

CITY OF PORTLAND, MAINE

PLANNING BOARD

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December 16, 2015

Tate Street Partnership, LLC
17 Chestnut Street
Portland, ME 04101

Pinkham & Greer
28 Vannah Avenue
Portland, ME 04103

Project Name: West Port Lofts
Project ID: 2015-182
Address: 22-28 Tate Street
Applicant: Tate Street Partnership, LLC
Planner: Nell Donaldson
CBLs: 44-E-15, 17, and 19

Dear Mr. Bass:

On December 15, 2015, the Planning Board considered your application for an eight-unit condominium development at 22-28 Tate Street. The Planning Board reviewed the proposal for conformance with the standards of the subdivision and site plan ordinances of the Land Use Code. The Planning Board voted 6-0 to approve the application with the following waivers and conditions.

WAIVERS

The Planning Board voted 6-0 to grant the following waivers:

1. The Planning Board found, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that aisle width for right-angle parking be 24 feet per *Figure I-27*, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard (*Section 1.14*) to allow a 22' foot wide aisle in the parking area;
2. The Planning Board found, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that a standard parking space be 9' x 18', that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard (*Section 1.14*) to allow four 8' 9³/₄" x 18' and four 8' 6" x 18' parking spaces;
3. The Planning Board found, based on the review of the Department of Public Works, that extraordinary conditions exist or undue hardship may result from strict compliance with the

Technical Manual standard (*Section 1.8*) requiring that sidewalks be a minimum of 5' in width, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard (*Section 1.8*) to allow a 4' sidewalk along the project frontage on Tate Street;

4. The Planning Board found that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The Planning Board waived the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute \$1,400 for seven street trees to Portland's tree fund.

SUBDIVISION REVIEW

The Planning Board voted 6-0 that the plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority;
2. Prior to Certificate of Occupancy, the applicant shall finalize condominium documents for review and approval by Corporation Counsel; and
3. The applicant shall provide a public pedestrian access easement for areas of sidewalk not within the city's right-of-way for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority.

SITE PLAN REVIEW

The Planning Board voted 6-0 that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval, which must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall submit a construction management plan for review and approval by the Department of Public Works, and
2. Final confirmation that plans comply with all applicable state and federal accessibility regulations shall be provided for review and approval by the Planning Authority.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report for application 2015-182 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

1. **Storm Water Management** The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.

The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services.

2. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
3. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
4. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
5. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
6. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
7. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, an inspection fee payment of 2.0% of the guarantee amount, seven (7) final sets of plans, and one digital copy of the final plan set must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
9. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
10. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The

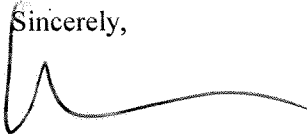
site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

11. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
12. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Nell Donaldson at 874-8723.

Sincerely,



Elizabeth Boepple, Chair
Portland Planning Board

Attachments:

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

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Stuart O'Brien, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Nell Donaldson, Planner/Senior Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Acting Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Lannie Dobson, Administration, Inspections Division
Brad Saucier, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services

David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Keith Gautreau, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

PLANNING BOARD REPORT PORTLAND, MAINE



West Port Lofts, 8-unit Condominium Development
22-28 Tate Street
Level III Site Plan and Subdivision Review
2015-182
Tate Street Partnership, LLC

Submitted to: Portland Planning Board Date: December 10, 2015 Public Hearing Date: December 15, 2015	Prepared by: Nell Donaldson, Planner CBLs: 044-E-15, 17, and 19 Project #: 2015-182
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I. INTRODUCTION

Peter Bass of Tate Street Partnership, LLC appears before the Planning Board for a final site plan and subdivision review for an eight-unit condominium development, the West Port Lofts, on three lots at 22-28 Tate Street in the city’s West End. The plans include a three-story building, eight parking spaces on a surface lot partly covered by the building, landscaping, stormwater treatment, and sidewalk improvements. The existing single family home on the site would be demolished.

This development is being referred to the Planning Board for compliance with the site plan and subdivision standards. No public workshop was held. A hearing for the project was originally planned for November 24, 2015, but was tabled to December 15, 2015 in order to allow time to resolve outstanding comments with respect to the building design. In the intervening weeks, the applicant has met with staff and modified the design to address these comments.

A total of 220 notices were sent to property owners within 500 feet of the site and a legal ad ran on November 16 and 17, 2015.

