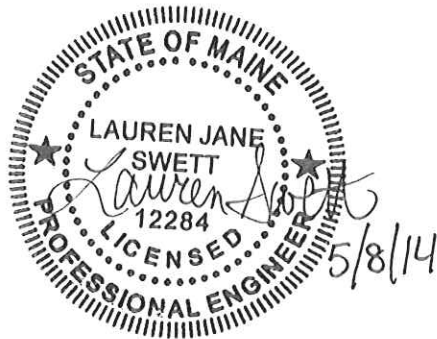




# Deering Oaks Pond – Pond Bottom Replacement

City of Portland  
Historic Preservation  
Application for  
Certificate of  
Appropriateness



41 Hutchins Drive  
Portland, ME 04102  
800-426-4262

**woodardcurran.com**  
COMMITMENT & INTEGRITY DRIVE RESULTS

222804.46  
**City of Portland**  
May 2014

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## 1. APPLICATION FORM



CONTACT INFORMATION:

APPLICANT

Name: Michael Farmer, Project Engineer  
Address: City of Portland, Department of Public Services  
55 Portland Street, Portland ME  
Zip Code: 04101  
Work #: 207-874-8845  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: mfarmer@portlandmaine.gov

PROPERTY OWNER SAME AS APPLICANT

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

BILLING ADDRESS SAME AS APPLICANT

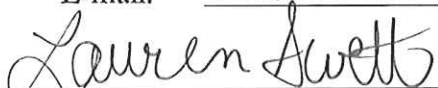
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Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

ARCHITECT

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Work #: \_\_\_\_\_  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: \_\_\_\_\_

CONTRACTOR AGENT/REPRESENTATIVE

Name: Woodard & Curran, c/o Lauren Swett, PE  
Address: 41 Hutchins Drive  
Portland ME  
Zip Code: 04102  
Work #: 207-774-2112  
Cell #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Home: \_\_\_\_\_  
E-mail: lswett@woodardcurran.com

  
Applicant's Signature

\_\_\_\_\_  
Owner's Signature (if different)

## Activities Requiring Approval in Historic Districts

If your property is located within a historic district or is an individually designated historic structure, it is necessary to receive approval before proceeding with any exterior alteration, construction activity or site improvement that will be visible from a public way. Following is a list of activities requiring review.

**Please check all those activities that apply to your proposed project.**

### Alterations and Repair

- Window and door replacement, including storms/screens
- Removal and/or replacement of architectural detailing (for example porch spindles and columns, railings, window moldings, and cornices)
- Porch replacement or construction of new porches
- Installation or replacement of siding
- Masonry work, including repointing, sandblasting, chemical cleaning, painting where the masonry has never been painted, or conversely, removal of paint where the masonry historically has been painted
- Installation or replacement of either roofing or gutters when they are a significant and integral feature of the structure
- Alteration of accessory structures such as garages

### Additions and New Construction

- New Construction
- Building additions, including rooftop additions, dormers or decks
- Construction of accessory structures
- Installation of exterior access stairs or fire escapes
- Installation of antennas and satellite receiving dishes
- Installation of solar collectors
- Rooftop mechanicals

### Signage and Exterior Utilities

- Installation or alteration of any exterior sign, awning, or related lighting
- Exterior lighting where proposed in conjunction with commercial and institutional signage or awnings
- Exterior utilities, including mechanical, plumbing, and electrical, where placed on or near clearly visible facades

### Site Alterations

- Installation or modification of site features other than vegetation, including fencing, retaining walls, driveways, paving, and re-grading

### Moving and Demolition

- Moving of structures or objects on the same site or to another site
- Any demolition or relocation of a landmark contributing and/or contributing structure within a district

***Note: Your project may also require a building permit. Please call Building Inspections (874-8703) to make this determination.***

**ATTACHMENTS**

To supplement your application, please submit the following items, *as applicable to your project*. Keep in mind that the information you provide the Historic Preservation Board and staff is the only description they will have of your project or design. Therefore, it should precisely illustrate the proposed alteration(s).

  X   Exterior photographs (required for all applications.) Include general streetscape view, view of entire building & close-ups of affected area.

  X   Sketches or elevation drawings at a minimum 1/4" scale. Please label relevant dimensions. All plans shall be submitted in 11" x 17" format except for major projects, where 22" x 34" plans are requested. Applicants for major projects should submit one (1) 11" x 17" copy for scanning purposes.

  X   Details or sections, where applicable.

  N/A   Floor plans, where applicable.

  N/A   Site plan showing relative location of adjoining structures.

  N/A   Catalog cuts or product information (e.g. proposed windows, doors, lighting fixtures)

  X   Materials - list all visible exterior materials. Samples are helpful.

  X   Other(explain)   **A Narrative Report has been attached to address the submission requirements and review standards. A site location map and design plans have also been provided.**  

If you have any questions or need assistance in completing this form, please contact Historic Preservation staff: Deb Andrews (874-8726) or by e-mail at [dga@portlandmaine.gov](mailto:dga@portlandmaine.gov)

**Please return this form, application fee (see attached fee schedule), and related materials to:**

Historic Preservation Program  
Department of Planning and Urban Development  
Portland City Hall, 4<sup>th</sup> Floor  
389 Congress Street  
Portland, ME 04101

## 2. PROJECT DESCRIPTION

### 2.1 PROJECT LOCATION AND BACKGROUND

Deering Oaks Park is a 55-acre public park owned by the City of Portland. Originally acquired by the City in the late 1800s, the park is recognized on the National Register of Historic Places. In 1994, a Master Plan was developed by The Halvorson Company, Inc. at the request of a committee of citizens, City staff, and the City's Mayor. The Friends of Deering Oaks Park group was incorporated in 1997. Today, the park has trails, sports fields, a playground, and space for a farmers market, all located throughout the wooded site. The park is located on the Portland Peninsula, and is bounded to the north by Interstate 295, to the west by Deering Avenue, to the south by Park Avenue, and to the east by Forest Avenue. A Location Map has been provided as Appendix A for your reference.



**Figure 2-1 Deering Oaks Pond Existing Conditions Photographs**

Deering Oaks Park is an important recreational feature in the City of Portland, and the focal point of the park is Deering Oaks Pond, a 3.5-acre manmade pond that serves both aesthetic and recreational purposes in the park. The pond was created in the late 1800s as a result of the sewer system installed in the adjacent State Street. The construction of the sewer dammed the tidal flats in the area, creating an impoundment that became the pond. The source of water for the pond has varied throughout its history, having first been filled with pumped drinking water. The pond currently receives source water from stormwater outfall pipes, sheet flow from surrounding areas, groundwater, and supplemental water from the Portland Water District's water distribution system, as needed. The pond's overflow discharges to the City of Portland's combined sewer system.



