

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

Carol Morrisette, Chair  
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January 25, 2013

Applicant:  
Mr. Phineas Sprague, Jr.  
New Yard, LLC  
58 Fore Street  
Portland, Maine 04101

Agent:  
Steve Bushey, PE  
Deluca Hoffman Associates  
778 Maine Street  
South Portland, Maine 04106

Project Name: New Yard at Canal Landing  
Project ID: #2012-575  
Address: 40 West Commercial Street  
CBL: 59-A-1,2,3,4,5,6,7,8,9,10,11,12  
Applicant: New yard, LLC  
Planner: Bill Needelman, Senior Planner

Dear Mr. Sprague:

On December 18, 2012, the Planning Board considered New Yard at Canal Landing for approval of a 22 acre boat repair and service yard located at 40 West Commercial Street and the Fore River. The Planning Board reviewed the proposal for conformance with the standards of the Conditional Use Review, Shoreland Zoning Regulations, Flood Plain Management, and the Site Plan Ordinance, including Site Development of Location Act. The Planning Board voted 7-0 to approve the application with the following waiver(s) and condition(s) as presented below.

### 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 application # **2012-575** relevant to the Portland's Land Use Code and Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board finds that two or more criteria for sidewalk waiver, as provided under Sec.14 –506 (b), **are** met, namely that: A safe alternative-walking route is reasonably available by way of a sidewalk on the other side of the street, and construction of the sidewalk will result in loss of significant features of greater value (truck circulation); and therefore **waives** the requirement for sidewalks along the southerly sideline of West Commercial Street.
2. The Planning Board finds that two or more criteria for granite curbing waiver, as provided under Sec.14 –506 (b), **are** met, namely that: construction of the curbing will result in loss of significant features of greater value (truck circulation); and that curbing is not necessary for stormwater management; and therefore **waives** the requirement for granite curbing along the southerly sideline of West Commercial Street.
3. The Planning Board **waives** the Technical Standard for flooding as provided Technical Manual III. 4. E.(2) Waiver of the flooding standard due to direct discharge into the ocean, a great pond, or major river segment.
4. The Planning Board **waives** the Technical Standard for Landscaping, Sec. IV. 5.4.5, for tree species and size to allow a naturalized replanting program consistent with the site’s Shoreland Zone context.
5. The Planning Board **waives** the Technical Standard for site lighting Sec. XII. 2., illumination levels and uniformity levels.
6. The Planning Board **waives** the Technical Standard for Soil Infiltration Testing, Sec. V, Appendix D.4.(a) based on known conditions on the site and controlled materials to be installed with construction.
7. The Planning Board **partially waives** the requirement for Bicycle Parking, Site Plan Standard 14-526 a (4) b., based on an industrial use located in an outlying area.

*The Planning Board stipulates that half (4) of the required 8 bicycle parking spaces are provided.*

8. The Planning Board **waives** the Technical Standard for driveway width, Sec I.7.1.4., 36 foot maximum width. 48 feet is allowed due to large truck and trailer turning movements.

**b. Conditional Use in the Waterfront Port Development Zone:**

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 application # **2012-575** relevant to the Conditional Use Standards of the Waterfront Port Development Zone for *marine product sales and boat storage*, and Section 14-474 of Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is** in conformance with conditional use standards of the land use code.

**c. Site Plan:**

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 application # **2012-575** relevant to the Site Plan Ordinance, standards for Site Location of Development, Shoreland Zone, Flood Plain Management, and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is** in conformance with applicable standards of the land use code, subject to the following conditions of approval:

**Conditions of Approval**

- i. MDOT Shared Entrance: that prior to issuance of a building permit, the applicant provides for review and approval an easement between MDOT and New Yard for construction and use of a shared entry way.*
- ii. Beach Street Intersection Contributions: that prior to issuance of a building permit, the applicant contributes \$5000 for Beach Street intersection improvements, including but not limited to pedestrian crossing and signalization.*
- iii. Combined Sewer Overflow Easement: that prior to issuance of a building permit, the applicant provides a 30 foot wide easement to the City for the combined sewer overflow line crossing the property from West Commercial Street to the Fore River as shown on the Deluca Hoffaman Site Development Plan, C-2.1, revision 4, dated 12-5-12.*
- iv. Other Agency Reviews: that any modifications to City approved plans to meet outside agency requirements must be identified and submitted to the Planning Authority for final review prior to issuance of a building permit. Outside agency permits include, NRPA wetland alternation permits, Maine DEP VRAP approvals, and Portland Harbor Commission approvals.*
- v. Rail Demolition: that prior to demolition of existing rail infrastructure, the applicant either provides evidence of rail abandonment or a legal opinion for the review and approval of Corporation Counsel that such abandonment is not required.*
- vi. Flood Plain Management: that prior to issuance of a building permit, the final site plan is revised to include a note requiring that structures on lots in the development*

- be constructed in accordance with Portland City Code, section 14-450.8, Flood Plain Management.*
- vii. Stormwater Management: that prior to issuance of a building permit, the applicant provides for review and approval a revised grading and drainage plan and supporting material consistent with consulting stormwater engineer, Dave Senus' review memo dated December 14, 2012, included as Attachment 4 of Planning Report #53-12.*
- viii. Fire Safety and Emergency Access: that prior to issuance of a building permit, the applicant submit a revised site plan for review and approval in compliance with the December 12, 2012 fire code analysis memo from Fire Risk Management, Inc. (Attachment U of Planning Report #53-12) The revised site plan will show emergency access routes to be kept clear of stored and trailered vessels, vehicle parking and snow storage.*
- ix. Utility Capacity: that prior to issuance of a building permit, that electrical, gas, and sewer capacity letters are provided to the Planning Authority.*
- x. Fencing: that the chain link fencing fronting West Commercial Street is provided with a black vinyl coating.*

#### **STANDARD CONDITIONS OF APPROVAL**

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

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **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.
3. **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.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and

seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting. (If applicable)
7. **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.)
8. **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.
9. **Storm Water Management:** That the developer /contractor /subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines; that 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 Storm Water Management, which specifies the annual inspections and reporting requirements; and that 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 Certificate of Occupancy with a copy to the Department of Public Services.

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

If there are any questions, please contact Bill Needelman, Senior Planner at (207) 874-8722 or email at wbn@portlandmaine.gov.

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

**Attachments:**

1. Dave Senus, Woodard and Curran, storm water review memo dated December 14, 2012, included as Attachment 4 of Planning Report #53-12.
2. Planning Board Report #53-12
3. City Code: Chapter 32
4. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
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Rhonda Zazzara, Field Inspection Coordinator, Public Services  
Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Jeremiah Bartlett, Public Services  
Captain Chris Pirone, Fire Department  
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



New Yard at Canal Landing  
Boatyard and Boat Repair Facility  
40 West Commercial Street

Level III Site Plan, Conditional Use, Shoreland Zone, Flood Plain,  
and Site Location of Development Reviews

New Yard, LLC, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: December 18, 2012 Project #2012-575 CBL: 59-A-1,2,3,4,5,6,7,8,9,10,11,12	Prepared by: Bill Needelman, Senior Planner Date: December 14, 2012 Planning Board Report Number: #53-12
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## I. Introduction

At the request of New Yard, LLC, represented by Steve Bushey, Deluca Hoffman Associates, the Planning Board is requested to hold a Public Hearing to review the proposed site plan for a boat and ship repair and maintenance facility in the vicinity of 40 West Commercial Street. A boat sales area is also proposed.

The proposal is for approximately 42,000 square feet of building space for the repair facility and re-grading of up to 7 acres of the site for boat storage and circulation.

The Planning Board held an introductory workshop on the proposal based on a preliminary application on September 11, 2010 and the applicant has provided an updated set of material as the basis for this Public Hearing. The revised material shows an expansion of interior building space from +/-20,000 square feet to +/-42,000 square feet with the addition of a 22,000 square foot "operations building." Other changes reflect city staff and Planning Board comments, changes to the water-side floats and docks, greater detail and engineering specificity, and responses to written review comments.

This hearing was advertised in the December 6 and 7, 2012 editions of the Portland Press Herald and was noticed by mail to 132 neighboring property owners and interested parties.

City staff has reviewed the application and written materials and the staff's analysis is provided below.

*Applicable Reviews*

The project is considered a Level III Site Plan subject to review under the Waterfront Port Development Zone, Shoreland, Flood Plain, and Conditional Use (marine retail and boat storage in the WPDZ) standards of the land use code. The project is also reviewed under delegated local authority for a Site Location of Development permit. The subject review is limited to the first phase of development and additional reviews may be required for later phases.