Applicant: Peter Bass, Tate Street Partnership, LLC

Consultants: Thomas Greer, Pinkham & Greer, Engineer; Owen Haskell, Surveyor; David Lloyd, Archetype, Architect

II. REQUIRED REVIEWS

Waiver Requests	Applicable Standards
Aisle width – To allow a 22’ aisle in the parking area <i>Supported by consulting traffic engineer.</i>	Technical Manual, <i>Section 1.14</i> , requiring that aisle width for right-angle parking be 24’ per Figure I-27.
Parking dimensions – To allow four 8’ 9¾” x 18’ parking stalls and four 8’ 6” x 18’ parking stalls <i>Supported by consulting traffic engineer.</i>	Technical Manual, <i>Section 1.14</i> , requiring that standard parking space be 9’ x 18’.
Sidewalk width – To allow a 4’ sidewalk on Tate Street, given limited right-of-way width <i>Supported by DPW.</i>	Technical Manual, <i>Section 1.8</i> , requiring that sidewalks be a minimum of 5’ in width.
Street trees – 8 units = 8 trees required. One tree proposed on site visible from street. Contribution for seven trees outstanding. <i>Supported by city arborist.</i>	Site Plan Standard, <i>Section 14-526(b)2.b(iii)</i> and Technical Manual, <i>Section 4.6.1</i> . All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, with applicant contributing proportionate amount to Tree Fund.
Review	Applicable Standards
Site Plan	<i>Section 14-526</i>
Subdivision	<i>Section 14-497</i>

III. PROJECT DATA

Existing Zoning	R-6
Existing Use	Residential (1 unit) and surface parking
Proposed Use	Residential (8 units)
Parcel Size	6,176 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	692 SF	1,606 SF	914 SF
Building Floor Area	1,390 SF	6,408 SF	5,018 SF
Impervious Surface Area	3,445 SF	4,318 SF	873 SF
Parking Spaces	6	8	2
Bicycle Parking Spaces	0	3	3
Estimated Cost of Project	\$1.2 million		



Figures 1 and 2: 22 Tate Street from above (top) and at right looking down Tate Street (below).

