

42-D-4

390 Commercial St.

Zone change - Beckys diner

Rebecca Rand

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 completing 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.

Mike Baffman:

Between Fish Pier, Inlet - Explore
need explanation of DEP

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

Public Comment:

Dick Fingalls, Waterfront Alliance Veteran
Representing 49 property owners (including the
Sundstrand wharf) Dry Wharf, Battery R. See
Schneider, Bridge Isle

① Apply 35' rule to all -
diminishing fishing fleet - marine related uses
"Drying up" ~~the~~
The old port proposals of 35' rule is
meaningless - all the same uses

② Important that Board look @ 75' rule
from DEP - Dine consequences on future.

Nick Alfiero: Resident of Customhouse Bldg
and own portion of Holyoke wharf. 1st floor
occupied by marine use -
asked clarifying language re: drydock,
end of pier should be water dependent uses
inner properties will probably have

- ① wants 35' rule
- ② don't want 75' rule

D.D. 35' rule to the west maybe extend, but
restrict "ped" use that don't restrict
access, and/or depths from council st.

J.T. Becky's experience shows small businesses
need assistance. - dividing line arbitrary
"35 foot rule"

Shubert. Changes in zone - Business profile in
economic ~~and~~ survey, -

Nick Alfiero: New Structure "Research rule" is also 75'
in aquatics.

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Dick Fingell, Waterfront Alliance Veterans
Representing 406 property owners (including the
Soundfront wharf) Dry Wharf, Beverly R. See
Schneider, (Judge Dale)

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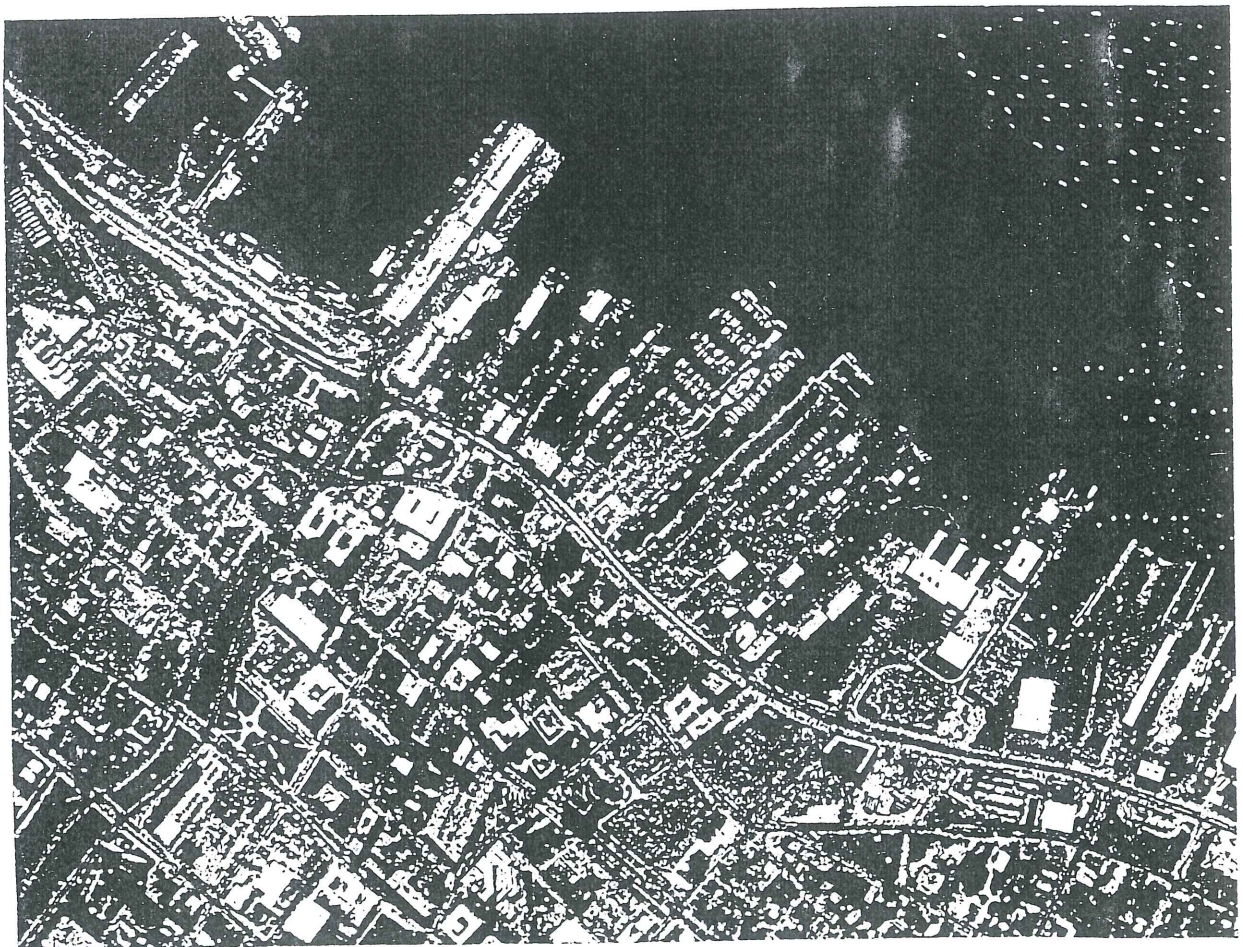
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Waterfront Alliance Recommendations