A majority of the pond's edge is formed by stacked granite block or stone-faced cast-in-place retaining wall systems. In 2006, a replacement fountain system was installed within the pond. An ornamental fountain is installed in the pond each spring and is removed in the fall so that the pond may be used for public ice skating during the winter months. The fountain recirculates pond water through a land-side pump vault and an intake pipe within the pond.

## 2.2 PROJECT NEED

Residents of Portland and surrounding communities utilize Deering Oaks Park and Deering Oaks Pond year round. The 1994 Master Plan emphasized the importance of maintaining water quality for this well-used resource. The lack of a structured pond bottom limits the City's ability to maintain the pond, and the lack of regular maintenance results in a buildup of organic material which can contribute to poor water quality and summer algae blooms, negatively impacting the pond's aesthetic and recreational character.

The City of Portland Department of Public Services completely drains Deering Oaks Pond twice annually to allow for the installation of pond infrastructure in the spring and the removal of equipment in the fall before the pond freezes. When the pond is drained, limited cleaning, including leaf and trash pickup, is completed, but comprehensive cleaning isn't done every year. The existing pond bottom and the underlying soils limit the type of equipment that may enter the pond to perform maintenance.



**Figure 2-2 Deering Oaks Pond (a) trash accumulation below the pond water; (b) leaf and organic deposits visible during pond draindown; and (c) algae blooms during the summer months.**

Leaves, trash, sediment, and other debris from the surrounding areas are continuously deposited in the pond, providing the nutrient source necessary to facilitate the growth of algae. The existing pond bottom can be very soft, and the City has historically had difficulty accessing some areas of the pond to perform maintenance. As a result, sediment and trash from stormwater runoff, along with deposited organic material (leaves and other vegetation), is not completely removed during annual cleaning, compromising water quality. With the organic material in the pond, nutrients cycle between the pond bottom material and the pond water, likely contributing to algae blooms during the warm summer months. The algae blooms impact pond aesthetics and can pose potential health risks to humans and animals that use the park. Algae can cycle organic matter and nutrients in the water column, further increasing the potential for additional blooms. Trash accumulation in the pond has impacts on wildlife (ducks and geese that frequent the pond), pets, and humans.

There is a need to improve water quality in Deering Oaks Pond. To accomplish this, the removal of existing soft materials and the installation of a new, more stable pond bottom will be installed to allow for more frequent and thorough cleaning of the pond on at least an annual basis.

## **2.3 PROJECT SUPPORT & FUNDING**

In 2006, a report was written to identify critical issues in need of attention in Deering Oaks Pond. This report addressed water quality concerns, retaining wall stability, fountain replacement, and electrical and lighting challenges. Since the report was written, some of the identified concerns have been addressed, including the installation of a new fountain, and some limited pond edge repairs.

In 2010, approximately \$1.2 million in federal funding was appropriated to the City of Portland for use on water quality projects for Deering Oaks Pond. In order to receive this funding, the City was required to provide a 45% funding match and submit an application to the EPA for a State & Tribal Affairs Grant (STAG). The City currently has \$500,000 available to be utilized as a match to the federal funds. A STAG application was submitted to EPA in 2013, requesting \$611,111 of the available funding, resulting in a total project budget of just over \$1.1 million. Approval of the grant was received in 2014.

## **2.4 PROPOSED PROJECT**

The scope of the current project is to address water quality issues utilizing the available federal funding and the committed City of Portland matching funds. Repairs to retaining walls are not covered by, and are not eligible for the available funding, and will need to be addressed as part of another project.

### **2.4.1 Existing Soil Removal**

The main goal of the proposed project is to improve the water quality of the pond by creating a more stable pond bottom that will allow for more thorough cleaning of the pond on at least an annual basis. By removing soft soils and installing a stable pond bottom that has been designed to withstand the loading of small earth moving and sweeping equipment and small dump trucks, a more comprehensive cleaning program can be implemented. At a minimum, during the fall draining of the pond, the pond bottom could be cleared of deposited organic material, reducing the nutrient source that typically supports algae blooms in the warm summer months.

The pond was evaluated in the spring of 2013 by Haley & Aldrich to determine the composition of the soils that make up the existing pond bottom. The results of the evaluation indicate that a thin organic layer exists on the pond bottom, followed by a layer of fine sand that varies from 4 inches to 22 inches in thickness, followed by an undetermined depth of silty clay (native marine clay layer). There are also areas of peat beneath the surface organics and sand, creating soft areas that pose challenges for maintenance equipment.

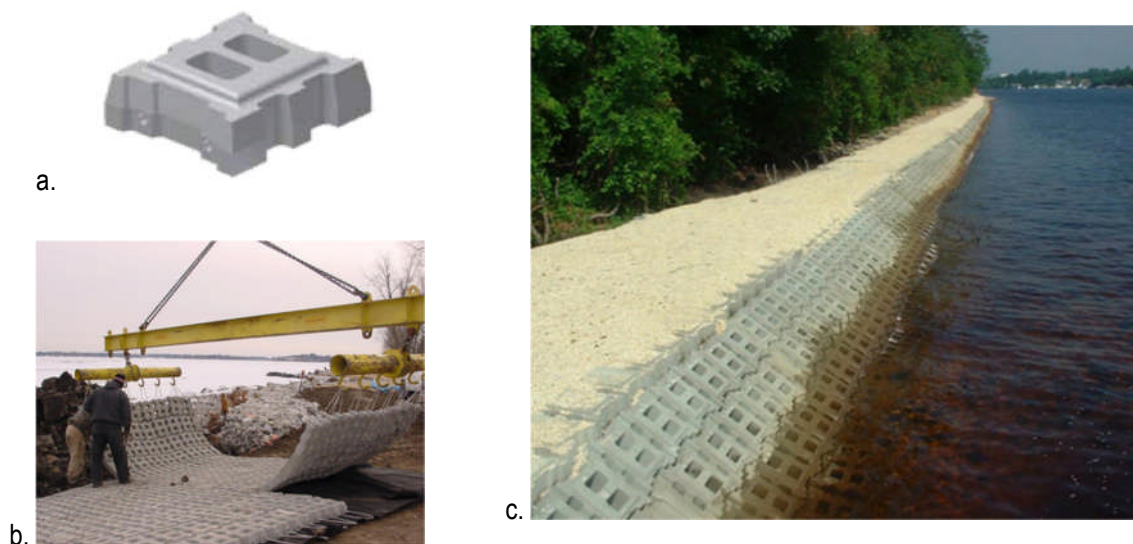
The proposed work will consist of the removal of approximately the top 14 inches of material from the entire pond, plus over-excavation of an additional 22 to 28 inches of material in select areas throughout the pond. This over-excavation will remove soft peat in areas identified during Haley & Aldrich's subsurface investigation. The over-excavated areas will be re-filled with gravel, and a new pond bottom system will be installed. The intent of the work will be to maintain the existing pond bottom elevation, with minor adjustments to remove some low spots that currently hold water when the pond is drained down for maintenance. The depth of water in the pond will remain largely the same.

