, to the extent required, at City expense the removal of such soils and establishment of post development grades, landscape, surface treatments and access ways between the northerly façade of Midtown Three and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld..

**ii. Standard B-4: Sidewalks and Crosswalks:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.

- i. **Standard B-10: Encroachments:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.

- ii. **Standard C-7: Bike Racks:** A detailed layout for bicycle parking within the parking garage shall be provided that ensures functionality and accessibility that meets the Technical Manual Standards to the satisfaction of the Planning Authority.
- iii. **Standard D-4: Pedestrian Amenities 2. Bus Shelters:** Bus stop location and level of ADA-compliance shall be resolved to meet the Technical Manual Standards to the satisfaction of the Planning Authority.
- iv. **Standard D-5: Public Art and other special features:** The treatment of any building location shown to potentially host public art should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.
- v. **Standard E-12: Materials:** Final storefront design shall be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.

Prior to receiving a building permit, the applicant shall submit a final set of elevations and site plans dated March 3, 2015 or a later date that shall removal any scriveners errors and incorporate any changes made in the plans between the initial submission and Planning Board approval.

## **STAFF ATTACHMENTS**

1. Bayside Vision and Midtown, Supplement to Planning Staff Memo for Dec. 9, 2014 Workshop
2. Memo from Tom Errico, Traffic Review Consultant (dated Jan. 27, 2015)
- 2A. Memo from Tom Errico, Traffic Review Consultant (dated Feb. 26, 2015)
3. Memo from John Peverada, Parking Manager (dated Jan. 5, 2015)
4. Memo from Bruce Hyman, Transportation Program Manager (dated Jan. 28, 2015)
5. Memo from David Senus, Development Review Consultant (dated Jan. 28, 2015)
6. Memo from David Margolis-Pineo, Deputy City Engineer (dated Jan. 7, 2015)
7. Memo from Keith Gautreau and Craig Messinger, Fire Department (dated Jan. 23, 2015)
8. Memo from Jeff Tarling, City Arborist (dated Jan. 6, 2015)
9. Memo from Greg Mitchell, Economic Development Director (dated Jan. 29, 2015)
10. Memo from Greg Mitchell, Economic Development Director
11. Background Information on EIFS
12. Elm Street Curb Plan
13. Memo from Caitlin Cameron, Urban Designer (dated 2-26-15)
14. January 14, 2014 Midtown Planning Board Approval Letter
15. Public Comment
  - PC1 – Matt Baxter dated 1-8-15
  - PC2 – John Bannon dated 1-9-15
  - PC3 – Robert Gerber dated 1-8-15

## **APPLICANT ATTACHMENTS**

### **A. Application and Written Submission**

- Exhibit 1 – Level III Final Site Plan and Subdivision Application
- Exhibit 2 – Project Description
- Exhibit 3 – Title, Right or Interest
- Exhibit 4 – Technical and Financial Capacity
- Exhibit 5 – Utilities Narrative
- Exhibit 6 – Fire Department Review and Life Safety Plan
- Exhibit 7 – State and Federal Permit Requirements
- Exhibit 8 – Construction Management Plan
- Exhibit 9 – Traffic Report
- Exhibit 9a – Updated Traffic Report dated 1-2015
- Exhibit 9b – Supplemental Traffic Information dated 1-29-15
- Exhibit 10 – Transportation Demand Management
- Exhibit 11 – AutoTURN Templates
- Exhibit 12 – Transit Stop for Metro
- Exhibit 13 – Stormwater Management Report and O & M Manual
- Exhibit 14 – Erosion and Sediment Control Plan
- Exhibit 15 – Geotechnical Report
- Exhibit 16 – Environmental and Historical Considerations

Exhibit 17 – Compliance with Zoning and B-7 Requirements  
Exhibit 18 – Proposed Easements, Covenants  
Exhibit 19 – Review of Section 14-526 Design Standards  
Exhibit 20 – Compliance with Comprehensive Plan  
Exhibit 21 – Areas to be Disturbed by Construction  
Exhibit 22 – Sample of Exterior Materials  
Exhibit 23 – Written Waivers  
Exhibit 24 – Leed Information  
Exhibit 25 – Traffic Movement Permit Application

B. Responses to Planning Staff Comments of November 24, 2014 (December 1, 2014)

1. Cover Letter
2. PWD, Utilil and CMP Responses
3. CBT Response to B07 Waivers
4. Pedestrian Wind Conditions/Assessment
5. Updated Building Façade Perspective

C. Responses to Planning Staff Comments of January 13, 2015

Att. A - Letter from The Federated Companies Addressing Non-Technical issues  
Att. B - Letter of Response Regarding Waiver Requests & B-7 Design Guidelines  
Att. C - Capacity Availability Letter - Wastewater  
Att. D - Updated Transportation Demand (TDM) Plan  
Att. E - Plan Sheet Index Updated to Reflect Changes dated 1-21-15

CC. February 20, 2015 Submission including Summary of Revisions

D. Plans

Plans 1-10 (Changes are highlighted in bubbles) (Revised 1-21-15)

Plan 1 Amended Subdivision/Recording Plat  
Plan 2 Site Layout Plan – midtownOne and midtownTwo  
Plan 3 Site Layout Plan – midtownThree  
Plan 4 - Site Layout Plan – midtownFour  
Plan 5 - Overall Utility plan  
Plan 6 - Utility Plan – midtownOne and midtownTwo  
Plan 7 - Utility Plan – midtownThree  
Plan 8 - Utility Plan – midtownFour  
Plan 9 - Bayside Trail Retaining Wall Details and Abutter Options  
Plan 10 - Bayside Trail Profile

Civil Plans

C-1.0 Cover Sheet  
C-1.1 General Notes and Legend  
C-1.2 Draft Amended Subdivision-Recording Plat (Revised 1-21-15)  
C-1.2A2006 Existing Conditions Survey Prepared by SGC (Reference Only)  
C-1.3 ALTA-ACSM Land Title Survey (by City of Portland)



- C-1.4 2012 Boundary and Topographic Survey (by Owen Haskell) C-1.5 Residential Subdivision of Lot 7
- C-1.8 Existing Conditions and Removals Plan
- C-2.0 Overall Site Plan
  - C-2.0A Overall Site Plan and Dimensions
  - C-2.0B Accessible Route Plan
- C-2.1 Site Layout Plan – midtownOne and midtownTwo (Revised 1-21-15)
- C-2.2 Site Layout Plan – midtownThree (Revised 1-21-15)
- C-2.3 Site Layout Plan – midtownFour (Revised 1-21-15)
- C-2.4 midtownOne and midtownTwo Building Envelope and Open Space Computations
- C-2.5 midtownThree Building Envelope and Open Space Computations
- C-2.6 midtownFour Building Envelope and Open Space Computations
- C-3.0 Grading and Drainage Plan – midtownOne and midtownTwo (Revised 1-22-15)
  - C-3.1 Grading Plan – midtownThree (Revised 1-22-15)
  - C-3.2 Grading Plan – midtownFour (Revised 1-22-15)
  - C-3.3 Proposed Spot Grades for East Side of Somerset
  - C-3.4 Proposed Spot Grades for West Side of Somerset
  - C-3.5 Proposed Spot Grades for Chestnut Street North
  - C-3.6 Proposed Spot Grades for Chestnut Street South
  - C-3.7 Proposed Spot Grades for Pearl Street Extension
  - C-3.8 Proposed Spot Grades for Elm Street
  - C-3.9 Data Summary Sheet (Somerset and Chestnut)
  - C-3.10 Proposed Stormdrain Schedules for StormTreat Units
  - C-3.11 Proposed Stormdrain Schedules for Tree Box Filter Systems Sheet 1 of 3
  - C-3.12 Proposed Stormdrain Schedules for Tree Box Filter Systems Sheet 2 of 3
  - C-3.13 Proposed Stormdrain Schedules for Tree Box Filter Systems Sheet 3 of 3
  - C-3.14 midtownOne and midtownTwo Courtyard Cross Sections
  - C-3.15 Courtyard and Mews Spot Grades and Water Quality System
- C-4.0 Overall Utility Plan (Revised 1-21-15)
  - C-4.1 Utility Plan – midtownOne and midtownTwo (Revised 1-21-15)
  - C-4.2 Utility Plan – midtownThree (Revised 1-21-15)
  - C-4.3 Utility Plan – midtownFour (Revised 1-21-15)
    - C-4.4A Electrical Distribution Plan Prepared by FST
    - C-4.4B Electrical Distribution Plan Prepared by CMP
- C-6.0 Erosion Control Plan
  - C-6.1 Erosion and Sediment Control Details
  - C-6.2 Erosion and Sediment Control Details
- C-7.0 Street and Driveway Cross Sections
  - C-7.0A Miscellaneous Sections and Details
    - C-7.1 Transportation Systems and Street Design
    - C-7.2 Transportation Systems and Street Design
    - C-7.3 San Sewer and Storm Drain Details
    - C-7.4 San Sewer and Storm Drain Details
    - C-7.5 Water Details

- C-7.6 Water Details
- C-7.7 Stormwater Details Stormtreat Systems
- C-7.8 Treebox Filter with Underground Storage Details
- C-7.9 Stormtreat and Brentwood Underground Storage Details
- C-7.10 Treebox Filter with Underground Storage Details
- C-7.11 Boxless Tree Filter for system A
- C-7.12 Bayside Trail Retaining Wall Details and Abutter Options (Revised 1-21-15)
- C-7.13 Retaining Wall Details
- C-8.0 Somerset Street Profile
- C-8.0A Somerset Street Profile Facing Noyes Building
- C-8.1 Elm Street, Chestnut Street and Pearl Street Extension Profiles
- C-8.2 Bayside Trail Profile (Revised 1-21 15)
- C-10.0 Somerset Street Cross Sections
- C-10.1 Somerset Street Cross Sections
- C-10.2 Somerset Street Cross Sections
- C-14.0 Predevelopment Watershed Map
- C-14.1 Postdevelopment Watershed Map
- C-15 Somerset Street Revised Cross Section

#### Architectural Plans

- 1-A101 Ground and Roof Plan – midtownOne (Revised 2-19-15)
- 1-A102 Typical Plan – midtownOne (Revised 2-19-15)
- 1-A201 Elevations – midtownOne (Revised 2-19-15)
- 2-A101 Ground and Entry Plan – midtownTwo (Revised 2-19-15)
- 2-A102 Typical and Roof Plan – midtownTwo (Revised 2-19-15)
- 2-A201 Elevations – midtownTwo (Revised 2-19-15)
- 3-A101 Ground Plan – midtownThree (Revised 2-19-15)
- 3-A102 Typical Plan – midtownThree (Revised 2-19-15)
- 3-A103 Roof Plan – midtownThree (Revised 2-19-15)
- 3-A201 Elevations – midtownThree (Revised 2-19-15)
- 3-A202 Elevations – midtownThree (Revised 2-19-15)
- 4-A101 Ground and Roof Plan – midtownFour (Revised 2-19-15)
- 4-A102 Typical Plan- midtownFour (Revised 2-19-15)
- 4-A201 Elevations – midtownFour (Revised 2-19-15)
- A101A Ground and Entry Plan – midtownTwo (Revised 1-20-15)
- A101B Ground and Roof Plan – midtownFour (Revised 1-20-15)
- A101C Ground and Roof Plan – midtownOne (Revised 1-20-15)
- A101D Ground Plan – midtownThree (Revised 1-20-15)
- A102 Typical and Roof Plan – midtownTwo (Revised 1-20-15)
- A102A Typical Plan – midtownOne (Revised 1-20-15)
- A102B Typical Plan – midtownThree (Revised 1-20-15)
- A102C Typical Residential Plan - midtownFour (Revised 1-20-15)
- A103 Roof Plan – midtownThree (Revised 1-20-15)
- A201A Elevations – midtownFour (Revised 1-20-15)
- A201B Elevations – midtownOne (Revised 1-20-15)
- A201C Elevations – midtownThree (Revised 1-20-15)

A201D Elevations – midtownTwo (Revised 1-20-15)  
A202 Elevations – midtownThree  
A800 Signage Elevations (11-14-14)  
Context Renderings 1-29-15 (Revised 1-20-15)

Landscape and Lighting Plans

L1 Landscape and Lighting Plan  
L1.1 Detail Landscape and Lighting Plan  
L2 Landscape and Lighting Plan  
L2.0 Landscape Details  
L2.1 Landscape Details  
L2.2 Lighting Details  
L3 Landscape and Lighting Plan  
L3.0 Photometrics – midtown 1 and 2  
L3.1 Photometrics – midtown 3 and 4  
L3.2 Photometrics – Garage Floor 7  
L3.3 Photometrics – Garage Floors 3-6  
L3.4 Photometrics – Garage Floor 2  
L3.5 Photometrics – Garage Floor 1

## Supplement to Planning Staff Workshop Memo of December 9, 2014

### Bayside Vision and Midtown

At the November 12, 2014 workshop Staff was asked to respond to a question whether the midtown development met the objectives of A New Vision For Bayside (Bayside Plan).

In a nutshell, the Bayside Plan envisions Bayside as a dense, urban, mixed use, walkable neighborhood. The basic underpinning of the plan are the 11 Development Principles which are listed below. The entire text of the principles are attached.

1. Urban gateway
2. Economic and employment opportunities
3. A walkable district
4. A critical mass of dwellings
5. Transit-oriented development
6. Multi-level parking structures
7. A neighbor center
8. Recreation and open space
9. Social service network
10. Environmental remediation
11. Scrapyard redevelopment

In reviewing the midtown submission with the Development Principles it is evident that the project provides economic and employment opportunities (#2); builds new housing contributing towards a critical mass of dwellings (#4); adds development to support a transit oriented development (#5); constructs a multi-level parking garage (#6); and remediates and redevelops a brownfields site including a scrap yard site (#10 and #11).

Other Development Principles are less clear as we are in the process of reviewing the development plan. In a gateway location (#1) midtown contributes toward activity and vitality but we are still reviewing the physical and architectural elements of the development program. Midtown is making significant improvements in making the project site more walkable (#3) but in the review process we are trying to address pedestrian circulation issues as discussed in today's memo. In terms of recreation and open space (#8), the Bayside Trail is already in place and the developer has created a mews and is lifting the grade of the trail. In the review process we are seeking to address issues of access and circulation issues related to the trail and the surrounding pedestrian network. The remaining Development Principles of neighborhood center (#7) and social service network (#9) do not apply.

### B-7 Mixed Use Development District

In terms of specific zoning regulations (such as building height) the Bayside Plan is largely silent. The Bayside Plan did anticipate the need for new zoning to guide Bayside's future however implementation of zoning regulations was left as a separate process after the plan was adopted by the City Council in 2000. The product of that zoning process was the new B-7 Mixed Use Development District which was enacted in 2006.

The purpose section of the B-7 zone (sec. 14-294) states in part: "Certain districts, including but not limited to bayside, lie at the perimeter of the established downtown and contain significant redevelopment opportunities. The B-7 zone encourages these districts to acquire a distinctly urban form through dense development featuring a mix of uses such as housing, retail, offices, research and development, and artisan studios and that emphasize a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design...The zone promotes a wide range of uses in high quality structures and public open spaces to achieve twenty-four (24) hour vitality and shared parking infrastructure."

The B-7 zone sets the basic framework for regulating uses, setbacks, height and other space and bulk requirements in creating an urban district with maximum building setbacks, minimum building height, no limit on housing density, restrictions on surface parking and other measures that support an urban environment. The submitted midtown plan meets the B-7 zoning standards including the minimum height requirement of 4 stories.

### B-7 Mixed Use Urban District Zone Design Principles and Standards

To provide further guidance in reviewing development proposals beyond zoning and the site plan ordinance, the B-7 Design Principles and Standards were created in 2008. The purpose section of the B-7 design standards is shown below.

The *B-7 Design Principles and Standards* are intended to guide Bayside neighborhood residents, developers, designers, City officials and staff and others in the creation of a vibrant, aesthetic and sustainable neighborhood which is dense, mixed-use, and pedestrian-friendly. The B-7 Design Standards support excellence in urban and architectural design which contributes to a strong sense of place, encourages 24-hour activity, promotes multi-modal transportation, provides public spaces and protects scenic views. The B-7 Design Standards meet the following goals:

1. Support and reinforce the goals of *A New Vision for Bayside*.

2. Accentuate Bayside as a gateway to the city by highlighting major corridors and corners.
3. Preserve the neighborhood building scale that is typical of the small blocks of Portland.
4. Extend the existing street grid and create mid-block permeability, in order to provide opportunities for multi-modal access, service alleys, public spaces, view corridors, and access to light and air. Design pedestrian oriented streets with significant landscaping.
5. Preserve view corridors toward Back Cove and the White Mountains, as well as views looking toward the spine of the Portland peninsula, as shown in the *Bayside Height Map*.
6. Create dense, mixed-use, multi-modal development that is adjacent to infrastructure, highways, jobs and educational opportunities.
7. Create spaces of various scales that are attractive to creative industries, such as art, architecture, design, film, media, music, performing arts, publishing and software design
8. Allow building heights that create space for a critical mass of people needed to make a new urban neighborhood successful. Ensure that development is human in scale at the pedestrian level.
9. Encourage architecture which expresses the aesthetic of the time in which it was built, that respects local urban design patterns, and that is compatible with adjacent traditional residential neighborhoods. The Portland Peninsula has been Maine's most urban area for several centuries and new architectural styles and materials are often introduced here. It is expected that this will continue to be the case as sites in the B-7 Zone are redeveloped.
10. Incorporate "green" design, smart growth policies, and sustainable technology into the urban design, site plan design, and architectural designs of the Bayside neighborhood.
11. Create a variety of mixed-use commercial opportunities that serve the neighborhood, city and region. Ensure that commercial development which is regional in scale, is compatible in design and massing to the adjacent traditional residential neighborhoods.
12. Provide a hierarchy of green spaces on public and private land with parks, playgrounds, plazas and trails. Ensure that the streetscape design enhances the pedestrian experience.

13. Use authentic building materials and construction methods that are of the highest quality and appropriate to an urban environment and expected to last at least 50 years.
14. Adaptively reuse existing buildings.

**Summary:** A New Vision For Bayside is a policy document that forms the policy basis for land development regulations and is not intended to be a prescriptive regulatory document. The regulatory tools available to the Board (such as B-7 design standards) have a direct lineage from the Bayside Plan. A policy document such as the Bayside Plan cannot be expected to include the detailed code requirements that a zoning ordinance or design standards may provide. The standards however do help implement the basic policies established by the Bayside Plan.

## **BAYSIDE REDEVELOPMENT MISSION STATEMENT**

*Bayside presents an opportunity to shape the last and largest land resource of the Portland Peninsula. Much of this land has an industrial heritage and is vacant or underutilized. Surrounding these parcels is a district with a multitude of uses ranging from industrial to commercial and residential.*



*Environmental conditions inhibit further investment, but can be overcome with reasonable and attainable remediation measures. Market forces are favorable, and the community is activated to seize the moment. The positive potential of this area will contribute to the future prosperity and quality of life for all Portlanders.*



*It is time to shed the back door image of Marginal Way, to recast Bayside as a productive and connected urban neighborhood, the front and center of the Portland peninsula. Bayside can support development of housing, commerce, and community resources, and represent the pride and the quality of the City of Portland.*



# Development Principles

## *Urban gateway...*

Bayside will be an attractive urban gateway and extension of the downtown business district for the City of Portland. This district will create a new front face of the City, and present the character of Portland which will encourage people to stop, visit, and enjoy all that the downtown and Portland peninsula have to offer. A fully functioning urban district and neighborhood will reconnect with and add to the fabric of the peninsula from downtown to the adjacent neighborhoods. A compact blend of uses fosters lively daily interaction and a sense of community spirit. A wide variety of housing, shops, workplaces, open spaces, centers of community and civic activity, and needed social services will comprise the future of Bayside.



## *Economic and employment opportunities...*

Bayside's location between downtown and I-295 presents a significant economic and market opportunity to be planned and managed to create the best value for development and quality of life improvements for the community, generate a broad range of employment opportunities and improve the tax base. Bayside presents prime real estate development prospect to expand the central business district with new office and commercial space, along with small-scale affordable spaces for start-up and small business.

## *A walkable district...*

Bayside will contain housing, workplaces, services, transportation, recreation, dining and shopping, all within comfortable walking distance of each other and the downtown. Attractive lighted sidewalks, bicycle and pedestrian trail linkages will connect these uses, designed for full and maximum accessibility. Key features will include Bayside Avenue (currently Marginal Way) as a landscaped boulevard, with Chestnut, Elm, Oxford, and the rail-to-trail corridor forming major pedestrian axes.

### ***A critical mass of dwellings...***

An urban district must have a mix of residences to be truly vital. The Bayside plan will fill in, extend, and enhance the existing residential fabric with a substantial amount of new housing units. A diversity of dwelling types will enable citizens from a wide range of economic levels, age groups, and life circumstances to live in Bayside. Careful attention to design, scale, density and variety will strive to create a healthy and compatible neighborhood similar to other successful urban neighborhoods on the Portland peninsula.

### ***Transit-oriented development...***

Mixed use, compact and intensive land development, and quick and convenient transit service combine to make Bayside a neighborhood that has genuine mobility choice. This model for the peninsula and beyond will be designed from the ground up, free from dependence upon the automobile. Features including the trail connectors and frequent shuttle service throughout the peninsula area and to all major transportation centers will signify progress and commitment by the city to implement the 1993 *Portland Transportation Plan*.



### ***Multi-level parking structures...***

Ample parking is needed to serve the needs of the Bayside residents, visitors and workforce. Strategically located parking structures will serve multiple functions, connect with transit services, facilitate the flow of traffic with minimal impact on neighborhood residents, and avoid extensive land consumption by surface parking lots. The location and timing of development of parking structures

must complement and enhance the function of Bayside as a transit-oriented district and respond to the policies of the *Portland Transportation Plan*.

### ***A neighborhood center...***

The community centers at the Chestnut Street church, Boys and Girls Club, and Portland High School combine to form a significant center for the neighborhood with space for youth and family recreation and community gatherings.

### ***Recreation and open space...***

Development of a multi-use trail and bikeway on the abandoned rail corridor will be a significant cornerstone feature of the Bayside plan. The trail and open spaces such as squares, greens, parks and community gardens will be located and designed to encourage active use, and to link with the Eastern Prom Trail, Back Cove, and Deering Oaks Parks. The plaza at the base of Chestnut Street will provide a focal open space.

### ***A social service resource network...***

Bayside will continue to fulfill its role as the hub of a social service network of substantial recognized value to the city, the region and the State of Maine. The homeless, the disabled, and those in poverty rely on these services for survival and hope. Vital facilities such as the homeless shelters and related services will remain in this area. Service clusters will provide a permanent and stable working environment, integral to the fabric of the community, that builds upon new and established working relationships to best serve the needs of the community.



### ***Environmental Remediation...***

The USEPA Brownfields Program encourages the reuse of vacant and underutilized land by providing for practical cleanup standards that are based on the future use of the land. Bayside redevelopment projects will clean up the soil and recycle these underutilized parcels into productive resources for the future of the Portland community.

Redevelopment of brownfields in Bayside counters the trend toward sprawl development in this region, adding the vigorous urban center of Portland

### ***Scrapyard Redevelopment...***

Removal and redevelopment of the current scrapyards into more compatible and productive uses is another cornerstone to the Bayside redevelopment plan, that will spur private development and improve aesthetic, economic, and community character of the Bayside district.

## Criteria for Planning Board Report Transportation Standards

Comments Provided by Thomas Errico, PE (1-27-2015)

### A. Section 14-526 Site Plan Standards:

Requirements for approval

#### (a) *Transportation Standards*

##### 1. *Impact on Surrounding Street Systems*

The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the 1985 Highway Capacity Manual published by the Transportation Research Board of the National Research Council, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D".

#### **Review:**

- 11/6/2014 Comment: A Traffic Movement Permit (TMP) that complies with MaineDOT Law was issued as part of the previous approval process. Given that the current development program is expected to generate less traffic, the applicant has two options for consideration. Option 1 would be for the applicant to retain the current TMP (and the trips levels) and meet all requirements as defined previously. A second option would be for the applicant to seek an amended or new TMP and follow all procedures and requirements as defined by MaineDOT. I would note that I am in the process of coordinating this issue with MaineDOT and will provide additional clarification as soon as possible.
- 12/4/2014 Comment: The applicant is proceeding with a new Traffic Movement Permit Application. A Traffic Movement Permit Application has been submitted and deemed complete. A Traffic Study Scoping meeting has been scheduled for December 9<sup>th</sup> at 9am in the Planning Conference Room. The Scoping meeting will define specific requirements of the traffic study for the project. General traffic mobility and safety issues will be reviewed after the receipt of the final traffic study.
- 1/7/2015 Comment: The applicant has continued to coordinate on assumptions for the Traffic Impact Study and comments will be provided upon receipt of the Study.

**Status: The applicant has submitted a traffic study and supplemental information that is compliant with the Traffic Scoping Meeting requirements. The following summarizes the traffic recommendations for the project and therefore represent the requirements for issuances of a Traffic Movement Permit.**

- *The applicant will be required to install a traffic signal at the Marginal Way/Chestnut Street intersection. This intersection currently meets signal warrants and accordingly this improvement shall be installed prior to*

*certificate of occupancy. It should be noted that the applicant will be responsible for the development of design plans and specifications for review and approval by the City.*

- *The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it current consist of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy. The applicant shall submit plans for review and approval.*
- *The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6 months following certificate of occupancy. The applicant shall submit plans for review and approval.*
- *The applicant shall make a \$24,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.*
- *The applicant shall make a \$26,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.*
- *The applicant shall make a \$21,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for project phases.*
- *Somerset Street/Pearl Street – The applicant has conducted a detailed evaluation of this installation of a four-way STOP sign traffic control condition and has determined that this type of control is warrant and from a traffic operations perspective performs at acceptable levels of service following project build-out. Accordingly, the applicant shall be responsible for the installation of a four-way STOP intersection.*
- 12/4/2014 Comment: The applicant shall provide a detailed Construction Management Plan. The information provided by the applicant is insufficient. I

would note that significant construction activity will be occurring along Marginal Way in 2016 and this project must account for this activity in the Plan.

- 1/7/2015 Comment: Outstanding

**Status: The applicant shall provide a detailed Construction Management Plan as a condition of approval. The plan shall be provided for review and approval prior to issuance of any City permit.**

- 1/7/2015 Comment: The applicant has requested the following waiver: "The profiles for the reconstruction of Chestnut, Somerset, Elm, and Pearl Streets are included in the Plan Documents. Minor Variations from the City Standards for the "K" values (30 and 40 for crests and sags) will be requested. It is anticipated, the variation of the K value for the sags on Chestnut Street is expected to have a "k" value of 33.56 and Elm Street is expected to have a value of 39.89". I find the geometric design details (K Factor) of Somerset Street, Pearl Street, and Chestnut Street to be acceptable and approve a waiver.

## 2. Access and Circulation

### a. Site Access and Circulation

- (i) The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site and shall comply with the standards set forth in Sections 1 of the Technical Manual.

#### **Review:**

- 11/6/2014 Comment: A review of the parking garage layout and circulation will be reviewed upon receipt of that information.
- 12/4/2014 Comment: The applicant has provided parking garage layout plans for the ground and entry floor levels. Plans for all garage levels shall be provided. In respect to the plans provided, the following comments are noted:

- The geometric details of the ticket area should be provided on one plan and not illustrated on two separate plans. The match line details do not seem to be accurate.

- 1/7/2015 Comment: I find conditions to be acceptable.

**Status: The revised gate layout has a transition area that entering the garage that is short and vehicles exiting the garage will block entry movements. The applicant shall revise the layout to prevent this blocking condition.**

- The grades of the parking garage vehicle ramps are a concern given conditions at other City garages. I will be reviewing this issue as it relates to providing grades that meet standard design practices and will report back in the future.
- 1/7/2015 Comment: Given that parking spaces are not located on the steeper grade ramps, I find conditions to be acceptable. It is requested that the applicant incorporate special pavement surface

treatment in the area approaching the entry gates for added traction during winter periods. Specifications shall be provided to the City for review and approval. In addition, the applicant shall be responsible for development of a parking operations management plan that will review traffic flow at the entry and exit gates to ensure the system is fully utilized from a capacity perspective and that winter operations are acceptable. The applicant shall perform a monitoring survey of operations that shall be reported 12 months after opening and annually thereafter. The applicant will be responsible for implementing improvements that respond to full usage of gate capacity or winter issues, if problems are identified.

**Status: Revised plan note a ramp slope of 6% at the back of sidewalk. I'm concerned about this slope and potential impact to pedestrian safety on the sidewalk. The applicant should revise the plans to address this safety concern.**

- The compact parking spaces located on the entry level are located near the gate/ticket area and use of these spaces by larger vehicles may complicate traffic flow into and out of the garage.
- 1/7/2015 Comment: A response should be provided.