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

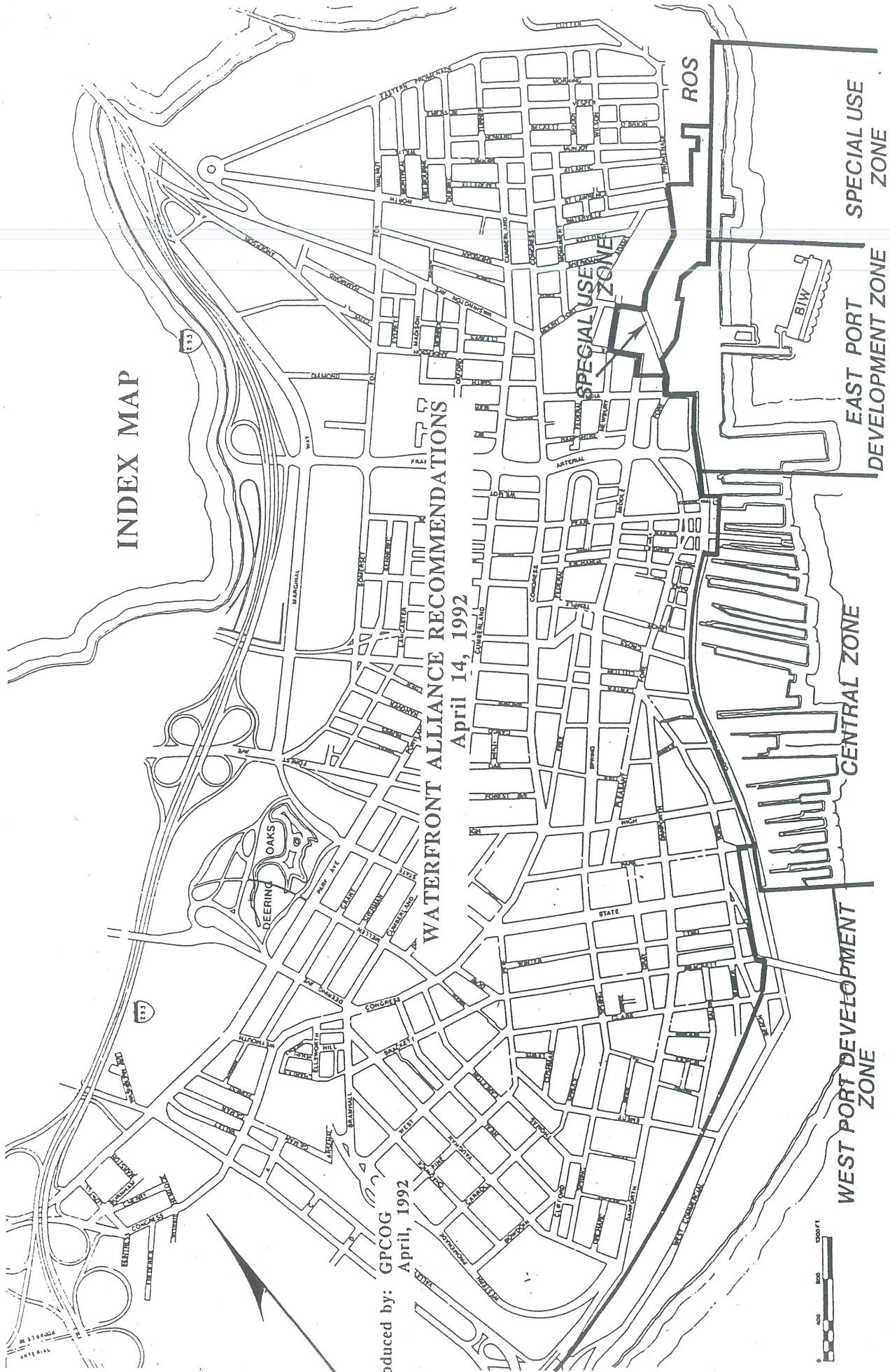
Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

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



WATERFRONT ALLIANCE RECOMMENDATIONS
April 14, 1992

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

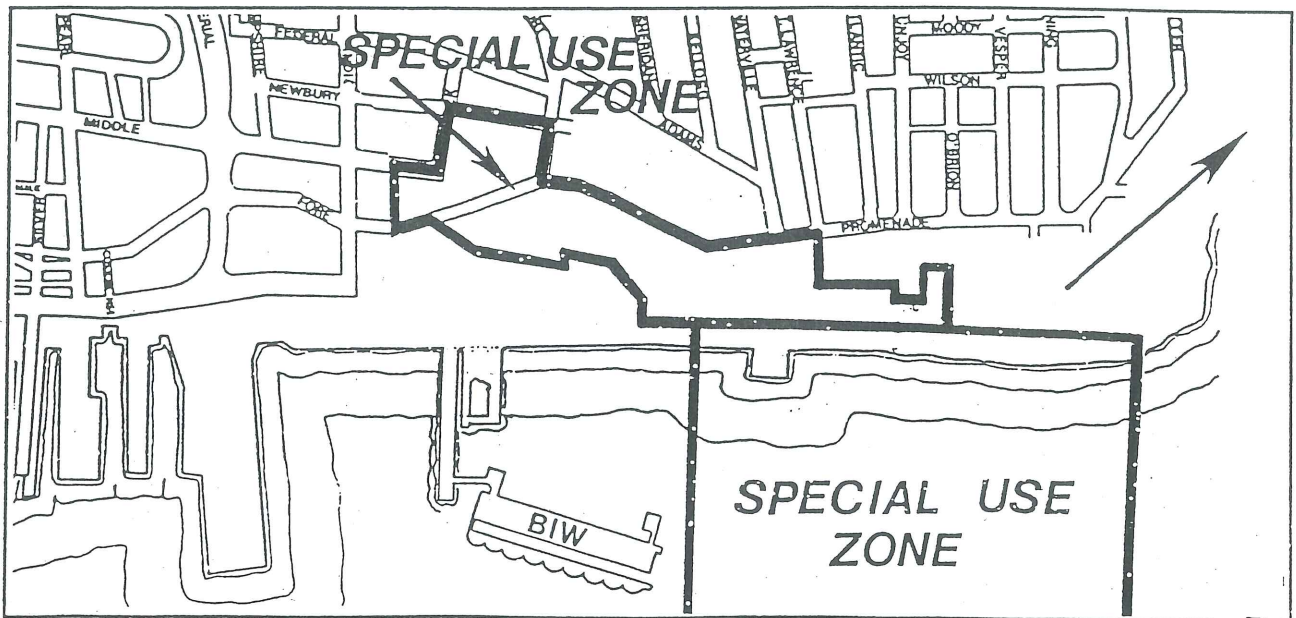
SPECIAL USE ZONE GEOGRAPHIC DESCRIPTION (SUZ):