A total of approximately 8,500 cubic yards of material will be removed from the pond bottom, including the over-excavated soft soils. This dredged material is classified as "special waste" by the Maine Department of Environmental Protection, and will require a solid waste license for beneficial use or disposal. Sediment sampling within the pond indicates that the material may meet the requirements for beneficial use, and this option will be provided to the Contractor.

### 2.4.2 Pond Bottom Alternatives

An alternatives analysis was completed to determine the type of pond bottom system to be specified for the Deering Oaks Pond. The alternatives analysis looked at four different options: asphalt, reinforced concrete, articulating concrete block mats, and gravel. Each alternative was evaluated based on seven screening criteria: capital cost, pond maintenance, pond bottom repair, installation impacts, expandability, future wall repair, and longevity.

The result of the alternatives analysis was the selection of a "hybrid" approach utilizing articulating concrete block mats and gravel. The articulating concrete block mats are typically 8-foot by 40-foot mats of concrete blocks attached together with polyester or steel cables. By connecting the blocks into large mats, they may be installed over large areas using a crane, instead of requiring individual hand placement. Individual blocks may also be installed by hand around edges and in areas that are irregularly shaped. The concrete blocks are installed over gravel, and have center holes that are also filled with gravel. Articulating block mats are often utilized for erosion protection on shorelines and at bridge abutments, and are also utilized as pond bottom systems.



**Figure 2-3 Articulating Concrete Block Mats: (a) typical individual block; (b) installation of mats by crane; and (c) blocks installed as shoreline protection (note, this project will not install the block mats above the water surface as shown above) (photos from Contech Engineered Solutions LLC)**

A roadway of articulating concrete block mats will be constructed throughout the pond (and only in areas that will be below water), allowing for access by heavier vehicles, like larger dump trucks and loaders. In areas without the concrete block mats, 14 inches of gravel over a layer of reinforcing geotextile will be installed. This gravel will provide adequate support for smaller equipment and vehicles that will be performing most of the maintenance on the pond. The gravel proposed for the pond bottom is the Maine Department of Transportation's Type B base gravel. This is the type of material that is often utilized as road base beneath asphalt, and is also used as the surface for some trails. Engineering plans for the proposed project are included in Appendix B.

### 2.4.3 Pond Bottom Visual Appearance

The gravel pond bottom will be similar in color to the existing pond bottom. The concrete blocks will be gray in color when installed. Image C in Figure 2-1 above shows that as water depth increases, the visibility of the concrete from the surface decreases. For reference, Figure 2-2 below shows the appearance of existing concrete and granite blocks located beneath the water in the pond. Under approximately 3 feet of water and typically located away from the pond edge, they will not be clearly visible. It is also anticipated that the blocks will become partly covered by gravel during construction and future maintenance, and the concrete blocks will also darken over time, as has been observed in other concrete in the pond.



**Figure 2-4 Deering Oaks Pond (a) concrete below water surface; (b) granite blocks below water surface at pond edge; and (c) darkened concrete at pond edge.**



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The pond bottom will remain covered with water or ice during all but the few weeks per year that the pond is drained for maintenance.

#### **2.4.4 Construction**

All proposed work will be done within the limits of the pond. Any areas outside of the pond impacted by construction activities, including pond access routes, will be returned to their original condition. Construction access to the site will likely be from Park Street, as shown on the plans included in Appendix B. The existing paved access ramp into the pond will be utilized and it is not anticipated that any other access points to the pond will be created. All construction access areas will be returned to their original condition or improved following the completion of the work within the pond. The project will require 6" of quality loam and park lawn mix grass in any lawn areas impacted by access.

The pond will be drained prior to the start of construction, so that work may be completed in the dry. All of the material excavated from the pond will be removed from the site and either disposed of or beneficially reused in accordance with Maine Department of Environmental Protection Solid Waste Standards (location to be determined by contractor).

The installation of a pond bottom system will not require disturbance at the fountain foundation. The intent is to not modify the fountain system, intake/discharge pipes, or pump vault.

Construction is anticipated to occur in the fall of 2014 and we anticipate work could take up to three months to complete.

#### **2.5 APPLICATION FOR CERTIFICATE OF APPROPRIATENESS**

In accordance with Article IX of the Land Use Code, an Application for a Certificate of Appropriateness is being submitted to the Historic Preservation Program for the proposed site alterations to the designated historic landscape, Deering Oaks Park. This report and attachments are presented in conformance with the requirements of the Application.

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### 3. EVIDENCE OF RIGHT, TITLE, AND INTEREST

The project site is located entirely on public land owned by the City of Portland. The project parcels are located at chart, block, lot 049 B001, 050 A001, and 035 I001. A copy of the City of Portland Tax Map showing the parcel locations is provided in Appendix C.

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## 4. ADDITIONAL PROJECT APPROVALS

### 4.1 LOCAL PERMITS

The project's area of disturbance will be limited to the bottom of the existing pond, an area that is covered by water during most of the year and temporary disturbance for access. The project will disturb approximately 3.5 acres, and no new impervious surface will be created. The project is primarily for maintenance, and a Level 1 Site Alteration Application is being submitted to the City of Portland Planning Division for staff review. The area of disturbance will be greater than one acre and less than 5 acres, and there will be no increase in impervious areas. As such, the General and Flooding Standards of the City's Stormwater Management regulations will not apply.

### 4.2 STATE & FEDERAL PERMITS

The project will qualify for a Stormwater Permit By Rule (PBR), which requires compliance with the MaineDEP Basic Standards for erosion and sedimentation control and good housekeeping measures. The Stormwater PBR form also serves as the Notice of Intent to comply with the Maine Construction General Permit. The submission of a separate Notice of Termination to the MaineDEP will be required for the MCGP, following completion of the project.