**Status: The spaces have been converted to motorcycle spaces and therefore I find conditions to be acceptable.**

- (ii) Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.

**Review:**

- 11/6/2014 Comment: A detail traffic operation analysis shall be provided at the garage entrance onto Somerset Street given that the size of the garage has increased and thus traffic volumes entering and exiting would also increase during peak hours.
- 12/4/2014 Comment: Outstanding
- 1/7/2015 Comment: This item was identified at the TMP scoping meeting and will be included in the Traffic Impact Study.

**Status: The applicant has conducted the requested analysis and has determined that the parking garage driveway at Somerset Street will operate at an acceptable level of service when fully occupied. I would note that while the delay is not expected to be significant, vehicles queues of in excess of 250 feet (12 vehicles) are projected leaving the garage during peak conditions and will back up through the gate system.**

- (iii) Where drive up features such as gasoline pumps, vacuum cleaners and menu/order boards are permitted, they shall not extend nearer than twenty five (25) feet to the street line. The site must have stacking capacity for vehicles waiting to use these service features without impeding on-site vehicular circulation or creating hazards to vehicular circulation on adjoining streets.

**Review: Not Applicable**



b. Loading and Servicing

- (i) All developments served by delivery or other service vehicles shall provide a clear route and travel way geometric design that permits safe turning and backing for the maximum vehicle length that would service the development and does not impede site access, vehicle circulation, pedestrian movements or parking;

**Review:**

- 11/6/2014 Comment: I am concerned about the provision of on-street parking and truck delivery/loading on Elm Street next to the Midtown Four building. Elm Street has a very different transportation function as compared to Somerset Street and thus street cross-sectional elements must be carefully reviewed. I would further note that the horizontal curve on Elm Street also complicates traffic safety issues in this area. The applicant should provide specific information on the use and design of the curb-side cut-out areas (vehicle parking, deliveries, drop-offs, etc.).
- 12/4/2014 Comment: The applicant should investigate the provision of a single-unit truck loading area on the north side of the Midtown Building Four that could be used for trash removal and other appropriate small truck deliveries. It should be noted that the design should only consider a single-unit truck and the driveway should be as narrow as possible (Given that truck activity should be light, I envision trucks backing into the driveway). The provision of short-term parking spaces in front of the building seems appropriate, but the number of spaces should be minimized and the design should be cognizant of Elm Street multi-modal functions (both existing and future) and any re-design of Elm Street.
- 1/7/2015 Comment: Outstanding

**Status: The revised plan included a new driveway that is intended for single-unit trucks and I find it to be acceptable. I would suggest that the on-street parking bay be shifted to the south so that it does not constrain the sidewalk in front of the building. I would also suggest that the sidewalk and curbing be implemented to match the City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building.**

c. Sidewalks

- (i) All proposed developments shall provide sidewalks along all frontages in accordance with Sections 14-498 and 14-499 of the City Code, installed to City specifications as described in Section 1 of the Technical Manual. An applicant may request a waiver from curb and sidewalk installation requirements if they meet applicable waiver criteria listed in Section 14-506 (b) of the City Code.

**Review:**

- 11/6/2014 Comment: The sidewalk system along Elm Street near the Midtown Four building will need to be closely reviewed for ADA compliance and general pedestrian needs given the ramping, steps, and retaining walls proposed.
- 12/4/2014 Comment: It is my understanding that the applicant is investigating potential changes to the Elm Street/Somerset Street intersection and these changes may impact this area and accordingly I will review this in the future.
- 1/7/2015 Comment: Outstanding

**Status: See prior comments as it relates to Building Four sidewalk design.**

- 11/6/2014 Comment: It appears that pedestrian use easements would be required on the sidewalk in front of Midtown Four.
- 12/4/2014 Comment: Outstanding
- 1/7/2015 Comment: Outstanding

**Status: The applicant has noted that they are open to providing a pedestrian use easement and a condition of approval should be included that notes that this will be coordinated in the future.**

- 11/6/2014 Comment: It would seem important that a formalized pedestrian crossing of Elm Street at Somerset Street be provided following the completion of this project.
- 12/4/2014 Comment: The plans have been revised to include two crosswalks on Elm Street at Somerset Street. The applicant should provide details on how the sidewalk ramp will be constructed given the existing driveway apron to the Noyes Building. As proposed the landing areas on the west side of Elm Street do not connect with any facility. Further review of this condition is required.
- 1/7/2015 Comment: Outstanding

**Status: Given site conditions and constraints the crosswalk on the south side of Elm Street has been eliminated. I find conditions to be acceptable and have no further comment.**

- 12/4/2014 Comment: The curb extension on the north side of Somerset Street near the Mews should be extended to the beginning of the nearest on-street parking space.
- 1/7/2015 Comment: Outstanding

**Status: The applicant has noted that this change is pending until the Somerset Street design is finalized.**

- 12/4/2014 Comment: The sidewalk ramp on the southeast corner of Chestnut Street does not appear to have an ADA compliant maneuver/turning spaces at the interface with the sidewalk. It is also unclear how the sidewalk will be constructed in this area.
- 1/7/2015 Comment: Outstanding

**Status: The applicant has indicated that ADA standards have been met and therefore I have no further comment.**

- 12/4/2014 Comment: The ramps at the Bayside Trail on Chestnut Street should consider pedestrian routings along Chestnut Street and that the path of accessibility should not include the ramp features.
- 1/7/2015 Comment: Outstanding

**Status: The applicant is suggesting that this be adjusted during final design and thus a condition of approval should be included.**

- 12/4/2014 Comment: Two rectangle symbols are illustrated on the Landscape Plan in the sidewalk at the garage entrance on Somerset Street. The applicant should note what is being proposed.
- 1/7/2015 Comment: Outstanding

**Status: The noted symbols have been removed and therefore I have no further comment.**

- (ii) Where sidewalks already exist but are in substandard condition, they shall be repaired or replaced in conformance with Chapter 25 of the City Code and Section 1 of the Technical Manual.

**Review: By Others**

- (iii) Continuous internal walkways shall be provided between existing or planned public sidewalks adjacent to the site, transit stops and street crossings and primary building entrances on the site.

**Review:**

- 12/4/2014 Comments: The plans are not clear as to the construction of the sidewalk on the south side of Somerset Street. The sidewalk is an important part of overall pedestrian accommodations and should be part of the design and construction of the project.
- 1/7/2015 Comment: Outstanding

**Status: The applicant is suggesting that this be adjusted during final design and thus a condition of approval should be included.**

- 11/6/2014 Comment: The applicant shall detail pedestrian routings between the generators and the parking garage and note the adequacy of facilities for providing safe and direct accommodations.
- 12/4/2014 Comment: The applicant has provided a graphic illustrating the routings and I find the general routings to be acceptable. Specific design detail comments for the pedestrian facility infrastructure are noted elsewhere. The applicant should provide information that specifies for all routings, compliant cross slopes are provided, including driveway aprons.
- 1/7/2015 Comment: Outstanding

**Status: The applicant has requested that this information be provided as a condition of approval.**

3. Public Transit Access

- a. For any residential development consisting of twenty (20) or more dwelling units or commercial or institutional development of at least 20,000 square feet gross floor area, a transit facility shall be constructed 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.

**Review: This standard is met.**

- (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, 1measured along rights-of-way.

**Review: This standard is met.**

- 12/4/2014 Comment: The Bus Shelter location shall be adjusted to be closer to the street and in conjunction with this the curb extension should be extended to the vehicle delivery driveway.

- 1/7/2015 Comment: Outstanding

**Status: The plans have been revised to reflect this comment. I would suggest that the revised location be reviewed and approved by METRO.**

- b. Transit facilities shall consist of a transit shelter and a transit pullout bay.

**Review: The City is requesting an in-line Transit Stop on Somerset Street and coordination with METRO is required to finalize details.**

- c. Transit facilities shall be connected to the public sidewalk system.

**Review: This standard is met.**

- d. Waiver: All or some of this standard may be waived if the Reviewing Authority determines one or more of the following:

- (i) That some or all of the required improvements cannot reasonably be made due to site constraints and/or insufficient right of way width; or

**Review: Not Applicable**

- (ii) That the development is not anticipated to generate public transit usage due to particular characteristics or proposed use of the development.

**Review: Not Applicable**

4. Parking

- a. Location and Required Number of Vehicle Parking Spaces

- (i) Off-street parking shall meet the applicable zoning requirements, except the Planning Board shall determine the parking requirement, based upon the applicant's parking study and a recommendation from the City Transportation Engineer, for new structures, building additions and changes of use with a total floor area of 50,000 sf or more and for projects, regardless of size, in the B-6, B-7 and USM Overlay zone.

**Review:**

- 11/6/2014 Comment: The applicant should provide a parking demand and supply analysis that demonstrates the adequacy of the proposed parking garage for the entire project.
- 12/4/2014 Comment: Outstanding
- 1/7/2015 Comment: Outstanding

**Status: Outstanding**

- 12/4/2014 Comment: It should be noted that on-street parking regulation changes requires action by the City Council as part of amending the City's Traffic Schedule and the applicant will be required to provide information in support of this process.
- 1/7/2015 Comment: The applicant has provided a proposed on-street parking regulation plan and minor comments/changes will be provided.

**Status:**

- (ii) Where a parking study is required, the City encourages Transportation Demand Management (TDM) strategies to be employed.

**Review: A draft TDM Plan has been submitted.**

- (iii) Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.

**Review: This standard is not relevant given that the parking garage will also serve other Bayside parking demand needs.**

- (iv) Parking spaces and aisles shall meet applicable dimensional standards as detailed in Section 1 of the Technical Manual.

**Review:**

**Status: The project meets this standard. Compact parking spaces exceed the City's dimensional standard and I find this condition to be acceptable.**

- (v) Parking lots, except for temporary lots to be used for less than one year, shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion.

**Review: Not Applicable**

- b. Location and Required Number of Bicycle Parking Spaces

(i) The site plan shall provide secure bicycle parking in conformance with Section 1 of the Technical Manual and shall meet the following requirements:

(a) *Residential structures.* Two (2) bicycle parking spaces for every five (5) dwelling units shall be required.

**Review: By Others**

(b) *Non-residential structures.* Two (2) bicycle parking spaces for every ten (10) vehicle parking spaces for the first one hundred (100) required vehicle parking spaces, plus one (1) bicycle parking space for every twenty (20) required motor vehicle parking space over one hundred (100) required vehicle parking spaces.

**Review: By Others**

(c) Development with zero (0) to ten (10) required vehicle parking spaces shall provide at least two (2) bicycle parking spaces.

**Review: By Others**

(ii) *Waiver:* The reviewing authority may reduce the required number of bicycle parking spaces if it is determined, based on evidence submitted by the applicant, that the proposed development is expected to generate reduced demand for bicycle parking due to characteristics or uses such as elderly or disabled persons housing or industrial uses located in outlying areas.

c. Motorcycle and Scooter Parking

(i) The site plan shall accommodate access and parking for two-wheeled motorized vehicles such as motorcycles and scooters.

**Review: By Others**

d. Snow Storage

(i) The site plan shall include areas for snow storage or shall include an acceptable snow removal plan.

**Review: By Others**

(ii) Snow storage areas may not encroach on areas designated to meet minimum parking requirements or on pedestrian walkways and shall not be located where they would adversely impact the functionality of bio retention or other stormwater management

systems. Landscaping in designated snow storage areas shall be such that it can withstand the snow pile.

**Review: By Others**

5. Transportation Demand Management (TDM)

a. The following types of development shall design and implement a Transportation Demand Management (TDM) plan:

- (i) All Level III development in the B7 zone;
- (ii) All commercial or institutional uses of 50,000 sf or more total floor area;
- (iii) All commercial or institutional uses designed to accommodate 100 or more employees and, for educational institutions, 100 or more students.

**Review:**

**Status: The project meets the above criteria and the applicant has submitted a draft TDM Plan**

b. The TDM Plan shall establish trip reduction targets and shall employ a combination of the following elements to achieve these targets:

- (i) Public transit incentives;

**Review:**

**Status: The TDM Plan will investigate transit incentives and thus this standard is met.**

- (ii) Parking cash-out;

**Review:**

**Status: This was not included in the TDM Plan.**

- (iii) Car sharing;

**Review:**

**Status: The TDM Plan will investigate car sharing opportunities and thus this standard is met.**

- (iv) Car and van pooling incentives;

**Review:**



**Status: The TDM Plan will investigate car and van pooling opportunities and thus this standard is met.**

(v) Guaranteed ride home programs;

**Review:**

**Status: This was not included in the TDM Plan.**

(vi) Other such strategies that reduce single occupancy vehicle trips to and from the development.

**Review:**

**Status: An annual monitoring program is required and thus other strategies will be review on a year-by-year basis.**

c. The development shall comply with the City of Portland TDM standards as described in Section 1 of the Technical Manual.

**Review:**

**Status: This standard is met, but the TDM Plan will need to be finalized.**

## Rick Knowland - Midtown Project

---

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Rick Knowland <RWK@portlandmaine.gov>  
**Date:** 2/26/2015 1:18 PM  
**Subject:** Midtown Project

---

Rick – Based upon a review of the February 20, 2015 submission materials, my previous comments remain with the exception of the following comment:

a) Transportation Standards

2. The revised Parking Garage gate layout has a transition area entering the garage that is short and vehicles exiting the garage will block entry movements. The applicant shall revise the layout to prevent this blocking condition for review and approval by the Traffic Engineer and Planning Authority.

The applicant has revised the plan to address this comment, but given that blockage still may be a problem, I would suggest that the applicant conduct a monitoring study both when the project opens and after the garage is fully occupied and be responsible for revising the entry layout if blockage problems are identified.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
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**CITY OF PORTLAND  
MEMORANDUM**

TO: Rick Knowland, Senior Planner  
FROM: John Peverada, Parking Manager  
DATE: January 5, 2015  
RE: Midtown

While I think Federated's proposed Midtown development in Bayside will be an overall benefit to the City, I have several concerns. I have indicated my concerns under the Review heading after each of the Review Standards listed below.

**A. Section 14-526 Site Plan Standards:  
Requirements for approval**

**(a) Transportation Standards**

1. Impact on Surrounding Street Systems

The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the 1985 Highway Capacity Manual published by the Transportation Research Board of the National Research Council, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D".

**Review:** How will off street loading and delivery for both the retail businesses and the apartments be dealt with ? The applicant has shown one delivery bay in each of the two buildings on Somerset St., but they are only 30-35' deep, and there is absolutely no off street delivery space for the building on Elm St.

How will large delivery vehicles such as moving vans and tractor trailers such as those now being used by Coke a Cola etc...be accommodated without blocking traffic. Unlike some other streets in the City, Somerset St has two way traffic and is relatively narrow. If given no alternative the large trucks will double park blocking traffic causing traffic flow and safety issues, for vehicles, pedestrians and emergency vehicles.

2. Access and Circulation

a. Site Access and Circulation

- (i) The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site and

shall comply with the standards set forth in Sections 1 of the Technical Manual.

**Review:** With the entrance gate to the garage being located on the ramp leading from the ground level to the first supported deck, what measures will be taken to prevent vehicles from being stuck (tires spinning on wet slush covered incline after stopping to pull a ticket), a 6% slope seems to be steep especially if vehicles stop to pull a ticket or swipe their card, then try to start up again, this too could cause traffic to back up in the garage and onto Somerset St..

The following is an excerpt from a e-mail I received from a parker in the Casco Bay garage after a snow event, and he didn't even have to stop on the ramp !

"I'm writing to you on Monday evening, as a very disappointed and frustrated parking customer of the Casco Bay Condo Association. I have been paying for monthly parking for at least 4 years, probably longer. The frustration and aggravation came at 3:00 this afternoon, when I came back to the garage on my way home to Peaks Island. The garage was packed (as usual) and the snow had not been plowed out. I made it easily up to the corner between the 2nd and 3rd floors, and then on the uphill slope my vehicle skidded and slid sideways in the snowy mess and I finally had to back down around and past another car coming up behind me. With no way to get to a parking space, I then had to leave the garage. I don't drive a particularly wimpy car: it's a front-wheel drive VW Passat with regular tires. I shouldn't have to drive an all-wheel drive vehicle just to park in a city garage!"

- (ii) **Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.**

**Review:** With only one entry and one exit lane what happens if a vehicle is "stuck" blocking the lane, and how would maintenance be performed without closing the garage? Additionally, with only one entry lane will vehicles be queued up onto Somerset St blocking traffic and the sidewalk while waiting to enter the garage at peak times?

**b. Loading and Servicing**

- (i) All developments served by delivery or other service vehicles shall provide a clear route and travel way geometric design that permits safe turning and backing for the maximum vehicle length that would service the development and does not impede site access, vehicle circulation, pedestrian movements or parking;

**Review:** Once again, the applicant has shown one delivery bay in each of the two buildings on Somerset St., but they are only 30-35' deep, and there is absolutely no off street delivery space for the building on Elm St.

How will large delivery vehicles such as moving vans and tractor trailers such as those now being used by Coke a Cola etc...be accommodated without blocking traffic? Unlike some other streets in the City, Somerset St has two way traffic and is relatively narrow. If given no

alternative the large trucks will double park, blocking traffic impeding traffic flow, pedestrian movements, and access for emergency vehicles.

4. Parking

d. Snow Storage

(i)The site plan shall include areas for snow storage or shall include an acceptable snow removal plan.

(ii)Snow storage areas may not encroach on areas designated to meet minimum parking requirements or on pedestrian walkways and shall not be located where they would adversely impact the functionality of bio retention or other stormwater management systems. Landscaping in designated snow storage areas shall be such that it can withstand the snow pile.

**Review:** What is the plan for snow removal from the roof? Snow left on the roof will result in a loss of parking spaces, and the additional weight can cause serious safety concerns.

Who will be responsible for removing the wind rows on Somerset St after a snow storm to maintain adequate street width? The City is responsible for snow removal in the PDD and some businesses off peninsula contract for their own snow removal.

**In summary my concerns are:**

1. Ingress and egress capacities IE # of entrances and exits

2. The slope of the ramps. The international Building Code (IBC) states that ramp slopes should not exceed a 6.67% slope. As stated in my previous e-mails, if a vehicle stops on the ramp they may have trouble proceeding forward if their tires spin on a wet surface, and cause traffic to back up.

Can we require the applicant to pay to have a third party "Parking Engineer" review the garage parking design. National companies such as Walker Parking, Carl Walker Assoc., Desman Assoc, Rich Assoc. are a list of some of the engineering firms that specialize in parking garages.

Finally, can we meet with the developer to review the proposed on street parking layout, IE vehicle loading zones, disabled parking, bus stops and parking meters. If we install the new multi space meters, it makes most sense to have one machine service 7-10 contiguous space.

Is the street wide enough to accommodate parking on both sides? After yesterdays storm, our office has received numerous complaints about streets being too narrow.

Please forward these comments onto the Planning Board.

Thanks  
John

**Criteria for Planning Board Report  
Transportation Standards  
Review Comments of Bruce Hyman, Transportation Coordinator  
January 28, 2015**

**A. Section 14-526 Site Plan Standards:**

Requirements for approval

(a) *Transportation Standards*

1. *Impact on Surrounding Street Systems*

The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the 1985 Highway Capacity Manual published by the Transportation Research Board of the National Research Council, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D".

**Review:**

2. *Access and Circulation*

a. Site Access and Circulation

- (i) The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site and shall comply with the standards set forth in Sections 1 of the Technical Manual.

**Review:**

- (ii) Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.

**Review:**

- (iii) Where drive up features such as gasoline pumps, vacuum cleaners and menu/order boards are permitted, they shall not extend nearer than twenty five (25) feet to the street line. The site must have stacking capacity for vehicles waiting to use these service features without impeding on-site vehicular circulation or creating hazards to vehicular circulation on adjoining streets.

**Review:**

b. Loading and Servicing

- (i) All developments served by delivery or other service vehicles shall provide a clear route and travel way geometric design that permits safe turning and backing for the maximum vehicle length that would service the development and does not impede site access, vehicle circulation, pedestrian movements or parking;

**Review:**

c. Sidewalks

- (i) All proposed developments shall provide sidewalks along all frontages in accordance with Sections 14-498 and 14-499 of the City Code, installed to City specifications as described in Section 1 of the Technical Manual. An applicant may request a waiver from curb and sidewalk installation requirements if they meet applicable waiver criteria listed in Section 14-506 (b) of the City Code.

**Review:** In numerous locations, the project as currently designed does not meet our Technical Manual standards for ADA-compliance and does not meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards.

Specifics include:

- The ramp and landing system on the NE corner of Elm Street-Somerset significantly interferes with pedestrians walking along Elm Street and is not ADA-compliant. The tree in front of this ramp and landing area hinders the pedestrian access route along the street and should be relocated or eliminated.
  - **Addressed – although the configuration remains non-ideal**
- The section of sidewalk along Elm Street between Midtown 3 and Midtown 4 does not provide a direct accessible pedestrian route (as depicted on Sheet C-2.0B). Pedestrians should not need to divert along the Bayside Trail for an ADA-compliant route on Elm Street.
  - **Not addressed**
- The configuration of several curb ramps are not ADA-compliant; they are not aligned perpendicular to the flush curb portion of the ramp.
  - **Not addressed – see attached**
- Portions of the accessible pedestrian route depicted on C-2.0B are not ADA-compliant due to reliance on crossing the flare of a curb ramp.
  - **Not addressed**
- The ADA-compliant accessible pedestrian route relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances should be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc).

- **Unknown: With the newly reconfigured sidewalk, an updated graphic (C-2.0B) illustrating the ADA-compliant pedestrian access routes should be prepared. It is not possible to know if this comment has been addressed.**
- The configuration of the sidewalk with the indented parking area in front of Midtown 4 will degrade the pedestrian environment along the section of sidewalk. A re-design of this Elm Street street frontage is desired to better comply with the B-7 Design Principles and Standards.
  - **Somewhat addressed – see Tom Errico’s comments.**

- (ii) Where sidewalks already exist but are in substandard condition, they shall be repaired or replaced in conformance with Chapter 25 of the City Code and Section 1 of the Technical Manual.

**Review:**

- (iii) Continuous internal walkways shall be provided between existing or planned public sidewalks adjacent to the site, transit stops and street crossings and primary building entrances on the site.

**Review:**

### 3. Public Transit Access

- a. For any residential development consisting of twenty (20) or more dwelling units or commercial or institutional development of at least 20,000 square feet gross floor area, a transit facility shall be constructed 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.

**Review:**



- (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, 1 measured along rights-of-way.

**Review:**

- b. Transit facilities shall consist of a transit shelter and a transit pullout bay.

**Review:**

- c. Transit facilities shall be connected to the public sidewalk system.

**Review:** The proposed bus stop location does not (per drawing C-2.0B) provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location.

- o **Not addressed:** A note has been added to the plan but no other information/design changes made.

- d. Waiver: All or some of this standard may be waived if the Reviewing Authority determines one or more of the following:

- (i) That some or all of the required improvements cannot reasonably be made due to site constraints and/or insufficient right of way width; or

**Review:**

- (ii) That the development is not anticipated to generate public transit usage due to particular characteristics or proposed use of the development.

**Review:**

4. Parking

- a. Location and Required Number of Vehicle Parking Spaces

- (i) Off-street parking shall meet the applicable zoning requirements, except the Planning Board shall determine the parking requirement, based upon the applicant's parking study and a recommendation from the City Transportation Engineer, for new structures, building additions and changes of use with a total floor area of 50,000 sf or more and for projects, regardless of size, in the B-6, B-7 and USM Overlay zone.

**Review:**

- (ii) Where a parking study is required, the City encourages Transportation Demand Management (TDM) strategies to be employed.

**Review:**

- (iii) Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.

**Review:**

- (iv) Parking spaces and aisles shall meet applicable dimensional standards as detailed in Section 1 of the Technical Manual.

**Review:**

- (v) Parking lots, except for temporary lots to be used for less than one year, shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion.

**Review:**

**b. Location and Required Number of Bicycle Parking Spaces**

- (i) The site plan shall provide secure bicycle parking in conformance with Section 1 of the Technical Manual and shall meet the following requirements:

- (a) *Residential structures.* Two (2) bicycle parking spaces for every five (5) dwelling units shall be required.

**Review:**

- (b) *Non-residential structures.* Two (2) bicycle parking spaces for every ten (10) vehicle parking spaces for the first one hundred (100) required vehicle parking spaces, plus one (1) bicycle parking space for every twenty (20) required motor vehicle parking space over one hundred (100) required vehicle parking spaces.

**Review:** The exterior bike rack locations are not designed with adequate spacing between the racks or with adequate spacing from the street or other structures.

- o **Not addressed**
- o **The bike racks shown on Sheet L4.0 (the Olympia Rack) do not meet the Technical Manual standard for bicycle racks for installation within the public right of way. These racks should be replaced with either the Bike Hitch or Downtown rack.**

- **Bicycle Parking within the Parking Garage:**  
A detailed layout should be provided to ensure the functionality and accessibility to the clusters of 8 bike racks, with 2 clusters per level. It does not appear that the racks will be fully accessible when cars are parked immediately adjacent to the clusters.

- (c) Development with zero (0) to ten (10) required vehicle parking spaces shall provide at least two (2) bicycle parking spaces.

**Review:**

- (ii) *Waiver:* The reviewing authority may reduce the required number of bicycle parking spaces if it is determined, based on evidence submitted by the applicant, that the proposed development is expected to generate reduced demand for bicycle parking due to characteristics or uses such as elderly or disabled persons housing or industrial uses located in outlying areas.

c. Motorcycle and Scooter Parking

- (i) The site plan shall accommodate access and parking for two-wheeled motorized vehicles such as motorcycles and scooters.

**Review:**

d. Snow Storage

- (i) The site plan shall include areas for snow storage or shall include an acceptable snow removal plan.

**Review:**

- (ii) Snow storage areas may not encroach on areas designated to meet minimum parking requirements or on pedestrian walkways and shall not be located where they would adversely impact the functionality of bio retention or other stormwater management systems. Landscaping in designated snow storage areas shall be such that it can withstand the snow pile.

**Review:**

5. Transportation Demand Management (TDM)

- a. The following types of development shall design and implement a Transportation Demand Management (TDM) plan:

- (i) All Level III development in the B7 zone;

**Review:**

- (ii) All commercial or institutional uses of 50,000 sf or more total floor area;

**Review:**

- (iii) All commercial or institutional uses designed to accommodate 100 or more employees and, for educational institutions, 100 or more students.

**Review:**

- b. The TDM Plan shall establish trip reduction targets and shall employ a combination of the following elements to achieve these targets:

- (i) Public transit incentives;

**Review: The plan (dated November 2014) does not meet this requirement.**

- (ii) Parking cash-out;

**Review: The plan (dated November 2014) does not meet this requirement.**

- (iii) Car sharing;

**Review: The plan (dated November 2014) does not meet this requirement.**

- (iv) Car and van pooling incentives;

**Review: The plan (dated November 2014) does not meet this requirement.**

- (v) Guaranteed ride home programs;

Review: The plan (dated November 2014) does not meet this requirement.

- (vi) Other such strategies that reduce single occupancy vehicle trips to and from the development.

Review: The plan (dated November 2014) does not meet this requirement.

- c. The development shall comply with the City of Portland TDM standards as described in Section 1 of the Technical Manual.

Review: Bicycle Parking: Minimum bicycle parking is a site plan requirement according to Section 14-526 of the Land Use Code. The TDM plan may incorporate additional bicycle parking, bicycle wayfinding, and/or covered parking to further encourage bicycle use.

While the Midtown project technically meets the minimum requirements for the quantity of bicycle parking, it does not meet the requirement that the amount and distribution of parking to help attain its stated TDM objective to encourage bicycling. Specifically, there is no long-term resident bicycle parking being provided in Midtown 1, 3 or 4. All long-term resident bicycle parking is consolidated within the parking garage (80 spaces). For instance, the long-term resident bicycle parking for residents of Midtown 4 is approximately 800 feet from the bicycle parking in the parking garage (Midtown 2).

- o Not addressed: the layout of the bike racks and adjacent parking needs to be examined to ensure that the bike racks are accessible – it does not appear that this is the case.

### 7.4.2 Influence of turning radii on curb ramp design

Curb ramps should be built so that the beginning of the sloped area is perpendicular to the user's path of travel. At a corner with a tight turning radius, the ramp of a perpendicular curb ramp will be at a 90 degree angle to the curb and will be oriented parallel to the crosswalk. This is helpful to users because they can follow the ramp path directly across the street. Curb ramps aligned with the crosswalk also minimize the maneuvering that wheelchair users must perform to use the ramp.

