

**Memorandum
Department of Planning and Development
Planning Division**



To: Chair Beal and Members of the Planning Board
From: Bill Needelman, Senior Planner
Date: February 10, 2006
Re: February 14 Workshop on the Peninsula Traffic Plan

Introduction:

This memo is in support of the Planning Board's continuing review of the Portland Peninsula Traffic Plan. This is the Board's second workshop on the Plan and will concentrate on showing the analytical basis for the recommendations and answering questions regarding the recommended improvements.

The previous workshop provided an introduction to the plan and the imbedded improvements. The previous memo is provided as attachment B for the Board's use as background.

Please note that Board member Anton has provided comments for distribution to the Board as a communication. Mr. Anton addresses a number of assumptions underlying the Plan. If the Board so wishes, staff will address these issues at the workshop.

February 14 Presentation:

The primary consultant for the Peninsula Traffic Study, Tom Gorrill, will be at the workshop to provide a presentation of the animated computer model showing the function and layout of the recommended roadway changes portrayed in the Plan. The animation shows schematic portrayals of the peninsula street system projected over a recent aerial photographic map (rectified for accuracy.) The animated model provides both a quantitative and qualitative assessment tool for evaluating roadway changes through time. The model has been calibrated to reflect the best current knowledge of traffic volumes on each specific section of city street and allows these volumes to be projected into the future based on assumed traffic growth. Physical roadway changes have been designed into the model to then predict (and show) the results of changes.

Future Review:

After this workshop's opportunity to question the consulting team on the improvements and assumptions of the Plan, it is hoped that the Board will schedule a public hearing. If questions remain outstanding, staff will provide clarifications as part of the Planning Board report, or for a future workshop if needed.

Below is an updated schedule of meetings reviewing the Peninsula Traffic Plan. Board Members may want to note that the February 15 Historic Preservation workshop, and the February 23 Transportation Committee workshop will both provide emphasis on the Deering Oaks/State and High Street issues.

Tentative Schedule of Meetings

February 14, 3:30, Planning Board Workshop. Room 209, City Hall.

February 15, 7:30, Historic Preservation Board. Room 209, City Hall

February 23, 5:00, Transportation Committee. Room 209, City Hall

March 14, 7:30, Planning Board Public Hearing. Deliberation by Board and vote on recommendation to City Council.

Council Action - Vote to adopt as part of the Comprehensive Plan. Date to be determined.

Board members are asked to bring their previously distributed copies of the Traffic Plan to the Workshop and to retain them for future use. If any Board member requires an additional copy, please inform the Planning Staff prior to the Workshop. Attachment C is a power point summary of the plan that was to be presented at the previous workshop and is now provided as a reference for the Board's use.

Attachments:

- A. Board Member Anton, communication
- B. January 20, 2006 Planning Board Memo
- C. Presentation Summary of the Plan

From: "John Anton" <janton@housinginvestmentfund.org>
To: <WBN@portlandmaine.gov>
Date: 02/02/2006 3:10:54 PM
Subject: peninsula traffic study

Bill - I am sorry that I couldn't attend the workshop on 1/24. I did want to offer the comments below for the consideration at the next workshop. I apologize for those comments that may be redundant with comments made at the workshop itself. Please include this email in that package. Thanks, John

Comments:

I am excited that the City and PACTS have taken the time to do the systemic planning analysis embodied in the Peninsula Traffic Study. This study process provides an opportunity to debate and hopefully resolve competing visions and expectations for the Peninsula. Having said that, I want to voice concern regarding certain baseline assumptions of the Study.

First and foremost, I am troubled by the assumption that there will be "at-grade" crossings for intercity train service on the Peninsula. One only need look at other locations in the city with existing at grade crossings to understand the challenge they pose for traffic movement and safety. It is inconceivable to me that the City would consent to any new at-grade rail crossings anywhere in the city. I support "passenger north" train service, but I feel that it can be provided much efficiently using the existing train station and existing railroad rights of way in Portland. If intercity rail must go through the Peninsula on the I-295 corridor, the tracks should be in the median of a widened I-295.

Second, throughout the study, there are recommendations for a future "alternative transportation" study. I feel that such a study must be concurrent with the traffic study. The PTS promotes (correctly in my opinion) making a shift away from maximum automobile convenience as the primary consideration in Peninsula traffic consideration. However, promoting such a shift without simultaneously a) articulating how alternatives to automobile will function and will be promoted while also b) budgeting for how much such alternatives will cost undermines the credibility of the broad change in thinking that the study suggests.=20

Finally, I am troubled by the assumption that exit 6A/B of 295 will be retained more or less in their current state. Exit 6 functions poorly on both the street and highway level and there appears to be insufficient real estate in its vicinity to correct its flaws. Exit 7 is quite close to Exit 6 and I believe that it, along with exit 5 and the Portland Connector, can absorb current and prospective users of exit 6 (provided that the appropriate street level improvements are made). I would ask that the City advocate strongly for the elimination of exit 6 as part of the current I-295 Corridor Study and then incorporate the assumption of no Exit 6 in the PTS.

There are many excellent incremental recommendations in the study that I

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believe the Planning Board should embrace. However, I also think we need to challenge the three assumptions above and recommend that the City Council revisit these assumptions before adopting the PTS.

cc: "Sarah Hopkins" <SH@portlandmaine.gov>, "Alex Jaegerman" <AQJ@portlandmaine.gov>

**Memorandum
Department of Planning and Development
Planning Division**



To: Chair Beal and Members of the Planning Board

From: Bill Needelman, Senior Planner

Date: January 20, 2006

Re: January 24 Workshop on the Peninsula Traffic Plan

Introduction:

The Peninsula Traffic Plan is the result of a multi-year analysis and policy development process that began in early 2000. The process, which has been delayed at several periods through its development, included the participation of a broad based citizen oversight committee, multiple departments of City staff, and an extensive consulting team led by Gorrill-Palmer Consulting Engineers. The Plan is the resulting report of the Peninsula Traffic Study (PTS). The study was funded by PACTS (Portland Area Comprehensive Transportation Study) and was conducted with the participation of the Maine Department of Transportation.

While the PTS process has been termed a “study”, the final report is a plan for traffic improvements for the Portland peninsula for the next twenty-five years. The Plan separates the peninsula into separate geographic districts and suggests improvements within those districts. The Plan identifies the Eastern Waterfront, Bayside, and Deering Oaks as general areas for improvements. Additionally, Franklin Arterial and State and High Streets are given particular attention as major through corridors connecting improvement areas to each other and to the transportation network beyond the peninsula.

This memo provides a brief summary of the background and methodology of the study process. An executive summary of the Traffic Plan is provided at the beginning of the full report on pages iv. to xiii. For the Board’s use. Board members are asked to pay particular attention to the physical improvements suggested in the Plan. These improvements are listed on pages vii to x in the executive summary. The full report provides greater detail in Chapter 6, *Eastern Waterfront and Ocean Gateway*, Chapter 7, *Bayside*, Chapter 8, *Franklin Street Arterial*, and Chapter 9, *Deering Oaks*. A summarized break down of phasing and costs is attached to this memo and should be appended to the end of Chapter 11 of the full report.

Board Members should note that the costs are separated into Immediate, Short-term, and Long-term improvements and they are not otherwise prioritized.

Background

The Peninsula Traffic Study (PTS) began in 2000 as an outgrowth of the Deering Oaks Master Plan. One of the signature recommendations of the Deering Oaks master planning process was to explore removing high-speed traffic from State Street and High Street from the park. Introduced as part of late 1960's traffic planning, the State and High Street one-way pair resulted in a fragmentation of the park and significant diminution of its pastoral character. The Oaks Master Plan looked to reconnect those portions of the park cut off by State and High Street, and to reduce the impact of vehicles overall.

As a result of the Master Plan recommendation, Wilbur Smith Engineers were engaged to conduct a preliminary study for a major re-routing of traffic in the area of Deering Oaks. Tom Errico, working for Wilbur Smith, produced a series of potential roadway plans for alternative traffic routing through and around Deering Oaks, but the process ultimately hit a serious roadblock. Mr. Errico, with the concurrence of then Public Works Director, Bill Bray and former City Traffic Engineer, Larry Ash, concluded that the impacts of the alternative roadway plans could not be predicted without a peninsula-wide analysis.

The redevelopment efforts proposed for Bayside and the Eastern Waterfront, a potential passenger train connecting to the north, the Commercial Street/Rte 295 connector project, Mercy Hospital relocation, and other major development proposals on the Portland Peninsula would all need to be assessed if the question of major roadway changes at the Oaks could be considered. The complexity of considering Deering Oaks roadway changes prompted the Planning and Public Works departments to further question how the traffic needs of the many development opportunities listed above would work together - regardless roadway changes near Deering Oaks. Ultimately the City requested and received a major study grant from PACTS to assess this question.

Study Methodology

The analytical basis for the Peninsula Traffic Plan is a computer model housed and maintained by PACTS. This model is used regionally to predict travel patterns within the PACTS study area (currently, Cumberland County.) The Peninsula Traffic Study additionally conducted an extensive data collection process to "fine tune" the regional model for the Portland peninsula. This data collection process took place in the spring of 2001 as an "origin and destination" study. Vehicle license plates were observed entering and leaving the peninsula at both the am and pm peak travel hour (the morning and evening rush hour commute.) Motorists were then mailed a survey inquiring of their travel habits and a statistically significant set of respondents provided the data for adjusting the PACTS model.

With the PACTS model adjusted for peninsula traffic patterns, the consultant team constructed a second computer model to allow analysis and visualization of the roadway system for both present and future conditions. The resulting animated model has been widely presented through the PTS process and allows quantitative and qualitative assessment of roadway capacity and intersection function. The animated model, often referred to as a “bug show”, will be presented to the Planning Board at the upcoming February 14 workshop where time will allow a detailed presentation of the study and plan results.

Future Review:

The following tentative schedule lists anticipated meetings where the Peninsula Traffic Plan will be discussed in detail. Board members are encouraged to attend as many of these meetings as needed to become familiar with the plan. One should note that there is only one additional workshop scheduled with the Planning Board prior to Public Hearing. While we anticipate having time on February 14 to have a detailed workshop review of the Plan, given the scope and detail of the material, Board Members will probably find attendance at one or more of the other venues informative.

Tentative Schedule of Meetings

January 30, 5:00pm, City Council 2nd Workshop. City Council Chambers, City Hall

February 1, 7:00pm, USM Neighborhood Forum. Luther Bonny Hall, USM. Providing an overview of plan process and results.

February 6, 7:00pm, City Council Public Hearing. City Council Chambers, City Hall. Action to accept and refer the Plan to the Planning Board and Historic Preservation Board for recommendation as part of the Comprehensive Plan.

February 8, 7:00pm, USM Neighborhood Panel Discussion. Luther Bonny Hall, USM. Panel discussion of Traffic Plan issues.

February 14, 3:30, Planning Board Workshop. Room 209, City Hall.

March 14, 7:30, Planning Board Public Hearing. Deliberation by Board and vote on recommendation to City Council.

Council Action - Vote to adopt as part of the Comprehensive Plan. Date to be determined.

Attachments:

1. Spread sheet of costs and phasing, to be appended to Chapter 11
2. Peninsula Traffic Plan

Memorandum
Department of Planning and Development
Planning Division



To: Chair Beal and Members of the Planning Board

From: Bill Needelman, Senior Planner

Date: **February 8, 2006**

Re: **February 14, 2006 Workshop
Waterfront Central Zone Taskforce
Recommended Zone Text Changes**

Introduction:

Beginning in February of 2005, then Mayor Jill Duson established a taskforce to evaluate the conditions and land-use policies of the Waterfront Central Zone (WCZ.) The Taskforce began its work in earnest in the spring and has recently provided a set of draft zone text changes as a result of their study. Planning Board members should note that the focus of the process was not to redraft the underlying policies regulating the Central Waterfront, but rather to adjust them to better meet the foundational assumptions of the existing Comprehensive Plan for the waterfront.

The draft zone edits are provided herein for the Board's review along with the original 1992 Waterfront Alliance report that provides their policy basis. Additionally, the Board will find a copy of a recently completed economic conditions survey that informed the WCZ Taskforce recommendations.

Please note that a small number of detail text edits were still under evaluation by a drafting subcommittee of the Taskforce as of the writing of this memo. Portions of text that are still under discussion are labeled accordingly. While the Planning Board would ordinarily be presented a final draft text, the information is dense enough to warrant an introductory discussion of the issues involved prior to resolution of details. It is anticipated that the Board will hold at least one additional workshop on the WCZ text changes prior to Public Hearing.

As referenced above, in 1992 the Waterfront Alliance, a non-profit association of waterfront property owners, advocates, and parties with marine interests from both sides of Portland Harbor, submitted a policy document to the City Council that eventually became the basis for new zoning text language and inclusion in the City's Comprehensive Plan. The Waterfront Alliance report recommended segmenting the Portland waterfront into three zones:

1. *The Waterfront Port Development Zone (WPDZ)* - Located in the areas of deep water industrial berthing from State Pier to Ocean Gateway in the east, and from the International Marine Terminal to the Merrill freight terminal in the west, the WPDZ policies support the continued use of deep water piers for large vessel berthing and support.
2. *The Waterfront Special Use Zone (WSUZ)* – Located at the easterly extent of Portland’s developed waterfront at the head of Portland harbor, the WSUZ is predominated by older buildings with limited water access (the exception is the area of the Portland Yacht Services marina just west of the Eastern Promenade park.) The WSUZ text allows limited mixed use of existing buildings and promotes new marine use development.
3. *The Waterfront Central Zone (WCZ)* – Located between Maine Wharf (Flat Breads/Rira) to the east and Deake’s Wharf (just east of the IMT) to the west, the WCZ contains a broad mix of marine and non-marine uses and infrastructure.

The WCZ is developed with mostly privately held piers (in addition to the City Fish Pier and the Gulf of Maine Research Institute) and is the home of many traditional marine business. The City’s ground fishing, herring, and lobster fleets rely upon the piers of the WCZ to berth and conduct business. Other marine businesses, including dock and dredge construction, boat hauling and repair, chartered tour boats, water taxis, marinas, fueling, chandlery service, and environmental response also use the piers of the WCZ to interface with the harbor.

Existing buildings located both on and off the piers have traditionally housed supporting marine use businesses in addition to non-marine uses. Non-marine uses include the retail type uses associated with the Old Port, office uses, and three 1980’s residential condominium projects.

The upland sections of the WCZ are highly developed along the Commercial Street corridor, though there are also large expanses of surface parking supporting both marine and non-marine interests.

At the time of the 1993 zoning adoption, the City Council’s zoning report (containing the Waterfront Alliance report and recommendations) was adopted as an element of the Comprehensive Plan. As the policy basis for zoning on the waterfront, the 1992 report remains the current Comprehensive Plan document by which new zoning text will be evaluated. The policies of the WCZ are described below.

Comprehensive Plan: *Waterfront Alliance Recommendations* and Current Zoning

The Waterfront Alliance report, titled “Waterfront Alliance Recommendations to the City of Portland,” outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but other portions of the waterfront (upper stories, and properties without water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The *Purpose* and *No Adverse Impact* sections of the WCZ text, included below, express the intent of the zone and the underlying policy.

The following text is excerpted from the WCZ language. A copy of the full WCZ text (with track changes edits) is attached to this memo in attachment 3.

Waterfront Central Purpose (current language)

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;*
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;*
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.*

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

In implementing the goals stated in the purpose statement above, the WCZ establishes the following “no adverse impact on marine uses” standards. These standards establish thresholds for any non-marine use in the zone.

No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses), need to adhere to the provisions of the “no adverse impact” clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. The complete (current) text of the no-adverse-impact clause is included below.

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;*
- (b) The proposed use will reduce existing commercial vessel berthing space;*

- (c) *The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or*
- (d) *The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.*

Taskforce Charge

Over the last 13 years of implementation, the WCZ text has been incrementally amended several times. With each amendment, some members of the Planning Board, City Council, and members of the waterfront business community have expressed a need to broaden some elements of the zone language. At the same time, other community members have stressed the need to retain protections for waterfront access for traditional industries. The current process is intended to revisit the zone with the intention of finding the best balance between potentially competing goals.

The Waterfront Central Zone Taskforce was charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms and other means;
5. Retain access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structures away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers;

Draft Text Changes: Outline and Summary of Proposed Text Edits

The following outline sketches the structure of the zone language and provides a guide to the recommended changes. The complete text with a “track changes” notation of edits is provided in attachment 3. Given the amount of edits, the track changes version adds confusion to an already complicated text. The following outline will hopefully help in the Board’s review of the changes. A “clean” version of the edits will be provided as a follow up document at a later workshop. Please note, as stated above, attachment 3 is still under consideration by the Taskforce. Text shown in **bold** or as otherwise noted may change in the near future.

➤ *Italicized text is a paraphrase of text edit language*

Sec. 14-313 Purpose Statement

Priority of uses

- (a) Water-dependent uses
- (b) Marine-related
- (c) Marine compatible uses

➤ *Clarifying language added stressing the policy of having non-marine uses support higher priority marine uses.*

Sec. 14-313.5 No adverse impact on marine uses

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
 - *Clarifying language added defining displacement.*
 - *New language added strengthening protection of property “physically suited” for water dependent use.*
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

New Section added

Sec. 14-313.6 Mitigation of impacts required for non-marine uses

➤ *The value of mitigation: at least 5% of total project costs or \$10.00 per square foot of non-marine space.*

- (a) ***Direct investment in marine infrastructure***
- (b) ***Financial contribution in lieu of mitigation***

Sec. 14-314 Permitted uses.

- (a) Marine Uses
- (b) **The “50% Rule”**
Commercial and industrial uses above the ground, limited to 50% of building.
- (d) Public Uses
- (e) **The “35-foot rule”**
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.
 - *Section Redrafted. Restrictions on first floor non-marine uses beyond 100 feet from Commercial Street*
- (f) Accessory uses:
 - *New use added for clarity: Parking for water-dependent uses. All other parking is a conditional use*
 - *Utility substations moved to Conditional Use section*

Sec. 14-315. Conditional uses.

Uses permitted subject to specific standards and requiring review by the Planning Board.

In addition to existing standards protecting marine utility of the zone, the following standards were added for conditional uses

- *Parking and Traffic Circulation Plan required for review and approval.*
- *Public View Protection standard added.*
- *75 foot setback from water for first floor non-marine use (DEP Requirement)*

Conditional Use List

- (a, b) Parking:
 - *Clarifying edit: Parking allowed for non-water dependent uses, provided that there is otherwise enough parking for marine uses.*
- (c) Marine:
 - *Minor edits provided*

(d) ***The “Sapporo Amendment”***

Expansion of non-marine related use permitted under the “35-foot rule.” subject to conditions.

- *Expansion allowance expanded from 2000 sq. ft. to 3000 sq. ft. subject to conditions.*
- *Allow upper floor expansion*

(e) ***The “chicken farmer amendment”***

Residential: The “primary” owner of a marine related business may occupy space within the upper story of an existing building subject to conditions.

- *Limit area to 750 sq. ft.*

(f) ***Utility Substation use***

- *Added with conditions*

(g) ***Waterfront Diner use***

- *Added with conditions*

(h) ***Expansion of upper floor non-marine use***

- *Expansion allowance to 2000 sq. ft. added with conditions*

(g) ***Expansion of “50% Rule”***

- *Non-marine use of upper floors in existing buildings expanded with conditions.*

Sec. 14-315.3. Contract or conditional rezoning.

Allowance for re-zoning to permit non-marine uses in new structures, providing the development meets the “no adverse impact clause” and additional standards.

Two options provided by Task Force. Each would be subject to mitigation investment or contribution as described in section 14-313.6 above.

➤ ***Option 1, “General”***

Provides standards for new structures to house upper floor non-marine uses.

➤ ***Option 2, “Old Port Overlay Zone” – Restricted to east of the Fish Pier.***

Provides allowance for new structures to house non-marine uses, including retail, on upper and lower floors, subject to conditions – including 75 foot setback from water.

NOTE FROM THE WCZ TASKFORCE: Option 2 is still under consideration and the Taskforce seeks public comment on this provision prior to making recommendations to the City Council.

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either the permitted or conditional use section are prohibited.

- *Drive-thru services prohibited*
- *Ground mounted telecommunication towers/antennas prohibited*

Sec. 14-316. Dimensional requirements.

- *Maximum building height expanded from 35 to 45 feet (but limited to 3 floors.)*
- *Minimum ground floor clearance added at 15 feet (to encourage industrial use of first floor.)*

Sec. 14-317. Performance Standards.

- *Urban design guidelines applied only to Commercial Street buildings east of the Fish Pier.*
- *Pier expansions need to be compatible with ferry and emergency vessel operations.*
- *Pier access standard added.*

Public Process:

The Taskforce held two public forums during its work in addition to their regularly scheduled meetings. Notes from these meetings are provided in attachment 4.

Future Review:

The WCZ Taskforce will complete its work in the very near future and the Planning Board will be provided a final draft text for review. After, or perhaps concurrently with, the Planning Board's work, the City Council will take the matter up at the Community Development Committee level and later with the full Council.

Attachments:

1. Waterfront Alliance Report, 1992
2. 2005 Economic Conditions Survey results presentation material
3. Draft WCZ edits
4. Public Forum Notes
 - A. Zone Map
 - B. Context Aerial Map

DRAFT EDITS TO THE WCZ, ~~2-91-6-06~~
2-10-06

DIVISION 18. WATERFRONT CENTRAL ZONE*

*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses. s-

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may

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2-10-06

result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on water-dependent~~marine~~ uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future water dependent ~~marine~~ development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwater-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (~~c~~) The proposed use will reduce existing commercial vessel berthing space;
- (~~d~~) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent

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2-10-06

uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or

- (ed) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

14-313.6 Mitigation of impacts required for non-marine uses

In addition to ~~Regardless of a finding of "no adverse impact"~~ under 14-313.5 for any single project, the cumulative impacts of non-marine developments create an environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses that are considered major development (as defined under section 14-522, site plan) listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (ai) direct investment in marine infrastructure, or by (bii) contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (ai) or (bii) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the planning Board.

(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine uses, uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes to mitigate some or all of the adverse impacts on water-dependent uses off-site, tThe next preference shall be

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for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. To the extent not feasible and adequate, then off-site mitigation may be considered. Mitigation by direct investment in marine infrastructure may include ~~but is not limited to,~~ dredging, pier edge improvements, (pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats,) pier expansions, permanent conversions of recreational berthing to commercial berthing, (or any combination of similar improvements.) Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to maintain utilize those improvements over time for permitted water dependent uses.

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(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site or off-site within the same lot, the applicant shall make or is not deemed by the Planning Board to be adequate to mitigate the adverse impacts on water-dependent uses, a condition of approval which stipulates a financial contribution to the City's waterfront loan and investment fund. may be evaluated as another potential means of mitigating adverse impacts.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water-marine uses dependent uses), the following uses are permitted in the waterfront central zone:

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(a) *Marine:*

1. Marine products, wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing, ~~—and —and—~~ packaging, ~~—and~~ retailing;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;

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17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;
24. Parking accessory to an on-site water dependent marine use. ****NOTE TO TASKFORCE****
Needs discussion

Editor's note: all parking in the WCZ for non water dependent marine-related ****see above NOTE**** uses are subject to conditional use provisions found in section 14-315.

25. Bait sales and processing

(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(ih) below.

, provided that the total floor area of the building used

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~~for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:~~

1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances ~~dance studios and performing arts spaces~~) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building; ~~provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:~~

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M₂ zone.

(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. ~~Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar~~

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~~structures, provided that such structures are located more than one hundred (100) feet from the water;~~

12. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

~~3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.~~

~~4. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.~~

NOTE: Re-write of the "35-foot rule"

(e) ~~Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:~~

Commercial uses in existing buildings located along Commercial Street. between the easterly edge of Maine Wharf and the easterly edge of the City fish pier.

Buildings meeting the following criteria may house the uses listed below:

1. The subject building is located between the easterly edge of Maine Wharf and the easterly edge of the City fish pier; and

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The subject building existed or had an unexpired site plan as of January 3, 1993; and

2. The subject building existed or had an unexpired site plan as of January 3, 1993; and.—The subject building is located between the easterly edge of Maine Wharf and the easterly edge of the City fish pier; and
3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and
4. The ground floor non-marine uses allowed under this section shall may not extend further than 100 feet from the southerly sideline of Commercial Street; and
5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

Subject to section 14-314(f)1 and 14-315(a){accessory parking for non-water dependent uses}, the following uses shall be permitted:

1. Professional, business, government, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants, Restaurants provided that—that full course meal food service e—and consumption shall be the primary function of the restaurant, and full meal service shall be continued up until the hours of closing;
4. Banking services;

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5. Laundry and dry cleaning services;
 6. Cabinet and carpentry shops, studios for artists and crafts people ~~—(excluding dance studios and performing arts spaces)~~(excluding group classes and performances), and accessory retail sales of products produced on the premises;
 7. Intermodal transportation facilities;
 8. Cold storage facilities;
 9. Museums and art galleries.
- (f) *Other:*
1. Accessory uses:
 - a1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) ~~{marine uses}~~ shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a) ~~{for marine related, but not water dependent uses}~~ or 14-315(b) ~~{for non-marine uses.}~~.
 - b2. Except as provided in subsection aa. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of

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the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

- c3. Interior meeting or classroom space accessory to uses permitted in section 14-314(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph 2, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three thousand (3,000) square feet in total floor area per building, or fifteen (15) percent of the total floor area per building, whichever is less.

24. Street vendors licensed pursuant to Chapter 19.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 131-01/02, § 1, 1-23-02; Ord. No. 309-01/02, § 1, 7-15-02; Ord. No. 38-02/03, § 1, 9-4-02)

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

Conditional Use Standards:

- i. Marine compatibility: The proposed use shall

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be compatible with existing and potential marine uses in the vicinity;

ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and

~~iii. iii.~~ Parking and Traffic Circulation:

a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1){traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

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iv. ~~Public iv.~~ ~~View Corridor Protection and Public Access~~: Any new development permitted as a conditional use in the WCZ shall perform a public view impact and public access analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall:(a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual and physical access to the water through sensitive building placement. Where existing public views are blocked for the reasonable development of the site, the view impacts may be mitigated through the establishment of newly created and publicly accessible pedestrian ways to provide alternative vantage points for public water views. The Planning Board shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland Peninsula, (b) retains panoramic views of the water from Commercial Street to the extent practicable, and (c) where loss of public views to the water is the shown to be necessary for the reasonable development of the site, the developer provides alternative public access views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

NOTE: The following text is provided to be consistent with State Mandatory Shoreland Zoning Act.

v. ~~Non-water dependent uses within 75 feet of maximum spring high tide~~: Excepting unoccupied pedestrian circulation areas as expressly permitted, the expansion or creation of non-water dependent uses on the ground floor of any existing or proposed structure must be located at least 75 feet from the maximum spring tide line of a coastal wetland, measured

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horizontally. Expansion or creation of upper floor non-water dependent uses within 75 feet of maximum spring tide may be allowed as provided for below.

NEW TEXT FOR CONSIDERATION:

vi. Expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide: Notwithstanding provision v. above, the expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide is allowed subject to the following conditions:

Place holder text

a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume or floor area of the original structure (existing as of the date of approval) - make rule consistent with other state expansion allowances.

b. The expansion does not extend the non-water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)

c. ?????other provisions?????

Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

Conditional Uses:

- (a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(hg), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site

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~~exceeds the number of parking spaces needed to accommodate the demand for water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). -required for water dependent uses that are permitted by section 14-314(a). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.~~

- ~~(b) Parking for (i) conditional uses, (ii) non marine uses either allowed in -buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning: , and uses permitted only above the ground floor level~~

~~Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-streetsite parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted -by section 14-314(a)which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.~~

~~*Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.*~~

~~, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are permitted required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a~~

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~~permitted use.~~

(~~c~~) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;

b. Any fish by-products facility shall employ current and appropriate odor control technology to eliminate or minimize to the extent feasible detectable odors from such a process, and in no case shall exceed the odor limitation performance standards of the IM zone; and

~~b.c.~~ The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

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- (3) Boat rack storage facilities, provided that:
- a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.
 - b. Boat rack structures shall not exceed 10,000 square feet of build footprint.

(de) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing ~~on~~ or having an unexpired site plan as of January 4, 1993 ~~January 4, 1993 or having a valid, unexpired site plan on January 4, 1993~~ and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the eCity Fish Pier.) into contiguous and newly created building space of no more than 32000 sq. ft., total for the life of the building, shall be allowed only as follows:

NOTE: Staff suggested edit

- (1) the use may occupy ground ~~ground~~ and/or floor ~~upper floor~~ area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than 1500 ~~1250~~ square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- _____(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the

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Waterfront Central Zone and this Code.

~~(ed)~~ Residential: The "primary" owner of a marine related business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

(1) The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished. (Examples include, but are not limited to monitoring and care for live product such as lobster, and security for equipment and berthed vessels.)

(1) the residential living space shall not exceed one thousand (7501,000) square feet, inclusive of all exterior porches and decks;

(2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;

(3) the residential use shall be limited to one unit per wharf;

(4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

(5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the

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residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

——For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(ef) Utility Sub Stations

Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:

- i. The facility is located more than 100 feet from the water's edge,
- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available for marine related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(gf) Waterfront Diner:

Food service establishment that through hours of operation and delivery of reasonably priced fare supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

- i. The diner shall not hold any alcohol license.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.

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- iv. The diner shall occupy no more than 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.

(hg) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

- (1) the use may occupy upper floor areas ,and
- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet; and
- (3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and
- (4) ~~(4)~~—The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a, and 14-315(a), the

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uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

- (1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,
- (2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be occupied bydedicated—to commercial berthing supporting a marine use listed under 14-314(a); and,
- (3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02)

Sec. 14-315.3. Contract or conditional rezoning.

~~Sec. 14-315.3 Contract or conditional rezoning.~~

14-315.3 (a) General

Except as otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development:

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- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under **either** subsection I, General **or** subsection II, Commercial Street/Old Port Overlay, below. (NOTE: **Subsection II is still under evaluation by the Taskforce**)

Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

14-315.3 (b) Direct Investment in marine infrastructure On-site versus off-site mitigation

The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site (~~or for development under subsection II~~), the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3(c)® below, shall be required for all or part of the mitigation off-site mitigation may be considered.

Mitigation by direct investment in marine infrastructure may include, ~~but is not limited to,~~ dredging, ~~pier edge improvements,~~ (pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats,) pier expansions, permanent conversions of recreational berthing to commercial berthing, (or any combination of similar improvements.) . Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize/maintain those improvements over time for permitted water dependent uses.

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Whether on-site or off-site, the value of mitigation shall be reasonably commensurate (not less than) with the value of compensation described in 14-315.3 (c) below.

14-315.3 (c) Financial contribution in lieu of mitigation

If (when applying option I, General,) the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, or is not deemed by the reviewing body to be adequate to mitigate the adverse impacts on water-dependent uses, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be may be evaluatedrequired as another potential means of mitigating adverse impacts. (All proposals applying for approval under option II, the Commercial/Old Port Overlay Zone, shall make a financial contribution in lieu of direct investment. In determining the amount of the contribution, (under either option I or II) the type and amount of the investment in nonmarine uses shall be considered; the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314 (b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as

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unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;.

- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels ~~(either on-site or of-site)~~, and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).
- (g) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing ~~less efficient traffic, parking or circulation patterns.~~ All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a) (Conditional use, Parking).
- (h) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor

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Protection and Public Access)

- (i) ~~(i)~~ The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains committed to use occupied by any commercial marine uses as listed in 14-314(a), and/or marine use which is proposed for the site is not abandoned after the project is developed.

NOTE: The following option is still under consideration by the Waterfront Central Zone Taskforce. The Taskforce seeks public comment on this provision prior to making a recommendation to the City Council.

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

The following standards are applicable to the Commercial Street/Old Port overlay zone, which extends from the easterly edge of Maine Wharf Long Wharf to the easterly edge of the City fish pier. westerly edge of Union Wharf. For a site with in the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards, immediately above. The standards within this overlay zone are as follows:

- (a) All portions of the structure are set back at least 75 feet from The maximum spring tide line of a coastal wetland, measured horizontally.
- (b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of Commercial Street), except that for restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

- (c) Any physical or legal impediments which preclude or

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impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

- (d) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or of-site), and visual and physical access to the waterfront for the general public.
- (e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).
- (f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)
- (g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as

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described above in 14-315.3(c).

(h) Maximum building setback from the southerly sideline of Commercial Street shall be no more than 10 feet.

~~Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:~~

- ~~(a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).~~
- ~~(b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.~~
- ~~(c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.~~
- ~~(d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~
- ~~(e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.~~

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- ~~(f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.~~
- ~~(g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.~~
- ~~(h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.~~
- ~~(i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.~~

~~(Ord. No. 168-93, § 2, 1-4-93)~~

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.
- f. Fish by-products processing as a principle use, or the processing of other material wastes or by-products not deemed a lawful accessory use under any other

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provision of this article.

fg. Drive-up services for any use other than a permitted
use listed under 14-314 (a).

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

~~Setback~~ from pier line: Notwithstanding the above requirements, a minimum setback of ~~five~~five (~~55~~) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* ~~Forty-five~~Thirty-five (~~45~~35) feet, except that within ~~two~~four hundred (~~2400~~) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

(f) Minimum ground floor clearance: Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable up 15 feet.

(h) New Non-Marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-315.3 (conditional rezoning,) four usable floors are allowed and ground floor clearance minimums do not apply.

(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
- (b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency,

including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce

the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities,

including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

(o) ~~(o)~~—Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the city fish pier: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly edge of the city fish pier shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(p) Pier and wharf expansions: In addition to meeting Harbor Commissioner and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the Waterfront Central Zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

NEW LANGUAGE

(q) Functional Utility of Piers and Access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods

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and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. For example, any development that proposes to site a building within 10 feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

(Ord. No. 168-93, § 2, 1-4-93)

AH 4.1

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

I. Welcome and Introduction

Councilors Karen Geraghty and Will Gorham

II. Waterfront Central Zone Policy Framework Introduction

Priority of uses in the WCZ:

- {a} Water-dependent uses, with functional access and infrastructure,
- {b} Marine related uses, and
- {c} Other Compatible uses.

III. Economic Conditions Survey Results

Presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG

IV. Public Input

The Waterfront Central Zone Taskforce seeks public comment and input on development issues along Portland's Central Waterfront. In particular, the Taskforce looks to answer the following questions to aid in their analysis of the district:

{1} Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

{2} Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

{3} Mixed-use development.

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

{4} Parking.

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

V. Open Discussion between Public and Task Force

Time Permitting

VI. Adjourn, 9:00pm

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

MEETING NOTES:

1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

- Zone is too restrictive (Holyoke)
- Aqua diving – property line requirement is an issue, too restrictive
- Inappropriate non marine uses conflict with marine uses (Chandlery)
- 6 lobster boats being displaced by research vessels (Hobson’s Wharf)
- Inadequate berthing
- Function more important than appearances
- Fishing industry outlook better than generally believed
- Continue to protect water dependent, but allow mixed use above (2nd floor and above) (e.g. legal uses)
- Working waterfront berths are working
- Bill Doane, Lobsterman – things are going well. Worried about future berthing competition by recreational berthing. Need direct vehicle access to pier edges.
- Keith Lane – doing o.k. but worried about rent increases/prosperity pushing prices out of reach of fishermen.
- Preference of berthing for working vessels and access.
- Keith – Truck parking and berthing and access to pier edge building rental is only useful if very inexpensive.

2. Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for working waterfront uses?

- Concerns about traffic generated by eastern waterfront uses (Westin, etc.) interfering with water dependent uses.
- Open upper floors to additional non-marine uses, see what investment is stimulated.
- Extra floor from additional height to build on Pile Foundation Investment.
- Institutional investment in marine research is an expression of confidence in fishing industry.
- 60’s and 70’s piers with wharves were in awful condition. The last 20 years have seen substantial improvements.

- Even condo people get along with fishermen.
- 2nd floor non-marine uses subsidizes 1st floor marine uses.
- Owners need to make money from 2nd floor uses. Maybe through contract zones.
- People come to Portland to see the waterfront legacy of fishing and lobstering, not a bunch of pleasure boats.
- Port Hole – importance of fish and lobster boats existence to clientele of Port Hole Restaurant.
- Doane – keep 1st floor marine open upper floors.
- How can we keep commercial berthing affordable? Improve the wharf edges with income from upper floors. Wharf owners will invest in wharf upgrades.
- Buildings on 1st floor is almost useless. Used for trap storage. No marine uses that will pay. Trap storage deteriorates buildings. Most of wharf edge is lobster fishing.
- Fishing vessel berthing is tied to income from upper floors on union wharf.
- Custom House Wharf case – council put restrictions, esp. parking.

3. Mixed-use development

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the working waterfront?

- Harbor Fish owner – general support for current zoning. Do not over emphasize down turn in fish economy, high hopes – other species are growing. Supports comment that B-1 zone worked – supports water dependent uses but need to allow other uses on 2nd floor and above (critical). Harbor Fish invites public to pier – see #2 comment, #1 re: Traffic on Commercial. Take a common sense to zoning to everyone's benefit.
- Steve Dimillo – Can it be as simple as “no condos” – that is where it started.
- Zoning Board of Appeals letter requesting additional flexibility re: Custom House Wharf case.
- Institutional (GOMRI) role and presence on Portland waterfront, diversity is important.
- GOMRI – opening up 2nd floor uses makes sense – safety value also, building height. 35 is restrictive. An extra floor is important given the expense of pier construction.
- Enough condos – they are there but no more. We get along. Need non-marine use on 2nd floor – suggests berthing and fishing. 1st floor – marine only. New buildings – no comment.

- Lobster boats may need protection from recreational boats. Owners should make money, see (2) linkage – don't know if new construction is o.k.
- O. Keathly – Can have some change on first floor by % or on 2nd floor – must keep fishing berthing.

4. Parking

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the central waterfront.

- GOMRI – parking is the limiting factor down there. Needs city vision. Public/private like Oceangate is worth exploring.
- Big problem – fishing folk won't parking off Commercial Street.
- Fishing (lobster) needs parking on the wharf w/access for trucks.

5. Other issues

- Roger Hale - Zone is restrictive, leads to vacant space. B-1 zone was a good zone and worked. No services. “Ben Snow steals our tenant”. Taxes are a problem.
- Former Zoning Board Chair – ZBA requested Council address waterfront zoning – i.e. Custom House Wharf. ZBA unable to grant variance – wrote letter to Council from ZBA – need copy of letter.
- Harbor Fish – Heritage of city is fishing. People come here to see the fishing and waterfront – now allows pleasure boats to displace lobster boats. To maintain character of the city – must preserve.

Question #1

Displacement of lobster boats for research vessels on Hobson's Wharf?

- Ben Snow to follow up.
- Need letter from ZBA

Kevin Beal:

- Various proposals for recreational berthing in other areas. Are concerns just for traffic or for boat traffic too? Mr. Doan concerns not really a problem on water, keep them out of Commercial area for berthing.

Anne Pringle:

- Gear storage – is there enough? No, not enough now, land is valuable.
- Linkage question – are rent controls needed?

Peter McAleney:

- We've been doing this for 15 years and wharves are getting pretty rough.

Anne Pringle:

- How do we guarantee money is going back to wharf?
- P.M. its my business, 1 needed.

K. McGowan:

- I give my lobster tenants 1st floor space because I can't rent the space.
- Square footage does not go with berth. If I want to rent space to other uses (marine) I need to displace lobster boats.