The pond is a manmade impoundment, which is not considered to be a jurisdictional wetland by the Maine Department of Environmental Protection (DEP) or the Army Corps of Engineers (ACOE). A review of publicly available information shows that the pond is not identified as habitat for endangered or threatened species. The area is not part of prime or unique agricultural lands, and is not located within any floodplains. The project will have no impact on air quality, and will also not impact any drinking water sources. The area is also not a habitat for Inland Wading Waterfowl, Shorebirds or Seabirds. The proposed project will not impact any natural resources. Natural Resources Protection Act (NRPA) permits from the Maine Department of Environmental Protection (MaineDEP) and Programmatic General Permits from the Army Corps of Engineers will not be required.

Deering Oaks Park is a registered historic landmark, and the project will be submitted to the State Historic Preservation Commission for review. Any correspondence received from the State Historic Preservation Commission will be provided under separate cover.

### 4.3 FEDERAL REVIEW

As part of the State and Tribal Affairs Grant process, the EPA carried out an environmental assessment for the project. A copy of that assessment, along with the Finding of No Significant Impact document is included as Appendix D for your reference.

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## 5. EVIDENCE OF FINANCIAL AND TECHNICAL CAPACITY

### 5.1 FINANCIAL CAPACITY

As previously noted, the proposed project will be paid for by a combination of Federal grant money and local matching funds. As part of their Fiscal Year 2013 Capital Improvement Plan (CIP) budget, the City of Portland approved \$500,000 for use on the project. This represents all of the local funding available for the required 45% match, such that the Federal grant funding will be \$611,111, setting the total maximum project cost at \$1,111,111. The State and Tribal Affairs Grant from the EPA was approved in 2014, and a copy of the grant agreement is included in Appendix D.

### 5.2 TECHNICAL CAPACITY

On behalf of the City of Portland, Woodard & Curran is preparing this application for the Deering Oaks Pond Bottom and Water Quality Improvements Project. Woodard & Curran has extensive experience with design for large site construction and earth moving projects and resumes can be made available upon request. Woodard & Curran is an over 800-person Portland based firm that has provided engineering services to the public sector for more than 30 years, including permitting, civil/site engineering, stormwater, and construction management services.



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## 6. CONSISTENCY WITH CITY MASTER PLANS

The proposed project has been designed to be consistent with the Deering Oaks Master Plan developed in 1994. Major efforts to implement the Deering Oaks Park Master Plan priorities have been accomplished to date, including ravine rehabilitation, tree transplanting and maintenance, utility improvements, recreational improvements, historic building rehabilitation, pedestrian bridge restoration, and fountain replacement. These projects were funded through the City's Capital Improvements Program, the taxpayers of the City of Portland, the federal Housing and Community Development Program, private donations, and with donated funds from the Friends of Deering Oaks, a local non-profit committed to the preservation and enhancement of the park. The Deering Oaks Pond pond bottom replacement will mark another step in achieving the Master Plan goals.

The Pond has historic and ongoing issues with algae growth and has required frequent dredging and cleaning, as documented in the Master Plan. The Master Plan identified Deering Oaks Pond as an essential park element, and the Guiding Principles of the Master Plan emphasizes the importance of its management and maintenance. As previously discussed, the proposed project will allow for more regular and thorough maintenance of the pond. The proposed project will help achieve all five of the Master Plan Goals:

1. Improve the Image and Safety of Deering Oaks
2. Facilitate the Use and Enjoyment of Deering Oaks
3. Rehabilitate and Preserve the Historic Design Intent of the Park
4. Restore and Maintain the Park's Horticultural Beauty and Ecological Health
5. Strengthen Park Maintenance and Management Programs

The improved maintenance operations (goal 5) that will result from the project, will result in a cleaner, more aesthetically pleasing pond, helping to meet the objectives of goals 1, 2, and 4. The objective of the third goal is to focus on rehabilitation in an effort to stabilize, preserve, and/or improve the character-defining features of the site, particularly elements such as the pond. Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses, while preserving those portions or features which convey its historical or cultural values.

The project meets the intent of the Deering Oaks Master Plan by helping to improve the water quality of Deering Oaks Pond through measures that are primarily not visible during most of the year. The project will not have a detrimental effect on the historic nature of the site, and will help to maintain the pond for future, enjoyable use by the Portland community.

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## 7. CONFORMANCE WITH HISTORIC PRESERVATION STANDARDS

Division 7 of Article IX of the City of Portland's Land Use Code outlines the standards for review of applications for Certificates of Appropriateness. This project involves site alterations and shall only be subject to the following standards, as applicable:

### 7.1 STANDARDS FOR REVIEW OF ALTERATION (LAND USE CODE SECTION 14-650)

The proposed project has been designed to comply with the standards for review of alteration as follows:

- a) No change in use will result from the proposed project; the property will be utilized for its originally intended purpose.
- b) The distinguishing original qualities and character of the site and its environment shall not be destroyed; the removal of organic material and the replacement of the pond bottom system will not negatively alter the visible aesthetic of the existing site; the work will help to improve the appearance of the pond by reducing the incidence of algae blooms.
- c) Alterations that have no historical basis or create a false sense of historical development shall not be made as part of this project; the existing pond bottom elevation will be maintained.
- d) Changes which have taken place in the course of time and are evidence of the history and development of the site and its environment are considered significant in their own right and shall not be destroyed as a result of this project; proposed work will impact only the pond bottom, which is not visible during all but a few weeks of the year.
- e) Distinctive features, finishes, and construction techniques and examples of skilled craftsmanship which characterize the site shall be treated with sensitivity. No walls, buildings, or other structures will be impacted by the project. Structures typically located within the pond, including the duck house and the fountain, will be removed prior to construction, and any remaining buried infrastructure will be protected during construction.
- f) There are no historic features on the site which are deteriorated and will require repair or replacement as part of this project. The repair of adjacent retaining walls is not part of the scope of this project.
- g) The proposed project will not include the surface cleaning of existing structures and objects.
- h) There are no known archaeological resources located within the project area. The pond bottom has been excavated and dredged numerous times over the history of the pond. A large portion of the material that will be removed from the pond has been placed in the pond in the past fifty years.
- i) The proposed project will not utilize a contemporary design for alterations and additions to the existing property; the removal of organic material and the replacement of the pond bottom system will not negatively alter the visible aesthetic of the existing site.
- j) No additions or alterations to structures or objects are proposed as part of this project.