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 Northwestly 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.

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:

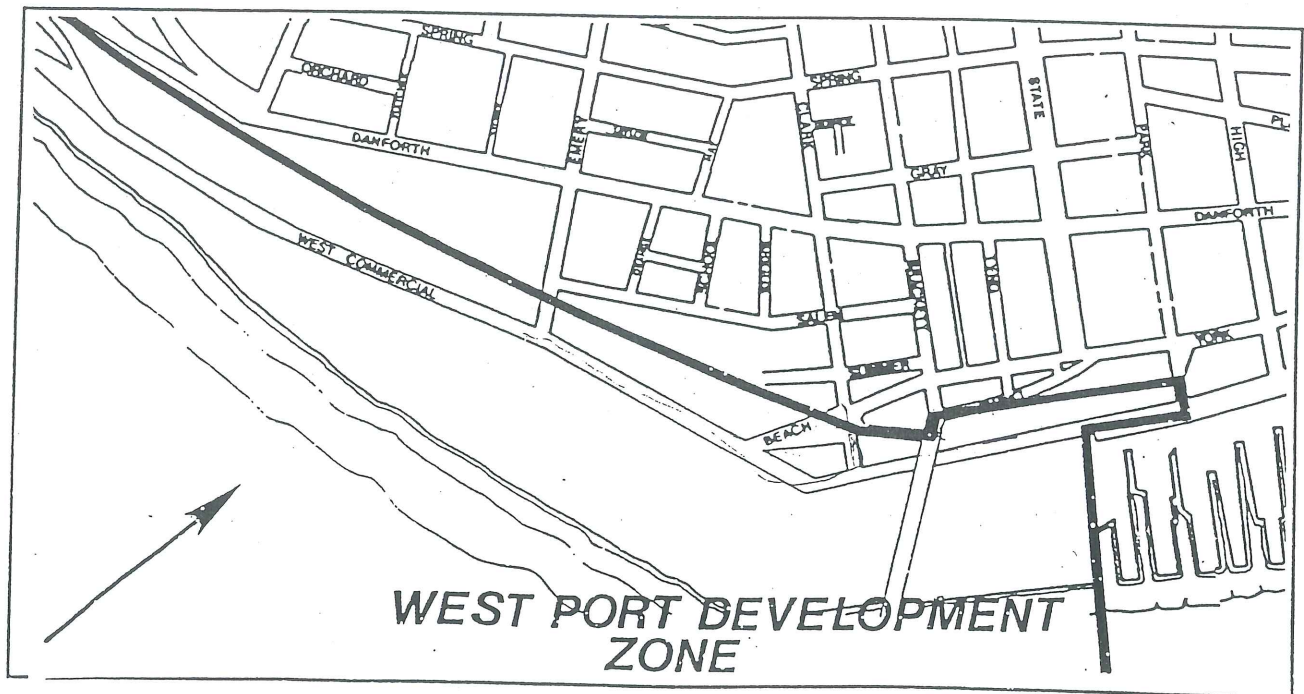
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

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.

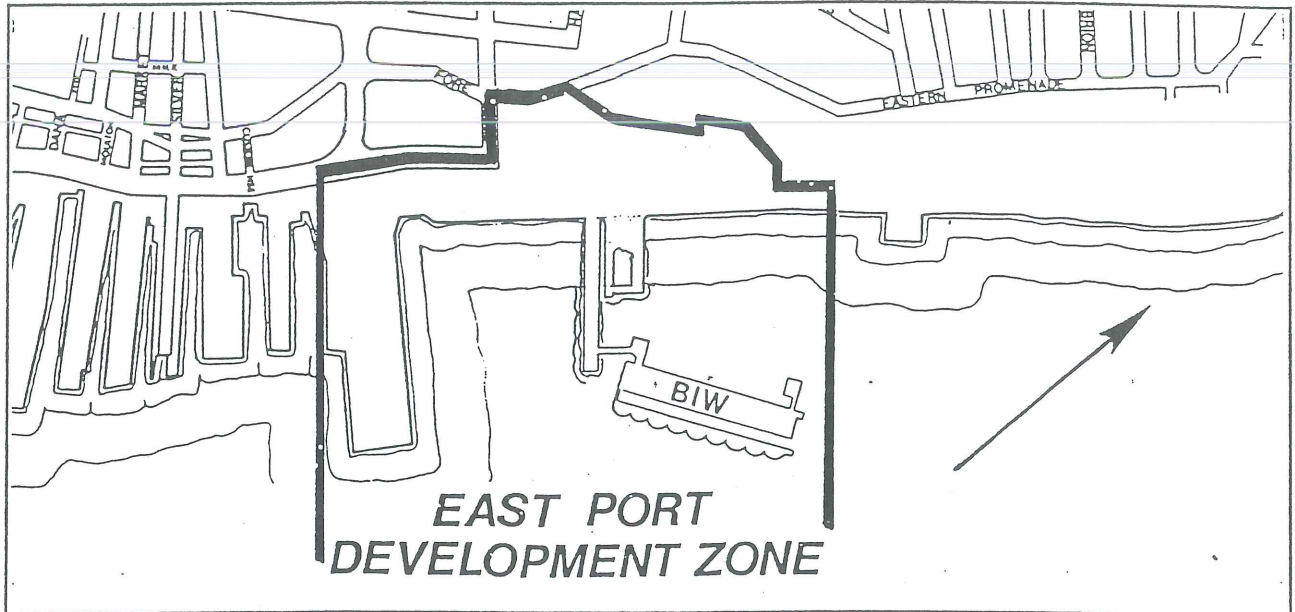
(See the Pringle Amendment attached for clarification.)