Susan Koen:

- Marine related uses – does 2nd floor help you?
- Boat owner – no use for 2nd floor. Need berth and a way to get t is with parking.
- Boat owner – Widgery wharf – have shops on wharf and storage – that may go.

Charlie Poole:

- Ability of having a fishing boat requires 2nd floor non-marine – agrees with fishing comment.

Jim Cloutier:

- Custom House Wharf contract requires commercial berthing/circulation plan. Parking restrictions are working.

Ken McGowen:

- Parking is a problem.

P. McAlleney:

- Reiterated.

AH 4.6

WATERFRONT CENTRAL ZONE TASKFORCE
January 25, 2006
Public Forum
Merrill Auditorium Rehearsal Hall, City Hall, 7:00pm

Forum Notes:

Following introductions by Chair Geraghty and a presentation of the draft text by Bill Needelman, the following comments were generated by the public participants at the forum.

Frank Riley: Concerned with the integrity of the port and stressed the opinion that new buildings shouldn't obstruct views of the harbor.

Ken McGowen: Noted that mitigation fees are not needed because the second floors are subsidizing the marine infrastructure now. He wanted to know how the 50% rule applied to properties with non-marine existing on the lower floors (given the 50% limitation on non-marine.) He stressed that the 75' setback was a problem and that offsite parking doesn't work.

Doug Mayo: prospective buyer of Sturd. Wharf for machine shop serving marine uses. He recommended that the 35 foot rule be extended to include the entire zone and that the upper floor provisions be simplified.

Paul Stevens: Representing both himself and GOMRI: Recommended at least 50 feet of building height.

Joe Malone: Representing Maine Wharf and Eric Ciancette. Please look at new construction. Supports the upper floor expansion for non-marine uses. Maine Wharf can expand over 300 feet. The 15 foot building setback is trouble for narrow piers, suggested that maybe only applied to one side on narrow piers.

Patrick ?: ZBA member (formerly?) 75 foot setback impractical for Portland. Please clean up the language.

Bill Doan: Lobsterman. 15 foot setback from pier edge a problem on narrow piers. needs a look. Question re: 50 noncommercial berthing. BN clarified.

John Cashman, Chair of the Board of Harbor Commissioners: The DEP 75 foot setback should not apply to urban waterfronts like Portland. Mr. Cashman noted that pier expansions are subject to the HC line and that other buffer provisions apply to allow navigation. These rules are presently under review by the HC. The chairs et al asked clarifying questions regarding this process and Planning staff should be made aware of these changes.

Don Perkins, GOMRI: Distributed graphics to the Task force and requested consideration of extending the provision for research labs to be 50 tall up to 400 feet from Commercial Street.

Councilor Cloutier asked questions of Mr. Perkins re: commercial berthing opportunities. (DP: subject to Coast Guard, water depth, proximity to Hobson's wharf, and condition of the bulkhead.)

Peter McAllaney: Public View section needs review by a lawyer to address liability issues.

Nancy Acres: Stressed need for fencing for many reasons.

Bill Doan: Public access. People like to wander around and see the waterfront. Keep the pedestrian ways open, like between Portland Pier and Custom House Wharf. Still use it for trap hauling, but keep it open.

Memorandum
Department of Planning and Development
Planning Division



To: Chair Beal and Members of the Planning Board

From: Bill Needelman, Senior Planner

Date: March 10, 2006

Re: March 14, 2006 Workshop
Waterfront Central Zone Taskforce
Recommended Zone Text Changes

I. Introduction:

Beginning in February of 2005, then Mayor Jill Duson established a taskforce to evaluate the conditions and land-use policies of the Waterfront Central Zone (WCZ.) The Taskforce began its work in earnest in the spring and has recently provided a set of draft zone text changes as a result of their study. Planning Board members should note that the focus of the process was not to redraft the underlying policies regulating the Central Waterfront, but rather to adjust them to better meet the foundational assumptions of the existing Comprehensive Plan for the waterfront.

This is the second workshop held on this issue. A public hearing has been scheduled for March 28 to ensure opportunity for the Board to provide a recommendation prior to an anticipated Council Action on April 3.

II. New information:

Most of the information provided in this memo was previously included in the February 14 memo except as described below. The revised draft of the WCZ language edits is included in attachment 3. This draft reflects edits provided at the final meeting of the WCZ Taskforce where this language was unanimously endorsed by members in attendance. A summary outline, which had previously been incorporated in the body of the workshop memo, has been revised to reflect recent edits and included as attachment 5.

Directly following this section, a "waterfront zoning primer" is included in the body of this memo. This text has been worked on by members of the WCZ Taskforce as well as Planning Staff as a "plain language" summary of the Taskforce's work. Staff would like to thank Taskforce members, Anne Pringle and Barbara Vestal for their significant contribution to this effort.

Issues from previous WS

75' setback, 35' rule extent

Planning Board members should note that the latest draft language provided in attachment 3 is largely consistent with the language provided on February 14. The latest draft is has been "cleaned" of annotations in addition to a few changes noted below.

pg 11/12

Setback for non-marine uses: As show in the previous draft, all first floor non-water dependent conditional uses needed to be setback at least 75 feet from the water's edge. The current draft allows for non-water dependent marine uses to continue with their exception from this provision and to permit a 30% expansion of existing structures (for the first floors within 75 feet from the water) for non-marine use. Planning Board members should note that the State DEP is currently considering this edit and will provide an opinion in the near future.

pg 12/18

Waterfront Diner: The water front diner section in the conditional use list has been edited to allow construction within 25 feet of the water (as opposed to 75 feet) as noted above. Other minor edits have been provided. One such edit includes a "formula food" restriction to prohibit a fast food franchise from meeting the waterfront diner definition. Corporation Counsel will provide a definition prior to public hearing.

Note: OLD Port Overlay Zone - pg 23

III. Waterfront Zoning "Primer"

The language below is a guide to the background assumptions, current policies, and proposed amendments to the WCZ text.

Guiding Principles (as Adopted by Waterfront Alliance 5/14/96 and reflected in Portland zoning)

- 1) Portland's waterfront is a limited natural resource (about 1.5 miles of the total 25 miles of working waterfront in the state) and water access should be reserved for both traditional and emerging water-dependent uses;
- 2) Portland's traditional water-dependent uses have experienced cyclical and structural change over time and this evolution will continue (e.g. commercial fishing). Portland's commitment, including zoning protections, should be long-term and should recognize the cyclical nature of these economies;
- 3) Stable pier infrastructure, easy access to land-based transportation, and stable channel and pier-side depths are key elements of successful water-dependent industries and should be maintained in an economic- and environmentally-sound manner;
- 4) The marine industries on the waterfront represent an array of inter-dependent uses and should be protected and encouraged;
- 5) While the waterfront serves a number of functions (job center, industry center, property tax base, transportation center, retail/visitor center, gateway, home, etc.), its primary role, recognizing its unique geometry, is as an economic center for water-dependent businesses that cannot exist elsewhere;
- 6) It is important to preserve a mix of public and private ownership of waterfront property;
- 7) Land use policy should respect the public's interest in qualitative standards relating to view, architectural character, and human impacts (noise, light, etc.);
- 8) Public access to the waterfront should be provided in areas where it is safe and will not interfere with business activity;

- 9) It is important to protect the natural resources of the waterfront because a healthy harbor environment contributes to a stable ecosystem, public health, economic growth, and recreational enjoyment.

Policy Underlying Zoning – Waterfront Central Zone

- 1) First priority is to protect and nurture existing and potential water-dependent uses;
- 2) Second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly or indirectly by placing incompatible demands on the zone's infrastructure;
- 3) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Existing Zoning Structure (as established in 1993, with post-1993 amendments)

- 1) Zoning encourages the use and rehabilitation of existing buildings, in order to maintain relatively low-cost ground-floor rents for water-dependent businesses;
- 2) Permitted uses include marine (including water-dependent uses) and compatible commercial, industrial, and public uses.
- 3) Ground floor use is limited to marine uses only except as provided in (7) below.
- 4) Upper floor use of existing buildings may include non-marine uses up to 50% of the total floor area of the building in order to generate additional revenue opportunities to support pier infrastructure.
- 5) Throughout the zone, a proposed new use is allowed only if it will not have an "impermissible adverse impact" on future marine development opportunities:
 - Proposed uses will not displace existing water-dependent uses;
 - Proposed use will not reduce existing commercial vessel berthing;
 - Proposed use, structure or activities will not unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
 - Proposed use will not substantially reduce or inhibit existing public access to marine or tidal waters.
- 6) Newly-constructed buildings for marine uses are allowed throughout the zone. Newly-constructed non-marine buildings are not expressly permitted, but may be approved through contract or conditional rezoning, subject to a finding of public benefit from the proposed project (Sec. 14.315.3):
 - Each proposed upper-story use is a permitted use;
 - The ground floor of the proposed structure consists entirely of marine uses;

- The proposed development is consistent with the Comprehensive Plan and, without the proposed development, the site could not otherwise support a water-dependent use;
 - Any physical or legal impediments which preclude further access to the water's edge are not the result of the applicant or prior owner;
 - The project's public benefits outweigh its potential negative impacts (protection of existing water-dependent uses, preservation of future water-dependent uses opportunities, contribution to marine infrastructure, and visual and/or physical access to the waterfront or the general public);
 - The proposed development responds to any unique physical conditions and development opportunities along the shoreline;
 - The proposed development does not have negative environmental impacts (specified);
 - The proposed development is consistent with the Waterfront Public Access Design Guidelines;
 - The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent uses are not abandoned after the project is developed.
- 7) In existing buildings (as of 1/93) within 35 feet of Commercial Street and between Maine Wharf and the City Fish Pier, a broad range of uses (office, retail, service, restaurant, bank, etc.) are allowed on all floors, in order to generate revenues for infrastructure maintenance (assumed such property in common ownership with pier ownership when zoning originally passed in 1993). The "35 foot rule" does not extend beyond the Fish Pier.
- 8) The broad range of permitted uses in existing buildings within 35 feet can expand by a modest amount (up to 2,000 sq. feet), with conditions.
- 9) Residential space, not exceeding 1,000 square feet and occupied by the primary owner of a marine-related business, may occupy an upper floor of an existing building, subject to conditions, limited to one residential unit per wharf..
- 10) Parking on piers is generally limited to marine uses, unless the applicant can demonstrate that on-site parking exceeds the number of spaces required for marine use.
- 11) Prohibited uses include all other residential, hotels, auditoriums, civic centers, convention centers, meeting facilities, and bars.

Summary of Changes Proposed by Waterfront Central Zone Task Force

- 1) "No adverse impact" standard more focused to protect water-dependent uses; to add a standard to prohibit non-water dependent uses from replacing a water-dependent use which existed within the previous two years; to add a standard to prohibit locating a new non-water dependent use on a portion of a site that is physically suited for a water-dependent use. (14-313.5)

2) Subject to no adverse impact on water-dependent uses, variety of provisions give more opportunity for non-marine uses to locate in WCZ in areas not likely to interfere with water-dependent uses:

a. Non-marine uses may occupy more than 50% of the total floor area of buildings in existence in 1993 as a conditional use, in upper floors, subject to standards for active ground floor marine use and occupied commercial berthing. (14-315(i))

b. Original contract or conditional rezoning provisions to allow non-marine uses in upper floors of new buildings, subject to standards, retained, subject to new mitigation provisions. (14-315.3 GENERAL)

c. A second option for contract or conditional rezoning is proposed through an "Old Port Overlay Zone" which allows construction of new buildings set back at least 75' from the water, between the easterly property line of Long Wharf and the westerly property line of Union Wharf, with up to 100% non-marine uses on all floors, subject to mitigation and specific standards. (14-315.3 Commercial St./Old Port Overlay Zone)

d. Studios for artists and crafts people added as permissible upper story use in buildings in existence in 1993. (14-314(b)(3))

e. Permissible expansion of certain "grandfathered" non-marine uses within 35' of Commercial Street increased from 2,000 to 3,000 square feet. (14-315(d))

f. Waterfront diner of no more than 4,000 square feet, no alcohol license or sales, entrance on Commercial Street, other standards, added as a conditional use throughout the zone. (14-315(g))

g. Upper floor non-marine use in buildings in existence in 1993 allowed to expand up to 2,000 square feet over life of building as conditional use, subject to standards. (14-315(h))

3) In exchange for more non-marine use opportunities, mitigation of the cumulative adverse impacts of new non-marine uses on marine uses is required. Mitigation can take the form of capital investment in the marine infrastructure within the same wharf or pier, or contribution to the City's Waterfront Loan and Investment Fund, according to a set formula. (14-313.6 and 14-315.3 (b) and (c))

4) Other Provisions:

a. Permitted marine uses modified to include bait sales and processing, and parking associated with on-site water-dependent uses. (14-314(a)(24) and (25))

- b. Broad uses for existing buildings within 35' of Commercial Street limited to not extending more than 100' from Commercial Street. (14-314(e)(4))
- c. Parking provisions clarified so that generally only parking for marine uses is allowed within the WCZ unless excess capacity. (14-314(a)(24) and 14-315(a) and (b))
- d. Conditional use standards clarified for parking and traffic circulation, pier access congestion and public view protection. (14-315)
- e. Performance standards added for fish by-products processing as a conditional use. (14-315(c)(2))
- f. Boat rack storage limited to footprint of 10,000 square feet. (14-315(c)(3))
- g. Residential unit for business owner, limited to one unit per pier, tightened to reduce size and add standard for compelling need. (14-315(e))
- h. Utility substations more restricted. (14-315(f))
- i. Ground-mounted telecommunication towers and drive-up services added to list of prohibited uses. (14-315.5)
- j. Maximum building height increased from 35' to 45' (except 50' for marine research facilities within 400 feet (changed from 200') of Commercial Street) but limited to no more than 3 habitable floors and minimum of 15' of floor to ceiling height in ground floor in most areas. (14-316(e) and (f))
- k. Performance standards expanded to include a provision requiring pier and wharf expansions to demonstrate compatibility with ferry and emergency vessel operations and a provision assuring protection of the functional accessibility of pier edges for marine use. (14-317(p) and (q))

IV. Previously Provided Policy Background:

As previously provided, the draft zone language is accompanied with the original 1992 Waterfront Alliance report that provides their policy basis. Additionally, the Board will find a copy of the recently completed economic conditions survey that informed the WCZ Taskforce recommendations.

In 1992 the Waterfront Alliance, a non-profit association of waterfront property owners, advocates, and parties with marine interests from both sides of Portland Harbor, submitted a policy document to the City Council that eventually became the basis for new zoning text language and inclusion in the City's Comprehensive Plan. The Waterfront Alliance report recommended segmenting the Portland waterfront into three zones:

1. *The Waterfront Port Development Zone (WPDZ)* - Located in the areas of deep water industrial berthing from State Pier to Ocean Gateway in the east, and from the International Marine Terminal to the Merrill freight terminal in the west, the WPDZ policies support the continued use of deep water piers for large vessel berthing and support.
2. *The Waterfront Special Use Zone (WSUZ)* – Located at the easterly extent of Portland’s developed waterfront at the head of Portland harbor, the WSUZ is predominated by older buildings with limited water access (the exception is the area of the Portland Yacht Services marina just west of the Eastern Promenade park.) The WSUZ text allows limited mixed use of existing buildings and promotes new marine use development.
3. *The Waterfront Central Zone (WCZ)* – Located between Maine Wharf (Flat Breads/Rira) to the east and Deake’s Wharf (just east of the IMT) to the west, the WCZ contains a broad mix of marine and non-marine uses and infrastructure.

The WCZ is developed with mostly privately held piers (in addition to the City Fish Pier and the Gulf of Maine Research Institute) and is the home of many traditional marine business. The City’s ground fishing, herring, and lobster fleets rely upon the piers of the WCZ to berth and conduct business. Other marine businesses, including dock and dredge construction, boat hauling and repair, chartered tour boats, water taxis, marinas, fueling, chandlery service, and environmental response also use the piers of the WCZ to interface with the harbor.

Existing buildings located both on and off the piers have traditionally housed supporting marine use businesses in addition to non-marine uses. Non-marine uses include the retail type uses associated with the Old Port, office uses, and three 1980’s residential condominium projects.

The upland sections of the WCZ are highly developed along the Commercial Street corridor, though there are also large expanses of surface parking supporting both marine and non-marine interests.

At the time of the 1993 zoning adoption, the City Council’s zoning report (containing the Waterfront Alliance report and recommendations) was adopted as an element of the Comprehensive Plan. As the policy basis for zoning on the waterfront, the 1992 report remains the current Comprehensive Plan document by which new zoning text will be evaluated. The policies of the WCZ are described below.

Comprehensive Plan: *Waterfront Alliance Recommendations and Current Zoning*

The Waterfront Alliance report, titled “Waterfront Alliance Recommendations to the City of Portland,” outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but other portions of the waterfront (upper stories, and properties without water access) can and should accommodate “marine compatible” uses to help support the maintenance of pier infrastructure. As stated in the report’s preamble,

“Water-dependent users are the lifeblood of Portland’s waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth.”

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The *Purpose* and *No Adverse Impact* sections of the WCZ text, included below, express the intent of the zone and the underlying policy.

The following text is excerpted from the WCZ language. A copy of the full WCZ text (with track changes edits) is attached to this memo in attachment 3.

Waterfront Central Purpose (current language)

Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;*
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;*
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.*

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

In implementing the goals stated in the purpose statement above, the WCZ establishes the following “no adverse impact on marine uses” standards. These standards establish thresholds for any non-marine use in the zone.

No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses), need to adhere to the provisions of the “no adverse impact” clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. The complete (current) text of the no-adverse-impact clause is included below.

Sec. 14-313.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;*
- (b) The proposed use will reduce existing commercial vessel berthing space;*

- (c) *The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or*
- (d) *The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.*

Taskforce Charge

Over the last 13 years of implementation, the WCZ text has been incrementally amended several times. With each amendment, some members of the Planning Board, City Council, and members of the waterfront business community have expressed a need to broaden some elements of the zone language. At the same time, other community members have stressed the need to retain protections for waterfront access for traditional industries. The current process is intended to revisit the zone with the intention of finding the best balance between potentially competing goals.

The Waterfront Central Zone Taskforce was charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms and other means;
5. Retain access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structures away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers;

Draft Text Changes: Outline and Summary of Proposed Text Edits

The outline provided in attachment 5 sketches the structure of the zone language and provides a guide to the recommended changes. The complete text with a “track changes” notation of edits is provided in attachment 3. Given the amount of edits, the track changes version adds confusion to an already complicated text. Attachment 5, along with the “primer” above will hopefully help in the Board’s review of the changes. A “clean” version of the edits will be provided as a follow up document at a later workshop.

Public Process:

The Taskforce held two public forums during its work in addition to their regularly scheduled meetings. Notes from these meetings are provided in attachment 4.

Attachments:

1. Waterfront Alliance Report, 1992
2. 2005 Economic Conditions Survey results presentation material
3. Draft WCZ edits
4. Public Forum Notes
5. WCZ Draft Edits Outline
- A. Zone Map
- B. Context Aerial Map

Section 14-315.1.v.

Revised Language for substitution. New text is **bold**.

- v. Location of non-water dependent uses: For conditional uses listed below in section 14-315.2, **except as otherwise restricted in this ordinance**, non-water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

Notwithstanding the paragraph above, marine uses listed below in section 14-315.2 (c), marine conditional uses may be located in any portion of an existing or new building, subject to a) a finding of "no adverse impact" under section 14-313.5, and b) any criteria imposed through conditional use review.

PB mtg 3-14
mtg notes

FINAL TASKFORCE DRAFT EDITS TO THE WCZ, Att.3.
3-10-06

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DIVISION 18. WATERFRONT CENTRAL ZONE*

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The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the

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higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.
(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-313.5. No adverse impact on water-dependent uses.

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No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future water dependent development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

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- (a) The proposed nonwater-dependent use will displace an existing water-dependent use, or replace a water-dependent use that previously existed within the last two years;
- (b) The proposed nonwater-dependent use is proposed to be located on a portion of the site that is physically suited for a water-dependent use;
- (c) The proposed use will reduce existing commercial vessel berthing space;
- (d) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (e) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

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14-313.6 Mitigation of impacts required for non-marine uses

Even if there is a finding of "no adverse impact" under 14-313.5 for any single project, the cumulative impacts of multiple non-marine developments create an

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environment that is detrimental to current activities and future growth potential of marine uses within the zone. Such impacts include, but are not limited to, direct competition for interior and exterior space, increased traffic congestion, and competition for limited parking resources.

In order to mitigate the cumulative impacts of non-marine uses in the zone, all new or expanded non-marine uses listed under 14-314(b), 14-314(c), and 14-314(e), or that require conditional use review under section 14-315 shall contribute to the marine economy through either (a) direct investment in marine infrastructure, or (b) by contribution to the City waterfront loan and investment fund, as may be amended from time to time. The value of mitigation under (a) or (b) shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation as determined by the Planning Board.

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(a) Direct investment in marine infrastructure

The preferred pattern of development for non-marine uses is for water-dependent and nonwater-dependent uses to co-exist on the same site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. The next preference shall be for mitigation off-site, but within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in (b) below shall be required for all or part of the required mitigation. Mitigation by direct investment in marine infrastructure may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for

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permitted water dependent uses.

(b) Financial contribution in lieu of mitigation

If the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, the applicant shall make a financial contribution to the City's waterfront loan and investment fund.

Sec. 14-314. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on water dependent-uses), the following uses are permitted in the waterfront central zone:

(a) Marine:

1. Marine products wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;

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- 10. Boat storage facilities, excluding rack storage facilities;
- 11. Seafood processing;
- 12. Seafood packing and packaging;
- 13. Seafood loading and seafood distribution;
- 14. Fabrication, storage and repair of fishing equipment;
- 15. Ice-making services;
- 16. Facilities for marine construction and salvage;
- 17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
- 18. Fabrication of marine-related goods;
- 19. Fishing and commercial vessel berthing;
- 20. Noncommercial berthing of less than fifty (50) linear feet per pier;
- 21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
- 22. Public landings;
- 23. Marine research, education, and laboratory facilities;
- 24. Parking accessory to an on-site water dependent use.

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Editor's note: all parking in the WCZ for non water dependent uses is subject to conditional use provisions found in section 14-315.

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25. Bait sales and processing

(b) Commercial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

Editor's Note: for commercial and industrial uses above the ground floor area exceeding 50% of the total floor area of the building, please refer to the Conditional Use section in 14-315(i) below.

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1. Professional, business, government, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) Industrial uses above the ground floor level of buildings in existence on January 4, 1993: Subject to sections 14-314(f)1.a. and 14-315(a), the following uses shall be permitted above the ground floor level provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-M zone.

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(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails;

(e) *Commercial uses in existing buildings located along Commercial Street.*

Buildings meeting the following criteria may house the uses listed below:

1. The subject building is located between the easterly property line of Maine Wharf and the easterly property line of the City fish pier; and
2. The subject building existed or had an unexpired site plan as of January 4, 1993; and
3. The subject building is located in part or in whole within 35 feet of the southerly sideline of Commercial Street; and
4. The ground floor non-marine uses allowed under this section shall not extend further than 100 feet from the southerly sideline of Commercial Street; and
5. Expansions of uses permitted under this section are subject to conditional use review under 14-315, or conditional or contract rezoning under 14-315.3.

Subject to section 14-314(f)1 and 14-315(a){accessory parking for non-water dependent uses}, the following uses shall be permitted:

1. Professional, business, government, and general offices;

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2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people (excluding group classes and performances), and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) Other:

1. Accessory uses:

a. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those defined as water dependent uses and set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-315(a){for marine related, but not water dependent uses} or 14-315(b) {for non-marine uses.}.

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b. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the

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location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

c. Interior meeting or classroom space accessory to uses permitted in section 14-314(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph 2, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three thousand (3,000) square feet in total floor area per building, or fifteen (15) percent of the total floor area per building, whichever is less.

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2. Street vendors licensed pursuant to Chapter 19.

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Sec. 14-315. Conditional uses.

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The uses listed below under section 14-315.2 shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

14-315.1 Conditional Use Standards:

- i. Marine compatibility: The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. Access for marine use: The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. Parking and Traffic Circulation:

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a. Parking and Traffic Circulation Plan: All applications for conditional use in the WCZ shall submit a Parking and Circulation Plan for review and approval by the Planning Board. The Parking and Circulation Plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The Plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the WCZ.

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b. Pier Access Congestion: For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future

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development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1){traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

iv. Public View Protection: Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the Planning Board as a condition of site plan approval. The analysis shall:(a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable, and (b) promote the public's visual access to the water through sensitive building placement. The Planning Board shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland Peninsula, (b) retains panoramic views of the water from Commercial Street to the extent practicable, and (c) where loss of public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

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v. Location of non-water dependent uses: For

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conditional uses listed below in section 14-315.2, non-water dependent uses may be located in either a) the upper floors of existing or newly created structures wherever located or b) on the ground floor of any existing or proposed structure located at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

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Notwithstanding the paragraph above, marine uses listed below in section 14-315.2 (c), marine conditional uses may be located in any portion of an existing or new building, subject to a) a finding of "no adverse impact" under section 14-313.5, and b) any criteria imposed through conditional use review.

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Editor's Note: Non-water dependent marine uses listed in the permitted use section 14-314(a) are not subject to the above provision.

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vi. Expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide: Notwithstanding provision v. above, the expansion of existing first floor non-water dependent uses within 75 feet of maximum spring high tide shall be prohibited except as provided below:

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a. Over the life of the building, the expansion is limited to no more than 30% of the first floor volume and/or floor area of that portion of the original structure located within 75 feet of the maximum spring high tide and existing as of the date of approval, but in no case closer than 25 feet thereto; and

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b. The expansion does not extend the non-water dependent use closer to the water than the nearest existing portion of the building existing as of (date of approval)

Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to State of Maine NRPA regulation.

14-315.2 Conditional Uses:

(a) Parking for marine uses that are not water dependent: Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water dependent uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.

(b) Parking for (i) conditional uses, (ii) non marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above the ground floor level, and/or (iii) uses allowed under conditional or contract rezoning:

Notwithstanding sections 14-317(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water dependent uses that are permitted by section 14-314(a) which are or may be located on the subject property. (Please see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

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Editor's Note: Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water dependent use elsewhere on the subject property or on a comparable property.

(c) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;

b. Any existing fish by-products facility shall employ current and appropriate odor control technology, and any new fish by-product use shall employ current, available odor control technology, to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the

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odor limitation performance standards of the IM zone; and

c. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

(3) Boat rack storage facilities, provided that:

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a. Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed 10,000 square feet of build footprint.

(d) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing or having an unexpired site plan as of January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between the easterly edge of Maine Wharf and the easterly edge of the City Fish Pier) into contiguous and newly created building space of no more than 3000 sq. ft., total for the life of the building, shall be allowed only as follows:

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(1) the use may occupy ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

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(2) the use may occupy a ground floor area of no more than 1500 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

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(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

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(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(e) Residential: The "primary" owner of a marine business located on the same site may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

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(1) The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished.

(2) the residential living space shall not exceed seven hundred fifty (750) square feet, inclusive of all exterior porches and decks;

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(3) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;

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(4) the residential use shall be limited to one unit per wharf;

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(5) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

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(6) upon the vacancy in excess of three (3) months of the residential living space by the

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primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(f) Utility Sub Stations

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Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps, and telecommunication switching stations, are permitted under the following conditions:

- i. The facility is located more than 100 feet from the water's edge,
- ii. The facility occupies no more than 50 square feet of structure above ground,
- iii. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise usable and made available for marine related uses, including but not limited to parking, travel ways, and/or storage.
- iv. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

(g) Waterfront Diner:

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Food service establishment that through hours and type of operation supports the working waterfront community. Waterfront diners shall demonstrate adherence to the following:

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f . Food service establishment that through hours and

- i. The diner shall not hold any alcohol license nor shall any alcohol be served on the

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- premises.
- ii. The diner shall open no later than 4:00am.
- iii. The diner shall maintain a prominent bulletin board for use by the commercial marine industry.
- iv. The diner shall occupy no more than a total of 4000 square feet of gross floor area and no more than 2500 square feet of ground floor area.
- v. The primary entrance to the diner shall be located no further than 10 feet from the southerly sideline of Commercial Street, and the entire diner use shall be located no further than 100 feet from the southerly sideline of Commercial Street.
- vi. The diner shall provide full service meals and table wait staff. No formula food shall be permitted.
- vii. No greater than 10% of total restaurant sales shall be take out service.
- viii. Notwithstanding sections 14-315.1.v and 14-315.1.vi (Location of non-water dependent uses,) the structure housing the diner may be located up to, but no closer than 25 feet from the maximum spring tide line of a coastal wetland, measured horizontally.

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(h) Expansion of an upper floor non water-dependent, non marine use permitted under 14-314(b) or (c), (Commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than 2000 sq. ft., total for the life of the building, shall be allowed only as follows:

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- (1) the use may occupy upper floor areas; and
- (2) newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water-dependent uses, excepting pedestrian circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where

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such circulation areas occupy no more than 300 square feet; and

(3) as of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(i) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-314 (f) 1.a, and 14-315 (a), the uses listed under 14-314(b) and 14-314(c) shall be permitted above the ground floor level and allowed to exceed fifty (50) percent of the total floor area of the building, subject to the following conditions:

(1) At least 80% of the ground floor must be occupied by one or more active marine uses, as listed under 14-314(a), and such marine use shall remain active throughout the occupancy of the above ground floor commercial or industrial use exceeding 50% of the total area of the building; and,

(2) At least 80% of the linear dock or pier edge under ownership and/or control of the same property owner as the subject building shall be occupied by commercial berthing supporting a marine use listed under 14-314(a); and,

(3) At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02)

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At least 20% of the subject building's second floor shall be dedicated to a marine use listed under 14-314(a).

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Sec. 14-315.3. Contract or conditional rezoning.

14-315.3 (a) General

Except as otherwise expressly authorized, an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993 or change the use of a structure which was in existence on January 4, 1993 to a nonmarine use if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development:

- (1) meets the standards of section 14-313.5 (no adverse impact on water-dependent uses),
- (2) meets the standards of section 14-317 (performance standards), and
- (3) meets all of the standards under either subsection I, General or subsection II, Commercial Street/Old Port Overlay, below.

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Under either I or II, the contract or conditional rezoning may apply only to a portion of a lot (as that term is defined for subdivision purposes), which portion may be referred to as the site of the proposed rezoning. However, in assessing impacts and mitigation of impacts, the reviewing body shall assess those impacts within the context of the entire lot, and such other lots as it deems to be potentially impacted.

14-315.3 (b) Direct Investment in marine infrastructure The preferred pattern of development under subsection I, General, is for water-dependent and nonwater-dependent uses to co-exist on the site and for the non-water dependent uses to make a critical contribution to the economic viability of the water-dependent use. If, however, the applicant proposes as a condition of rezoning to mitigate some or all of the adverse impacts on water-dependent uses off-site, the next preference shall be for mitigation within the same lot, to the extent feasible and adequate. To the extent not feasible and adequate, then a financial contribution in lieu of direct investment, as described in 14-315.3(c), below, shall be required for all or part of the mitigation

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Mitigation by direct investment in marine infrastructure may include, dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. Such mitigation shall be for the benefit of water-dependent uses listed within 14-314(a), and shall include commitments to utilize those improvements over time for permitted water dependent uses. Whether on-site or off-site, the value of mitigation shall be not less than the value of compensation described in 14-315.3 (c) below.

14-315.3 (c) Financial contribution in lieu of mitigation

If (when applying Option I, General,) the opportunity to make such investment in marine infrastructure is not available on-site, or off-site within the same lot, a condition of rezoning which stipulates a financial contribution to the City's waterfront loan and investment fund shall be. (All proposals applying for approval under option II, the Commercial/Old Port Overlay Zone, shall make a financial contribution in lieu of direct investment. In determining the amount of the contribution, (under either option I or II) the contribution shall be not less than the greater of 5% of total project costs or \$10.00 per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. The reviewing body shall decline to grant a rezoning if any of the conditions, including adequate mitigation of adverse impacts on water-dependent uses, is not satisfied with regard to existing water-dependent uses and future water-dependent development opportunities.

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Standards for conditional rezoning:

OPTION I. GENERAL

The following standards apply to any site within the Waterfront Central Zone (unless a proper applicant opts to apply for a rezoning under option II below):

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993,

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pursuant to section 14-314 (b), (c) or (d).

(b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314 (a) excepting circulation areas, such as unoccupied vestibules, elevator cores, and/or stair landings serving upper floors, only where such circulation areas occupy no more than 300 square feet;.

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(c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

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(d) Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

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(e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels, and visual and physical access to the waterfront for the general public.

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(f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-313 (purpose).

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(g) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or

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circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315 (a) (Conditional use, Parking).

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(h) The proposed development is consistent with Conditional use standard 14-315 iv. (Public View Protection and Public)

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(i) The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine uses as listed in 14-314(a).

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The proposed rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains

Option II. COMMERCIAL STREET/OLD PORT OVERLAY ZONE

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The following standards are applicable to the Commercial Street/Old Port Overlay Zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf (see incorporated map). For a site within the Old Port Overlay Zone, the applicant may opt to apply these standards rather than the General standards (option I,) immediately above. The standards within this overlay zone are as follows:

- Deleted: NOTE: The following option is still under consideration by the Waterfront Central Zone Taskforce. The Taskforce seeks public comment on this provision prior to making a recommendation to the City Council. ¶

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(a) All portions of the structure are set back at least 75 feet from the maximum spring tide line of a coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the State Department of Environmental protection that the location and development context of the subject site adhere to the State's definition of a "general development district," the coastal wetland setback may be reduced to 25 feet.

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(b) New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-314(e) (commercial uses in buildings existing on January 4, 1993 and located within 35 feet of

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Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.

(c) Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

(d) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or of-site), and visual and physical access to the waterfront for the general public.

(e) The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to section 14-315(a) (conditional use, parking).

(f) The proposed development is consistent with Conditional use standard 14-315 iv. (View Corridor Protection and Public Access)

(g) The proposed development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably

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- Inserted: for restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.¶
- ¶
- ¶ Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.¶
- ¶
- ¶ The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits: protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or of-site), and visual and physical access to the waterfront for the general public.¶
- ¶
- ¶ The nonmarine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as ... [4]
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conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution which the reviewing body deems sufficient for off-site mitigation of those adverse impacts (as described above in 14-315.3(c).

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(h) Maximum building setback from the southerly sideline of Commercial Street shall be no more than 10 feet.

Deleted: Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:¶
¶
(a). Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).¶
¶
(b). The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.¶
¶
(c). The proposed development is consistent with the comprehensive plan and, without the propos[... [5]

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.
- e. Ground mounted telecommunication towers, antennas, and/or disks.
- f. Drive-up services for any use other than a permitted use listed under 14-314 (a).

Deleted: f. Fish by-products processing as a principle use, or the processing of other material wastes o[... [6]

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

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Inserted: g. Drive-up services for any use other than a permitted use listed under 14-314 (a).¶

- (a) *Minimum lot size:* None.

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- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

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- (d) *Maximum lot coverage:* One hundred (100) percent.

- (e) *Maximum building height:* Forty-five (45) feet, except that within four hundred (400) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Under no circumstances shall a structure in the Waterfront Central Zone provide more than three habitable floors; however, typical roof top appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

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- (f) *Minimum ground floor clearance:* Fifteen (15) feet. First floor space for any new building proposed to be larger than 300 square feet shall provide no less than 15 feet of floor to ceiling vertical clearance to promote marine industrial use potential. Additions to existing multi-story buildings are exempt from this provision but shall provide the maximum ground floor clearance

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practicable up 15 feet.

(h) New Non-Marine use building exception for usable floors and minimum ground floor clearance: Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-315.3 (conditional rezoning, option II) four usable floors are allowed and ground floor clearance minimums do not apply.

(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

- (b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over

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a period of sixty (60) seconds (LEQ₁).

- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.
- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill

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material to leach into docking areas or navigable waters.

- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314 (a). Siting of a use not set forth in section 14-314 (a) shall not

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substantially reduce or inhibit existing public access to marine or tidal waters.

- (o) Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street between the easterly property line of Maine Wharf and the easterly property line of the City Fish Pier: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the City Fish Pier shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

- (p) Pier and wharf expansions: In addition to meeting Harbor Commissioner and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the Waterfront Central Zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

- (q) Functional Utility of Piers and Access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future needs of water dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. For example, any development that proposes to site a building within 10 feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through the building to allow the transfer of goods and materials to trucks and

circulation routes within the interior of the pier.

(Ord. No. 168-93, § 2, 1-4-93)

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(m) . *General site plan*
features: The Planning Board
or planning authority shall
approve a site plan located
within a shoreland zone if
it finds that the following
standards, in addition to
the standards set forth in
section 14-526, are met:¶
¶
. . . 7. . The proposal will not
adversely affect existing
commercial fishing or
maritime activities;¶
¶

Att. 1

Waterfront Alliance Recommendations
to the City of Portland

Prepared by the
Greater Portland Council of Governments

April 14, 1992



WATERFRONT ALLIANCE

• PORT OF PORTLAND •

P.O. Box 587 • Portland • Maine • 04112 • 207/874-PORT (7678)

April 14, 1992

The Honorable Thomas H. Allen, Mayor
and the Portland City Council
389 Congress Street
Portland, ME 04101

RE: Report of the Waterfront Alliance
Review and recommendations in regard to current
waterfront zoning and economic issues.

Dear Mayor Allen and City Council:

On January 31, 1991, Esther Clenott, Chairwoman of the Community Development Committee, wrote to the Alliance accepting our offer to assist the City with a review of current waterfront zoning. Councilor Clenott requested that the report be submitted by mid-summer of 1991. Since receiving the letter, the process was lengthened by instructions to consider economic factors along with zoning recommendations.

The Alliance proceeded with the review. Work continued on a two meeting a month basis until January of this year when we started meeting weekly. The preparation of this report has included participation of people with interests and viewpoints of all levels of concern for our waterfront. The review included several tours of the waterfront and the assistance of the Planning Staff. The Alliance Board list is attached for your review.

While none of the following recommendations are in-depth or completed studies, we feel that they will provide you with the material needed to go forward with a zoning plan that will be acceptable to virtually every interested party.