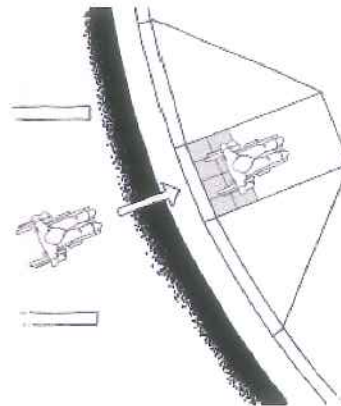


Figure 7-32. Sidewalks are easier for wheelchair users to travel on if the ramp slope is perpendicular to the curb because the chair does not become unstable as it does when one front wheel strikes a curb ramp before the other.

At corners with larger turning radii, the curb ramp cannot always be parallel to the direction of the crosswalk while the ramp slope is perpendicular to the curb. In this situation, **priority should be given to ensuring that the ramp slope is perpendicular to the curb.** However, because the curb ramp is not aligned with the crosswalk, the crosswalk must be sufficiently wide enough to allow the user to line up with the curb ramp while still in the street.

If the ramp slope is not perpendicular to the curb, wheelchair users either have to:

- Negotiate changing cross slopes and changing grades simultaneously since one side of the chair will be in the gutter while the other is still on the ramp; or
- Turn on the ramp in order to have both wheels move from the ramp to the gutter at the same time. When traveling down a curb ramp, the turn must be completed while on a significant grade and within a narrow space.

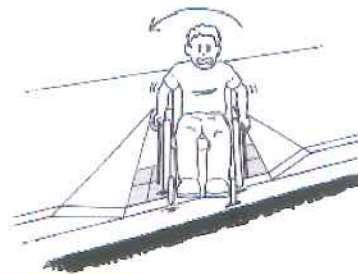


Figure 7-33. **PROBLEM:** Wheelchair users can be very unstable when traveling down a narrow ramp with a slope that is not perpendicular to the curb, because all four wheels are not touching the ground at all times.

Both of these situations significantly reduce the accessibility of the curb ramp for wheelchair users.

In some cities, designers have chosen to align curb ramps on large radii curves parallel to the crosswalk, even though the curb ramp is not perpendicular to the curb. As a result, the change of grade between the ramp and street becomes skewed relative to the path of travel. The theoretical advantage of this design is that people with vision impairments could use the

path of the curb ramp to direct them across the street. However, this benefit has limited impact because people with vision impairments tend not to rely on curb ramps for directional information due to the abundance of curb ramps that are not aligned with the proper crossing direction.

## MEMORANDUM



**TO:** Rick Knowland, Planner  
**FROM:** David Senus, P.E.  
**DATE:** January 28, 2015  
**RE:** Midtown, Final Subdivision & Level III Site Plan Application

Woodard & Curran has reviewed the final application materials submitted for the Midtown development to be located along Somerset Street, between Elm and Pearl Streets. The project consists of a 3.5-acre mixed-use commercial complex with four buildings that will house a parking garage, residential units, and retail space.

### Final Documents Reviewed By Woodard & Curran

- Subdivision & Final Level III Site Plan Development Review Application and attachments, dated November 13, 2014, prepared by FST Engineers on behalf of The Federated Companies.
- Applicant's Response to Planning Staff Comments letter, dated December 1, 2014, prepared by FST Engineers on behalf of The Federated Companies.
- Applicant's Response to Planning Staff Comments letter, dated January 21, 2015, prepared by FST Engineers on behalf of The Federated Companies.
- Civil-Related Site Development Plans for midtown, rev. dated January 21, 2015, prepared by FST Engineers on behalf of The Federated Companies, including C-1.2, C-2.0, C-2.0A, C-2.1, C-2.2, C-2.3, C-3.0 to C-3.2, C-4.0 to C-4.3, C-7.12, and C-8.2.
- Figure 1 – Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of The Federated Companies.

### Review Comments

1. The Applicant's submittal is in conformance with the requirements of the City's Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. The Applicant has requested a waiver from the requirement to meet the Flooding Standard under the City's Stormwater Management Standards and MaineDEP Site Law / Chapter 500 Standards. The Applicant has provided adequate engineering justification to support this waiver request.
2. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice should be submitted to the City upon filing with MaineDEP for the project record.
3. The Applicant will need to continue to coordinate their design with all impacted utility providers to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility.
4. The following comments are specific to the proposed grading and drainage concept for the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50; refer to sheets C-3.0 and C-7.12:
  - a. The drainage concept, as proposed, provides an adequate means of collecting and conveying stormwater runoff from the midtown property, City property (Bayside Trail), and adjacent properties north of the Bayside Trail.
  - b. The face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements will be required from the adjacent property owner to complete the work as proposed, as construction activity will be required on adjacent property to install the retaining wall and the associated grading.





5. The Applicant, City, and adjacent landowners have acknowledged that drainage issues exist during certain storm events along Somerset Street, specifically in and around a low point at the Somerset Street / Elm Street intersection. A proposal has been discussed between the City and the Applicant to install a 24" storm drain pipe from the Somerset / Elm intersection to an existing 24" storm drain pipe in Elm Street, near Trader Joe's. We recommend moving forward with the proposal to install a 24" storm drain pipe at this location. It is our understanding that the City has agreed to pay for the installation of this pipe, and that the Applicant will provide design plans. We recommend including a condition of approval requiring the Applicant to design the 24" storm drain pipe in Elm Street as part of their final plan, to be submitted for review prior to construction.
6. To address concerns raised by the Noyes family, owners of the properties located on the south / east side of Somerset Street between Elm and Pearl Streets, the Applicant has prepared Figure 1, *Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. We have reviewed this figure with input from the City's Planning and Public Services Engineering Departments, and we recommend approving the design concepts presented on this figure. The civil engineering plans submitted by the Applicant do not currently reflect the layout, grading, drainage, and materials that are presented on Figure 1 in the Somerset Street Right-of-Way. We recommend including a condition of approval requiring that the Applicant design the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for review prior to construction.
7. Numerous design plans within the Applicant's most recent submittal include a note on Somerset Street that reads "*midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND CONSTRUCTION SHALL BE COMPLETED BY OTHERS*". The aforementioned recommended condition of approval (see Comment #6) will require that the applicant design and submit Somerset Street plans for review and approval. We also understand that the City and the Applicant have entered into a cost sharing agreement which requires the Applicant to construct the improvements proposed within Somerset Street. This note should be struck from future submittals.

**Conformance with City of Portland Code of Ordinances, Chapter 14 Land Use Section 14-526 Site Plan Standards, (b) Environmental Quality Standards**

**3. Water Quality, Stormwater Management and Erosion Control:**

- a. *All development must demonstrate that the proposed site improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The stormwater management plan must demonstrate the following:*
  - (i) *Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;*  
**Review: Standard met. The Applicant's design incorporates numerous and appropriately located drainage inlets to collect and convey stormwater runoff draining from the project site and from adjacent lands abutting the project site into the municipal storm drain system so as not to create ponding on, or flooding of, adjacent lots.**
  - (ii) *Any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;*  
**Review: Standard met. The Applicant's design does not propose to increase the volume or rate of stormwater runoff onto adjacent lots.**



- (iii) *Any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the City's property; and*  
**Review: Standard met.** The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.
- (iv) *Any increase in volume or rate of stormwater draining from the lot into the City's separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.*  
**Review: Standard met.** The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate and volume from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.
- b. *All development, except Level I minor residential development, shall comply with the standards of Section 5 of the Technical Manual including basic, general and flooding standards, as applicable, to prevent and control the release of pollutants to waterbodies, watercourses, wetlands and groundwater, and reduce adverse impacts associated with increases or changes in flow, soil erosion and sedimentation.*  
**Review: Standard met for Basic & General Standards; Waiver requested from Flooding Standard.**
- c. *All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to Maine DEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.*  
**Review: Standard not applicable.** The project is not located in the watershed of an Urban Impaired Stream.
- d. *Level I: minor residential development shall comply with basic erosion control standards, as described in Section 6 of the City of Portland Technical Manual.*  
**Review: Standard not applicable.** The project is not a Level I minor residential development.
- e. *Development shall not pose a risk of groundwater contamination either during or post-construction, as described in Sections 5 and 9 of the Technical Manual.*  
**Review: Standard met.** The Applicant proposes methods for stormwater management that are designed in accordance with Section 5 of the Technical Manual to limit risk to groundwater contamination. Project is located in area of City serviced by PWD drinking water distribution system, therefore the water supply standards of Section 9 are not applicable.
- f. *Development shall provide for adequate and sanitary disposal of sewage as described in Section 2 of the Technical Manual.*  
**Review: Standard met.** The design incorporates acceptable means of connecting the project's sanitary sewer systems to the City's combined sewer system.

#### **Exhibit 23 of Application - Written Waiver Requests by Applicant**

#### ***Comments on waiver requests that are applicable to Woodard & Curran's review:***

##### ***11. 1.4 Street Grades (reference page 3 of Technical Standards)***

- The cross slope for local streets shall be 0.03. The cross slope for other street classifications shall be 0.02.*



*The project will require the reconstruction of Somerset Street. The building will be set at elevation 12.0 to be 2 feet above the higher flood hazards anticipated to increase over time. There are existing buildings with finish floors, entrances, and exits at lower elevations. The Federated plan for the midtown project has extensive ground floor retail which requires flush accessible entrances. On the other hand, there are existing buildings across the street (most notably the "Noyes" property with existing floors and entrance elevations which will not be changed. Because the buildings on either side of the street are near or on the right of way, some variation from transverse slopes and location of the street crown from the City's typical cross section within the street right of way will be required.*

**Review: Support waiver from roadway cross slope standard in accordance with the concepts presented on Figure 1 – Somerset Street Schematic Maintain 18" of Freeboard Adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of The Federated Companies.**

13. *Section 2 – Sanitary Sewer and Storm Drain Design Standards*

*2.7.8. No storm drain lines, with the exception of field inlets and underdrains, shall be connected into a catch basin structure (Reference Page 82 of the Technical Standards)*

*Representatives from the City of Portland have indicated the technical standards are being revised and will remove this restriction. If the standards have been revised, this waiver will not be required. The waiver is very important to avoid excessive piping and appurtenances in the public streets.*

**Review: Support waiver to allow drain line connections into catch basin structures. The proposed stormwater treatment system design requires direct connections into catch basins to comply with design guidance outlined in MaineDEP Chapter 500 BMP Manual.**

14. *Section 5 - Portland Stormwater Management Standards and MaineDEP Chapter 500 Stormwater Management (Reference Page 149; Section E. 2.6 of this Chapter of the Technical Standards)*

*The requirements include stormwater detention for flood control. The applicant is requesting a waiver to the requirement for detention as part of the Stormwater Management Plan. The location of the site within the watershed results in a condition where passing flow from this area as soon as possible allows capacity to free up to receive and convey flows from upstream areas.*

**Review: Support waiver from Flooding Standard. The Applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure.**

ATT 6

**Rick Knowland - Revised Comments for Midtown**

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**From:** David Margolis-Pineo  
**To:** Barbara Barhydt; Rick Knowland  
**Date:** 1/7/2015 3:21 PM  
**Subject:** Revised Comments for Midtown  
**CC:** DEVELOPMENT REVIEW GROUP

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January 7, 2015

**Memo To:** Rick Knowland  
 Barbara Barhydt  
**From:** David Margolis-Pineo  
**Re:** Midtown Development - Preliminary Comments – Federated Properties

The Department of Public Services has the following comments.

**1. Survey Related Comments**

- a. Comments on the submitted Amended Subdivision/Recording Plat Dated April 10, 2013 have not been address by the applicant and the plan has not been stamped by a registered land surveyor. This issue may need to be a condition of approval.
- b. Easements notes on drawings C-3.1, C-3.4 etc. need to be reviewed and shown on the plat.
- c. A deed is required for the proposed four foot widening of Somerset Street plus this widening needs to be shown on the Plat.
- d. Plans are referenced but appear not to be recorded. This needs to be addressed.
- e. All property corners have not been shown.

**2. Waiver Request**

- a. The Department is supportive of waiver request # 3, with the following conditions: All light fixtures shall be LED, all fixtures shall be shielded for down lighting and light spacing shall be per Code requirements. The applicant is encouraged to consider supplemental lighting on the applicant's property. All proposed lighting within the street right of way will be owned and maintained by the City of Portland and shall be on a separately metered circuit.
- b. With the Midtown Two drive now consolidated to a 24' width, waiver request #4 can be removed.
- c. The City is receptive of allowing stormwater treatment connections to catchbasins. This Department is supportive of waiver request #13.
- d. The City is supportive in waiving request #15, the requirement for a high intensity soils investigation.
- e. All proposed stormwater treatment and storage devices as a result of this project within or outside the road right of way shall be owned and maintained by the applicant and noted on the Plat.

**3. Sewer and Drainage Issues**

- a. Where all sewers are scheduled to be abandoned within the street right of way, the pipes

shall be filled with grout.

- b. The plans show a 12" catchbasin lead from E-9 on drawing C-3.3 connecting to a 24" sewer without a manhole at the intersection of Pearl and Somerset Streets. This is not allowed by City Code which states: All connecting pipes eight inches and larger require manholes. Please provide a manhole at this junction point.
- c. Please indicate for Elm St that the 12" drainage line will be increased to 24". It is the City's intent to pay for this drain extension which will be bid with the applicant's work. Plans will need to be submitted for review.
- d. A catchbasin is proposed in the sidewalk, approximate station 2+90, drawing C-3.3, at the Noyes building near the corner of Elm Street. Catchbasin in sidewalks are not allowed.
- e. All the proposed underdrain along the face of the Noyes building does not appear to be shown. Drawing C3.4 approximate station 5+25. Please verify.
- f. Please correct 6" SD location from structure S-0. Drawing C-3.4

#### 4. Road Right of Way Issues

- a. Further discussions are necessary on how does applicant propose to access for maintenance the electrical transformer behind Midtown 4. The City is not receptive to traveling over the trail unless something can be mutually agreed upon to reinforce the trail.
- b. Any lite bollards to be located within the street right of way shall be Halophane.
- c. A license for the proposed canopy for Midtown Three extending over the street right of way will be required.
- d. As a result on proposed Midtown 4 curb cut, new 24" storm drain and the replacement of the water main on Elm St., this opportunity should be used to re-align the curbing on the North side of Elm Street between the Trader Joes and Somerset Street to remove the three foot sidewalk pinch point at the Trader Joes building. Again it is the City's intent to pay for a portion of the curb realignment. Construction plans should be developed as part of the Midtown project showing these changes.
- e. There are three issues at the intersection of Elm and Somerset Streets which need to be addressed. It is felt that a meeting with the applicant's engineer and a representative of the City's engineering staff could quickly resolve these three issues.
  - i. The proposed alignment of Somerset Street Extension and Somerset Street at Elm Street,
  - ii. The proposed crosswalk alignment across Elm Street at the Somerset Street intersection, and
  - iii. The proposed layout of the crosswalk across Somerset Street at the Elm Street intersection to open pedestrian clearance on the Midtown side of Somerset Street.
- f. The sidewalk along the face of the Noyes building shall be constructed of brick. The sidewalk along the Noyes parking lot shall be constructed of asphalt as proposed.
- g. Currently parallel parking is proposed in front of the drive cut to the Noyes parking lot. This is the only drive cut to access that lot. Alternatives to the proposed design will need to be resolved.
- h. The right turn radius from both Elm and Chestnut Streets on to Somerset St will force certain vehicles into the on-coming traffic. The City staff will work with the applicant's engineers to address this issue for the final design submittal.
- i. Several of the proposed treebox filters are located in the sidewalk area. Assurance is needed that all locations will be ADA compliant.
- j. The minimum lane travel width for all portions of Somerset St shall be 13 feet. This impacts only the curb bump out areas.
- k. Due to the existence of the Noyes Storage Building and the desire to raise the level of

Somerset Street between Chestnut and Elm Street, City staff is requesting to meet with the applicant's engineers to discuss and resolve possible street and sidewalk design variances to accommodate this goal and to assure positive drainage away from the Noyes building.

ATT 7

**Rick Knowland - Midtown Tree & Landscape Revised**

**From:** Jeff Taring  
**To:** Rick Knowland  
**Date:** 1/30/2015 12:48 PM  
**Subject:** Midtown Tree & Landscape Revised  
**CC:** Barbara Barhydt

Hi Rick -

In review of the latest Midtown landscape plan I wanted to offer the following 'review & comments' on the tree and landscape plan as proposed:

a) 'Street-trees', 'trees per unit standard', trees proposed for overall project.

Proposed tree calculations: from Landscape Plan key, 125 trees

Midtown I - 64 trees  
 Midtown II & III - 61 trees

Trees with raised granite planters 29 in Public Way, 5 on private or project land

Midtown 1 -  
 3 with raised granite planter in Public Way

Midtown 2 -  
 13 with raised granite planters in Public Way  
 5 with raised granite planters on project land

Midtown 3 -  
 13 with raised granite planters in Public Way

Cost estimate for raised granite tree planters is \$50 per foot or \$2,000 each.

b. General Landscape Notes, recommendations / conditions of approval:

Plant sizes: (UPGRADE AS REQUESTED EARLIER)

ALL SHRUBS should be 5 Gal minimal vs the small residential scale 3 Gal size.

Green Wall Vines - ALL PLANTS should be 3 GAL minimum

ALL PERENNIALS should be 3 GAL minimum size

Raised granite planter - Note should change saw-cut top to "Thermal Top"

TREE SAVE - plan should show all 'tree save' areas and protection measures. This includes physical barriers / construction fencing, no construction equipment or storage near root zones. This is for trees to remain along the Bayside Trail etc. Web links for Tree Save measures, See:

<http://www.treesaregood.com/treecare/resources/AvoidingTreeDamage.pdf>

<http://www.treesaregood.com/treecare/resources/ConstructionDamage.pdf>

(Unknown if row of Norway Maples along street can be saved)

Existing trees to be relocated - the project landscape contractor shall properly prepare trees to be relocated to be made available to the City of Portland for reuse. This includes digging and preparing the rootball with 'balled & burlap' typical standard. Trees should be cared for on-site as needed for an agreed upon period of time, this includes watering and site protection in safe location. (add to Note 17)

Trees within the Public Right of Way - should not include 'tree wrap', staking / guying unless directed by City Arborist.

**Criteria for Planning Board Report  
 Environmental Quality Standards**

**A. Section 14-526 Site Plan Standards:**

Requirements for approval  
 (b) *Environmental Quality Standards*

1. *Preservation of Significant Natural Features*

- a. The site plan shall preserve and protect significant natural features by incorporating them into site design. Significant natural features shall be defined as:
- (i) Populations of trees and plants listed on the Official List of Endangered and Threatened Plants in Maine, published by the Maine Natural Areas Program.  
Review:
  - (ii) Habitat for species appearing on the official state or federal list of endangered or threatened animal species;  
Review:
  - (iii) High and moderate value waterfowl and wading bird habitat including nesting and feeding areas, as defined by the Department of Inland Fisheries and Wildlife;  
Review:
  - (iv) Aquifers on islands in Casco Bay, as identified in the City of Portland Island Groundwater Management Study and/or by the Maine Geological Survey;  
Review:
  - (v) Waterbodies including wetlands, watercourses, significant vernal pools and floodplains. These features may also be regulated by Division 26, Shoreland Regulations, Division 26.5, Flood Plain Management Regulations and Division 26.7, Stream Protection Ordinance of the City Code, along with Sections 5 and 8 of the Technical Manual or other State regulations.  
Review:
- b. Where areas set aside for preservation are part of a larger existing habitat block extending beyond the boundaries of the site, the contiguity of these features shall be preserved, where possible.  
Review:
- c. Waiver: Where complete preservation of significant natural features substantially compromises development of the site otherwise permitted by zoning, the Reviewing Authority may reduce the requirement to accommodate development provided that the applicant demonstrates compliance with applicable state and federal regulations and implements preservation measures to the extent practicable.  
Review:

## 2. Landscaping and Landscape Preservation

- a. Landscape Preservation
- (i) Site development shall be designed to incorporate, and limit disturbance to or removal of existing trees, as specified below. Preserved trees may be counted towards site landscaping requirements.  
Review: Landscape plan proposes to remove & replace existing trees. The site does not have any 'mature' trees.
  - (ii) All development subject to zoning setbacks shall preserve a minimum of 30% of existing trees ten (10) inches DBH or greater within the required setback area unless trees are non-native invasive species, as identified in Section 4 of the Technical Manual, or are deemed unsalvageable by the Portland City Arborist or their designee.  
Review: No trees of 10" DBH are on site.
  - (iii) Protection during Construction: The site plan shall include adequate measures to protect vegetation to be preserved from construction impacts, in accordance with the tree preservation standards listed in Section 4 of the Technical Manual.  
Review: N/A
  - (iv) Waiver: Where the applicant can demonstrate that preservation of existing vegetation would compromise development of the site, the Reviewing Authority may permit the substitution of replacement landscaping in other areas of the site, and/or a financial contribution to the City of Portland Tree Fund for an amount proportionate to the cost of trees removed, as described below: N/A
    - (a) For each tree required to be preserved that is removed and is greater than 16" in caliper DBH, two (2) replacement trees of a species identified on the City of Portland Recommended Tree List shall be planted on the site as detailed in Section 4 of the Technical Manual).  
Review: N/A
    - (b) For each tree required to be preserved that is removed and is between ten (10) and sixteen (16) inch DBH, one (1) replacement tree of a species identified on the City of Portland Recommended Tree List shall be planted on the site as detailed in Section 4 of the Technical Manual).  
Review: N/A
- (c) Where the planting of replacement trees on the site is not feasible, the applicant shall contribute an amount proportionate to the cost of required replacement trees to the City of Portland Tree Fund, as detailed in Section 4 of the Technical Manual. (See notes)  
Review:
- (v) In addition to the provisions of this section, all development within the Shoreland Zone shall meet the requirements of Division 26, Shoreland Regulations.  
Review: N/A
- b. *Site Landscaping*



## (i) Landscaped Buffers:

- (a) *Screening.* Loading and servicing areas, dumpsters, storage areas and utility structures, except for renewable energy systems, shall be screened from view from public sidewalks, streets and adjacent properties by dense evergreen landscaping, fencing, masonry wall building walls, or a combination thereof.

**Review:** The proposed landscape plan shows adequate buffering with the exception of the trail side of Midtown Three. The trail side of Midtown Three shows a row of 26 Pagoda Dogwood, shown as 'C. ALT (26) on the landscape sheet, these should be upgraded to a larger tree species. This might include: Yellow Birch, River Birch, Red Maple, Swamp White Oak (examples) planted in fewer numbers than the proposed 26 Dogwoods, perhaps in groves. This request is to improve the scale as the Pagoda Dogwoods mature size is a low 10' in height. The City Arborist & Planning authority is willing to work with the project team to find a compromise on the revised tree types, numbers & spacing for the trail section of Midtown Three. Also due to the number of Cornus or Dogwood species in this area planted prior to the project an alternate species is needed to add plant diversity and long term sustainability which is low in mono-culture plantings.

- (b) *Under story/Under story Plantings.* All development subject to required zoning setbacks shall include a minimum of six (6) shrubs per forty five (45) linear feet of all frontages as measured along the property line. A shrub shall be defined as one shrub, one ornamental grass, and/or 3 perennials. Required shrubs may be installed anywhere on the site, including a green roof, if proposed, and may be planted in any arrangement. Existing vegetation to be preserved on the site may be counted towards this requirement as detailed in Section 4 of the Technical Manual.

**Review:** The proposed landscape plan appears to have met this standard. Earlier review comment mentions that plants should meet or exceed minimum sizes.  
warrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedwarrantedExample - a minimum size for ornamental grasses, perennials & vines should be 3 gallon pot size and all shrub planting should be 5 gallon pot size minimum. I have checked local nursery vendors and found these sizes available. Due to the size & scale of the project this upgrade of plant sizes is warranted as requested earlier.

- (c) *Industrial and Commercial Zones.* For non-residential development proposed in an industrial or commercial zone subject to required zoning setbacks and abutting a residential zone, an evergreen, densely landscaped buffer of not less than ten (10) ft wide and six (6) ft tall is required along the side abutting the residential zone. Where site constraints prevent such a buffer from being established, the width of the landscaped buffer may be reduced but shall include architectural quality fencing of not less than six (6) ft tall and a mix of evergreen and deciduous trees spaced no further than twenty (20) ft apart along the abutting the residential zone.

**Review:** N/A

- (d) *Buffer from Surrounding Development.* All residential development shall provide and/or preserve evergreen vegetated buffers where necessary to buffer the development from detrimental impacts of existing surrounding development.

**Review:** The proposed landscape plan meets this standard provided tree & plant sizes meet standards with the upgrade of pot sizes to 5 Gallon for Shrubs and 3 Gallon for all perennials, grasses & vines.

## (ii) Parking Lot Landscaping:

- (a) Developments with five (5) or more parking spaces shall include at least two (2) trees (or one (1) tree and three (3) shrubs) per five (5) parking spaces planted in landscaped islands to screen shade and break up parking. Trees and shrubs in parking lots may be in informal groups, straight rows, or concentrated in clusters as detailed in Section 4 of the Technical Manual.

**Review:** Project proposes indoor parking garage.

- (b) Landscaped islands shall be distributed so that uninterrupted pavement does not exceed forty (40) parking spaces.

**Review:** N/A

- (c) Landscaped islands shall be curbed and a minimum of eight (8) feet in width, not including curbing. The incorporation of bio retention into landscaped islands is strongly encouraged.

**Review:** The project does include bio retention features all of which should be maintained by the project including those within the public way but serves the proposed development. This includes the required maintenance and reporting aspect. (this is likely covered in the Engineering Review comments)

- (d) Vehicle display lots shall be subject to the parking lot landscaping standards of this section.

**Review:** N/A

- (e) *Waiver:* Where site constraints prevent implementation of all or a portion of required parking lot landscaping, as determined by the Reviewing Authority, the requirements may be all or partially waived and the applicant shall contribute an amount proportionate to the cost of required parking lot trees to the City of Portland Tree Fund.

**Review:** N/A

## (iii) Street Trees:

- (a) All development shall include street trees in numbers and locations as specified in Section 4 of the Technical Manual. Street trees shall be planted in the right of way, as specified in Section 4 of the Technical Manual. Street trees shall be of a species identified on the City of Portland Recommended Tree List, unless otherwise approved by the Portland City Arborist or his/her designee.

**Review:** The proposed landscape plan appears to meet the standard. Trees must be from the approved list, no Callery Pear or Lindens.

- (b) Waiver. Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the planting of street trees in the front yard, within ten feet of the property line. Existing preserved healthy trees that are six (6) inches or more in caliper and are on the site within ten (10) feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the City of Portland Tree Fund an amount proportionate to the cost of required street trees.

**Review:** Contribution to the City of Portland Tree Fund is recommended with a reduction of the cost for granite tree planters. A cost estimate of \$50 per foot for granite planters is current. Thus a reduction of this cost for trees in the public right of way could be considered reasonable.

3. Water Quality, Stormwater Management and Erosion Control

- a. All development must demonstrate that the proposed site improvements are designed to minimize the amount of stormwater leaving the site. This must include consideration of the design and location of improvements to minimize the total area of impervious surface on the site and stormwater management techniques to minimize both the volume and rate of runoff from the lot. The stormwater management plan must demonstrate the following:
- (i) Any stormwater draining onto or across the lot in its pre-improvement state will not be impeded or re-directed so as to create ponding on, or flooding of, adjacent lots;
- Review:**
- (ii) Any increase in volume or rate of stormwater draining from the lot onto an adjacent lot following the improvement can be handled on the adjacent lot without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the adjacent lot;
- Review:**
- (iii) Any increase in volume or rate of stormwater draining from the lot onto City property following the improvement can be handled without creating ponding, flooding or other drainage problems and that the owner of the lot being improved has the legal right to increase the flow of stormwater onto the City's property; and
- Review:**
- (iv) Any increase in volume or rate of stormwater draining from the lot into the City's separate storm sewer system can be accommodated in the system without creating downstream problems or exceeding the capacity of the storm sewer system.
- Review:**
- b. All development, except Level I minor residential development, shall comply with the standards of Section 5 of the Technical Manual including basic, general and flooding standards, as applicable, to prevent and control the release of pollutants to waterbodies, watercourses, wetlands and groundwater, and reduce adverse impacts associated with increases or changes in flow, soil erosion and sedimentation.
- Review:**
- c. All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to Maine DEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.
- Review:**
- d. Level I: minor residential development shall comply with basic erosion control standards, as described in Section 6 of the City of Portland Technical Manual.
- Review:**
- e. Development shall not pose a risk of groundwater contamination either during or post-construction, as described in Sections 5 and 9 of the Technical Manual.
- Review:**
- f. Development shall provide for adequate and sanitary disposal of sewage as described in Section 2 of the Technical Manual.
- Review:**

January 23, 2015

To: Rick Knowland

From: Keith Gautreau & Craig Messinger

Dear Sir,

Pursuant to your request for a summary of the proposed Mid-Town project, we have the following Life Safety issues /concerns that we feel need to be addressed for the project to be moved forward.