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).

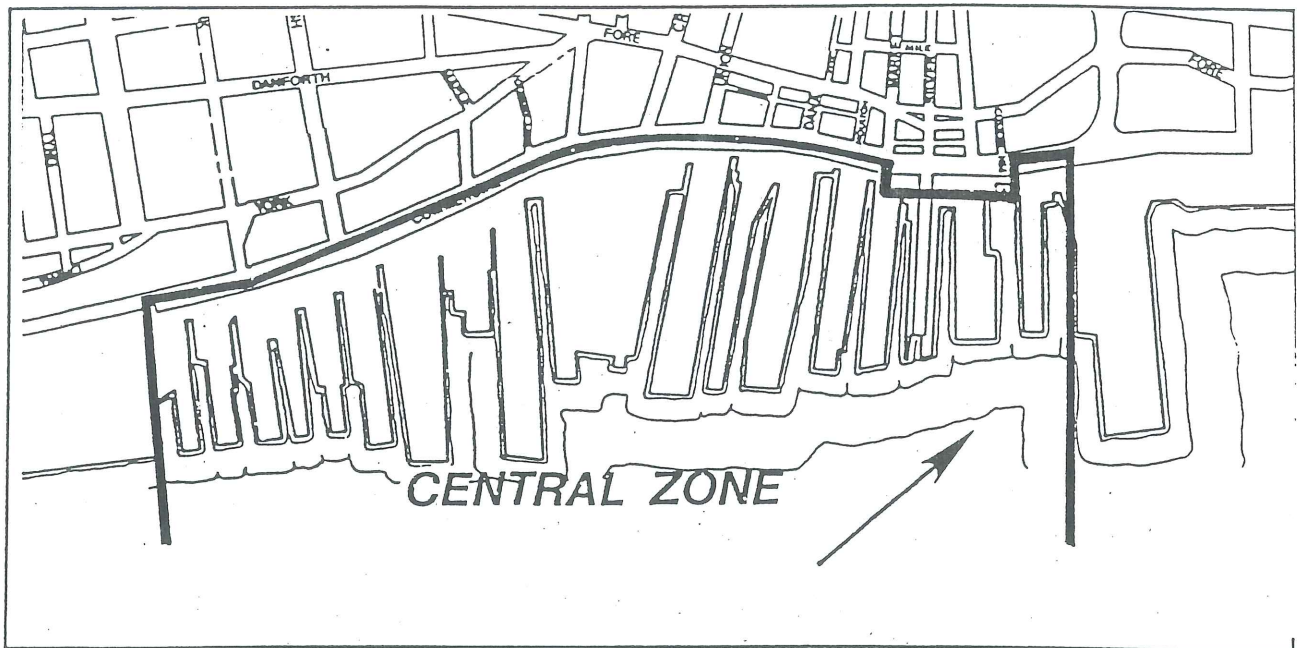
The zone's existence is designed to ensure the continued viability of the port. Its uses, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water, and/or contribute to Port Development Activity.

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

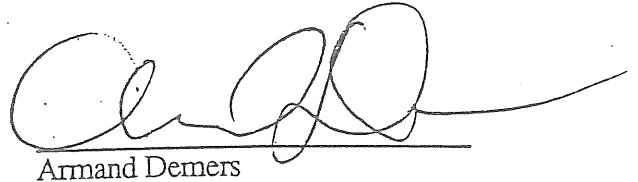
It is the feeling of the Alliance that the above issues are of paramount interest in the future of the Port of Portland. As with the zoning issue, the Alliance stands ready to work with the City on all of the above issues and recommends immediate activity in that direction. It is our conclusion that 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

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.

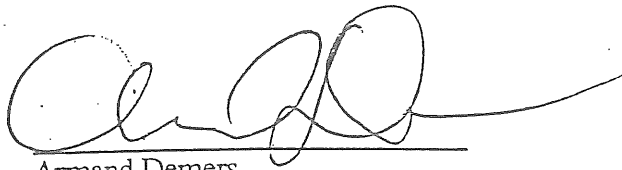
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APPENDICES

APPENDICESINDEX

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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)

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

1-2-87
INSCRIBED
B.V.

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."

9

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.