ZONING

On February 27, 1991, the Alliance submitted recommendations for the Industrial Zones. A copy of that report is attached. Continuing discussion since the submittal of that report has resulted in changes which are included in the following:

PREAMBLE

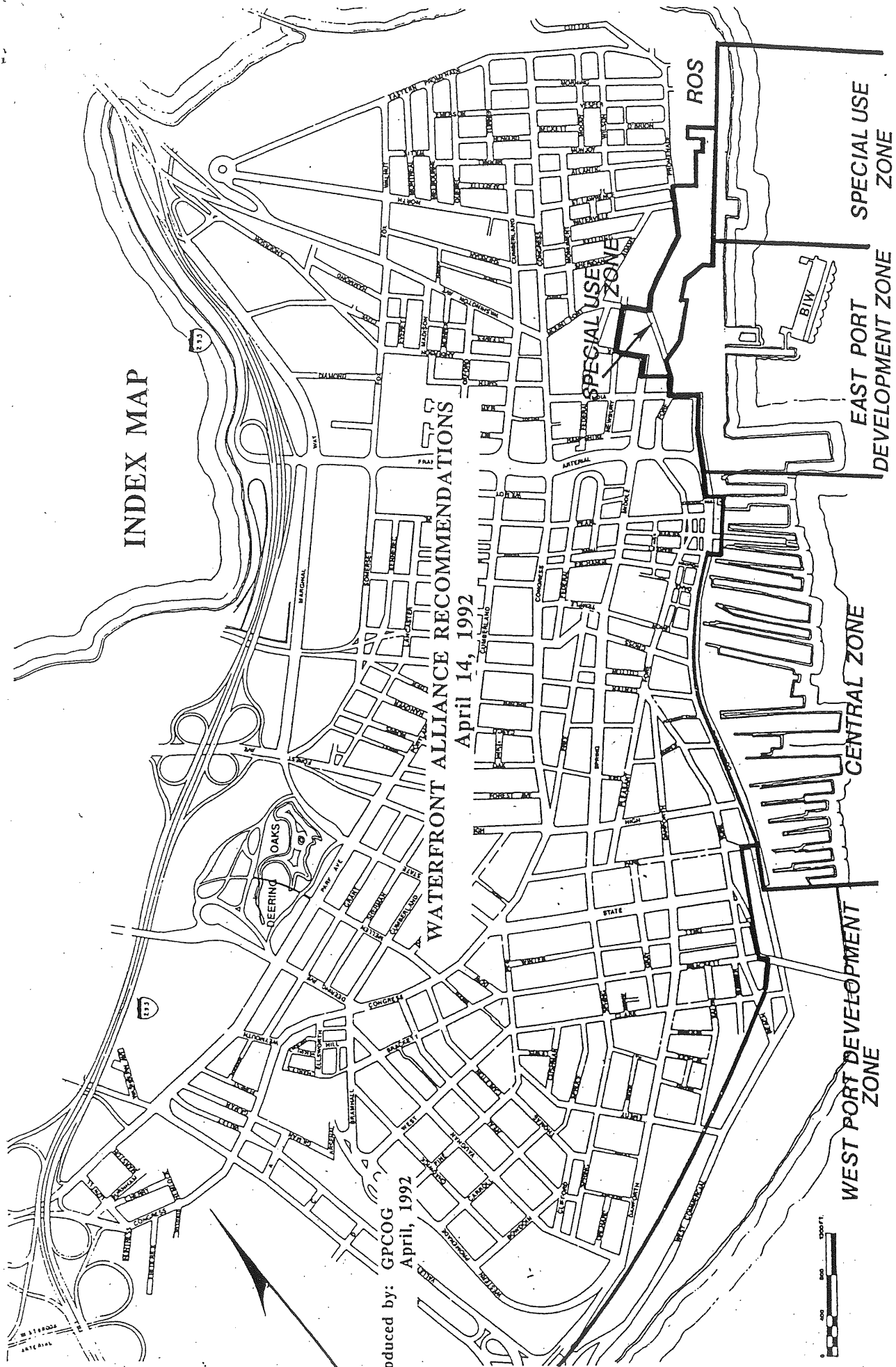
Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

INDEX MAP



Produced by: GPCOG
April, 1992

DEFINITIONS

- Water Dependent - those uses requiring direct waterside or water access for berthing and space - are priority one.
- Marine Related Support Uses - those in support of but not interfering with water dependent - are priority two.
- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

SPECIAL USE ZONE

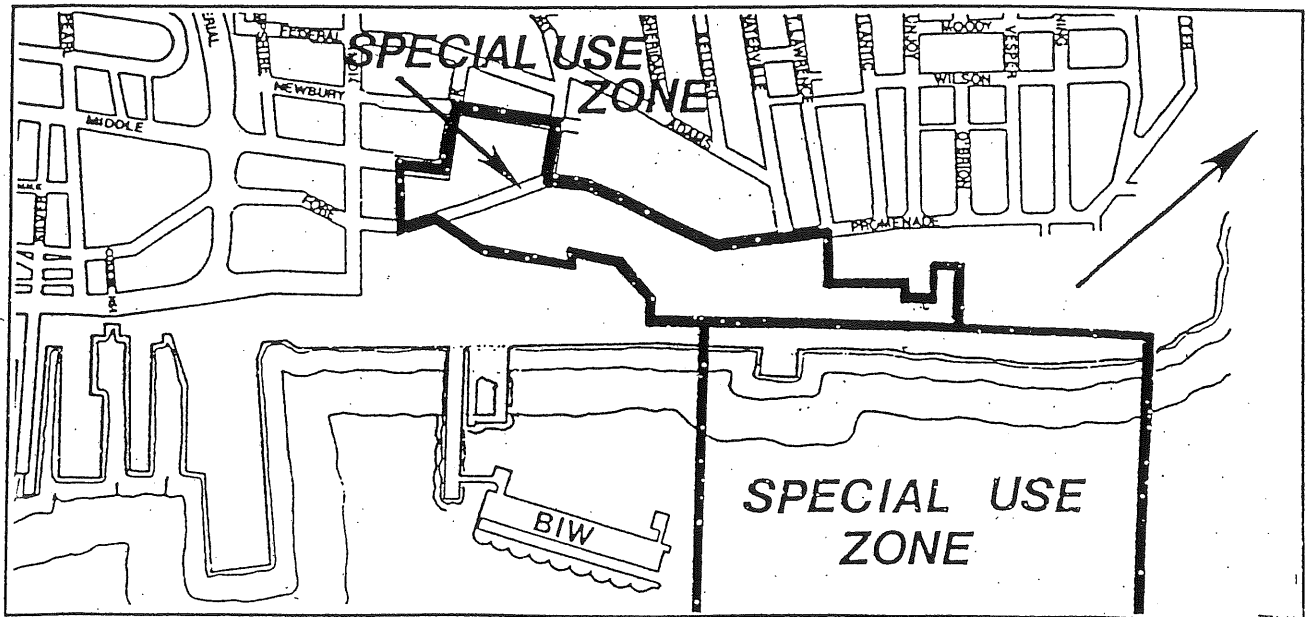
SPECIAL USE ZONE GEOGRAPHIC DESCRIPTION (SUZ):

This area is a mixture of the original sloping river bank and filled land along the water's edge. Major development of this area has included a rail head and terminal for Grand Trunk Railroad, a locomotive foundry as well as a steel foundry and other heavy industrial uses. Until the 1950's, this was Canada's winter port. The area now has a mix of 19th Century factory buildings that are largely vacant or underutilized, and more modern light industrial buildings with a mix of uses as tenants. There is little vacant land.

Recommendations are:

1. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
2. to allow Marine Compatible Uses to occupy existing vacant facilities that are not directly water related;
3. to provide a plan which directs new non-marine development (new construction/substantial rehabilitation) to contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use;
4. to promote the use of the land along the water's edge be used by water dependent uses;
5. to encourage public access to the waterfront;
6. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

The geography of this new zone is generally the eastern end of the Portland Engineering property north of the Grand Trunk Railroad r-o-w and moving along the r-o-w and on parcel lines Northwestery crossing a point on Eastern Promenade at the Old Cosby Laughlin site and including that property, then Easterly back along Eastern Promenade and then south following the line of Portland Engineering property to the r-o-w. Further included is all land south of the r-o-w from a point just East of the BIW Dry Dock easterly to the current abutting ROS zone.



The Waterfront Alliance concept for this area is to develop viability while maintaining compatibility with the Port Development Zone (PDZ), ROS and residential zones that abut. The Waterfront Alliance sees this area as the potential gateway to the region.

This recommendation is based on the SUZ current lack of actual water access. The included properties should constitute a special use zone that can have attributes of the Port Development, Central and current IM2 zones. Our recommendations are to allow for some of the non-allowed uses in the Central and Port Development Zones to be allowed in the SUZ. Uses that constitute potential infringements on the Central and Port Development Zone may not cause the same negative impact when located in the SUZ. Generally, all uses in IM2 and those outlined above are seen as appropriate uses after some performance standards are met.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

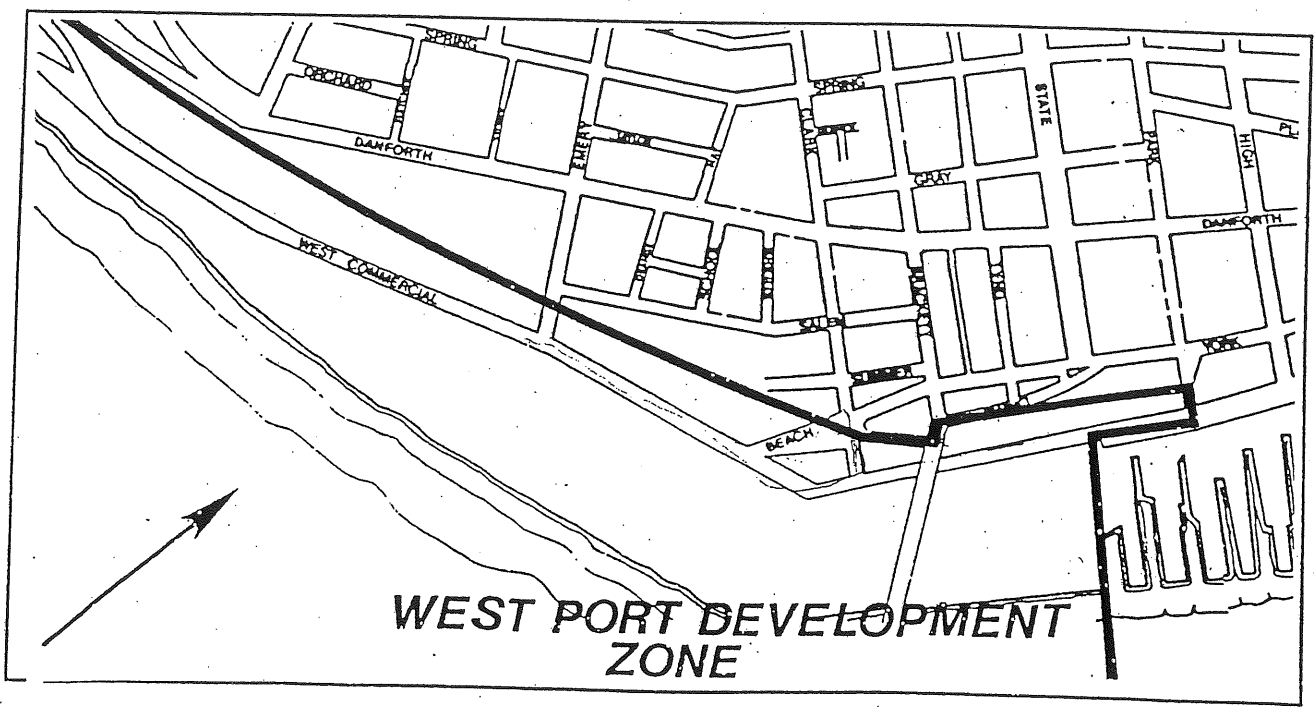
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

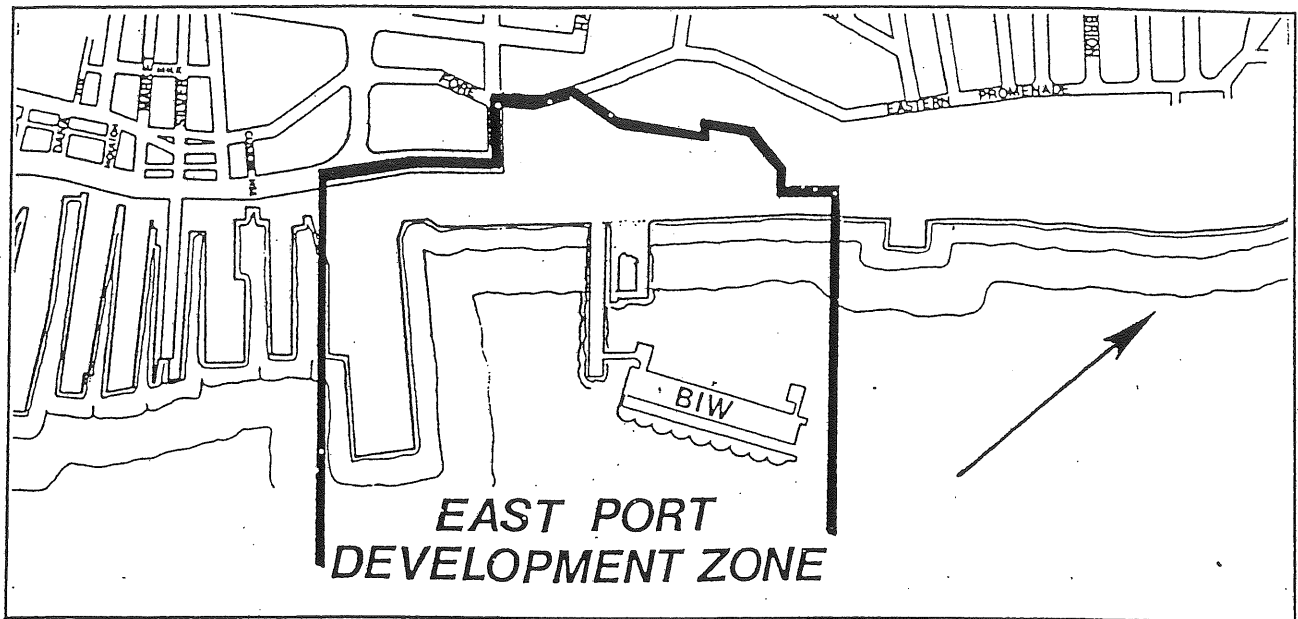
(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



PORT DEVELOPMENT EAST ZONE GEOGRAPHIC DESCRIPTION:

The area from the east side of the Maine Wharf to the easterly end of the current W-1, all areas south of the Grand Trunk Railroad r-o-w and including the r-o-w (part of old IM2).



USES NOT ALLOWED IN PORT DEVELOPMENT ZONE:

- New residential
- Hotels
- New Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Institutional
- Marine incompatible

Land Use Description: The purpose of the zone is to accommodate intermodal transportation of goods to and from Portland and the region. The description recognizes the importance of the zone to the regional economy. It recognizes that links with rail, turnpike and waterborne mechanisms are at the crux of this zone's protection of the marine dependent uses (marine only access).

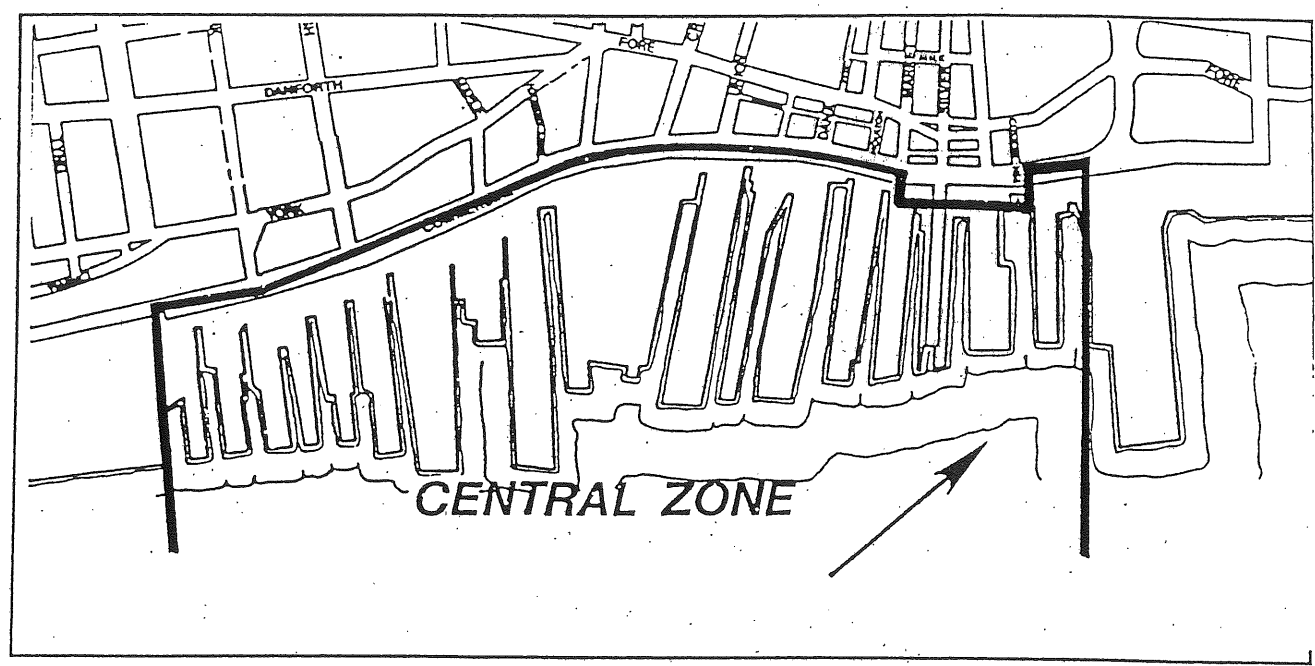
The zone's existence is designed to ensure the continued viability of the port. Its uses, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water, and/or contribute to Port Development Activity.

NON-MARINE ACTIVITIES IN SUPPORT OF PORT DEVELOPMENT goals may be allowed in areas that are in the PDZ. We recommend a mechanism be developed to allow some flexibility in the "non-marine but supports port development uses" to ensure retention of the waters edge on the one hand while allowing enough economic activity to retain the area's economic viability.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

THE CENTRAL ZONE

THE CENTRAL ZONE GEOGRAPHIC DESCRIPTION: The geography of the central zone is generally described as the area from the east side of the State Street Wharf to the Centerline between the Maine Wharf and the Casco Bay Island Terminal. The zone also includes the areas to the north of Commercial Street currently zoned as W1-W2 on City zoning maps.



USES NOT ALLOWED IN CENTRAL ZONE:

- New residential
- Hotels
- New large Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Non-marine Institutional

Generally, no large projects that create unreasonable demands on the zone's infrastructure and that interfere now or in the future with marine only and marine compatible support.

CENTRAL ZONE USES RECOMMENDED:

Generally any use not excluded that does not interfere now or in the future with marine dependent and marine dependent support business.

- Uses on the first floors of buildings with direct water access (berthing) and those within 100 feet of the direct water access must be marine only.
- Uses on floors other than the first floor may have water dependent, marine related, or marine compatible activities.
- After a mechanism for allowing such uses is developed, buildings beyond 100 feet of the direct water access may have water dependent, marine related or marine compatible uses on all floors (after a case by case review).
- Water Dependent - those uses requiring direct waterside or water access for berthing and space - are priority one.
- Marine Related Support Uses - those in support of but not interfering with water dependent - are priority two.
- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM hours of business and so forth.

It is our feeling that the balance of the work needed to reach written zoning ordinance will be best accomplished by the Planning Department and City Council. It is the intent of the Alliance to be available to serve as requested by the City to complete this task. We request that the new ordinances be developed and enacted as soon as possible upon completion.

ECONOMIC PLAN

The Alliance has established an Economic Development subcommittee which is now working on economic issues and at this point recommends that these zoning recommendations be seen as only one part of a larger scheme for the maintenance and development of the waterfront.

The Alliance feels that zoning is not the only "tool" available to stimulate growth and development of waterfront resource. In fact, probably no land uses could generate sufficient revenue to maintain and fully develop the waterfront infrastructure to its full potential.

If the working waterfront mandate is to be carried out for the sake of the long-term community interest, then the public and private interests must start to work together in critical areas such as harbor management and development. The Alliance has outlined for your consideration, the following general action plan:

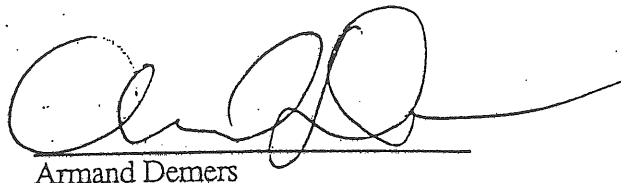
1. Harbor Management
 - a. Port Authority/Commission
 - b. Marketing
 - c. Policy
 - d. Harbor dredging
 - e. Streamline permitting process
 - f. Improved interest in the port by all citizens
 - g. Cooperative effort by both cities harbor issues
2. Long Term Economic Development
 - a. Tax incentives
 - b. Low cost loans
 - c. Grants (Government)
 - d. Revolving loan programs
3. State level activity
 - a. Legislative changes favoring Port of Portland
 - b. Economic impact
 - c. Lack of political influence
4. Economic Development Strategies should include:
 - a. Business Retention
 - b. Financial Assistance
 - c. Marketing/Promotions
 - d. Business Recruitment
5. Industries on the Waterfront-Market That Need Review:
 - a. Dry Cargo
 - b. Oil Shipping
 - c. Fishing
 - d. Recreational Boating
 - e. Passenger/Cruise Ships
 - f. Retail/Tourism
 - g. Transportation (Intermodal)
 - h. Tourism
 - i. Ship Repair
 - j. Coast Guard

It is the feeling of the Alliance that the above issues are of paramount interest in the future of the Port of Portland. As with the zoning issue, the Alliance stands ready to work with the City on all of the above issues and recommends immediate activity in that direction. It is our conclusion that an all out effort on the foregoing zoning and economic issues will help refuel the engine that is our Harbor and our region's "Economic Gateway to the Future."

Sincerely,
The Waterfront Alliance for the Port of Portland

Enclosures


Richard L. Ingalls


Armand Demers

Co-Chairmen
Waterfront Alliance

The following board members of the Waterfront Alliance have voted in favor of presenting this document.

- Bob Cott, Creative Design and Marketing
- Sam Davidson, Marine Trade Center
- Tom Dobbins, Getty Petroleum Corp.
- John Ferland, Clean Casco Bay, Inc.
- Bob Fontaine, Munjoy Hill Neighborhood Organization
- Ed Gomes, Casco Bay Island Development Assoc.
- Bob Goode, Southern Maine Technical College
- Virginia Hildreth, (non-voting member) Economic Development Director, City of Portland
- Jack Humeniuk, Portland Longshoreman's Benevolent Society
- Ken Jackson, The Sheridan Corp.
- Paul Jensen, Port Harbor Marine
- Avis Leavitt, Maine Fisherman's Wives Association
- Bill Leavitt, Chase, Leavitt & Co.
- Dan & Kathy Libby, Olde Port Mariner Fleet, Inc. - Tour and Charter Boats
- Herbert Lilly, Bath Iron Works
- Alan Lyscars, Seacoast Ocean Services
- Skip Matson, Portland West
- Artie Odlin, The Maine Fisherman's Cooperative Association
- Joe Payne, Casco Baykeeper, Friends of Casco Bay
- Charlie Poole, Proprietors of Union Wharf
- John Ricker, CIANBRO, Corp.
- Karen Sanford, Keep the Port
- Bill Scherr, Sea Rite, Inc.
- Pete Smith, Portland Pilots
- Phineas Sprague, Portland Yacht Services
- Ray Swenton, Bristol Seafood
- Al Trefry, (non-voting member) Portland Harbor Commission

- John Bubier, Facilitator, Executive Director, Greater Portland Council of Governments
- Muriel White, Support Staff, Greater Portland Council of Governments
- Kristen Sommer, Cartographer, Greater Portland Council of Governments

APPENDICES

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Pringle Amendment	19
Waterfront Alliance Subcommittee on Economic Development	20

NOTE: This section includes the Waterfront Alliance Issues Committee Report on Waterfront Industrial Zones already submitted.

Over the past six months, the Issues Committee of the Waterfront Alliance has been looking at the Industrial Zones along Portland's waterfront. All of Portland's Industrial Zones are slated to be revised in the coming year, and as stated in our Mission Statement, we have first concentrated our efforts on these zones and have come up with the following recommendations.

1. The Committee recommends that because the Industrial Zones that are adjacent to the navigable waterfront are unique, they should be treated separately from the other upland Industrial Zones. For the purposes of this report, these zones are going to be classified as follows: the properties bounded by the Million Dollar Bridge, the cliffs below Danforth Street, the Veterans Bridge and the water will be called the Industrial Marine 1 Zone (IM1). The properties bounded by Portland House, Fore Street, BIW and the water will be called the Industrial Marine 2 Zone (IM2).
2. Because of the substantial difference - topography, access, historical use, present uses, among others - between the two zones (IM1 and IM2), the zoning regulations should be tailored for each zone. What is appropriate for one zone may not be for the other and vice versa.

With these recommendations, the following purposes have been put forth for these Industrial Marine Zones.

Industrial Marine 1 Zone Description and History

This area is largely level filled land that is approximately 33 acres. It was originally filled and developed as a rail yard and terminal for bulk cargoes such as clay and coal by Maine Central Railroad. The land is largely vacant with the notable exception of Merrill's Marine Terminal, and a few light industrial uses clustered around West Commercial Street and along the north side of Commercial Street by the Million Dollar Bridge. Northern Utilities also operates a gas plant in the zone.

The purpose of the IM1 Zone is:

1. to encourage commerce which requires use of water, rail and highway transportation networks;
2. to encourage a compatible mixture of industrial transportation related uses, while giving priority to water dependent uses to the waterfront area;
3. to encourage Marine Industrial Uses that utilize the transportation infrastructure;
4. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
5. to provide a plan that directs new nonmarine development (new construction/substantial rehabilitation) to contribute to maintenance and improvement of the infrastructure along the water's edge as a condition of use;
6. to promote the use of the land along the waters edge to be used by water-dependent uses;
7. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

Industrial Marine 2 Zone

Description and History

This area is a mixture of the original sloping river bank and filled land along the water's edge. Major development of this area has included a rail head and terminal for Grand Truck Railroad, a locomotive foundry as well as a steel foundry and other heavy industrial uses. Until the 1950's, this was Canada's winter port. The area now has a mix of 19th Century factory buildings that are largely vacant or underutilized, and more modern light industrial buildings with a mix of uses as tenants. There is little vacant land.

The purpose of the IM2 Zone is:

1. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
2. to allow Marine Compatible Uses to occupy existing vacant facilities that are not directly water related;
3. to provide a plan which directs new nonmarine development (new construction/substantial rehabilitation) to contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use;
4. to promote the use of the land along the water's edge be used by water-dependent uses;
5. to encourage public access to the waterfront;
6. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

PLANNING BOARD RECOMMENDATIONS

Proposed Waterfront Zoning Amendments

and

Land Use Policy Update

September 29, 1992

INTRODUCTION

The Planning Board is forwarding a series of zoning amendments related to the waterfront area of Commercial Street. These amendments would replace the existing W-1 and W-2 waterfront zones as well as the Waterfront Overlay Zone that was enacted by referendum in 1987. The zoning amendments includes the text and map.

In early 1991, the City Council Community Development Committee accepted the offer of the Waterfront Alliance to assist the City with a review of waterfront zoning issues. At the request of the City, the Alliance was also asked to consider economic factors along the waterfront which lengthened the process. In the Spring of this year, the product of this process, the Waterfront Alliance's Recommendations" was forwarded to the City.

The Alliance's report included the basic zoning and policy concepts which the Board refined and translated into a formal zoning text. The Planning Board's initial waterfront zoning workshop included a presentation by the Waterfront Alliance of its report. Representatives of the Alliance's Zoning Committee attended the Board's meetings, answered questions and offered comments on the recommendations as well as the direction of the draft zoning amendments.

A copy of the Alliance's Report has been previously distributed.

SUMMARY OF PROPOSED ZONING AMENDMENTS (Text has previously been distributed)

Definitions...Page 1...These amendments revises an existing definition and creates a new definition.

Waterfront Central Zone...Page 1 to 11...Creates a new zone.

Waterfront Port Development Zone...Pages 11 to 19...Creates a new zone.

Waterfront Special Use Zone...Page 20 to 29...Creates a new zone.

Urban Commercial Mixes Use Zone...Pages 29 to 34...Creates a new zone.

Zoning Map...Page 35 and 36...Revises the zoning map. Replaces the existing zones along the waterfront with four (4) new zones described above.

A B-2 zone would be created along India Street by the railroad office building and a sewer pump station.

EXISTING WATERFRONT LAND USE POLICY

Waterfront land use policies are embodied in the City's comprehensive plan. The waterfront element of the comprehensive plan as adopted by the City includes the sections listed below.

* Strategies for the Development of the Portland Waterfront, April 1982, as amended through August 1985

* Proposed Waterfront Goals, Policies and Zoning Amendments (1983)

- 9
- * Portland Waterfront Public Access Project Technical Report (1983)
 - * Portland Waterfront Public Access Design Guidelines (1983)
 - * A Waterfront Action Plan for the Port of Portland, Maine (1988)
 - * Waterfront Task Force Recommendations (1990)

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A summary of these documents and waterfront planning since the mid 1970's has been previously distributed.

PLANNING BOARD'S WATERFRONT ZONING AND LAND USE POLICY RECOMMENDATION

This Report and its findings and policy recommendations are proposed to be incorporated as a new section of the waterfront element of the City's comprehensive plan. Land use policies of the waterfront and each zone are described in the following section.

The proposed waterfront policies involves the creation of three new districts along the waterfront. The new zones include the Waterfront Port Development Zone, Waterfront Central Zone and the Waterfront Special Use Zone. A fourth zone, Urban Commercial Mixed-Use Zone, was created to replace a landside W-1 zone. The zoning map is shown on pages 4 and 5.

These districts have contrasting but complementary functions to achieve the intended zoning policy. Land use policies of the waterfront and each zone are described starting on page 7. A summary of the more significant aspects of the zoning text is also provided. The preamble of the Waterfront Alliance Recommendations is shown on page 6.

A brief summary of the four new zones is shown below.

Waterfront Central Zone

The Waterfront Central Zone is the central area of the harbor for fishing and marine activities. While the focus of the zone is to protect water-dependent and marine-related uses, certain types and quantities of non-marine uses are allowed in the upper stories and buildings remote from the water. The zone runs east of the International Ferry Terminal to Maine Wharf and includes 16 piers.

Waterfront Port Development Zone

The Waterfront Port Development Zone is intended to protect areas with deep water access for uses that contribute to water transportation activities. This area serves as a staging area and connecting point for shipment of goods from vessels to trains and other forms of surface transportation.

The area of this zone includes the Portland International Ferry Terminal and areas west of the Million Dollar Bridge to the Merrill Transportation Marine Terminal. Other areas covered by the zone include the Casco Bay Ferry Terminal, BIW and adjacent railroad property.

Waterfront Special Use Zone

The Waterfront Special Use Zone allows a broad mix of marine and commercial non-marine uses. This is the most flexible of the waterfront zones. Marine uses, offices, retail, aquariums, convention centers are among the uses allowed in this zone. The area of this zone includes the Portland Engineering site (Phineas Sprague) and the former National Distributor's warehouse and the Yale Cordage building.

Urban Commercial Mixed Use Zone

The Urban Commercial Mixed Use Zone was developed to replace a W-1 zone on the landside (northerly) of Commercial Street between the Million Dollar Bridge and Center Street. This zone needed to be created since the W-1 zone is being eliminated and no other zone was appropriate. The zone is virtually identical to the text of the W-1 zone.

Other Zoning Amendments

In addition to the creation of 4 new zones, there are several other zoning amendments proposed.

The definition section of the ordinance would be revised (see page 1 of zoning text). The term "marina" would be redefined and a new term "non-commercial vessel berthing" added to this section. These changes were made to more clearly define what a marina is as well as the type of berthing that is considered to be non-commercial. The term non-commercial vessel berthing is significant in that it allows some flexibility in the calculation of vessel space along wharves that might otherwise be considered a conditional use. Non-commercial berthing space along a wharf in the Waterfront Central Zone exceeding 50 linear feet is a conditional use.

A minor map amendment is also recommended by the Board. This change involves a strip of land along India Street between Fore Street and Commercial Street. This area includes the railroad office building and a sewer pump station. Currently zoned I-2b, it is recommended that these properties be rezoned to B-2. The properties behind this area would be zoned Waterfront Port Development Zone.

EXISTING ZONING MAP



The zoning indicated on this map will be replaced by the zoning shown on the preceding page.

PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

WATERFRONT CENTRAL ZONE

Summary:

The Waterfront Central Zone is the central area of the harbor for fishing and marine activities. This zone is intended to accommodate a variety of marine uses, while allowing for selective uses and quantities of non-marine development of upper stories and buildings a distance remote from the water. An important concept in this zone is that non-marine uses must meet a compatibility standard so that they do not unreasonably interfere with marine uses. Hotels and residential uses are prohibited in this zone. See page 1 of zoning text.

Zoning Map Area:

Area east of the Portland International Ferry Terminal to Maine Wharf. This area includes 16 piers.

Purpose Section/Policy Statements:

"The Waterfront Central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that, while necessary for the convenient and successful conduct of such uses, may not be compatible with other types of uses.

Marine compatible uses are permitted under certain circumstances in the Waterfront Central Zone, provided that they respect and do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Marine compatible uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure."

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Additional policy statements recommended by the Planning Board:

The Waterfront Central Zone encourages the rehabilitation of existing buildings and the development of appropriately sized newly constructed buildings. The goals of this zone, including the protection and enhancement of marine uses and facilities, may be achieved under certain circumstances, through a conditional/contract rezoning process in which the size of newly constructed buildings exceeds the normal zoning requirement of floor area devoted to non-marine uses.

An appropriate contract rezoning in this instance, would consider among others, the following factors in assessing the zone change application: conformance with the marine compatibility standard of section 14-317(14); the degree to which the development enhances and furthers the waterfront policies and goals of the City's comprehensive plan; the amount of non-marine uses in relation to marine uses in the building; the type and quantity of the pier infrastructure improvement and/or the amount of investment in a marine infrastructure improvement fund, including improvements that enhance berthing facilities for commercial fishing vessels and other commercial marine vessels.

In addition, new construction of buildings along Commercial Street should also contribute to the orderly development of that street by meeting design goals and guidelines outlined in the City's comprehensive plan, such as the Downtown Urban Design Guidelines and the Portland Waterfront Public Access Design Guidelines. The design guidelines will help foster an appropriate scale and design for new infill development that strengthens the pedestrian environment in this area.

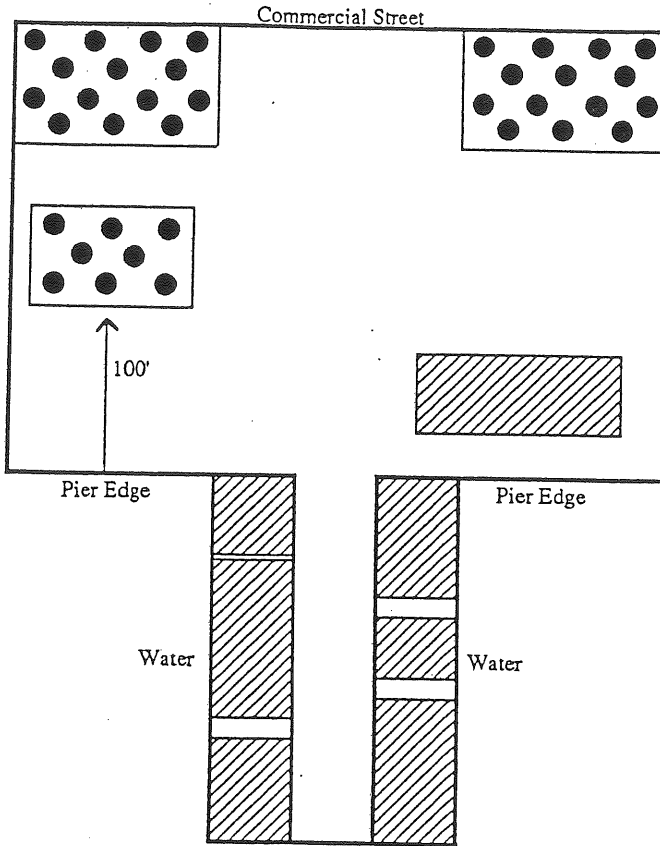
Distinguishing Characteristics:

The primary focus of this zone is protection of water-dependent and marine-related support uses. Certain non-marine uses such as offices, retail uses and restaurants are allowed. These uses are restricted to the upper floors of buildings. In the case of existing buildings along Commercial Street and in buildings more than 100 feet from the water, such uses may also be located on the first floor. This concept is illustrated on a chart on the following page.

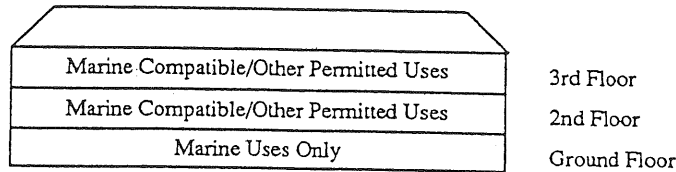
All non-marine uses regardless of their location must comply with a marine compatibility standard. (See page 10, line 41 of zoning text). The marine compatibility standard is also referenced for the other waterfront zones. A list of the marine compatible uses is shown on page 3, line 25 of the zoning text. The compatibility standard has been drafted to assure that permitted non-marine uses do not interfere with the operation of marine uses. The compatibility standard is shown below:

Waterfront Central Zone

Proposed Zoning and Building Locations



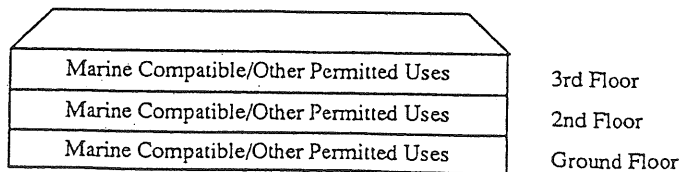
Buildings less than 100 feet from the water.



Existing Buildings: No cap on floor area for marine compatible uses.
 Newly Constructed Buildings: 20,000 sq. ft. cap on marine compatible uses.



Buildings more than 100 feet from the water or existing buildings along Commercial Street (within 35 feet of the street edge) from Maine Wharf to City Fish Pier.



Existing Buildings: No cap on floor area for marine compatible uses.
 Newly Constructed Buildings: 30,000 sq. ft. floor area cap for marine compatible uses.

The primary focus of most marine activities and operations is in the ground level of buildings. Marine compatible uses in the upper story spaces of buildings allows property owners a wider range of uses to fill vacant building spaces that otherwise may not be needed for marine uses and activities. Marine compatible uses help provide the financial return to property owners necessary for the maintenance and improvement of marine infrastructure.

In some cases the ordinance has been drafted to limit the size and scale of certain marine compatible uses such as retail and office uses in newly constructed buildings. The intent is to encourage the use of vacant space in existing buildings rather than the construction of new large offices and retail complexes.

Marine compatible uses may not exceed 20,000 sq. ft. of floor area in the upper floors of newly constructed buildings. If the building is more than 100 feet from the water, an additional 10,000 sq. ft. of floor area for marine compatible use would be allowed for the entire building. There is no limitation on the amount of upper story floor area that can be used for non-marine uses in existing buildings in order to encourage the use of existing vacant space.

Depending on the amount of floor area devoted to non-marine uses, the use may be permitted as of right or require Planning Board conditional use review.

A majority of floor area in a building must be devoted to marine uses unless the Board grants conditional use approval. This was intended as a balance to insure that non-marine uses do not overwhelm marine uses in a building or in the vicinity of the site.

The Board's recommendation includes lowering the existing height limit from 45 feet to 35 feet. The Board felt that 45 feet was too high for this area of Commercial Street.

WATERFRONT PORT DEVELOPMENT ZONE

Summary:

The Waterfront Port Development Zone is intended to protect areas with deep water access for uses that contribute to water transportation activities. Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development. Hotels and residential uses are prohibited in this zone. See page 11 of zoning text.

Zoning Map Area:

Portland International Ferry Terminal property and areas west of the Million Dollar Bridge to the Veteran's Bridge (water side). This area includes the Merrill Transportation pier facility, Ciambro, Northern Utilities and Portland Terminal Company (Guilford Transportation Industries, Inc.) property. This zone also includes an area on the northerly side of Commercial Street from the vicinity of the Veteran's Bridge to Emery Street (primarily railroad property), and an area including Maine State Pier, BIW and adjacent railroad property.

Purpose Section/Policy Statements:

"Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development."

Distinguishing Characteristics:

This zone has been established to foster and protect waterfront land with deep water access which can contribute to port activity. This area serves as a staging area and connecting point for shipment of goods from vessels, trains and other forms of surface transportation. The use of this land for such purposes is critical to protecting harbor resources for port activities.