We have been told that a hydrant will be relocated along Lancaster street, Portland Water District has assured us that it will only be moved a very short distance.

A Dumpster is proposed to be placed inside of Building #3 for the trash holding area. Although this building will be provided with a full sprinkler system, we are requiring a two hour separation between this space and the remainder of the building.

Mid-Town building #4 currently shows emergency access to only one side of the structure, the PFD has always required two sides of a structure to be access for emergency vehicles.

**The new proposed curb cut and access off Elm Street to the small side of Midtown #4 must be a minimum of 16' wide. Also we will require signage and striping on driveway indicating Fire Lane NO PARKING.**

At this point, the PFD has not seen any current plans for Fire Alarm and/or Sprinkler systems.

During construction, the PFD will require the following:

Per NFPA 1, 16.3.4, Access for firefighting equipment.

Per NFPA1,16.4.3, Fire Protection during construction. (Water supply )

Per NFPA 16.4.3.3.2, Standpipe Installations in Buildings under construction.

Per NFPA 16.7.1.6, Fire Extinguishers

Per NFPA 16.7.2, Fuel Systems.

Respectfully Submitted,

Keith

Portland, Maine



Yes. Life's good here.

Economic Development Department  
Gregory A. Mitchell, Director

## MEMORANDUM

**To:** Planning Board  
**From:** Greg Mitchell, Economic Development Director  
**Date:** January 29, 2015  
**Subject:** Somerset Street Cost Share Agreement

You have asked for information about the City and Federated Companies partnership to invest in grade adjustment to Somerset Street, between Pearl and Elm Streets.

Attached is a copy of the "Somerset Street Cost Share Agreement" which assigns responsibilities for funding and construction of this public improvement.

Agreement highlights include:

**Cost:** \$4 million total.

**Cost Share:** Federated Companies funds 1/3 of the cost and the City funds 2/3rds. The City financial sources are as follows:

\$1 million from Bayside HUD 108 and BEDI Grant funds;  
 \$1 million from Bayside Tax Increment Financing District existing available funds; and,  
 \$700,000 in City General Obligation debt which has been approved by the City Council.

**Project Construction Responsibility:** Federated, under the supervision and inspection of the City.

**Project Timing:** During construction of the midtown Project.

I will be attending the February 3<sup>rd</sup> Planning Board public hearing for the Midtown Project and will be available to answer your questions.

**Agreement by and between  
FEDEQ DV001 and City of Portland  
on Costs For Off-Site Improvements  
Improving Somerset Street,  
To be Partially Funded by City of Portland**

THIS AGREEMENT dated Oct. 14, 2014 is made by and between THE CITY OF PORTLAND, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101 (the "City" or "Seller"), and FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("FEDEQ" or "Buyer").

RECITALS

WHEREAS, an Agreement for the purchase and sale of real estate (the "P&S Agreement") has been made between the City and FEDEQ Apartments, LLC, a Florida limited liability company with a place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137, assignee of said P&S Agreement from the Federated Companies LLC, a Florida limited liability company with a principal place of business at 3301 NE 1st Avenue, Suite M-302, Miami, Florida 33137 ("Federated"); and FEDEQ Apartments LLC has recently assigned its rights in and to the P&S Agreement to FEDEQ DV001, LLC, a Maine limited liability company with a mailing address of PO BOX 370008, Miami, Florida 33137 ("FEDEQ");

WHEREAS, related to, and benefiting the development planned by Buyer on the real property which is the subject of the P&S Agreement, and integral thereto, are certain improvements detailed herein to the adjacent public way known as Somerset Street, and more specifically for the portion thereof between Pearl Street and Elm Street (the "Project"), which both the City and Buyer wish to see made;

WHEREAS, the estimated total costs of the Project are \$4,000,000; and

WHEREAS, the City and the Buyer are willing to share these costs, as set out herein;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. **Project and Scope and Cost and Timeline/Schedule:** FEDEQ and the City have jointly agreed to the scope of Project which work is more specifically described in Attachment A attached hereto with an estimated total project cost of \$4,000,000 (the "Total Project Cost"). FEDEQ and the City have jointly agreed to a schedule or timeline for the Project, which is attached hereto as Attachment B. The term "Total Project Cost" shall mean the actual Project cost as established by FEDEQ and the City following receipt of a guaranteed maximum cost construction contract acceptable to the City and FEDEQ.
2. **Cost Sharing and Conditions Precedent:** Subject to the terms hereof, the City will fund two-thirds (2/3) of the Total Project Cost, and FEDEQ will fund one-third (1/3) of the Total Project Cost.

FEDEQ's agreement to fund said one-third (1/3) of the Total Project Cost is contingent upon: FEDEQ (or assigns) closing on acquisition of the real estate which is subject matter of the P&S Agreement.

In the event FEDEQ (or assigns) fails to close on the acquisition of the real estate which is the subject matter of the P&S Agreement, FEDEQ shall have the right to cancel and terminate this Agreement by giving written notice of such cancellation and termination to the City, and upon the giving of such notice, this Agreement shall be terminated and FEDEQ shall be relieved of all further obligations hereunder.

Prior to the issuance of a Building Permit for the Project, FEDEQ shall provide the City with evidence of its financial resources, in the amount of at least one-third of the Total Project Cost, available and dedicated to the costs of this Project, in a form reasonably acceptable to the City's Director of Finance, which may include a commitment from a commercial lender to fund requisitions for payment of Project costs.

More than likely, the actual total project cost will not be precisely the amount of the Total Project Cost stated above. Therefore, the parties agree:

- (a) The contract(s) for the Project will not be 'mixed' with any other work needed by either party. Notwithstanding the foregoing, nothing herein shall prevent FEDEQ from entering into contracts with the same contractor for construction of other portions of the midtown project to be coordinated with the work on the Project, provided, however, that costs must be allocable to the Project and the midtown project.
  
- (b) In order to address both parties' concerns that the Total Project Costs could exceed the estimate stated above, the City and, FEDEQ will meet early in the development and design of this project to jointly and cooperatively manage said project's design, staging, procurement costs and construction costs; and said parties will continue to meet as reasonably necessary for this same purpose, and will work collaboratively to control procurement and construction costs. And in particular, before FEDEQ executes contracts for the construction of the Project, the parties shall meet and agree on the scope and cost of those contracts, including amounts for project supervision and construction management, general conditions, building permit fees, bonding costs, insurance and including an

appropriate construction contingency amount. All such construction contracts shall be in the form of guaranteed maximum cost contracts.

- (c) Any changes to the Project cost over and above any established contingency included in the Total Project Cost during construction shall require mutual review and agreement in writing, which shall not be unreasonably withheld or delayed.

3. **Procedures for Making Disbursements (Payments).** With respect to all requisitions for disbursements of the City's share of Total Project Costs, the City and FEDEQ agree as follows:

- a. FEDEQ shall deliver to the City a written request for payment (a "Requisition") which shall be in substantially the same form as AIA Forms G702 and G703. The Requisition shall be accompanied by: (i) a summary of all expenses requested, (ii) copies of invoices, bills, receipts and such other information as may be reasonable to document the expenditures described in the Requisition, (iii) mechanics' lien affidavits and/or written lien waivers from such contractors, laborers, subcontractors and materialmen for work done and materials supplied which were paid for pursuant to the immediately preceding Requisition, and (iv) a certified payroll in conformance with the requirements of the Davis-Bacon Act of 1931, as amended, for all contractors and subcontractors on site and for which invoices are included.
- b. Requisitions shall be submitted by FEDEQ no more frequently than monthly. Prior to the disbursement by the City of any requested Requisition, City's construction inspector shall certify to City that the work for which a Requisition has been submitted has been completed and the City's Housing and Neighborhood Services staff will verify all workers are being paid the prevailing wage.
- c. A copy of the construction schedule will be submitted to the City at the beginning of the project. Updates will be provided by FEDEQ as necessary to remain accurate.
- d. City shall make disbursements to FEDEQ only after such certification and verification, and with a certified payroll, all the same must be correct and

complete. Each Requisition for disbursement shall be submitted at least five (5) days before the date for which the disbursement is requested, and the City shall make such advancement no later than fifteen (15) days after receipt of each Requisition to make such disbursement.

4. **Project Administration and Supervision:** FEDEQ will be responsible for procuring the construction contracts and for providing for the owner's administration for the Project, consistent with the scope of Project contained in Attachment A, hereto, and upon the Timeline attached hereto as Attachment B. All FEDEQ's costs for procurement of construction contracts, administration or the like shall not be shared by the City, nor shall the City be required to share in any other type of internal costs of FEDEQ. Notwithstanding the foregoing, the items described in section 2(b) above shall be payable as part of the Total Project Costs.

The City of Portland will monitor and inspect the work of the Project, including for compliance with City Rules and Ordinances. The City shall have the right to suspend work on the Project as it reasonably deems necessary, to provide for such compliance, and for compliance with the Scope of Work in Attachment A. The City's monitoring and inspection will be collaborative with FEDEQ.

The Contracts for the work of the Project between FEDEQ and its vendors and contractors shall contain these two provisions:

Prior to the execution of this Agreement, the **CONTRACTOR** will procure and maintain Automobile Insurance and General Public Liability Insurance coverage and coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, naming the **CITY OF PORTLAND** as an additional insured thereon, and also Workers' Compensation Insurance coverage. With respect to the Liability Insurance, the **CONTRACTOR** will provide the **CITY OF PORTLAND** a certificate of insurance evidencing such coverage, in this way: certificate must say either: A) "the policy has been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Extension Endorsement, by which the City of Portland is automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr," or the like, or which merely states the City of Portland is named as an Additional Insured, will not be acceptable. The **CONTRACTOR** shall furnish the **CITY OF PORTLAND** and thereafter maintain certificates evidencing all such coverages, which certificates shall provide for thirty (30) days' notice to the **CITY OF PORTLAND** of termination of insurance from insurance company or agent.

The **CONTRACTOR** shall furnish to FEDEQ and to the **CITY OF PORTLAND**, upon execution of the Contract, a Contract Performance Bond and a Contract Labor and Materials Payment Bond each for the full amount of the Contract and issued by a surety



company or surety companies authorized to do business in the State of Maine and approved by the **CITY OF PORTLAND**. The Bonds shall remain in effect for one year after final acceptance of the Work, and protect both FEDEQ and **CITY OF PORTLAND** for at least one year of warranty of the Work hereunder, and also shall insure settlement of claims for the payment of all bills for labor, materials and equipment. The bonds described in this section shall be deemed to satisfy the performance guaranty requirements for the Project as required by section 14-501 of the City of Portland Code of Ordinances, and no further performance guaranty shall be required.

5. **Requirements related to Funding Sources.** FEDEQ, its employees, assigns, agents and subcontractors for this project, at all times shall comply with the requirements of the Section 108 Loan Guarantee and Brownfields Economic Development Initiative Grant program and Federal Labor Standards pursuant to Davis Bacon and related Acts, specifically including:
  - a. Davis-Bacon Act, as amended.(40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.
  - b. Contract Work Hours and Safety Standards Act, as amended. (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.
  - c. Copeland Anti-Kickback Act, as amended. (18 U.S.C. 874 and 40 U.S.C. 276c). This Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.
6. **Entire Agreement.** This Agreement (i) constitutes the entire agreement between the parties hereto with respect to the Project and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Project; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Agreement shall not confer any rights or remedies upon any third-party


other than the parties to this Agreement and their respective successors and permitted assigns.

7. **Notices.** Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, with a copy to, the Director of Economic Development, facsimile 207-756-8217, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), and to FEDEQ, at the address recited above, with a copy to The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931.
  
8. **Severability.** In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.


IN WITNESS WHEREOF, the City and FEDEQ, by their representatives duly authorized, have caused this instrument to be executed as of 008.14. 2014.

**FEDEQ DV001, LLC**

**CITY OF PORTLAND**

By   
Sheila Hill-Christian, Acting City Manager

By   
Jonathan Cox  
Its: Manager

By   
Suzanne Knight, Acting Finance Director

By   
Corporation Counsel Attorney

## Budget Site Construction Cost Estimate Peer Review

Midtown - Somerset Street Improvements

12/5/2013



Description	Site Development Costs		Somerset Street Costs		Total Costs	
	Total	% of Total	Total	% of Total	Total	% of Total
<b>Item (a) Basis of Design:</b>						
Site Demolition	\$ -	0.0%	\$ 28,055	2.1%	\$ 28,055	0.8%
Preliminary Site Work	\$ -	0.0%	\$ 61,241	4.6%	\$ 61,241	1.8%
Earthwork	\$ -	0.0%	\$ 32,447	2.4%	\$ 32,447	0.9%
Dewatering	\$ -	0.0%	\$ 10,000	0.8%	\$ 10,000	0.3%
Storm Drainage (See Note 1)	\$ 202,470	9.7%	\$ 1,260	0.1%	\$ 203,730	6.0%
Sanitary Systems	\$ 20,596	1.0%	\$ -	0.0%	\$ 20,596	0.6%
Water Systems	\$ 118,118	5.7%	\$ 1,200	0.1%	\$ 119,318	3.5%
Portland Water District - Water Service Fees	\$ 15,000	0.7%	\$ -	0.0%	\$ 15,000	0.4%
Misc Site Utilities (See Note 2)	\$ 175,933	8.4%	\$ 240,948	18.1%	\$ 416,881	12.2%
Utiliti - Gas Utility Fees (Allowance)	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Central Maine Power - Phase 1 Electrical Utility Fees	\$ 268,000	12.8%	\$ 332,000	24.9%	\$ 600,000	17.5%
Central Maine Power - Phase 2 Electrical Utility Fees	\$ 317,000	15.2%	\$ 83,000	6.2%	\$ 400,000	11.7%
Time Warner - Communication Utility Fees (Allowance)	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Fairpoint - Communication Utility Fees	No Cost	0.0%	No Cost	0.0%	\$ -	0.0%
Roads/Walks (See Note 3)	\$ 99,463	4.8%	\$ 540,113	40.5%	\$ 639,576	18.7%
Site Improvements (See Note 4)	\$ 550,623	26.4%	\$ 2,398	0.2%	\$ 553,021	16.2%
Concrete (See Note 4)	\$ 161,666	7.7%	\$ -	0.0%	\$ 161,666	4.7%
Misc Metals (See Note 4)	\$ 40,991	2.0%	\$ -	0.0%	\$ 40,991	1.2%
Electrical Site (See Note 5)	\$ 116,953	5.6%	\$ -	0.0%	\$ 116,953	3.4%
<b>Item (a) Basis of Design Sub-Total</b>	<b>\$ 2,086,813</b>	<b>100%</b>	<b>\$ 1,332,662</b>	<b>100%</b>	<b>\$ 3,419,475</b>	<b>100%</b>
<b>Estimate Adjustment and Indirect Costs:</b>						
Cost Estimate Adjustments (See W&C 11/15/2013 Memo)	\$ 11,900	3.1%	\$ 40,000	14.3%	\$ 51,900	7.8%
Contractor General Conditions (See Note 6)	\$ 166,945	43.1%	\$ 106,613	38.1%	\$ 273,558	41.0%
Contractor OH&P, Insurance, Bonds (See Note 7)	\$ 208,681	53.8%	\$ 133,266	47.6%	\$ 341,948	51.2%
<b>Estimate Adjustment and Indirect Costs</b>	<b>\$ 387,526</b>	<b>100.0%</b>	<b>\$ 279,879</b>	<b>100.0%</b>	<b>\$ 667,406</b>	<b>100.0%</b>
<b>Somerset Street Improvements Total (Rounded)</b>	<b>\$ 2,474,000</b>		<b>\$ 1,613,000</b>		<b>\$ 4,087,000</b>	

**Notes:**

- Cost segregation assumes Site Development Costs include off-site drainage piping/structures required for on-site stormwater treatment system.
  - Cost to raise existing storm drainage manholes/catch basins is included in the Somerset Street Costs.
- Cost segregation assumes Site Development Costs will include electrical trenching, backfill and precast concrete light pole bases.
  - Infrastructure and utility company fees to relocate overhead electrical/communication utilities are shared based on scope of work.
- Cost segregation assumes Site Development Costs will include new and existing granite curbing along Somerset, Elm, Chestnut and Pearl Streets.
  - Cost for approximately 1,080 CY of lightweight concrete fill under new sidewalks is included in the Site Development Costs.
  - Cost to remove and re-set approximately 1,120 LF of existing granite curb on the southeast side is included in the Somerset Street Costs.
- Cost segregation assumes Site Development Costs will include all brick pavers, concrete ramps/planters/stairs/rails and trees.
- Cost segregation assumes Site Development Costs will include all site lighting concrete bases, light poles, luminaires and wiring.
- Contractor General Conditions (not included in PC estimate) may range in the amount of 8-10% depending on schedule and concurrent activities.
- Contractor OH&P, Insurance, Bonds and Contingency (not included in PC estimate) may range in the amount of 10-12%.
- Allowance has been included for electrical utility company fees for relocating existing overhead electrical services to underground.
  - CMP Phase 1 cost assumes Site Development Costs include (1)-2000 & (1)-500 KVA pad mount transformers, 500 CU cable and junction pole.
  - CMP Phase 1 cost assumes Somerset Street Costs include (1)-1000 KVA submersible transformer, 500 CU cable and riser poles.
  - CMP Phase 2 cost assumes Site Development Costs include (3)-2000 & (1)-500 KVA pad mount transformers and 500 CU cable.
  - CMP Phase 2 cost assumes Somerset Street Costs include 500 CU primary cable at Elm Street.
- Allowance has been included for water utility company fees for new Site Development fire and domestic water services.
- No allowances have been included for gas, telephone and cable utility company fees since there should be no charge for this work.
- No allowances have been included for unsuitable soils or contaminated groundwater treatment/disposal.
- No allowances have not been included for offsite improvements or traffic control signalization.

ATTACHMENT B TO COST SHARING ARRANGEMENT  
TIMELINE FOR PROJECT -  
TO BE PROVIDED

Portland, Maine



Yes. Life's good here.

Economic Development Department  
Gregory A. Mitchell, Director

## MEMORANDUM

**To:** Planning Board  
**From:** Greg Mitchell, Economic Development Director  
**Date:** January 29, 2015  
**Subject:** Midtown Project Parking Garage Contribution Agreement

City of Portland and Federated Companies midtown Project partnership documents require Federated to construct one parking garage with "no less than 800 spaces".

You have asked for information concerning the public benefit aspects associated with the City of Portland planned investment in the proposed Midtown Two Parking Garage.

Conditions included in the referenced Agreement include:

"5. Garage Operations.

- (a) **Key Card.** The Garage shall be equipped with a "key card" system (or its equivalent) whereby weekly, monthly or longer term users shall have 24-hour access to the Garage 7 days a week, it being understood that certain users may only have access at certain hours based on contractual agreements with the owners of Garage. Legacy Park shall make the Garage available for public (hourly access) use during the "Start-Up Phase" at such times as established by Legacy Park during reasonable commercial business hours, which shall at a minimum be from 7 a.m. to 7 p.m., Monday through Saturday, and 10 a.m. to 7 p.m., Sundays and Holidays. The expression "Start-Up Phase" shall mean that period commencing when the Garage receives a Certificate of Occupancy allowing operation of the parking garage portion of the Garage facility and ending the date when the first other building (and not merely the retail portion within the parking garage structure) within the Project is issued a Certificate of Occupancy and that building starts using parking in the Garage. During and after the Start-Up Phase the Garage shall be open during reasonable hours, seven days per week, subject to modification from time to time by Legacy Park based on historical and projected volume of usage.

(b) Additional Requirements:

(i) Hourly and monthly rates for the Garage shall be based upon prevailing market rates, defined as follows: in no event shall rates be greater than 110% of the average market rates charged by City at City-owned and operated garages or the average of the three highest rates charged by garages within the City, excluding any garages that may be owned by Legacy Park or any of its affiliates;

(ii) The Garage shall participate in the Park and Shop Program;

(iii) The Garage shall be available for City snow ban parking, and the overnight (i.e. 5:00 p.m. to 8:00 a.m.) snow ban parking rate per hour shall not exceed three times the then-current maximum hourly rate charged by the Garage;

(iv) Upon written request of the City in each such instance, the Garage shall be available at customary rates for parking for special events held on the Portland Peninsula after 5:30 pm on weekdays and if requested, at requested reasonable times on weekends.

(v) The Garage shall have shared use with the public 7 days a week, 24 hours per day.

(vi) The Garage shall provide a minimum of 200 hourly turnover parking to the general public, and will provide within 2 days upon request data and information, including the number of non-turnover parkers present in the Garage at any given time, in order for the City to verify compliance with this condition.

(vii) The Garage will accept both cash and credit card payments.

(viii) The Garage will be maintained so long as it is a public parking facility, in accordance with the then current edition of the National Parking Association's "Parking Garage Maintenance Manual (now in its Fourth Edition) , and in particular in accordance with the Recommended Maintenance Checklist contained therein.

(c) The Garage will remain a public parking facility for a minimum of thirty (30) years.

These requirements (a) through (c) shall be a covenant contained in the deed to Lots 6 and 7 and the covenant shall run with the Land for the stated thirty (30) year period from the date of conveyance of Lots 6 and 7 from the City to Legacy Park and thereafter shall automatically expire."

A copy of the complete Agreement is attached for your information.

I will be attending the February 3<sup>rd</sup> Planning Board public hearing on the Midtown Project and would be happy to answer any questions.

## PARKING GARAGE CONTRIBUTION AND FUNDING AGREEMENT

This Parking Contribution and Funding Agreement (the "Parking Garage Agreement") is made this 15<sup>th</sup> day of October, 2012, by and between the **CITY OF PORTLAND, MAINE**, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine (hereinafter "City") and **LEGACY PARK APARTMENTS LLC**, a Florida limited liability company with a place of business at 801 Brickell Avenue, Suite 720, Miami, Florida 33131 (hereinafter "Legacy Park").

**WHEREAS** Legacy Park is the assignee, by virtue of an Assignment and Assumption Agreement effective June 27, 2011, ("Assignment"), of a Purchase and Sale Agreement between The City of Portland, Maine, ("City"), effective June 23, 2011, ("Agreement"), for the purchase of certain blighted and brownfield real property located on Somerset Street, Portland, Maine known as Lots 1, 2, 3, 5, 6, 7,8 and a portion of Lot 9,(collectively, "the Land"), consisting of approximately 3.25 acres formerly known as the "Bayside Railyard":

**WHEREAS** City, in order to create jobs and economic growth for the Citizens of Portland, Maine, has agreed to make a \$9,007,000.00 contribution, ("City Grant Funds"), to Legacy Park from funds being provided to the City by the U.S. Department of Housing and Urban Development pursuant to the Bayside Redevelopment Project, Maine BEDI Grant and Section 108 Loan Program, ("HUD Funds"), toward the expense of the construction of a garage, with no fewer than 700 parking spaces and at least thirty thousand square feet of retail space on the first floor on a portion of Lot 5 and all of Lots 6 and 7 and a portion of Lot 9, ("Garage");

**WHEREAS** Section 11 of the Agreement requires City and Legacy Park to enter into a formal Parking Garage Agreement stipulating the terms and conditions of the contribution of the City Grant Funds to Legacy Park for the construction of the Garage.

**NOW THEREFORE**, in consideration of the foregoing and for good and valuable consideration the parties covenant and agree in this Parking Garage Agreement as follows:

1. Garage Construction. Subject to the terms and conditions of this Parking Garage Agreement and the City contributing City Grant Funds as described below, Legacy Park or its nominee shall construct the Garage in the location depicted on the plan attached hereto and incorporated herein by reference as Exhibit "A". The Garage shall have reached "Start-up Phase" as defined below within two (2) years after the date on which a total of \$1,000,000.00 in City Grant Funds has been requisitioned by Legacy Park and disbursed by the City to Legacy Park. Notwithstanding the above, Legacy Park will diligently work to have constructed a sufficient percentage of the Garage so as to permit Legacy Park to requisition the City Grant Funds in full by November 31, 2014, so as to allow full disbursement of the City Grant Funds by December 31, 2014. If Legacy Park informs the City, in good faith, before October 1, 2014 that Legacy Park will not meet this requisition timetable, with evidence and reasons for this, the City will use its best

efforts to obtain an extension of this disbursement deadline for the HUD Funds from HUD, and if it obtains such an extension, it shall immediately transmit to Legacy Park evidence of this extension by HUD, and this timetable shall thereby be correspondingly changed, without further action of the parties hereto being required.

Legacy Park shall construct the Garage and any attached structures or units designed for non-garage use using sustainable and energy efficient construction methods, including, but not limited to, energy efficient lighting.

2. City Grant Funds. The City shall provide a grant to Legacy Park or its nominee of Nine Million Seven Thousand Dollars (\$9,007,000.00) in City Grant Funds for use by Legacy Park for the City Grant Funds Uses as defined below. This funding is being provided in part as an incentive to build the Garage which would otherwise not be commercially viable. Accordingly, the City agrees that the first \$9,007,000.00 of City Grant Funds Uses, disbursed in accordance with this Parking Garage Agreement, shall be City Grant Funds, but subject to and less the retainage described below. The City Grant Funds may be used for all purposes related to the Garage allowed with such HUD Funds, including but not limited to design, planning, permitting, environmental testing and remediation, and construction ("City Grant Funds Uses").
3. Legacy Park Contribution. Following the disbursement of City Grant Funds, less the retainage, Legacy Park shall provide sufficient additional funds for completion of the construction of the Garage, ("Legacy Park Contribution"). The Legacy Park Contribution shall either come from its own equity or financing from a construction lender. The Legacy Park Contribution, in addition to the City Grant Funds will cover the complete cost of constructing the Garage to completion.
4. Procedures for Making Disbursements (Payments). With respect to all requisitions for disbursements of the City Grant Funds, the City and Legacy Park agree as follows:
  - (a) Legacy Park shall deliver to the City a written request for payment (a "Requisition") which shall be in substantially the same form as AIA Forms G702 and G703. The Requisition shall be accompanied by: (i) a summary of all expenses requested, (ii) copies of invoices, bills, receipts and such other information as may be reasonable to document the expenditures described in the Requisition, (iii) mechanics' lien affidavits and/or written lien waivers from such contractors, laborers, subcontractors and materialmen for work done and materials supplied which were paid for pursuant to the immediately preceding Requisition, and (iv) a certified payroll in conformance with the requirements of the Davis-Bacon Act of 1931, as amended, for all contractors and subcontractors on site and for which invoices are included.



- (b) Requisitions shall be submitted by Legacy Park no more frequently than monthly. Prior to the disbursement by the City of any requested Requisition, City's construction inspector shall certify to City that the work for which a Requisition has been submitted has been completed and the City's Housing and Neighborhood Services staff will verify all workers are being paid the prevailing wage.
- (c) A copy of the construction schedule will be submitted to the City at the beginning of the project. Updates will be provided by Legacy Park as necessary to remain accurate.
- (d) City shall make disbursements to Legacy Park only after such certification and verification, and with a certified payroll, all the same must be correct and complete. Each Requisition for disbursement shall be submitted at least five (5) days before the date for which the disbursement is requested, and the City shall make such advancement no later than fifteen (15) days after receipt of each Requisition to make such disbursement. If the City fails to make any disbursement within fifteen (15) calendar days after such requisition with all required and correct and complete paperwork as delineated in this Parking Garage Agreement, such disbursement shall be paid with interest at a rate of one-quarter of one percent per month, from that date until the disbursement is in fact made ("Interest For Late Payment"). If any such Interest For Late Payment is owed then such amount shall be in addition to the City Grant Funds.
- (e) City shall retain ten percent (10%) of the City Grant Funds as retainage, which shall be disbursed to Legacy Park upon receipt of the Certificate of Occupancy for the Garage or as mutually agreed upon between the City and Legacy Park.

5. Garage Operations.

- (a) Key Card. The Garage shall be equipped with a "key card" system (or its equivalent) whereby weekly, monthly or longer term users shall have 24-hour access to the Garage 7 days a week, it being understood that certain users may only have access at certain hours based on contractual agreements with the owners of Garage. Legacy Park shall make the Garage available for public (hourly access) use during the "Start-Up Phase" at such times as established by Legacy Park during reasonable commercial business hours, which shall at a minimum be from 7 a.m. to 7 p.m., Monday through Saturday, and 10 a.m. to 7 p.m., Sundays and Holidays. The expression "Start-Up Phase" shall mean that period commencing when the Garage receives a Certificate of Occupancy allowing operation of the parking garage portion of the Garage facility and ending the date when the first other building (and not merely the retail portion within the parking garage structure) within the Project is issued a Certificate of Occupancy and that building starts using parking in the Garage. During and after

the Start-Up Phase the Garage shall be open during reasonable hours, seven days per week, subject to modification from time to time by Legacy Park based on historical and projected volume of usage.