## APPENDIX A: LOCATION MAP



**PROJECT  
LOCATION**

**NOTE: AERIAL PHOTOGRAPHIC DATA PROVIDED BY  
MAINE GIS, CITY OF PORTLAND 2012 DATA**



BAR SCALE  
1" = 200'  
CHECK GRAPHIC SCALE BEFORE USING



41 Hutchins Drive  
Portland, Maine 04102  
800.426.4262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

### LOCATION MAP

DESIGNED BY: N/A      CHECKED BY: DAS  
DRAWN BY: LJS      222804.46 LOCATION FIGURE.DWG

CITY OF PORTLAND  
PORTLAND, MAINE

DEERING OAKS POND  
POND BOTTOM IMPROVEMENTS

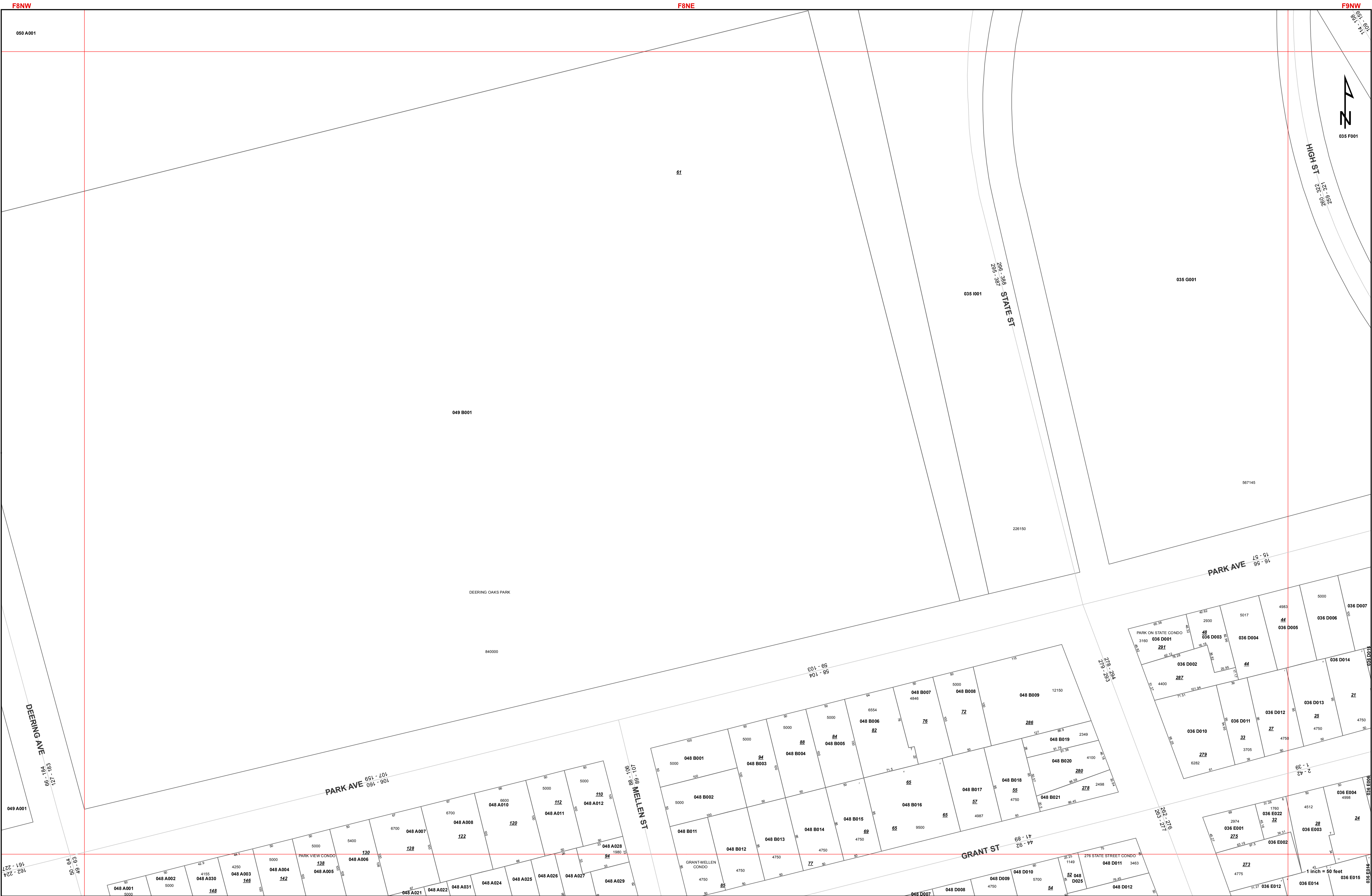
JOB NO: 222804  
DATE: AUGUST 2013  
SCALE: 1"=200'

**FIG. 1-1**

## APPENDIX B: PROJECT PLANS

## APPENDIX C: TAX MAP





## **APPENDIX D: EPA DOCUMENTS**

- Environmental Assessment & Finding of No Significant Impact
- Grant Agreement





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 1**

**5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

October 29, 2013

Michael Bobinsky  
Director of Public Services  
City of Portland  
55 Portland Street  
Portland, Maine 04101

Re: FNSI Determination for the Deering Oaks Pond Bottom Replacement Project

Dear Mr. Bobinsky:

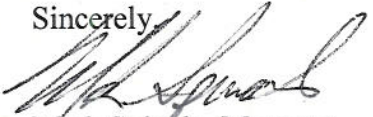
In compliance with EPA Regulations for Implementation of Procedures on the National Environmental Policy Act (NEPA), our office has prepared an Environmental Assessment (EA) for the proposed Deering Oaks Pond project. The City of Portland is proposing to excavate and remove accumulated sediment from the Deering Oaks Pond, and to construct a new pond bottom foundation system.

Based on the EA that has been prepared with supporting documentation (e.g. September 2013 EID) provided by the City of Portland in its grant application submittal, EPA has also prepared a corresponding Finding of No Significant Impact (FNSI) determination. No adverse environmental impacts are expected to occur from the proposed project. As a result, an Environmental Impact Statement (EIS) will not be required.

The FNSI will be distributed as required by 40 CFR Section 6.203. It will also be posted electronically for public review for 30 days. In addition, we request that this determination, and any additional proposed project documents, be made available for review by the public at the City of Portland offices. If any future review results in an indication of dissatisfaction with the way the environmental effects of the proposed project have been dealt with, our office should be notified immediately so that we can determine if modifications to the project are warranted.

Should you have any questions, you may contact David Chin of my staff at 617-918-1764. Thank you for your continued cooperation and we look forward to working with the City of Portland on its proposed Deering Oaks Pond project.