The traditional use of this land is similar to the purposes of this zone. The land within the Waterfront Port Development Zone was originally created for transportation-related purposes. In the 19th century, land was filled along the Fore River to create Commercial Street so that shipment of goods by rail and water could be facilitated. This became the hub of the City's import and export business.

The existing transshipment facilities and the former trackage yard west of the Million Dollar Bridge shows the potential for expanded port transportation activities in the harbor. The port has experienced considerable growth in shipping activities over the last several years with the Merrill Marine Terminal and the new International Marine Terminal facility. The replacement bridge for the Million Dollar Bridge will open up new and expanded port activities for this area since the existing bridge currently limits the size of vessels that may pass through it.

The Waterfront Port Development Zone does allow conditional uses such as industrial and other marine uses that are not related to harbor transportation uses. The conditional use standard requires that "such uses will not impede or preclude existing water-dependent development on the same lot or impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses."

An aquarium is a conditional use with standards in this zone. The standards are shown below.

Aquariums, provided that:

- i. This use shall not decrease the amount of, nor diminish the quality of existing on-site commercial berthing space, as measured along the pier edge, float edge, or wharf edge, whether or not such space is in actual use as commercial berthing space at the time of the proposed use;
- ii. The proposed use, including proposed accessory parking, shall not reduce the amount of space used by marine uses located on the site and in existence on (date of passage).
- iii. The proposed use shall meet the standards set forth in section 14-320.3(14).

WATERFRONT SPECIAL USE ZONE

Summary:

The Waterfront Special Use Zone allows a broad mix of marine and commercial non-marine uses. This is the most flexible of the waterfront zones. The zone is intended to offer more flexibility for properties which are separated from the water's edge and which have obsolete buildings or facilities that exceed the scale of development appropriate for other waterfront zones. The zone prohibits hotels and residential uses. See page 20 of zoning text.

Zoning Map Area:

Areas include the Portland Yacht Services facility (former Portland Engineering site) off Fore Street and properties adjacent in the vicinity of 84 to 154 Fore Street (southerly side). This area includes the former National Distributor's warehouse and the Yale Cordage building.

Purpose Section/Policy Statements:

"The Waterfront Special Use Zone permits a wide variety of marine-related, marine-compatible, private commercial, and public uses on properties adjacent to the waterfront. The zone offers expanded economic opportunities for property owners to reuse existing buildings and facilities, enhances the economic strength and stability of the waterfront economy, and encourages uses which will increase public understanding and enjoyment of the City's marine resources. The public accepts certain non-marine-related public uses and non-marine-related private commercial uses in the belief that investments in related improvements or the return on those investments will also benefit the City's marine industries.

The zone applies only to properties with the following characteristics. First, the properties are separated from the water's edge by physical or other restrictions which impede direct water access. Second, the properties include obsolete buildings or facilities that substantially exceed the scale of developments deemed appropriate for marine uses and marine-compatible uses in sections of this ordinance regulating land use in the Waterfront Central Zone and the Waterfront Port Development Zone.

All development in the Waterfront Special Use Zone should provide for greater public access to and enjoyment of the City's waterfront, and must also benefit neighboring marine-related and marine-compatible uses on adjacent waterfront properties. Land uses in the Waterfront Special Use Zone must neither conflict with present marine-related uses on the properties or on neighboring properties, nor inhibit any future development of marine-related uses on neighboring properties. Any proposed new development or renovation for either public or private uses must meet expressed standards of compatibility with marine industrial and marine-related uses."

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Additional policy statements recommended by the Planning Board:

The zoning text of the Waterfront Special Use Zone does not restrict the amount of total floor area that can be utilized in an existing building (for structures in existence at the ordinance enactment date), since the purpose of the zone is to encourage the use and rehabilitation of such buildings. The size and scale of newly constructed buildings, in this zone however, has been limited to 30,000 sq. ft. of floor area to achieve the above objectives.

The goals of this zone may be achieved under certain circumstances, through a conditional/contract rezoning in which the size of newly constructed buildings exceeds the normal zoning requirement. Among the factors to be considered for an appropriate rezoning include: the relationship of the proposal to policies and goals of the waterfront element and other elements of the City's comprehensive plan; impact on existing marine-related uses on the property or existing or potential marine-related uses on adjacent property; circulation and parking; scale and design of the development in relationship to surrounding areas and public access.

The Waterfront Special Use Zone was created to address unique properties that have no access to water. Should such properties gain physical access to the water, the zoning for the site should be reviewed to determine whether a different zoning designation would be more appropriate to foster and protect the existing and potential use of the site for marine uses.

Distinguishing Characteristics:

This zone is the most flexible waterfront zone. The zone allows offices, retail, marine and commercial uses, industrial uses (meeting I-2 performance standards), warehousing, wholesaling, restaurants, convention centers, museums and art galleries. An aquarium is a conditional use in this zone.

The zoning text has been drafted to distinguish those areas of the zone that have direct water access and those that do not. The northerly side of the zone near Fore Street (Sprague property) does not have legal access to the water, based on a recent court decision. This area is able to take advantage of the wide range of permitted uses described above. This is also the only area of the zone that has existing buildings, aside from the former National Distributors warehouse and the Yale Cordage building.

The railroad right-of-way and land between the railroad property and the water would be restricted by the zoning text to primarily marine uses since this property does have water frontage. In this way, areas adjacent to the water can be protected for marine uses.

There are no floor area limitations on the above uses, although the zoning text does set a cap of 30,000 sq. ft. for newly constructed buildings. Newly constructed buildings over 30,000 sq. ft. would need to go through the conditional/contract rezoning process for approval. Policy criteria for such a rezoning is shown on the previous page.

The Board's recommendation did not include the Crosby Laughlin site on the northerly side of Fore Street. The Board felt that since the site is isolated from the water that it should not be classified as a waterfront zone.

URBAN COMMERCIAL MIXED USE ZONE

Summary:

The Urban Commercial Mixed Use Zone was developed to replace a W-1 zone on the landside (northerly) of Commercial Street between the Million Dollar Bridge and Center Street. This zone covers areas having the potential for the redevelopment of a mixture of commercial, marine, industrial and residential use to achieve a more productive use of land and buildings. The text of this zone is very similar to the W-1 zone. This zone is needed since the W-1 zone is being eliminated and no other existing zone was appropriate.

Zoning Map Area:

North side of Commercial Street between the Million Dollar Bridge and Center Street.

Purpose:

To provide a zone in areas of the peninsula near the central business district that are characterized by vacant land and underutilized buildings. Such areas have the potential for redevelopment of a mixture of commercial, marine, industrial and residential use to achieve a more productive use of land and buildings.

OTHER MAJOR POLICY AND ZONING ISSUES

Most of the major policy issues were outlined in the descriptions of each zone in this report. There are, however, several significant issues that cross several zones. These issues are highlighted below.

Aquariums

The Board recommends that an aquarium should be permitted as a conditional use in the Waterfront Special Use Zone and the Waterfront Port Development Zone provided that such uses can meet the appropriate review standards (including the marine compatibility standard) specified in the ordinance. The Board also recommended as a policy statement that such uses may also be considered for other locations in the City such as the Waterfront Central Zone as well as other commercial and industrial zones through the conditional contract/rezoning process.

Contract/Conditional Rezoning

The Board's zoning text recommendation provides an appropriate balance in achieving the policy objectives of the new water zoning system. Limitations were placed on the size and scale of certain non-marine uses in newly constructed buildings (Waterfront Central Zone) to insure that they are not disruptive to marine uses in waterfront zones. The size of newly constructed buildings was limited in the Waterfront Special Use Zone. The Board feels that there are appropriate circumstances, however, where the policy goals of a zone can be achieved through a contract or conditional zoning process, in which these limitations can be modified to provide more flexibility in the zoning requirements.

Contract/conditional zoning enables the City to impose restrictions or conditions on projects which standard zoning would not typically address. This process has the advantage of providing flexibility in the zoning process with the City retaining control on the type and scale of development.

The appropriate circumstances for a contract or conditional rezoning is outlined in the Waterfront Central Zone and the Waterfront Special Use Zone. The policy criteria for this type of rezoning is shown on pages 8 and 14 of this report. An important consideration in the rezoning would be the extent that the proposal invests in the improvement of marine infrastructure (such as the substructure of piers); the impact of the project on marine uses; and the relationship of the proposal to the City's Comprehensive Plan. Conditions can be imposed in the project to insure that these policy considerations are met.

WATERFRONT ZONING PLANNING PROCESS

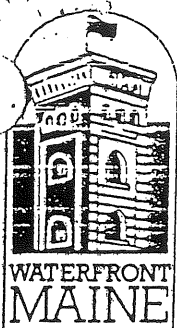
The Planning Board held eight workshops and two public hearings to discuss proposed waterfront zoning changes. The first public hearing was held on August 25th with the final public hearing on September 29th. On September 29th, the Planning Board voted 6-1 (Williams) to recommend to the City Council approval of the Waterfront Zoning Amendments attached to this report. The Planning Board also voted 6-1 (Williams) to recommend to the City Council that the Planning Board Report on Waterfront Zoning be incorporated into the City's Comprehensive Plan.

A boat and land tour of the waterfront was held by the Board early in the planning process. The Board's initial meeting included a presentation by the Waterfront Alliance of their report. Representatives of the Alliance Zoning Committee attended the Board's meetings, answered questions and offered comments on the recommendations as well as the direction of the draft zoning amendments. As appropriate, the Board also allowed some public comment during a number of the workshops.

In addition to a newspaper advertisement of the public hearings, over 900 notices were sent to area residents.

Written comments submitted to the Board are attached.

WRITTEN COMMENTS RECEIVED BY THE PLANNING BOARD
ON WATERFRONT ZONING (ATTACHED)



RECEIVED

SEP 23 1992

PORTLAND PLANNING OFFICE

September 18, 1992

Mr. Joseph R. DeCoursey, Chairperson
and the Portland Planning Board
389 Congress Street
Portland, Maine 04101

Re: Waterfront Zoning

Dear Mr. DeCoursey:

In August, I sent you, and the other members of the Board, a letter outlining my concerns relative to the proposed Waterfront Central Zone. My primary objection was to the distinction being made between buildings located in and outside an arbitrary perimeter 100 feet from the "water."

Having followed closely the work that has been done on this draft amendment to date, I have reached the conclusion, shared I believe with members of the Planning Department, the Waterfront Alliance, and the Planning Board, that the Cumberland Cold Storage Building is a unique waterfront property, not adequately addressed by the zoning ordinance as proposed.

Due to its size, masonry construction and the immense scale of its under-utilization, it is unlike any other structure on the Central Waterfront, with the exception of the Thomas Block before its renovation, a property getting very different zoning consideration. Even Karen Sanford, and others who support her extreme position, have difficulty envisioning a future use for the Cumberland Building within a marine zone. Her answer is to demolish it.

That would be a mistake, no less significant than the demolition of Union Station. The Cumberland Cold Storage Building should be viewed as an asset to the City, not a liability. It is a landmark structure, whose revitalization will impact not only the Waterfront, but Portland as a whole.

The proposed amendment includes limits and restrictions that would make it very difficult, in practical terms, to adapt and re-use the building, let alone to survive the site plan review or contract rezoning process. The ordinance is written with smaller buildings, constructed for modern marine uses, in mind. It does not take into account the importance of first floor rental income to a large commercial project, the primary infra-structure expenses involved in modernizing a 5 story building, nor the serious competition for marine tenants offered up by the adjacent City Fish Pier.

The effort to protect the special character of Portland's Downtown Waterfront has focused primarily on insuring the availability of berthing, access and ground floor space for its traditional marine industries, particularly the fishing industry. Much less attention has been paid to the use and preservation of what few historic buildings remain on the harbor.

An economically viable, adaptive re-use of the Cumberland Cold Storage Building poses no threat to the "working" waterfront. Because of its size, configuration, and outdated construction, the building has attracted little or no interest from marine-related users. In comparison, the adjacent City Fish Pier offers seafood businesses a large property with first class facilities dedicated to serve their needs.

In short, the Cumberland Cold Storage Building is better suited to a B-3 Zone than the zone presently under consideration for the Central Waterfront. To upgrade and lease the building will require resourcefulness and zoning flexibility, similar to that proposed in language under the Special Use Zone. We believe that we can make this property work again if given the opportunity.

It would be my pleasure to tour the inside of the building with you or any other interested members of the Planning Board. My past efforts to show the property to members of the Waterfront Alliance and to include it on the Planning Department's tour of the Waterfront met without success.

Please contact me should you have such an interest.

Sincerely,



Peter Mellin

cc: Joseph Gray



September 17, 1992

Joseph DeCoursey, Chairman
Portland Planning Board
City Hall
389 Congress Street
Portland, ME 04101

Dear Chairman DeCoursey:

I am writing on behalf of Portland Trails to request a clarification of the description of permitted uses in the proposed Waterfront Port Development Zone, Waterfront Central Zone and the Waterfront Special Use Zone as now being considered by the Planning Board. As you know, Portland Trails is a non-profit community-based organization set up in Portland to help implement the Shoreway Access Plan, which was commissioned by the City in the late 1980s and adopted as part of its comprehensive plan. As I understand it, the zones as currently proposed permit public uses including pedestrian parks or landscaped pedestrian parks and plazas, and "other similar outdoor pedestrian spaces." We are requesting that you add to this language by way of clarification ". . . including without limitation pedestrian and bicycle trails." (See Section 14-314(5)(b), Section 14-319(3)(b) and Section 14-320.6(4)(b) of the 9/11/92 Draft.)

Although we think this is a clarification only and merely makes explicit what is implicit, I would be happy to speak at more length to the Planning Board at a workshop or public hearing if you think that would be helpful.

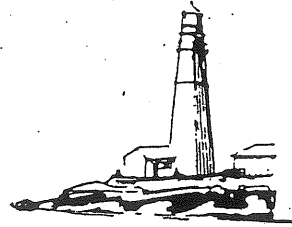
Thanks for your consideration.

Very truly yours,

J. Peter Monroe, President
Portland Trails

cc Joseph Gray

Casco Bay Island Development Association, Inc.
P.O.Box 3373, Portland, Maine 04104.



September 14, 1992

Mr. Joseph Gray
Planning Department
Portland City Hall
Portland, Maine 04101

Re: Waterfront Zoning

Dear Joe Gray:

At a meeting on September 12, the Steering Committee of Casco Bay Island Development Association voted the following position on the matter of the Portland Waterfront zoning.

Casco Bay Island Development Association is opposed to further delay of waterfront zoning.

Casco Bay Island Development Association favors unlimited use for upper floors in the Central Zone as long as tenants are willing to abide by the statement of purpose for the central zone.

Sincerely,

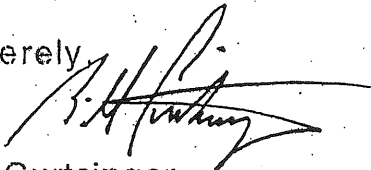
Jean Dyer, President Casco Bay Island Development Association

It is my understanding that the proposed language in the new waterfront zoning document would prohibit an aquarium from the central wharf area but allow it east of the Maine State Pier. Who can say just exactly where an aquarium will end up on the waterfront. There have been many proposals over the years about site location. These proposals have involved property all along the waterfront, not just east of the Maine State Pier. It would be a serious mistake and not in the city's best interest to zone out a public aquarium from the central wharf area. The aquarium should go in the right place for an aquarium. It should go wherever it can go along the waterfront that makes sense for a hundred reasons, but not in a location settled on in advance for political expediency.

Several years ago I supported the waterfront zoning ordinance. As a member of the public and a Portland resident, I felt we needed to step back and take a look at the waterfront and try to figure out how to best utilize this important area with the public and the city's long term interest in mind. I support the idea of "marine" use, but that marine use concept needs to change and evolve, just as the marine resource that traditional marine use depends upon is changing and evolving and in some cases, disappearing. The income loss to the city through overly restrictive zoning is another major issue here, and one I hope you and the council will give fair attention to.

Today, I don't feel that such restrictive language and zoning satisfies the long term interests of the public, waterfront property owners, and traditional users of Portland's waterfront. Zoning out from the central wharf area a public aquarium whose time has surely come is a bad idea, and one I hope you address fairly in your upcoming deliberations.

Sincerely,



Bill Curtsinger

MAINE WHARF

A S S O C I A T E S

BERLIN MILLS WHARF

A S S O C I A T E S

September 4, 1992

City of Portland, Maine

Planning Board

Dear Members of the Planning Board:

My name is Joe Schmader, and I am the owner and operator of Berlin Mills Wharf and Maine Wharf here in Portland. I am also President of Gowen, Inc. a Marine oriented company that has it's roots in Portland since 1907. I am writing you at the request of Mr. Richard Knowland. I was out of town for the Public Hearing, but have read and talked to a number of people who attended. I feel there were many valid points made however, I don't feel the real issues were discussed from a nuts and bolts stand point.

I have been involved in the Marine field all my life; from an avid recreational boater, owner of fishing boats, operator of a fish take out, designer and builder of fish processing equipment, to presently the operator of a shipyard, owner and renter of waterfront property since 1968 and dealing with the zoning laws and the appeals process. My background allows me to put things in a different perspective from what I heard to date. I believe we have an opportunity, not only to achieve some well defined zoning for our waterfront which will allow us to be a profitable, supportive members of the community, but also deals with some of the red tape, saving the taxpayers money.

Two areas which concern me are:

- a) How to deal with the 1st. floor space along Commercial Street, which is not suitable for water dependent business
- b) Definitions of Marine uses.

I feel the way the alliance and other respected parties are dealing with the 1st. floor space on Commercial Street, creates another set of costly problems to the owner and the city. To be more specific, 100' from what! The water's edge? Are we talking a radius? Is water really what we are concerned about? No, I believe the concern is the ability of business (fish take out, processing, boat repair and berthing, etc.) I feel we need to define the water dependent as to water depth, i.e. naviable water at low tide.

If you look at the existing map of Commercial Street and the head of each slip, by using a 100' from the waters edge really doesn't do anything except create a lot of work in the zoning appeal process, 22 I believe, not to mention everybody's attempt to read something different into the language.

I would like to propose a clearly defined line off Commercial Street. For example, any building adjacent to Commercial Street, within 100' of the center of Commercial Street be zoned Marine compatible. If you review each building and the head of each slip, I believe we accomplish the same intent of keeping wharf and building space available for water dependent businesses.

With the way it is currently stated, I foresee approximately 20 property owners requesting conditional use variances, after expending many dollars and time.

Using a bench mark off Commercial Street, I would project one request for a conditional use, the Cumberland Cold Storage Building, which is clearly a different issue.

In further support of the above, there is not an existing building within 100' of the center of Commercial Street that can meet the need of a water dependent business.

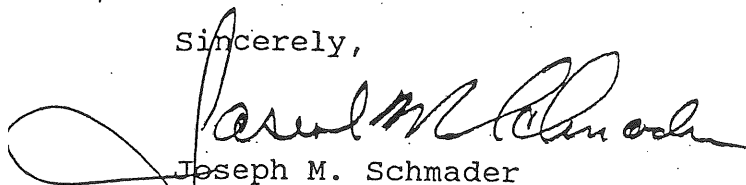
The only slip that is navigable to it's head within 100' of Commercial Street is between Long and Chandlers Wharfs, which at the present time is being used for it's highest and best use.

I have spent the past 5 years attempting to define Marine Companies that need access to the water and the type of access they need. All of the businesses I can come up with require direct access: un-obstructed to navigable water at all hours of the day. Based on this, there is not an existing building within the 100' of Commercial Street, which has navigable water access. I have defined navigable water as 8' at MLW.

I will be at your work shop Tuesday Sept. 8th. to answer any questions you may have on this or any area my experience may lend.

I thank you all for your time and firmly believe we will achieve a workable zoning we can all be proud of.

Sincerely,



Joseph M. Schmader

cc: Joseph R. DeCoursey, Chair
Kenneth M. Cole III, Vice Chair
Jadine R. O'Brien
Irving Fisher
Cyrus Hagge
John H. Carroll
Donna Williams

to: members of the Planning Board
from: Nini Mc Manamy
10 Willis St.
Portland, Maine 04101

date: 9-8-92
re: waterfront zoning

I would like to reiterate for you my concerns regarding waterfront zoning, and make some suggestions regarding the process for handling the Alliance report.

These are personal concerns. The Munjoy Hill Neighborhood Association is in the process of polling its membership to determine their priorities for development in the special use zone, and expects to have results during the first week in October.

First, the Alliance report is totally inadequate on the topic of economic development. Their charge, as reiterated in their report, suggests their task was to develop something like a business plan for the entire waterfront, with zoning recommendations to carry out that plan.

Instead, they have become consumed by the technology of zoning ordinances, and either leapfrogged over or hidden from public view their assumptions and priorities for economic development.

I urge you, as the planning board, to initiate the economic and social planning which is absent from this document, and to leave the zoning now in place untouched until it is clear what the residents of Portland want for their waterfront-- with the exception of those items which may receive universal support, such as limited second-floor relief.

As part of this planning process, you might recommend that the city council ask the city manager to assign an interdepartmental team from economic development, planning, and health and human services, at a minimum, to staff this effort. The working team for this process should collect and publish data essential to develop a plan for the waterfront:

numbers and kinds of jobs there, with earnings and benefits for those jobs (I've been told that no one seems to know how many people are employed in various parts of the fishing industry on the waterfront, for example) so we know what works and should be preserved;

rents, incomes, vacancy rates, ownership and real estate values for properties there, to show the effect of the various types of zoning we have had over the last decade;

histories of mixed use properties of equivalent scale elsewhere;

data on workforce characteristics in the Portland area, to show what kind of jobs should be encouraged to improve the well-being of our citizens;

data on lending patterns of financial institutions along the waterfront to see what kind of investment is occurring; and so on.

This data should be then developed into two or three scenarios for consideration by the planning board and city council, with explicit statements about economic and social development theories contained in each scenario and infrastructure needs to be funded by the city, state, and federal government. Only then should zoning language be developed to carry out the best, and most achievable vision.

If the planning board could forward such recommendations to the city council, along with developed information about resources and timelines necessary to complete the process, no momentum would be lost since this kind of planning will have to be done piecemeal in the future if not now, and future repeated, wasteful hearings on conditional use applications, could be avoided.

Thank you for listening.

MEMO

To: Portland Planning Board
From: Orlando E. Delogu, Professor of Law, Resident of Portland
Date: August 25, 1992
Subject: Proposed Waterfront Rezoning

Introduction--Underlying Facts and Assumptions:

1. The present waterfront zoning (lying primarily on the water side of Commercial Street) encompasses a little more than 1% of the total land area of the city. It is a small (approx. 2 ½ miles long) almost straight line waterfront. It affords some of the finest deep water anchorage on the east coast. Within this compact area the widest range of water dependent uses and activities are, and must continue to be, located. Waterfront land is a scarce resource--it should not be wasted--the present waterfront zoning more fully protects this resource than any of the proposals for change that are on the table.
2. The present waterfront zoning is in accord with federal policies as articulated in the Coastal Zone Management Act; the State of Maine's coastal management policies; and the City's comprehensive plan.
3. There is no shortage of land area in Portland, much of it in close proximity to the waterfront, which can accommodate the full range of non-water dependent land uses and activities that a dynamic downtown (and urban) economy requires. These activities do not need to be on the waterfront; they have already been allocated more space than they can possibly use (upper story office vacancy rates on Congress Street presently exceeds 40%); they do not mix well with working waterfront activities--in fact, there is a considerable body of evidence suggesting that over time these upscale non-water dependent activities tend to drive out (either by regulation or economic clout) working waterfront activities. Sound planning and zoning should not permit this.
4. There is also considerable evidence that Portland's working waterfront, protected by the present waterfront zoning, fared relatively well in the economic downturn that Maine and the City of Portland have recently endured. As we emerge from the recession, as we contemplate the construction of a new high level bridge (between Portland and South Portland) that will make the inner harbor more accessible, and as some of the infra-structure improvements along the waterfront and on many of the piers is completed, there is every reason to believe that working waterfront economic activities will expand further providing both taxbase and reasonably well paying jobs to the City.

ALL OF THESE FACTORS TAKEN TOGETHER SUGGEST THAT FEW, IF ANY, CHANGES OUGHT TO BE MADE TO THE PRESENT WATERFRONT ZONING. IT AIN'T BROKE--DON'T FIX IT.

Fine-Tuning The Present Waterfront Zoning--Some Suggestions:

There are in my judgment at least three useful modifications to the present scheme of waterfront zoning that ought to be considered by the Portland Planning Board and City Council. None would abandon the fundamental underlying concept of the present zoning, i.e., that the waterfront ought to be reserved as fully as possible for water-dependent uses and activities. At the same time the modifications suggested here seem both fair and economically sound and create a measure of useful flexibility in the present zoning.

1. A recent Maine Law Court decision, CNR v. Sprague & Portland Yacht Services, makes clear that a portion of the property in the India and Fore Street area of the initiated waterfront zoning (and extending towards the Eastern Promenade) has been cut off from access to the water. Accordingly, the boundary of the waterfront zone in this area should be redrawn. The waterfront land should remain in the zone--the area cut off from the waterfront should be excluded; it should be treated (zoned) in a manner similar to land presently situated on the non-water side of Commercial, India, and Fore Streets.
2. A range of non-water dependent uses and activities could be permitted in the waterfront zone as "accessory uses" functionally related to, and integrated into (a logical extension of) a permitted water dependent use or activity. Thus, for example, a parking garage, a filling station, a machine shop, a restaurant, a gift shop, or a newsstand which is part of a ferry terminal facility, a cruise boat terminal facility, a marina or a fish pier complex could be a permitted "accessory use". Standing alone these activities would not normally (and should not) be permitted in the waterfront zone.
3. The 2nd, 3rd, and 4th floors of existing buildings in the waterfront zone may not always lend themselves to marine related and water-dependent adaptation and use. It would seem useful to modify the present zoning to allow those pier owners that can show a long-term high vacancy rate in these upper stories of existing buildings (for example, a vacancy rate 5-10% above the average commercial space vacancy rate in Portland that lasts a year or more) to let space to a range of non-water dependent office uses and activities. An upper limit of such non-water dependent rental in those buildings that qualify would probably be appropriate, 25-40% of total upper story building space, for example. It goes without saying that any new construction in the waterfront zone should be in conformance with the present zoning--the economic safety valve that would be created by the modification suggested here is not needed for new waterfront investment (building) made with full knowledge of, and in conformance with, the presently existing (marine related, water-dependent) pattern of waterfront zoning.

FINE-TUNING PORTLAND'S WATERFRONT ZONING IS APPROPRIATE--BUT WE SHOULD NOT ABANDON THIS PATTERN OF ZONING. THE WATERFRONT IS WORKING--ZONING STABILITY WILL CONTRIBUTE TO THE CONTINUING SUCCESS OF THE WATERFRONT.

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To
Portland Planning Board,
Company
Joseph Gray + Alexander Jaegerman
Location

Fax #
207 874-8649
Comments

Telephone #

No. of Pages 2
Relay's Date 8-23-92
Time

From Leonard A. Lucas
Company Guilford Transportation
Location Dept. Charge

Fax #
Telephone # 603 429-1115
Original
Disposition: Destroy Return Call for pickup

Please make copies and distribute to etc
above individuals

Real Estate
7 Executive Park Drive
Merrimack, N.H. 03054
803 429 1115
603 429 1755 FAX



August 21, 1992

VIA FACSIMILE TRANSMISSION
(207) 874-8649

City of Portland Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

Re: Waterfront Zoning

Dear Planning Board Members:

The current waterfront zoning proposal places property owned by Portland Terminal Company in the Waterfront Port Development Zone. This property is located between the Merrill Marine Terminal and the so-called "Million Dollar Bridge". I should note for the sake of accuracy that Portland Terminal also owns property on the north side of Commercial Street east of the bridge. This too is included in the Waterfront Port Development Zone even though property across Commercial Street is located in the Waterfront Central Zone.

At the August 11, 1992 workshop session, I addressed the Board with respect to Portland Terminal Company's objections to the proposed zoning. These objections concern the effect of distinctions between the Waterfront Central Zone and the Waterfront Port Development Zone in light of current economic conditions. In formulating its re-zoning proposal, the Waterfront Alliance makes a point well taken that current economic conditions do not sustain development or maintenance of waterfront dependent/related uses. Consequently, the current zoning proposal liberalizes the permitted uses in the Waterfront Central Zone. Ironically, the proposal also intensifies the restrictions placed upon land located in the Waterfront Port Development Zone. It is this distinction that concerns Portland Terminal Company. It is unfair to both Portland Terminal as a land owner and the City so far as it may be interested in the tax base, that the current zoning proposal recognizes and alleviates

City of Portland Planning Board
August 21, 1992
Page Two

the hardship associated with water dependent/related restrictions on one hand and intensifies those hardships on the property of another, resulting in a severe decrease in value.

Therefore, I propose that the boundaries of the Waterfront Central Zone be expanded to include all of the Portland Terminal property. I would also ask that the list of permitted uses be expanded to include railroad and railroad related activities, given the historical use of this property.

Further, it is my understanding that the City would like to foster industrial development in this area. Toward that end, I suggest that the Planning Board review the performance type restrictions contained in the current Waterfront Port Development Zone proposal. Specifically, height restrictions should not be determined in accordance with street site lines but rather with the needs associated with industrial development. Further, the noise performance criteria in the Waterfront Port Development Zone should be no less stringent than that proposed for the Waterfront Central Zone. It should be recognized that although a residential area abuts the Portland Terminal property, the Portland Terminal property enjoys a long history as a rail related parcel. Therefore, the change from a rail use to even a non-rail industrial use should not impose an unknown or previously unforeseeable burden upon abutting property owners.

I sincerely hope that these suggestions address the request of the Planning Board for a more specific proposal on the part of Portland Terminal property. Once these policy-type decisions relating to the Portland Terminal property can be made, I stand ready, willing and able to work with the Board on tailoring the specific language of the proposed zoning amendment.

Sincerely,

PORTLAND TERMINAL COMPANY

By: 

Leonard A. Lucas

LAL:img

cc: Joseph E. Gray Jr., Director
Planning Urban and Development
Alexander Jaegerman, Chief Planner
Robert Ganley, City Manager

CHESTER & VESTAL
ATTORNEYS AT LAW

EDWIN P. CHESTER
BARBARA A. VESTAL

107 Congress Street
Portland, Maine 04101
Telephone (207) 772-7426

August 20, 1992

Portland Planning Board
389 Congress Street
Portland, ME 04101

RE: Waterfront Zoning

Dear Planning Board Members:

I will be out of town during the week of August 25th, so I am writing to express my concerns about the most recent draft of the Waterfront Zoning. While I agree that some modifications are required in the existing zoning, I believe Portland should take a cautious approach. Any modifications should reflect what we have learned during the last decade, and should draw on techniques developed by other communities faced with similar issues.

I believe the ordinance as drafted fails to provide sufficient protection for water dependent uses (WDU's). There are a multiplicity of reasons for reserving sites which have adequate shoreside access for active WDU's. Many of these WDU's, such as commercial fishing, are resource dependent, therefore cyclical; if space is not reserved for them when the resource is down, they will not be able to secure adequate space when the resource is up and they have much to contribute to the local economy. Similarly, berthing space and space suitable for the transfer of people and goods between land and sea is a scarce resource. Due to increasingly stringent environmental laws, we should not expect that much new dredged and engineered waterfront space will be created in the future. We must reserve what we have for uses that can only be accommodated on these sites. National and State policy makers (both in Maine and in many other coastal states) have recognized the importance of protecting shoreline space for water dependent uses (see e.g., the Federal Coastal Zone Management Act and Maine's Coastal Management Policies Act, made applicable to municipalities through the Growth Management and Shoreland Zoning Acts). Beyond the fact that it is in our economic self interest to do so, these laws also mandate protection of suitable shoreline space for WDU's.

This does not mean that we have to freeze out all other uses while reserving spaces for water dependent uses. But it

certainly does require much more than just including a laundry list of marine uses among a host of permitted uses as the current draft does.

The current Waterfront Central Zone Purpose Statement correctly identifies that the role of "marine compatible" uses should be to provide the financial return to support the marine infrastructure. The necessity for this financial linkage is the major lesson we should have learned from the mistakes made in 1983's W-1 Zone. But there are much more creative, and much more effective, ways to approach this problem than just juggling permitted and conditional uses, imposing some very generous square foot limits on non-water dependent uses, and hoping that pier owners will choose to reinvest their profits to improve the marine infrastructure.

For example, "marine-compatible uses" could be allowed only if they are temporary or reversible (see New York State Guidelines), thus avoiding an irreversible conversion from WDU's. Or the underlying zoning could permit only WDU's, with the possibility of rezoning to a floating zone that allows a broader range of uses if the applicant is able to demonstrate that the proposed development will actually provide infrastructure or financial support for water-dependent and marine-related support services. (See Stamford, Connecticut for the concept, which would need modification to insure proper public benefits.) Or, a conditional rezoning process could be established for larger projects which would require specific discussion and review of the proposed contribution to the marine infrastructure. (See Washington State Department of Ecology guidelines for mixed use waterfront developments.) These are just examples of a few of the techniques that could be incorporated.

While I understand the Waterfront Alliance was asked to make recommendations, I believe those recommendations should only serve as a starting point for discussion. The Planning Board and City Council should not abdicate their responsibility to evaluate those recommendations against city-wide objectives for the waterfront. Similarly, their lay recommendations should not preclude creativity by the planning and legal staff in translating the objectives into an actual enforceable zoning ordinance.

My major concerns with the proposed ordinance are as follows:

WATERFRONT CENTRAL ZONE

1. The purpose statement is generally good but neglects

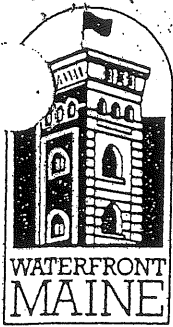
to mention that sites suitable for active WDU's are a scarce resource. The balance of the ordinance fails to live up to the objectives set out in the purpose statement. This is a serious problem since the purpose statement cannot provide what is lacking in the remainder of the text.

2. The standard for compatibility of non-marine uses with marine uses (14-317(14)) is too weak. It should provide that non-marine uses may not displace existing marine uses, nor may they locate in areas which have been occupied by WDU's during the previous five years, nor may permanent uses locate in areas where there is now or will be in the foreseeable future a demand for space by WDU's. The issues should not be limited to non-interference with currently existing WDU's or non-impedance of access to the water by existing or potential marine uses; the criteria should also preclude conversion of existing or potential sites which are suitable for WDU's.
3. The map should be further refined and new zone(s) created as appropriate to make more of a distinction between a very limited retail/office area at the foot of the Old Port and the rest of the central waterfront. The remainder of the central waterfront should be more industrial in emphasis, with much more limited conditional uses. As drafted now, this district is a step backward to pre-1983, when the waterfront was opened up to almost any use.
4. As we have learned from experience, conditional uses are basically permitted uses. They should not be included unless the Planning Board is willing to see the entire zone built out in those uses.
5. The conditional use size restrictions are excessive for all uses, but for particularly for new construction. If the intent is to give relief to current owners with vacant upper story space, why allow such large non-WDU's in new buildings? There are no requirements that this new development contribute to the marine infrastructure. This also is in direct conflict with the Downtown Plan and goals of revitalizing Congress Street. The standards are phrased per building; nothing prevents a series of 20,000+ square foot buildings on a single pier 100% of which could be occupied by non-WDU's.

6. As I read the draft, parking is required for WDU's (perhaps at 50% of the amount otherwise required), but not for conditional uses or uses above the ground floor. This actually penalizes WDU's and will cause even more congestion in this area. Conditional uses and uses above the ground floor should be required to lease off-site parking across Commercial Street or make a contribution in lieu of parking to support construction of a new centralized parking facility, shuttle parking or other system.
7. One rationale for allowing retail, office, and restaurant use on the waterfront has been to create an area for the public to enjoy the marine ambiance. So if some of these conditional uses are retained, they should at least be subject to design standards to ensure that the resulting non-WDU's create a lively, interesting, publicly-accessible area. Public walkways, observation areas, decks, interesting signage, pedestrian amenities, etc. should be required. (See, e.g., Portland's B-3 Design Standards and the Waterfront Design Standards, Norwalk, Connecticut.)
8. Since any commercial use which is permitted above the ground floor is allowed as a conditional use on the ground floor if there is no functional access to the water's edge (14-315(1)(e)), there needs to be a prohibition on any further division of existing lots in any way which would reduce functional access to the water. (See Norwalk Marine Commercial Zoning for a similar provision.)

WATERFRONT PORT DEVELOPMENT ZONE

1. The purpose statement and remaining provisions are generally good. However, I believe the conditional use standard for physically adaptable/relocatable uses may need to be fleshed out to spell out the powers of the Planning Board to impose conditions that will trigger removal of a non-marine industrial activity.
2. At least in the 8/11/92 draft, the dimensional requirements contain references to parts of Munjoy Hill that are not contiguous to this proposed zone. They should be deleted.
3. The noise performance standards should be reviewed for treatment of impulse sounds, to set maximum limits on those sounds regardless of averaging. As a possible model, see the 1983 DEP sound limits imposed



July 31, 1992

Mr. Joseph R. DeCoursey
and Members of the Portland Planning Board
389 Congress Street
Portland, Maine 04101

Dear Mr. DeCoursey:

As one with a vested interest in the Waterfront, I am troubled by a particular provision in the draft ordinance presently under review, specifically, the restriction placed upon the ground floor of buildings located within 100 feet of the water.

It is my understanding that the selection of this distance, during deliberations of the Waterfront Alliance, was an arbitrary one. Numbers were thrown against the wall, and "100" happened to stick. It was not a decision based upon a careful study of particular properties, nor a clear understanding of the unique interplay between boats and certain buildings.

The stated intent of the Waterfront Alliance was to provide a mechanism for preserving those waterfront structures of unique significance to marine business, in particular, the ground floor space of buildings whose close proximity to the water facilitates the loading and unloading of boats, and other marine-related operations. These buildings typically are situated within 2 feet, or 5 feet, certainly no more than 10 feet from the water's edge. If a truck can be driven between a building and the water, its ground floor serves no particular advantage to marine users.

The Cumberland Cold Storage Building, in which I share ownership, was constructed within 55 feet of the water. It was built with railroads, not boats, in mind. Over its long history, it has made molasses, canned fruits and vegetables, and stored potatoes and chicken. To my knowledge, it has never housed a marine tenant, in the narrow definition of the word we apply today. The building is vacant, not because of its condition (there are many more buildings on the Waterfront in worse shape), but because marine tenants find it ill-suited to their operations, due to its type of construction and its distance from the water.

I urge you to examine this provision in practical terms, to reduce the width of this 100 foot perimeter, with its ground floor restriction, to the width of a common roadway, say 30 feet. The Working Waterfront will not suffer. It will be preserved on the ground floors of buildings, with an obvious marine advantage, and on the city-owned properties specifically reserved for marine use. Non-marine buildings, like Cumberland Cold Storage, cannot be revitalized without viable use of their most rentable floor.

Sincerely,


Peter Wellin

Waterfront Maine
14 Maine Street
Brunswick, Maine 04011

KEEP THE PORT IN PORTLAND

August 23, 1992

Joseph DeCoursey, Chair,
Members, Portland Planning Board

Re: Waterfront Zoning

Dear Mr. DeCoursey and Planning Board Members,

Because we are taking our son to college this week, I cannot attend the Planning Board Public Hearing on Tuesday.

Due to lack of time, I must submit to you this draft version of my public comments. I am sorry about the mess.