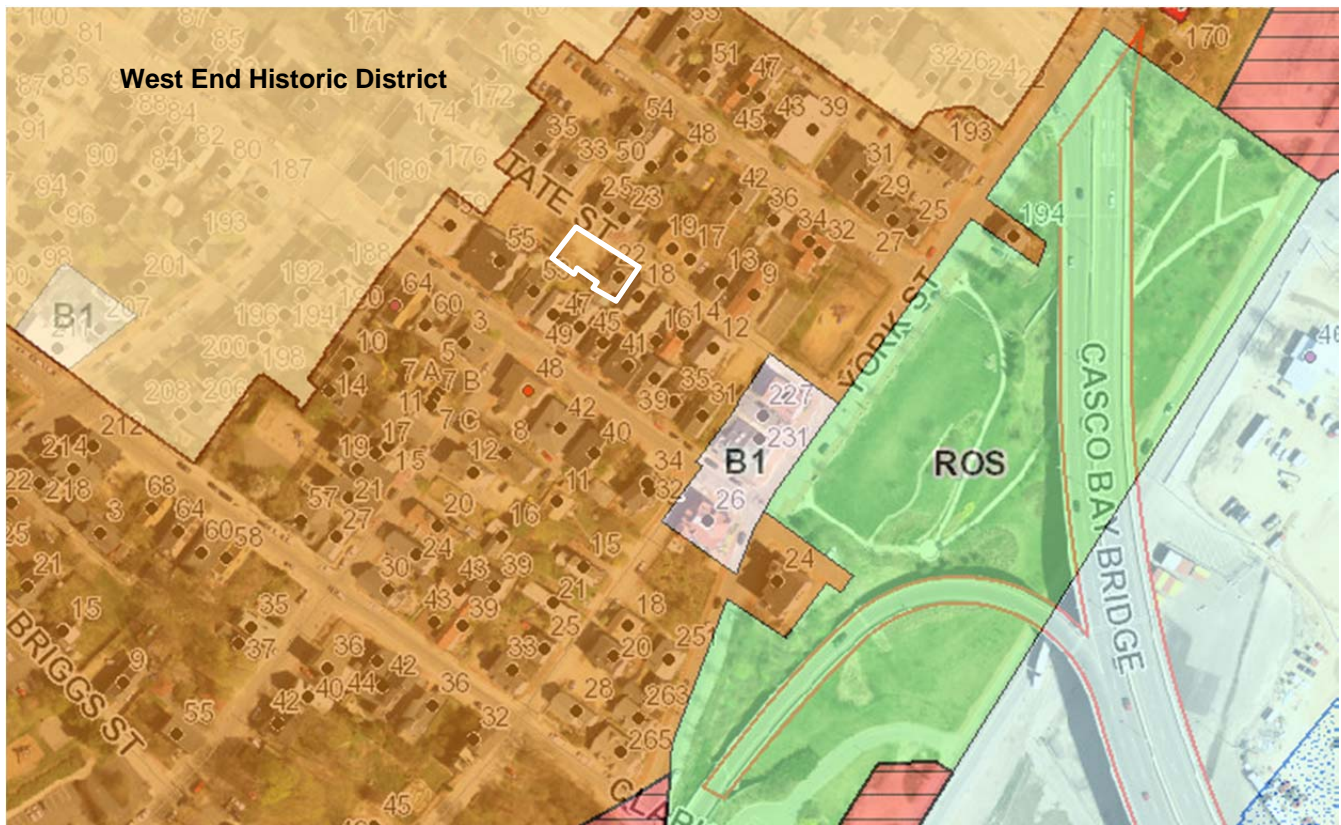


Figure 3: Tate Street zoning context

IV. EXISTING CONDITIONS

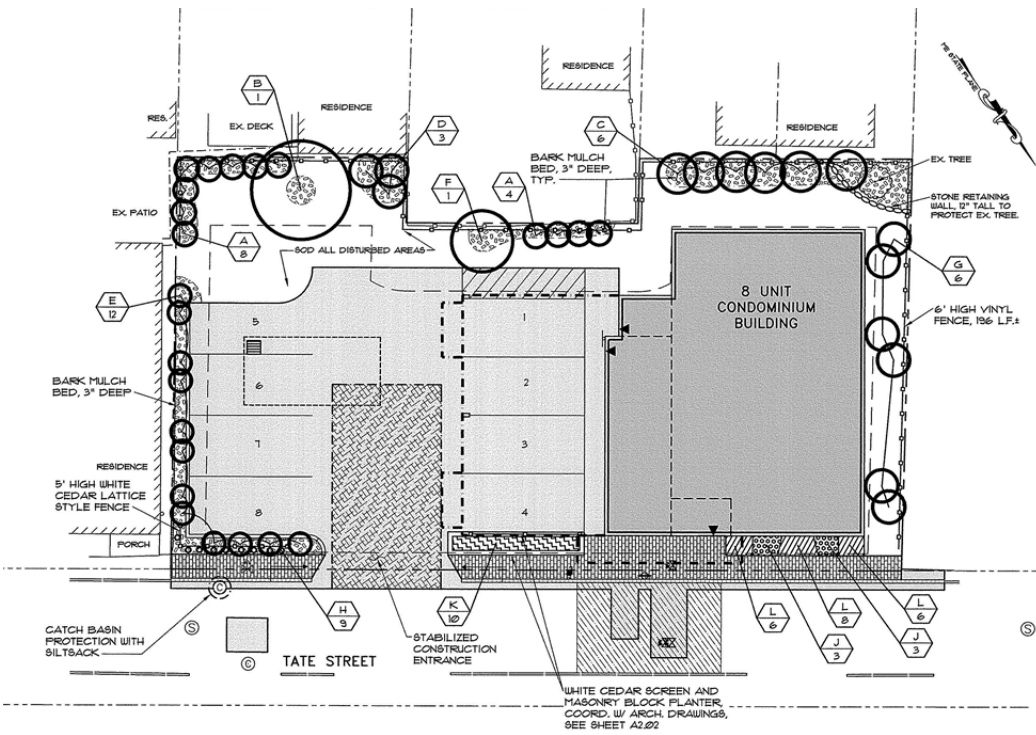
22 Tate Street is located just uphill from the Casco Bay Bridge in the city’s West End, and technically consists of three separate lots under common ownership. The southerly of these lots is currently occupied by a 1½ -story single family home. The northerly two lots are vacant and provide gravel parking associated with the home. There is one curb cut and a bituminous sidewalk on the site. Tate Street is a narrow street with a 20’ right-of-way supporting one-way traffic to the southeast.

The site lies in an R-6 zone and is surrounded by residential uses on all sides, including both single and multi-family homes. The West End Historic District lies 90 feet to northwest. A small B-1 zone sits at the bottom of Tate Street southeast of the site.

V. PROPOSED DEVELOPMENT

The applicant’s plans show an eight-unit condominium building with common access from an entrance on Tate Street. The first floor unit would also have access from the rear. The plans also include eight parking spaces with access via a 18’ curb cut from Tate Street. New brick sidewalks and landscaping are proposed on the Tate Street frontage. Landscaping is also proposed at the rear and sides of the site. The applicant has proposed stormwater treatment in an underground storage chamber in the parking area.

The building is proposed at three stories in height, with smooth ground face block, fiber cement paneling, and metal screening at the base. A combination of fiber cement clapboards and panels are proposed as cladding on the upper floors. The renderings show the clapboards in green and the fiber cement panels in gray. A canopy is proposed over the main building entrance, and balconies are shown on the southeastern façade.