Sincerely,



Mark Spinale, Manager  
Municipal Assistance Unit

Attachments

cc: U.S. ACOE  
U.S. Fish and Wildlife



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
BOSTON, MA 02109-3912

**ENVIRONMENTAL ASSESSMENT**

**I. PROJECT NAME:** Deering Oaks Pond – Portland, Maine  
Pond Bottom Replacement Project

**ADDRESS:** City of Portland  
Public Services Department  
55 Portland Street  
Portland, Maine 04101-2921  
ATTN: Michael Bobinsky, Director

**PROJECT LOCATION:** Deering Oaks Pond, Deering Oaks Park  
Portland, Maine

**II. BACKGROUND, PURPOSE and NEED:**

The Deering Oaks Pond, located in Deering Oaks Park in the City of Portland, Maine, is a 3.5 acre manmade pond/impoundment. Created in the late 1800s, the current source of water for the pond is from a combination of stormwater outfall pipes, stormwater runoff from the immediate surrounding areas, groundwater, and supplemental water from the Portland Water District's water distribution system. Any overflow from the pond enters the City of Portland's combined sewer system. The pond serves both aesthetic and recreational purposes in the park. The pond is utilized for public skating during the winter months.

A majority of the pond's edge is formed by stacked granite block or stone face cast-in-place retaining wall systems. The pond is drained twice a year for maintenance. The existing pond bottom in many areas is quite soft which hinders maintenance work. As a result, it is often difficult to remove sediment, trash, and deposited organic material, which compromises water quality. In addition, excess organic material helps to create and exacerbate algae blooms during the warm summer months.

The City of Portland has proposed to improve water quality by installing a new and more stable pond bottom that would allow more frequent and effective cleaning of the pond on an annual basis. The City of Portland will be provided with federal assistance (Public Law 111-88) in the amount of \$611,111, along with a required local match of \$500,000 (approved by the City of Portland as part of its FY2013 Capital Improvement Plan budget) to help fund this proposed endeavor.



## II. PROJECT DESCRIPTION AND OBJECTIVES

Improving water quality is the primary goal of this proposed project. Deering Oaks Pond experiences high algal blooms as a result of low dissolved oxygen levels and elevated temperatures. Over the years, the pond has received organic materials from combined sewer overflow discharges, waterfowl waste, decomposed leaves, and sediment from stormwater runoff. The decomposition of the organic material contributes to higher nitrogen and phosphorous levels, which in turn, contributes to the lower dissolved oxygen levels.

The proposed project will include the removal of the accumulated organic matter. The installation of a new and more stable pond bottom foundation will result in improved and more effective future maintenance. Both endeavors will greatly enhance the water quality of the Deering Oaks Pond for the future.

The pond will be drained and the organic material will be removed down to the historic pond bottom elevation height. All sediment and organic material will be properly disposed of in compliance with local, state and federal requirements. After removal of the sediment, a new stable pond bottom system will be installed so the pond may be regularly and properly maintained in the future. The pond bottom system alternatives are being evaluated and they include: (a) gravel; (b) cast-in-place reinforced concrete; and (3) precast modular concrete blocks.

An Environmental Information Document was prepared by representatives of the City of Portland as part of its grant application submittal. Information from this specific document, as well as supplemental information (e.g. 9/25/13 memo) provided to the EPA is utilized to support the following narrative regarding environmental concerns and impacts.

## III. SUMMARY REVIEW OF ENVIRONMENTAL CONCERNS AND IMPACTS, AND PUBLIC and INTERAGENCY REVIEW

### A. Direct Impacts

#### 1. Air Quality

During construction, there will be expected slight increase in noise and dust associated with excavation and removal work, installation work, and vehicular traffic.

#### 2. Water Quality

There will be some temporary water quality impairment that is typical of these types of projects. The City of Portland will implement all necessary measures to minimize any temporary water quality degradation before, during, and after excavation and installation.

The installation of a new pond bottom system will result in the disturbance of ~ 3.5 acres of land area, requiring compliance with the Maine Department of Environmental Protection (DEP) Chapter 500 Stormwater Management regulations and the Maine Construction General Permit. Since the disturbance of land area will be greater than one acre and less than five acres, the project will qualify for a Stormwater Permit By Rule (PBR) that requires compliance with the Maine DEP Basic Standards for erosion and sedimentation control involving the implementation of best management practices.

The City of Portland will complete and submit a Notice of Intent/Stormwater PBR form to comply with the Maine Construction General Permit (MCGP). The City of Portland will also Submit a Notice of Termination to the Maine DEP following completion of the project.

In correspondence between the City of Portland representative and the Army Corps of Engineers, it has been determined that Deering Oaks Pond is not a water of the United States. Therefore, an ACOE permit is not required for the proposed project.

### 3. Environmentally Sensitive Areas

#### a. Flood plains and Wetlands

There are no mapped wetlands in the project area and is not located in a floodplain.

#### b. Prime Agricultural Land

The project area is not located in prime agricultural lands..

#### c. Wildlife Habitat

The area is not a habitat for inland wading waterfowl, shorebirds, or seabirds. According to the EID, the closest shorebird habitat is ~2,000 feet away from the propose project site. The closest inland wading waterfowl habitat is ~9,500 feet away. The proposed project will have no impact on wildlife habitat.

#### d. Stream Modification

No stream modifications are required as a result of this proposed project.

4. Socio-Economic Impacts

The proposed project will not require the relocation of residents and people, and area employment will not be disrupted by the construction project. No properties will be impacted by the Uniform Relocation and Assistance Act.

5. Historical/Archeological and National Landmarks

Deering Oaks Pond is a nationally registered historic landmark. We have assurances from the City of Portland that this project will be implemented in coordination with City of Portland's Historic Preservation Department. The City of Portland will also coordinate with the Maine Historic Preservation Commission.

6. Endangered Species

The pond is not identified as a habitat for endangered or threatened species.

7. Coastal Zone Management

The project area is not part of an immediate sea coast.

8. Wild and Scenic Rivers

The project area is not within a wild and/or scenic river designation area.

#### IV. MITIGATION AND CONCLUSIONS

Short-term impacts to air quality (e.g. dust and equipment exhaust) may occur during construction. However, contract documents will require the contractor to control dust and comply with all applicable State and EPA air pollution control requirements. There will be minimal or no impacts to air quality. There will be no land use changes. There will be no environmentally sensitive areas that will be impacted.