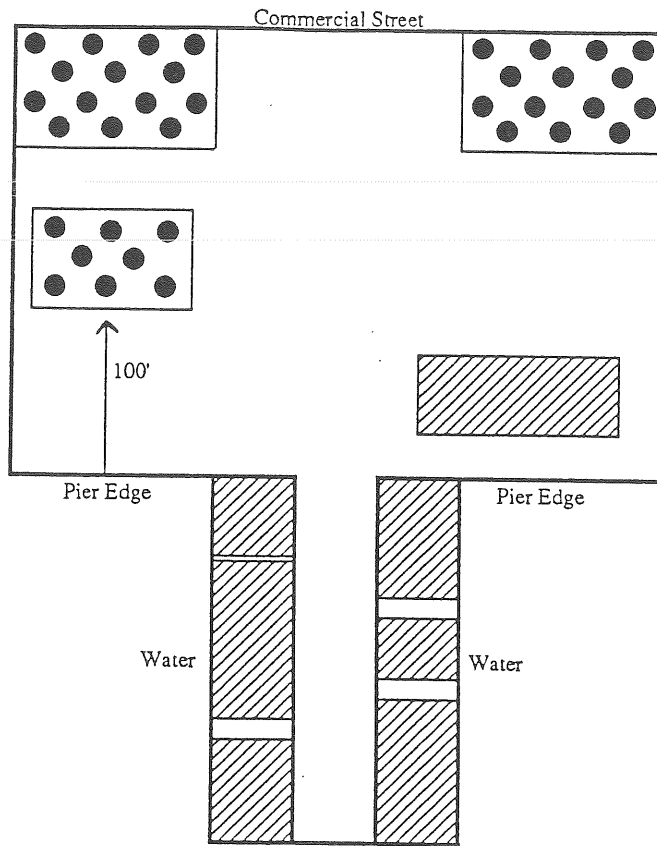
Distinguishing Characteristics:

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.

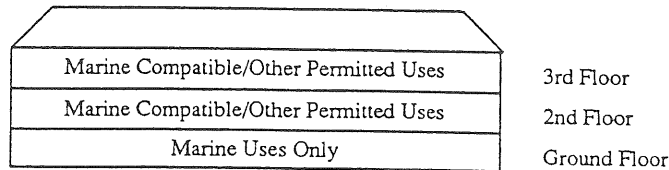
All non-marine uses regardless of their location must comply with a marine compatibility standard. (See page 10, line 41 of zoning text). The marine compatibility standard is also referenced for the other waterfront zones. A list of the marine compatible uses is shown on page 3, line 25 of the zoning 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



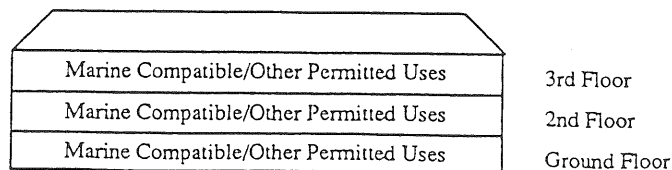
Buildings less than 100 feet from the water.



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, BW 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."

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

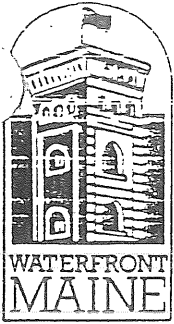
The Planning Board held eight workshops and two public hearings to discuss proposed waterfront zoning changes. The first public hearing was held on August 25th with the final public hearing on September 29th. On September 29th, the Planning Board voted 6-1 (Williams) to recommend to the City Council 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:

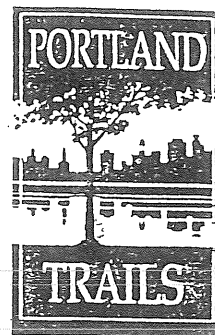
In August, I sent you, and the other members of the Board, a letter outlining my concerns relative to the proposed Waterfront Central Zone. My primary objection was to the distinction being made between buildings located in and outside an arbitrary perimeter 100 feet from the "water."

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

Dear Chairman DeCourcey:

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. Leedes
Company Guilford Transportation
Location Dept. Orange

Fax # 607 874-8649
Comments Telephone #

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

Please make copies and distribute to the 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 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

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:

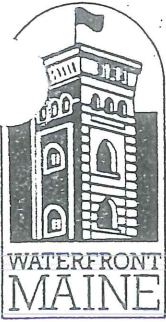
I will be out of town during the week of August 25th, so I am writing to express my concerns about the most recent draft of the Waterfront Zoning. While I agree that some modifications are required in the existing zoning, I believe Portland should take a cautious approach. Any modifications should reflect 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.



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.

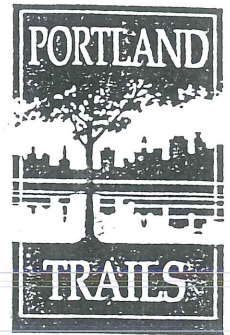
The proposals for that area began with some measure of care for the waterfront and the neighborhood, with the Port Development Zone underlying, which was liberalized to the Central Zone underlying, which then went to a Special Overlay Zone and has ended up with the most permissive zoning, (either on 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,



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.

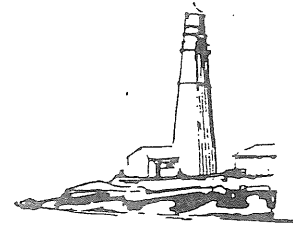
Thanks for your consideration.

Very truly yours,

J. P. Monroe
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.

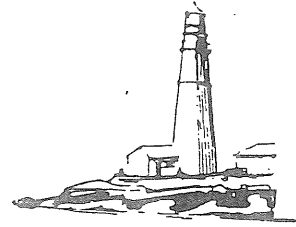
Casco Bay Island Development Association is opposed to further delay of waterfront zoning.

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

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:

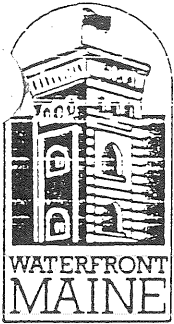
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Casco Bay Island Development Association favors unlimited use for upper floors in the Central Zone as long as tenants are willing to abide by the statement of purpose for the central zone.