Figures 4 and 5:
Rendering from the southeast (top) and proposed site plan (bottom).

VI. PUBLIC COMMENT

The Planning Division received a number of public comments on the plans (*Attachments PC-1-12*) and the applicant has provided neighborhood meeting minutes (*Attachment K*). The public comments generally strike on a number of common themes:

- A number of neighbors expressed broad support for additional housing, for additional housing in this specific context, and for the public improvements associated with the project;
- Several neighbors also raised larger concerns about the condition of city services on Tate Street, including the function of the combined sewer system, snow plowing, and the ability of emergency services to access portions of Tate Street in winter months, given the width of the roadway. Neighbors expressed fears that the proposed project might exacerbate these issues;
- Neighbors expressed concerns regarding parking, including a perceived lack of parking supply for the project, the need for screening for the parking area, and the width of the proposed curb cut;
- Residents raised concerns about the stormwater impacts of the project, not only in terms of surface runoff and downhill neighbors, but also in terms of sewer capacity impacts;
- Lastly, a number of neighbors expressed comments on the design of the building, particularly in the context of the surrounding neighborhood, the historic West End, and the narrow cross-section of Tate Street. It should be noted that the design of the building has been revised in the time since the receipt of most of these comments.

VII. RIGHT, TITLE, & INTEREST

The applicant has provided a deed as evidence of right, title, and interest (*Attachment B*).

VIII. FINANCIAL & TECHNICAL CAPACITY

The applicant has submitted a letter from Gorham Savings Bank attesting to the “management capabilities and financial resources” of the applicant (*Attachment F*). The applicant has also provided a description of the qualifications of their engineering firm (*Attachment G*).

IX. ZONING ANALYSIS

Staff conducted a zoning analysis which found that the project meets the requirements of the R-6 zone, including minimum lot area per dwelling unit, setbacks, lot coverage, and building height. The elevations show the height, based on average grade, at 32’ 9” (*Plan 14*). The R-6 permits 45’ in height.

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

The applicant has submitted a draft subdivision plat (*Plan 2*). The draft plat has been reviewed by the city’s surveyor, Bill Clark, who notes,

The Subdivision Plan needs to be stamped by a Professional Land Surveyor. This is a State of Maine requirement. Stamping of the plan by a non-licensed person is considered practicing surveying without a license subject to review and civil penalties by the State of Maine Board of Professional Land Surveyors.

Bearings and distances for the Proposed Pedestrian Access Easement to the City of Portland need to be added to the plan which will be used for the deed to the City of Portland.

Survey reference number 8 was not added referencing the ALTA/ACSM Land Title Survey by Owen Haskell, Inc. dated 9/16/2015.

A final plat addressing these comments and meeting the requirements of *Section 14-496* has been included as a condition of approval. A review of condominium documents has also been included as a condition of approval.

As noted by Mr. Clark, the plat depicts a public pedestrian easement for areas of sidewalk that are proposed on private property. This easement, including a metes and bounds description, has been included as a condition of approval. It should be noted that public pedestrian easements require action by the City Council.

The applicant has not provided a construction management plan. As such, a construction management plan has also been included as a condition of approval.

XI. SUBDIVISION REVIEW (14-497(a). Review Criteria)

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland's subdivision ordinance. Staff comments are below.

1. Water, Air Pollution

No detrimental water or air quality impacts are anticipated.

2 & 3. Adequacy of Water Supply

The applicant has provided evidence of capacity from the Portland Water District (*Attachment I*).

4. Soil Erosion

No unreasonable soil erosion or reduction in the capacity of the land to hold water is anticipated.

5. Impacts on Existing or Proposed Highways and Public Roads

Tom Errico, the city's consulting traffic engineer, has reviewed the plans and has not raised any concerns about trip generation impacts to the existing street network (*Attachment 3*).

6. Sanitary Sewer/Stormwater Disposal

A sewer connection is proposed to an existing line in Tate Street. The applicant has provided a wastewater capacity letter from David Margolis-Pineo of the Department of Public Services attesting to the city's capacity to transport and treat the anticipated wastewater flows from the project via this sewer line (*Attachment I*).

Technically, the site is currently largely impervious, with building and gravel parking as ground cover. As proposed, the impervious area on site would increase by just under 900 SF. Given this, the applicant is not required by ordinance to treat stormwater runoff from the site. However, the applicant has proposed a stone chamber infiltration system for the roof runoff, which will provide some treatment and detention capacity before runoff enters the combined sewer system in Tate Street. David Senus, the city's consulting civil engineer, has reviewed this system and indicated his approval (*Attachment 2*). Mr. Margolis-Pineo has noted that the installation of this system will actually result in "an overall reduction in flow volumes to the [combined sewer] system during storm events" (*Attachment 1*).