The applicant is requesting waivers from the following provisions of the Land Use Code and Technical Standards

<b>Waiver</b>	<b>Code Reference</b>	<b>Comment</b>
<b>Sidewalks and Granite Curbing:</b>	Site Plan Standard 14-526(a)(2)c.1 (and 14-448 and 14-449, by reference)	<i>Sidewalk waiver is recommended by staff based on sidewalk criteria 1 (safe route across the street, and criteria 6 (loss of significant features of greater value). Curbing waiver is recommended based on criteria 4 (loss of significant site features of a greater public value,) and criteria 5 (runoff from the development site or within the street does not require curbing for stormwater management.)</i>
<b>Site Lighting</b>	Tech Standards Sec. XV. 5.4.A, Uniformity and 4.B, Illumination Levels.	<i>Waiver requested due to proposed dark areas on the site not meeting minimum illumination levels.</i>
<b>Landscaping:</b>	Tech Standards Sec. IV. 5.4.5 Tree Species and Size standards.)	<i>Waivers requested to allow a naturalized replanting program consistent with the site's Shoreland Zone context.  Note: Other landscaping waivers are requested that staff has determined are not required by code.</i>
<b>Flooding</b>	Tech Standards Sec.V E, Flooding	<i>Waiver requested due to the capacity of the receiving body (the Fore River)</i>



<b>Waiver</b>	<b>Code Reference</b>	<b>Comment</b>
<b>Soil Infiltration Testing</b>	Tech Standards, Sec. V, Appendix D.4.(a)	<i>Based on known conditions on the site and controlled materials to be installed with construction.</i>
<b>Bicycle Parking</b>	Site Plan Standard 14-526 a (4) b.	<i>Based on an “industrial use located in an outlying area (waiver criteria)</i>  <i>Note: Note staff recommends a partial waiver of this standard to half (4 spaces) of the zoning requirement</i>
<b>Motorcycle and Scooter Parking</b>	Site Plan Standard 14-526 a (4) c.	<i>Industrial yard layout will allow two wheeled parking throughout the site.</i>  <i>Note: Staff recommends that based on the availability of parking generally on the site, that this waiver is not needed.</i>
<b>Driveway width</b>	Tech Standards, sec 1.7.1.4.	<i>Standard cites 36 feet maximum: 48 feet +/- requested. Waiver supported by the Consulting Transportation Engineer due to large truck and trailer turning movements.</i>

## II. Project Data

Total Site Acreage: 22.5 acres  
Total Proposed Disturbed area: 318,950 sq ft  
Zone: Waterfront Port Development Zone  
Existing Uses: Mostly Vacant. Propane distribution and rail sidings  
Proposed Use: Boat repair, storage, sales  
Continued propane distribution

Predevelopment Impervious Area: 287,704 sq ft  
Post-development Impervious Area: 255,598 sq ft  
Percentage Impervious Area, total: 26%

Proposed Building Footprint: 720 sq ft Brokerage Building  
19,200 sq ft Storage and Repair tension fabric shed  
22,417 sq ft Operations Building

Existing Total Building Floor Area: 0 sq ft  
 Proposed Total Building Floor Area: 42,337 sq ft

Required Vehicle Parking: 42  
 Proposed Vehicle Parking: As needed, see staff review page 5 and page 8  
 Required Bicycle Parking: 8  
 Proposed Bicycle Parking: 0 Spaces (waiver of City Ordinance requested)

### **III. Right, Title and Interest**

The applicant has included a purchase and sale agreement documents for the subject parcels. The former gas plant parcels are subject to an option agreement for a 50 year lease to the applicant. Right title and interest documents are included in Attachment Q (with the schedules and exhibits omitted due to size.)

### **IV. Site Description**

The subject site is an aggregate of waterfront parcels located adjacent to the Casco Bay Bridge along the dredged channel of the Fore River. Totaling over 22 acres, the site contains active rail lines and has a long history of industrial, marine, and rail development. Along with the lone remaining rail siding, the only remaining active use of the site is a propane distribution facility located on 3.96 acres in the interior of the site. The propane facility is proposed to remain on a somewhat reduced lot.

The subject site is the combination of a former coal gasification plant site with portions of an historic rail yard. With the exception of the propane facility, the land is vacant and the rail yard portions of the site have recently re-vegetated with volunteer birch, poplar, oak and pine.

The gas plant use has left portions of the site contaminated with coal tars and the site is partially subject to a Maine DEP "VRAP" remediation agreement.

The Fore River shoreline is characterized by derelict piers and stone bulkheads. To the east, the former gas plant site has been stabilized by recent riprap installed as part of the VRAP. There are some areas of erosion located between the former gas and rail properties. This erosion is assumed to be problematic with potential coal tar contaminants entering the river. Redevelopment of the site provides an opportunity to stabilize this area of concern.

The site has +/-1500 feet of frontage along West Commercial Street. While the northerly side of West Commercial Street, along Nova Seafood, the Graybar building and the "Star Match" complex, have curb and sidewalk, none exist along the subject parcel. The

applicants are requesting a waiver of curb and sidewalk, as was granted to the adjacent IMT complex by the Planning Board in 2011.

The Beach Street entrance/exit from the Casco Bay Bridge intersects West Commercial Street across from the center of the site at the location an existing driveway for the propane facility. The Beach Street ramp intersection is currently being evaluated for a traffic signal and the City is seeking funds for such a project.

The applicant's submission includes a detailed description of the property in Attachment F of this report.

## V. Proposed Development

The material provided is separated into long-term master plan and phase 1 plans for permitting.

Phase 1 includes two boat ramps, a "travel lift" mobile crane with an excavated basin (for launching and hauling boats), a 19,000 square foot maintenance building, a 22,000 square foot operations building, a 720 square foot yacht brokerage shed, and extensive dockage along the Fore River. Adjacent to the shoreline, the plans also call for the location of a floating dry dock with landside access and supporting infrastructure.

Master Plan documents are shown on Plan 4 and described on Attachment C.2. Phase 1 elements are shown on Plan 2 and described on Attachment F and I of the applicant's submission. Attachment I additionally shows images and renderings describing buildings and equipment proposed.

### *Rail Line Removal and New Rail Corridor Created:*

The applicant is proposing to remove existing rail lines from portions of the site east of the propane distribution facility. The revised plans, while continuing to show demolition of the tracks, have included a new 25 foot wide corridor located near West Commercial Street. This corridor is proposed to be a location for future rail if such service is extended to the adjacent IMT facility. Staff has asked the applicant to explore whether there is any formal abandonment procedure needed to remove the tracks east of the gas yard. A condition of approval is suggested *that the applicant either provide evidence of rail abandonment or a legal opinion for the review and approval of Corporation Counsel that such abandonment is not required.*

### *Shared Access with MDOT:*

The proposed development includes a new access drive located at the far easterly boundary of the site located near to an abutting roadway accessing a MDOT bridge building located near to the water. The development includes a shared access drive for both properties and a boundary line adjustment providing MDOT with an additional 60 foot wide strip of land lying between the subject property and the adjacent IMT. A

condition of approval is suggested *that the applicant provide evidence of an access easement over the shared MDOT drive entrance.*

## **VI. Staff Review:**

The application and supporting documents have been reviewed by City staff from the Departments of Planning and Urban Development, Fire Safety, Public Services, Parking and the Corporation Counsel's Office. The plans have also been reviewed by consulting engineers for civil engineering and traffic.

### *Notes on Boatyard Uses, Generally:*

Boatyards are dynamic industrial spaces that typically exhibit a great deal of flexibility depending on the number and type of vessels currently being served. The applicants are requesting a site plan design that facilitates this flexibility.

While most site plans depend on specific areas being identified and designed for specific uses (such as parking lots for vehicle parking,) boat yards tend to defy such prescriptions. Vessels may remain stationary for extended periods of time or may move daily. Likewise, the size of vessels may vary from 8 foot dinghies to 100+ foot yachts and schooners.

The design approach requested shows general areas for distinct activities, but does not show parking lots or even clearly defined routes for circulation. This approach presents challenges to a typical site plan review; specifically regarding parking, pedestrian circulation, emergency access, and snow storage. Given the unique use and the large size of the site, the City review staff and consulting engineers support the approach taken. On a smaller site, it would probably be prudent to identify the specific location of parking to ensure that adequate supply is provided. On the subject site, there is sufficient land area to accommodate the 42 required parking spaces and employees and visitors will park in and among the boats. Pedestrians, almost all of which will be employees, will walk in available areas depending on the location of vessels at that time. Casual visitors and service customers will access the brokerage area and the operations building located at the north of the site and near the primary entrance. In short, people will park and walk, and the operators will store snow in areas that are free of boats.

What is needed and as yet not shown on the submitted plans are the areas where vessels, vehicles, and stored snow will be excluded to ensure necessary and safe access for emergency vehicles. Staff suggests that these issues are best addressed in an emergency access plan that ensures that safety equipment is provided open locations and routes, as needed. The Safety Plan should include a wayfinding plan and signage schedule directing operators, employees, and visitors away from emergency access routes and toward appropriate areas.

**a. Zoning Review: WPDZ, Shoreland, Flood Plain**

***i. Waterfront Port Development Zone***

The site is zoned Waterfront Port Development, which is the most restrictive of the City's waterfront zones. Uses in the WPDZ are mostly restricted to marine industry with limited options for non-marine uses.

*Use:* The project is located in a WPD Zone. The proposed boat repair yard uses are permitted uses in this zone. The yacht brokerage and boat storage uses are both conditional uses.