Sincerely,

Jean Dyer, President Casco Bay Island Development Association



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 Wellin

cc: Joseph Gray

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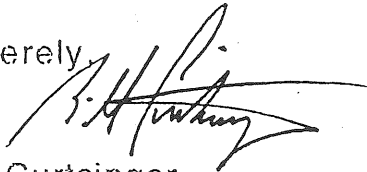
cc: Joseph Gray

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,

A handwritten signature in black ink, appearing to read "Bill Curtsinger", with a stylized flourish at the end.

Bill Curtsinger

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

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144 Pine Street
Portland, Maine 04102
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- 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.

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:

September 4, 1992

City of Portland, Maine

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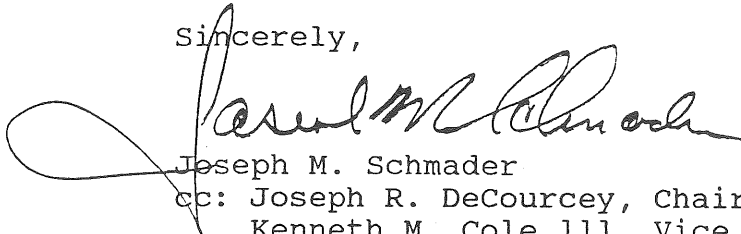
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I will be at your work shop Tuesday Sept. 8th. to answer any questions you may have on this or any area my experience may lend.

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

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;

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.

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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 accomodate 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 accessable, 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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Post-It® brand

Fax Transmittal Memo 7672

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

Fax #
207 874-8649
Comments

Telephone #

No. of Pages

- 2 -

Today's Date

8-21-92

Time

From

Leonard A. Lucas

Company

Guildford Transportation

Location

Dept. Orange

Fax #

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

GUILD FORD TRANSPORTATION INDUSTRIES, INC.

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. Lyons

LAL:iaq

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

City of Portland Planning Board
August 21, 1992
Page Two

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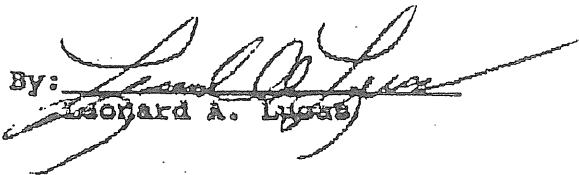
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PORTLAND TERMINAL COMPANY

By: 
Richard A. Lucas

LAL:iaq

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

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

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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.

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KEEP THE PORT IN PORTLAND

August 23, 1992

Joseph DeCourcey, Chair,
Members, Portland Planning Board

Re: Waterfront Zoning

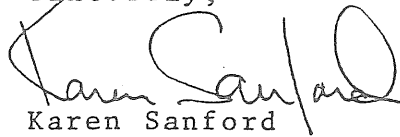
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Because we are taking our son to college this week, I cannot attend the Planning Board Public Hearing on Tuesday.

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

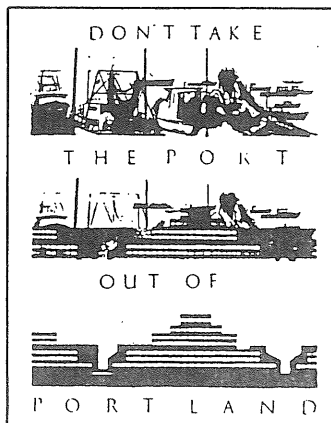
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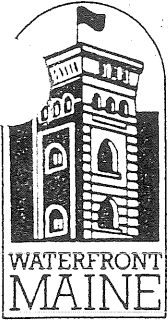
Sincerely,


Karen Sanford

Copy of newspaper
article is attached

cc: Joe Gray, Alex Jagerman,
Rick Knowland





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

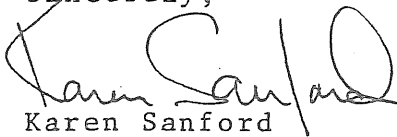
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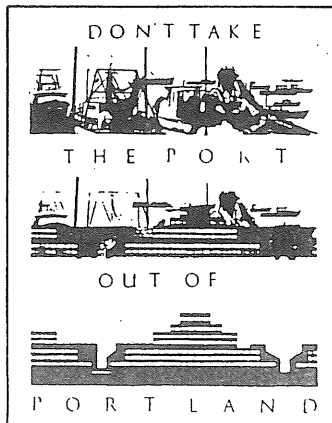
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HOW CAN WE GIVE ZONING RELIEF WITHOUT CHANGING THE WORKING CHARACTER^{of} OR SETTING UP CONFLICTS BETWEEN NON-MARINE and MARINE USES ON THE WATERFRONT.

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 weakly 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 !

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.

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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

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.

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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".

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Associated Press

Michael Zdanowicz sits on the stern of his lobster boat, Gertrude Z, in Beverly, 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 wooden float he had 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 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 tions are "a good idea, should leave the lobster there," he said. "That's that should be preserved." "There is supposed heritage in the area. "It's too bad because enjoy talking to a lobster boats and fishing boats or Central Wharf & "There was Tommy, my recalled, "Y in the city out." Zdanowicz when h father' son, M 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.

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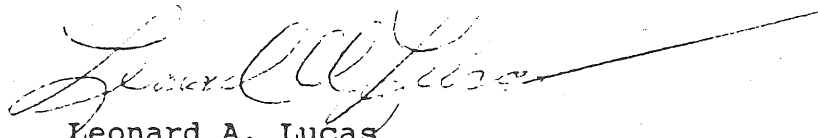
Chairperson Joseph R. DeCoursey
July 29, 1992
Page Two

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)

July 9, 1992

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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."