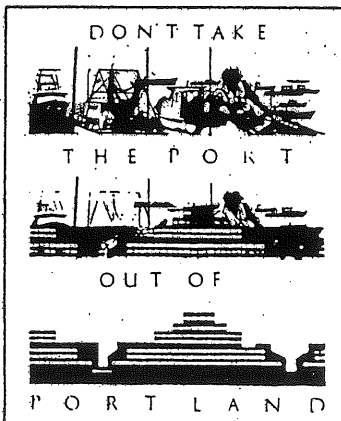
I look forward to other chances to discuss this with you.

Sincerely,


Karen Sanford

Copy of newspaper
article is attached

cc: Joe Gray, Alex Jagerman,
Rick Knowland



Look at the SPECIAL USE ZONE next to Bath Iron Works:

As I just said, the Alliance consensus was that the Portland Engineering property has some characteristics which distinguish it from other waterfront areas (including possible lack of access to the water) and that, therefore, some uses that would not be acceptable in the industrial heart of the working waterfront could be permitted there.

The proposals for that area began with some measure of care for the waterfront and the neighborhood, with the Port Development Zone underlying, which was liberalized to the Central Zone underlying, which then went to a Special Overlay Zone and has ended up with the most permissive zoning, (either on or OFF the waterfront) that could be imagined. Convention Centers of almost any size, huge new office buildings, an aquarium;

And all of this as OUTRIGHT PERMITTED USES, subject only to a 50% of normal parking requirement !

This makes the half-a-million square foot, 330 condo complex called "Eastern Point" look like child's play.

And, what about the SINGLE MOST IMPORTANT COMPONENT OF THE CONSENSUS COMPROMISE WHICH WAS THE CONCEPT OF ALLOWING NON-MARINE, BUT MARINE COMPATIBLE USES ON UPPER FLOORS OF EXISTING BUILDINGS, or possibly, in some buildings without water relationship, on all floors ?

During much of 1990, the Alliance worked on the two large industrial zones at the east and west ends of the waterfront that suffered under archaic zoning and the referendum overlay on top of that. At that time, the concept of MARINE-COMPATIBILITY was born. We centered all of this work on that concept and forwarded these ideas to the city - the IM1 and IM2 zones. The concept was then applied to the Central Zone as we sought ways to give relief to property owners from the marine-only provisions of the 1983 and 1987 zoning laws. We asked,

HOW CAN WE GIVE ZONING RELIEF WITHOUT CHANGING THE WORKING CHARACTER^{of} OR SETTING UP CONFLICTS BETWEEN NON-MARINE and MARINE USES ON THE WATERFRONT.

The Alliance repeated throughout its recommendations that there should be developed some "PERFORMANCE STANDARDS OR CONTRACT ZONE" provisions which would ensure the compatibility of new uses with the marine uses.

I was assured 50 times over that property owners did not want fancy restaurants or boutiques or art galleries or ANY OTHER USES WHICH WOULD INEVITABLY CONFLICT WITH THE DAILY INDUSTRIAL ACTIVITY OF MARINE INDUSTRY.

What do we end up with in this text ? On the 9th and FINAL page of the Waterfront Central Zone proposals, performance standard #14 of 14 standards - there is a paragraph which meakly suggests that non-marine uses not "UNREASONABLY INTERFERE WITH THE EXISTENCE OR OPERATION OF MARINE USES NOR SIGNIFICANTLY IMPEDE ACCESS TO VESSEL BERTHING."

Where is the working waterfront protected from becoming ^{A NEW} OLD PORT ON-THE-WATER ? Jewelry shops, boutiques, art museums, art galleries, antique stores, trendy restaurants, book stores, gift shops, banks, parks and plazas, shiny new office/retail/restaurant complexes, hair salons, pizza places, NEW BUILDINGS NEARLY THE SIZE OF THE 35,500 sq' MARINE TRADE CENTER, NEARLY TWICE THE SIZE OF THE CARROLL BLOCK (18,000 sq.ft), UNLIMITED CONVERSION OF EXISTING BUILDINGS TO ALL OF THIS - NOCAPS ON OFFICE SQUARE FOOTAGE, NO CAPS ON RETAIL, AND RESTAURANTS TWICE THE SIZE OF BECKY'S! *With such uses on upper floors, First Floor marine businesses don't stand a chance!*

THIS IS MARINE-COMPATIBLE ? THIS IS A WORKING WATERFRONT ? THIS HAS NOTHING TO DO WITH GIVING PROPERTY OWNERS SOME UPPER STORY FLEXIBILITY. THIS IS A PRESCRIPTION FOR A COMPLETE TRANSFORMATION AWAY FROM A WORKING WATERFRONT AND TOWARD A TRENDY ONE AWAY FROM WELL-PAYING JOBS AND TOWARD MINIMUM WAGE. A COMPLETE TRANSFORMATION !

THIS IS NOT RHETORIC; THIS IS WHAT THIS ZONING PROPOSAL PERMITS AND ENCOURAGES.

FORGET THE THREAT TO THE WORKING WATERFRONT :
Does the City of Portland, after spending \$30,000 on a study of how to fix the 41% ^{retail} vacancy rate on Congress Street and the 12% vacancy rate in the Old Port, really think that creating a third retail district with the competitive advantage of a waterside location is wise ?

You know, Portland was heralded nationally as one of the few waterfront cities that, during the pressures of the 80's, stood firm with its working waterfront and bucked the trend to go trendy. (Since then, a number of these trendy waterfronts have failed.)

1987, The people of Portland did more than vote NO CONDOS as some like to suggest. I don't think for a minute that the people of Portland want us to become yet another Newport, Rhode Island or Salem, Massachusetts where the last fishermen are now being driven off their waterfronts. Portland can offer tourists a REAL WORKING WATERFRONT IN AN UNPARALLELED HISTORIC SETTING.

The Waterfront Alliance recommended "NO NEW LARGE OFFICE BUILDINGS". That's where we began.

The process of the last two months, when business people have been allowed to craft their own zoning, has given us, as conditional uses, which usually means permitted, BRAND NEW, 30,000 square foot office/retail/restaurant complexes - 20,000 office, 6,000 retail and 4,000 restaurant. No parking requirements at all for non-marine uses. The Cumberland Cold Storage could very well be granted permission to convert all 98,000 square feet to office/retail/restaurant. That's what the property owner wants and that what he got.

Aiding such property owners is the 100' provision. Here is its history:

On the final day of Alliance board discussions about zoning, the property owners dropped a bomb into negotiations. They departed from the long-standing plea for upper story relief and proposed that ALL FLOORS BE NON-MARINE if MARINE-COMPATIBLE.

In a pressure-filled, last minute compromise, the Alliance agreement was that, after a case by case review of buildings which were perhaps not suitable for marine industry because of their distance from water, a liberalizing to all-floors-marine-compatible could be considered. It was thought that there were only a few such buildings. The Alliance suggested the somewhat arbitrary distance from water might be 100 feet.

We ended up with a provision that if ANY PORTION of a building is 100 feet from the water, it may qualify for 100% non-marine.

What is to stop a property owner from leasing the water's edge to a water-dependent use and then claiming that either existing or new buildings on the pier are not water-accessible and therefore qualify for the 100% non-marine rule. Isn't that a possible outgrowth of this provision ?

What about Marinas on the Central Waterfront ?

The Waterfront Alliance made no recommendations about marinas on the Central Waterfront.

The W-1 underlying zoning allows marinas as a highly-regulated conditional use; they are prohibited in the W-2. The referendum overlay defers to the more restrictive W-2 prohibition on marinas.

They were liberalized immediately (See July 2 Draft), and became outright permitted in the entire central zone. On July 14, the 50-feet-of-non-commercial-berthing standard in the W-2 was questioned as being too small. They were removed as an outright permitted use.

A marina manager was asked to help draft the marina language.

We've ended up with considerable liberalization of marinas. Its a back door, foot-in-the-door approach where now rack storage is outright permitted (contrary to Waterfront Task

Force Recommendation #3), there can be ^{over} 150 feet of recreational berthing on pier and there is no limit to the amount of linear feet on a pier which can be devoted to yacht sales and repair.

Our 18M dollar public investment in the Fish Pier is threatened by any possible reduction in the amount of commercial berthing on the working waterfront. Without adequate fish boat berthing, the auction can not survive.

This liberalization of marina provisions flies in the face of the arduous legislative process of 1986, when Keep the Port in Portland, then-Councilor Esther Clenott and the Portland Planning Board, concerned about the loss of commercial berthing experienced in the Chandlers' Wharf condo development, presented three packages of commercial berthing protection measures which the City Council molded into law in the Spring of 1987.

In 1989, taxpayers paid roughly \$30,000 to study the berthing needs on the Portland waterfront as part of the Waterfront Task Force effort. Recommendation #9 reads: MORE FISHING BOAT BERTHING IS NEEDED AND THE BEST SITE IS AT THE PORTLAND FISH PIER.

MORE FISH BOAT BERTHING IS NEEDED, say the consultants and the Task Force and yet these proposals have the potential of seriously undermining that directive.

In summary, there is no relationship, absolutely NO RELATIONSHIP between this proposed zoning plan and the recommendations which I helped write with the Waterfront Alliance.

The zoning subcommittee of the Alliance which has been working with the Planning Staff and the Planning Board on those recommendations has acted like children in a candy store where everything is free.

These last two months have been little more than an exercise in special interest lobbying and legislation.

Only the Port Development Zone recognizes that it sits on valuable deep water.

Since the 1983 Marine Only W-2 was enacted by City Council, the community debate has been about allowing some upper-story flexibility - to more fully use existing buildings and thus help support the marine infrastructure. We all agree that adding some truly marine-compatible uses to the W-2 is a good idea. But NEVER has the community debate been that we need to simply delete a few of the most egregious uses from the wide-open W-1 (such as condos and convention centers) and make the whole central waterfront W-1 !

After all we've been through since 1981, it should be stunning to Portlanders that our city might even consider this sweeping waterfront-gentrification proposal.

In this time of great need for industry and good jobs - when national leaders are saying : "PUT AMERICA BACK TO WORK" and calling for us to become a greater export nation, can the city named for its waterfront identity seriously consider *enacting* a law that over the next few years could turn our invaluable working waterfront resource into yet another themepark ?

Let's go back to the drawing boards and come up with a waterfront zoning plan that, at least once in its 30 pages, uses the words "RESOURCE PROTECTION".



Associated Press

GERTRUDE Z. ZDANOWICZ SALEM

Michael Zdanowicz sits on the stern of his lobster boat, Gertrude Z. in Beverly, Mass. Zdanowicz, whose grandfather started the family's lobster business in Salem, Mass., in 1918, was forced to move his operation because of the modernization of Salem's waterfront.

Last commercial fisherman leaves town

• The departure of Michael Zdanowicz closes the book on the proud fishing tradition of Salem, Mass.

Associated Press

SALEM, Mass. — Commercial fishing, a centuries-old way of life in this New England coastal town, has drifted away on a tide of tourism. Michael Zdanowicz, 39, whose grandfather set up a family lobstering base in Salem in 1918, shoved the Central Wharf on June 15, when he had 100 wooden lobster pots. The old

“There were no compromises to be made,” he said. “It was kind of disheartening.” Zdanowicz was swept out on a wave of modernization that has transformed the town’s coastline into private developments and national parkland. Leaning heavily on its seafaring heritage for tourist dollars, Salem has restored fishermen’s historic homes, built marinas, condominiums and pricey seafood restaurants, and attached nautical names to stores. There was no room for a real live lobsterman. The eviction notice came from the National Park Service, which wants to repair the eroding wharf and build several historic warehouses and an old ship. Zdanowicz had stood his ground for years, but a contentious public hearing, angry letters and confrontations and threatened fines eventually

“He didn’t go. He wouldn’t go. Until now we accommodated him,” said Cynthia Pollack, a Park Service official in charge of the site. “But you can’t conduct business in a national park unless you’re a concession.” Salem, a town of 38,000 residents north of Boston, has never been a large fishing port but commercial fishing has always had a place, as it has in most New England coastal towns. While the number of commercial fishermen and lobstermen in Massachusetts has remained stable in recent years, the fishermen often have been forced out of traditional ports. They go in search of undeveloped ports or inlets. Zdanowicz moved to Beverly, 3 miles north. “All things change, everything has to change a little,” said William Palombo, president of the Atlantic Offshore Fishermen’s Association. George Nowak, a city councilor for 21 years who used to buy lobsters from Zdanowicz’s uncle Joseph, said

he finds the Park Service’s ironic. The planned historical zones are “a good idea, should leave the lobster there,” he said. “That’s that should be preserved heritage in the area.” “It’s too bad because enjoy talking to a lobster boat in the early Central Wharf fishing boats of there was Tommy, my father’s son, and recalled “y in the cit out.” Zdanowicz when his father’s son, a thing don

Real Estate
7 Executive Park Drive
Merrimack, N.H. 03054
603 429 3100
603 429 3120 FAX

RECEIVED

JUL 31 1992

GUILFORD TRANSPORTATION INDUSTRIES, INC.

Writer's New Number (603)429-1115
New Facsimile Number (603)429-1755

July 29, 1992

Chairperson Joseph R. DeCoursey
Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

Re: Waterfront Zoning

Dear Chairperson DeCoursey:

Guilford Transportation Industries, Inc. is the parent corporation of Portland Terminal Company. Portland Terminal Company owns a considerable amount of waterfront property in Portland. Its holdings begin on the Fore River in the vicinity of Congress Street and extend along the shoreline around the Veterans Bridge up to the so-called "Million Dollar Bridge". In the area between the Veterans and Million Dollar Bridges, Portland Terminal Company owns property on both sides of Commercial Street. On the easterly side of the Million Dollar Bridge, Portland Terminal Company also owns two parcels of land on the northerly side of Commercial Street. These are approximately located across Commercial Street from Deakes Wharf in the vicinity of Park Street. As the owner of such waterfront holdings, Portland Terminal Company is concerned about the current proposed zoning.

The current zoning proposal places most, if not all, of Portland Terminal's properties in the Waterfront Port Development Zone as opposed to the Waterfront Center Zone. Leaving aside for the moment my concerns regarding the specifics of each proposal, I am primarily concerned with the principal difference between the two zones.

Although Portland Terminal Company is not a member of the Waterfront Alliance, I have spoken with several property owners involved with the Alliance project. I understand that they are seeking relief from current zoning restrictions. The need for this relief has arisen from the fact that the current economics of waterfront related business do not support the costs associated with owning real estate in the area. I sympathize with the landowners' plight.

Chairperson Joseph R. DeCoursey
July 29, 1992
Page Two

However, it would be inconsistent and unfair for the City to recognize the plight of these individuals, situated in the Waterfront Central Zone, on one hand and on the other hand impose more severe restrictions on Portland Terminal Company's properties located in the Waterfront Port Development Zone. Simply put, Portland Terminal Company should not be made to suffer the economic hardship for which the City would be granting relief to the property owners located in the Waterfront Central Zone.

Although I am generally opposed to the establishment of the Waterfront Port Development Zone, in the event that it comes into being, I am also concerned with its geographic scope. It is my understanding that the City has an interest in preserving the deep water berthing located along the Portland Terminal Company property between the Million Dollar and Veterans Memorial Bridges. It seems to me that the City can preserve access to this area without encumbering all of the property between the two bridges. Further, with respect to property located east of the Million Dollar Bridge, I do not see any rationale for including property north of Commercial Street in said zone.

I hope that these concerns can be taken into account as the proposed zoning ordinance is worked and reworked during the coming weeks so that all landowners can be treated fairly and without discrimination. I will make myself available at planning board workshops to discuss this position further or at any time convenient to the board.

Sincerely,


Leonard A. Lucas
Vice President-Real Estate

LAL:img

cc: Joseph E. Gray, Jr. Director, Planning and Urban Development
Alexander Jaegerman, Chief Planner

July 9, 1992

TO: Joseph R. DeCoursey, Chair, Portland Planning Board and
Members of Planning Board. cc: J. Gray, A. Jagerman, R. Knowlan

FR: Keep The Port In Portland, K. Sanford, Chair.

RE: Proposed Changes to Waterfront Zoning- PRELIMINARY QUESTIONS.

NOTE: We apologize for the discrepancies between section numbers and titles as referred to here versus those which the Planning staff may use. We had to respond to the earlier draft written by Planning staff which was used in a July 7, meeting between Planning staff and the Waterfront Alliance.

As you consider the preliminary draft of possible zoning changes, we ask you to give thought to the following questions:

1) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (1)

a) MARINAS: Given the experience in 1986 with the loss of commercial berthing on Chandler's Wharf, and the subsequent Planning Board legislation (ultimately adopted by City Council in 1987), to protect commercial berthing in the W-2 zone, is the City of Portland still committed to preserving at least 12 piers on the central (W-2) waterfront for year-round commercial berthing which supports the public investment in the Portland Fish Pier?

Is there a real difference between a gradual (or sudden) conversion of an existing commercial-berthing pier to most or all recreational berthing versus new construction of a marina?

Would it make sense to allow the existing marina provisions in the W-1 and W-2 to remain? (The only pier which, in the Waterfront Alliance recommendations, is no longer within the existing W-1, W-2 boundaries is the International Ferry Terminal which, by Alliance definition, is now in the "Port Development Zone" which is not recommended for marina use - and is therefore protected from marina conversion, and is publically-owned)

NOTE: In our small, deep-water harbor, there are five major marinas: Breakwater, Spring Point, Marine East, DiMillo's and Channel Crossing. There is significant recreation berthing at Chandler's Wharf and at Merrill's. The City's 1988-1990 Waterfront Task Force recommended no more marinas within the inner harbor area. (Recommendation #1)

2) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (2)

a) PROFESSIONAL, BUSINESS AND GENERAL OFFICES:

Are all office uses equal? Should the city be concerned by the NATURE of the office use? Would a Pediatric doctor's office, or a Gerontologist's office create pedestrian-truck - conflicts, for example, that perhaps an engineering consultant's office would not? Will the parking and congestion problems already present on the central waterfront be exacerbated more by one type of office than another?

b) RESTAURANTS:

Are all restaurants equal? Again, should the city be concerned about the NATURE of the restaurant? With SIX restaurants on the waterfront (five adjacent to the Old Port and Becky's within walking distance of Old Port) does the city want to encourage the proliferation of waterfront restaurants with their parking requirements and potential congestion problems? (The CDC, under Pam Plumb's leadership in 1989, devised a set of criteria for waterfront restaurants; that work might be useful in your discussions.)

c) CRAFT AND SPECIALTY SHOPS:

Would this provision permit pottery shops, jewelry designers, art galleries, T-shirt silk-screening shops, for example? Do we want to encourage tourist shopping, and other casual shopping in the midst of semi-truck and forklift traffic on our narrow piers? What are the liability implications for property owners?

d) RETAIL AND SERVICE ESTABLISHMENTS:

Is it in the best interest of the City of Portland to encourage the development of a THIRD RETAIL DISTRICT (Congress St., Old Port, waterfront)? Are boutiques a desirable, compatible or wise use of the waterfront resource? When would the cumulative impact of such uses seriously interfere with the working waterfront's ability to function? Would Portland become another Newport?

Is tourist and other casual shopping compatible with the industrial nature of the working waterfront?

- e) BANKING,
- f) LAUNDRY AND DRY CLEANING SERVICES:

What is the rationale for including these as permitted uses? Would these uses want upper story locations? Or would they be considered for the first floor of buildings more than 100' from the water? If so, would the high customer turnover at the entrance to working piers congest these areas and restrict access to the water?

NOTE: THE ALLIANCE MADE NO SPECIFIC RECOMMENDATIONS FOR SPECIFIC "PERMITTED USES", PENDING DEVELOPMENT OF CRITERIA TO DETERMINE WHAT IS "MARINE-COMPATIBLE"

These questions beg the broader policy question of marine-compatibility on the working waterfront. While the Waterfront Alliance did not develop a full-blown definition of nor set of criteria for determining marine compatibility, it is important to recognize that the Alliance recommendations never refer to marine-compatible as "mixed use" which carries quite liberal connotations in terms of zoning.

On the contrary, the Alliance builds the concept of marine-compatibility in the following terms:

- Pg. 2; #3 "ALLOW MARINE COMPATIBLE USE OF OTHER PROPERTY THAT DOES NOT INTERFERE IN ANY WAY WITH THE ACTIVITIES OF WATER-DEPENDENT USERS"
- Pg. 4 "MARINE COMPATIBLE: THOSE USES THAT ARE NOT EITHER WATER DEPENDENT, MARINE RELATED SUPPORT AND DO NOT INTERFERE WITH OR ARE NOT INCOMPATIBLE WITH THE ABOVE - ARE ENCOURAGED"
- Pgs. 6,8,10 "THE WATERFRONT ALLIANCE RECOMMENDS THE DEVELOPMENT OF PERFORMANCE STANDARDS OR CONTRACT ZONE CONCEPT TO BE APPLIED TO PROJECTS THAT MUST COMMIT TO AN UNDERSTANDING OF THE NEEDS OF THE MARINE DEPENDENT IN NOISE, TRAFFIC CONTROL, ODORS, PARKING, TRAFFIC, TDM, HOURS OF BUSINESS AND SO FORTH."
- Pg. 8 "NON-MARINE ACTIVITIES IN SUPPORT OF PORT DEVELOPMENT GOALS MAY BE ALLOWED IN AREAS THAT ARE IN THE PDZ. WE RECOMMEND A MECHANISM BE DEVELOPED TO ALLOW SOME FLEXIBILITY IN THE 'NON-MARINE BUT SUPPORTS PORT DEVELOPMENT USES' TO ENSURE RETENTION OF THE WATER'S EDGE ON THE ONE HAND WHILE ALLOWING ENOUGH ECONOMIC ACTIVITY TO RETAIN THE AREA'S ECONOMIC VIABILITY."
- Pg. 18 "A MARINE COMPATIBLE USE IS AN INDUSTRIAL OR COMMERCIAL USE THAT DOES NOT INFRINGE UPON ABUTTING OR NEABY WATER DEPENDENT AND MARINE RELATED USES. MARINE COMPATIBLE USES SHALL NOT INTERFERE WITH THE DAILY ACTIVITIES OF WATER DEPENDENT AND MARINE RELATED USES"

WATERFRONT PLANNING FROM THE 1970's TO PRESENT

The City adopted the Land Development Plan in 1974, the first master plan for Portland in 40 years. One of the Land Development Plan's major recommendation was the creation of a W-1 waterfront zone (mixed use) from Fort Allen Park to the Veterans Memorial Bridge along the waterfront. The waterfront at this time was zoned I-3b Industrial, which allowed only industrial and heavy commercial uses. Concern was expressed that unless the City came up with a definitive land use and zoning plan for the area, future growth could be misdirected and the valuable resource base of the waterfront lost.

In 1975, the City formally completed and adopted the **City Edges Waterfront Improvement Program**. This report offered a comprehensive assessment of existing conditions along the waterfront including land use, building conditions, piers and wharfs, transportation, public improvements and historic buildings. The report also provided a wide range of recommendations for revitalizing the waterfront. The zoning recommendation suggested a Waterfront W-1 zone be established between the Million Dollar Bridge and Custom House Wharf.

A text amendment was developed for the W-1 zone (mixed use) in 1976 but only the International Ferry Terminal site was zoned for this designation. The following year the text was amended to correct deficiencies in the earlier ordinance and a W-1 zone was established from the Million Dollar Bridge to Custom House Wharf. In addition to a variety of marine uses, the W-1 allowed offices, retail, hotel and residential uses. The policy statement of this zone indicated that "the purpose of this zone is to permit and promote marine shipping and fishing-related uses while at the same time providing for traditional commercial and industrial uses and for customer-oriented commercial uses and residences." The remainder of the waterfront stayed I-3b.

In the early 1980's, the City commissioned a waterfront study by **American Cities Corporation**. The report generated an intense public debate on the recommendations and the future visions of the waterfront. The City then embarked on a process to develop its own plan. The product of this new effort was **Strategies for the Development and Revitalization of the Portland Waterfront**. The plan outlined a comprehensive strategy to reinvigorate the working waterfront while encouraging mixed uses in certain areas of the waterfront. (See Attachment A for zoning goals and policies.) The report also recommended a significant investment in public facilities, such as the City Fish Pier, Casco Bay Ferry Terminal and Commercial Street improvements.

The land use and zoning recommendations that were adopted by the Planning Board and City Council called for the establishment of two waterfront zones. The W-1 (mixed use zone) was limited to 4 piers (Central, Long, Portland and Custom House.) Like the earlier W-1 zone, the new version allowed maritime uses as well as retail, offices; hotels, residential uses. A new zone (W-2) was created to protect the working waterfront uses (fishing and maritime industries.) Uses were limited to marine uses. This zone runs from the Million Dollar Bridge to Widgery Wharf and from Maine Wharf to B.I.W.

The Portland Waterfront Public Access Design Project (1983) outlined a pedestrian walkway system along the Commercial Street Waterfront. The report recommends open space along the waterfront and identifies major view corridors. Design guidelines for public access improvements and building construction are provided.

The report includes recommendations for a park on the Maine State Pier, a pedestrian walkway along the waterfront including improvements to Portland Pier. The plan also recommends that a walkway be planned from the Eastern Prom along the waterfront to the Western Prom following the Fore River to Stroudwater.

In early 1986, the Planning Board considered a request by several waterfront property owners to allow more flexibility in the W-2 zone by permitting nonmaritime office uses. The text amendment recommended by the Board allowed nonmaritime offices in the upper stories of buildings provided that such uses did not exceed more than twenty-five (25) percent of the total floor area above the first story. A sunset provision required that the nonmaritime offices be discontinued after December 31, 1992. The City Council did not enact the amendment.

On May 5, 1987, a citizen initiated referendum was passed by Portland voters enacting a new **Waterfront Overlay Zone**. The overlay zone runs along the waterfront from the Million Dollar Bridge east to Tukey's Bridge. The permitted uses of this zone are restricted to fishing activities, maritime activities and functionally water dependent uses. Hotels, residential and other nonmaritime uses are prohibited. (See Attachment B).

In April 1987, the Planning Board and City Council passed a series of zoning amendments strengthening regulation of marinas. These amendments were enacted to address the concern that recreation vessels and marinas would displace fishing vessel berthing such as what happened along Chandlers Wharf. Marinas in the W-1 zone were changed from permitted uses to conditional uses.

Performance standards were added to protect dockage space for commercial vessels. The W-2 zone was clarified to specifically exclude marinas. A conditional use standard for residential uses was changed to clarify the requirement for conserving commercial dockage space along piers.

Within a year of the referendum, the City completed a **Waterfront Action Plan for the Portland, Maine**. The purpose of this plan was to develop a comprehensive list of strategies to guide City policy along the waterfront, in light of the referendum. The focus of these policies included improvements to public facilities as well as other measures to help reinforce working waterfront businesses and commerce. A list of the 24 policies is shown as Attachment C. This document was adopted by the City Council.

The City Council appointed a **Waterfront Task Force** in 1988 to pursue in greater detail three of the most complex points of the Waterfront Action Plan. These three areas were berthing, marketing and the economic impact of land use controls. The 41 recommendations of the Task Force are shown as Attachment D. The vessel berthing recommendations suggests that fish vessel berthing should be increased and that new recreational berthing should be encouraged outside the harbor. The marketing recommendation suggests that the City should budget increase resources towards port marketing, attract more fish processors to the harbor and promote the Portland Fish Exchange.

Attachments:

- A. Waterfront Zoning Goals and Policies
- B. Waterfront Overlay Zone
- C. Waterfront Action Plan
- D. Waterfront Task Force Recommendations

Order 153-04/05

Passed: 2/7/05 7-0 (Leeman, Carr absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER APPROVING CHARGE OF
THE WATERFRONT TASK FORCE,
PHASE IV
RE: WATERFRONT CENTRAL ZONE**

ORDERED, that the charge of The Waterfront Task Force, Phase IV, a copy of which is attached hereto as Exhibit A, is hereby approved.

Waterfront Task Force, Phase IV, Waterfront Central Zone

I. CHARGE OF THE TASK FORCE:

The task force is charged with considering the following:

1. Update Economic Conditions Survey and analyze occupancy, business mix and space needs;
2. Evaluate current ownership patterns of the piers and pier heads (e.g., pier owned by single entity or multiple parcels held by different owners);
3. Evaluate open space/undeveloped/minimally developed land in WCZ and develop policy and zoning language to guide future development;
4. Consider a stronger link between non-marine development and marine infrastructure investment through zoning incentives, financial mechanisms, and other means;
5. Retain quality access to the water and adequate space on working piers for water dependent uses and ensure the availability and usability of pier edges for commercial berthing;
6. Review options for effective regulations and standards for non-marine uses in new structures along Commercial Street and in upper floors of new structure away from Commercial Street;
7. Address the parking demands of non-marine uses without compromising marine utility of the piers; and,

The product of the task force's work will be a report on the status of infrastructure investment in the WCZ with recommendations on any policy changes, including zoning text, for review by the Planning Board, Community Development Committee and the City Council.

II. WORK PLAN

A schedule of the task force's work plan might proceed as follows:

Meeting #1, February 2005

- Review previous waterfront planning reports and task force recommendations, specifically:
 - Waterfront Alliance Report to the Portland City Council, April 1992; and,
 - Waterfront II, *Investing in Our Working Waterfront: Final Report of the Mayor's Waterfront Task Force on Economic Development, October 2000.*
 - Update Economic Conditions Survey

(SITE TOURS WILL BE CONDUCTED FOR TASK FORCE MEMBERS, AS NEEDED, IN BETWEEN MEETINGS.)

Meeting #2, March 2005

- Evaluate the previous study and any current study of physical condition of marine infrastructure in the Waterfront Central Zone (WCZ) and work with the marine industry community to identify the core access and support needs for traditional water-dependent uses.

Meeting #3, April 2005

- Evaluate updated Economic Conditions Survey
- Evaluate pier/pier head ownership patterns analysis
- Evaluate the current language of the WCZ and identify successes and failures of the zone;

- Establish Drafting Subcommittee to work on WCZ text change language.

Meeting #4 and Public Forum #1, May 2005

Committee meeting if necessary and;

Public Forum to present data and generate input

Zone Text Subcommittee to work through June 2005

- Recommend changes to City policy (including but not limited to zoning language)

Meetings #5 and #6, July and August 2005

- Review, edit, and vote on Subcommittee's work.

Public Forum #2, September 2005

- Present Task Force Recommendations, collect public comment

III. TASK FORCE REPORT APPROVAL PROCESS

Planning Board Workshop, October 2005

Neighborhood Meeting, Required by ordinance, October 2005

Planning Board Public Hearing, November 2005

Community Development Committee, November/December 2005

City Council Workshop and Public Hearing, December 2005 and January 2006

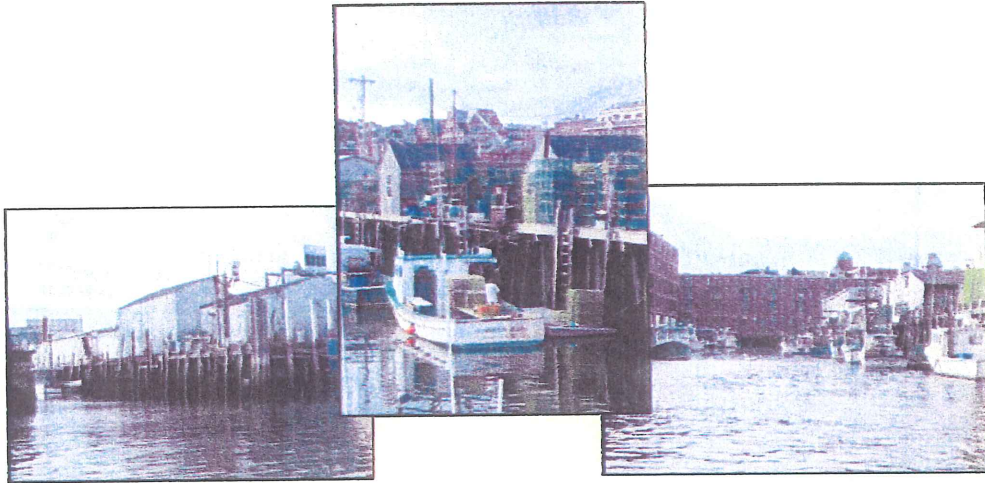
IV. MEMBERSHIP

The participants of the task force should represent multiple perspectives and include waterfront property owners and tenants, interested citizens, waterfront business owners, members of the fishing industry and other marine industries, a community development facilitator, and representatives of the State Department of Marine Resources, the State DEP/Shoreland Zoning, the Planning Board and the City Council.

**Central Waterfront Zone
November, 9, 2005 Public Forum**

Economic Conditions Survey

Conducted by Greater Portland Council of Governments

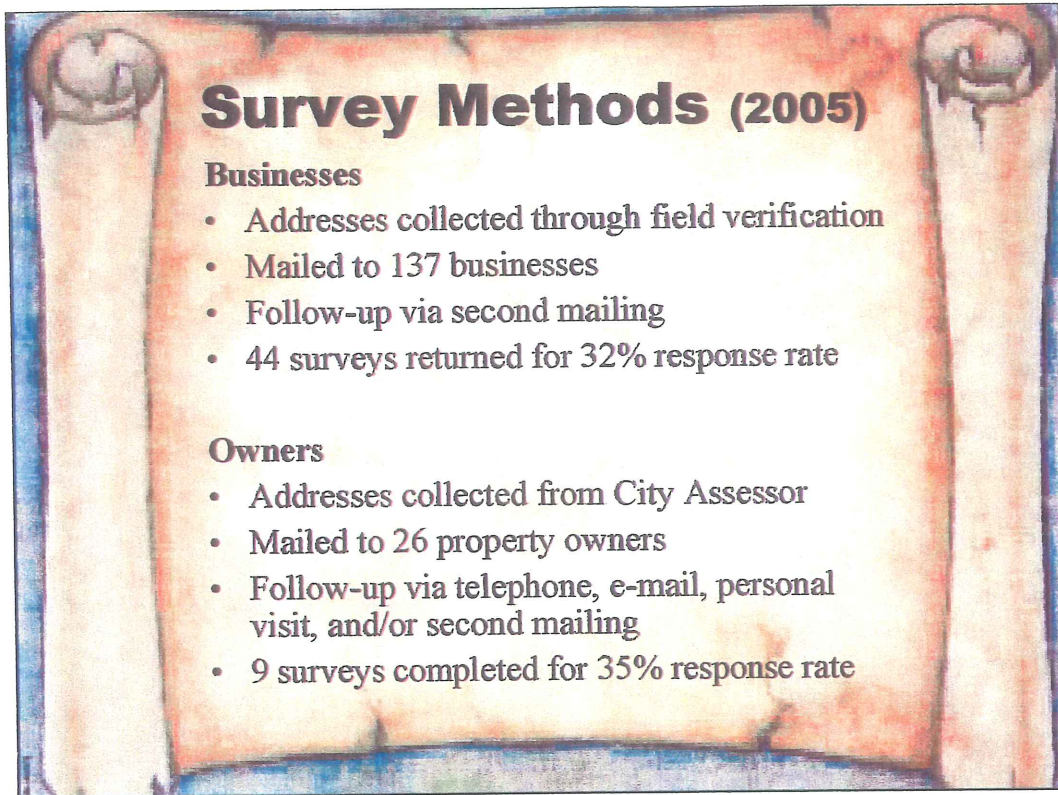


Port of Portland

- 4th largest port in the Northeast
- 1,000 jobs fishing-related jobs and services
- Over \$18 million pounds of fish landed at Portland Fish Exchange
- 175 vessels home ported
- Over 200,000 cruise ship passengers

Source: Port of Portland

The pulse of the working waterfront can be measured in a number of ways – by pounds of fish landed, by the value of new construction, by the number of cruise ship passengers, by the tons of petroleum imports. Over the last 15 years, the City of Portland has been measuring the health of the waterfront through a number of surveys designed to assess the business climate.



This year, we worked with the City to survey both businesses and property owners on the Portland waterfront. Substantially the same questions were asked in 1989, 1990, 1991, 2000, and again this year to allow for comparison. Except for 1989, when businesses were called individually, the response rate has been about the same – about 30%. One big difference was that this year, only businesses in the Central Waterfront Zone were surveyed.

Business Profile



	1989	1991	2000	2005
Number surveyed	156	148	232	137
Response rate	71%	39%	30%	32%
Demand water access?	31%	36%	N/A	59%
Serve fishing or marine industry?	61%	64%	80%	77%
Dependent on marine for > 75% of business?	N/A	N/A	48%	64%
Over 10 years in same location?	19%	27%	32%	56%
Average full-time employees	20	30	13	11
Seasonal?	54%	N/A	25%	29%

Over half of this year's respondents said that their businesses were dependent on access to the water. More than three quarters said they served the fishing or marine industry. We might further classify waterfront businesses into four different categories: water dependent for those that require access to the water; water related for those that directly service the water dependent businesses; water related by client, for those who say the majority of their clients are involved in water dependent businesses; and "other" for those who are on the water because they find it appealing or convenient. Although average employment is down, businesses responding seem to be more stable – Over half have been on the waterfront for more than 10 years and only a third are now seasonal.

Job Growth, 1989-2004

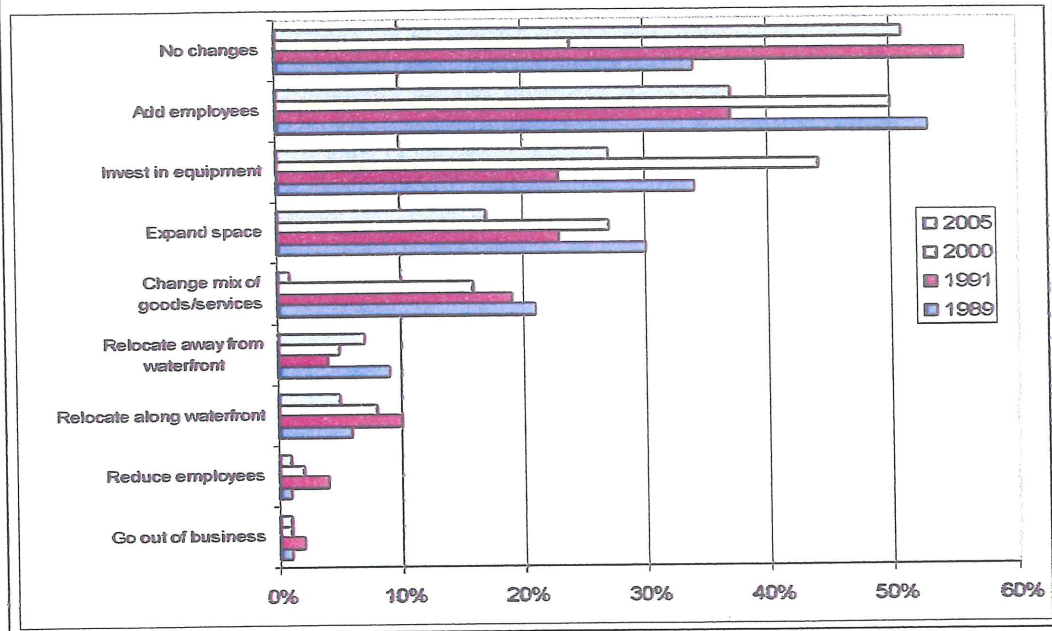


Source: U.S. Bureau of Labor Statistics

We asked businesses about their business plans as well as about their needs and problems. What's very clear, as it was from previous surveys, is that the health of the waterfront tracks closely with the rest of the economy. Job growth was peaking in 1989. The recession hit in 1991. We rebounded through the 1990's, but we took another hit in 2001. Since then, Greater Portland, although we've lost over 4,000 jobs, has done better in terms of job growth than Maine, New England, and the rest of the country. Even though fishermen, who are not "payroll" employees, are not reflected in these numbers, you'll see that the businesses that support them reflect this cycle.