*No Adverse Impact on Marine Use:* The WPDZ includes a provision for protecting access function of water dependent uses in the form of "Sec. 14-318.5. No adverse impact on marine uses." The No Adverse impact provision could be construed to apply to the boat sales and storage uses as these uses do not necessarily require direct water access (though water access may be a component of both through launching and hauling.) While applicability the provision of could be argued, no portion of the proposed development appears to create an adverse impact as described in the Sec. 14-318.5 and quoted below:

*Sec. 14-318.5*

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

*Dimensional Requirements:*

The proposed development meets all provisions of the WPDZ dimensional requirements. The height requirements allow for 45 foot buildings that also may be no more than 65 feet above sea level. The section drawing in Plan 11 of the applicant's submittals shows compliance with this restriction.

*Parking:*

42 parking spaces are required for this development. While a formalized parking area is not identified, as noted above, the expectation is that employees and clients using the site will find more than adequate parking to fill both the zoning requirements and functional needs of the site.

**ii. Shoreland Zone:**

At the time of the previous workshop on this project, the extent to which Shoreland Zone Tree Clearance restrictions apply to marine development in the shoreland portions of the site were subject to an on-going conversation with Maine DEP. City Code exempts industrial and waterfront zones from the tree clearance provisions, while Maine State statute requires more stringent preservation. The applicants have worked with the staff at MeDEP to resolve this issue as it relates to the redevelopment of a rail yard with significant environmental contamination issues. The resolution proposed and approved by MeDEP, with the agreement of the City Zoning Administrator and the City Arborist, is to combine tree removal as needed with replacement with native species. The landscape plan, Plan 13 shows the latest result of the tree preservation/replacement discussion, based on MeDEP's agreement. The MeDEP agreement letter is included in Attachment 2.1.

In addition to the tree clearance standards, the Planning Board is asked to find on the following standards. Staff recommends that based on the discussions provided in the site plan review section of this report that the Shoreland Zoning standards have been met.

*The Planning Board or planning authority shall approve a site plan located within a shoreland zone if it finds that the following standards, in addition to the standards set forth in section 14-526, are met:*

- 1. The proposal will maintain safe and healthful conditions;*
- 2. The proposal will not result in water pollution, erosion, or sedimentation to surface waters;*
- 3. The proposal will adequately provide for the*

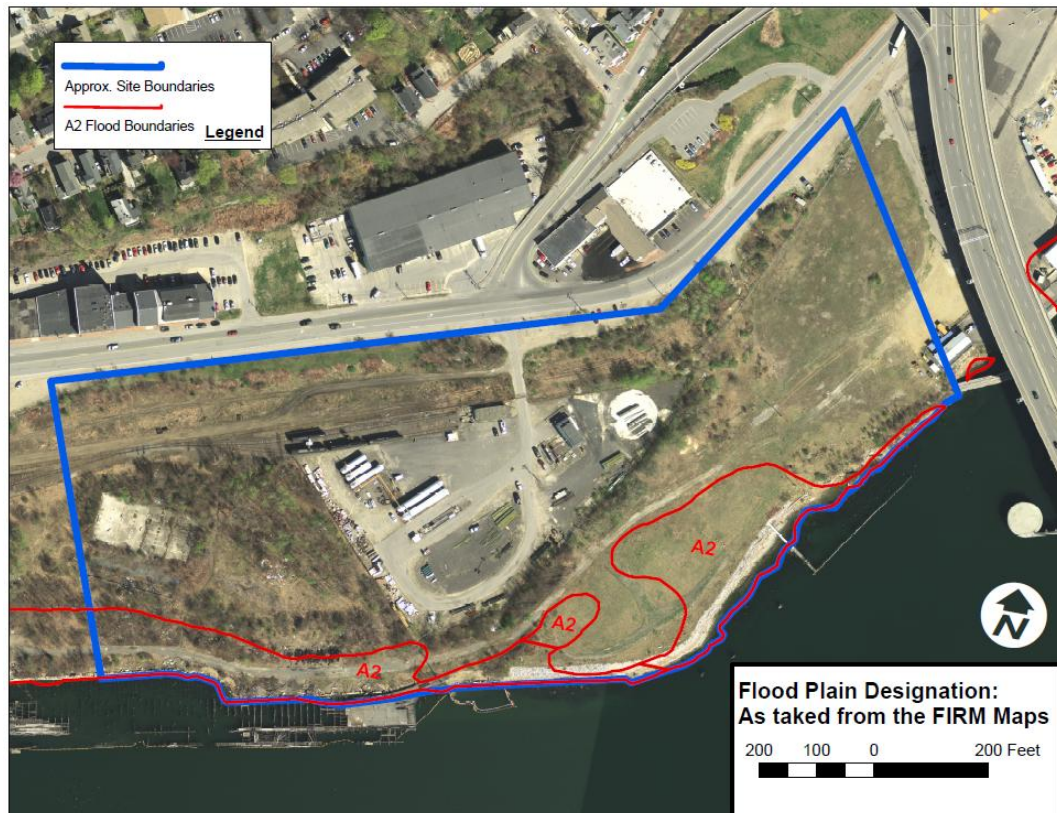
*disposal of all wastewater;*

4. *The proposal will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*
5. *The proposal will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;*
6. *The proposal will protect archaeological and historic resources;*
7. *The proposal will not adversely affect existing commercial fishing or maritime activities;*
8. *The proposal will avoid problems associated with flood plain development and use; and*
9. *The proposal is in conformance with the standards set forth in this section.*

***iii. Flood Plain Management:***

The subject parcel is partially located in a regulated Flood Plain. The FEMA, Flood Insurance Rate Maps show portions of the property within the flood zone A2 with a base

flood elevation of 10’.



Portland’s Flood Plain Management ordinance requires buildings within “A” flood zones have finished floors more than 2 feet above the base flood elevations. The proposed development is showing a minimum of elevation 13 for finished floors and is compliance with this provision

Any structure within the A2 area will need to comply with filling out floodplain applications and certificates of elevation as a requirement of Building Permitting. Based on the Site Plan review of the subject project, the following Flood Plan development standards have been met:

1. *All such proposals are consistent with the need to minimize flood damage.*
2. *All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.*
3. *Adequate drainage is provided so as to reduce exposure to flood hazards.*
4. *All proposals include base flood elevations, flood boundaries and, in a ravine flood plain, floodway*



*data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.*

5. *Any proposed development plan must include a condition of plan approval requiring that structures on lots in the development be constructed in accordance with section 14-450.8 of this division. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or planning authority as part of the approval process.*

A condition of approval addressing Standard 5 above is included in the suggested motions.

***iv. Vehicle Loading, Division 21: NA***

***v. Signage:***

Separate permits are required for any new signage prior to installation.

***b. Conditional Use Review for Marine Retail and Boat Storage in the WPDZ***

As noted above, the proposal is subject to a conditional use review for boat storage and marine product sales in the WPDZ. Conditional Uses in the WPDZ are subject to the following provisions:

***Sec. 14-320. Conditional uses.***

*...such uses will not impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses, and meet any additional standards set forth below:*

Of the proposed development's three buildings, the marine operations building is the most permanent, but as it will primarily be dedicated to the permitted use of boat repair and maintenance, these provisions do not apply. (Note a small portion of the Operations Building shows a retail area, as is typically found as an accessory to boat repair uses. Boat storage may occur in the tension fabric building, and this structure is designed to be relocatable. The brokerage shed is only 720 square feet and is located approximately 500 feet from the water and does not appear to be in conflict with this standard.

All conditional uses are subject to the provisions of Section 14-474, Conditional Use:

*Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:*

- a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;*
- b. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*
- c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

Staff recommends that the proposal is in conformance with the above standards.

***c. Site Plan Review.***

The applicant has provided adequate information for the review under site plan for the three proposed buildings and associated site improvements.

***Site Plan Standards Review, Sec. 14-526***

The site plan standards language is summarized below in *italics*, with planning staff comment and analysis in regular font.

*(a) Transportation Standards*

Primary access to the site is provided through the easterly entrance drive located on the expanded MDOT parcel. As noted in the introduction to the Staff Review, the site plan is somewhat vague as to dedicated internal routing. Given the generously sized site and the variable use of the site, the development review staff supports the flexible proposal, subject to the emergency access suggestions described below.

Consulting Traffic Engineer, Tom Errico, provided the following review comments:

- I have reviewed the traffic analysis prepared by Gorrill-Palmer Consulting Engineers, Inc. and concur that the project will not significantly impact traffic conditions in the area.
- GPCEI has reviewed sight distance for the proposed driveway and has determined that adequate sight distance will be provided.