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Pg. 18

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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.

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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*

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.

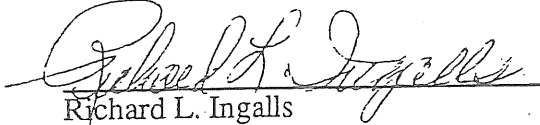
If the working waterfront mandate is to be carried out for the sake of the long-term community interest, then the public and private interests must start to work together in critical areas such as harbor management and development. The Alliance has outlined for your consideration, the following general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

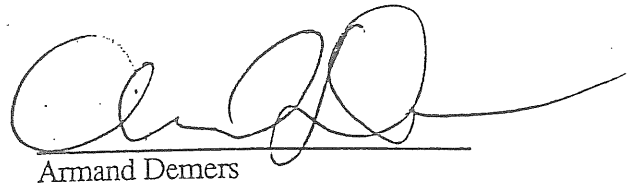
It is the feeling of the Alliance that the above issues are of paramount interest in the future of the Port of Portland. As with the zoning issue, the Alliance stands ready to work with the City on all of the above issues and recommends immediate activity in that direction. It is our conclusion that 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.

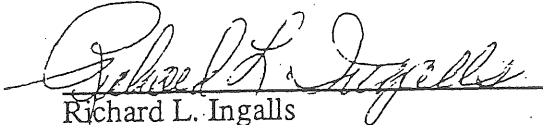
Bob Cott, Creative Design and Marketing
Sam Davidson, Marine Trade Center
Tom Dobbins, Getty Petroleum Corp.
John Ferland, Clean Casco Bay, Inc.
Bob Fontaine, Munjoy Hill Neighborhood Organization
Ed Gomes, Casco Bay Island Development Assoc.
Bob Goode, Southern Maine Technical College
Virginia Hildreth, (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

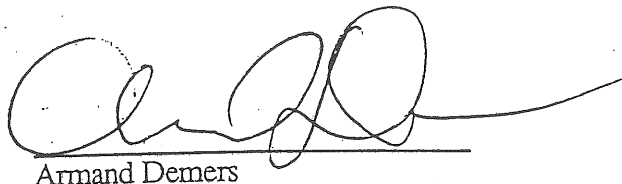
John Bubier, Facilitator, Executive Director, Greater Portland Council of Governments
Muriel White, Support Staff, Greater Portland Council of Governments
Kristen Sommer, Cartographer, Greater Portland Council of Governments

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

APPENDICESINDEX

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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

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)

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

1-28
INSURE
B.V.

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.

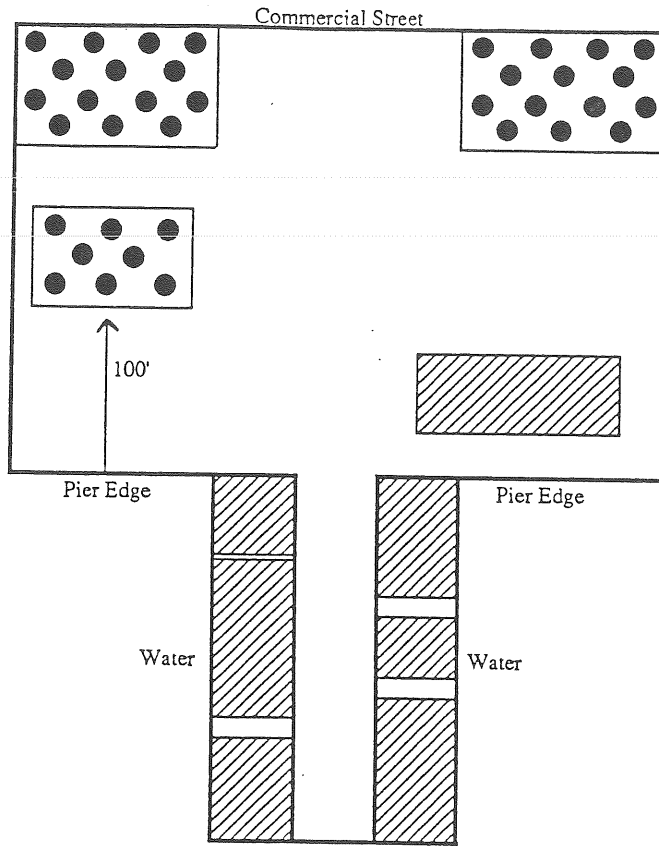
Distinguishing Characteristics:

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.

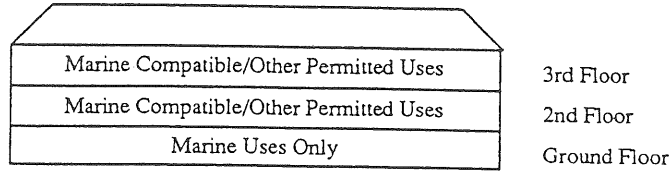
All non-marine uses regardless of their location must comply with a marine compatibility standard. (See page 10, line 41 of zoning text). The marine compatibility standard is also referenced for the other waterfront zones. A list of the marine compatible uses is shown on page 3, line 25 of the zoning 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



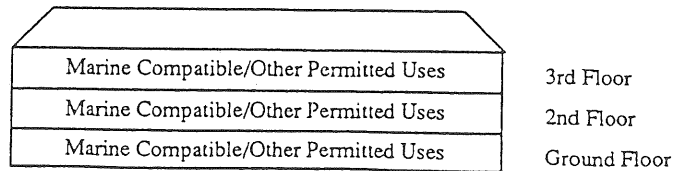
Buildings less than 100 feet from the water.