7. Solid Waste

The applicant has proposed a storage room on the ground floor for storage of solid waste. According to the applicant's submittal, it would be removed by a private hauler (*Attachment C*).

8. Scenic Beauty

This proposal is not deemed to have an adverse impact on the scenic beauty of the area.

9. Comprehensive Plan

The plans meet multiple goals from the city's housing plan, including "encourag[ing] higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation."

10. Financial and Technical Capacity

As noted above, the applicant has submitted a letter from Gorham Savings Bank attesting to the applicant's financial capacity (*Attachment F*).

11. Wetland/Water Body Impacts

There are no anticipated impacts to wetlands or water bodies.

12. Groundwater Impacts

There are no anticipated impacts to groundwater supplies.

13. Flood-Prone Area

Per the city’s existing flood maps, the site is not located in a flood zone.

XII. SITE PLAN REVIEW

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland’s site plan ordinance. Staff comments are below.

1. Transportation Standards

a. Impact on Surrounding Street Systems

The development entails eight residential units, which, per the applicant’s submittal, would generate five AM and five PM peak hour trips, based on rates from the ITE Trip Generation Manual (*Attachment C*). Mr. Errico has reviewed the trip generation assumptions and has not noted any appreciable impact on surrounding street systems (*Attachment 3*).

b. Access and Circulation

The final plans include the replacement of existing bituminous sidewalk with brick along the frontage of the site. Because the Tate Street right-of-way is only 20 feet and the street itself consumes approximately 13 feet of this right-of-way, the sidewalk is proposed at 4 feet in width, less than the city standard of 5 feet. Even with the narrower sidewalk width, a significant portion of the sidewalk is proposed outside the city’s right-of-way. David Margolis-Pineo, of the city’s Department of Public Services, has agreed to a waiver of the *Technical Manual* standard relating to sidewalk width. He writes,

The City standard width for street sidewalks is five feet. The applicant proposes a four foot wide sidewalk. Since the Tate St. right of way width is nonconforming to City standards and since the applicant has agreed to install a portion of the sidewalk on their property with a pedestrian access easement to the City, this department supports waiving the five foot sidewalk width requirement.

The plans also include a new curb cut and a new paved drive aisle which would provide access to eight parking spaces, four of which would be under the first floor of the building and four of which would be in open air. The plans show the curb cut measuring 18 feet, conforming with the city’s *Technical Manual* standards for residential development of this size. The drive aisle, however, is proposed at 22’ in width, or narrower than the city standard of 24 feet. As such, a waiver is required. Mr. Errico has expressed his support for this waiver,

The parking lot aisle width does not meet City standards (the project proposes 22 feet versus the standard of 24 feet). Given project constraints, low traffic generation from the site and low traffic volumes on Tate Street, I support a waiver from the City’s technical standards.

While the front building entrance is proposed at grade from Tate Street, access to all eight units from this entrance is proposed via interior stairwell, rendering them inaccessible from an ADA standpoint. The applicant writes that the Fair Housing Act and the Maine Human Rights Act apply in this case, and that both stipulate that in a building of over 4 units without an elevator, only ground floor units technically need to comply (*Attachment L*). In order to address accessibility to the ground floor unit then, the applicant has proposed “the building of a second entrance to the ground floor unit that is ‘lift ready’” at the rear (*Figure 6*). Mr. Errico has noted that the walkway between the public sidewalk and this secondary entrance, which is proposed at 3 feet in width, meets minimum ADA standards (*Attachment 3*). However, outstanding questions surrounding the location and conditional nature of this accessible rear entrance remain. Staff has