Business Plans

% of businesses responding "yes" fluctuates with the economic cycle



During the boom of 1989, waterfront businesses were fairly "bullish" about adding new employees – more than half said they would. Same scenario in 2000, before the recession. But now, the mood is fairly stable. More than half report no changes are planned, much like in 1991. Still it is not all "doom and gloom." Even in the darkest of times, few, if any businesses said they would reduce employees or go out of business. This says, although the marine economy is just a small part of employment in the region, it is a stable core of the economy. One area of concern, however, is the latest response to whether businesses plan to "change their mix of goods and services." This is about innovation and flexibility in the marketplace. The response was negligible, which means that we're kind of in a holding pattern, maybe waiting to make investments until other facets of the economy become more predictable – taxes, interest rates, regulations, the war. And this was before Hurricane Katrina.

Growth

Is your current space adequate for the next three years?

% Reporting NO

1989	1991	2000	2005
28%	29%	54%	24%

Of 13 businesses that responded to the business survey in both 2000 and 2005:

- 4 lost employees
- 4 remained stable
- 5 grew, for a net growth of 13 employees



Studies show that as much as 80% of new jobs are created by existing businesses in a community rather than business moving into the community. We've already seen that over half of the businesses responding have been on the waterfront for more than 10 years. In every survey, businesses were asked an open ended question about their most important business decision in the next three years. Whether or not to expand consistently tops the list. The survey goes further to ask about space. This time around, about a quarter said their space was NOT adequate, compared to more than half in 2000. So we went back to look at what happened with the 54%, or at least the businesses that responded in both 2000 and 2005. 9 of the 13 remained stable or grew, which is probably better than in other industry sectors.

Property Owners

Occupancy

- Lease rates range from a low of \$10 per month for first floor marine to a high of \$25 per square for first floor retail.

Vacancy

- 6 reported no vacancies.
- 3 reported vacancies on the 1st floor as well as upper stories.



We heard from property owners who own entire pier or wharf as well as those who own just a portion. We did ask property owners for an inventory of tenants as well as lease rates charged. Range is \$10 for marine to \$25 for retail. Only three reported any vacancies at all, with one space in poor condition.

Investment

	Properties	Total Value
Buildings		
Renovation	9	\$670,870
Expansion	1	\$150,000
Replacement	1	\$150,000
New construction	4	\$12,284,400
Piers/Wharves		
Dredging	2	\$70,000
Pilings, Decking & Fendering	4	\$615,000
Floats	3	\$1,018,000
Extension	0	\$0
Total Improvements		\$14,958,270



Renovation was the most popular improvement – primarily cosmetic, e.g., paint, carpet, but also systems. Some deferred the more expensive roof and masonry renovations. There was also a quite a bit of new construction – over \$12 million dollars. Less work was done to the actual piers and wharves than we hoped. Four owners reported work on pilings, decking and fendering. This and the dredging was all characterized as maintenance work. Three owners replaced floats. Repaving also occurred on a few properties.

Viability

- 5 Maintenance
- 4 Business attraction
- 2 Lack of parking
- 2 Meeting expansion needs
- 1 Dredging



While businesses were contemplating whether to expand, the number one issue for property owners was maintenance – generating enough revenue to pay for on-going expenses.



ion

ion needs

...plating whether to expand, the number one issue for
...nce – generating enough revenue to pay for on-going

**Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues**

November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street

MEETING NOTES:

1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

- Zone is too restrictive (Holyoke)
- Aqua diving – property line requirement is an issue, too restrictive
- Inappropriate non marine uses conflict with marine uses (Chandlery)
- 6 lobster boats being displaced by research vessels (Hobson’s Wharf)
- Inadequate berthing
- Function more important than appearances
- Fishing industry outlook better than generally believed
- Continue to protect water dependent, but allow mixed use above (2nd floor and above) (e.g. legal uses)
- Working waterfront brakes are working
- Bill Doane, Lobsterman – things are going well. Worried about future berthing competition by recreational berthing. Need direct vehicle access to pier edges.
- Keith Lane – doing o.k. but worried about rent increases/prosperity pushing prices out of reach of fishermen.
- Preference of berthing for working vessels and access.
- Keith – Truck parking and berthing and access to pier edge building rental is only useful if very inexpensive.

2. Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for working waterfront uses?

- Concerns about traffic generated by eastern waterfront uses (Westin, etc.) interfering with water dependent uses.
- Open upper floors to additional non-marine uses, see what investment is stimulated.
- Extra floor from additional height to build on Pile Foundation Investment.
- Institutional investment in marine research is an expression of confidence in fishing industry.
- 60’s and 70’s piers with wharves were in awful condition. The last 20 years have seen substantial improvements.

- Even condo people get along with fishermen.
- 2nd floor non-marine uses subsidizes 1st floor marine uses.
- Owners need to make money from 2nd floor uses. Maybe through contract zones.
- People come to Portland to see the waterfront legacy of fishing and lobstering, not a bunch of pleasure boats.
- Port Hole – importance of fish and lobster boats existence to clientele of Port Hole Restaurant.
- Doane – keep 1st floor marine open upper floors.
- How can we keep commercial berthing affordable? Improve the wharf edges with income from upper floors. Wharf owners will invest in wharf upgrades.
- Buildings on 1st floor is almost useless. Used for trap storage. No marine uses that will pay. Trap storage deteriorates buildings. Most of wharf edge is lobster fishing.
- Fishing vessel berthing is tied to income from upper floors on union wharf.
- Custom House Wharf case – council put restrictions, esp. parking.

3. Mixed-use development

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the working waterfront?

- Harbor Fish owner – general support for current zoning. Do not over emphasize down turn in fish economy, high hopes – other species are growing. Supports comment that B-1 zone worked – supports water dependent uses but need to allow other uses on 2nd floor and above (critical). Harbor Fish invites public to pier – see #2 comment, #1 re: Traffic on Commercial. Take a common sense to zoning to everyone's benefit.
- Steve Dimillo – Can it be as simple as “no condos” – that is where it started.
- Zoning Board of Appeals letter requesting additional flexibility re: Custom House Wharf case.
- Institutional (GOMRI) role and presence on Portland waterfront, diversity is important.
- GOMRI – opening up 2nd floor uses makes sense – safety value also, building height. 35 is restrictive. An extra floor is important given the expense of pier construction.
- Enough condos – they are there but no more. We get along. Need non-marine use on 2nd floor – suggests berthing and fishing. 1st floor – marine only. New buildings – no comment.

- Lobster boats may need protection from recreational boats. Owners should make money, see (2) linkage – don't know if new construction is o.k.
- O. Keathly – Can have some change on first floor by % or on 2nd floor – must keep fishing berthing.

4. Parking

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the central waterfront.

- GOMRI – parking is the limiting factor down there. Needs city vision. Public/private like Oceangate is worth exploring.
- Big problem – fishing folk won't parking off Commercial Street.
- Fishing (lobster) needs parking on the wharf w/access for trucks.

5. Other issues

- Roger Hale - Zone is restrictive, leads to vacant space. B-1 zone was a good zone and worked. No services. "Ben Snow steals our tenant". Taxes are a problem.
- Former Zoning Board Chair – ZBA requested Council address waterfront zoning – i.e. Custom House Wharf. ZBA unable to grant variance – wrote letter to Council from ZBA – need copy of letter.
- Harbor Fish – Heritage of city is fishing. People come here to see the fishing and waterfront – now allows pleasure boats to displace lobster boats. To maintain character of the city – must preserve.

Question #1

Displacement of lobster boats for research vessels on Hobson's Wharf?

- Ben Snow to follow up.
- Need letter from ZBA

Kevin Beal:

- Various proposals for recreational berthing in other areas. Are concerns just for traffic or for boat traffic too? Mr. Doan concerns not really a problem on water, keep them out of Commercial area for berthing.

Anne Pringle:

- Gear storage – is there enough? No, not enough now, land is valuable.
- Linkage question – are rent controls needed?

Peter McAleney:

- We've been doing this for 15 years and wharves are getting pretty rough.

Anne Pringle:

- How do we guarantee money is going back to wharf?
- P.M. its my business, 1 needed.

K. McGowan:

- I give my lobster tenants 1st floor space because I can't rent the space.
- Square footage does not go with berth. If I want to rent space to other uses (marine) I need to displace lobster boats.

Susan Koen:

- Marine related uses – does 2nd floor help you?
- Boat owner – no use for 2nd floor. Need berth and a way to get t is with parking.
- Boat owner – Widgery wharf – have shops on wharf and storage – that may go.

Charlie Poole:

- Ability of having a fishing boat requires 2nd floor non-marine – agrees with fishing comment.

Jim Cloutier:

- Custom House Wharf contract requires commercial berthing/circulation plan. Parking restrictions are working.

Ken McGowen:

- Parking is a problem.

P. McAlleny:

- Reiterated.

Att 4.6

WATERFRONT CENTRAL ZONE TASKFORCE
January 25, 2006
Public Forum
Merrill Auditorium Rehearsal Hall, City Hall, 7:00pm

Forum Notes:

Following introductions by Chair Geraghty and a presentation of the draft text by Bill Needelman, the following comments were generated by the public participants at the forum.

Frank Riley: Concerned with the integrity of the port and stressed the opinion that new buildings shouldn't obstruct views of the harbor.

Ken McGowen: Noted that mitigation fees are not needed because the second floors are subsidizing the marine infrastructure now. He wanted to know how the 50% rule applied to properties with non-marine existing on the lower floors (given the 50% limitation on non-marine.) He stressed that the 75' setback was a problem and that offsite parking doesn't work.

Doug Mayo: prospective buyer of Sturd. Wharf for machine shop serving marine uses. He recommended that the 35 foot rule be extended to include the entire zone and that the upper floor provisions be simplified.

Paul Stevens: Representing both himself and GOMRI: Recommended at least 50 feet of building height.

Joe Malone: Representing Maine Wharf and Eric Ciancette. Please look at new construction. Supports the upper floor expansion for non-marine uses. Maine Wharf can expand over 300 feet. The 15 foot building setback is trouble for narrow piers, suggested that maybe only applied to one side on narrow piers.

Patrick ?: ZBA member (formerly?) 75 foot setback impractical for Portland. Please clean up the language.

Bill Doan: Lobsterman. 15 foot setback from pier edge a problem on narrow piers. needs a look. Question re: 50 noncommercial berthing. BN clarified.

John Cashman, Chair of the Board of Harbor Commissioners: The DEP 75 foot setback should not apply to urban waterfronts like Portland. Mr. Cashman noted that pier expansions are subject to the HC line and that other buffer provisions apply to allow navigation. These rules are presently under review by the HC. The chairs et al asked clarifying questions regarding this process and Planning staff should be made aware of these changes.

Don Perkins, GOMRI: Distributed graphics to the Task force and requested consideration of extending the provision for research labs to be 50 tall up to 400 feet from Commercial Street.

Councilor Cloutier asked questions of Mr. Perkins re: commercial berthing opportunities. (DP: subject to Coast Guard, water depth, proximity to Hobson's wharf, and condition of the bulkhead.)

Peter McAllaney: Public View section needs review by a lawyer to address liability issues.

Nancy Acres: Stressed need for fencing for many reasons.

Bill Doan: Public access. People like to wander around and see the waterfront. Keep the pedestrian ways open, like between Portland Pier and Custom House Wharf. Still use it for trap hauling, but keep it open.

WZ 16/2 3-14-06

WATERFRONT CENTRAL ZONE TASKFORCE
March 7, 2006

Outline of proposed zone text edits

WCZ Text Outline:

➤ *Italicized text is a paraphrase of text edit language*

Sec. 14-313

Purpose Statement

Priority of uses

- (a) Water-dependent uses
- (b) Marine-related
- (c) Marine compatible uses

➤ *Clarifying language added stressing the policy of having non-marine uses support higher priority marine uses.*

Sec. 14-313.5

No adverse impact on marine uses

(a) The proposed nonwater-dependent use will displace an existing water-dependent use;

- *Clarifying language added defining displacement.*
- *New language added strengthening protection of property "physically suited" for water dependent use.*

- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

New Section added

Sec. 14-313.6 Mitigation of impacts required for non-marine uses

➤ *The value of mitigation: at least 5% of total project costs or \$10.00 per square foot of non-marine space.*

- (a) ***Direct investment in marine infrastructure***
- (b) ***Financial contribution in lieu of mitigation***

Sec. 14-314 Permitted uses.

- (a) Marine Uses
- (b) **The “50% Rule”**
Commercial and industrial uses above the ground, limited to 50% of building.
- (d) Public Uses
 - *Utility substations moved to Conditional Use section*
- (e) **The “35-foot rule”**
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.
 - *Section Redrafted. Restrictions on first floor non-marine uses beyond 100 feet from Commercial Street*
- (f) Accessory uses:
 - *New use added for clarity: Parking for water-dependent uses. All other parking is a conditional use*

Sec. 14-315. Conditional uses.

Uses permitted subject to specific standards and requiring review by the Planning Board.

In addition to existing standards protecting marine utility of the zone, the following standards were added for conditional uses

- *Parking and Traffic Circulation Plan required for review and approval.*
- *Public View Protection standard added.*
- *75 foot setback from water for most first floor non-marine use (DEP Requirement. Up to 30% expansion allowed within 75 feet (similar to other*

Conditional Use List

- (a, b) Parking:
 - *Clarifying edit: Parking allowed for non-water dependent uses, provided that there is otherwise enough parking for marine uses.*

- (c) Marine:
 - *Minor edits provided*
- (d) ***The “Sapporo Amendment”***
Expansion of non-marine related use permitted under the “35-foot rule.” subject to conditions.
 - *Expansion allowance expanded from 2000 sq. ft. to 3000 sq. ft. subject to conditions.*
 - *Allow upper floor expansions*
- (e) ***The “chicken farmer amendment”***
Residential: The “primary” owner of a marine related business may occupy space within the upper story of an existing building subject to conditions.
 - *Limit area to 750 sq. ft.*
- (f) ***Utility Substation use***
 - *Added with conditions*
- (g) ***Waterfront Diner use***
 - *Added with conditions*
- (h) ***Expansion of upper floor non-marine use***
 - *Expansion allowance to 2000 sq. ft. added with conditions*
- (g) ***Expansion of “50% Rule”***
 - *Non-marine use of upper floors in existing buildings expanded with conditions.*

Sec. 14-315.3. Contract or conditional rezoning.

Allowance for re-zoning to permit non-marine uses in new structures, providing the development meets the “no adverse impact clause” and additional standards.

Two options provided by Task Force. Each would be subject to mitigation investment or contribution as described in section 14-313.6 above.

➤ ***Option 1, “General”***

Provides standards for new structures to house upper floor non-marine uses.

➤ ***Option 2, "Old Port Overlay Zone" – Restricted to east of the Fish Pier.***

Provides allowance for new structures to house non-marine uses, including retail, on upper and lower floors, subject to conditions – including 75 foot setback from water (with potential to reduce setback to 25 feet under certain circumstances.)

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either the permitted or conditional use section are prohibited.

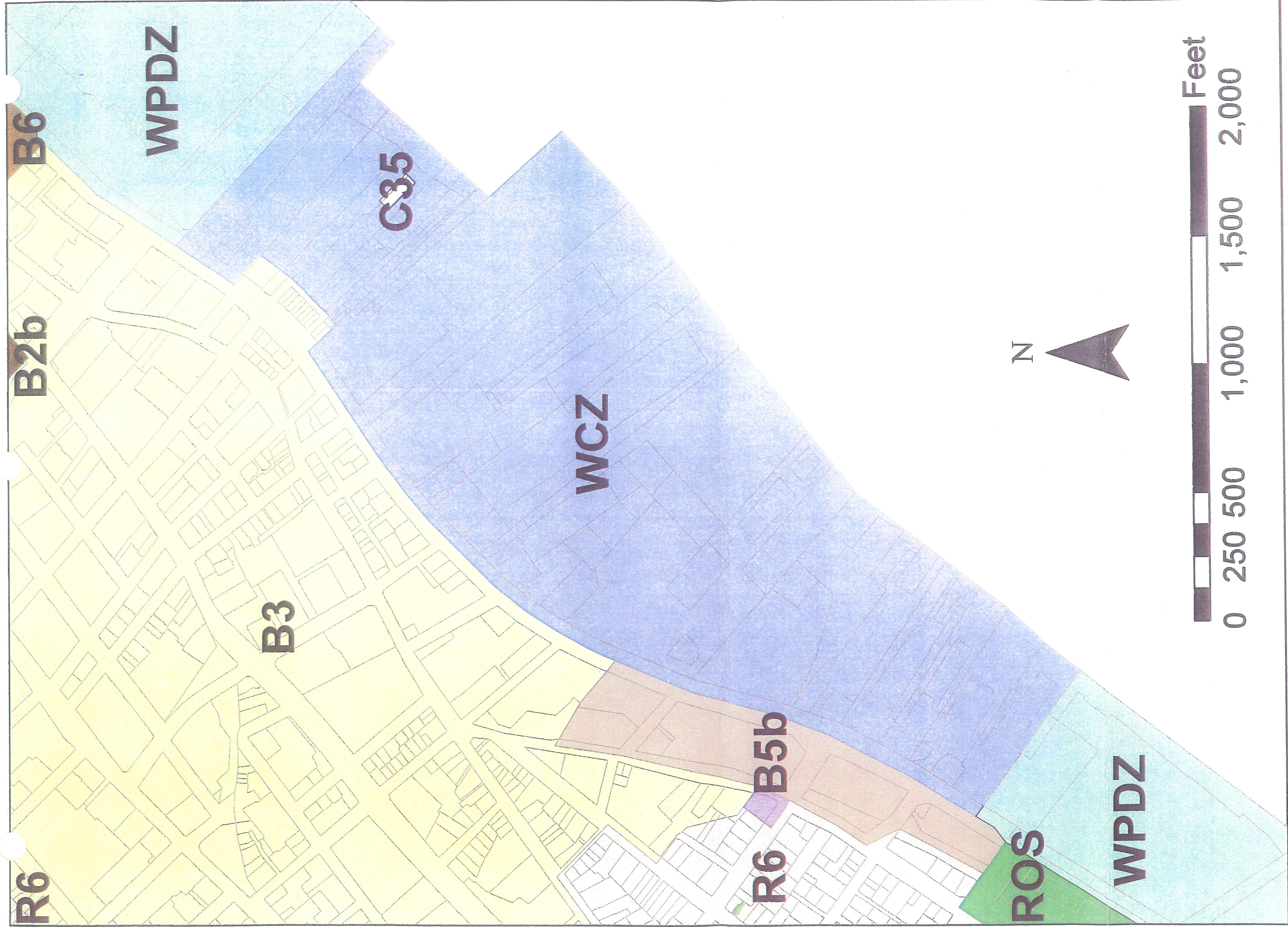
- *Drive-thru services prohibited*
- *Ground mounted telecommunication towers/antennas prohibited*

Sec. 14-316. Dimensional requirements.

- *Maximum building height expanded from 35 to 45 feet (but limited to 3 floors.)*
- *Minimum ground floor clearance added at 15 feet for most new structures (to encourage industrial use of first floor.)*

Sec. 14-317. Performance Standards.

- *Urban design guidelines applied only to Commercial Street buildings east of the Fish Pier.*
- *Pier expansions need to be compatible with ferry and emergency vessel operations.*
- *Functional utility of pier edge standard added*



Zoning Map of the Portland Waterfront

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.
 April 2005



Att. A



Central Waterfront Context Map

Prepared by the City of Portland Planning Division from data produced by the GIS Work Group
For study purposes only. April 2005

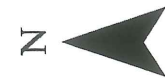


A.H. B



NOTE: The boundary of the "Old Port Overlay" shown here is approximate. The actual boundaries, location of coastal wetlands, and the resulting developable potential of each property will need to be established by a registered professional land surveyor as a requirement of application.

Old Port Overlay Zone



Waterfront Central Zone - Old Port Overlay

Prepared by the City of Portland Planning Division from data produced by the GIS Work Group
For review purposes only. March 2006

DIVISION 18. WATERFRONT CENTRAL ZONE

Outline of zone structure and summary of zone text

Italicized text is a paraphrase of full zone language

Purpose

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose.

Priority of uses

- (a) Water-dependent uses
- (b) Marine and marine-related
- (c) Marine compatible uses

No adverse impact on marine uses

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities.

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Permitted uses.

Please note that all non-water dependent use are subject to a determination that the proposed use meets the “no adverse impact” clause.

- (a) *Marine Uses*

- (b) *Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993*
- (d) *Public Uses*
- (e) ***The “35-foot rule”***
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.
- (f) *Other: Accessory uses:*
 - 1. *Parking for uses other than those set forth in section 14-314(a) (Marine Uses) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a) (Conditional uses)*
 - 2. *Such accessory uses provide goods or services that are supportive of the principal use and its clientele.*

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses (Planning Board Review) and shall also meet the following conditions:

- i. *The proposed use shall be compatible with existing and potential marine uses in the vicinity;*
 - ii. *The proposed use shall not impede access to the water by existing or potential marine uses; and*
 - iii. *For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.*
- (a) *Parking: for non-marine uses, provided that there is otherwise enough parking for marine uses.*

(b) Marine:

- (1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
 - a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space.. for commercial vessels in its current condition....
- (2) Fish by-products processing, *subject to conditions..*
- (3) Boat rack storage facilities, *provided that parking is provided off-site.*

(c) ***The “Sapporo Amendment”***

Expansion of non-marine related use permitted under the “35-foot rule.”.. *no more than 2000 sq. ft., total, shall be allowed only as follows:*

- (1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and
- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(d) ***The “chicken farmer amendment”***

Residential: The “primary” owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

- (1) ...shall not exceed one thousand (1,000) square feet;
- (2) ...shall be limited to the primary owner of the marine related business...not transferable... *or leaseable..*
- (3) the residential use shall be limited to one unit per wharf;

- (4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and
- (5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, “primary owner of the marine related business” shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

Sec. 14-315.3. Contract or conditional rezoning.

For non-marine uses in new structures, providing the development meets the “no adverse impact clause” and... all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

Sec. 14-315.5. Prohibited uses.

Uses which are not enumerated in either *the permitted or conditional use* section... are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.

Sec. 14-316. Dimensional requirements.

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. *Not to be used for parking.*

(d) *Maximum lot coverage:* One hundred (100) percent.

(e) *Maximum building height:* Thirty-five (35) feet...*except for marine research, education and laboratories within 200 feet of Commercial Street, 50 feet.*

Sec. 14-317. Performance standards.

All uses in the waterfront central zone shall comply with the following standards:

(a) *Outdoor storage of materials:*

(b) *Noise:*

(c) *Vibration:*

(d) *Federal and state environmental regulations:*

(e) *Discharges into harbor areas:*

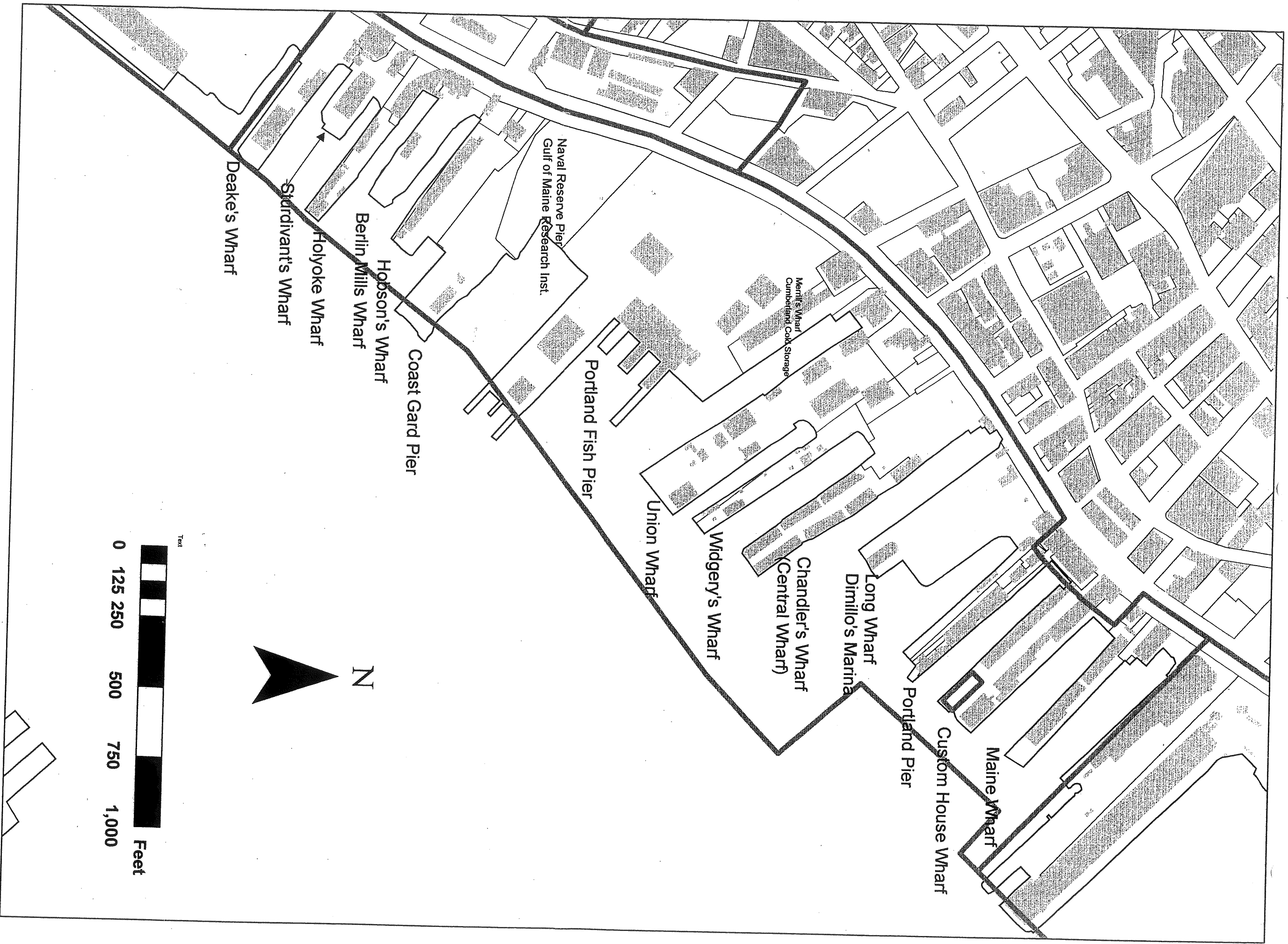
(f) *Storage of vehicles:*

(g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing

areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.

- (h) *Off-street parking*: Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading*: Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations*: Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting*: All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs*: Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes*: On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses*: Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street*: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located

within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.
(Ord. No. 168-93, § 2, 1-4-93)



Piers and properties in the Waterfront Central Zone

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.
May 2005



Waterfront Central Zone Task Force
Public Forum on Central Waterfront
Development Issues

November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street

I. Welcome and Introduction :

Councilors Karen Geraghty and Will Gorham

II. Waterfront Central Zone Policy Framework Introduction

Priority of uses in the WCZ:

- {a} Water-dependent uses, with functional access and infrastructure,
- {b} Marine related uses, and
- {c} Other Compatible uses.

III. Economic Conditions Survey Results

Presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG

IV. Public Input

The Waterfront Central Zone Taskforce seeks public comment and input on development issues along Portland's Central Waterfront. In particular, the Taskforce looks to answer the following questions to aid in their analysis of the district:

{1} Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

{2} Linkage between new, non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

{3} Mixed-use development.

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

{4} Parking.

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

V. Open Discussion between Public and Task Force

Time Permitting

VI. Adjourn, 9:00pm

Waterfront Central Zone Public Forum, November 9, 2005

Comment Sheet

Name, address, email

1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

2. Linkage between non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

3. Mixed-use development.

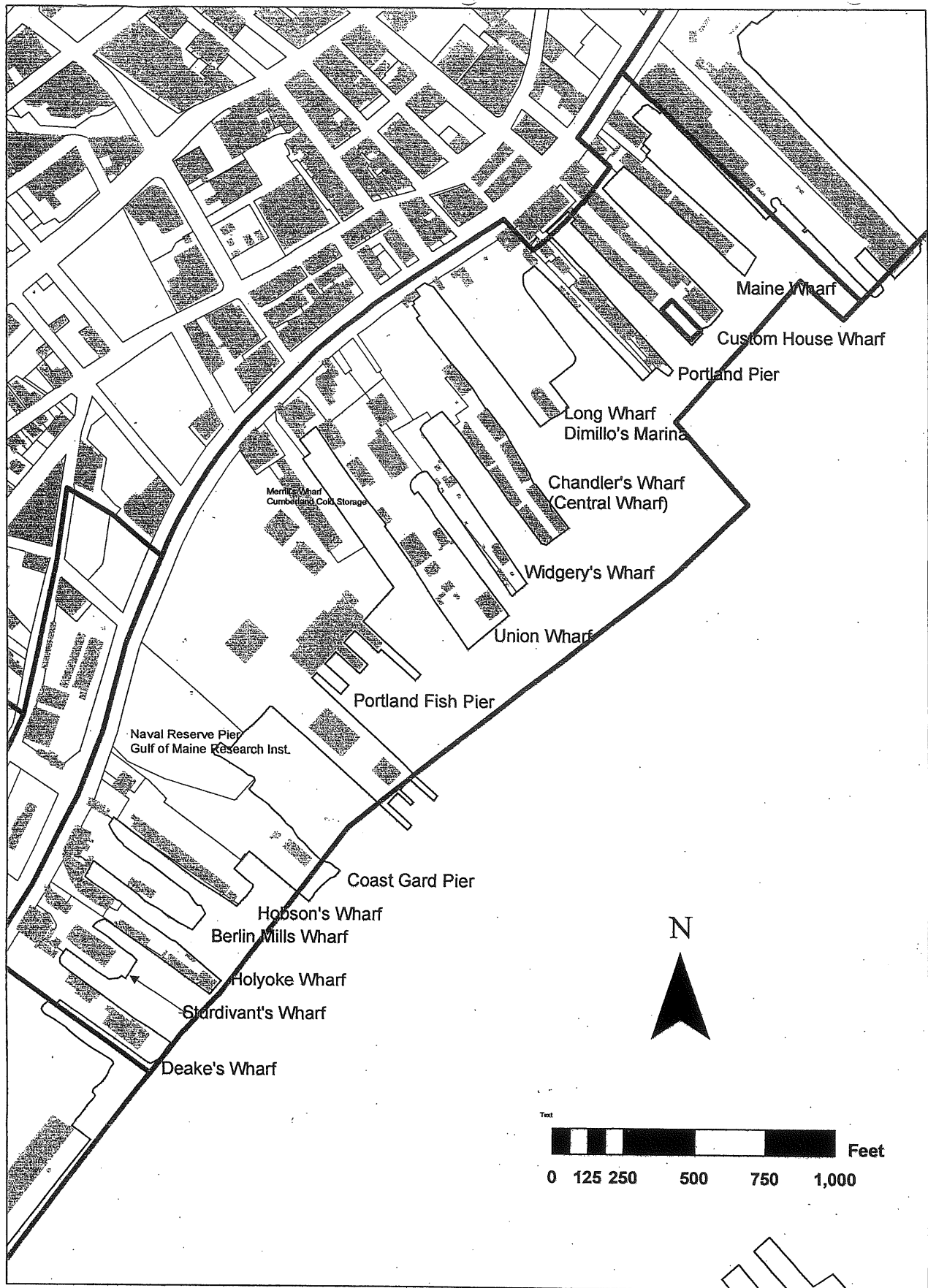
What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

4. Parking.

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

5. Other Issues

Please comment on other issues that you would like the WCZ Taskforce to consider regarding development in the Central Waterfront. (Please use the opposite side if needed.)



Piers and properties in the Waterfront Central Zone

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.
 May 2005



WATERFRONT ZONING

Guiding Principles (as Adopted by Waterfront Alliance 5/14/96 and reflected in Portland zoning)

- 1) Portland's waterfront is a limited natural resource and water access should be reserved for both traditional and emerging water-dependent uses;
- 2) Portland's traditional water-dependent uses have experienced cyclical and structural change over time and this evolution will continue (e.g. commercial fishing). Portland's commitment, including zoning protections, should be long-term and should recognize the cyclical nature of these economies;
- 3) Stable pier infrastructure, easy access to land-based transportation, and stable channel and pier-side depths are key elements of successful water-dependent industries and should be maintained in an economic- and environmentally-sound manner;
- 4) The marine-related industries on the waterfront represent an array of inter-dependent uses and should be protected and encouraged;
- 5) While the waterfront serves a number of functions (job center, industry center, property tax base, transportation center, retail/visitor center, gateway, home, etc.), its primary role, recognizing its unique geometry, is as an economic center for water-dependent businesses that cannot exist elsewhere;
- 6) It is important to preserve a mix of public and private ownership of waterfront property;
- 7) Land use policy should respect the public's interest in qualitative standards relating to view, architectural character, and human impacts (noise, light, odor, etc.);
- 8) Public access to the waterfront should be provided in areas where it is safe and will not interfere with business activity;
- 9) It is important to protect the natural resources of the waterfront because a healthy harbor environment contributes to a stable ecosystem, public health, economic growth, and recreational enjoyment.

Policy Underlying Zoning – Waterfront Central Zone

- 1) First priority is to protect and nurture existing and potential water-dependent uses;
- 2) Second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly or indirectly by placing incompatible demands on the zone's infrastructure;
- 3) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Zoning Structure

- 1) Zoning encourages the rehabilitation of existing buildings, in order to maintain relatively low-cost ground-floor rents for water-dependent businesses;

Looks good
Alex

DRAFT10-27-05, annotations in (This is a first draft for comment)