With respect to impacts to water quality during construction, the contractor will be required to implement sedimentation and erosion control measures in accordance with MGCP. Appropriate erosion and sedimentation control will be utilized to prevent sedimentation in the areas of the pond and in the pond outlets connected to the City of Portland Combined Sewer System.



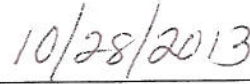
In addition, organic matter that is removed from the site during construction will be tested for contaminants and will be disposed of in accordance with all applicable local, state, and federal regulations/requirements. The potential for beneficial re-use of the sediment will be evaluated.

Overall water quality of the pond will be improved in the short-term and long-term. There may be minor and temporary short-term construction impacts affecting air quality and water quality, as well as the need to control the level of noise and traffic. Nevertheless, we have been assured by the City of Portland that any short-term impacts are expected to be properly mitigated and minimized.

**Based on our review of available documentation, this proposed project is not expected to have any long-term adverse impacts on the environment.**



David Chin, Environmental Engineer  
Municipal Assistance Unit



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
5 Post Office Square, Suite 100  
BOSTON, MA 02109-3912

**FINDING OF NO SIGNIFICANT IMPACT**

To: All Interested Persons                      Date Issued: October 28, 2013

Pursuant to the Federal Water Pollution Control Act, as amended, we have made an environmental determination for the:

City of Portland, Maine  
Public Services Department  
55 Portland Street  
Portland, Maine 04101-2921

Assigned EPA Grant Assistance # EM-96178401

Total Estimated Project Cost: \$1,111,111

Total EPA Grant Available: \$ 611,111

**Background and Purpose**

The Deering Oaks Pond, located in Deering Oaks Park in the City of Portland, Maine, is a 3.5 acre manmade pond/impoundment. The pond is drained twice a year for maintenance. The existing pond bottom in many areas is quite soft which hinders maintenance work. As a result, it is often difficult to remove sediment, trash, and deposited organic material, which compromises water quality. In addition, excess organic material helps to create and exacerbate algae blooms during the warm summer months.

The City of Portland has proposed to improve water quality by installing a new and more stable pond bottom that would allow more frequent and effective cleaning of the pond on an annual basis. The City of Portland will be provided with federal assistance (Public Law 111-88) in the amount of \$611,111, along with a required local match of \$500,000 (approved by the City of Portland as part of its FY2013 Capital Improvement Plan budget) to help fund this proposed endeavor.

The proposed project will also include the excavation and removal of the accumulated organic matter. The installation of a new and more stable pond bottom foundation will result in improved and more effective future maintenance. Both endeavors will enhance the water quality of the Deering Oaks Pond in the future.



**Environmental Review Summary**

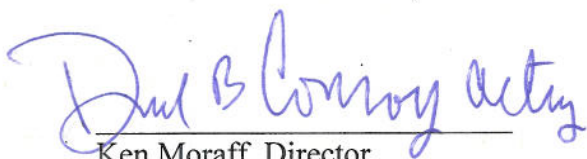
An Environmental Information Document (September 2013) was prepared by representatives of the City of Portland as part of its grant application submittal. Information from this specific document, as well as supplemental information (e.g. 9/25/13 memo) provided to the EPA has been utilized to support its EPA environmental determination.

All of the proposed work will take place within the existing pond and the immediate area adjacent to the pond. No adverse environmental impacts are anticipated from the project. A more detailed description and environmental review of the project is contained in the attached Environmental Assessment (EA) prepared by the Municipal Assistance Unit. Based on our review of the intended grant recipient's proposed scope of work and the corresponding EA document, EPA is issuing a Finding of No Significant Impact (FNSI).

Appropriate mitigation measures will be implemented to minimize any temporary minor air, traffic, noise, and any erosion impacts. No significant adverse impacts are expected as a result of the proposed project and more importantly, the water quality of the Deering Oaks Pond will be further protected as a result of the proposed project. Therefore, an Environmental Impact Statement will not be prepared.

Comments relative to this decision may be submitted to David Chin of the Municipal Assistance Unit on behalf of the EPA for review. Please note that no EPA reimbursement of eligible costs related to this proposed construction project will be approved for at least thirty (30) calendar days after the issuance of this Finding.

Additional documentation and information regarding this proposed project are available for public review at the Municipal Assistance Unit of Office of Ecosystem Protection at the EPA Regional Office in Boston and at the City of Portland, Maine's Public Services Department.



Ken Moraff, Director  
Office of Ecosystem Protection

10-28-13

Date

Attachment

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	<b>GRANT NUMBER (FAIN):</b> 96178401 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> EM	<b>DATE OF AWARD</b> 02/04/2014
		<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 02/11/2014
		<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 10061
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> USEPA LVFC 4220 S. Maryland Pkwy Bldg C, Ste 503 Las Vegas, NV 89119 Tel: (702) 798-2406; Fax: (702) 798-2423	
<b>RECIPIENT:</b> Portland City of 389 Congress Street Portland, ME 04101 <b>EIN:</b> 01-6000032		<b>PAYEE:</b> City of Portland 389 Congress Street Portland, ME 04101	
<b>PROJECT MANAGER</b> Michael Farmer 389 Congress Street Portland, ME 04101 <b>E-Mail:</b> mfarmer@portlandmaine.gov <b>Phone:</b> 207-874-8845		<b>EPA PROJECT OFFICER</b> David Chin 5 Post Office Square, Suite 100, OEP06-3 Boston, MA 02109-3912 <b>E-Mail:</b> Chin.David@epamail.epa.gov <b>Phone:</b> 617-918-1764	
<b>EPA GRANT SPECIALIST</b> Diane Culhane Grants Management Office, OARM16-2 <b>E-Mail:</b> Culhane.Diane@epamail.epa.gov <b>Phone:</b> 617-918-1975			
<b>PROJECT TITLE AND DESCRIPTION</b> Deering Oaks Park Pond Bottom Accumulated sediment in the Deering Oaks Pond will be excavated and removed. A new pond bottom foundation will be constructed that will improve overall water quality.			
<b>BUDGET PERIOD</b> 03/29/2013 - 12/31/2014	<b>PROJECT PERIOD</b> 03/29/2013 - 12/31/2014	<b>TOTAL BUDGET PERIOD COST</b> \$1,111,111.00	<b>TOTAL PROJECT PERIOD COST</b> \$1,111,111.00
<b>NOTICE OF AWARD</b>			
<p>Based on your Application dated 09/17/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$611,111. EPA agrees to cost-share <u>55.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$611,111. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 1  5 Post Office Square, Suite 100 Boston, MA 02109-3912	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
<b>Digital signature applied by EPA Award Official for</b> Michael Kenyon - Director Office of Administration & Resource Management Fred Weeks - Award Official delegate			<b>DATE</b> 02/04/2014