(b) Additional Requirements:

(i) Hourly and monthly rates for the Garage shall be based upon prevailing market rates, defined as follows: in no event shall rates be greater than 110% of the average market rates charged by City at City-owned and operated garages or the average of the three highest rates charged by garages within the City, excluding any garages that may be owned by Legacy Park or any of its affiliates;

(ii) The Garage shall participate in the Park and Shop Program;

(iii) The Garage shall be available for City snow ban parking, and the overnight (i.e. 5:00 p.m. to 8:00 a.m.) snow ban parking rate per hour shall not exceed three times the then-current maximum hourly rate charged by the Garage;

(iv) Upon written request of the City in each such instance, the Garage shall be available at customary rates for parking for special events held on the Portland Peninsula after 5:30 pm on weekdays and if requested, at requested reasonable times on weekends.

(v) The Garage shall have shared use with the public 7 days a week, 24 hours per day.

(vi) The Garage shall provide a minimum of 200 hourly turnover parking to the general public, and will provide within 2 days upon request data and information, including the number of non-turnover parkers present in the Garage at any given time, in order for the City to verify compliance with this condition.

(vii) The Garage will accept both cash and credit card payments.

(viii) The Garage will be maintained so long as it is a public parking facility, in accordance with the then current edition of the National Parking Association's "Parking Garage Maintenance Manual (now in its Fourth Edition) , and in particular in accordance with the Recommended Maintenance Checklist contained therein.

(c) The Garage will remain a public parking facility for a minimum of thirty (30) years.

These requirements (a) through (c) shall be a covenant contained in the deed to Lots 6 and 7 and the covenant shall run with the Land for the stated thirty (30) year period from the date of

conveyance of Lots 6 and 7 from the City to Legacy Park and thereafter shall automatically expire.

7. Payments in Lieu of Taxes. In consideration of the City Grant Funds paid to Legacy Park by the City, Legacy Park agrees, for itself and its successors, assigns and lessees for a period of thirty (30) years starting on the closing date of the purchase of the Land, that in the event that any portion of the Land is ever exempt from real or personal property tax, then a yearly payment by the then owner of the exempt portion shall be made in lieu of taxes equivalent to the property taxes that would otherwise be paid on the exempt portion of the real and personal property situated on the property. This requirement shall be a covenant contained in the deed to the Land and the covenant shall run with the land for the stated thirty (30) year period.
8. Compliance with HUD requirements.
  - (a) Job Creation. HUD regulations require that the City, as the original grantee of the HUD Funds, document all jobs created through the use of HUD Funds disbursed to Legacy Park as City Grant Funds. Legacy Park recognizes that one of the primary goals of City's contribution of the City Grant Funds is the creation of jobs, and Legacy Park agrees to create the required number of jobs necessary for the City's use of the HUD Funds and to provide City with timely and complete documentation of all jobs created or caused to be created as a result of receiving the City Grant Funds, and requirements related to job creation shall be contained in a Job Creation Agreement to be entered into between the parties.
  - (b) Section 108 Compliance. Legacy Park, its employees, assigns, agents and subcontractors for this project, at all times shall comply with the requirements of the Section 108 Loan Guarantee and Brownfields Economic Development Initiative Grant program and Federal Labor Standards pursuant to Davis Bacon and related Acts, specifically including:
    - A. Davis-Bacon Act, as amended. (40 U.S.C 276a - 276a-5.) All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.
    - B. Contract Work Hours and Safety Standards Act, as amended. (40 U.S.C. 327-333). All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with

and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable Federal laws and regulations pertaining to labor standards.

C. Copeland Anti-Kickback Act, as amended. (18 U.S.C. 874 and 40 U.S.C. 276c). This Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions.

9. Default. In the event that Legacy Park is in default of a material provision on any of the obligations contained in this Parking Garage Agreement, and Legacy Park fails to cure said default within ninety (90) days of receipt of written notice issued by the City, then Legacy Park shall, if requested to do so by the City, convey to the City the Garage and the related real property, on these terms and conditions:

- This conveyance to the City shall be without the requirement of further legal action by the City.
- The cost to the City for this purchase will, in concept, be the sum of the cost of construction of the Garage and all related improvements associated with the Garage, plus the cost to the cost to Legacy Park for the related land upon which the Garage sits (the "Garage Land"), less the amount of the City Grant Funds actually disbursed up to the time of this purchase.
- The City acknowledges that Legacy Park will most likely use the Garage and the Garage Land as collateral for a construction loan for the purpose of finishing the construction of the Garage and other costs and improvements related to the project. The City therefore agrees to work on documents at the time of such financing, with Legacy Park and its construction lender, to make it possible for the City to have the remedy described above in concept, and to also permit such construction financing.

The City agrees that Legacy Park's obligations under this Parking Garage Agreement are "non-recourse" and that any recovery by the City shall be limited to the Garage. None of Legacy Park, its officers, members, employees, attorneys, agents or affiliates (collectively, "Legacy Park Persons") shall be personally liable for the performance of this Parking Garage Agreement, and the City shall not commence or prosecute any action against any Legacy Park Person, for payment or performance of any obligations under this Parking Garage Agreement. The City shall not seek, obtain, or enforce a deficiency judgment against any Legacy Park Person. Notwithstanding this provision, the rights and obligations under the Agreement between the parties and the Corporate Guaranty Agreement of near or even date are cumulative and in addition to the rights described herein.

In the event of an alleged default by the City, Legacy Park, at its sole election, shall have the right to seek specific performance and any and all other relief to be provided

by a Court, at law or in equity, including, but not limited to, common law writs. City expressly consents to the jurisdiction of the Maine Courts in the event of an alleged City breach under this Parking Garage Agreement.

10. Assignment. Legacy Park shall be entitled, without the City's consent, to assign all of its right, title, interest and obligations in and to this Parking Garage Agreement to any lender or to any entity in which Legacy Park maintains a majority interest and management control. The City must be notified within thirty (30) days or Legacy Park will be in default of this Parking Garage Agreement as described in Section 9 of this Agreement.
11. Termination. In the event that the Parking Garage Agreement is terminated on account of Legacy Park's default, the obligation of the City to provide the City Grant Funds described herein is terminated.
12. Miscellaneous Provisions. In the event of litigation, the prevailing party shall be entitled to receive its reasonable legal fees and court costs from the other party. This provision shall survive the Closing and delivery of the Deed pursuant to the Agreement.
13. Entire Agreement. This Parking Garage Agreement (i) constitutes the entire agreement between the parties hereto with respect to the construction and operation of the Garage and it supersedes all prior discussions, undertakings or agreements between the parties in respect to the Garage; (ii) shall not be modified except by a written agreement executed by both parties; (iii) shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns; (iv) may be executed in counterparts; and (v) may be executed by facsimile signatures. This Parking Garage Agreement shall not confer any rights or remedies upon any third-party other than the parties to this Parking Garage Agreement and their respective successors and permitted assigns.
14. Notices. Any notice by either party to the other party shall be in writing and shall be deemed to have been duly given when either delivered personally, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight courier, or sent by facsimile, or sent by e-mail addressed to the City at Portland City Hall, 389 Congress Street, Portland, Maine 04101, Attn: City Manager facsimile 207-874-8669, email: MHR@portlandmaine.gov, with a copy to, the Director of Economic Development, facsimile 207-756-8217, email: gmitchell@portlandmaine.gov, and another copy to Corporation Counsel, at the same address, facsimile 207-874-8497), email: gary@portlandmaine.gov, and to Buyer c/o The Federated Companies, 801 Brickell Avenue, Suite 720, Miami, Florida 33131, Attn: Jonathan Cox, facsimile (800) 523-5931, email: j\_cox@federatedcompanies.com
15. Severability. In the event any one or more of the provisions contained in this Parking Garage Agreement shall be for any reason held invalid, illegal or unenforceable in any

September 6, 2012, 2012 by LCW

O:\Bayside - Federated Companies Parking Garage Contribn Agrmt 2\Final Parking Contribution and Funding Agreement For Execution.doc

respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Parking Garage Agreement, and this Parking Garage Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Parking Garage Agreement.

**In Witness Whereof**, the parties have hereunto executed this Parking Garage Agreement as of the day and year set forth next to their respective signatures below.

**LEGACY PARK APARTMENTS LLC**

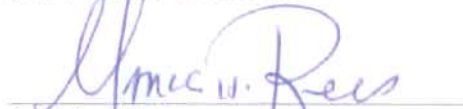


By: Jonathan Cox

Its: Member

Date of Execution: 10/15/12

**CITY OF PORTLAND**



By: Mark Rees

Its: City Manager

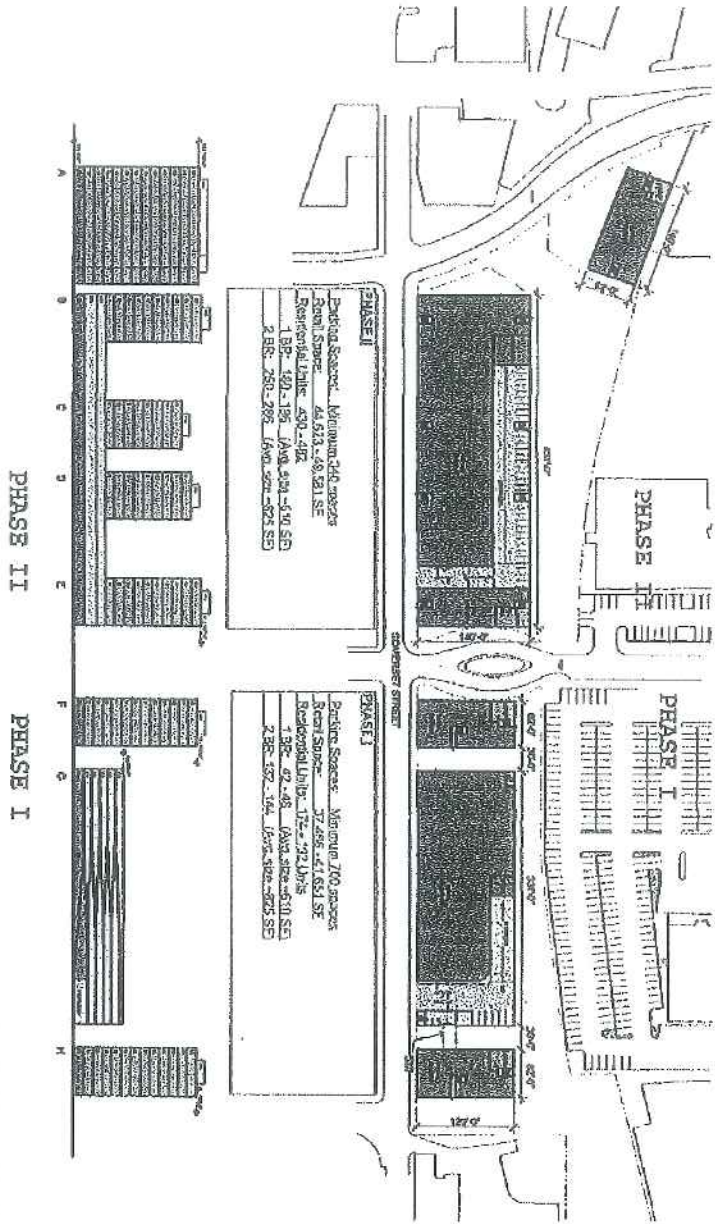
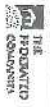
Date of Execution: 10-15-12



Approved: Ellen Sanborn, Finance Director



Approved as to Form: Corp. Counsel



**PHASE I**  
 Parking Spaces: Minimum 240 spaces  
 Area: 30,000 sq. ft.  
 Approx. 100' x 300'  
 1. 100' x 300' (100' x 300' x 50' SD)  
 2. 100' x 300' (100' x 300' x 50' SD)

**PHASE II**  
 Parking Spaces: Minimum 700 spaces  
 Area: 30,000 sq. ft.  
 Approx. 100' x 300'  
 1. 100' x 300' (100' x 300' x 50' SD)  
 2. 100' x 300' (100' x 300' x 50' SD)

Exhibit A

ATT II

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Technology

Posted on: August 5, 2013 From: ARCHITECT July 2013

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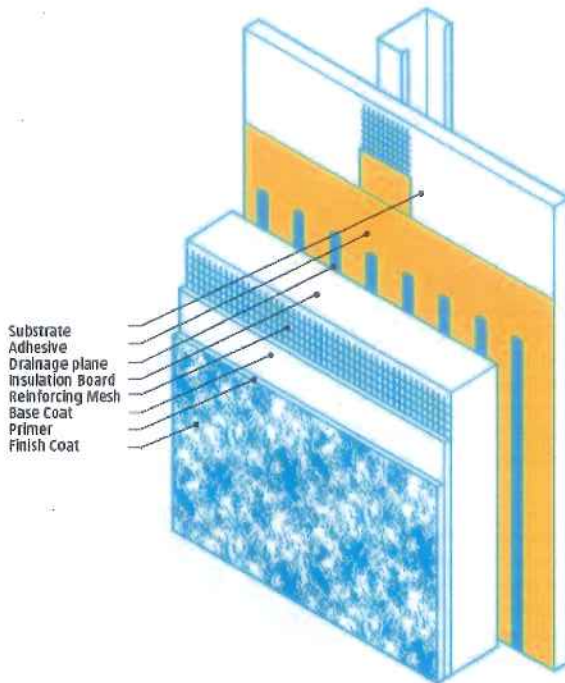
TECHNOLOGY

**Water Under the Bridge**

EIFS became known as a lawsuit magnet in the 1990s. But with new energy codes for commercial buildings imminent, is the cladding system poised for a comeback?

By Elizabeth Evitts Dickinson

Drainable EIFS



The new drainable EIFS feature a drainage plain that helps provide protection from moisture for the underlying materials.

Credit: Jameson Simpson

In 1996, a homeowner living in Wilmington, N.C., made a call to Daniel Bryson, an attorney based in nearby Raleigh. Bryson specializes in construction defects involving mass torts and class action lawsuits, but he had never heard a story like this one. "The homeowner was putting a new shutter on the garage. And he missed the shutter, and the nail went straight through the wall," Bryson says. The man then broke open a piece of the exterior cladding and uncovered a horrific scene: the wood underneath had deteriorated from pervasive rot. "He thought he had stucco, but what he saw inside the wall he called Styrofoam," Bryson says. "The building inspector had no idea what the product was. I had never seen anything like it."

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The house was actually wrapped in a proprietary lightweight synthetic cladding known as an Exterior Insulation and Finishing System (EIFS)—a multilayered wall system with thermal insulation built right in. It is composed of expanded polystyrene insulation board covered with glass fiber mesh and layers of thin synthetic coating for the exterior finish. Early system designs used an adhesive to bond the insulation board directly to the building's sheathing. These systems, known as "barrier EIFS," were touted for their insulation capacity and affordability. But what Bryson soon discovered was that they failed to drain moisture that got behind the finish coating of the system. "Water was getting in through windows and other wall penetrations, but the system had no way for the water to escape."

Bryson filed one of the first EIFS lawsuits in the country and secured a settlement for his Wilmington client. He went on to win about \$150 million in claims against EIFS manufacturers in the U.S., and was one of a handful of prominent attorneys in the 1990s who filed hundreds of lawsuits against the manufacturers for structural damage. Bryson and other lawyers dubbed barrier EIFS the ultimate roach motel: The water could get in, but it couldn't get out. "The original iteration of this product was one of the worst I have ever seen in over 25 years of litigation, second only to Chinese drywall," Bryson says.

Fast-forward to today. EIFS manufacturers such as Dryvit, Sto, and BASF have redesigned their products to include a drainage plane and a weather resistive barrier between the sheathing and insulation board. The drainage happens in one of two ways, most commonly through the use of vertically troweled mortar, which leaves adequate space for moisture to exit. Some systems specify drainage through a grooved composite board. These "drainable" versions of EIFS, first introduced in the U.S. around 1995, provide protection from moisture for the underlying materials. Bryson says that their introduction dried up the court cases: "The litigation has virtually disappeared."

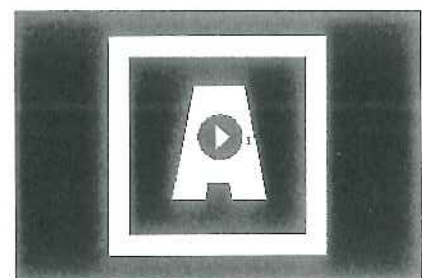
Joseph Lstiburek, principal of Boston-based Building Science Corporation and an ASHRAE fellow, was one of the first forensic engineers to sound the alarm over moisture buildup within barrier EIFS in the late 1980s. Lstiburek served as an expert witness for Bryson and became instrumental in the class-action lawsuits against EIFS manufacturers. Today, however, his assessment of EIFS has evolved: It's "a phenomenal system," he says. "They addressed the fundamental flaws that they had in the 1990s, which is they added moisture management. And now EIFS resembles the perfect wall."

This October, when the U.S. Department of Energy strengthens regulations on energy efficiency for commercial buildings, some designers believe EIFS may become the best available cladding option. In an article published this winter in the trade magazine *Walls & Ceiling*, an architect named Chris Dixon wrote that "EIFS is positioned for a huge comeback in buildings in the United States."

The EIFS industry hopes to finally shake the hangover of past litigation and become the comeback kid of cladding for both commercial and residential projects. In the meantime, the story of how this wall system evolved over the last four decades offers a valuable reminder for a building industry rushing to embrace ever-greater energy efficiency standards.

EIFS began as a pragmatic solution to a pervasive problem. After World War II, Europe needed to rebuild, and the system was invented to repair damaged masonry buildings. In 1969, Dryvit set up shop in Rhode Island and brought the technology to the United States. The American energy crises of the 1970s propelled more architects and developers to spec EIFS because it mimicked the look of stucco while providing something known as Continuous Insulation, or CI. Instead of placing insulation inside the wall cavity, which creates opportunities for thermal bridging, CI is wrapped around the exterior, creating an uninterrupted barrier. According to the EIFS Industry Members Association (EIMA), most EIFS systems use an insulation board with an R-value of R-5.6 per inch, which, when combined with traditional cavity insulation, can result in an overall value of R-16 or more.

When the EIFS problem surfaced in North Carolina in 1996, Tom Kenney, vice president of engineering and research at the National Association of Home Builders' Home Innovation Research Labs, participated in a task force led by the Wilmington Buildings Codes Department. He spent a good portion of a year getting to the root causes of the issue and writing EIFS standards. He says the problem wasn't solely with the EIFS walls, but with the entirety of a building's construction. "The building codes back in the day were wholly inadequate with detailing the flashing systems that were necessary to keep water out of the walls," Kenney says. "It really woke up the home building industry in general with regard to moisture management. It was a complete blindspot," he says.



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The Lido Beach Towers on Long Beach Island in New York, a structure that was re-clad in EIFS, survived Superstorm Sandy intact, despite the devastation of the property and the interiors.



### Innovative Detail Series

Check out these stories, which take a close look at innovative projects that are using wood in creative ways. Proudly sponsored by reThink Wood.

In 2009, the International Code Council added drainable EIFS to the international commercial and residential building codes as acceptable for use. Current versions of the system feature advancements in the synthetic coating that enable EIFS to aesthetically mimic any finish—wood, stone, brick, even metal—at a fraction of the cost of the real thing. Moreover, the reinforcing mesh can be customized to climate and geography, offering things like increased impact resistance for hurricane-prone areas. Bob Dazel, AIA, marketing manager for strategic initiatives at Dryvit, says his company's Outsulation product can withstand a small missile impact test; indeed, a hospital clad in impact-resistant EIFS won't need to evacuate during a Category 4 hurricane.

David Boivin, CEO of Sto, points to the Lido Beach Towers on Long Beach Island as a good example of EIFS evolution. Five years ago the 1920s structure was re-clad in EIFS and after Superstorm Sandy destroyed several floors of the interior—depositing sand up to the ceiling of first floor units—the exterior survived. "Literally, the whole beach came up on that project, and the bottom floors were completely inundated with water and sand," Boivin says. "When they cleared everything away, the EIFS wall structure suffered virtually no damage. The owners were stunned."

Ryan Johnson, Assoc. AIA, of LSE Architects has worked on several hotel and casino projects that used EIFS. He says the insulation and the aesthetics make it a popular choice for commercial clients. "We've been trying to move the insulation to the outside of the building on all of our projects, no matter if it's an EIFS project," he says. But EIFS is the only option that offers true CI, he says: "Other product manufacturers aren't figuring out how to attach their product back to the building without going through the exterior insulation. If it's metal panel on the outside, and it's got exterior insulation, you're still punching little holes all through the insulation to attach it to the building."

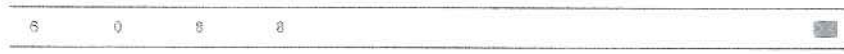


Today, EIFS manufacturers sell primarily to the commercial industry. Chances are you've seen the product, even if you didn't realize what it was. Much of the Vegas Strip is covered in EIFS, including the Bellagio. Estimates give the system about 20 to 25 percent of the commercial cladding business. Dryvit, whose Outsulation product covers the Bellagio, has about 40 percent of the total market in the U.S. The company says that 95 percent of its business is commercial and 5 percent residential, which may reflect the stagnant residential market over the last few years, but mostly points to the residual reputation damage from past litigation. A look back at market share of EIFS usage shows an overall decline in the residential sector once the lawsuits hit. In 1998, EIFS was on the rise, with 4.7 percent of the market in new construction single-family and townhouses, according to the NAHB. In 2012, the residential market share for EIFS was 2 percent.

The challenge in rebuilding that residential market is dispelling leftover concerns among Realtors, insurance companies, and others who still malign the product even though the lawsuits are now well over a decade old. "I am perplexed why people would not want to use a system that is so flexible, so energy efficient, and so easy to apply, and extremely cost competitive to other wall claddings," says David Johnston, the executive director of EIMA. "We need to move on."

Nevertheless, Kenney hopes that some of the lessons born out of EIFS travails won't be forgotten. The issues did spur building codes to evolve, he says, and ensured that "other cladding systems had a new awareness of that moisture management issue."

Today, "as we ratchet up the energy codes, there are consequences," Kenney says. What other building issues could emerge as the result of product innovation? "We're in the midst of a sea change, and the marketplace is doing what it does best: innovation. But uncontrolled and unregulated, it can be the Wild West."



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**Dick Trigger** 495 days ago

The product creates the perfect storm for mold and rot, with it's compartmentalization and channels, layers and absorption. Proper flashing indeed, that is a myth. The installers are not educated and don't understand the physics of proper flashing, they are hired because they don't mind working on a shaky scaffold 100 feet above the ground in the cold or direct sun all day. Even if someone makes the proper flashing for them--which won't happen because some pieces have to be molded to fit at the install event--they will misuse it, nail it improperly and otherwise end up with a rotting stinking mess. Big mistake to take chances with this product, and it only sells because of ignorance of the client, who is misled to believe it is a solid stone type stucco.

Reply

0



**Tom MacKnight** 497 days ago

I know too many folks who make their living in litigation and remediation for EIFS. I wouldn't touch the stuff for any project where the life of the building was over 10 years, and I'd never, ever use it near the coast.

Reply

[1 reply](#)

0



**David Gregory** 496 days ago

Are you talking about the original approach, or the back-drained EIFS? Does the latter (updated) assembly have other longevity problems or problems in coastal areas? Would love to hear more details.

Reply

0



**Anonymous** 498 days ago

An additional issue: the material is in my opinion too vulnerable to impact and abrasion damage close to landscaping and walkways - anywhere adjacent to public access. The fiberglass coated trims hold up fairly well if properly detailed, but there still can be issues. The fact is that EIFS systems require special detailing for window and door openings, proximity to deck drainage surfaces, drip screeds at the foundation, and sundry flashing details, i.e., at parapet copings, water tables, roof/wall rakes, etc. It may be a less than perfect substrate for stick-on faux stone and brick finishes. It would still not be my first choice.

Reply

[2 replies](#)

0



**David Gregory** 496 days ago

From the article, sounds like lots of the original problems were due to poor flashing details (plus lack of back drainage), which is the weak point of lots of building assemblies - any system needs its own particular water management details. Seems like the weakness of lots of 'composite' cladding systems is that it's harder to physically lap the different layers of protection, putting lots of pressure on the sealants of the few remaining joints.

You're right about impact and other damage, though, probably best to keep it 'out of reach', perhaps adding a harder-wearing surface from ground to ~7' ht? And at a minimum, strengthen corners where they could get bumped...

Reply

[1 reply](#)

0



**Richard** 488 days ago

If you have basic building science knowledge .... it was already known the system had a MAJOR FLAW!!!!!!!!!!!!!!

Knowing government agency's allowed Company's such as Dryvit to manufacturing and marketing EIFS components knowing it would cost Americans Billions of dollars in repairs for a product which was known to be FLAWED!

From the legal side of the matter who got the SHAFT? Everyone that had EIFS installed on there home or business lost there shirts. All of the EIFS manufactures blamed it on the installers and walked away Scotts free.....

Looking at some of the drainage plain details they recommend now!!!!!! I still see flaws!!!!

They all should not be given a second chance!!!!!!

Reply

0

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# Exterior insulation finishing system

From Wikipedia, the free encyclopedia

**Exterior insulation and finishing system (EIFS)** is a type of building exterior wall cladding system that provides exterior walls with an insulated finished surface and waterproofing in an integrated composite material system.



A historic brick building in Germany covered with EIFS on the right side.

## Contents

- 1 Terminology
- 2 How EIFS is installed
- 3 EIFS today
- 4 Composition and types of EIFS
- 5 History of EIFS
- 6 Legal issues
- 7 Marketing of EIFS and the EIFS industry
- 8 EIFS architectural details
- 9 References

## Terminology

According to the definitions of the International Building Code and ASTM International, an Exterior Insulation and Finish System (EIFS) is a nonload bearing, exterior wall cladding system that consists of an insulation board attached either adhesively or mechanically, or both, to the substrate; an integrally reinforced base coat; and a textured protective finish coat.<sup>[1]</sup>

EIFS with Drainage, another EIFS system, is the predominate method of EIFS applied today. As the name implies, EIFS with Drainage provides a way for moisture that may accumulate in the wall cavity to evacuate.<sup>[2]</sup>

Although often called "synthetic stucco", EIFS is not stucco. Traditional stucco is a centuries-old material which consists of aggregate, a binder, and water, and is a hard, dense, thick, non-insulating material. EIFS is a lightweight synthetic wall cladding that includes foam plastic insulation and thin synthetic coatings. There are also *specialty stuccos* that use synthetic materials but no insulation, and these are also not *EIFS*. A common example is what is called *one-coat stucco*, which is a thick, synthetic stucco applied in a single layer (traditional stucco is applied in 3 layers).

EIFS are proprietary systems of a particular EIFS manufacturer and consist of specific components. EIFS are not *generic* products made from common separate materials. To function properly, EIFS needs to be architecturally designed and installed as a system.

EIFS typically consist of the following components:

- An optional water-resistive barrier (WRB) that covers the substrate
- A drainage plane between the WRB and the insulation board that is most commonly achieved with vertical ribbons of adhesive applied over the WRB
- Insulation board typically made of expanded polystyrene (EPS) which is secured with an adhesive or mechanically to the substrate
- Glass-fiber reinforcing mesh embedded in the base coat
- A water-resistant base coat that is applied on top of the insulation to serve as a weather barrier
- A finish coat that typically uses colorfast and crack-resistant acrylic co-polymer technology.

[3]

The technical definition of "an EIFS" does not include wall framing, sheathing, flashings, caulking, water barriers, windows, doors, and other wall components. However, as of recently, architects have begun specifying flashings, sealants, and wiring fasteners (such as Viperstrap) as being a part of the EIFS scope of work, essentially requiring EIFS contractors to carry out that work as well. The technical national consensus standard for the definition of an EIFS, as published by ASTM International organization (<http://www.astm.org>), does not include flashing or sealants as part of the EIFS. Many of the EIFS manufacturers have their own standard details showing typical building conditions for window and door flashings, control joints, inside/outside corners, penetrations, and joints at dissimilar materials which should be followed for that manufacturers warranty.

## How EIFS is installed

EIFS is typically attached to the outside face of exterior walls with an adhesive (cementitious or acrylic based) or mechanical fasteners. Adhesives are commonly used to attach EIFS to gypsum board, cement board, or concrete substrates. EIFS is attached with mechanical fasteners (specially designed for this application) when installed over sheet-good weather barriers such as are commonly used over wood sheathings. The supporting wall surface should be continuous (not "open framing") and flat.