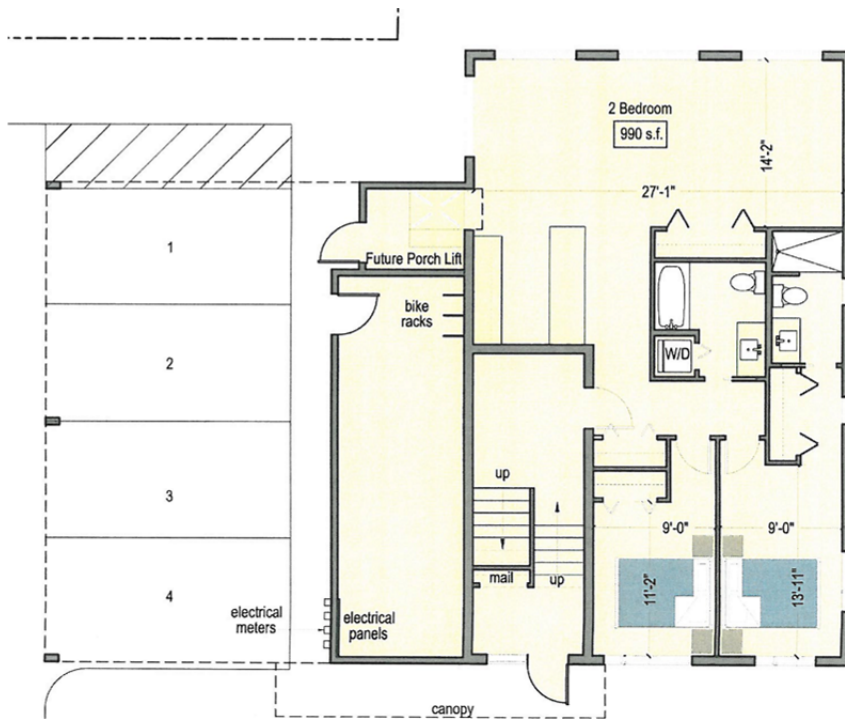


Figure 6: First floor plan

contracted with a third party reviewer in an effort to reach a resolution on the question of accessibility. However, that review was not available at the time of the writing of this report. As such, confirmation that the proposed plans are compliant with federal and state accessibility requirements has been included as a condition of approval.

c. Public Transit Access

The proposed development is not located along a public transit route. As such, no provisions for transit access are required.

d. Parking

Division 20 of the land use ordinance provides an

exception for the off-street parking requirement for the first three units in the R-6 zone and a 1:1 requirement thereafter. Per the ordinance, then, only five off-street spaces are technically required. The applicant has, however, elected to provide eight off-street spaces. On the final plans, the applicant shows these spaces slightly narrower than the 9 foot wide *Technical Manual* standard; four spaces are proposed at 8' 6" and four spaces are proposed at 8' 9 3/4". Mr. Errico has expressed his support for this waiver,

The parking stalls do not meet City standards (the project proposes 8'-9 3/4" x 18' versus the standard of 9' x 18'). Given project constraints, low traffic generation from the site and low traffic volumes on Tate Street, I support a waiver from the City's technical standards.

Two bicycle spaces per five dwelling units are required under the site plan ordinance. As such, four bicycle parking spaces are required. The final plans denote a bicycle rack in the right-of-way to provide space for one visiting bicycle. Additional bicycle parking spaces are shown in the interior storage room. The plans meet the bicycle parking standard.

e. Transportation Demand Management

A transportation demand management plan is not required.

2. Environmental Quality Standards

a. Preservation of Significant Natural Features

There are no known significant natural features on the site.

b. Landscaping and Landscape Preservation

The landscaping plan includes the installation of hostas, switch grass, and daylilies on the Tate Street frontage, as well as climbing hydrangeas on a white cedar trellis/fence to screen portions of the parking area. Per the architectural drawings, under building parking would be treated with a metal screen. Sargent junipers, lilacs and viburnum are proposed at the side and rear property lines. The plans also include flowering crab apple and serviceberry trees.

Per the city’s site plan ordinance, eight street trees are required for the eight residential units proposed. In discussion, Jeff Tarling, the city’s arborist, has indicated that the serviceberry tree could qualify toward the street tree requirement. Given the narrow width of the city’s right-of-way on Tate Street, the applicant has argued that site constraints prevent the planting of additional street trees. A waiver for the seven remaining street trees, with a contribution of \$1,400 as required by ordinance, is proposed.

c. *Water Quality/Storm Water Management/Erosion Control*

As previously noted, the applicant has provided plans showing a subsurface crushed stone chamber to provide detention and treatment for roof runoff. While this system is not technically required, it will provide some treatment for stormwater runoff from the site (*Attachment J*). The system’s stone chamber would “exfiltrate water into the soil until the elevation of [an] overflow pipe is reached,” when water would discharge to the combined system in Tate Street. Both the applicant’s engineer and Mr. Margolis-Pineo have noted that the installation of this system will actually reduce peak flows leaving the site (*Attachments J and I*). Mr. Senus has reviewed the stormwater plans and details and indicated his approval (*Attachment 2*).

3. Public Infrastructure and Community Safety Standards

a. *Consistency with Related Master Plans*

As noted above, the project is generally deemed consistent with related master plans.

b. *Public Safety and Fire Prevention*

Keith Gautreau, of the Fire Prevention Bureau, has noted that the width of Tate Street generally makes emergency access difficult (*Attachment 4*). However, he has also indicated his general approval. (*Attachment 4*).

c. *Availability and Capacity of Public Utilities*

The plans depict underground electric from a pole directly in front of the proposed building in Tate Street. Sewer, gas, and water are also proposed to and from Tate Street. As noted previously, storm drains would outlet to the combined sewer in Tate Street. The subsurface detention system is designed to mitigate existing capacity issues in this system by controlling the rate of runoff during storm events. As noted above, the applicant has provided evidence of utility capacity (*Attachment I*).