Central Waterfront Task Force

**Public Forum on Central Waterfront
Development Issues**

**November 9, 2005, 7:00pm
City Council Chambers, 2nd Floor, City Hall
389 Congress Street**

Meeting Agenda and Discussion Format

~~~~~

**I. Welcome and Introduction of the Task Force members by the Task Force Chairs, Councilors Karen Geraghty and Will Gorham (2-5 minutes)**

**II. Waterfront Central Zone Policy Framework Introduction**  
*(<3minutes to frame the policies of the zone, as expressed in the WCZ purpose statement. List and briefly explain the "priority of uses" concept, stressing that the purpose of the Task Force is to implement these policies better, not to re-draft them. The presentation will list the hierarchy of uses:*

- {a} Water-dependent uses, with functional access and infrastructure,*
- {b} Marine related uses, and*
- {c} Other Compatible uses – mixed, non-marine- to provide support for the infrastructure as long as no adverse impact.*

*Presentation by Bill, Alex or the Chairs)*

**III. Economic Conditions Survey Results**  
*(15 minutes max, presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG)*

**IV. Public Input**



*(The Chairs should introduce the public input session as an opportunity to provide the Task Force with specific information regarding the function and future of the Central Waterfront. The Task Force has identified 4 issue areas that warrant consideration within the zone and is looking to hear the suggestions and experiences of property owners, business owners, fishermen, and interested citizens on these issues particularly. Other comments will be recorded separately. The 4 topic areas identified are:*

*{1} Functional access for water-dependent uses.*

*Is the zone protecting working waterfront access?*

*{2} Linkage between new, non-marine development and the marine economy.*

*How can non-marine investment provide direct or indirect support for Working Waterfront uses?*

*{3} Mixed-use development.*

- a. For both existing and new buildings, and*
- b. For both along Commercial Street and out on the piers.*

*What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?*

*{4} Parking.*

*Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?*

*{5} Other Issues*

*As provided by the Public.*

## **V. Open Discussion between Public and Task Force**

*(If time permits, the floor could be opened at the end of the meeting to allow a panel discussion by the Taskforce members and questions from the audience on the issues previously addressed.)*

### **Notes on Public Participation:**

*During item **IV, Public Input**, the public will be asked to make brief remarks on the 4 specific issues and to identify which issue they will be addressing. This will allow scribes to record public comments by category, and to help structure the conversation.*

*Depending on how many members of the public attend (10, 20, 50?), Task Force members will be allowed to reply and/or return follow-up questions to the participant at the podium. If attendance is light, there should be time for a conversational exchange. If attendance is heavy, public comments can be recorded, but there may not be time for a Task Force follow up - Assuming the goal is to allow all members of the public to speak with in a limited period of time.*

*Assuming a 9:00 adjournment and 30 minutes of settling in, introductions, and presentation, 90 minutes can be given to the public comment period. If 30 members of the public are in attendance, all comments will need to be limited to less than 3 minutes and there will be no time for Open Discussion. If 50 people show up, the meeting will probably run long and will need to be tightly structured.*

*Hopefully, attendance will be in the 15 to 25 range and the facilitator (~~we assume the Chairs~~) can encourage some back and forth with the Task Force and allow the Open Discussion prior to adjournment.*

# PLANNING BOARD RECOMMENDATIONS

*Proposed Waterfront Zoning Amendments*

*and*

*Land Use Policy Update*

## INTRODUCTION

The Planning Board is forwarding a series of zoning amendments related to the waterfront area of Commercial Street. These amendments would replace the existing W-1 and W-2 waterfront zones as well as the Waterfront Overlay Zone that was enacted by referendum in 1987. The zoning amendments includes the text and map.

In early 1991, the City Council Community Development Committee accepted the offer of the Waterfront Alliance to assist the City with a review of waterfront zoning issues. At the request of the City, the Alliance was also asked to consider economic factors along the waterfront which lengthened the process. In the Spring of this year, the product of this process, the "Waterfront Alliance's Recommendations" was forwarded to the City.

The Alliance's report included the basic zoning and policy concepts which the Board refined and translated into a formal zoning text. The Planning Board's initial waterfront zoning workshop included a presentation by the Waterfront Alliance of its report. Representatives of the Alliance's Zoning Committee attended the Board's meetings, answered questions and offered comments on the recommendations as well as the direction of the draft zoning amendments.

A copy of the Alliance's Report has been previously distributed.

## SUMMARY OF PROPOSED ZONING AMENDMENTS (Text has previously been distributed)

Definitions...Page 1...These amendments revises an existing definition and creates a new definition.

Waterfront Central Zone...Page 1 to 11...Creates a new zone.

Waterfront Port Development Zone...Pages 11 to 19...Creates a new zone.

Waterfront Special Use Zone...Page 20 to 29...Creates a new zone.

Urban Commercial Mixes Use Zone...Pages 29 to 34...Creates a new zone.

Zoning Map...Page 35 and 36...Revises the zoning map. Replaces the existing zones along the waterfront with four (4) new zones described above.

A B-2 zone would be created along India Street by the railroad office building and a sewer pump station.

## EXISTING WATERFRONT LAND USE POLICY

Waterfront land use policies are embodied in the City's comprehensive plan. The waterfront element of the comprehensive plan as adopted by the City includes the sections listed below.

\* Strategies for the Development of the Portland Waterfront, April 1982, as amended through August 1985

\* Proposed Waterfront Goals, Policies and Zoning Amendments (1983)

- 9
- \* Portland Waterfront Public Access Project Technical Report (1983)
  - \* Portland Waterfront Public Access Design Guidelines (1983)
  - \* A Waterfront Action Plan for the Port of Portland, Maine (1988)
  - \* Waterfront Task Force Recommendations (1990)

146  
INSCR  
B.V.

A summary of these documents and waterfront planning since the mid 1970's has been previously distributed.

### PLANNING BOARD'S WATERFRONT ZONING AND LAND USE POLICY RECOMMENDATION

This Report and its findings and policy recommendations are proposed to be incorporated as a new section of the waterfront element of the City's comprehensive plan. Land use policies of the waterfront and each zone are described in the following section.

The proposed waterfront policies involves the creation of three new districts along the waterfront. The new zones include the Waterfront Port Development Zone, Waterfront Central Zone and the Waterfront Special Use Zone. A fourth zone, Urban Commercial Mixed-Use Zone, was created to replace a landside W-1 zone. The zoning map is shown on pages 4 and 5.

These districts have contrasting but complementary functions to achieve the intended zoning policy. Land use policies of the waterfront and each zone are described starting on page 7. A summary of the more significant aspects of the zoning text is also provided. The preamble of the Waterfront Alliance Recommendations is shown on page 6.

A brief summary of the four new zones is shown below.

#### Waterfront Central Zone

The Waterfront Central Zone is the central area of the harbor for fishing and marine activities. While the focus of the zone is to protect water-dependent and marine-related uses, certain types and quantities of non-marine uses are allowed in the upper stories and buildings remote from the water. The zone runs east of the International Ferry Terminal to Maine Wharf and includes 16 piers.

#### Waterfront Port Development Zone

The Waterfront Port Development Zone is intended to protect areas with deep water access for uses that contribute to water transportation activities. This area serves as a staging area and connecting point for shipment of goods from vessels to trains and other forms of surface transportation.

The area of this zone includes the Portland International Ferry Terminal and areas west of the Million Dollar Bridge to the Merrill Transportation Marine Terminal. Other areas covered by the zone include the Casco Bay Ferry Terminal, BIW and adjacent railroad property.

### Waterfront Special Use Zone

The Waterfront Special Use Zone allows a broad mix of marine and commercial non-marine uses. This is the most flexible of the waterfront zones. Marine uses, offices, retail, aquariums, convention centers are among the uses allowed in this zone. The area of this zone includes the Portland Engineering site (Phineas Sprague) and the former National Distributor's warehouse and the Yale Cordage building.

### Urban Commercial Mixed Use Zone

The Urban Commercial Mixed Use Zone was developed to replace a W-1 zone on the landside (northerly) of Commercial Street between the Million Dollar Bridge and Center Street. This zone needed to be created since the W-1 zone is being eliminated and no other zone was appropriate. The zone is virtually identical to the text of the W-1 zone.

### Other Zoning Amendments

In addition to the creation of 4 new zones, there are several other zoning amendments proposed.

The definition section of the ordinance would be revised (see page 1 of zoning text). The term "marina" would be redefined and a new term "non-commercial vessel berthing" added to this section. These changes were made to more clearly define what a marina is as well as the type of berthing that is considered to be non-commercial. The term non-commercial vessel berthing is significant in that it allows some flexibility in the calculation of vessel space along wharves that might otherwise be considered a conditional use. Non-commercial berthing space along a wharf in the Waterfront Central Zone exceeding 50 linear feet is a conditional use.

A minor map amendment is also recommended by the Board. This change involves a strip of land along India Street between Fore Street and Commercial Street. This area includes the railroad office building and a sewer pump station. Currently zoned I-2b, it is recommended that these properties be rezoned to B-2. The properties behind this area would be zoned Waterfront Port Development Zone.

EXISTING ZONING MAP



The zoning indicated on this map will be replaced by the zoning shown on the preceding page

## PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.



## WATERFRONT CENTRAL ZONE

### **Summary:**

The Waterfront Central Zone is the central area of the harbor for fishing and marine activities. This zone is intended to accommodate a variety of marine uses, while allowing for selective uses and quantities of non-marine development of upper stories and buildings a distance remote from the water. An important concept in this zone is that non-marine uses must meet a compatibility standard so that they do not unreasonably interfere with marine uses. Hotels and residential uses are prohibited in this zone. See page 1 of zoning text.

### **Zoning Map Area:**

Area east of the Portland International Ferry Terminal to Maine Wharf. This area includes 16 piers.

### **Purpose Section/Policy Statements:**

"The Waterfront Central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that, while necessary for the convenient and successful conduct of such uses, may not be compatible with other types of uses.

Marine compatible uses are permitted under certain circumstances in the Waterfront Central Zone, provided that they respect and do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Marine compatible uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure."

**Additional policy statements recommended by the Planning Board:**

The Waterfront Central Zone encourages the rehabilitation of existing buildings and the development of appropriately sized newly constructed buildings. The goals of this zone, including the protection and enhancement of marine uses and facilities, may be achieved under certain circumstances, through a conditional/contract rezoning process in which the size of newly constructed buildings exceeds the normal zoning requirement of floor area devoted to non-marine uses.

An appropriate contract rezoning in this instance, would consider among others, the following factors in assessing the zone change application: conformance with the marine compatibility standard of section 14-317(14); the degree to which the development enhances and furthers the waterfront policies and goals of the City's comprehensive plan; the amount of non-marine uses in relation to marine uses in the building; the type and quantity of the pier infrastructure improvement and/or the amount of investment in a marine infrastructure improvement fund, including improvements that enhance berthing facilities for commercial fishing vessels and other commercial marine vessels.

In addition, new construction of buildings along Commercial Street should also contribute to the orderly development of that street by meeting design goals and guidelines outlined in the City's comprehensive plan, such as the Downtown Urban Design Guidelines and the Portland Waterfront Public Access Design Guidelines. The design guidelines will help foster an appropriate scale and design for new infill development that strengthens the pedestrian environment in this area.

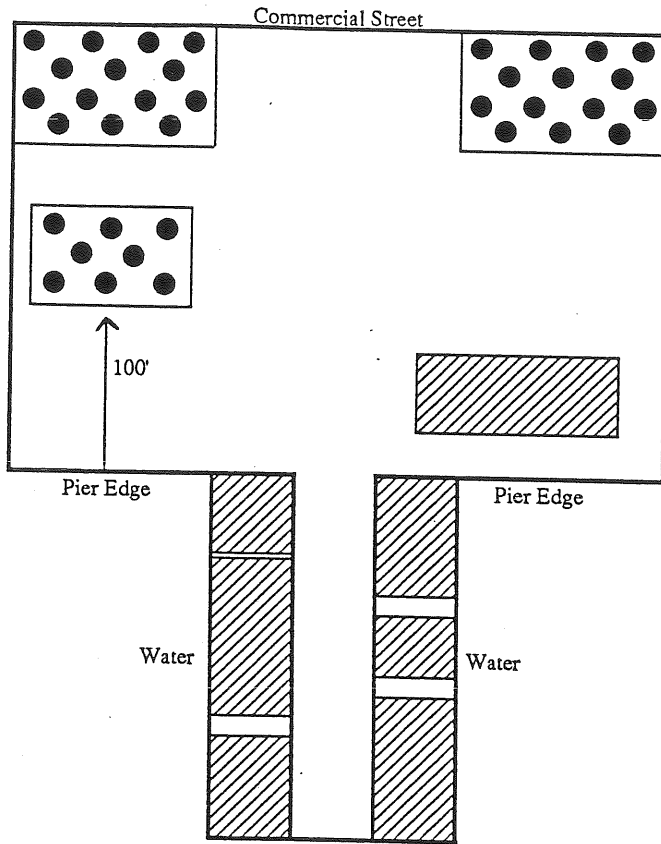
**Distinguishing Characteristics:**

The primary focus of this zone is protection of water-dependent and marine-related support uses. Certain non-marine uses such as offices, retail uses and restaurants are allowed. These uses are restricted to the upper floors of buildings. In the case of existing buildings along Commercial Street and in buildings more than 100 feet from the water, such uses may also be located on the first floor. This concept is illustrated on a chart on the following page.

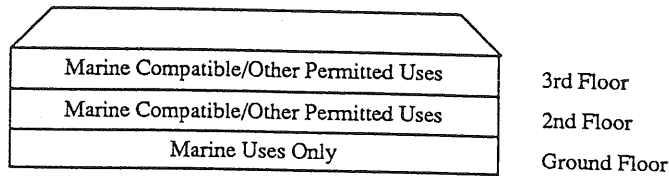
All non-marine uses regardless of their location must comply with a marine compatibility standard. (See page 10, line 41 of zoning text). The marine compatibility standard is also referenced for the other waterfront zones. A list of the marine compatible uses is shown on page 3, line 25 of the zoning text. The compatibility standard has been drafted to assure that permitted non-marine uses do not interfere with the operation of marine uses. The compatibility standard is shown below:

# Waterfront Central Zone

## Proposed Zoning and Building Locations



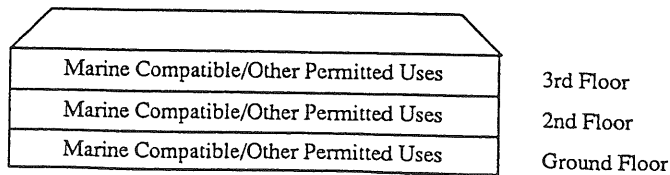
Buildings less than 100 feet from the water.



Existing Buildings: No cap on floor area for marine compatible uses.  
 Newly Constructed Buildings: 20,000 sq. ft. cap on marine compatible uses.



Buildings more than 100 feet from the water or existing buildings along Commercial Street (within 35 feet of the street edge) from Maine Wharf to City Fish Pier.



Existing Buildings: No cap on floor area for marine compatible uses.  
 Newly Constructed Buildings: 30,000 sq. ft. floor area cap for marine compatible uses.

The primary focus of most marine activities and operations is in the ground level of buildings. Marine compatible uses in the upper story spaces of buildings allows property owners a wider range of uses to fill vacant building spaces that otherwise may not be needed for marine uses and activities. Marine compatible uses help provide the financial return to property owners necessary for the maintenance and improvement of marine infrastructure.

In some cases the ordinance has been drafted to limit the size and scale of certain marine compatible uses such as retail and office uses in newly constructed buildings. The intent is to encourage the use of vacant space in existing buildings rather than the construction of new large offices and retail complexes.

Marine compatible uses may not exceed 20,000 sq. ft. of floor area in the upper floors of newly constructed buildings. If the building is more than 100 feet from the water, an additional 10,000 sq. ft. of floor area for marine compatible use would be allowed for the entire building. There is no limitation on the amount of upper story floor area that can be used for non-marine uses in existing buildings in order to encourage the use of existing vacant space.

Depending on the amount of floor area devoted to non-marine uses, the use may be permitted as of right or require Planning Board conditional use review.

A majority of floor area in a building must be devoted to marine uses unless the Board grants conditional use approval. This was intended as a balance to insure that non-marine uses do not overwhelm marine uses in a building or in the vicinity of the site.

The Board's recommendation includes lowering the existing height limit from 45 feet to 35 feet. The Board felt that 45 feet was too high for this area of Commercial Street.

## WATERFRONT PORT DEVELOPMENT ZONE

### **Summary:**

The Waterfront Port Development Zone is intended to protect areas with deep water access for uses that contribute to water transportation activities. Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development. Hotels and residential uses are prohibited in this zone. See page 11 of zoning text.

### **Zoning Map Area:**

Portland International Ferry Terminal property and areas west of the Million Dollar Bridge to the Veteran's Bridge (water side). This area includes the Merrill Transportation pier facility, Ciambro, Northern Utilities and Portland Terminal Company (Guilford Transportation Industries, Inc.) property. This zone also includes an area on the northerly side of Commercial Street from the vicinity of the Veteran's Bridge to Emery Street (primarily railroad property), and an area including Maine State Pier, BIW and adjacent railroad property.

### **Purpose Section/Policy Statements:**

"Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development."

### **Distinguishing Characteristics:**

This zone has been established to foster and protect waterfront land with deep water access which can contribute to port activity. This area serves as a staging area and connecting point for shipment of goods from vessels, trains and other forms of surface transportation. The use of this land for such purposes is critical to protecting harbor resources for port activities.

The traditional use of this land is similar to the purposes of this zone. The land within the Waterfront Port Development Zone was originally created for transportation-related purposes. In the 19th century, land was filled along the Fore River to create Commercial Street so that shipment of goods by rail and water could be facilitated. This became the hub of the City's import and export business.

The existing transshipment facilities and the former trackage yard west of the Million Dollar Bridge shows the potential for expanded port transportation activities in the harbor. The port has experienced considerable growth in shipping activities over the last several years with the Merrill Marine Terminal and the new International Marine Terminal facility. The replacement bridge for the Million Dollar Bridge will open up new and expanded port activities for this area since the existing bridge currently limits the size of vessels that may pass through it.

The Waterfront Port Development Zone does allow conditional uses such as industrial and other marine uses that are not related to harbor transportation uses. The conditional use standard requires that "such uses will not impede or preclude existing water-dependent development on the same lot or impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses."

An aquarium is a conditional use with standards in this zone. The standards are shown below.

Aquariums, provided that:

- i. This use shall not decrease the amount of, nor diminish the quality of existing on-site commercial berthing space, as measured along the pier edge, float edge, or wharf edge, whether or not such space is in actual use as commercial berthing space at the time of the proposed use;
- ii. The proposed use, including proposed accessory parking, shall not reduce the amount of space used by marine uses located on the site and in existence on (date of passage).
- iii. The proposed use shall meet the standards set forth in section 14-320.3(14).

**Additional policy statements recommended by the Planning Board:**

The zoning text of the Waterfront Special Use Zone does not restrict the amount of total floor area that can be utilized in an existing building (for structures in existence at the ordinance enactment date), since the purpose of the zone is to encourage the use and rehabilitation of such buildings. The size and scale of newly constructed buildings, in this zone however, has been limited to 30,000 sq. ft. of floor area to achieve the above objectives.

The goals of this zone may be achieved under certain circumstances, through a conditional/contract rezoning in which the size of newly constructed buildings exceeds the normal zoning requirement. Among the factors to be considered for an appropriate rezoning include: the relationship of the proposal to policies and goals of the waterfront element and other elements of the City's comprehensive plan; impact on existing marine-related uses on the property or existing or potential marine-related uses on adjacent property; circulation and parking; scale and design of the development in relationship to surrounding areas and public access.

The Waterfront Special Use Zone was created to address unique properties that have no access to water. Should such properties gain physical access to the water, the zoning for the site should be reviewed to determine whether a different zoning designation would be more appropriate to foster and protect the existing and potential use of the site for marine uses.

**Distinguishing Characteristics:**

This zone is the most flexible waterfront zone. The zone allows offices, retail, marine and commercial uses, industrial uses (meeting I-2 performance standards), warehousing, wholesaling, restaurants, convention centers, museums and art galleries. An aquarium is a conditional use in this zone.

The zoning text has been drafted to distinguish those areas of the zone that have direct water access and those that do not. The northerly side of the zone near Fore Street (Sprague property) does not have legal access to the water, based on a recent court decision. This area is able to take advantage of the wide range of permitted uses described above. This is also the only area of the zone that has existing buildings, aside from the former Naitonal Distributors warehouse and the Yale Cordage building.

The railroad right-of-way and land between the railroad property and the water would be restricted by the zoning text to primarily marine uses since this property does have water frontage. In this way, areas adjacent to the water can be protected for marine uses.

There are no floor area limitations on the above uses, although the zoning text does set a cap of 30,000 sq. ft. for newly constructed buildings. Newly constructed buildings over 30,000 sq. ft. would need to go through the conditional/contract rezoning process for approval. Policy criteria for such a rezoning is shown on the previous page.

The Board's recommendation did not include the Crosby Laughlin site on the northerly side of Fore Street. The Board felt that since the site is isolated from the water that it should not be classified as a waterfront zone.



## URBAN COMMERCIAL MIXED USE ZONE

### **Summary:**

The Urban Commercial Mixed Use Zone was developed to replace a W-1 zone on the landside (northerly) of Commercial Street between the Million Dollar Bridge and Center Street. This zone covers areas having the potential for the redevelopment of a mixture of commercial, marine, industrial and residential use to achieve a more productive use of land and buildings. The text of this zone is very similar to the W-1 zone. This zone is needed since the W-1 zone is being eliminated and no other existing zone was appropriate.

### **Zoning Map Area:**

North side of Commercial Street between the Million Dollar Bridge and Center Street.

### **Purpose:**

To provide a zone in areas of the peninsula near the central business district that are characterized by vacant land and underutilized buildings. Such areas have the potential for redevelopment of a mixture of commercial, marine, industrial and residential use to achieve a more productive use of land and buildings.

## OTHER MAJOR POLICY AND ZONING ISSUES

Most of the major policy issues were outlined in the descriptions of each zone in this report. There are, however, several significant issues that cross several zones. These issues are highlighted below.

### Aquariums

The Board recommends that an aquarium should be permitted as a conditional use in the Waterfront Special Use Zone and the Waterfront Port Development Zone provided that such uses can meet the appropriate review standards (including the marine compatibility standard) specified in the ordinance. The Board also recommended as a policy statement that such uses may also be considered for other locations in the City such as the Waterfront Central Zone as well as other commercial and industrial zones through the conditional contract/rezoning process.

### Contract/Conditional Rezoning

The Board's zoning text recommendation provides an appropriate balance in achieving the policy objectives of the new water zoning system. Limitations were placed on the size and scale of certain non-marine uses in newly constructed buildings (Waterfront Central Zone) to insure that they are not disruptive to marine uses in waterfront zones. The size of newly constructed buildings was limited in the Waterfront Special Use Zone. The Board feels that there are appropriate circumstances, however, where the policy goals of a zone can be achieved through a contract or conditional zoning process, in which these limitations can be modified to provide more flexibility in the zoning requirements.

Contract/conditional zoning enables the City to impose restrictions or conditions on projects which standard zoning would not typically address. This process has the advantage of providing flexibility in the zoning process with the City retaining control on the type and scale of development.

The appropriate circumstances for a contract or conditional rezoning is outlined in the Waterfront Central Zone and the Waterfront Special Use Zone. The policy criteria for this type of rezoning is shown on pages 8 and 14 of this report. An important consideration in the rezoning would be the extent that the proposal invests in the improvement of marine infrastructure (such as the substructure of piers); the impact of the project on marine uses; and the relationship of the proposal to the City's Comprehensive Plan. Conditions can be imposed in the project to insure that these policy considerations are met.

## WATERFRONT ZONING PLANNING PROCESS

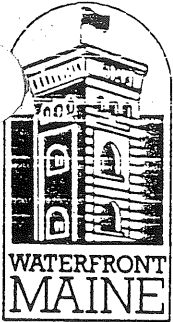
The Planning Board held eight workshops and two public hearings to discuss proposed waterfront zoning changes. The first public hearing was held on August 25th with the final public hearing on September 29th. On September 29th, the Planning Board voted 6-1 (Williams) to recommend to the City Council approval of the Waterfront Zoning Amendments attached to this report. The Planning Board also voted 6-1 (Williams) to recommend to the City Council that the Planning Board Report on Waterfront Zoning be incorporated into the City's Comprehensive Plan.

A boat and land tour of the waterfront was held by the Board early in the planning process. The Board's initial meeting included a presentation by the Waterfront Alliance of their report. Representatives of the Alliance Zoning Committee attended the Board's meetings, answered questions and offered comments on the recommendations as well as the direction of the draft zoning amendments. As appropriate, the Board also allowed some public comment during a number of the workshops.

In addition to a newspaper advertisement of the public hearings, over 900 notices were sent to area residents.

Written comments submitted to the Board are attached.

WRITTEN COMMENTS RECEIVED BY THE PLANNING BOARD  
ON WATERFRONT ZONING (ATTACHED)



RECEIVED

SEP 23 1992

PORTLAND PLANNING OFFICE

September 18, 1992

Mr. Joseph R. DeCoursey, Chairperson  
and the Portland Planning Board  
389 Congress Street  
Portland, Maine 04101

Re: Waterfront Zoning

Dear Mr. DeCoursey:

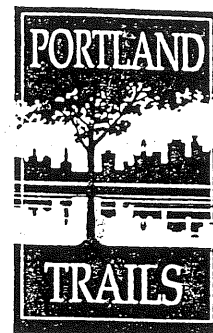
In August, I sent you, and the other members of the Board, a letter outlining my concerns relative to the proposed Waterfront Central Zone. My primary objection was to the distinction being made between buildings located in and outside an arbitrary perimeter 100 feet from the "water."

Having followed closely the work that has been done on this draft amendment to date, I have reached the conclusion, shared I believe with members of the Planning Department, the Waterfront Alliance, and the Planning Board, that the Cumberland Cold Storage Building is a unique waterfront property, not adequately addressed by the zoning ordinance as proposed.

Due to its size, masonry construction and the immense scale of its under-utilization, it is unlike any other structure on the Central Waterfront, with the exception of the Thomas Block before its renovation, a property getting very different zoning consideration. Even Karen Sanford, and others who support her extreme position, have difficulty envisioning a future use for the Cumberland Building within a marine zone. Her answer is to demolish it.

That would be a mistake, no less significant than the demolition of Union Station. The Cumberland Cold Storage Building should be viewed as an asset to the City, not a liability. It is a landmark structure, whose revitalization will impact not only the Waterfront, but Portland as a whole.

The proposed amendment includes limits and restrictions that would make it very difficult, in practical terms, to adapt and re-use the building, let alone to survive the site plan review or contract rezoning process. The ordinance is written with smaller buildings, constructed for modern marine uses, in mind. It does not take into account the importance of first floor rental income to a large commercial project, the primary infra-structure expenses involved in modernizing a 5 story building, nor the serious competition for marine tenants offered up by the adjacent City Fish Pier.



September 17, 1992

Joseph DeCoursey, Chairman  
Portland Planning Board  
City Hall  
389 Congress Street  
Portland, ME 04101

Dear Chairman DeCoursey:

I am writing on behalf of Portland Trails to request a clarification of the description of permitted uses in the proposed Waterfront Port Development Zone, Waterfront Central Zone and the Waterfront Special Use Zone as now being considered by the Planning Board. As you know, Portland Trails is a non-profit community-based organization set up in Portland to help implement the Shoreway Access Plan, which was commissioned by the City in the late 1980s and adopted as part of its comprehensive plan. As I understand it, the zones as currently proposed permit public uses including pedestrian parks or landscaped pedestrian parks and plazas, and "other similar outdoor pedestrian spaces." We are requesting that you add to this language by way of clarification ". . . including without limitation pedestrian and bicycle trails." (See Section 14-314(5)(b), Section 14-319(3)(b) and Section 14-320.6(4)(b) of the 9/11/92 Draft.)

Although we think this is a clarification only and merely makes explicit what is implicit, I would be happy to speak at more length to the Planning Board at a workshop or public hearing if you think that would be helpful.

Thanks for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "J. Peter Monroe".

J. Peter Monroe, President  
Portland Trails

cc Joseph Gray

RECEIVED

SEP 09 1992

PORTLAND PLANNING OFFICE

BILL  
CURTSINGER

PHOTOGRAPHER

Joe Gray  
Portland Planning Board  
City Hall  
Portland, ME 04101

September 6, 1992

Dear Mr. Gray and Board Members:

I would like to speak to the waterfront zoning issue now before you and specifically how the proposed language impacts the future site location of a public aquarium on the Portland waterfront.

I would first like to introduce myself. I have been a contract photographer for the National Geographic since 1971. I specialize in natural history and underwater photography. I have photographed over twenty stories for National Geographic Magazine, the most recent being the story, "*Bikini's Nuclear Graveyard*", in the June, 1992 issue. My underwater photography has appeared in every major magazine here and abroad. I have had two books of my photography published and am currently working on a third. Photo agents in New York, Barcelona, Milan, Paris, and Tokyo sell my photography to their specific markets. My wife and I market my photography everywhere we can from our office in Portland.

My work has been on display in many public aquariums and oceanariums and used in their promotional and educational materials. I have worked in several aquariums and visited many. I sincerely believe in a public aquarium for the Portland waterfront, and have no doubt about its viability and success. Having been involved with marine education my whole career, I don't think there is a better way to educate the public about the marine environment than an eyes-on, hands-on experience at a marine aquarium. I also believe that the Gulf of Maine Aquarium will be built, and they will come.

144 Pine Street  
Portland, Maine 04102  
207-761-0955  
FAX 207-772-4578

**MAINE WHARF**

ASSOCIATES

**BERLIN MILLS WHARF**

ASSOCIATES

September 4, 1992

City of Portland, Maine

Planning Board

Dear Members of the Planning Board:

My name is Joe Schmader, and I am the owner and operator of Berlin Mills Wharf and Maine Wharf here in Portland. I am also President of Gowen, Inc. a Marine oriented company that has it's roots in Portland since 1907. I am writing you at the request of Mr. Richard Knowland. I was out of town for the Public Hearing, but have read and talked to a number of people who attended. I feel there were many valid points made however, I don't feel the real issues were discussed from a nuts and bolts stand point.

I have been involved in the Marine field all my life; from an avid recreational boater, owner of fishing boats, operator of a fish take out, designer and builder of fish processing equipment, to presently the operator of a shipyard, owner and renter of waterfront property since 1968 and dealing with the zoning laws and the appeals process. My background allows me to put things in a different perspective from what I heard to date. I believe we have an opportunity, not only to achieve some well defined zoning for our waterfront which will allow us to be a profitable, supportive members of the community, but also deals with some of the red tape, saving the taxpayers money.

Two areas which concern me are:



With the way it is currently stated, I foresee approximately 20 property owners requesting conditional use variances, after expending many dollars and time.

Using a bench mark off Commercial Street, I would project one request for a conditional use, the Cumberland Cold Storage Building, which is clearly a different issue.

In further support of the above, there is not an existing building within 100' of the center of Commercial Street that can meet the need of a water dependent business.

The only slip that is navigable to it's head within 100' of Commercial Street is between Long and Chandlers Wharfs, which at the present time is being used for it's highest and best use.

I have spent the past 5 years attempting to define Marine Companies that need access to the water and the type of access they need. All of the businesses I can come up with require direct access: un-obstructed to navigable water at all hours of the day. Based on this, there is not an existing building within the 100' of Commercial Street, which has navigable water access. I have defined navigable water as 8' at MLW.

to: members of the Planning Board  
from: Nini Mc Manamy  
10 Willis St.  
Portland, Maine 04101

date: 9-8-92  
re: waterfront zoning

I would like to reiterate for you my concerns regarding waterfront zoning, and make some suggestions regarding the process for handling the Alliance report.

These are personal concerns. The Munjoy Hill Neighborhood Association is in the process of polling its membership to determine their priorities for development in the special use zone, and expects to have results during the first week in October.

First, the Alliance report is totally inadequate on the topic of economic development. Their charge, as reiterated in their report, suggests their task was to develop something like a business plan for the entire waterfront, with zoning recommendations to carry out that plan.

Instead, they have become consumed by the technology of zoning ordinances, and either leapfrogged over or hidden from public view their assumptions and priorities for economic development.

I urge you, as the planning board, to initiate the economic and social planning which is absent from this document, and to leave the zoning now in place untouched until it is clear what the residents of Portland want for their waterfront-- with the exception of those items which may receive universal support, such as limited second-floor relief.

As part of this planning process, you might recommend that the city council ask the city manager to assign an interdepartmental team from economic development, planning, and health and human services, at a minimum, to staff this effort. The working team for this process should collect and publish data essential to develop a plan for the waterfront:

numbers and kinds of jobs there, with earnings and benefits for those jobs (I've been told that no one seems to know how many people are employed in various parts of the fishing industry on the waterfront, for example) so we know what works and should be preserved;

rents, incomes, vacancy rates, ownership and real estate values for properties there, to show the effect of the various types of zoning we have had over the last decade;

histories of mixed use properties of equivalent scale elsewhere;

MEMO

To: Portland Planning Board  
From: Orlando E. Delogu, Professor of Law, Resident of Portland  
Date: August 25, 1992  
Subject: Proposed Waterfront Rezoning

Introduction--Underlying Facts and Assumptions:

1. The present waterfront zoning (lying primarily on the water side of Commercial Street) encompasses a little more than 1% of the total land area of the city. It is a small (approx. 2 ½ miles long) almost straight line waterfront. It affords some of the finest deep water anchorage on the east coast. Within this compact area the widest range of water dependent uses and activities are, and must continue to be, located. Waterfront land is a scarce resource--it should not be wasted--the present waterfront zoning more fully protects this resource than any of the proposals for change that are on the table.
2. The present waterfront zoning is in accord with federal policies as articulated in the Coastal Zone Management Act; the State of Maine's coastal management policies; and the City's comprehensive plan.
3. There is no shortage of land area in Portland, much of it in close proximity to the waterfront, which can accommodate the full range of non-water dependent land uses and activities that a dynamic downtown (and urban) economy requires. These activities do not need to be on the waterfront; they have already been allocated more space than they can possibly use (upper story office vacancy rates on Congress Street presently exceeds 40%); they do not mix well with working waterfront activities--in fact, there is a considerable body of evidence suggesting that over time these upscale non-water dependent activities tend to drive out (either by regulation or economic clout) working waterfront activities. Sound planning and zoning should not permit this.
4. There is also considerable evidence that Portland's working waterfront, protected by the present waterfront zoning, fared relatively well in the economic downturn that Maine and the City of Portland have recently endured. As we emerge from the recession, as we contemplate the construction of a new high level bridge (between Portland and South Portland) that will make the inner harbor more accessible, and as some of the infra-structure improvements along the waterfront and on many of the piers is completed, there is every reason to believe that working waterfront economic activities will expand further providing both taxbase and reasonably well paying jobs to the City.

ALL OF THESE FACTORS TAKEN TOGETHER SUGGEST THAT FEW, IF ANY, CHANGES OUGHT TO BE MADE TO THE PRESENT WATERFRONT ZONING. IT AIN'T BROKE-- DON'T FIX IT.

Post-it® brand

**Fax Transmittal Memo 7672**

To *Portland Planning Board,*  
Company *Joseph Gray + Alexander Jaegerman*  
Location

No. of Pages *- 2 -* Today's Date *8-21-92* Time

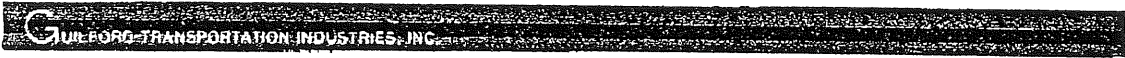
From *Leonard A. Lucas*  
Company *Guilford Transportation*  
Location *Dept. Charge*

Fax # *607 874-8649* Telephone #  
Comments

Fax # Telephone # *603 429-1115*  
Original Disposition:  Destroy  Return  Call for pickup

*Please make copies and distribute to etc  
above individuals*

Real Estate  
7 Executive Park Drive  
Merrimack, N.H. 03054  
603 429 1115  
603 429 1755 FAX



August 21, 1992

VIA FACSIMILE TRANSMISSION  
(207) 874-8649

City of Portland Planning Board  
City Hall  
389 Congress Street  
Portland, Maine 04101

Re: Waterfront Zoning

Dear Planning Board Members:

The current waterfront zoning proposal places property owned by Portland Terminal Company in the Waterfront Port Development Zone. This property is located between the Merrill Marine Terminal and the so-called "Million Dollar Bridge". I should note for the sake of accuracy that Portland Terminal also owns property on the north side of Commercial Street east of the bridge. This too is included in the Waterfront Port Development Zone even though property across Commercial Street is located in the Waterfront Central Zone.

At the August 11, 1992 workshop session, I addressed the Board with respect to Portland Terminal Company's objections to the proposed zoning. These objections concern the effect of distinctions between the Waterfront Central Zone and the Waterfront Port Development Zone in light of current economic conditions. In formulating its re-zoning proposal, the Waterfront Alliance makes a point well taken that current economic conditions do not sustain development or maintenance of waterfront dependant/related uses. Consequently, the current zoning proposal liberalizes the permitted uses in the Waterfront Central Zone. Ironically, the proposal also intensifies the restrictions placed upon land located in the Waterfront Port Development Zone. It is this distinction that concerns Portland Terminal Company. It is unfair to both Portland Terminal as a land owner and the City so far as it may be interested in the tax base, that the current zoning proposal recognizes and alleviates

CHESTER & VESTAL  
ATTORNEYS AT LAW

EDWIN P. CHESTER  
BARBARA A. VESTAL

107 Congress Street  
Portland, Maine 04101  
Telephone (207) 772-7426

August 20, 1992

Portland Planning Board  
389 Congress Street  
Portland, ME 04101

RE: Waterfront Zoning

Dear Planning Board Members:

I will be out of town during the week of August 25th, so I am writing to express my concerns about the most recent draft of the Waterfront Zoning. While I agree that some modifications are required in the existing zoning, I believe Portland should take a cautious approach. Any modifications should reflect what we have learned during the last decade, and should draw on techniques developed by other communities faced with similar issues.

I believe the ordinance as drafted fails to provide sufficient protection for water dependent uses (WDU's). There are a multiplicity of reasons for reserving sites which have adequate shoreside access for active WDU's. Many of these WDU's, such as commercial fishing, are resource dependent, therefore cyclical; if space is not reserved for them when the resource is down, they will not be able to secure adequate space when the resource is up and they have much to contribute to the local economy. Similarly, berthing space and space suitable for the transfer of people and goods between land and sea is a scarce resource. Due to increasingly stringent environmental laws, we should not expect that much new dredged and engineered waterfront space will be created in the future. We must reserve what we have for uses that can only be accommodated on these sites. National and State policy makers (both in Maine and in many other coastal states) have recognized the importance of protecting shoreline space for water dependent uses (see e.g., the Federal Coastal Zone Management Act and Maine's Coastal Management Policies Act, made applicable to municipalities through the Growth Management and Shoreland Zoning Acts). Beyond the fact that it is in our economic self interest to do so, these laws also mandate protection of suitable shoreline space for WDU's.

This does not mean that we have to freeze out all other uses while reserving spaces for water dependent uses. But it

to mention that sites suitable for active WDU's are a scarce resource. The balance of the ordinance fails to live up to the objectives set out in the purpose statement. This is a serious problem since the purpose statement cannot provide what is lacking in the remainder of the text.

2. The standard for compatibility of non-marine uses with marine uses (14-317(14)) is too weak. It should provide that non-marine uses may not displace existing marine uses, nor may they locate in areas which have been occupied by WDU's during the previous five years, nor may permanent uses locate in areas where there is now or will be in the foreseeable future a demand for space by WDU's. The issues should not be limited to non-interference with currently existing WDU's or non-impedance of access to the water by existing or potential marine uses; the criteria should also preclude conversion of existing or potential sites which are suitable for WDU's.
3. The map should be further refined and new zone(s) created as appropriate to make more of a distinction between a very limited retail/office area at the foot of the Old Port and the rest of the central waterfront. The remainder of the central waterfront should be more industrial in emphasis, with much more limited conditional uses. As drafted now, this district is a step backward to pre-1983, when the waterfront was opened up to almost any use.
4. As we have learned from experience, conditional uses are basically permitted uses. They should not be included unless the Planning Board is willing to see the entire zone built out in those uses.
5. The conditional use size restrictions are excessive for all uses, but for particularly for new construction. If the intent is to give relief to current owners with vacant upper story space, why allow such large non-WDU's in new buildings? There are no requirements that this new development contribute to the marine infrastructure. This also is in direct conflict with the Downtown Plan and goals of revitalizing Congress Street. The standards are phrased per building; nothing prevents a series of 20,000+ square foot buildings on a single pier 100% of which could be occupied by non-WDU's.