- The proposed driveway width exceeds City standards and therefore a waiver from the City's technical standards is required. I support a waiver given the type of vehicles entering and exiting the site.
- The site plan indicates that the proposed driveway will partially be located on abutting property. It appears an easement may be required.
- Documentation from MaineDOT should be provided noting that the provision of the share driveway configuration is acceptable.
- The applicant should conduct a sidewalk waiver analysis for the provision of a sidewalk along the property frontage on Commercial Street for consideration by the Planning Board. The City will be conducting a future planning study for West Commercial Street and that effort will identify transportation facility recommendations, including whether sidewalks are appropriate for both sides of the street. I would suggest that the following conditions of approval be considered:
  - If a sidewalk waiver is granted, no action is required by the applicant.
  - If criteria for a sidewalk waiver are not met, the applicant should make a monetary contribution equal to constructing a sidewalk along the property frontage. If the future planning study concludes that sidewalks on the south side of Commercial Street are not necessary, the contribution shall be returned to the applicant. If sidewalks are deemed appropriate, the funds shall be used to construct the subject sidewalk.
  - The City is currently in the process of seeking funds for the installation of a traffic signal at the Commercial Street/Beach Street intersection. Provision of a pedestrian crossing on Commercial Street between the Beach Street ramp and the project site was not included in the grant application. It is my recommendation that the applicant contribute \$5,000.00 towards the future installation of pedestrian signal equipment (e.g. pedestal posts, pedestrian signal heads, push buttons) and facilities (e.g. paint, signs, sidewalk ramps, etc.) that will allow for a safe crossing. This crossing is necessary regardless of the installation of a sidewalk on Commercial Street. I would add that during field investigations of the study area, installation of an uncontrolled crosswalk in the vicinity of the proposed Phase I driveway is not recommended given high vehicle speeds and volumes (without significant infrastructure treatment).

Individual Transportation Standards are addressed below.

1. *Impact on Surrounding Street Systems:*

The project is anticipated to generate 11-12 trips in the peak hour and is not anticipated to negatively impact traffic on West Commercial Street.

2. *Access and Circulation:*

a. *Site Access and Circulation.*

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

*Circulation*

Pedestrians: As noted above, pedestrians are expected to safely

use the interior of the site provided reasonable caution is employed as would be anticipated in any industrial environment.

Pedestrian access to the street system is problematic given the high speeds and lack of sidewalks on West Commercial Street. These issues are given further consideration in the sidewalk waiver request discussion below.

#### Vehicles

As noted above, the site's circulation appears to meet applicable standards, subject to providing adequate definition for emergency vehicle access.

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

Access and egress to the site is located in the area with the best site lines and is supported by Mr. Errico's comments above.

(iii) *Drive up features*

NA

b. *Loading and Servicing.*

The entire site is designed to facilitate loading and servicing.

c. *Sidewalks.*

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

The applicants are requesting a waiver of this sidewalk and granite curbing requirements for the entire site frontage. This waiver request is addressed above in Mr. Errico's comment as well as with the applicant's submittal in Attachment A.7. City Staff and the consulting engineers have held lengthy discussions on the sidewalk waiver request and ultimately recommend that the Board grant the waiver. Under most circumstances, leaving a site isolated from the city sidewalk network would be unsupportable; but in this instance several complicating conditions exist:

- There will be very limited pedestrian use generated by the development.
- If a sidewalk were constructed, such a segment would be isolated for the foreseeable future due to rail right of way in

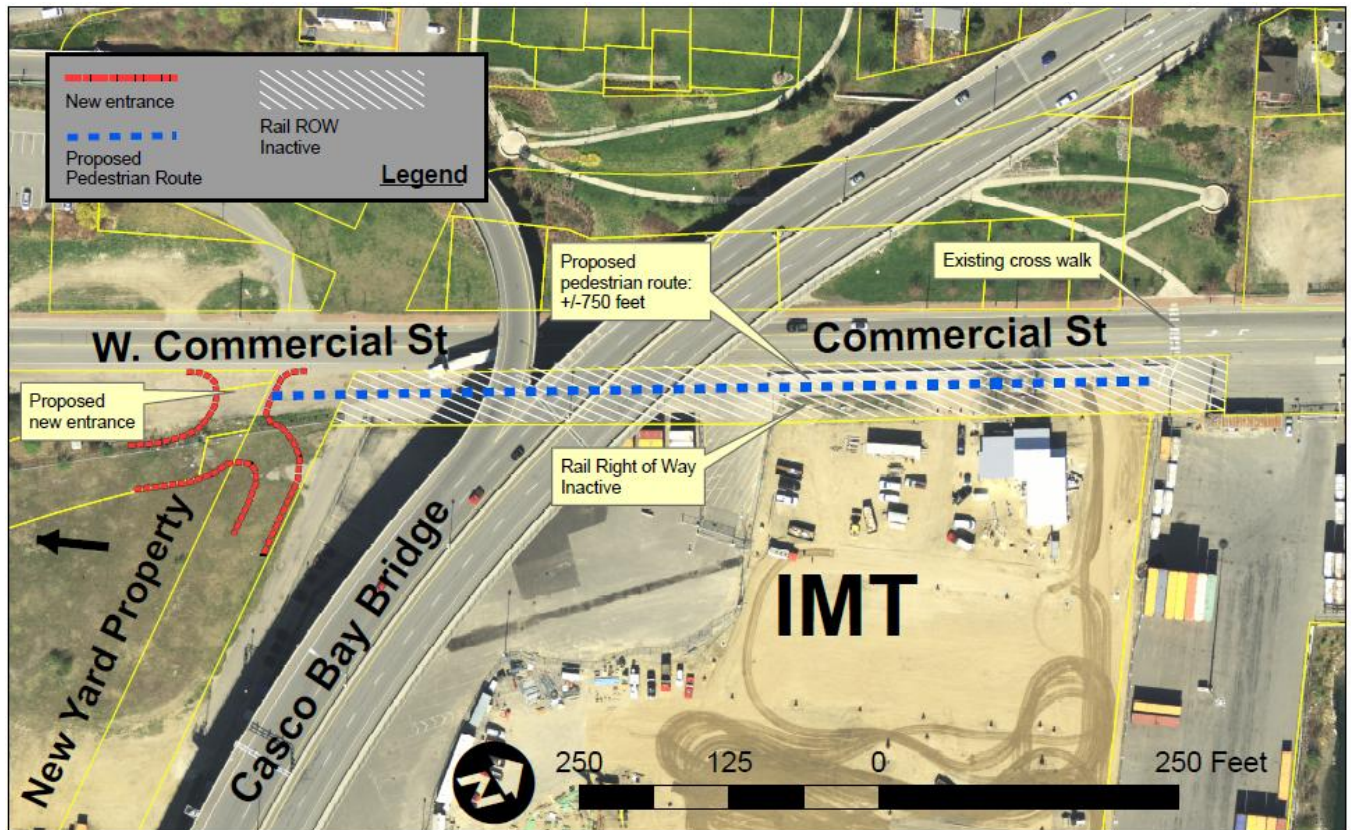
West Commercial Street under the Casco Bay Bridge, the recent waiver of sidewalk for the IMT to the east, and the lack of pedestrian destinations to the west.

Sidewalk construction on West Commercial Street is further complicated by the industrial context of the area and the need for heavy vehicle use of the soft shoulder. Working waterfronts require truck staging areas and with the gentrification of the Central Waterfront, West Commercial Street has become increasingly important as a truck staging area. Within recent years, trucks waiting to load and unload on the piers of the Central Waterfront traditionally staged in Commercial Street at the head of the piers. Increased congestion in the street and transition to other uses on the piers have combined to make in-street staging problematic (many of these trucks are bait trucks and the majority of the congestion occurs in the warmer months.) In response to changes in Commercial Street, West Commercial Street's southerly sideline has increasingly become the de facto truck staging area for many Central Waterfront marine businesses. At this time without a long-term plan for West Commercial Street, it is unclear if there is room for both sidewalk (which would need to be curbed) and truck staging and circulation.

There is a sidewalk on the north side of West Commercial Street and there are plans to extend a multi-use path along the entire length of the northerly right of way from Harborview Park to the Fore River Parkway. Given the industrial context of the site and the planned improvements to signalize the Beach Street intersection, both the DPS and Planning staff recommend waiving sidewalks for the site and asking the applicant to contribute toward pedestrian improvements at the planned traffic signal.

As an interim, the applicant proposes that pedestrians who choose to access the site by foot can use the inactive rail line that runs from the subject site, in front of the IMT, to a mid-block crosswalk located near the easterly end of the IMT boundary with Deake's Wharf. While not ideal, this would appear to be the only reasonably safe access to the existing sidewalk network – with or without a sidewalk on the subject site.

Staff has provided a map of the interim pedestrian route below.



The entire Portland Peninsula is located in a brick material district for sidewalk construction and granite curbing would be required as room for a planted esplanade is not available. Department of Public Services estimates that a new brick sidewalk would cost +/- \$135,000 and granite curbing could add +/- \$50,000 to \$60,000.

Based on the above discussion, staff recommends waiving both sidewalk and curbing. Sidewalk waivers criteria are provided below. Two criteria must be met to waive for each sidewalk and granite curbing.

#### *Sidewalk Waiver Criteria*

1. *There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.*
2. *There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.*

3. *A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.*
4. *The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.*
5. *The street has been constructed or reconstructed without sidewalks within the last 24 months.*
6. *Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.*

Criteria 3 is clearly met with the existing sidewalk located on the northerly side of West Commercial Street. Of the remaining criteria, staff supports use of Criteria 6. The open and curb-free sideline of West Commercial Street is suited to its industrial use and the introduction of curbed sidewalk could have significant and negative impact on marine uses on a range of working piers and wharfs located along Portland's waterfront. Criteria 2 could also be applied, if considered for only the south side of West Commercial Street.