## EIFS today

EIFS today are one of the most tested and well researched claddings in the construction industry. Research, conducted by the Oak Ridge National Laboratory and supported by the Department of Energy, has validated that EIFS are the "best performing cladding" in relation to thermal and moisture control (<http://www.eima.com/pdf/EIFS-Performance-and-Modeling-Study-Summary.pdf>) when compared to brick, stucco, and cementitious fiberboard siding. In addition EIFS is in full compliance with modern building codes which emphasize energy conservation through the use of CI (continuous insulation) and a

continuous air barrier. Both these components are built into today's EIFS products to provide maximum energy savings, reduced environmental impact over the life of the structure, and improved IAQ, Indoor Air Quality. Along with these functional advantages come virtually unlimited color, texture, and decorative choices to enhance curb appeal and enjoyment of almost any home or structure. <sup>[4]</sup>

EIFS before 2000 was a barrier system, meaning the EIFS system itself was the weather barrier. After 2000 the EIFS industry introduced the air/moisture barrier that resides behind the foam. In a study done by the The Department Of Energy's Office of Science - Oak Ridge National Laboratory it was found that the best air/moisture barrier was a fluid barrier. The Oak Ridge National Laboratory, ATLANTA, Oct. 28, 2006 — EIFS "outperformed all other walls in terms of moisture while maintaining superior thermal performance." The National Institute of Standards and Technology (NIST) have evaluated the 5 life cycle stages of the environmental impact of EIFS alongside brick, aluminum, stucco, vinyl, and cedar. Depending on a variety of site and project specific conditions, EIFS has the potential to save money in construction costs and contribute toward energy efficient operations and environmental responsibility when correctly designed and executed.

EIFS have also passed a variety of fire tests that range from resistance to ignitability, that include: ASTM E 119, NFPA 268, NFPA 285, ANSI FM 4880. <sup>[5]</sup>

## Composition and types of EIFS

The most common type of EIFS used today is the system that includes a drainage cavity, which allows any and all moisture to exit the wall. EIFS with drainage typically consists of the following components:

- An optional water-resistive barrier (WRB) that covers the substrate
- A drainage plane between the WRB and the insulation board that is most commonly achieved with vertical ribbons of adhesive applied over the WRB
- Insulation board typically made of expanded polystyrene (EPS) which is secured with an adhesive or mechanically to the substrate
- Glass-fiber reinforcing mesh embedded in the base coat
- A water-resistant base coat that is applied on top of the insulation to serve as a weather barrier
- A finish coat that typically uses colorfast and crack-resistant acrylic co-polymer technology.

[6]

If an EIFS with Drainage, or water-managed EIFS is installed, a water resistive barrier (aka a WRB) is first installed over the substrate (generally glass faced exterior-grade gypsum sheathing, OSB or plywood). The moisture barrier is applied to the entire wall surface with a mesh tape over joints and a liquid-applied membrane or a protective wrap like Tyvek or felt paper. Then a drainage cavity is created (usually by adding some sort of space between the foam and the WRB). Then the other 3 layers, described above, are added. This type of EIFS is required by many building codes areas on wood frame construction, and is intended to provide a path for incidental water that may get behind the EIFS with a safe route back to the outside. The purpose is to preclude water from damaging the supporting wall.



Adhesives and Finishes are water-based, and thus must be installed at temperatures well above freezing. Two types of Adhesives are used with EIFS: those that contain Portland Cement ("cementitious"), or do not have any Portland Cement ("cementless"). Adhesives that contain Portland Cement harden by the chemical reaction of the cement with water. Adhesives and Finishes that are cementless harden by the evaporation of water – like house paint. Adhesives come in two forms. The most common is in a plastic pail as a paste, to which Portland Cement is added. Adhesives are also available as dry powders in sacks, to which water is added. Finishes come in a plastic pail, ready to use, like paint. EIFS insulation comes in individual pieces, usually 2' x 4', in large bags. The pieces are trimmed to fit the wall at the construction site.

## History of EIFS

EIFS was developed in Europe after World War II and was initially used to retrofit solid masonry walls. EIFS started to be used in North America in the 1960s, and became very popular in the mid- 1970s due to the oil embargo and the resultant surge in interest in high energy efficiency wall systems (such as EIFS provides). The use of EIFS over stud-and-sheathing framing (instead of over solid walls) is a technique used primarily in North America. EIFS is now used all over North America, and also in many other areas around the world, especially in Europe and the Pacific Rim.

In North America, EIFS was initially used almost exclusively on commercial buildings. As the market grew, prices dropped to the point where its use became widespread on normal single family homes.

In the late 1980s problems started developing due to water leakage in EIFS-clad homes and buildings. This created an international controversy and numerous lawsuits. Critics argue that, while not inherently more prone to water penetration than other exterior finishes, barrier-type EIFS systems (non-water-managed systems) do not allow water that may penetrate the building envelope to escape.<sup>[7]</sup>

The EIFS industry has consistently maintained that the EIFS itself was not leaking, but rather poor craftsmanship and bad architectural detailing at the perimeter of the EIFS was what was causing the problems. The building codes reacted by mandating EIFS with Drainage on wood frame building and additional on-site inspection.

Most homeowner insurance policies cover EIFS and EIFS-like systems. Though there are some cases where insurance companies may not offer coverage for EIFS several companies do.<sup>[8]</sup> Also, some facility owners have found that EIFS systems that are installed at lower building levels are subject to vandalism as the material is soft and can be chipped or carved resulting in significant damage. If these concerns exist specifying heavier ounce reinforcing mesh can be the answer, these specifications can drastically increase the durability of the EIFS system.<sup>[9]</sup>

EIFS installation was found to be a contributing factor in the multi-billion dollar problem known as the "Leaky condo crisis" in southwestern British Columbia and the "Leaky homes" issue in New Zealand that emerged separately in the 1980s and 1990s.<sup>[10][11][12][13]</sup>

## Legal issues

EIFS systems have been the subject of several lawsuits, mostly related to the installation process and failure of the system causing moisture buildups and subsequent mold growth. The most notable case concerned the former San Martin, California courthouse. This case was settled for 12 million dollars.[1] (<http://www.stuccolaw.com/news/santaclara.html>)

The basic underlying problem behind EIFS litigation was that EIFS was marketed as a cost-effective replacement for stucco. Stucco is expensive to install because it must be carefully applied by skilled craftsmen and takes a month to cure between coats. General contractors switched to EIFS because it was supposed to be easy to install with unskilled or semi-skilled labor and would not crack like traditional stucco will if it is not cured properly. Although EIFS *if properly installed* according to the manufacturer's directions should not have water intrusion problems, many GCs cut corners by using unqualified labor (that is, illiterate laborers unable to read or follow directions) and also failed to adequately supervise their work. In turn, thousands of EIFS installations were noncompliant and suffered severe water intrusion and mold as a result. While the EIFS industry has consistently tried to shift the blame to GCs, the construction industry has retorted that using professional unionized journeymen carpenters in turn eliminates the cost advantage of EIFS over stucco, and that the EIFS industry should have anticipated this issue and engineered its products from the beginning to be installed by unskilled labor or semi-skilled labor (that is, it should have been a fault-tolerant design).

## Marketing of EIFS and the EIFS industry

EIFS accounts for about 10% of the US commercial wall cladding market. There are several dozen EIFS manufacturers in North America. Some sell nationwide, and some are regional in their area of business operations. The EIFS manufacturers sell the various system components (adhesives, coatings, etc.) through specialty building product distributors who in turn resell the components to local EIFS installers. The top 5 EIFS producers account for about 90% of the US market. These producers include Dryvit Systems, STO Corp., BASF Wall Systems, Master Wall, and Parex.

## EIFS architectural details

Another benefit of EIFS is the option to add architectural details that are composed of the same materials. EIFS mouldings or as they are commonly referred to, stucco mouldings, come in a large variety of shapes and sizes. They are widely used on residential/commercial projects in North America and are gaining popularity worldwide. Production methods have come a long way since their inception which allow manufacturers to create with great efficiency in a cost effective manner. The production of architectural foam mouldings was recently showcased on How It's Made airing on The Discovery Channel Network. (<http://www.youtube.com/watch?v=MAT2-H8NESQ>)

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# Investigating EIFS Performance Across Climates

Exterior insulation and finishing systems studied in long-term test

by Ulf Wolf

Photo courtesy EIFS Industry Members Association

**BETWEEN JANUARY 2005 AND JUNE 2007, THE OAK RIDGE NATIONAL LABORATORY (ORNL) UNDERTOOK AN EXTENSIVE EIFS INDUSTRY MEMBERS ASSOCIATION (EIMA)-SPONSORED TRIAL COMPARING THE MOISTURE AND TEMPERATURE MANAGEMENT PROPERTIES OF SEVERAL EXTERIOR INSULATION AND FINISHING SYSTEM CONFIGURATIONS WITH THOSE OF OTHER CLADDINGS IN A HOT AND HUMID CLIMATE. NOW, A NEW THIRD PHASE OF THE STUDY IS DEMONSTRATING THE ASSEMBLY'S POTENTIAL FOR OTHER CLIMATE ZONES.**

As part of Phase I of the initial study, researchers designed and built a test facility in Hollywood, South Carolina near Charleston—a location typical of a mixed, coastal, Zone 3 climate, as prescribed in the 2006 *International Energy Conservation Code (IECC)*. The flexible design allowed researchers to change the wall panels with ease and to control conditions inside the building by creating two zones within the building interior.

Interior temperature and relative humidity (RH) conditions were selected based on the proposed American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) SPC 160P, *Criteria for Moisture Control Design Analysis in Buildings*. Building orientation and placement of the wall panels were determined based on a comprehensive study of historical weather patterns, including prevailing wind and precipitation direction.

The data were collected in two phases. In Phase I, 15 exterior cladding configurations—not only EIFS, but also stucco, brick, and cementitious paneling—were integrated into one side of the building (southeastern exposure), with the goal of having all the claddings exposed to similar weather conditions for a full weather year (15 months from January 2005 through May 2006).

In Phase II, simulated building envelope defects were introduced into some of the wall panels, which included newly constructed wall panels as well as some of the 20-month-aged wall panels from Phase I. (To simulate leaks, these defects allowed a certain amount of water to penetrate the outer envelope.) The goal was to assess the performance of cladding

Figure 1

System	EPS	Attachment	Drainage/ Air Space	Weather Barrier	Sheathing	Framing	Insulation	Vapor Retarder
EIFS 2 (SE)	1 ½" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	2 x 4@16"	R-11 Unfaced	None
EIFS 3 (SE) with flaw	1 ½" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	2 x 4@16"	R-11 Unfaced	None
EIFS 4 (SE)	1 ½" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	2 x 4@16"	R-11 Unfaced	6-mil poly
EIFS 5 (SE)	4" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	2 x 4@16"	0	None
EIFS 6 (SE) Commercial	1 ½" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	1 8 ga. @16"	R-11 Unfaced	None
Brick 14 (SE)	No	N/A	Air Cavity 1"	1-Layers Grade D 60 Minute	OSB	2 x 4@16"	R-11 Unfaced	None
EIFS 18 (NW) With flaw	1 ½" Flat	Notched Trowel	Vertical Ribbons	Liquid	Plywood	2 x 4@16"	R-11 Unfaced	None
EIFS 26 (NW) Ventilated	1 ½" Flat	Adhesive	Lath	Liquid	Plywood	2 x 4@16"	R-11 Unfaced	None

Emulated wall assemblies used for model validation.

assemblies to water penetration, as well as the impact on the performance of wall assemblies from wall orientation on moisture infiltration, the type of water-resistive barriers (WRBs) used (e.g. sheet membranes versus liquid-applied), and different exterior claddings systems (e.g. EIFS and brick). In Phase II, wall panels were placed on both the building's southeast and northwest sides, with data collected from May 2006 to June 2007.

### Zone 3 conclusions

The findings of these trials, as published at the time, showed EIFS was capable of controlling temperature and moisture within the wall system; it also showed these assemblies outperformed other exterior claddings during the monitored year. Phase II further established that an EIFS system, with drainage consisting of a liquid-applied water-resistive barrier coating and 100 mm (4 in.) of expanded polystyrene (EPS) insulation board, performed the best of all tested systems.

In other words, given the specific parameters of this study, the EIFS wall configurations performed better than stucco (both three- and one-coat) and brick. The EIFS wall systems with drainage maintained a consistent, acceptable level of moisture (average monthly RH below 80 percent, as defined by ASHRAE SPC 160P) within the cladding, despite varying outdoor conditions when appropriate interior vapor retarders were used. Brick and stucco tended to accumulate slightly more moisture during both Phase I and Phase II of the project and retained moisture longer than EIFS.

The trial also found EIFS with a liquid-applied, water-resistive barrier coating readily dispersed moisture introduced by the building envelope flaws installed for Phase II, unlike other

claddings that retained more water. Both Phase I and II trials also confirmed vertical ribbons of adhesive provide an effective means of drainage within an EIFS-clad wall assembly.

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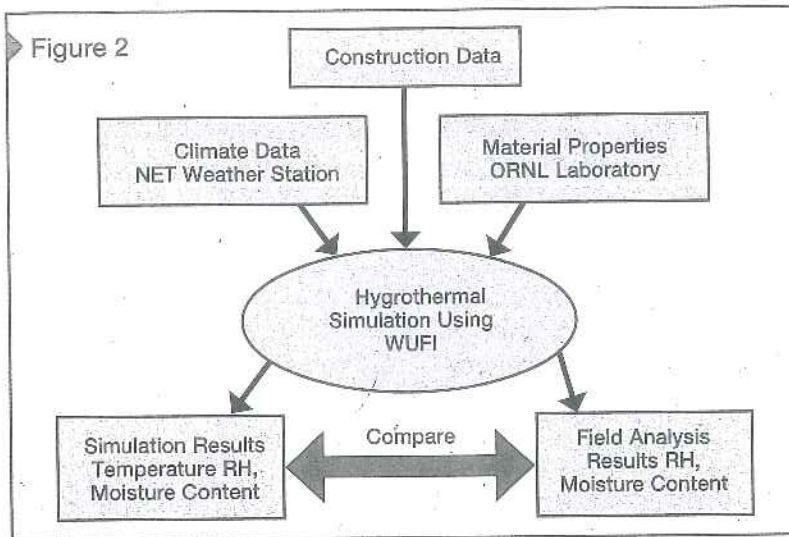
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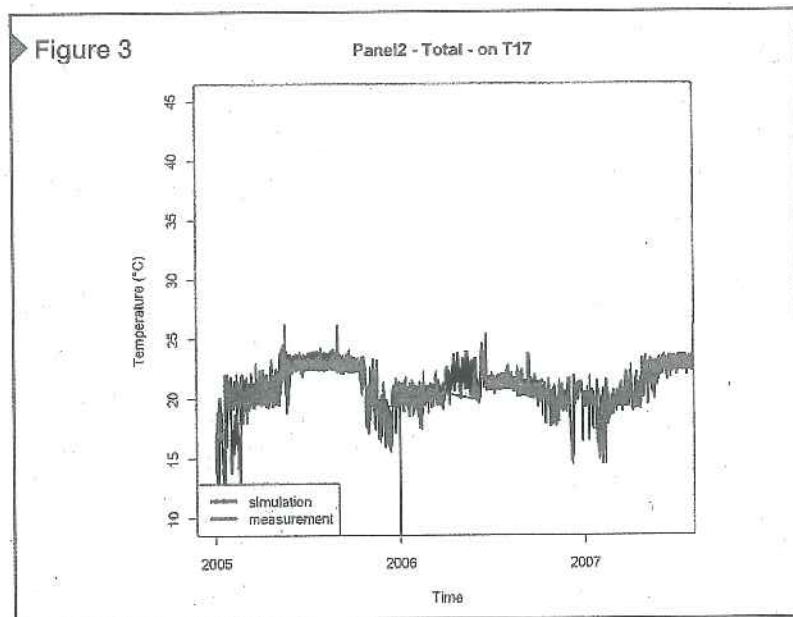
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Validation analysis process.

Images courtesy Oak Ridge National Laboratory



Transient temperature at the interior surface of the wall (both Phases 1 and 2).

The research showed EIFS has the ability to maintain the acceptable balance of moisture and temperature control indicative of a well-designed, properly operating, energy-efficient building without moisture problems. To quote the ORNL report summary:

EIFS-clad wall assemblies with drainage outperform other typical exterior claddings during most of the year. The results also showed that EIFS is an excellent exterior cladding choice for achieving key building performance goals in a hot and humid climate, specifically a mixed, coastal, Zone 3 climate.

These trials, however, did not necessarily answer the questions or concerns any designer, contractor,

or insurer operating outside mixed, coastal, Zone 3 might have about EIFS. In other words, how does it perform in Zones 1 to 2 and 4 to 8? This is where Phase III of the ORNL trials enters the picture.

### ORNL trials' Phase III

Having compiled the full data set from Phases I and II for the mixed, coastal climate, the task remained to extrapolate these findings across all U.S. climatic regions. One way to achieve this would have been to select sites in the various climate zones and constructed additional test facilities there for live data-collection. This, however, would have been neither practical nor cost-efficient. Rather, the task fell to ORNL (more specifically, program manager Andre Desjarlais) to create a reliable, computer-simulated trial for the remaining climate zones. Desjarlais' reports, and a recent interview with this author, has provided the overview and summary of this third phase of the EIMA-sponsored EIFS trials in this article.

Running a computer simulation of this kind requires two virtual constructs validated as behaving and performing like real-world ones. First, there are the virtual panels, which are the computerized equivalent of the real-life, constructed panels used in the Phase I and II trials. Then, there are also the virtual climate zones—the computerized equivalent of the real-life humidity levels and weather patterns of actual climate zones.

The simulation consisted of creating four virtual panels (each fully corresponding to its live counterpart), which were then placed in each of the eight different virtual climate zones. They were then virtually exposed over three simulated 'years' to the humidity fluctuations and weather conditions of each respective zone. At the same time, the same hygrothermal measurements of these panels, as had been monitored during the live trials, were taken:

- temperature;
- relative humidity (RH);
- heat flux; and
- moisture content.

By the end of these simulated trials, ORNL had collected performance data equivalent to four different panels in eight different locations over three years.

### The software tool

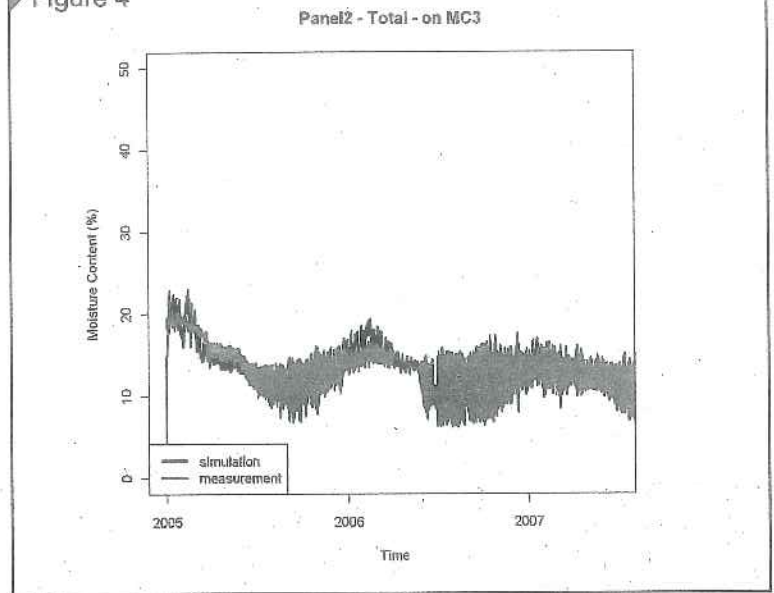
Virtual panels and climate require validated software tools to construct them. The tool used

for this third phase of the trials was WUFI, which stands for Wärme und Feuchte Instationär (i.e. heat and moisture fluctuations)—a true and tested software tool long used to calculate the coupled heat and moisture transfer in building components.

This PC program allows realistic calculation of the transient coupled one-dimensional heat and moisture transport in multi-layer building components exposed to natural weather. WUFI is based on the latest findings regarding vapor diffusion and liquid transport in building materials and has been validated by detailed comparison with measurements obtained in the laboratory and on outdoor testing fields. The underlying model has been validated for more than 20 years.

WUFI, like the live study, takes into account not only thermal properties of a building component and their impact on heating losses, but also its hygric (moisture) performance since thermal and hygric behavior of a building component are closely interrelated—increased moisture content leads to heat loss, while thermal situation in turn affects moisture transport. Therefore, both have to be tracked in their mutual interdependence for an accurate result. WUFI accomplishes this.

Figure 4



#### Virtual panels and locations

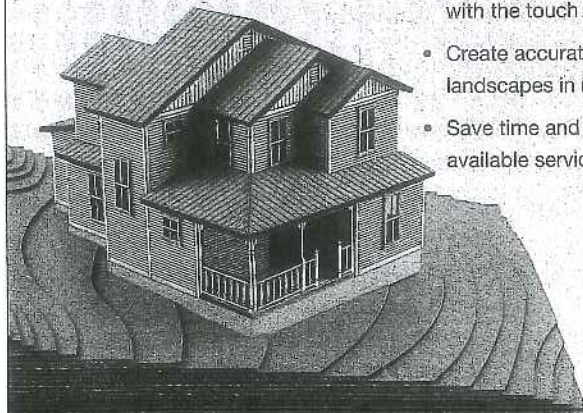
Following the guidelines summarized in ASHRAE 160-2009, *Criteria for Moisture-control Design Analysis in Buildings*, each simulation was undertaken for a three-year period using the design 'cold' year. Four wall systems were selected for study, comprising the following components:

Transient moisture content in plywood sheathing board (both Phases 1 and 2).



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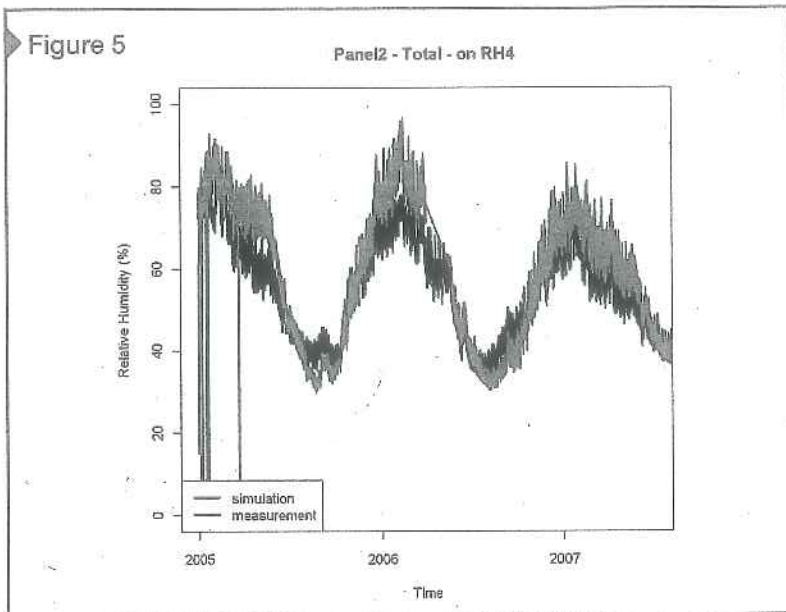
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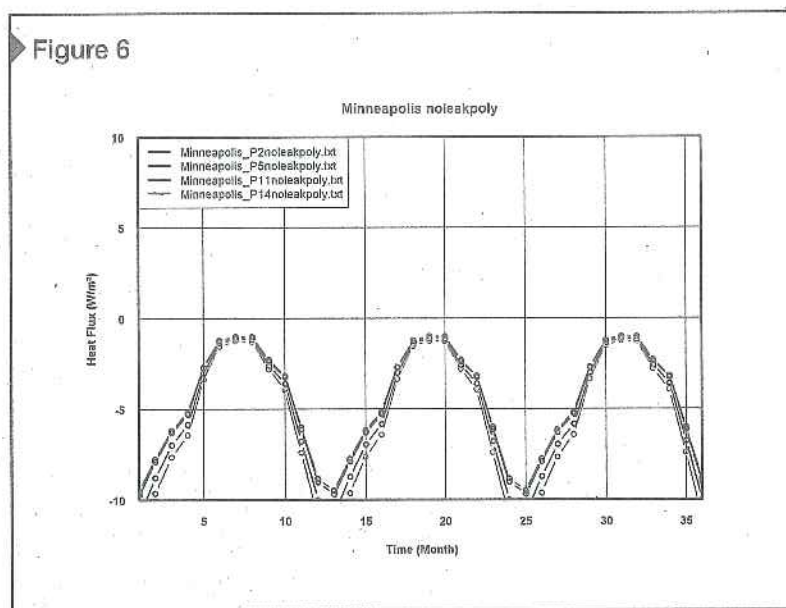
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Transient relative humidity (RH) at interior plywood sheathing board is shown for both Phases 1 and 2.



Heat flux for test walls in Zone 6 with no leak and a poly vapor retarder.

- EIFS Panel 2 (P2): 40-mm (1 1/2-in.) flat insulation, notched trowel attachment, drainage airspace created by vertical ribbons, liquid-applied weather barrier, plywood exterior sheathing, 50 x 100-mm (2 x 4-in.) framing 400-mm (16-in.) on center (oc), with unfaced R-11 fiberglass batts and no vapor retarder, a 13-mm (1/2-in.) gypsum board, and a 10-perm paint layer;
- EIFS Panel 5 (P5): 100-mm (4-in.) flat insulation, notched trowel attachment, drainage airspace created by vertical ribbons, liquid-applied

weather barrier, plywood exterior sheathing, 50 x 100-mm (2 x 4-in.) framing 400-mm (16 in.) oc, with no cavity insulation and no vapor retarder, a 13-mm (1/2-in.) gypsum board, and a 10-perm paint layer.

- EIFS Panel 11 (P11): 40-mm (1 1/2-in.) flat insulation, notched trowel attachment, drainage airspace created by vertical ribbons, a liquid-applied weather barrier, ASTM C1177 exterior gypsum board, 18-gauge 50 x 100-mm (2 x 4-in.) steel framing 400-mm (16-in.) oc, with unfaced R-11 fiberglass batts and no vapor retarder, a 13-mm (1/2-in.) gypsum board, and a 10-perm paint layer; and
- brick Panel 14 (P14): brick façade, 25-mm (1-in.) airspace, one layer of Grade D 60-minute building paper, oriented strandboard (OSB) exterior sheathing, 50 x 100-mm (2 x 4-in.) framing 400-mm (16-in.) oc, with unfaced R-11 fiberglass batts and no vapor retarder, a 13-mm (1/2-in.) gypsum board, and a 10-perm paint layer. Airspace was considered ventilated (open top and bottom).

The eight IECC climate zones modeled in this simulation (representing cities for Climate Zones 1 through 8, respectively) were:

- Miami, Florida;
- Austin, Texas;
- Atlanta, Georgia;
- Baltimore, Maryland;
- Chicago, Illinois;
- Minneapolis, Minnesota;
- Fargo, North Dakota; and
- Fairbanks, Alaska.

### Model validation

The first step of this simulation was to validate the model itself—that is, to ensure the virtual panels behave precisely like their real counterparts, given the same hygrothermal loads. For purposes of validation, the researchers selected eight different panels from Phases I and II to emulate with computer configurations. The panels chosen for this, and their makeup, are shown in Figure 1 (page 35), which is taken from the ORNL report, “Energy and Moisture Impact on EIFS Walls in the USA.” (Note: The typical interior finish for all emulated systems was 13-mm [(1/2-in.)] drywall, primed and painted [one coat of acrylic paint]).

The validation of these eight selected wall systems ran for the combined length of Phases I and II and was performed using the measured Natural



Exposure Test facility (NET) weather station data for Charleston, South Carolina, along with the measured indoor data, and all hygrothermal material properties measured during Phases I and II of this trial.

Figure 2 (page 36) illustrates the validation process. Completed, this analysis demonstrated good agreement between the WUFI hygrothermal model and the Charleston South Carolina field data, the model trends at all times following those of the Phases I and II experimental data. Consequently, the researchers could now confidently predict the heat and moisture performance of the four walls systems selected for the final simulation.

Figures 3 through 5 illustrate the type of data collected during the validation phase. EIFS Panel 2 is used as an example in this case. These figures depict both the measured and predicted (simulated) factors as follows:

- Figure 3 (page 36)—interior surface temperature as measured by Thermistor 17 (T17);
- Figure 4 (page 37)—moisture content of the plywood sheathing as measured by Moisture Content Sensor 3 (MC3); and
- Figure 5— relative humidity of the interior surface of the plywood as measured by Relative Humidity Sensor 4 (RH4).