## WATERFRONT SPECIAL USE ZONE

### **Summary:**

The Waterfront Special Use Zone allows a broad mix of marine and commercial non-marine uses. This is the most flexible of the waterfront zones. The zone is intended to offer more flexibility for properties which are separated from the water's edge and which have obsolete buildings or facilities that exceed the scale of development appropriate for other waterfront zones. The zone prohibits hotels and residential uses. See page 20 of zoning text.

### **Zoning Map Area:**

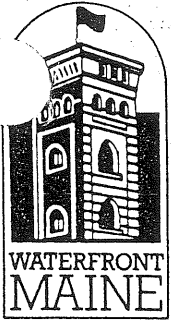
Areas include the Portland Yacht Services facility (former Portland Engineering site) off Fore Street and properties adjacent in the vicinity of 84 to 154 Fore Street (southerly side). This area includes the former National Distributor's warehouse and the Yale Cordage building.

### **Purpose Section/Policy Statements:**

"The Waterfront Special Use Zone permits a wide variety of marine-related, marine-compatible, private commercial, and public uses on properties adjacent to the waterfront. The zone offers expanded economic opportunities for property owners to reuse existing buildings and facilities, enhances the economic strength and stability of the waterfront economy, and encourages uses which will increase public understanding and enjoyment of the City's marine resources. The public accepts certain non-marine-related public uses and non-marine-related private commercial uses in the belief that investments in related improvements or the return on those investments will also benefit the City's marine industries.

The zone applies only to properties with the following characteristics. First, the properties are separated from the water's edge by physical or other restrictions which impede direct water access. Second, the properties include obsolete buildings or facilities that substantially exceed the scale of developments deemed appropriate for marine uses and marine-compatible uses in sections of this ordinance regulating land use in the Waterfront Central Zone and the Waterfront Port Development Zone.

All development in the Waterfront Special Use Zone should provide for greater public access to and enjoyment of the City's waterfront, and must also benefit neighboring marine-related and marine-compatible uses on adjacent waterfront properties. Land uses in the Waterfront Special Use Zone must neither conflict with present marine-related uses on the properties or on neighboring properties, nor inhibit any future development of marine-related uses on neighboring properties. Any proposed new development or renovation for either public or private uses must meet expressed standards of compatibility with marine industrial and marine-related uses."



July 31, 1992

Mr. Joseph R. DeCoursey  
and Members of the Portland Planning Board  
389 Congress Street  
Portland, Maine 04101

Dear Mr. DeCoursey:

As one with a vested interest in the Waterfront, I am troubled by a particular provision in the draft ordinance presently under review, specifically, the restriction placed upon the ground floor of buildings located within 100 feet of the water.

It is my understanding that the selection of this distance, during deliberations of the Waterfront Alliance, was an arbitrary one. Numbers were thrown against the wall, and "100" happened to stick. It was not a decision based upon a careful study of particular properties, nor a clear understanding of the unique interplay between boats and certain buildings.

The stated intent of the Waterfront Alliance was to provide a mechanism for preserving those waterfront structures of unique significance to marine business, in particular, the ground floor space of buildings whose close proximity to the water facilitates the loading and unloading of boats, and other marine-related operations. These buildings typically are situated within 2 feet, or 5 feet, certainly no more than 10 feet from the water's edge. If a truck can be driven between a building and the water, its ground floor serves no particular advantage to marine users.

The Cumberland Cold Storage Building, in which I share ownership, was constructed within 55 feet of the water. It was built with railroads, not boats, in mind. Over its long history, it has made molasses, canned fruits and vegetables, and stored potatoes and chicken. To my knowledge, it has never housed a marine tenant, in the narrow definition of the word we apply today. The building is vacant, not because of its condition (there are many more buildings on the Waterfront in worse shape), but because marine tenants find it ill-suited to their operations, due to its type of construction and its distance from the water.

I urge you to examine this provision in practical terms, to reduce the width of this 100 foot perimeter, with its ground floor restriction, to the width of a common roadway, say 30 feet. The Working Waterfront will not suffer. It will be preserved on the ground floors of buildings, with an obvious marine advantage, and on the city-owned properties specifically reserved for marine use. Non-marine buildings, like Cumberland Cold Storage, cannot be revitalized without viable use of their most rentable floor.

Sincerely,

Peter Wellin

Waterfront Maine  
14 Maine Street  
Brunswick, Maine 04011



Look at the SPECIAL USE ZONE next to Bath Iron Works:

As I just said, the Alliance consensus was that the Portland Engineering property has some characteristics which distinguish it from other waterfront areas (including possible lack of access to the water) and that, therefore, some uses that would not be acceptable in the industrial heart of the working waterfront could be permitted there.

The proposals for that area began with some measure of care for the waterfront and the neighborhood, with the Port Development Zone underlying, which was liberalized to the Central Zone underlying, which then went to a Special Overlay Zone and has ended up with the most permissive zoning, (either on or OFF the waterfront) that could be imagined. Convention Centers of almost any size, huge new office buildings, an aquarium;

And all of this as OUTRIGHT PERMITTED USES, subject only to a 50% of normal parking requirement !

This makes the half-a-million square foot, 330 condo complex called "Eastern Point" look like child's play.

---

And, what about the SINGLE MOST IMPORTANT COMPONENT OF THE CONSENSUS COMPROMISE WHICH WAS THE CONCEPT OF ALLOWING NON-MARINE, BUT MARINE COMPATIBLE USES ON UPPER FLOORS OF EXISTING BUILDINGS, or possibly, in some buildings without water relationship, on all floors ?

During much of 1990, the Alliance worked on the two large industrial zones at the east and west ends of the waterfront that suffered under archaic zoning and the referendum overlay on top of that. At that time, the concept of MARINE-COMPATIBILITY was born. We centered all of this work on that concept and forwarded these ideas to the city - the IM1 and IM2 zones. The concept was then applied to the Central Zone as we sought ways to give relief to property owners from the marine-only provisions of the 1983 and 1987 zoning laws. We asked,

THIS IS NOT RHETORIC; THIS IS WHAT THIS ZONING PROPOSAL PERMITS AND ENCOURAGES.

FORGET THE THREAT TO THE WORKING WATERFRONT :  
Does the City of Portland, after spending \$30,000 on a study of how to fix the 41% vacancy<sup>retail</sup> rate on Congress Street and the 12% vacancy rate in the Old Port, really think that creating a third retail district with the competitive advantage of a waterside location is wise ?

You know, Portland was heralded nationally as one of the few waterfront cities that, during the pressures of the 80's, stood firm with its working waterfront and bucked the trend to go trendy. (Since then, a number of these trendy waterfronts have failed.)

---

1987, The people of Portland did more than vote NO CONDOS as some like to suggest. I don't think for a minute that the people of Portland want us to become yet another Newport, Rhode Island or Salem, Massachusetts where the last fishermen are now being driven off their waterfronts. Portland can offer tourists a REAL WORKING WATERFRONT IN AN UNPARALLELED HISTORIC SETTING.

-----  
The Waterfront Alliance recommended "NO NEW LARGE OFFICE BUILDINGS". That's where we began.

The process of the last two months, when business people have been allowed to craft their own zoning, has given us, as conditional uses, which usually means permitted, BRAND NEW, 30,000 square foot office/retail/restaurant complexes - 20,000 office, 6,000 retail and 4,000 restaurant. No parking requirements at all for non-marine uses. The Cumberland Cold Storage could very well be granted permission to convert all 98,000 square feet to office/retail/restaurant. That's what the property owner wants and that what he got.

-----  
Aiding such property owners is the 100' provision. Here is its history:

On the final day of Alliance board discussions about zoning, the property owners dropped a bomb into negotiations. They departed from the long-standing plea for upper story relief and proposed that ALL FLOORS BE NON-MARINE if MARINE-COMPATIBLE.

Force Recommendation #3), there can be <sup>OVER</sup> 150 feet of recreational berthing on pier and there is no limit to the amount of linear feet on a pier which can be devoted to yacht sales and repair.

Our 18M dollar public investment in the Fish Pier is threatened by any possible reduction in the amount of commercial berthing on the working waterfront. Without adequate fish boat berthing, the auction can not survive.

This liberalization of marina provisions flies in the face of the arduous legislative process of 1986, when Keep the Port in Portland, then-Councilor Esther Clenott and the Portland Planning Board, concerned about the loss of commercial berthing experienced in the Chandlers' Wharf condo development, presented three packages of commercial berthing protection measures which the City Council molded into law in the Spring of 1987.

In 1989, taxpayers paid roughly \$30,000 to study the berthing needs on the Portland waterfront as part of the Waterfront Task Force effort. Recommendation #9 reads: MORE FISHING BOAT BERTHING IS NEEDED AND THE BEST SITE IS AT THE PORTLAND FISH PIER.

MORE FISH BOAT BERTHING IS NEEDED, say the consultants and the Task Force and yet these proposals have the potential of seriously undermining that directive.

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In summary, there is no relationship, absolutely NO RELATIONSHIP between this proposed zoning plan and the recommendations which I helped write with the Waterfront Alliance.

The zoning subcommittee of the Alliance which has been working with the Planning Staff and the Planning Board on those recommendations has acted like children in a candy store where everything is free.



Associated Press

Michael Zdanowicz sits on the stern of his lobster boat, Gertrude Z, in Beverly, Mass. Zdanowicz, whose grandfather started the family's lobster business in Salem, Mass., in 1918, was forced to move his operation because of the modernization of Salem's waterfront.

# GERTRUDE Z SALEM

## Last commercial fisherman leaves town

● The departure of Michael Zdanowicz closes the book on the proud fishing tradition of Salem, Mass.

Associated Press

SALEM, Mass. — Commercial fishing, a centuries-old way of life in this New England coastal town, has drifted away on a tide of tourism. Michael Zdanowicz, 39, whose grandfather set up a family lobstering base in Salem in 1918, shoved the Central Wharf on June 15 from the wooden float he had used for lobster pots.

"There were no compromises to be made," he said. "It was kind of disheartening." Zdanowicz was swept out on a wave of modernization that has transformed the town's coastline into private developments and national parkland.

Leaning heavily on its seafaring heritage for tourist dollars, Salem has restored fishermen's historic homes, built marinas, condominiums and pricey seafood restaurants, and attached nautical names to stores. There was no room for a real live lobsterman.

The eviction notice came from the National Park Service, which wants to repair the eroding wharf and build several historic warehouses and an old ship.

Zdanowicz had stood his ground for years, but a contentious public hearing, angry letters and confrontations and threatened fines eventually

He didn't go. He wouldn't go. Until now we accommodated him," said Cynthia Pollack, a Park Service official in charge of the site. "But you can't conduct business in a national park unless you're a concession." Salem, a town of 38,000 residents north of Boston, has never been a large fishing port but commercial fishing has always had a place, as it has in most New England coastal towns.

While the number of commercial fishermen and lobstermen in Massachusetts has remained stable in recent years, the fishermen often have been forced out of traditional ports. They go in search of undeveloped ports or inlets. Zdanowicz moved to Beverly, 3 miles north to change a little," said William Palombo, president of the Atlantic Offshore Fishermen's Association. George Nowak, a city councilor for 21 years who used to buy lobsters from Zdanowicz's uncle Joseph, said

he finds the Park Service's ironic. The planned historical zones are "a good idea, should leave the lobster there," he said. "That's what should be preserved." "There is supposed to be a heritage in the area. It's too bad because I'm enjoying talking to a lot of people in the early days of lobster boats and fishing boats on Central Wharf." "There was a Tommy, my father, who was recalled. 'You're out of the city, out.'" Zdanowicz when his father's son, Michael, did

Chairperson Joseph R. DeCoursey  
July 29, 1992  
Page Two

However, it would be inconsistent and unfair for the City to recognize the plight of these individuals, situated in the Waterfront Central Zone, on one hand and on the other hand impose more severe restrictions on Portland Terminal Company's properties located in the Waterfront Port Development Zone. Simply put, Portland Terminal Company should not be made to suffer the economic hardship for which the City would be granting relief to the property owners located in the Waterfront Central Zone.

Although I am generally opposed to the establishment of the Waterfront Port Development Zone, in the event that it comes into being, I am also concerned with its geographic scope. It is my understanding that the City has an interest in preserving the deep water berthing located along the Portland Terminal Company property between the Million Dollar and Veterans Memorial Bridges. It seems to me that the City can preserve access to this area without encumbering all of the property between the two bridges. Further, with respect to property located east of the Million Dollar Bridge, I do not see any rationale for including property north of Commercial Street in said zone.

I hope that these concerns can be taken into account as the proposed zoning ordinance is worked and reworked during the coming weeks so that all landowners can be treated fairly and without discrimination. I will make myself available at planning board workshops to discuss this position further or at any time convenient to the board.

Sincerely,



Leonard A. Lucas  
Vice President-Real Estate

LAL:img

cc: Joseph E. Gray, Jr. Director, Planning and Urban Development  
Alexander Jaegerman, Chief Planner

2) Div. 18.5 WATERFRONT CENTRAL ZONE - Permitted Uses (2)

a) PROFESSIONAL, BUSINESS AND GENERAL OFFICES:

Are all office uses equal ? Should the city be concerned by the NATURE of the office use ? Would a Pediatric doctor's office, or a Gerontologist's office create pedestrian-truck - conflicts, for example, that perhaps an engineering consultant's office would not ? Will the parking and congestion problems already present on the central waterfront be exacerbated more by one type of office than another ?

b) RESTAURANTS:

Are all restaurants equal ? Again, should the city be concerned about the NATURE of the restaurant ? With SIX restaurants on the waterfront (five adjacent to the Old Port and Becky's within walking distance of Old Port) does the city want to encourage the proliferation of waterfront restaurants with their parking requirements and potential congestion problems ? (The CDC, under Pam Plumb's leadership in 1989, devised a set of criteria for waterfront restaurants; that work might be useful in your discussions.)

c) CRAFT AND SPECIALTY SHOPS:

Would this provision permit pottery shops, jewelry designers, art galleries, T-shirt silk-screening shops, for example ? Do we want to encourage tourist shopping, and other casual shopping in the midst of semi-truck and forklift traffic on our narrow piers ? What are the liability implications for property owners ?

d) RETAIL AND SERVICE ESTABLISHMENTS:

Is it in the best interest of the City of Portland to encourage the development of a THIRD RETAIL DISTRICT (Congress St., Old Port, waterfront) ? Are boutiques a desirable, compatible or wise use of the waterfront resource ? When would the cumulative impact of such uses seriously interfere with the working waterfront's ability to function ? Would Portland become another Newport ?

Is tourist and other casual shopping compatible with the industrial nature of the working waterfront ?



## WATERFRONT PLANNING FROM THE 1970's TO PRESENT

The City adopted the **Land Development Plan** in 1974, the first master plan for Portland in 40 years. One of the Land Development Plan's major recommendation was the creation of a W-1 waterfront zone (mixed use) from Fort Allen Park to the Veterans Memorial Bridge along the waterfront. The waterfront at this time was zoned I-3b Industrial, which allowed only industrial and heavy commercial uses. Concern was expressed that unless the City came up with a definitive land use and zoning plan for the area, future growth could be misdirected and the valuable resource base of the waterfront lost.

In 1975, the City formally completed and adopted the **City Edges Waterfront Improvement Program**. This report offered a comprehensive assessment of existing conditions along the waterfront including land use, building conditions, piers and wharfs, transportation, public improvements and historic buildings. The report also provided a wide range of recommendations for revitalizing the waterfront. The zoning recommendation suggested a Waterfront W-1 zone be established between the Million Dollar Bridge and Custom House Wharf.

A text amendment was developed for the W-1 zone (mixed use) in 1976 but only the International Ferry Terminal site was zoned for this designation. The following year the text was amended to correct deficiencies in the earlier ordinance and a W-1 zone was established from the Million Dollar Bridge to Custom House Wharf. In addition to a variety of marine uses, the W-1 allowed offices, retail, hotel and residential uses. The policy statement of this zone indicated that "the purpose of this zone is to permit and promote marine shipping and fishing-related uses while at the same time providing for traditional commercial and industrial uses and for customer-oriented commercial uses and residences." The remainder of the waterfront stayed I-3b.

In the early 1980's, the City commissioned a waterfront study by **American Cities Corporation**. The report generated an intense public debate on the recommendations and the future visions of the waterfront. The City then embarked on a process to develop its own plan. The product of this new effort was **Strategies for the Development and Revitalization of the Portland Waterfront**. The plan outlined a comprehensive strategy to reinvigorate the working waterfront while encouraging mixed uses in certain areas of the waterfront. (See Attachment A for zoning goals and policies.) The report also recommended a significant investment in public facilities, such as the City Fish Pier, Casco Bay Ferry Terminal and Commercial Street improvements.

The land use and zoning recommendations that were adopted by the Planning Board and City Council called for the establishment of two waterfront zones. The W-1 (mixed use zone) was limited to 4 piers (Central, Long, Portland and Custom House.) Like the earlier W-1 zone, the new version allowed maritime uses as well as retail, offices; hotels, residential uses. A new zone (W-2) was created to protect the working waterfront uses (fishing and maritime industries.) Uses were limited to marine uses. This zone runs from the Million Dollar Bridge to Widgery Wharf and from Maine Wharf to B.I.W.

The City Council appointed a **Waterfront Task Force** in 1988 to pursue in greater detail three of the most complex points of the Waterfront Action Plan. These three areas were berthing, marketing and the economic impact of land use controls. The 41 recommendations of the Task Force are shown as Attachment D. The vessel berthing recommendations suggests that fish vessel berthing should be increased and that new recreational berthing should be encouraged outside the harbor. The marketing recommendation suggests that the City should budget increase resources towards port marketing, attract more fish processors to the harbor and promote the Portland Fish Exchange.

Attachments:

- A. Waterfront Zoning Goals and Policies
- B. Waterfront Overlay Zone
- C. Waterfront Action Plan
- D. Waterfront Task Force Recommendations



## DIVISION 18. WATERFRONT CENTRAL ZONE\*

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\*Editor's note--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.  
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### Sec. 14-313. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly

interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-313.5. No adverse impact on marine uses.**

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-314. Permitted uses.**

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

(a) *Marine:*

1. Marine products, wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;

18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

(b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-2 zone.

(d) *Public*: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

- 020 AP
1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
  2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
  3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.
  4. Street vendors licensed pursuant to Chapter 19 are a permitted use, but only in the following area of the waterfront central zone: on Commercial Street from the westerly side of the Maine State Pier to the easterly side of the International Marine Terminal.

35-foot  
rule

(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier*: Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Professional, business, and general offices;

2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;
4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other: Accessory uses:*

1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each individual use does not exceed one thousand (1,000) square feet in total floor area of the

building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

3. Interior meeting or classroom space accessory to uses permitted in section 14-314(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph 2, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three thousand (3,000) square feet in total floor area per building, or fifteen (15) percent of the total floor area per building, whichever is less.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 131-01/02, § 1, 1-23-02; Ord. No. 309-01/02, § 1, 7-15-02; Ord. No. 38-02/03, § 1, 9-4-02)

#### **Sec. 14-315. Conditional uses.**

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in

this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

(a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.

(b) Marine:

(1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the Planning Board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

(2) Fish by-products processing, provided that:

a. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and



b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

(3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

(c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

(1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or

(2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

(3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and

(4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.

(d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:

(1) the residential living space shall not exceed one thousand (1,000) square feet;

(2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;

(3) the residential use shall be limited to one unit per wharf;

(4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and

(5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02)

### **Sec. 14-315.3. Contract or conditional rezoning.**

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a

structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).

- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-315.5. Prohibited uses.**

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

**Sec. 14-316. Dimensional requirements.**

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.
- (e) *Maximum building height:* Thirty-five (35) feet, except that within two hundred (200) feet of the southerly sideline of the Commercial Street right of way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility.

(Ord. No. 168-93, § 2, 1-4-93; Ord No. 309-01/02, § 2, 7-15-02)

**Sec. 14-317. Performance standards.**

All uses in the waterfront central zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal

conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.

- (b) *Noise*: The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds ( $LEQ_1$ ).
- (c) *Vibration*: Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations*: All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas*: No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of

Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.

- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.
- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)



NATHAN H. SMITH (MAYOR)(3)  
WILLIAM R. GORHAM (1)  
KAREN A. GERAGHTY (2)  
CHERYL A. LEEMAN (4)  
JAMES I. COHEN (5)

CITY OF PORTLAND  
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)  
JAMES F. CLOUTIER(A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR SITE AT CUSTOM HOUSE WHARF**

**ORDERED**, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

**CONDITIONAL ZONE AGREEMENT  
THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2004, by **THE PROPRIETORS OF CUSTOM HOUSE WHARF**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns (the "**PROPRIETORS**").

**WITNESSETH:**

**WHEREAS**, the **PROPRIETORS** have restored dilapidated pilings and wharf decking, and made certain improvements to Custom House Wharf, including the construction of a building thereon, which building is located in Portland at Map 030, Block A, Lot 1, which building and surrounding property is more particularly described on **Attachment 1** (the "**PROPERTY**");

**WHEREAS**, the **PROPRIETORS** have requested a rezoning of the **PROPERTY** in order to permit the **PROPRIETORS** to maintain certain non-marine uses limited to those floors above the ground level of said **PROPERTY**;

**WHEREAS**, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions more specifically set forth below;

**WHEREAS**, the **CITY** has determined that the proposed rezoning would be pursuant to and consistent with the standards and requirements set forth in Portland City Code §14 -313.5 and §14 -315.3 for conditional rezoning within the WCZ;

**WHEREAS**, the **CITY** has determined because of the unusual location of the **PROPERTY** it is necessary and appropriate to have imposed by the **PROPRIETORS** the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan;

**WHEREAS**, the **CITY** through its Planning Board and City Council have determined that said rezoning would be consistent with the 1992 Waterfront Alliance Report which report recognized in part that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth;

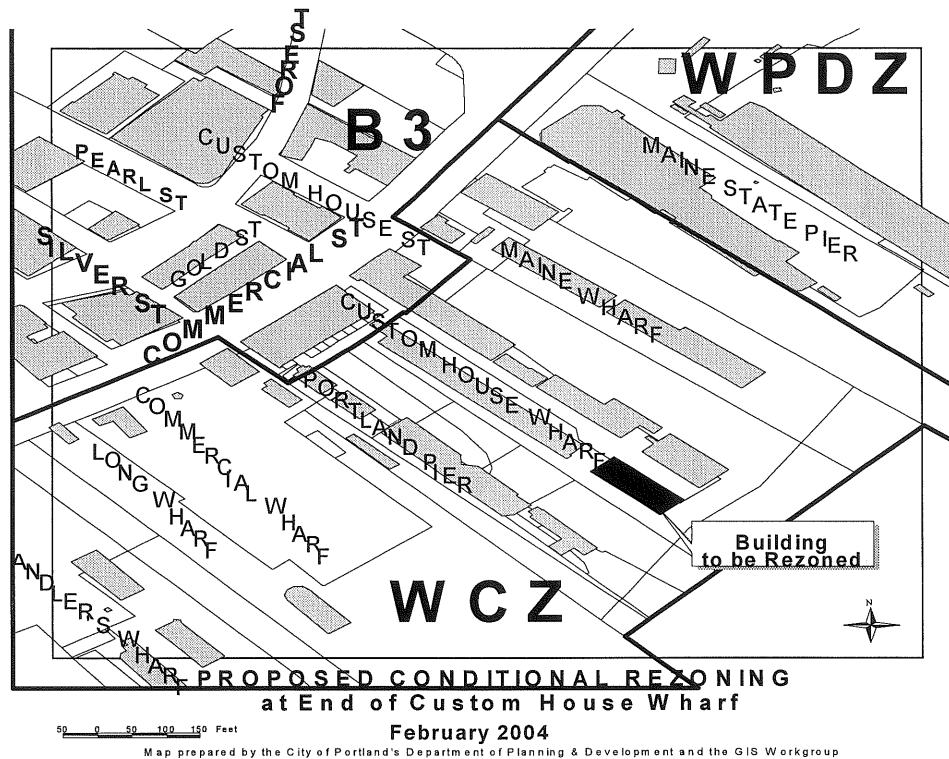
**WHEREAS**, the **CITY** though its Planning Board and City Council have recognized that there is an economic need to subsidize marine uses with the WCZ by allowing a mixture of marine and non-marine uses within the Waterfront Central Zone.

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2004;

**NOW THEREFORE**, in consideration of the rezoning the **PROPRIETORS**

covenant and agree as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code §14-49, by adopting the map change amendment as shown below and limited to the footprint of the building existing at \_\_\_(address)\_\_\_ as of the date of passage of Council Order # \_\_\_\_\_.



2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the approved 10-5-99 site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. In addition to those uses that are, or may become, otherwise authorized within the WCZ, as it may hereafter be amended, repealed, or replaced, the **PROPRIETORS** shall be authorized to establish and maintain non-marine uses on the upper two floors of the **PROPERTY** in accordance with Portland City Code §14-314(b) and (c), as though the building located on the **PROPERTY** had been in existence on January 4, 1993. Except as expressly superceded herein, the zoning requirements of the underlying WCZ shall apply to the **PROPERTY**, **including the requirement found in**

**14-315.3(i) that the ground floor marine related use shall not be abandoned following occupancy of the upper stories as otherwise permitted herein.** This paragraph shall be effective only to the extent of the footprint of the building located on the **PROPERTY**, as shown in Paragraph 1.

5. Unless otherwise liberalized by the zoning requirements of the underlying zone, no more than 50% of the total square footage of the building may be used for non-marine related uses, provided, however, that marine related uses, only, shall be allowed on the first floor of the building.

6. Notwithstanding paragraph 4 above, and for so long marine related uses are required within the WCZ on the upper floors of buildings constructed after January 4, 1993, when leasing the upper floors of the **PROPERTY**, the **PROPRIETORS** shall give preference in tenant selection to marine related uses.

7. Leases, rentals or other usage fees charged for space within the **PROPERTY** or the Associated Berthing Space (as more particularly defined in Paragraph 10 below) to marine related and water dependant tenants, shall be made at rates comparable to those charged for similar privately owned space leased by or rented to marine related and water dependant uses within the WCZ, taking into to consideration the comparative condition and quality of such other marine related space.

8. The **PROPRIETORS** shall manage the on site parking associated with the Property in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases. No vehicle parking shall be allowed within the 1<sup>st</sup> floor of the building.

9. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

10. The berthing space immediately adjacent to the **PROPERTY** (the "Associated Berthing Space") shall be reserved exclusively for commercial marine vessels.

11. The **PROPRIETORS** shall reserve eighty percent (80%) of the total berthing space available on Custom House Wharf as delineated on **Attachment 3** for use by commercial marine vessels.

12. The **PROPRIETORS** shall maintain adequate water depths to ensure that commercial marine vessels are able to access the Associated Berthing Space, provided that such maintenance may be conducted in accordance with all relevant municipal, State and Federal laws.

13. The **PROPRIETORS** shall maintain and ensure access to the edge of the pier sufficient to provide functional land/water transfer of goods, catch, materials and supplies.

The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit the **PROPRIETORS**, any entity affiliated with the **PROPRIETORS** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of the **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. The **PROPRIETORS** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the book and page of the deeds to the property underlying said **PROPERTY**, providing to the City a copy of such recorded document.

If any restriction, provision, condition, or portion thereof, set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination and shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland, including all provisions of the WCZ and all corresponding performance standards, and any applicable amendments thereto or replacements thereof.

In the event that **PROPRIETORS** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **PROPRIETORS'** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code that would otherwise be applicable to property in the WCZ zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452 or in any other manner available by law. Should

**PROPRIETORS** be found to have breached this Agreement, the Planning Board, at the request of the Planning Authority, or the City Council, on its own initiative, may propose that the zoning of the **PROPERTY** be modified or that the **PROPERTY** be rezoned.

**WITNESS**

**THE PROPRIETORS OF CUSTOM  
HOUSE WHARF**

\_\_\_\_\_

\_\_\_\_\_  
By: Kenneth Macgowan  
Its: General Manager

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2004

Personally appeared before me the above-named **Kenneth Macgowan**, in his capacity as Director and General Manager of the Proprietors of Custom House Wharf, and acknowledged the foregoing instrument to be his free act and deed in his said capacities and the free act and deed of the Proprietors of Custom House Wharf.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

**Waterfront Task Force, Phase IV  
Waterfront Central Zone  
City of Portland Maine**

**Task Force Meeting**

**Room 209, 2<sup>nd</sup> Floor, Portland City Hall  
Wednesday, October 26, 2005, 6:00pm  
(Please note change of time and place)**

**Agenda**

1. Welcome and review of the agenda. *5 minutes*
2. Evaluate the current language of the WCZ and identify successes and failures of the zone. *1 hour 40 minutes*
  - a. Presentation of Zone structure and content (Bill Needelman)
  - b. Committee discussion of zone successes.
  - c. Committee discussion of zone failures.
  - d. Committee identifies issues for particular attention to provide guidance to the drafting subcommittee.
3. Establish Drafting Subcommittee to work on WCZ text change language.  
*5 minutes*
4. Plan for **Public Forum # 1:**      **Wednesday, November 9, 2005, 7:00pm**  
Present Economic Conditions Survey results  
Take public comment for use by the Drafting Subcommittee  
*5 minutes*
5. Set next meeting date. *5 minutes*
6. Adjourn. *8:00pm*

9. What marine related industries have been lost?

Please note that these are rough notes and I welcome any and all suggested changes.

Some questions that were raised include the following.

1. What is the infrastructure? Data needs - Baseline statistics including square footage by use, berthing capacity, parking, physical conditions, expansion potential.

2. Who uses the space? Data needs - Non-marine, marine and water dependent use inventory. Vacancy%

3. Where and for whom are investments being made? Data needs - Recent and planned investments separated by marine/non-marine.

4. Is there a gap between the maintenance needs of marine infrastructure and the recent history of investment? Data needs - derived from above.

5. Key trends - in summary

It was discussed that there should be general consistency between the property owner surveys and business surveys.

We did not have time to go line by line through the surveys. Caroline will use the conversion to take a first stab at the property owner survey and provide a draft. When we have a discussion draft, we can re-convene to finalize and use it as a framework for finalizing the other surveys. It occurs to me that we did not much discuss the fishing survey and would like to know your thoughts.

Caroline is also working on updating the contact lists. She will attend the upcoming meeting as well as the site walk.

I am working on the property ownership map and provided a draft at the meeting. It generated discussion regarding the potential to map selected data from the surveys using the City GIS (geographic information system).

Sheep shot right now

who has left

Do they need more space? What can you afford?

6. Who's getting what they need, and who's not.

7. What prevents one from improving property? gear storage lots

Document 2 Expansion of business 2 - on inside lot could be on water

8. How to make wharves viable and grow the infrastructure



**DRAFT10-27-05, w/ annotations (This is a first draft for comment)**

**Central Waterfront Task Force**

**Public Forum on Central Waterfront  
Development Issues**

**November 9, 2005, 7:00pm  
City Council Chambers, 2<sup>nd</sup> Floor, City Hall  
389 Congress Street**

**Meeting Agenda and Discussion Format**

~ ~ ~ ~ ~

**I. Welcome and Introduction of the Task Force members by the Task Force Chairs, Councilors Karen Geraghty and Will Gorham (2-5 minutes)**

**II. Waterfront Central Zone Policy Framework Introduction (<3minutes to frame the policies of the zone, as expressed in the WCZ purpose statement. List and briefly explain the "priority of uses" concept, stressing that the purpose of the Task Force is to implement these policies better, not to re-draft them. The presentation will list the hierarchy of uses:**

- {a} Water-dependent uses, with functional access and infrastructure,*
- {b} Marine related uses, and*
- {c} Other Compatible uses – mixed, non-marine- to provide support for the infrastructure as long as no adverse impact.*

*Presentation by Bill, Alex or the Chairs)*

**III. Economic Conditions Survey Results (15 minutes max, presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG)**

**IV. Public Input**

*(The Chairs should introduce the public input session as an opportunity to provide the Task Force with specific information regarding the function and future of the Central Waterfront. The Task Force has identified 4 issue areas that warrant consideration within the zone and is looking to hear the suggestions and experiences of property owners, business owners, fishermen, and interested citizens on these issues particularly. Other comments will be recorded separately. The 4 topic areas identified are:*

*{1} Functional access for water-dependent uses.*

*Is the zone protecting working waterfront access?*

*{2} Linkage between new, non-marine development and the marine economy.*

*How can non-marine investment provide direct or indirect support for Working Waterfront uses?*

*{3} Mixed-use development.*

- a. For both existing and new buildings, and*
- b. For both along Commercial Street and out on the piers.*

*What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?*

*{4} Parking.*

*Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?*

*{5} Other Issues*

*As provided by the Public.*

## **V. Open Discussion between Public and Task Force**

*(If time permits, the floor could be opened at the end of the meeting to allow a panel discussion by the Taskforce members and questions from the audience on the issues previously addressed.)*

## **VI. Adjourn 9:00pm**

***Notes on Public Participation:***

*During item IV, Public Input, the public will be asked to make brief remarks on the 4 specific issues and to identify which issue they will be addressing. This will allow scribes to record public comments by category, and to help structure the conversation.*

*Depending on how many members of the public attend (10, 20, 50?), Task Force members will be allowed to reply and/or return follow-up questions to the participant at the podium. If attendance is light, there should be time for a conversational exchange. If attendance is heavy, public comments can be recorded, but there may not be time for a Task Force follow up - Assuming the goal is to allow all members of the public to speak with in a limited period of time.*

*Assuming a 9:00 adjournment and 30 minutes of settling in, introductions, and presentation, 90 minutes can be given to the public comment period. If 30 members of the public are in attendance, all comments will need to be limited to less than 3 minutes and there will be no time for Open Discussion. If 50 people show up, the meeting will probably run long and will need to be tightly structured.*

*Hopefully, attendance will be in the 15 to 25 range and the facilitator (we assume the Chairs) can encourage some back and forth with the Task Force and allow the Open Discussion prior to adjournment.*

WATERFRONT CENTRAL ZONE TASKFORCE  
January 25, 2006  
Public Forum

**Outline of proposed zone text edits**

**WCZ Text Outline:**

*Italicized text is a paraphrase of text edit language*

**Sec. 14-313**

**Purpose Statement**

Priority of uses

- (a) Water-dependent uses
- (b) Marine-related
- (c) Marine compatible uses

*Clarifying language added stressing the policy of having non-marine uses support higher priority marine uses.*

**Sec. 14-313.5**

**No adverse impact on marine uses**

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;

*Clarifying language added defining displacement.*

*New language added strengthening protection of property "physically suited" for water dependent use.*

- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use will unreasonably interfere with existing water-dependent uses, vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

*New Section added*

***Sec. 14-313.6 Mitigation of impacts required for non-marine uses***

*The value of mitigation: at least 5% of total project costs or \$10.00 per square foot of non-marine space.*

- (a) ***Direct investment in marine infrastructure***
- (b) ***Financial contribution in lieu of mitigation***

**Sec. 14-314 Permitted uses.**

- (a) Marine Uses
- (b) **The “50% Rule”**  
Commercial and industrial uses above the ground, limited to 50% of building.
- (d) Public Uses
- (e) **The “35-foot rule”**  
Commercial uses in a building located within thirty-five feet of Commercial Street - between Maine Wharf and the city fish pier.

*Section Redrafted. Restrictions on first floor non-marine uses beyond 100 feet from Commercial Street*

- (f) Accessory uses:

*New use added for clarity: Parking for water-dependent uses. All other parking is a conditional use  
Utility substations moved to Conditional Use section*

**Sec. 14-315. Conditional uses.**

Uses permitted subject to specific standards and requiring review by the Planning Board.

*In addition to existing standards protecting marine utility of the zone, the following standards were added for conditional uses*

*Parking and Traffic Circulation Plan required for review and approval.*

*Public View Protection standard added.*

*75 foot setback from water for first floor non-marine use (DEP Requirement)*

**Conditional Use List**

- (a, b) Parking:  
*Clarifying edit: Parking allowed for non-water dependent uses, provided that there is otherwise enough parking for marine uses.*
- (c) Marine:  
*Minor edits provided*

- (d) ***The “Sapporo Amendment”***  
Expansion of non-marine related use permitted under the “35-foot rule.” subject to conditions.

*Expansion allowance expanded from 2000 sq. ft. to 3000 sq. ft. subject to conditions.*

*Allow upper floor expansions*

- (e) ***The “chicken farmer amendment”***  
Residential: The “primary” owner of a marine related business may occupy space within the upper story of an existing building subject to conditions.

*Limit area to 750 sq. ft.*

- (f) ***Utility Substation use***

*Added with conditions*

- (g) ***Waterfront Diner use***

*Added with conditions*

- (h) ***Expansion of upper floor non-marine use***

*Expansion allowance to 2000 sq. ft. added with conditions*

- (g) ***Expansion of “50% Rule”***

*Non-marine use of upper floors in existing buildings expanded with conditions.*

### **Sec. 14-315.3. Contract or conditional rezoning.**

Allowance for re-zoning to permit non-marine uses in new structures, providing the development meets the “no adverse impact clause” and additional standards.

*Two options provided by Task Force. Each would be subject to mitigation investment or contribution as described in section 14-313.6 above.*

#### ***Option 1, “General”***

*Provides standards for new structures to house upper floor non-marine uses.*

#### ***Option 2, “Old Port Overlay Zone” – Restricted to east of the Fish Pier.***

*Provides allowance for new structures to house non-marine uses, including retail, on upper and lower floors, subject to conditions – including 75 foot setback from water.*

**NOTE FROM THE WCZ TASKFORCE:** Option 2 is still under consideration and the Taskforce seeks public comment on this provision prior to making recommendations to the City Council.

**Sec. 14-315.5. Prohibited uses.**

Uses which are not enumerated in either the permitted or conditional use section are prohibited.

*Drive-thru services prohibited  
Ground mounted telecommunication towers/antennas prohibited*

**Sec. 14-316. Dimensional requirements.**

*Minimum building setback from pier edge expanded from 5 to 15 feet.  
Maximum building height expanded from 35 to 45 feet (but limited to 3 floors.)  
Minimum ground floor clearance added at 15 feet (to encourage industrial use of first floor.)*

**Sec. 14-317. Performance Standards.**

*Urban design guidelines applied only to Commercial Street buildings east of the Fish Pier.  
Pier expansions need to be compatible with ferry and emergency vessel operations.*

**Waterfront Central Zone Task Force  
Public Forum on Central Waterfront  
Development Issues**

November 9, 2005, 7:00pm  
City Council Chambers, 2<sup>nd</sup> Floor, City Hall  
389 Congress Street

**I. Welcome and Introduction :**

Councilors Karen Geraghty and Will Gorham

**II. Waterfront Central Zone Policy Framework Introduction**

Priority of uses in the WCZ:

- {a} Water-dependent uses, with functional access and infrastructure,
- {b} Marine related uses, and
- {c} Other Compatible uses.

**III. Economic Conditions Survey Results**

Presentation of survey method and results for business and property owners, by Caroline Paras, GPCOG

**IV. Public Input**

The Waterfront Central Zone Taskforce seeks public comment and input on development issues along Portland's Central Waterfront. In particular, the Taskforce looks to answer the following questions to aid in their analysis of the district:

**{1} Functional access for water-dependent uses.**

Is the zone protecting working waterfront access?

**{2} Linkage between new, non-marine development and the marine economy.**

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

**{3} Mixed-use development.**

- a. For both existing and new buildings, and
- b. For both along Commercial Street and out on the piers.

What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

**{4} Parking.**

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

**V. Open Discussion between Public and Task Force**

Time Permitting

**VI. Adjourn, 9:00pm**



# Waterfront Central Zone Public Forum, November 9, 2005

## Comment Sheet

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Name, address, email

### 1. Functional access for water-dependent uses.

Is the zone protecting working waterfront access?

### 2. Linkage between non-marine development and the marine economy.

How can non-marine investment provide direct or indirect support for Working Waterfront uses?

### 3. Mixed-use development.

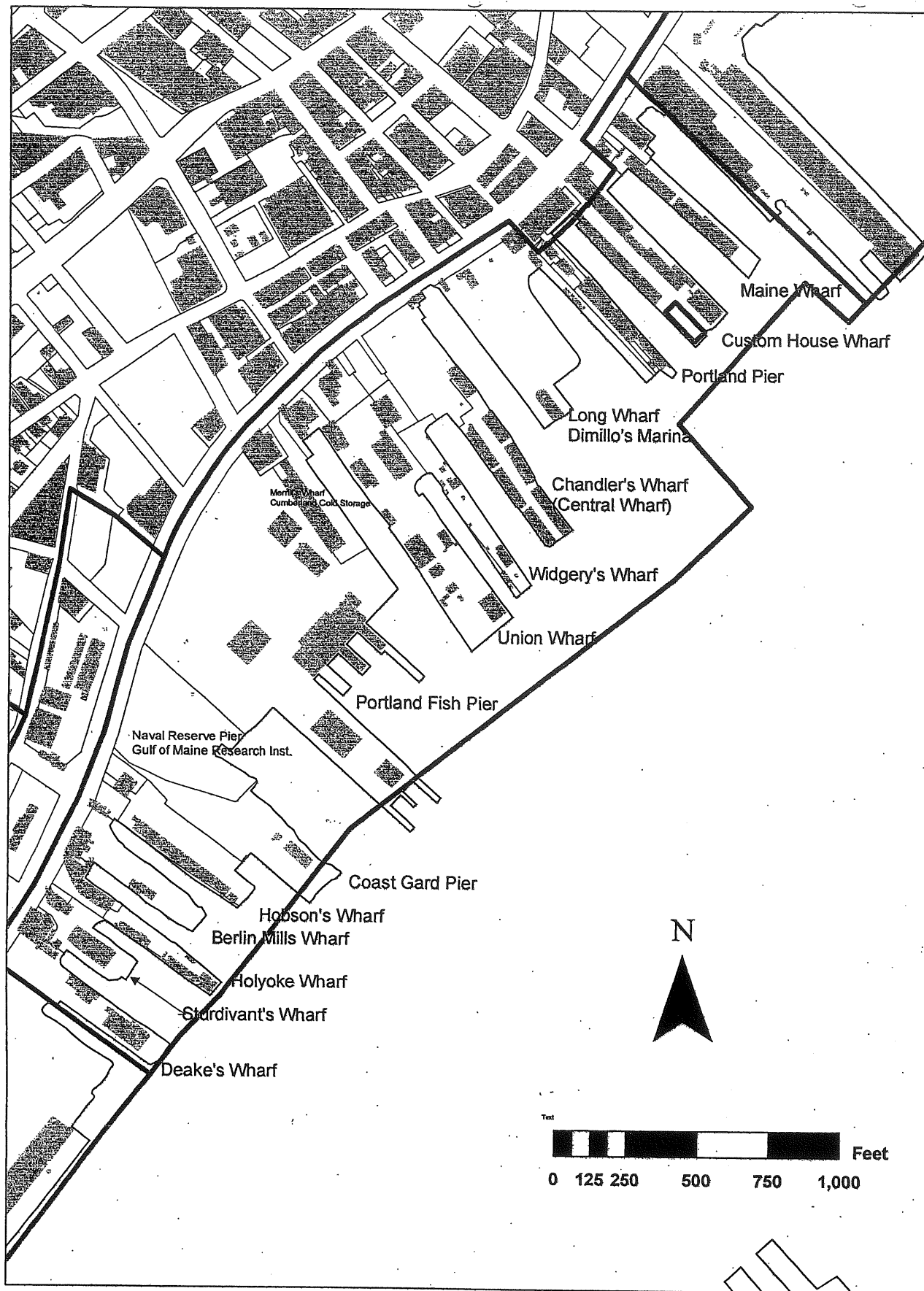
What is the best way to expand all development opportunities, marine and non-marine, while continuing to protect the Working Waterfront?

### 4. Parking.

Is non-marine use parking a growing problem regarding water access for marine uses and what is the best way to provide parking for both marine and non-marine uses in the Central Waterfront?

### 5. Other Issues

Please comment on other issues that you would like the WCZ Taskforce to consider regarding development in the Central Waterfront. (Please use the opposite side if needed.)



## Piers and properties in the Waterfront Central Zone

Prepared by the City of Portland Planning Division from data produced by the GIS Workgroup.  
 May 2005