*Note on Future Phases:* With the anticipated future study and evaluation of West Commercial Street, Staff's recommendation for waiver of Phase 1 sidewalk requirements should not be considered a determinative precedent for future phases of development. The applicant's master plan shows a significant marine retail facility and increased employment on the site overall. Furthermore, the future West Commercial Street is intended to provide the policy and design direction for the street and should inform future infrastructure decision making. Any future phase of development should conduct an independent analysis of the needs for and current policies for pedestrian accommodations at the time of application.

#### *Curbing Waiver Criteria*

1. *The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.*

2. *The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.*
3. *The street has been rehabilitated without curbing in the last 60 months.*
4. *Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.*
5. *Runoff from the development site or within the street does not require curbing for stormwater management.*

Staff recommends waiving the requirement for granite curbing based on criteria 3, as per the sidewalk discussion above; and criteria 5, as recommended by the Department of Public Services.

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

See the sidewalk waiver discussion, above.

3. *Public Transit Access:*  
See 2.iii, above.
4. *Parking:*
  - a. *Location and Required Number of Vehicle Parking Spaces:*
    - (i) *Off-street parking*

As noted above, adequate parking meeting the zoning requirement is anticipated to be provided in open areas of the site not used for boat storage or service. Parking location restrictions should be included in an emergency access plan. See below.

*Parking Supply and Demand:*

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



*be employed.*

NA

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

NA

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

The parking dimensional standards applicable to the proposed program.

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

The compacted crushed stone surface is designed to meet the above standard.

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

A waiver is requested for bicycle parking. As with vehicle parking, it is anticipated that any bicyclists accessing the site will have ample opportunity to find informal parking within the industrial structures or in the boatyard. Staff recommends a partial waiver, with a requirement for 2 bike hitch posts or loops with capacity for 4 bikes (half the zoning requirement.)

*c. Motorcycle and Scooter Parking.*

A waiver is requested for motorcycle and parking. As with the vehicle parking discussion above, staff does not believe that a waiver is needed.

*d. Snow Storage.*

Given the size of the site and the low level of exterior activity during the winter months, snow storage is not anticipated to be a problem on or off site. The applicant will be subject to MeDEP regulations if they intend to deposit snow in the Fore River and no

snow storage will be allowed on emergency access routes.

5. *Transportation Demand Management (TDM): NA*

(b) *Environmental Quality Standards*

1. *Preservation of Significant Natural Features:*

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

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

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

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

(iv) *Aquifers NA*

(v) *Waterbodies See Stormwater Management*

2. *Landscaping and Landscape Preservation:*

The proposed landscape plan is included in Plan 13.

a. *Landscape Preservation*

The applicant has determined, with the agreement of the Zoning Administrator, that the project has met the requirements for tree preservation in the Shore Land Zone. See the MeDEP letter in Attachment 2.1.

b. *Site Landscaping.*

Where zoning setbacks are not required for development in the WPDZ, the landscaping requirements for buffer areas do not apply. The plan shows naturalized clumps of native vegetation concentrated around areas where trees and shrubs are to be retained. The West Commercial Street sideline, the easterly boundary with MDOT and the south east shoreline receive the majority of treatment with broad areas of the site interior left

open as one would anticipate with a boatyard use. There is a screened dumpster located on the northerly side of the primary buildings separated from West Commercial Street by +/-200 feet. With the street-side plantings and the anticipated boats in the yard, it is unlikely that the dumpster will have any visual impact from West Commercial Street.

*Street Trees:* The Technical Standards require street trees along all street frontages with a spacing of 30-45 feet on center. With +/-1500 feet of frontage and assuming a 45 foot spacing, the project requires 33 street trees. The proposal shows planting and/or preservation of 21 tree located along West Commercial Street east of the propane yard entry and two large clumps of preserved trees located west of the propane yard entry. The City Arborist recommends approval of the plan as designed and the number of trees appears to meet the Technical Standard.

A waiver from the Technical Standards for tree species and size is requested to achieve the naturalized design proposed. The City Arborist supports the proposed design.

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

The subject parcels are relatively flat and grade generally south from West Commercial Street to the Fore River. The grade and soils appear to allow sufficient infiltration to avoid ponding and the site does not show evidence of channelized flow nor impacts to off-site properties. In the existing condition, there is no subsurface stormwater collection, but the site is crossed by a 24 inch municipal combined sewer overflow pipe that outlets into the river +/- 500 feet westerly from the Casco Bay Bridge.

The Stormwater and Erosion Control sections of the applicant's submission (Attachments J and O) describe the applicant's approach to managing stormwater and protecting the Fore River from pollutants and sedimentation. Board members should note that the industrial history of the site (with its coal tar contamination) and the proposed boat yard use both require an individualized approach for stormwater management.

The site's soils contamination, which is and will continue to be subject to MeDEP oversight through the VRAP program, requires containment and stabilization of the site, especially at the shoreline. While the former gasworks portions of the site have been previously stabilized, access to the former rail yard parcels has been limited and the subject project will be the first opportunity to correct an on-going problem with erosion on at the boundary between the abutting parcels. This project's proposal to aggregate abutting properties and provide a unified erosion control plan will address a long-standing contamination concern for the Fore River and Portland Harbor. VRAP constraints additionally may limit the extent and location of some excavation and use of otherwise predictable stormwater management practices. While the applicant's proposal, as may be

modified by review comments described below, appears to be a prudent and functional means to meet Site Plan and Site Location of Development standards, all surface, subsurface, and shoreline improvements to the site will require review and approval by the MeDEP and the VRAP program. Modifications to the proposed design may be necessary to meet DEP requirements. Likewise, wetlands alteration permits by the Army Corps of Engineers and the MeDEP may also lead to alterations of the proposed design. A condition of approval is suggested *that any modifications to City approved plans to meet outside agency requirements must be identified and submitted to the Planning Authority for final review prior to issuance of a building permit.*

The site's location along the Fore River obviates the need for stormwater volume controls, as the receiving body will not be negatively impacted by increased water volume or rate of discharge. The applicants have requested a waiver of the Technical Standards for Stormwater Flooding, as is typical for coastal shoreline projects. The stormwater quality standards, therefore, are the primary design concern.

The boat yard use additionally presents unique challenges to site design. Crushed stone, underlain by a compacted gravel layer, is the applicant's preferred surface treatment for the re-graded portions of the site - approximately 6 acres (total impervious area minus the building footprints.) Crushed stone is proposed as an affordable, durable surface that will additionally provide for a reasonable degree of stormwater storage and infiltration resulting in quality treatment. The applicants additionally propose infiltration swales along the easterly property boundary and along the easterly portions of the shoreline. Staff and consulting engineers agree that this approach has merit and is generally supportive. As noted below, consulting engineer, Dave Senus, PE, has concerns that over time the retention and infiltration capacity of the crushed stone will diminish and that additional use of the infiltration swales, particularly along the shoreline, is merited to meet stormwater treatment standards over time as the crushed stone is compacted and displaced by use of the site. As of the writing of this report, Mr. Senus provided a revised review memo that addresses these issues and the suggested motions include a condition of approval stating *that prior to issuance of a building permit, the applicant provides for review and approval a revised grading and drainage plan and supporting material consistent with consulting stormwater engineer, Dave Senus' review memo dated December 14, 2012, included as Attachment 4 of Planning Report #53-12.*

Note: As noted above, the site is crossed by a 24 inch combined sewer overflow pipe outletting into the Fore River. The City Department of Public Services is requesting a drainage and maintenance easement to allow servicing of this public facility. The applicants have shown such an

easement on their revised utilities plan, Plan 7, and a condition of approval for receipt of the easement is suggested in the motions.

(c) *Public Infrastructure and Community Safety Standards.*

1. *Consistency with City Master Plans:*

- a. The proposal appears consistent with applicable approved master plans. Note: The City is applying for funds to engage in a West Commercial Street planning process to determine the appropriate design to accommodate multiple modes of transport consistent with both landside mixed use and water-side marine development along the corridor.

2. *Public Safety and Fire Prevention:*

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

All of the principle open spaces on the development are visible with clear lines of site from multiple vantage points and/or buildings with windows.

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

The site appears to sufficient access control through fencing, entry gates, and its location on the water.

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

The use and maintenance of the facility as designed should sufficiently reinforce the site's identity as an active boat yard.

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

Captain Chris Pirone has indicated his approval of the project design as submitted for access of emergency vehicles from West Commercial Street, but additional definition is required for clear emergency routing. Additional discussion on this point is continued below.

- (e) *Be consistent with City public safety standards, Section 3 of the City of Portland Technical Manual, including but not limited to*

*availability and adequacy of water supply and proximity of fire hydrants to structures.*

The site is currently served by a fire hydrant on West Commercial Street and the utility plan, attached Plan 7, shows an additional hydrant proposed for the interior of the site. All of the buildings are proposed to be fitted with sprinkler systems and the Portland Water District has provided a letter indicating adequate capacity to serve the fire suppression needs of the proposal.