In all instances, the predicted parameters agreed with the measured results.

### The simulation

Using the validated model, the researchers now performed a hygrothermal WUFI analysis following the guidelines summarized in ASHRAE 160-2009. Each simulation was undertaken for a three-year period using the design 'cold' year. As mentioned, the four wall systems studied were identified as P2, P5, P11, and P14.

Each wall system was evaluated with and without a vapor retarder, and with and without water penetration as specified in ASHRAE 160-2009. Traditional practice does not typically require a vapor retarder

in the southern climates, but these walls were modeled as well for completeness.

The wall orientation provided the maximum amount of rain to emulate water penetration. Therefore, whenever rainfall was detected, one percent of the rain incident on the exterior surface of the wall system was deposited into the wall's exterior sheathing.

The interior boundary conditions were developed as per ASHRAE 160-2009 and

the initial moisture contents of all wall components were set at their equilibrium moisture content at 80 percent RH. Solar radiation and cooling due to night sky radiation were included in the analyses.

### Resulting data

The volume of data generated by these simulations cannot adequately be summarized in a short article. To trim it down into a digestible portion, the results

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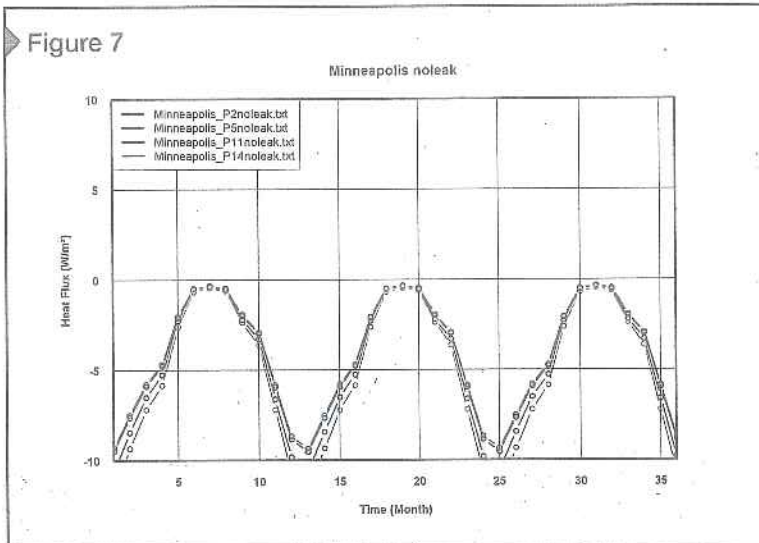
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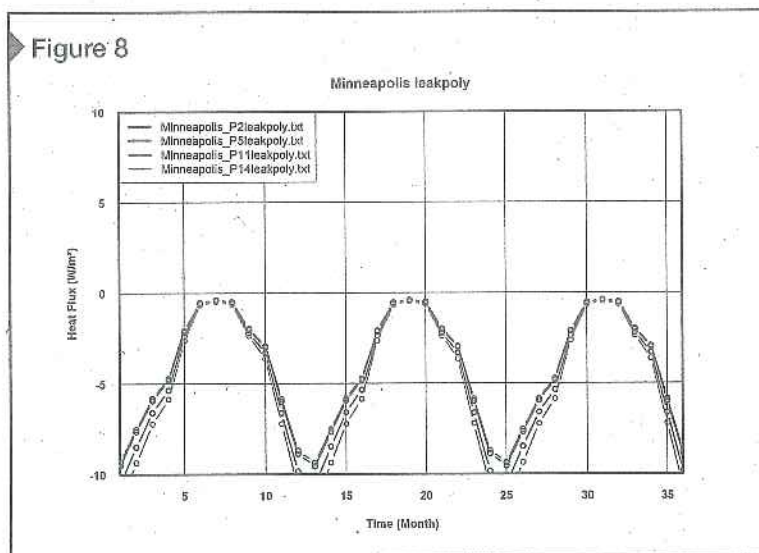


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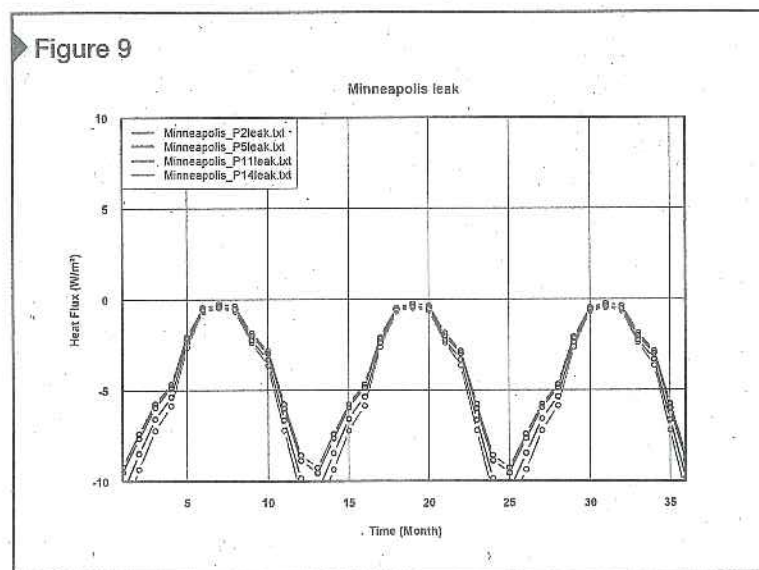
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Heat flux for test walls in Zone 6 with no leak and no poly vapor retarder.



Heat flux for test walls in Zone 6 with a leak and a poly vapor retarder.



Heat flux for test walls in Zone 6 with a leak and no poly vapor retarder.

of Climate Zone 6 (Minneapolis) will be the focus—however, it is representative of the data generated by remaining seven Climate Zones.

Figures 6 through 12 summarize the monthly average heat flux through the four wall systems, and the moisture content of their exterior sheathings in Climate Zone 6 weather conditions over a three-year period. The four pairs of graphs compare the effects of leakage (none vs. ASHRAE 160) and the inclusion of a vapor retarder (none vs. 6-mil poly).

It is important to note EIFS configurations P2 and P11 yield the same energy efficiency, followed by EIFS P5 and Brick P14. The addition of leaks and vapor retarders does little to modify the energy performance of these walls in this climate; the walls are hygrothermally efficient enough to prevent sufficient moisture accumulation to impact their energy efficiency.

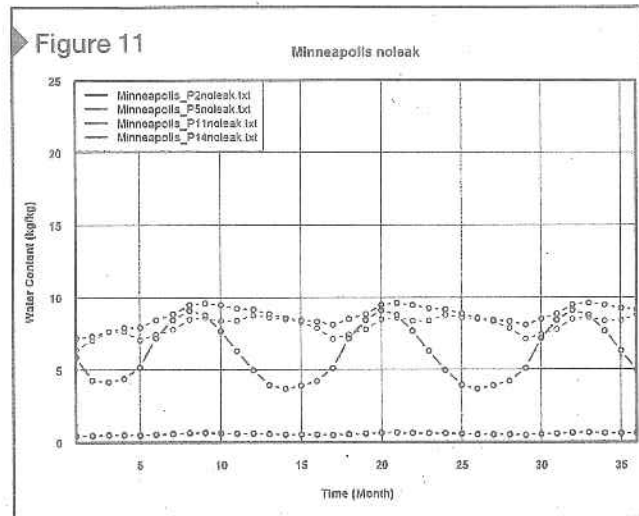
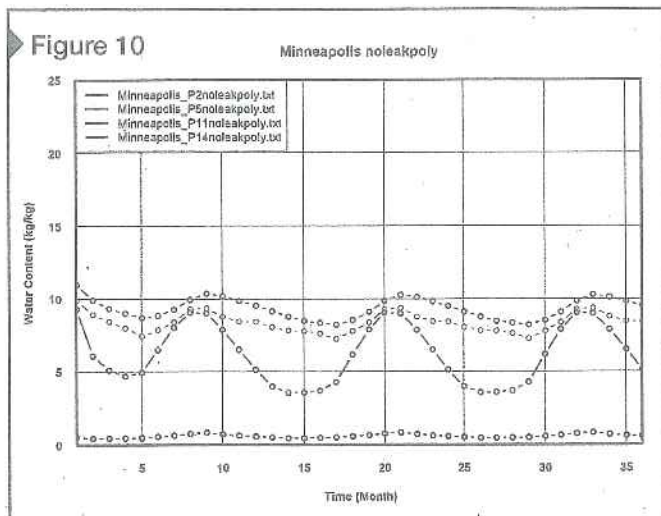
With no leakage and no poly, all wall systems maintain exterior sheathing moisture contents well below 80 percent RH. The addition of poly has little impact on the moisture contents. Wall EIFS P5 outperforms the other wall assemblies; the low interior RH maintains the exterior sheathing to a very low level of relative humidity.

When leakage is added to the wall assemblies in this climate, their hygrothermal performance changes minimally. Both configurations do add to the moisture contents of the walls' exterior sheathings, but they are maintained at moisture content levels at or below the 80 percent RH level.

#### Energy efficiency

For all climate zones, the addition of the leak did not appreciably increase the heat flux. Adding a vapor retarder on the inside of the test walls, which would retard the internal drying potential or decrease the moisture flow from the building interior, did not change the moisture contents of the walls enough to affect their energy efficiency.

The researchers found little difference in the heat flux through the four test walls in Zone 1. Moving the wall systems to colder climates, EIFS Panels 2 and 11 exhibited the best energy performance, followed by EIFS Panel 5 and Brick Panel 14. The facts the simulations are one-dimensional—and the calculations are performed in the center of the cavity—explain why one sees no effect of the metal studs in EIFS Panel 11. The differences between EIFS Panels 2 and 11 and the other two test panels increase in colder climates.



Water content for test walls in Zone 6: at left, with no leak and a poly vapor retarder; at right, with no leak and no poly vapor retarder.

### Moisture performance

For all climate zones, panels combining no leakage and no vapor retarder deliver acceptable performance. That is also true for all panels with no leakage and a poly vapor retarder. The addition of the vapor retarder increases the sheathing moisture contents for all walls in the warmer Climate Zones 1 through 4, but this addition is relatively small and on the order of two to three mass percent—in other words, not enough to compromise the durability of the wall systems. In the more northern zones, the addition of a vapor retarder is neutral; all panels behave similarly with or without the vapor retarder.

The addition of a leak substantially increases the moisture contents of all wall assemblies. In Climate Zones 1 through 4, the panels without a vapor retarder come close to the 80 percent RH threshold (levels above 80 percent for extended periods are detrimental).

When a vapor retarder is added, the moisture contents rise even further and are at levels above 80 percent RH for months each year and as systems will eventually fail. In colder Climate Zones 5 through 8, the increase in moisture content after adding a vapor retarder is less severe, and the time the sheathing is at moisture contents exceeding 80 percent RH is substantially shorter.

### Conclusion

Throughout the simulation, the three exterior insulation and finishing system configurations outperformed the brick wall system for the specific measured criteria across all climate zones, with EIFS Panel 5 performing the best overall. Joseph Lstiburek, an ASHRAE fellow and a principal at Building Science Corporation, was one of the first forensic engineers to sound the alarm over moisture buildup problems within barrier EIFS in the late 1980s. At that point, he did not think highly of the assemblies. This, however, has changed over time, and today he confirms he believes EIFS to be “a phenomenal system. They addressed the fundamental flaws they had in the

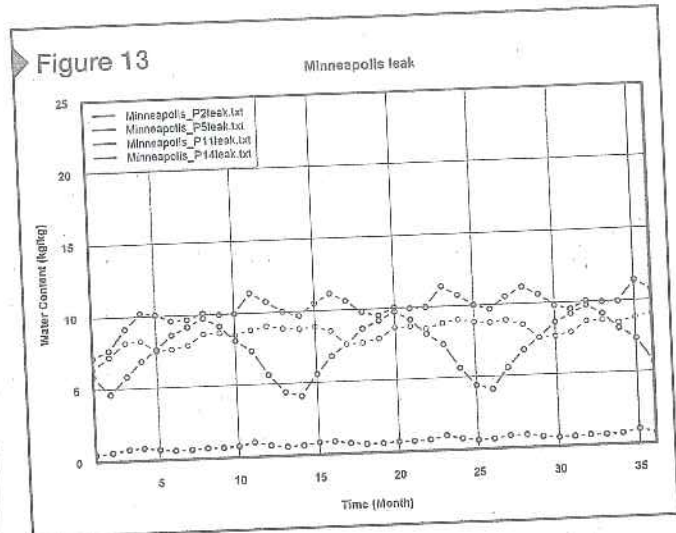
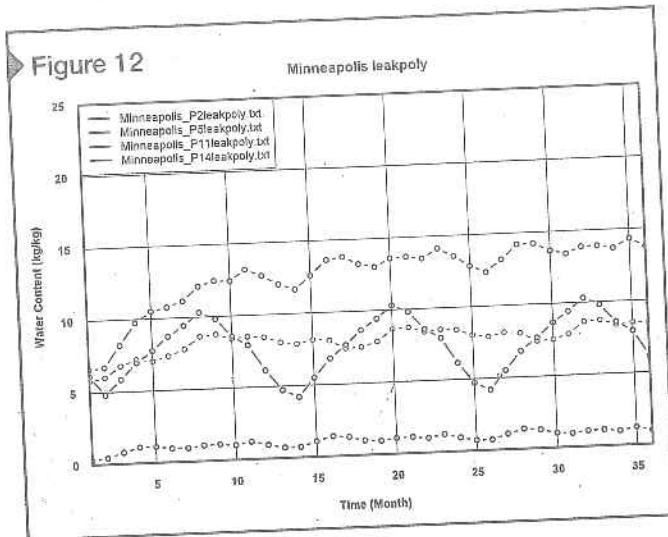
1990s by adding moisture management. And now EIFS resembles the perfect wall.”<sup>22</sup>

When considering the research in this article, it is important to remember all ‘test walls’ were constructed new. A test like this will not highlight differences 20 years down the road. Further, a scientific tracking of various actual envelopes built in many climate zones as to moisture and thermal performance, as well as to insurance costs and claims, will paint a broader, fuller comparative picture amongst claddings. Finally, this

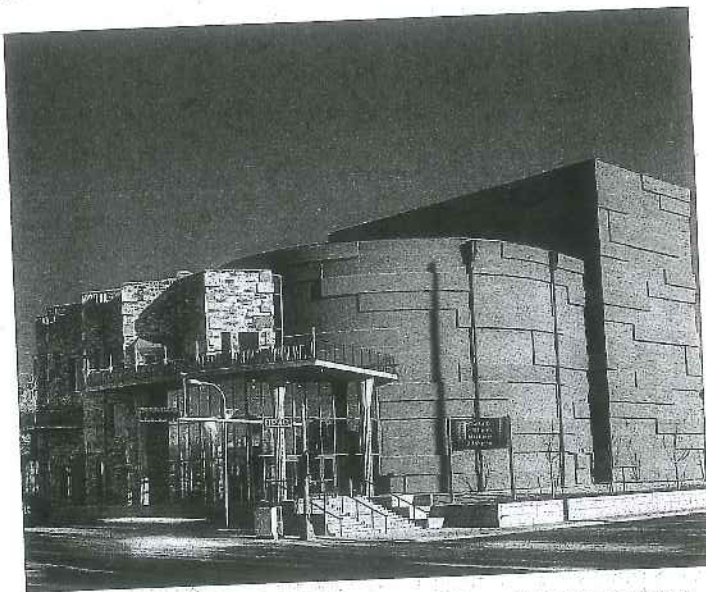
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Water content for test walls in Zone 6: at left, with a leak and a poly vapor retarder; at right, with a leak and no poly vapor retarder.



As a lightweight wall cladding, exterior insulation and finishing systems (EIFS) combines insulation with various thin synthetic coatings.  
Photo courtesy EIFS Industry Members Association

study was intended to measure only the moisture and thermal performance of these wall assemblies—there are other criteria design/construction professionals and building owners will take into consideration when selecting materials for their projects.

With both the 2012 IECC and ASHRAE 90-1 now stipulating continuous insulation building envelope for new construction, the outcome of this third and final phase of the ORNL trials is very good news indeed for EIFS. **CS**

#### Notes

<sup>1</sup> This is per ASTM C1177, *Standard Specification for Glass Mat Gypsum Substrate for Use as Sheathing*.

<sup>2</sup> For more, see the August 2013 issue of *Architect*, which featured the article, “Water Under the Bridge,” by Elizabeth Evitts Dickinson. Visit [www.architectmagazine.com/technology/water-under-the-bridge.aspx](http://www.architectmagazine.com/technology/water-under-the-bridge.aspx). (This author recently spoke with Lstiburek and confirmed his quotation still stands.)

## ADDITIONAL INFORMATION

#### Author

Ulf Wolf is the senior writer at Words & Images ([www.words-images.com](http://www.words-images.com)). Since 2007, he has been a regular contributor of articles to the Association of the Wall and Ceiling Industry's (AWCI's) *Construction Dimensions* magazine. Previously, he contributed “Greener Than You Think: Exterior Organic Solvent-based coatings” to the February 2011 issue of *The Construction Specifier*. He can be reached via e-mail at [ulfwolf@gmail.com](mailto:ulfwolf@gmail.com).

#### Abstract

The Oak Ridge National Laboratory (ORNL) recently undertook a series of trials comparing the moisture and temperature management properties of several different exterior insulation and finishing system (EIFS) configurations with those of other

claddings. This article looks at how the research was conducted (along with related modeling software), and focuses on the findings for different types of climate locations, and other data.

#### MasterFormat No.

07 24 00—Exterior Insulation and Finish Systems

#### UniFormat No.

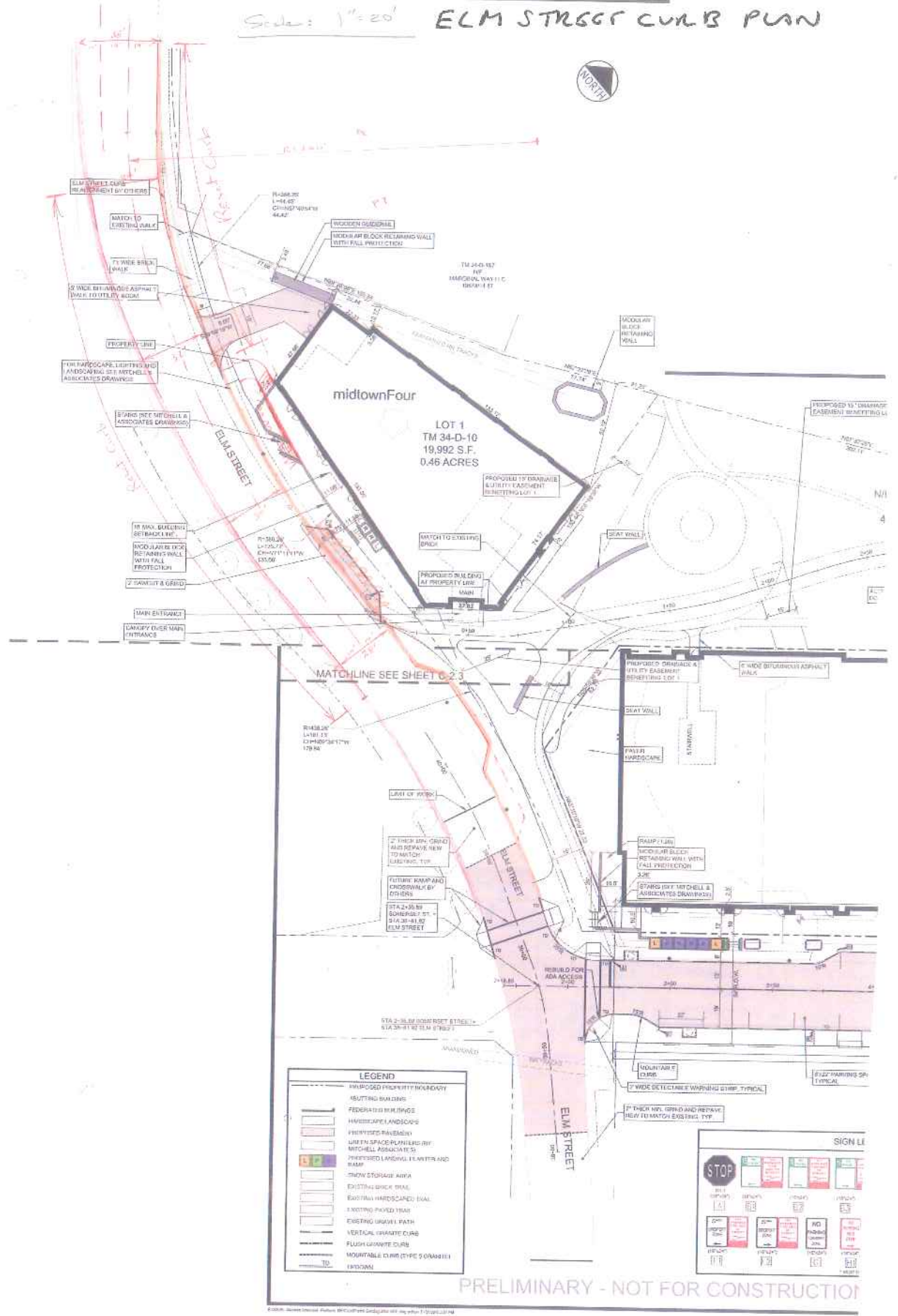
B2010—Exterior Walls

#### Key words

Division 07  
Claddings  
EIFS  
Moisture protection

Oak Ridge National  
Laboratory  
Testing

# Scale: 1"=20' ELM STREET CURB PLAN



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## Planning and Urban Development Department Planning Division

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**Subject:** Summary of Midtown Design Changes

**Written by:** Caitlin Cameron, Urban Designer

**Date of Review:** Thursday, February 26, 2015

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### Additional Information:

- MidtownFour: An additional elevation of the entry façade of was provided in order to better evaluate the building entry and façade facing Elm Street sight lines (Sheet 4-A201 – drawing 3)

### Revisions:

The building designs of the midtown project have been revised in the following ways:

#### Façade Composition:

- MidtownOne: Applicant changed West Elevation to reflect the fenestration pattern shown in floor plan. This includes an increase of windows on the elevation (Sheet 1-A201 drawing 3).
- MidtownTwo: No apparent changes
- MidtownThree: The placement of metal siding was shifted on each elevation so that the proportion of metal siding around the window was swapped (occurring in the left-most bay section of each elevation drawing – Sheets 3-A201 and 3-A202).
- MidtownFour: No apparent changes

#### Materials:

- MidtownOne: Windows added in West Elevation include metal siding to break up expanse of EIFS (Sheet 1-A201 drawing 3).
- MidtownTwo: No apparent changes
- MidtownThree: The amount of EIFS has been decreased on all facades and metal siding was inserted along all facades. In the case of the East and West elevations, metal siding was added to two columns of windows each. In the case of the South and North elevations, more extensive sections of EIFS were replaced with metal siding in the upper floors of the middle bays. The change in façade composition as mentioned above also effectively added more metal siding/reduced EIFS siding on this building (Sheets 3-A201 and 3-A202).
- MidtownFour: No apparent changes

CITY OF PORTLAND, MAINE  
 PLANNING BOARD

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January 28, 2014

The Federated Companies  
 Jonathan Cox  
 Suite M-302  
 3301 NE 1<sup>st</sup> Avenue  
 Miami, Florida 33137

Shinberg Consulting  
 Greg Shinberg  
 Suite 1012  
 477 Congress Street  
 Portland, Maine 04101

Project Name:	midtown	Project ID:	#2013-105
Address:	59 Somerset Street 10	CBL:	34-B-2, 3, 4, 5; 34-D-3, 8 and
Applicant:	Federated Companies		
Planner:	Richard Knowland		

Dear Mr. Cox,

On January 14, 2014, the Planning Board considered the midtown development application submitted by the Federated Companies (hereinafter, the “applicant.”). The Planning Board reviewed the proposal for conformance with the standards, outlined in the City Code, for Conditional Use approval (Phase One); Master Development Plan approval (all phases); Subdivision approval; a Traffic Movement Permit; and Site Plan approval (Phase One), including Site Development of Location Act.

**A. CONDITIONAL USE**

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Reports #58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section VIII of the January 14, 2014, relevant to Portland’s B-7 zone, the City’s Site Plan Ordinance, the City’s Conditional Use Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing:

1. The Planning Board finds the proposed conditional use for the increase in building height to 165 feet does meet the standards of B-7 Conditional Use (Sec. 14-296), Site Plan Sec. 14-526 (d)(9) (viii), and City Code Section 14-474 (2), and therefore voted 7-0 to approve an increase in building height to 165 feet, subject to the following conditions of approval:

**a. Wind Mitigation Condition for Phase One:**

The applicant shall submit plans and specifications for all recommended wind mitigation measures contained in the RWDI wind study for the mews, the courtyard, and the residential entry area to achieve a condition comfortable for standing in the mews area and comfortable for sitting in the courtyard area, and comfortable for walking in the building entrance area, for review and approval by the Planning Board prior to issuance of a building permit. At the same time, the applicant shall submit a wind condition monitoring plan for Planning Board review and approval, which will specify how the wind conditions will be monitored and recorded over a twelve month period from the date of the Phase One residential building certificate of occupancy. A performance guarantee shall be retained at the time of issuance of a building permit to cover the estimated cost of constructing the potential wind mitigation measures, which shall remain at the full amount until the satisfactory completion of any required mitigation improvements, at which time it shall be reduced to a 10% defect guarantee.

After 12 months from the issuance of the Certificate of Occupancy (C of O), but not more than 15 months after the C of O is issued, the applicant shall submit the wind monitoring report to the Planning Board. If the comfort and safety level in the mews, courtyard, and/or entry area is not satisfactory in the judgment of the Planning Board, the applicant shall be required to implement and install some or all of the wind mitigation measures contained in the RWDI wind study within a time certain as directed by the Planning Board

**b. Wind Mitigation Condition for Phases Two and Three:**

At time of Level III Site Plan Review of Phase Two, the applicant shall submit a detailed wind study of Phases Two and Three, which shall include an instrumented physical model wind tunnel study and impact assessment for the Planning Board's review. The master development plan and site plan shall be revised to mitigate projected wind impacts to achieve a satisfactory level of comfort for standing or sitting in public places for a substantial majority of the time in all seasons, including but not limited to the trail corridor behind and between the buildings proposed in Phases Two and Three.

2. The Planning Board finds that the development meets the requirements for modifying the stepback provisions of 14-296(a)(5)(b) relating to stepbacks as required under sec. 14-526(9)(viii)(b) and therefore voted 6 to 1 (Morrissette) to approve such modification..



3. The Planning Board finds the proposed conditional use for the Phase One parking garage does meet the standards of B-7 Conditional Use, Sec. 14-296 (3) governing structured parking and Zoning Code Section 14-474 (2), and therefore voted 7 to 0 to approve the parking garage use.

## **B. MASTER DEVELOPMENT PLAN**

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinances 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:

That the Master Development Plan is in conformance with the standards of the Master Development Plan provisions of the Site Plan Ordinance, and therefore voted 7 to 0 to approve the Master Development Plan for all three phases, subject to the following conditions of approval:

1. That a pedestrian passage be provided in the Phase Two site plan between the two residential towers in Phase Two or, the alternative, through one of the residential towers located in Phase Two, unless the Planning Board waives this requirement during the Phase 2 Level III site plan review process.
2. The final Master Development Plan shall be revised to reflect Planning Board decisions outlined herein that impact the overall Master Development Plan, including but not limited to waivers, conditional use review, subdivision review and site plan review.
3. For Phases Two and Three, include and install erosion control measures meeting best management practices and maintain the erosion controls for the site prior to mulching disturbed areas. The site shall be maintained clean and free of debris at all times. The City may request the applicant to conduct additional maintenance activities or grading corrections to Phase Two and Phase Three, if debris or sedimentation is found in the surrounding catch basins which diminishes the capacity or causes back-ups of the basins. All sidewalks shall be cleared of snow by the property owner, including sidewalks located in Phase Two and Phase Three.
4. The proposed Bus shelter location shown on Somerset Street in Phase Two shall be coordinated and further refined in the future during site plan review for Phase Two.

5. The Drop-off area, sidewalk ramps, sidewalks, and other features within the public right-of-way on Elm Street for Midtown Four, which is included in Phase Three, are not acceptable. Details of the sidewalk, curb line, and other features shall be revised and submitted for approval during future site plan reviews.