4. Site Design Standards

a. *Massing, Ventilation, and Wind Impact*

There are no anticipated impacts to ventilation or wind patterns.

b. *Shadows*

There are no anticipated impacts to publicly accessible open spaces.

c. *Snow and Ice Loading*

Snow storage has been depicted in the lawn area at the rear of the site.

d. *View Corridors*

Tate Street is not a protected view corridor.

e. *Historic Resources*

The West End Historic District lies just over 90 feet to the northwest of the site. As a result, the project is subject to *Section 14-526(d)5(b)*, which states that

“when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, or historic landscape district, such development shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development....For the purposes of this provision, ‘compatible’ design shall be defined as

design which respects the established building patterns and visual characteristics that existing in a given setting and, at the same time, is a distinct product of its own time. To aid the Planning Board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development’s immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.”

Deb Andrews, Historic Preservation Manager has provided a description of the immediate context for the board’s review (*Attachment 5, See memo from November 23*). This description describes the forms, materials, and details that are generally found in the West End Historic District. Ms. Andrews also discusses the immediate context of Tate Street.

At the time of Ms. Andrews’s context memo, the building was depicted with a butterfly roof and large areas of metal siding, elements which were not deemed to relate to the predominant patterns of the surrounding historic neighborhood (*Plans 13-16*). In her memo, Ms. Andrews identified several design choices that might enhance the compatibility of the building in its context.

It should be reiterated that, over the course of the review, several adjacent neighbors also raised concerns regarding this earlier iteration of the design. Neighbors generally stated that they found the roof form, material choices, window style, and design of the under-building parking incompatible with the West End Historic District and the context of Tate Street itself.

In response to these comments and through discussion with Ms. Andrews, the applicant chose to modify the architectural approach in the final submittal. The final plans show the building with a flat roof, fiber cement clapboards, and trimmed windows on a significant portion of the building exterior, referencing form and materials found on many multi-family buildings in the immediate context. Ms. Andrews has provided a second memo indicating that she finds that the new design direction “achieves an appropriate balance between the applicant’s desire for a clearly contemporary and cost-effective development and the ordinance’s requirement that it relate to its surrounding context” (*Attachment 5*). It should be noted that the revised plans have also been made available to neighbors who raised original concerns. The response has generally been positive.



Figure 7: Tate Street elevation

f. *Exterior Lighting*

The applicant has provided a photometric plan and a specification for a building light. The lighting meets the city’s *Technical Manual* standards.

g. *Noise and Vibration*

On the final elevations, condensers are shown in the parking area under the building at the interior of the site. These condensers would be screened from the public way by metal screening.

h. *Signage and Wayfinding*

No signage or wayfinding is proposed.

i. *Zoning-Related Design Standards*

The city’s site plan ordinance establishes design standards for development in the R-6 zone. The *Design Manual* also includes design guidelines for the R-6 zone. Caitlin Cameron, the city’s urban designer, has submitted a final design review narrative reflecting several rounds of review with the applicant (*Attachment 6*). Through this review, the applicant modified the Tate Street fenestration pattern, façade materials, balcony elements, and screening to meet R-6 principles and standards. As noted above, the applicant has also modified the design, including the roof form and building materials, to address comments related to compatibility with the neighboring West End Historic District. The final design review finds that the project meets the criteria for the R-6 alternate design review, with only one minor outstanding comment. Staff has requested that the applicant modify the design of the cornice to include an overhang on the front façade as well as the side (*Attachment 6*). The applicant has indicated that the asymmetrical cornice is a concerted design choice and they prefer to preserve the design as submitted. Staff is requesting the board’s guidance on this issue. No condition of approval has been proposed.

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed eight-unit condominium development at 22 Tate Street.

XIV. PROPOSED MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on November 24, 2015 for application 2015-182 relevant to Portland’s technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board **finds/does not find**, based upon the consulting transportation engineer’s review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that aisle width for right-angle parking be 24 feet per *Figure I-27*, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waives/does not waive** the *Technical Manual* standard (*Section 1.14*) to allow a 22’ foot wide aisle in the parking area;
2. The Planning Board **finds/does not find**, based upon the consulting transportation engineer’s review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that a standard parking space be 9’ x 18’, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waivers/does not waive** the *Technical Manual* standard (*Section 1.14*) to allow four 8’ 9¾“ x 18’ and four 8’ 6” x 18’ parking spaces;

3. The Planning Board **finds/does not find**, based on the review of the Department of Public Works, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.8*) requiring that sidewalks be a minimum of 5' in width, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waivers/does not waive** the *Technical Manual* standard (*Section 1.8*) to allow a 4' sidewalk along the project frontage on Tate Street;
4. The Planning Board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The Planning Board **waives/does not waive** the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute \$1,400 for seven street trees to Portland's tree fund.