Fire Safety Officer, Captain Chris Pirone has requested that the applicant conduct a fire code analysis of the project and the applicant provided a memo from Fire Risk Management, Inc. as of the writing of this report. The memo reports the recommendations of a licensed fire safety engineer and Captain Pirone has agreed with the findings of the memo. In addition to the building's fire code issues, which will be addressed during the building permit review, the major site issues involve the location of hydrants, clear access routes for emergency vehicles, and treatment of the floating wharfs and marine operations areas. The applicant's fire safety memo is included as Attachment U of this Report. Captain Pirone recommends a condition of approval *that prior to a building permit, the applicant submit a revised site plan for review and approval in compliance with the December 12, 2012 fire code analysis memo from Fire Risk Management, Inc. The revised site plan will show emergency access routes to be kept clear of stored and trailered vessels, vehicle parking and snow storage.*

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

The site is served by all public utilities and a letter of water capacity has been provided. A condition of approval is suggested *that prior to issuance of a building permit, that electrical, gas, and sewer capacity letters are provided to the Planning Authority.*

#### (d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact: NA*
2. *Shadows: NA*

3. *Snow and Ice Loading: NA*
4. *View corridors: NA*
5. *Historic Resources:*
  - a. *Developments affecting designated landmarks or within designated historic districts or historic landscape districts: NA*
  - c. *Preservation and/or Documentation of Archaeological Resources.*

Where the site was the origination/termination of the Cumberland and Oxford Canal, the subject property has significant historic interest; however, more recent grading and development has obliterated surficial evidence of the canal structure. Likewise, as noted in the Maine State Historic Preservation Commission letter, the site of the former Portland Glass Works is a significant resource, though its location appears to be sited westerly from the proposed phase one buildings. The proposed construction is not anticipated to disturb any evidence of the original canal structure or remains of either of these resources. The Site Plan standards additionally list historic rail beds as a specific resource for preservation and/or documentation. Given the fact that the rail and gasworks uses of the site resulted in a dense web of rail beds constructed and modified over 150 years, this standard is both applicable and nearly impossible to fully address. Numerous period maps and images of the site exist, which show the evolving network of rail sidings on and around the site, serve to document the rail history of the subject property and should serve to address this standard. Planning staff will provided at least one 1882 example to the Planning Board as an example.

6. *Exterior Lighting:*

The applicant's lighting plan is provided as Plan 14 with the fixture specifications provided as Attachment M. A waiver of the illumination levels and uniformity standards is requested as Plan 14 shows areas of the site that are not lighted to the minimum requirement. With these darker areas, the uniformity standard cannot be met while still keeping adequate light levels around the buildings and the marine operations areas.

The light fixtures requested are all compliant full cut off fixtures that are either building mounted or installed on 30 foot tall poles (the standard maximum height.) Lighting levels shown in the areas intended to be lit are all compliant with the site lighting standards of the Technical Manual and Staff supports the waiver request for illumination levels and uniformity.

7. *Noise and Vibration:*

Mechanical equipment will be reviewed with building permits. Based on the current Portland Yacht Services activities, exterior noise levels are anticipated to be within zoning requirements for sound levels.

8. *Signage and Wayfinding:*

Signage plans have not been provided, but will be reviewed and approved with the building permit applications for the site. No signage may be installed without such approval.

9. *Zoning Related Design Standards* NA

### VIII. Staff Recommendation:

The applicants have demonstrated adherence to the applicable standards and Planning Staff recommends that the Planning Board approve the New Yard at Canal Landing, subject to the conditions provided below in the suggested motions.

### IX. Recommended 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 application # **2012-575** relevant to the Portland's Land Use Code and Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board finds that two or more criteria for sidewalk waiver, as provided under Sec.14 –506 (b), **(are/are not)** met, namely that: A safe alternative-walking route is reasonably available by way of a sidewalk on the other side of the street, and construction of the sidewalk will result in loss of significant features of greater value (truck circulation); and therefore **(waives/does not waive)** the requirement for sidewalks along the southerly sideline of West Commercial Street.
2. The Planning Board finds that two or more criteria for granite curbing waiver, as provided under Sec.14 –506 (b), **(are/are not)** met, namely that: construction of the curbing will result in loss of significant features of greater value (truck circulation); and that curbing is not necessary for stormwater management; and therefore **(waives/does not waive)** the requirement for granite curbing along the southerly sideline of West Commercial Street.
3. The Planning Board **(waives/does not waive)** the Technical Standard for flooding as provided Technical Manual III. 4. E.(2) Waiver of the flooding standard due to direct



discharge into the ocean, a great pond, or major river segment.

4. The Planning Board (**waives/does not waive**) the Technical Standard for Landscaping, Sec. IV. 5.4.5, for tree species and size to allow a naturalized replanting program consistent with the site's Shoreland Zone context.
5. The Planning Board (**waives/does not waive**) the Technical Standard for site lighting Sec. XII. 2., illumination levels and uniformity levels.
6. The Planning Board (**waives/does not waive**) the Technical Standard for Soil Infiltration Testing, Sec. V, Appendix D.4.(a) based on known conditions on the site and controlled materials to be installed with construction.
7. The Planning Board (**waives/does not waive**) the requirement for Bicycle Parking, Site Plan Standard 14-526 a (4) b., based on an industrial use located in an outlying area.

*Staff recommends a partial waiver requiring half (4) of the required 8 bicycle parking spaces.*

8. The Planning Board (**waives/does not waive**) the Technical Standard for driveway width, Sec I.7.1.4. , 36 foot maximum width. 48 feet is requested due to large truck and trailer turning movements.

**b. Conditional Use in the Waterfront Port Development Zone:**

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 application # **2012-575** relevant to the Conditional Use Standards of the Waterfront Port Development Zone for *marine product sales and boat storage*, and Section 14-474 of Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with conditional use standards of the land use code.

**c. Site Plan:**

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 application # **2012-575** relevant to the Site Plan Ordinance, standards for Site Location of Development, Shoreland Zone, Flood Plain Management, and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with applicable standards of the land use code, subject to the following conditions of approval:

### Conditions of Approval

- i. MDOT Shared Entrance: that prior to issuance of a building permit, the applicant provides for review and approval an easement from MDOT to New Yard for construction and use of a shared entry way.
- ii. Beach Street Intersection Contributions: that prior to issuance of a building permit, the applicant contributes \$5000 for Beach Street intersection improvements, including but not limited to pedestrian crossing and signalization.
- iii. Combined Sewer Overflow Easement: that prior to issuance of a building permit, the applicant provides a 30 foot wide easement to the City for the combined sewer overflow line crossing the property from West Commercial Street to the Fore River as shown on the Deluca Hoffaman Site Development Plan, C-2.1, revision 4, dated 12-5-12.
- iv. Other Agency Reviews: that any modifications to City approved plans to meet outside agency requirements must be identified and submitted to the Planning Authority for final review prior to issuance of a building permit. Outside agency permits include, NRPA wetland alternation permits, Maine DEP VRAP approvals, and Portland Harbor Commission approvals.
- v. Rail Demolition: that prior to demolition of existing rail infrastructure, the applicant either provides evidence of rail abandonment or a legal opinion for the review and approval of Corporation Counsel that such abandonment is not required.
- vi. Flood Plain Management: that prior to issuance of a building permit, the final site plan is revised to include a note requiring that structures on lots in the development be constructed in accordance with Portland City Code, section 14-450.8, Flood Plain Management.
- vii. Stormwater Management: that prior to issuance of a building permit, the applicant provides for review and approval a revised grading and drainage plan and supporting material consistent with consulting stormwater engineer, Dave Senus' review memo dated December 14, 2012, included as Attachment 4 of Planning Report #53-12.
- viii. Fire Safety and Emergency Access: that prior to issuance of a building permit, the applicant submit a revised site plan for review and approval in compliance with the December 12, 2012 fire code analysis memo from Fire Risk Management, Inc. (Attachment U of Planning Report #53-12) The revised site plan will show emergency access routes to be kept clear of stored and trailered vessels, vehicle parking and snow storage.
- ix. Utility Capacity: that prior to issuance of a building permit, that electrical, gas, and sewer capacity letters are provided to the Planning Authority.