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 611,111	\$ 611,111
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 500,000	\$ 500,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 1,111,111	\$ 1,111,111

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.202 - Congressionally Mandated Projects	Public Law 111-88 Department of Interior Environment and Related Agencies Appropriations Act 2010	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	14010CG004	13	E4C	0120G9T	202B51	4192			611,111
									611,111

## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
<b>1. Personnel</b>	\$0
<b>2. Fringe Benefits</b>	\$0
<b>3. Travel</b>	\$0
<b>4. Equipment</b>	\$0
<b>5. Supplies</b>	\$0
<b>6. Contractual</b>	\$1,111,111
<b>7. Construction</b>	\$0
<b>8. Other</b>	\$0
<b>9. Total Direct Charges</b>	\$1,111,111
<b>10. Indirect Costs: % Base</b>	\$0
<b>11. Total (Share: Recipient <u>45.00</u> % Federal <u>55.00</u> %.)</b>	\$1,111,111
<b>12. Total Approved Assistance Amount</b>	\$611,111
<b>13. Program Income</b>	\$0
<b>14. Total EPA Amount Awarded This Action</b>	\$611,111
<b>15. Total EPA Amount Awarded To Date</b>	\$611,111

## **Administrative Conditions**

### **1. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 31.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

#### **Current Fair Share Objective/Goal**

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. MEDEP has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

Combined	.64% MBE	1.64% WBE
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#### **Negotiating Fair Share Objectives/Goals**

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

#### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of

these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E**

MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

- (a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
- (b) \$3,000 or more is included for supplies; or
- (c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

This award meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due within 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to **[insert name and contact information of the appropriate DBE coordinator and Grants Specialist (optional)]**. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm)

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

### **CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

## **2. General Terms and Conditions**

The recipient agrees to comply with the applicable EPA general terms and conditions available at: <http://www.epa.gov/ogd/tc.htm>. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below.

## **Programmatic Conditions**

### **STAG Earmark Programmatic Conditions City of Portland, Maine EPA Grant Assistance #EM- 96178401**

1. It is the responsibility of the Grantee to comply with all the terms and conditions of the grant agreement, to efficiently and effectively manage grant funds within the approved budget, to complete the undertaking in a diligent and professional manner and to monitor and report performance.

2. The Grantee agrees to manage the project consistent with the intent of the March 29, 2010 U.S. EPA Headquarters memorandum, "Award of Grants and Cooperative Agreements for Special Projects and Programs Authorized by the Agency's FY 2010 Appropriations Act". The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to state and local governments. Furthermore, a listing of the Federal Laws and Executive Orders that apply to all EPA grants, including the projects authorized by the Agency's FY 2010 Appropriations Act, is contained within the aforementioned documents.

3. The Grantee is responsible for compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq. and Final Regulations promulgated under 40 Code of Federal Regulations, Part 6.

The Grantee agrees that final design work and /or any construction shall be undertaken in accordance with the results of the completed NEPA review and findings, including but not limited to, the implementation of measures the EPA and the other state and local entities have identified as reasonable to mitigate the environmental impacts of the project. Furthermore, the grant recipient agrees to ensure that the appropriate restrictions noted in EPA's environmental review determination are also adhered to. In the event the recipient fails to comply with any part of this condition, EPA will implement the remedies contained in 40 CFR Section 31.43. This may include requiring the return all of the federal funds that it has received from the EPA pertaining to this project. Any exceptions to the noted mitigation measures and restrictions would have to be approved by the EPA.

4. The Grantee agrees to submit final plans and specifications to the EPA Project Officer for administrative review.

5. The Grantee shall ensure that all permits required by Federal, State, or local statutes are

obtained. The Grantee further agrees to implement all of the requirements of the subject permits. In addition, the Grantee agrees to adhere to appropriate industry construction standards (e.g. Ten State Standards, AWWA Standards, etc...) as required or recommended by EPA or the State.

**6.** The Grantee agrees to procure all services, equipment, supplies, and construction awarded under this grant in accordance with 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

**7.** The Grantee shall comply with 49 CFR Part 24 which applies in the event the recipient procures land or if people are relocated. The Grantee shall obtain acceptable legal opinion for sites, easements and / or rights-of-way to ensure that they are free of any restrictions or encumbrances that might limit their use for the intended purpose, if necessary for project completion. This documentation must be kept on file and made available to EPA and to the State.

**8.** The Grantee agrees to provide access to the project site and all related construction records to EPA for the purpose of monitoring progress of the project.

**9.** The Grantee agrees to maintain all project records for three years after the issuance of EPA's final payment or until any litigation, appeal, claim or Federal audit that is begun before the end of the three-year period is completed and resolved, whichever is longer (40 CFR Part 31.42).

**10.** The Grantee agrees to submit a Request for Advance or Reimbursement (SF-270) to the designated EPA Project Officer for review and approval, as costs are incurred on the assistance agreement. The reimbursement request will also include copies of all supporting documentation such as invoices and paid receipts. The SF-270 may be submitted quarterly, but no more often than monthly. The EPA Project Officer will forward the approved reimbursement request to EPA's Finance Office for processing.

**11.** In accordance with 40 CFR 31.40 related to post award monitoring, the Grantee agrees to provide to the EPA Project Officer an annual progress report which may include information on each of the following areas: 1) a comparison of actual accomplishments to the outputs / outcomes established in the assistance agreement work plan for the period; 2) the reasons for slippage if established outputs / outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

**12.** In accordance with 40 CFR 31.40 (d), the Grantee agrees to inform EPA promptly in writing of any substantial project changes that may affect the grant amount, delay or accelerate the project schedule, or alter the project significantly, which may result in a grant amendment or will impair the ability of the Grantee to meet the outputs / outcomes specified in the assistance agreement work plan.



**13.** The Grantee agrees that costs incurred for the local share are subject to final EPA / State review. The Federal share of the grant will be limited to no more than 55% of the final cost for completing the scope of work described, regardless of the amount appropriated for the project. Approval of this project for Federal financial assistance does not imply a commitment of future Federal funds beyond current levels of Congressional appropriations.

**14.** If applicable (e.g. if federal financial assistance expenditures exceed \$500,000 annually), the Grantee shall comply with the Single Audit Act and the reporting requirements set forth in OMB Circular A-133.

**15.** EPA expects the recipient to make to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project. If the recipient fails to make sufficient progress, EPA will take appropriate action.