B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on November 24, 2015 for application 2015-182 relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority;
2. Prior to Certificate of Occupancy, the applicant shall finalize condominium documents for review and approval by Corporation Counsel; and
3. The applicant shall provide a public pedestrian access easement for areas of sidewalk not within the city's right-of-way for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority.

C. DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on November 24, 2015 for application 2015-182 relevant to the site plan regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the site plan standards of the land use code, subject to the following conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall submit a construction management plan for review and approval by the Department of Public Works, and
2. Final confirmation that plans comply with all applicable state and federal accessibility regulations shall be provided for review and approval by the Planning Authority.

XV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Department of Public Works review (memo from David Margolis-Pineo, 11/18/15)
2. Civil engineer review (memo from David Senus, 11/13/15)
3. Traffic engineer review (memo from Thomas Errico, 11/18/15)
4. Fire Prevention Bureau review (memo from Keith Gautreau, 10/28/15)
5. Historic preservation memo (from Deb Andrews, 12/10/15 and 11/23/15)
6. Design review (memo from Caitlin Cameron, 11/13/15)

APPLICANT'S SUBMITTALS

- A. Cover Letter (from Tom Greer, 10/9/15)
- B. Level III Site Plan Application
- C. Project Information and Photos
- D. Evidence of Right, Title, & Interest
- E. Location Map
- F. Evidence of Financial Capacity
- G. Evidence of Technical Capacity
- H. Tax Map, Flood Map, and Soils Map
- I. Utility Capacity Letters
- J. Stormwater Management Report
- K. Neighborhood Meeting Summary
- L. Accessibility Narrative
- M. Cover Letter (from Tom Greer, 11/19/15)

PLANS

- Plan 1. Boundary Survey
- Plan 2. Subdivision Plat
- Plan 3. Site Plan
- Plan 4. Existing Conditions, Demolition Plan, and Grading & Utilities Plan
- Plan 5. Erosion Control & Landscape Plan
- Plan 6. Details
- Plan 7. Details
- Plan 8. Details
- Plan 9. Photometric Plan
- Plan 10. First Floor Plan
- Plan 11. Second Floor Plan
- Plan 12. Third Floor Plan
- Plan 13. 11/16/15 Street View
- Plan 14. 11/16/15 East and West Elevations
- Plan 15. 11/16/15 North and South Elevations
- Plan 16. 11/16/15 Rendering
- Plan 17. Final East & West Elevations (12/4/15)
- Plan 18. Final North & South Elevations (12/4/15)
- Plan 19. Final Rendering (12/4/15)

PUBLIC COMMENT

- PC-1. Rechsteiner email (11/5/15)
- PC-2. Tousignant email (11/5/15)
- PC-3. Morrison email (11/6/15)
- PC-4. Terenzoni email (11/17/15)
- PC-5. Jacob email (11/18/15)
- PC-6. Greater Portland Landmarks letter (11/18/15)
- PC-7. Kowtko email (11/22/15)
- PC-8. McWilliams email (11/22/15)
- PC-9. Anonymous letter (11/22/15)
- PC-10. Tousignant email (12/9/15)
- PC-11. Ryan/CHOM email (12/10/15)
- PC-12. Olin email (12/10/15)

CHAPTER 32 STORM WATER

- Art. I. Prohibited Discharges, §§ 32-1--32-15**
Art. II. Prohibited Discharges, §§ 32-16--32-35
Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

ARICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the year adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file an annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

For SUBDIVISIONS

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

Maintenance Agreement

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

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

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

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

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

The Owner agrees to record a copy of this Agreement in the Cumberland County Registry of Deeds within thirty (30) days of final execution of this Agreement. The Owner further agrees to provide a copy of this Agreement to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

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

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

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

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

(name of company)

(representative of owner, name and title)

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

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

Before me,

Notary Public/Attorney at Law
Print name: _____

Exhibit A: Subdivision Plat as recorded

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

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement



Jeff Levine, AICP
Director, Planning & Urban Development Department

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	<u>PUBLIC</u>			<u>PRIVATE</u>		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements**].

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: [**Applicant**]

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ _____ [amount of performance guarantee] on behalf of _____ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on _____ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ [insert: subdivision and/ or site improvements (as applicable)] approval, dated _____ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
***Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ***Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

-
- Attach the approval letter, condition of approval or other documentation of the required contribution.
 - One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project