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 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.

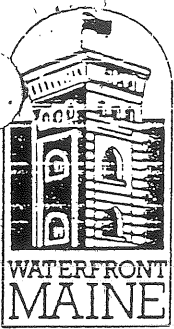
WRITTEN COMMENTS RECEIVED BY THE PLANNING BOARD
ON WATERFRONT ZONING (ATTACHED)

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.

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.

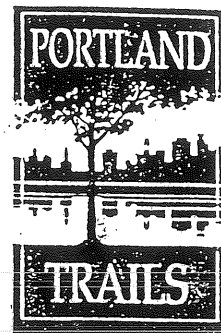
Please contact me should you have such an interest.

Sincerely,



Peter Wellin

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.

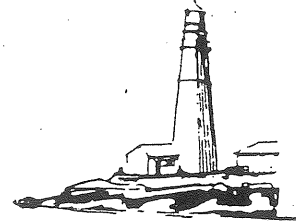
Very truly yours,

A handwritten signature in cursive script that reads "J. Peter Monroe".

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

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.

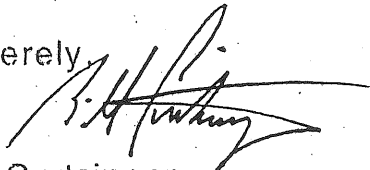
144 Pine Street
Portland, Maine 04102
207-761-0955
FAX 207-772-4578

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

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:

- 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. navigable 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.

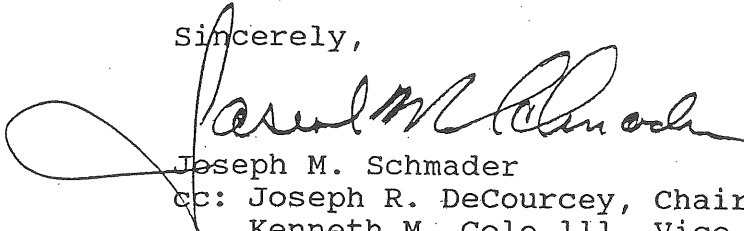
The only slip that is navigable to it's head within 100' of Commercial Street is between Long and Chandlers Wharfs, which at the present time is being used for it's highest and best use.

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 accomodate 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 accessable, 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.

Post-It® brand

Fax Transmittal Memo 7672

To: Portland Planning Board,
Company: Joseph Gray + Alexander Jaggerman
Location:

No. of Pages: 2 Today's Date: 8-21-92 Time:

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

Fax #: 207 874-8649 Telephone #:
Comments:

Fax #: 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 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

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. Lyons

LAL:iaq

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

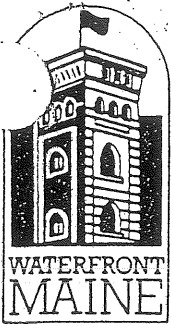
to mention that sites suitable for active WDU's are a scarce resource. The balance of the ordinance fails to live up to the objectives set out in the purpose statement. This is a serious problem since the purpose statement cannot provide what is lacking in the remainder of the text.

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.

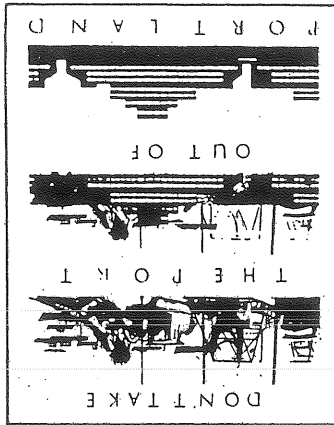
The Cumberland Cold Storage Building, in which I share ownership, was constructed within 55 feet of the water. It was built with railroads, not boats, in mind. Over its long history, it has made molasses, canned fruits and vegetables, and stored potatoes and chicken. To my knowledge, it has never housed 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



cc: Joe Gray, Alex Jagerman, Rick Knowland

Copy of newspaper article is attached

Sincerely,
Karen Sanford
Karen Sanford

Dear Mr. Decourcy 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.

Re: Waterfront Zoning
Joseph Decourcy, Chair,
Members, Portland Planning Board

August 23, 1992

KEEP THE FRONT IN PORTLAND

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 weakly suggests that non-marine uses not "UNREASONABLY INTERFERE WITH THE EXISTENCE OR OPERATION OF MARINE USES NOR SIGNIFICANTLY IMPEDE ACCESS TO VESSEL BERTHING."

A NEW

Where is the working waterfront protected from becoming 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;

proposed that ALL FLOORS BE NON-MARINE IF MARINE-COMPATIBLE.
departed from the long-standing plea for upper story relief and
the property owners dropped a bomb into negotiations. They
On the final day of Alliance board discussions about zoning,
history:
Adding such property owners is the 100' provision. Here is its

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

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

1987,

(Since then, a number of these trendy waterfronts have failed.)
firm with its working waterfront and bucked the trend to go trendy.
waterfront cities that, during the pressures of the 80's, stood
You know, Portland was heralded nationally as one of the few
waterside location is wise ?
a third retail district with the competitive advantage of a
12% vacancy rate in the Old Port, really think that creating
of how to fix the 41% vacancy^{retail} rate on Congress Street and the
Does the City of Portland, after spending \$30,000 on a study
FORGET THE THREAT TO THE WORKING WATERFRONT :

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

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-foot-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 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 Glenott 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.

over

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 identify seriously consider enacting a law that over the next few years could turn out invaluable working waterfront resource into yet another theme park ?

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".