### **Attachments**

1. Public Comment
2. DEP Correspondence
3. 1882 City Atlas Excerpts, Rail Alignments
4. Consulting Stormwater Engineer, Dave Senus' review memo dated December 14, 2012

### **Applicant's Submission Packet**

- A. Response to City review comments, Dec. 6, 2012
- B. Cover Letter and Application (B1- Site Plan, B2-Conditional Use)
- C. Neighborhood Meeting Material
- D. MeDEP Check List
- E. Table of Contents (applicant's submittal)
- F. Proposed Development Description
- G. Site Photos
- H. Context Maps
- I. Building Renderings and Images
- J. Stormwater Material
- K. Utility Capacity Letters
- L. Traffic Analysis
- M. Lighting Fixtures
- N. Solid Waste
- O. Erosion Control
- P. Technical Capacity
- Q. Right, Title and Interest (Schedules and exhibits omitted due to size, available upon request)
- R. Financial Capacity
- S. Site Plan Standards Review Narrative
- T. State Agency Contact
- U. Fire Safety Report Memo, Fire Risk Management, Inc., December 12, 2012

### **Plans**

- |         |   |
|---------|---|
| Plan 1  | Cover Page, Notes, and Legend               |
| Plan 2  | Survey and Existing Conditions              |
| Plan 3  | Demolition                                  |
| Plan 4  | Conceptual Master Plan, Long-term Build Out |
| Plan 5  | Site Plan, Phase 1 (current permitting)     |
| Plan 6  | Grading and Drainage, Phase 1               |
| Plan 7  | Utilities                                   |
| Plan 8  | Erosion and Sedimentation Control           |
| Plan 9  | Details                                     |
| Plan 10 | Stormwater Strategy Section                 |
| Plan 11 | Building Height Section                     |
| Plan 12 | Building Sections and Floor Plans           |
| Plan 13 | Landscaping                                 |

Plan 14      Lighting Photometrics

**ATT 1.1**

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Lary Shaffer <shaffer@midmaine.com> Saturday, September 01, 2012 8:42 AM >>>

Dear Ms. Barhydt,

I am a resident of Scarborough and I have great interest in seeing Portland and Greater Portland developed in ways that protect the environment while providing opportunities for all residents. I was delighted to read in the Press Herald of the plans by Mr. Sprague to extend and increase his boat yard activities. If I understand the description of the land correctly, it is the former Portland Terminal Company rail yard area beyond the Casco Bay Bridge from the business center of Commercial Street. This seems to be a fine example of location-specific job creation and I hope that this development is able to proceed.

I am writing to ask if it is possible for at least one railroad right-of-way to remain across that land to the adjacent container terminal. I do not think that it would be a busy rail corridor. However, it seems to me to be very shortsighted to permanently block the railroad access to the container terminal. On a recent trip in southern states, I saw container trains that were probably a hundred cars long. As I understand it, containers on railroads offer great flexibility in shipping because the cars do not have to be cut out of trains and left. The containers can be picked off trains by cranes and various other means and, if necessary, delivered locally by trucks. This saves a considerable amount of railroad time and makes shipping by rail competitive. I do not know why Pan Am does not already work with the container terminal.

It is completely possible that a rail spur through the property would also benefit the boatyard operations by permitting large items to arrive there by rail. I would be very surprised if that had not already been considered by Mr Sprague.

The establishment of a permanent rail right-of way across that land may not be within the responsibilities of the planning board. I do hope, however, that in the interest of future prosperity and wise use of natural resources it will be considered by whomsoever is in charge of deciding these matters.

Yours sincerely,

Lary Shaffer

Lary Shaffer  
Scarborough Marsh Fine Furniture  
Scarborough Maine



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Telephone: (207) 774-6324

Fax: (207) 774-6385

William Needelman  
Senior Planner  
City of Portland  
389 Congress St.  
Portland, ME. 04101

City of Portland Planning Board Members

November 09, 2012

Dear Bill and Planning Board Members:

My name is Angelo Ciocca, President of Nova Seafood, Ltd., 555 Commercial St., Portland, ME. I am writing to you today with a few comments on the new development planned by New Yard LLC, 58 Fore St., Portland, ME.

During a recent visit to Portland City Hall, Bill Needelman showed my partner and myself the detailed plans for this development. We are happy with the look of the overall plan, but have some concerns. The first and most important is the traffic flow, which is already a problem at the "corner." I am sure that you are all aware that Nova Seafood is located at 555 Commercial St., right on this blind corner. We have witnessed many accidents over our 20 plus years at this location, as well as a few fatalities.

I have spoken with both the MDOT and the Portland City Hall about this issue over the past two decades, and have always received the same answer: "This intersection is not a high priority." I gave up trying to convince you. I am now urging you to make this a high priority as traffic on West Commercial Street has increased tremendously over the past 20 years. We assume this trend will continue. This will be the last opportunity the city and state have to correct this bottleneck and deadly roadway/intersection, and to impact the safety of travelers on this very busy road.

I am not a traffic engineer, but as mentioned previously, our vehicles have been pulling in and out of this location for 20 years; that being the case, we believe that our input should be considered during the planning of this project.

We are submitting the following points for consideration: divert some land from the new development to soften the present angle in the road (this will serve to make the road less "blind"); install a traffic light at the intersection of Beach Street and Commercial Street; and install a turn lane to access the bridge and the Nova Seafood building, along with a flashing yellow light to alert traffic of the coming light.

We would also like to mention that neither the City nor the MDOT should assume that the Nova Seafood property and the attached lot at 531-547 Commercial Street will remain in its current form forever. A future development of 531-555 Commercial Street would only exacerbate the current traffic issues.

One last suggestion is that it is our hope that the Planning Board does not allow concrete "Jersey" barriers, or something similar in appearance, as a boundary line for the new development. Trees or other shrubbery would be a much more attractive gateway to the city/Old Port area of Portland.

I respectfully request that the Planning Board keep us updated as this development progresses.

Sincerely,

Handwritten signature of Angelo Ciocca in black ink.

Angelo Ciocca  
President/Owner  
Nova Seafood, Ltd.  
Bridgeport Associated

cc: Steve Bushey  
DeLuca-Hoffman Associates  
778 Main Street Unit #8  
South Portland, ME 04106

Att. 2.1



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

December 10, 2012

Mr. Stephen B. Mohr  
Mohr & Seredin Landscape Architects  
18 Pleasant Street  
Portland, Maine 04101

Dear Mr. Mohr:

Thank you for submitting the plans concerning vegetation removal and replanting on behalf of Canal Landing, LLC, to the Maine Department of Environmental Protection (Department) for review. The property on West Commercial Street is the prospective site of the relocated Portland Yacht Services. The use associated with this business is considered to be at least partially functionally water dependent, thus requiring development directly adjacent to and/or over the resource.

The City of Portland has zoned this area as a Waterfront Port Development Zone (WPD Zone). This zoning district, due to its location and historic development, contains less stringent development standards than normally required by the Mandatory Shoreland Zoning Act (Act) and the Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances. The Act allows the Department to approve less stringent ordinances when special local conditions warrant such a deviation. In addition, the Act through both its purpose and various sections supports allowances for commercial fisheries/maritime uses in the shoreland zone. However, both the City of Portland's Zoning Ordinance and State statute, 38 MRSA § 439-A(6), contain provisions concerning vegetation removal that must be followed. The construction of this section of the Act does not allow the department to approve municipal ordinances that contain clearing standards that are less stringent than this statutory section. This is reflected in Department Order 56-2011, which conditionally approved the City of Portland's ordinance amendment for the WPD Zone to include the statutory requirements.

The proposed plans for the relocation of the Portland Yacht Services, requires a great deal of vegetation removal, not only for the siting of structures, parking and access, but also for the potential need for site remediation of contamination from past uses. This clearing would exceed the provision found at 38 MRSA § 439-A(6)(C), which states that "selective cutting of no more than 40% of the trees 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period . . ."

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PRESQUE ISLE  
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Letter to Mohr  
(12/10/12)  
Page 2 of 3

The plan and accompanying letter submitted to the Department includes calculations concerning the number of existing trees over four and one half (4.5) inches in diameter, the number of those trees to be removed, and the number of trees that will be replanted. Currently, the site contains 152 trees over 4.5 inches in diameter, measured at four and one half (4 ½) feet above ground, within the 250 foot shoreland zone.<sup>1</sup> The proposal aims to remove 137 trees, 4.5 inches or more in diameter. Under the 40% provision, 61 trees would be allowed to be removed. This would mean 91 trees would need to be retained. The plan calls for 15 of the trees 4.5 inches or more in diameter to be retained, and the landowner proposes to plant 78 additional trees which would result in a net removal of approximately 39 percent of the trees in the shoreland zone. Along with the tree planting, the landscaping plan also proposes to plant additional vegetation.

Department review of this proposal and accompanying plan finds it to be consistent with the general purposes of the Act. Sufficient vegetation will both be retained and replanted, the use of this property for maritime purposes is strongly supported by the Act, and remediation of contaminated areas will improve the site overall.

When working with municipalities on replanting plans, the Department generally advises that native vegetation be planted, and under certain circumstances is mandated by law and rule. The plan provided to the Department calls for a significant number of Eastern Cottonwood trees (*Populus deltoids*) to be replanted. Eastern Cottonwood, while not native, has become quite naturalized in Maine. Due to their rather fast growing rate they are good trees for providing windbreaking properties, they grow well along rivers, and are good trees for providing shading. Through the municipal permitting process, the City of Portland may require the planting of native vegetation, but the Department would not find issue with allowing the planting of these trees in this particular instance.

In any replanting effort, especially of this magnitude, the Department generally recommends that an applicant provide for a three year maintenance plan, which seeks to retain an at least 80 percent survival rate. Again, during the local permitting process this may be something the City of Portland will require as a condition of the permit, but is not mandated by the Department.