### **C. TECHNICAL AND DESIGN WAIVERS**

On the basis of the applications (2013-105 and 2013-128) plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section IX of the report for January 14, 2014 titled "Technical Waivers," the report and the reviews by Tom Errico, PE dated January 6, 2014 (Attachment 3) and David Margolis-Pineo, Deputy City Engineer dated January 9, 2014 (Attachment 4), for the Midtown Master Development Plan and Midtown Phase One 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 hearings, the Planning Board voted 7 to 0 on the following findings:

#### Street Trees

1. The Planning Board finds that the applicant has demonstrated that site constraints prevent the planting of required street trees on the site and/or in the City right of way. The Planning Board voted 7 to 0 to waive Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance and concluded that the applicant shall make a financial contribution of \$5,000 to the tree fund, which amount takes into consideration the applicant's commensurate infrastructure investment in twenty-one ( 21) raised tree wells as presented in the application. This waiver applies to Phase One only.

#### Transportation and Street Design

2. The Planning Board finds, based, among other things, on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Section 1.4 Street Grades of the Technical Manual to modify the cross slopes as presented in the application for a local street from the 0.03 requirement. This waiver applies to Phase One only.

#### Section 1.4 Street Grades

3. The Planning Board does not find based upon the reviews by Tom Errico and David Margolis Pineo (Attachments 3 and 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted (7 to 0) not to waive Section 1.4 Street Grades of the Technical Manual to modify the cross slopes for a sidewalk as presented in the application from the 0.02 requirement.

### Section 1.5 Vertical Alignment

4. The Planning Board finds based, among other things on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted to 7 to 0 to waive Section 1.5 Vertical Alignment of the Technical Manual to modify the K values as presented in the application. This waiver applies to Phase One only.

### Section 1.7.2.5 Curbing of Driveways

5. The Planning Board finds based, among other things on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 waive Section 1.7.2.5 Curbing of Driveways of the Technical Manual to allow the tip down granite curbs rather than radius curbs at driveways, subject to the condition that the exact details of the aprons shall be provided for review and approval.

### Section 1.7.1.9 Number of Driveways

6. The Planning Board finds based, among other things on the reviews by Tom Errico and David Margolis Pineo (Attachments 3 and 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Number of Driveway of the Technical Manual to allow the Master Development Plan project to have five (5) curb cuts: two (2) in Phase One; two (2) in Phase Two; and one (1) in Phase Three; with the condition that curb cuts in Phases Two and Three will be reviewed at the Level III site plan reviews and only the Phase One curb cuts will be installed with the Somerset reconstruction as presented on the applicant's Phase One plan.

### Sanitary Sewer and Storm Drain Design

7. The Planning Board finds based, among other things, upon the review by David Margolis Pineo (Attachment 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Section 2.7.8 Catch Basin of the Technical Manual to allow the connection of storm drain lines into a catch basin structure.

### Stormwater Management Standards and ME DEP Stormwater Management

8. The Planning Board finds that the project conveys stormwater exclusively in a piped system directly into the ocean as confirmed by David Senus' review (Attachment 5) and therefore, extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Chapter 5, Section E.2 Flooding Standard of the Technical Manual to allow the stormwater to be directly piped to the ocean.

### Soil Survey Standards

9. The Planning Board finds based upon David Margois-Pineo's recommendation (Attachment 4) that greater than 50% of the site was developed on a filled site and remediated as a Brownfields site, which has had soil analysis done for the site and street right-of-way and therefore, extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. . The Planning Board voted 7 to 0 waive Section 7.1 Soil Survey Standards of the Technical Manual related to the requirement for a high intensity soil survey.

### **D. B-7 WAIVERS**

On the basis of the applications (2013-105 and 2013-128) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section X, B-7 Design Standard Waivers of the January 14, 2014 report for the Midtown Master Development Plan and Midtown Phase One relevant to Portland's Design Manual, 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:

1. Recognizing the existing blockage of the Cedar Street views and partial blockage of Myrtle Street view corridors, constraints relating to building design and block configuration, as well as other factors outlined in the applications and the Planning Board Report, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 waive B-7 Standard A-4, Views and Landmarks, to grant a partial waiver of the requirement that new development be sited so that it does not block view corridors, to allow the garages in Phases One and Two to partially obstruct the Myrtle Street and Cedar Street view corridor.
2. Recognizing that Cedar and Myrtle streets do not abut the subject property, and in consideration of the proposed mews providing an alternate access between Somerset Street and the trail, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive to B-7 Standard B-2, Street Connectivity, to grant a waiver of the requirement that the development be required to extend Cedar Street and Myrtle Street through the project.

3. Due to the proposed placement of the garage and buildings in Phase II, the Planning Board does not find that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 not to approve a waiver of B-7 Standard B-3, Mid-Block Permeability, for Phase Two development which requires mid-block permeability of the development between Chestnut and Elm Streets.
4. Recognizing that there is no other location for such entrances other than on Somerset Street due to block configuration, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard B-7, Continuity of Street Level Uses, to allow service entrances and vehicular entrances on Somerset Street.
5. In order to enable and enhanced retail and pedestrian sidewalk lighting conditions on Somerset Street, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard B-11, Lighting, to allow closer spacing of the street lights on Somerset Street as depicted on the submitted site plan. \_.
6. Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-2 Parking Entrances, to allow the entry and exit of the garage entry to be combined on Somerset Street.
7. Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-5, Decks and Ramps, to allow visible non-horizontal ramps on the north face of the garage.
8. Because this project has no rear elevation, the Planning Board therefore finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-8, Service, Utility and Mechanical

Infrastructure, which requires all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

9. Recognizing that the shadow study (Exhibits 20 and 20A) demonstrate that for half of the 12 time/seasons reported, a 65 foot tall building would impose a shadow impact on the trail and open space that subsumes the longer shadow of the taller building. Further, the six times that show increased shadow from the taller building, the shadow impact is limited in area and duration, therefore the overall increase in shadow created by the taller heights is not substantially more detrimental to the trail than would result from an as-of-right (65 foot tall) development, thus undue hardship may result from strict compliance with Standard E-19. The Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard E-19, Shadows, to allow an increase of more than 10% shadow on the Bayside Trail.

#### **E. TRAFFIC MOVEMENT PERMIT**

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision reviews 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:

That the plan is in conformance with the standards of the Traffic Movement Permit, and therefore voted 7 to 0 to approve the Traffic Movement Permit, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The applicant will be required to install a traffic signal at the Marginal Way/Chestnut Street intersection. This intersection currently meets signal warrants and accordingly this improvement shall be installed prior to certificate of occupancy of Phase One. It should be noted that the applicant will be responsible for the development of design plans and specifications for review and approval by the City.
2. The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it current consist of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy for Phase One. The applicant shall submit plans for review and approval.

3. The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6 months following certificate of occupancy. The applicant shall submit plans for review and approval.
4. The applicant shall make a \$32,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
5. The applicant shall make a \$30,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
6. The applicant shall make a \$51,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
7. Somerset Street/Pearl Street - This intersection was determined to operate at unacceptable conditions following project build-out. It is recommended that the applicant conduct a monitoring study following the construction of Phase One. The monitoring study would be required for Phase 2 of the project.

**F. AMENDED OVERALL SUBDIVISION PLAT AND PHASE ONE SUBDIVISION PLANS:**

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinances 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:

That the Amended Overall Subdivision plat (dated 12-20-2013) and the Phase One Subdivision Plans are in conformance with the subdivision standards of the City's Code, and therefore voted 5 to 2 (Hall and O'Brien opposed) to approve the subdivision plans, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. That the Phase One Subdivision Plan shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to labeling of easements, subdivision notes and other relevant conditions meeting the requirements for a recording plat as contained in Portland's Subdivision Ordinance and Maine State statute, and incorporating the phasing plan as described in condition 3, below.
2. That the Amended Overall Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services including detailed references to labeling of easements, subdivision notes and other relevant conditions.
3. That Somerset Street improvements may be constructed in two phases with design details subject to review and approval by the City's Department of Public Services as further described in a letter from Michael Bobinsky, Director of Public Services, dated January 9, 2014, see Attachment 2. The construction of lot 6 and or lot 7 (Phase One) shall require the reconstruction of Somerset Street from Pearl Street to Chestnut Street along with necessary grade tapering west of Chestnut Street and additional related tapering on Chestnut Street, which shall be implemented in conjunction with Phase One of the Master Development Plan and Level III Site Plan review. Initiation of construction on lots 2, 3 and or 5 (Phase Two) requires reconstruction of the remainder of Somerset Street west of Chestnut Street to Elm Street, which shall be implemented in conjunction with development of Phase Two and/or Phase Three of the Master Development Plan, or at such earlier time as may be approved by the Department of Public Services and Planning Authority.
4. That all easements shall be submitted for Public Services, Planning Authority and Corporation Counsel review and approval. Easements shall specify the function, responsibility of maintenance and repair as well as ownership of all improvements.
5. That the passage easement between Chestnut and Elm be removed on the Amended Overall Subdivision plat provided that a pedestrian passage be provided in the Phase Two site plan between the two residential towers in Phase Two or through one of the residential structures.
6. The applicant shall be totally responsible for the reconstruction of the Bayside Trail to the satisfaction of the City.
7. That the applicant and all assigns shall comply with the conditions of Chapter 32 of the City Code governing Stormwater, including Article III, "Post-Construction Storm Water Management," which specifies the City's annual inspections and reporting requirements. The applicant/developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and



sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system shall be submitted for review and approval by Corporation Counsel and the Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and

8. That the Subdivision Plat shall be revised to address the following review comments from the Department of Public Services:
  - a. Show property pins to be set at all locations to define the applicant's property.
9. That the Subdivision Plans shall be revised for review and approval by the Department of Public Services to address the Department of Public Services review of the subdivision plans as presented in a January 9, 2014 memo from David Margolis-Pineo, Deputy City Engineer.
10. In the event that the elevation of Somerset Street is raised east of Pearl Street, the applicant or successor shall be responsible for removing ramps, steps and other impediments in providing a continuous at-grade pedestrian access along the frontage of Phase One. Applicant or successor shall also be responsible for installing new streetscape materials and amenities that achieves a continuous at-grade sidewalk with review and approval by the Planning Authority. The applicant or its successor shall also be responsible for sidewalk and related improvements within their property line along Pearl Street extension should Pearl Street extension be reconstructed in the future.
11. The applicant and all assigns shall be responsible for the maintenance and upkeep of all ramps/stairs/planters in the sidewalk along Somerset Street in front of the residential tower, whether such ramps/stairs/planters are located within the street right of way or on private property.
12. The applicant shall revise the subdivision plat to remove the limited open space easement on lot 4, (adjacent and west of Lot 2) benefiting lot 2.

#### **G. SITE PLAN REVIEW**

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinance 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 in conformance with the site plan standards of the Land Use Code, Site Location of Development review and DEP Stormwater Permit, and therefore voted 7 to 0 to approve the proposed site plan, subject to the following condition(s) of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The applicant shall submit revised plans that provide the details for the mountable curbs, and provide details of the driveway apron areas meeting City standards for review and approval by the Planning Authority for the proposed mountable curbs.
2. According to information provided by the applicant, large delivery vehicles cannot be accommodated in the proposed service entrances provided for the project. For Phase One the on-street parking spaces on Somerset Street shall be designated as a Loading Zone with Dual Rear Wheel vehicle use requirements. The site plan shall correctly indicate such signage along Somerset Street and the No Parking signs on Pearl Street shall be revised to add "Tow Away Zone" for review approval by Department of Public Services. A large delivery vehicle management plan for the site shall be submitted to the Traffic Engineer for review and approval. For other future phases, it is recommended that the details on large truck loading be determined during Site Plan review.
3. The City shall retain the opportunity for a 60-foot right-of-way on Pearl Street north of Somerset Street. Therefore, the applicant shall submit a revised plan for review and approval that shifts the right-of-way line to the west 5-feet in anticipation of the City acquiring 5 feet of right-of-way width in the future to the east as it intends to do.
4. The TDM Plan provides general information on strategies and notes requirements for conducting tenant surveys as required by the City's Code. Following the 6 month survey and monitoring report, the City may require the applicant to aggressively implement strategies such as METRO pass subsidies, if trip reduction targets contained in the TDM plan are not met.
5. The applicant has submitted a general Construction Management plan that primarily details how the Bayside Trail will be closed and temporarily relocated to Somerset Street. The applicant shall submit a more detailed plan for review and approval by the Department of Public Services that provides the specific details on the trail facility as well as general pedestrian circulation throughout the area. The applicant shall submit a fully detailed construction management plan with a timeline prior to obtaining any City permits.
6. Details of the sidewalk ramps adjacent to the proposed crosswalk on Pearl Street to the Whole Foods corner shall be revised to the satisfaction of Department of Public Services.

7. The applicant shall provide a plan that specifically documents the sidewalk compliance with maximum cross slope requirements and sidewalk ramps that meet City standards for review and approval.
8. The location of the on-street ticket dispenser and related signage shall be revised to the satisfaction of the City's Parking Division. Additionally, it is recommended that the ticket system include the parking spaces on the south side of Somerset Street so the applicant will be responsible for the foundation and signage changes.
9. Phase One includes a Turn-Out on Pearl Street at the Entrance to the residential building. The turn-out will function independently of public traffic without a Pearl Street connection to Marginal Way; however, the design does not function when Pearl Street is extended. When Pearl Street is connected to Marginal Way, the turn-out shall be eliminated and a standard curbside drop-off area shall be implemented. This should be noted as a future condition of approval.
10. A sidewalk ramp at the corner of Somerset Street and Elm Street may be necessary in conjunction with interfacing this project with the City's Somerset Street Extension project. The applicant shall be responsible for revising the plan accordingly.
11. That the signage depicted in the Master Plan shall be revised to meet zoning ordinance requirements and shall be subject to Planning Board review and approval.
12. That the lighting plan shall be subject to Planning Staff review and approval.
13. That the landscaping plan shall be subject to City Arborist review and approval.
14. That the site plan shall be revised to clarify the number and location of bicycle spaces subject to Planning Authority review and approval.
15. That the final height of the ornamental fence around the transformers shall be subject to Planning Authority review and approval.
16. That the site plan shall be revised to widen the Pearl Street extension sidewalk to a minimum of ten (10) feet.
16. That references to snow storage within the Bayside Trail corridor shall be removed from all site plans.
17. That the site plan and related documentation shall be revised reflecting the comments of Capt. Chris Pirone of the Fire Department, in a memo dated January 6, 2014.

18. That the site plan and related documentation shall be revised reflecting the comments of David Senus, Consulting Review Engineer, in a memo dated January 6, 2014-
19. That the site plan and related documentation shall be revised reflecting the comments of David Margolis-Pineo, in a memo dated January 9, 2014.
20. That the site plans shall be revised removing discrepancies and inconsistencies among plans for Planning Authority review and approval.
21. That the location of all exterior gas meters shall be reviewed and approved by the Planning Authority.
22. That the final design of the Bayside Trail shall be revised for review and approval by Public Services and Planning Authority reflecting a goal of eliminating a second fence/rail proposed along the northerly edge of the trail.
23. The applicant shall install a public entrance to the retail building space for the Phase One residential building and parking garage, adjoining the courtyard and trail respectively, if appropriate to the use, to the satisfaction of the Planning Authority.

The approval is based on the submitted plans and the findings related to the development review standards as contained in Planning Report for application #2013-105 which is attached.

#### **STANDARD CONDITIONS OF APPROVAL**

Please note the following standard conditions of approval and requirements for all approved development 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 subdivision approval.

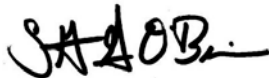
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or 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 approval.
7. **Master Development Plan Expiration** A master development plan is valid for up to six (6) years from the date of Planning Board approval with potential extension periods as provided for in Section 14-532(d).
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, 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 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.
10. **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. (If applicable)

11. **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.)
12. **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.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted in 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 the 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 Richard Knowland at (207) 874-8725.

Sincerely,



Stuart O'Brien  
Portland Planning Board

**Attachments:**

1. (Insert applicable staff memos)
2. Planning Board Report
3. City Code: Chapter 32
4. Sample Stormwater Maintenance Agreement [if applicable]
5. 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  
Rick Knowland, Senior Planner  
Philip DiPierro, Development Review Coordinator, Planning  
Marge Schmuckal, Zoning Administrator, Inspections Division  
Tammy Munson, Inspection Division Director  
Lannie Dobson, Administration, Inspections Division  
Gayle Guertin, 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  
Captain Chris Pirone, Fire Department  
Danielle West-Chuhta, Corporation Counsel  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File

>>> matthew baxter <ppsc.me@gmail.com> Thursday, January 08, 2015 5:37 PM >>>  
To whom it may concern,

Although I will not be able to make the planning board meeting in regards to the Midtown project, and I am slightly disappointed at the scaled back version (but not as disappointed as I am with fellow citizens civil dissent and lack of support of our city's planners & leaders), I would be very happy and excited to see this project get off the ground and get moving and am still in support of the wasteland that is this portion of Bayside, Portland, being developed with the current scale and designs.

Please get this project moving! The planning, litigation, and citizen opinion and appeal has long ago eclipsed the boring and tiresome stage, and at times (especially while tied in litigation and ulterior motives) become nauseating.

Build Midtown now!

Thank you for your time,

Matt Baxter





January 9, 2015

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

Gregory A. Mitchell, Director  
Department of Economic Development  
389 Congress Street  
Room 308  
Portland, Maine 04101

Michael Bobinski, Director  
Department of Public Services  
City of Portland  
55 Portland Street  
Portland, Maine 04101

***Re: Earle W. Noyes & Sons Moving Specialists, Inc. / Concerns  
Relating to the Possible Elevation of Somerset Street in  
Connection with The Federated Companies' Proposed  
"Midtown" Project***

Dear Jeff, Greg, and Mike:

This office represents Earle W. Noyes & Sons Moving Specialists, Inc. (hereafter "Noyes") in protecting its interests in the property at 93 Kennebec Street commonly known as "Noyes Self-Storage," as well as the two parking lots at 53 Kennebec Street it owns and leases to Oakhurst Dairy and Whole Foods (hereafter collectively the "Property"). Noyes is concerned about potential damage to the Property resulting from one aspect of that project: the proposed raising of Somerset Street by approximately 3.25 vertical feet.

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[www.mpmlaw.com](http://www.mpmlaw.com)

January 9, 2015

Page 2

To be clear, Noyes is not opposed to the Midtown project per se; it could potentially cure the blight on the neighborhood caused by past environmental contamination of the project site. However, from Noyes's perspective, any positive effects of the project will be moot if, even indirectly, it causes significant financial harm to Noyes. Based on the information available to it, Noyes has deep concerns that one aspect of the project – the proposed raising of Somerset Street – will, in fact, lead to potentially catastrophic damage to its Property.

For many years Noyes has kept a wary eye on the periodic flooding of Somerset Street by storm water and run-off from melting snow. The City, as I understand it, is well aware of that problem, and has devised, as a strategy to combat it, the elevation of Somerset Street and other public ways in the vicinity.

In the exercise of due diligence, Noyes contracted with Robert G. Gerber, P.E. of Ransom Consulting to study the potential effects of the elevating Somerset Street on the Property. Because of his well-known expertise in water-related environmental issues in general and the effects of sea level rise in particular, Mr. Gerber was an ideal choice for that assignment. Indeed, Mr. Gerber has assisted the City of Portland itself in challenging FEMA's proposed revisions to its flood insurance maps covering the City.

Attached to this letter as Exhibit A is Mr. Gerber's analysis of the short- and long-term effects of attempting to manage storm water near the Property by elevating existing, flood-prone public ways such as Somerset Street. Although that letter speaks for itself, suffice it to say that Noyes has legitimate cause for apprehension that the proposed elevation of Somerset Street will not, in fact, eliminate storm water accumulation adjacent to its Property, but will instead significantly increase the risk that storm water flowing from an elevated Somerset Street would enter, damage, and undermine the first floor and foundation of its warehouse building. Whereas the warehouse floor is currently situated about 3.5 feet above the level of Somerset Street, the proposed raising of the street would result in the warehouse floor being only a few inches above the road's surface, rendering the warehouse vulnerable to frequent and potentially devastating storm water intrusions. Noyes would be put to a choice between being put out of business or else spending enormous sums raise the surface of its Property and the ground floor of its building to match Somerset Street's increased height.

The potential threats to Noyes' parking lots at 53 Kennebec Street are also grave. Those parking lots are currently level with the surface of Somerset Street. Thus, if Somerset Street is raised, Noyes' parking lots will be more than three feet below grade and will inevitably collect storm water running off the street.

It is of only slight consolation to Noyes that Maine law would allow it to recover from the City for any diminution in the fair market value of its Property caused by the raising of Somerset Street. 23 M.R.S.A. § 3607 provides in pertinent part as follows:

When a way or street is raised or lowered by a road commissioner or person authorized to the injury of an owner of adjoining land, he may within a year apply in writing to the municipal officers, and they shall view such way or street and assess the damages, if any have been occasioned thereby, to be paid by the town. Any person aggrieved by said assessment may have them determined, on complaint to the Superior Court...

Although Noyes has no interest in becoming involved in such a dispute with the City, it will have no choice but to resort to that remedy if Mr. Gerber's analysis is correct. Given Mr. Gerber's well-known expertise in this area, it would be reckless for Noyes or the City to gamble that he is wrong. That gamble becomes even more foolhardy given the likelihood that, within a few decades, sea level rise will obliterate any temporary gains achieved by the elevation of Somerset Street and other roads in the Bayside area.

Based on all the foregoing, Noyes urges the Planning Board to review the Midtown project based on the stipulation that Somerset Street will *not* be elevated as had previously been proposed. By that means, Noyes will have no reason to become an adversary either to The Federated Companies or the City with respect to the development of the project site, nor will the City face potential liability to Noyes from the adverse effects Mr. Gerber predicts will follow from raising Somerset Street in the vicinity of the Property.

Thank you for your attention to this letter.

Sincerely,

  
John C. Bannon

JCB/kpm  
Enclosure

January 9, 2015

Page 4

cc: Stuart O'Brien, Chair, Planning Board (w/encl)  
Rick Knowland, Senior Planner (w/encl)  
Barbara Barhydt, Development Review Manager (w/encl)  
Kevin J. Donaghue, City Councilor and Chair, Housing & Community  
Development Committee (w/encl)  
David Margolis-Pineo, Deputy City Engineer (w/encl)  
Peter Quesada (w/encl)  
Peter Noyes (w/encl)  
Brent Noyes (w/encl)  
Robert G. Gerber (w/encl)  
Edward S. McColl, Esq. (w/encl)



Consulting  
Engineers  
and Scientists

R141.06141.001

January 8, 2015

Howles Incorporated  
Earl W. Noyes & Sons  
c/o Peter Noyes, President  
127 Oxford, Street  
Portland, ME 04104

via email



Re: Noyes Self-Storage Building – Somerset Street

Dear Peter:

I am writing to comment on the City of Portland's proposal to re-construct Somerset Street. This reconstruction involves a significant raising of the street and sidewalk elevations in conjunction with the proposed Mid-Town Federated project. The last set of plans that I have seen show part of the street proposed to be raised to within 3 inches of the Noyes warehouse floor elevation from the current 3.6' between road and floor elevation. The small separation of the road level from the floor level of the warehouse is of concern, particularly under conditions of a heavy snowfall followed immediately by rain.

There are two sources of flooding in this area: rain and snowmelt runoff; and coastal storm surge. Without including any wave setup, Back Cove floods to elevation 8.0' NAVD88 (about 8.7' NGVD29) in a 10-year storm and to 8.4' NAVD88 in a 25-year storm. A large area of the Bayside area of Portland should be zoned to be in a 100-year flood zone due to the fact that Back Cove floods to elevations of about 9' NAVD88 during a 100-year storm surge and seawater either flows back through the current stormwater system and up through city street stormwater inlets and/or runoff from rainfall and snowmelt in the upland areas will pond in low-lying areas of Bayside during extra high tides. When these surges occur in Bayside, no removal of ponded water by the storm sewer system can occur at or below the storm surge elevation, regardless of how little intensity the upland rainfall exhibits. With sea level rising, this problem will only grow worse with time.

In concert with raising Somerset Street, the City is also planning to install storm drains in the two parking lots at 53 Kennebec Street that Noyes owns and leases to Oakhurst Dairy and Whole Foods. My concerns with the installation of these storm drains is that although there might appear to the lay person to be a benefit, the plan does not take into account the longer term plan to raise all the streets in the area, nor does it consider issues of possible back-flooding from Back Cove during times of extra high tides. Specifically my concerns are: 1) the amount of additional flooding to these lots during times of extra high tides (by reverse flow of seawater up through the storm drains) has not been quantified as far as we can determine; 2) we have not seen a demonstration that the proposed addition of four catch basins—that could easily plug with debris or winter ice—will drain the lots as efficiently as current sheet flow does; 3) presumably when other streets in the City street grid are eventually raised, that will also raise the grades of all streets adjacent to the parking lots. The long term plans for

400 Commercial Street, Suite 404, Portland, Maine 04101, Tel (207) 772-2891, Fax (207) 772-3248  
Pease International Tradeport, 112 Corporate Drive, Portsmouth, New Hampshire 03801, Tel (603) 436-1490  
12 Kent Way, Suite 100, Byfield, Massachusetts 01922, Tel (978) 465-1822  
2127 Hamilton Avenue, Hamilton, New Jersey 08619, Tel (609) 584-0090  
60 Valley Street, Building F, Suite 106, Providence, Rhode Island 02909, Tel (401) 433-2160

[www.ransomenv.com](http://www.ransomenv.com)

raising all the streets and the analysis of flooding impacts on adjacent properties have not been completed as far as we can determine.

The Portland Planning Department and/or Dept. of Public Works have apparently decided that the best current approach to adjusting to sea level rise is the raising of streets in the low-lying areas of Bayside. However, it is my understanding that there is no comprehensive plan for raising all the streets, nor any cost estimate to re-design and re-construct the streets and utilities as part of this comprehensive street raising. In my opinion, it is a big mistake and waste of money to spend a million dollars raising one street and changing all the underground utilities without the knowledge of how this would function when all streets are raised, and what it will cost to re-construct all the streets in Bayside like this.

Further, I think street raising is bad policy, particularly since it is being done in a vacuum with no other current policy for dealing with sea level rise. What if street raising were the policy in New Orleans as the delta sank and the City were threatened by the relative rise of the sea? Is Portland going to raise all its Bayside streets 10' if sea level rises 10'? Sea level rise and climate change (the latter seems to be causing an increase in rainfall intensity and coastal storm intensity) are problems that are going to become serious issues for Bayside in the next 10 to 20 years. It is not a problem off in the distance that allows a leisurely pace to address it.

The City has to make some hard choices: 1) let the Bayside flood as sea level rises and, with this laissez-faire attitude, property owners will eventually move (at their own expense) their commercial/residential land uses out of that area and the area will become wetland; 2) do something actively to save this tax base or at least provide further time for a transition to a different future for the Bayside, whether it be wetland, or a Venice-type area, or a New Orleans type area (the 3<sup>rd</sup> option based on building levees and pumping water from behind them). Raising the streets seems to me to have the least benefit/cost ratio to the City property owners. In fact it probably is a negative ratio. What good are the streets if the properties between are flooded?

A million dollars would be much better spent doing a feasibility study of putting a storm surge gate under Tukey's Bridge. Tukey's Bridge offers an unusual opportunity for the construction of a storm surge barrier at relatively reasonable cost. The benefit of building such a structure would accrue to all low-lying property owners in the Bayside area instead of just one or two projects. A thoroughly engineered comprehensive solution is needed soon, not 30 or 40 years from now. In fact I would say it is needed in 10 years. Since the lead time to design, perform studies, obtain permits, develop a financing plan, and build a surge barrier would be about 10 years, that work needs to start now.

With the above perspective, and as a past consultant to the City on the matter of flood risk, I strongly recommend against raising Somerset Street but rather putting that money to better use on a feasibility study to mitigate ocean storm surge flooding. Leaving Somerset Street at its current level is at least maintaining the status quo and posing no more flood risk than exists at present. Raising the street in the absence of a comprehensive plan to deal with sea level rise in the Back Cove area may, in fact, increase the risk of localized flooding and provide no benefit to existing landowners but rather cost them money to adapt to the street raising.

Sincerely,  
Ransom Consulting, Inc.



Robert G. Gerber, P.E.

Digitally signed by Robert G.  
Gerber  
Location: Portland, ME  
Date: 2015.01.08 17:22:57 -05'00'

Cc: John Bannon, Esq.

City of Portland  
Code of Ordinances  
Sec. 32-1

Storm Water  
Chapter 32  
Rev. 9-17-09

## 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.**

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

## **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>	<b>PUBLIC</b>			<b>PRIVATE</b>		
	<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)**

	<b>PUBLIC</b>	<b>PRIVATE</b>	<b>TOTAL</b>
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.

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**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:**

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- 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