The Department will forward this letter to the City of Portland to notify them that the plan presented to the Department would be acceptable to meet the purpose and intent of the Act. If you have any questions about this opinion please feel free to contact me at (207) 557-0353 or via email at [deirdre.schneider@maine.gov](mailto:deirdre.schneider@maine.gov); or Michael Morse at (207) 822-6328 or at [michael.j.morse@maine.gov](mailto:michael.j.morse@maine.gov).

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<sup>1</sup> Please note that the letter submitted to the Department stated that there were 152 trees four inches or more in diameter as measured at 4 ½ feet above ground. A subsequent email from Mr. Mohr to the Department, dated November 29, 2012, clarified that this was in fact a typographical error, and the 152 trees represented those trees that measured 4.5 inches or more in diameter.

Letter to Mohr  
(12/10/12)  
Page 3 of 3

Sincerely,

A handwritten signature in cursive script that reads "Deirdre Schneider".

Deirdre Schneider

cc: Mr. Phineas Sprague, Canal Landing, LLC  
Mr. Bill Needleman, Senior Planner, City of Portland  
Mr. Michael Morse, DEP, Southern Maine Regional Office



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Att. 2.4

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

November 16, 2012

William Needelman, Senior Planner  
Planning Office, City Hall  
389 Congress St.  
Portland, ME 04101

RE: Canal Landing  
DEP #L-25823-26-B-D

Dear Bill:

This letter is to inform you that the Department of Environmental Protection has received the Notification of Application Acceptance concerning the application of New Yard, LLC to develop Canal Landing, a boat yard on the Fore River. The Department is satisfied that the notice provisions of 38 M.R.S.A. Section 489-A Subsection 8 for Municipal Review of Development have been satisfied by the City of Portland and the applicant. Based upon its review of the notice and application, the Department will not be exercising jurisdiction over this application pursuant to 38 M.R.S.A. Section 489-A Subsection 9. However, this determination of non-jurisdiction does not apply to any Natural Resources Protection Act (NRPA) issues that may relate to the proposed project

If the application is amended prior to the municipality taking final action, another Notification of Application Acceptance may be required. Please contact me should this occur. The municipality is also required to submit one copy of the record of review and basis of decision within 40 working days of the final action by the reviewing authority.

If you have any questions concerning this, please call me at 592-1692.

Sincerely,

Marybeth Richardson  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

C: File

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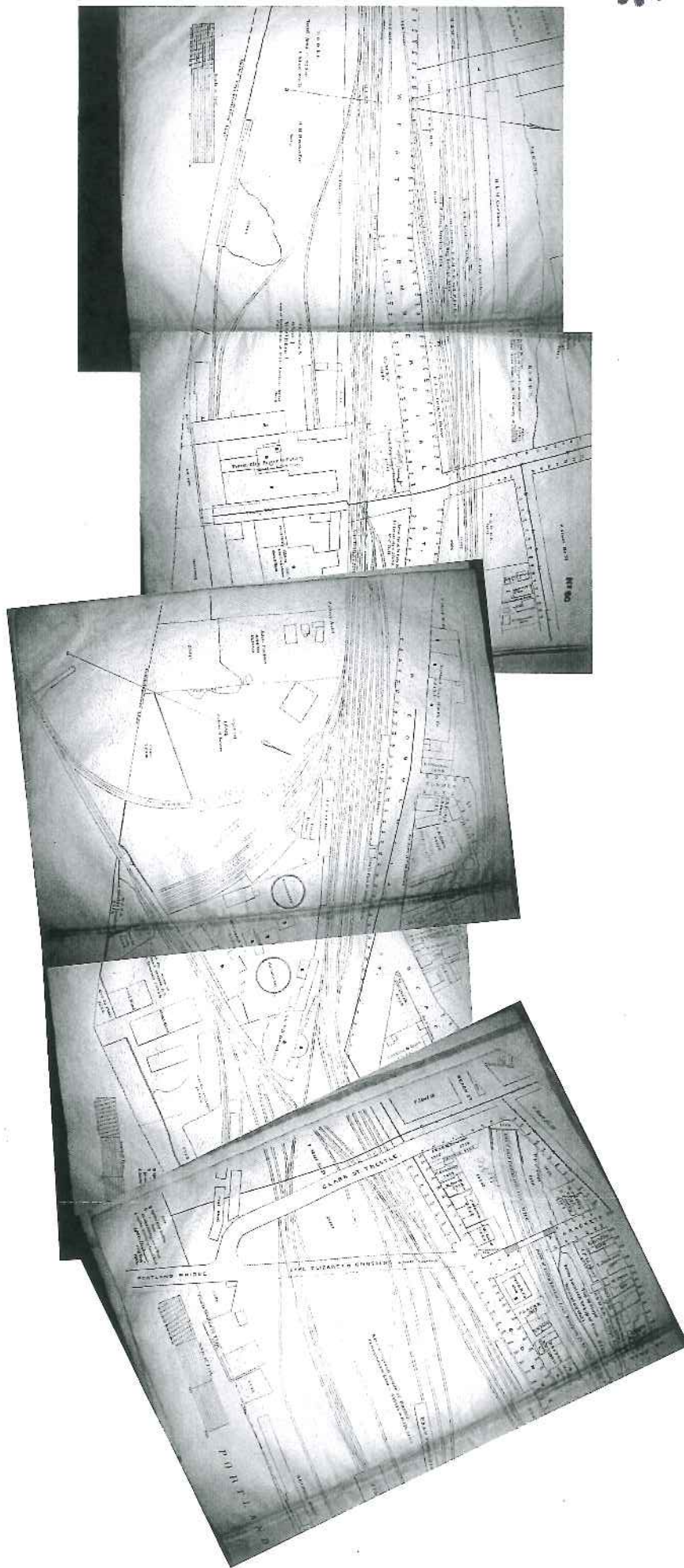
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Rail Alignments from 1882 City Atlas: Photo Montage

Not to scale



## MEMORANDUM



**TO:** Bill Needelman, Planner  
**FROM:** David Senus, P.E. & Ashley Auger, E.I.T.  
**DATE:** December 14, 2012  
**RE:** 40 West Commercial Street, Final Level III Site Plan Application

Woodard & Curran has reviewed the Response to Comments on the Final Level III Site Plan Application for Phase I of the Canal Landing Development at 40 West Commercial Street in Portland, Maine. The project proposes to construct a boat repair and maintenance yard along with related marine uses over the course of multiple phases. Phase I will include construction of a tension fabric building and associated utilities, concrete boat ramps along the shorefront, establishment of yard areas, and marine improvements.

### Documents Provided By Applicant

- Response to Comments Letter and attachments dated December 6, 2012, prepared by DeLuca-Hoffman Associates, Inc., on behalf of New Yard, LLC.
- Engineering Plans, Sheets C-2.1, C-3.1, C-4.1, C-6.1, C-8.1, C-9.0, & L-1.0, revised December 5, 2012, prepared by DeLuca-Hoffman Associates, Inc., on behalf of New Yard, LLC.

### Comments

- 1) The Applicant is proposing a manmade pervious surface ("Boatyard Surface") for much of the improved area of the site to meet the General Standard. The "Boatyard Surface" has been altered from the previous submittal to increase the depth of the crushed stone surface layer and the Type D gravel layer. In addition, the "Boatyard Surface" Section detail on Sheet C-8.1 has been updated to show geo-grid below the Type D gravel layer (between the Type D gravel and the existing subgrade). A similar product was previously noted directly below the crushed stone, between the stone and the underlying gravel (refer to C-8.1 drawing dated 10/31). Placing a separation grid or netting product between the stone and gravel would limit the migration of stone into the gravel section, and avoid loss of the stone "reservoir" layer over time. Please clarify whether a grid or netting product can be utilized between the stone layer and the gravel layer, as previously depicted.
- 2) The Grading & Drainage Plan depicts "Stormwater Management Areas" along the east and south of the improved "Boatyard Surface" area. These areas are intended to collect and manage stormwater during larger storm events. We recommend adding additional "Stormwater Management Areas" to the west, south of the driveway access the Travel Lift Basin and Boat Ramp (between the "Boatyard Surface" and the seawall); so long as this is acceptable to the MaineDEP in consideration for the site's VRAP.
- 3) The Applicant has indicated that the "Stormwater Management Areas" noted on C3.1 are intended to be grassed swales, as detailed on Sheet C6.3. The plans should reference this detail for clarity.
- 4) Proper oversight during the construction of the stormwater systems will be essential to ensure that the correct materials and methods are utilized to construct these systems. The plans should include a note stating that the Owner shall retain the services of a professional engineer to oversee the construction of the stormwater management systems, including the "Boatyard Surface" and the "Stormwater Management Areas".
- 5) Inspection and maintenance of the "Boatyard Surface" will be a critical step to ensuring that the system functions as intended. The Applicant has referenced Chapter 32 of the City of Portland Code of Ordinances within the "Project Overview" section of the project's Inspection and Maintenance Manual. Section IV, "Program Administration", of the Inspection and Maintenance Manual should also include specific reference to the City's Inspection, Maintenance, and Reporting requirements outlined under Chapter 32.
- 6) The Inspection and Maintenance Manual should include a description of the prescribed operations for the wash-down collection areas.