

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

Sean Dundon, Chair  
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August 22, 2018

Cyrus Hagge  
Project Management, INC  
225 Commercial Street, Suite 502  
Portland, ME 04101

<b>Project Name:</b>	121 Cassidy Point Drive	<b>Project ID:</b>	CU-000084-2018
<b>Address:</b>	121 Cassidy Point Drive	<b>CBL:</b>	072-B-001, 072-B-003
<b>Applicant:</b>	Project Management, INC		
<b>Planner:</b>	Matthew Grooms		

Dear Mr. Hagge:

On July 10, 2018, the Planning Board considered the conditional use application for change of use at 121 Cassidy Point Drive in the Waterfront Port Development Zone to allow marine retail and storage, and low impact industrial uses, identified as conditional uses under Section 14-320 of the land use code. The Planning Board reviewed the proposal for conformance with the conditional use standards and standards for an administrative authorization. The Planning Board voted 5-0 (Dundon, Smith absent) to approve the application as presented below:

### Conditional Use

The Planning Board voted 5-0 (Dundon, Smith absent) that the plan is in conformance with the conditional use standards as listed under Section 14-320 and Section 14-474 of the Land Use Code, permitting marine retail/storage and repair along with low impact industrial uses at 121 Cassidy Point Drive subject to the following conditions of approval to be met prior to issuance of a Certificate of Occupancy:

1. The applicant shall provide updated information regarding future site lighting, specifically

the location of lighting and relevant lighting details demonstrating compliance with Section 10 of the Technical Manual.

2. The applicant shall provide an updated site plan showing the location of the proposed dumpster and enclosure along with details for its enclosure, demonstrating compliance with the site plan ordinance.

The approval is based on the submitted plans and the findings related to conditional use review standards as contained in the Planning Report for application CU-000084-2018, which is attached.

### **Standard Conditions of Approval**

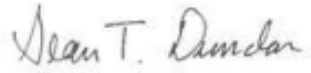
Please Note: The following standard conditions of approval and requirements apply to all approved site plans:

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 Permitting and Inspections Department.
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. Department of Public Works Permits If work or obstructions will occur within the public right-of-way, such as utilities, curb, sidewalk, driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy Permit (s) is required for your site. Please contact the Department of Public Works Permit Clerk at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

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 and Urban Development Department 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 Matthew Grooms at (207) 874-8725

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Dundon".

Sean Dundon, Chair  
Portland Planning Board

Attachments:

1. TY Lin Review Comment
2. Planning Board Report
3. Performance Guarantee Packet



# PLANNING BOARD REPORT PORTLAND, MAINE

WPDZ Conditional Use  
121 Cassidy Point Drive  
Administrative Authorization and Conditional Use Applications  
84-2018  
Cyrus Hagge, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: July 10, 2018	Prepared by: Matthew Grooms, Planner Date: July 6, 2018
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## I. INTRODUCTION

Cyrus Hagge has submitted an administrative authorization and conditional use application for his property at 121 Cassidy Point Drive for conversion of the former CoachWorks facility for use by small-scale light industrial operations geared towards craft persons, marine businesses and small trades. The planned re-use of this property is in two phases. The first phase involves reuse of the existing site and buildings. The second phase, anticipated to begin in Spring of 2019, involves demolition of the existing wooden structure on-site and replacement with a new metal building.

This property is located within the Waterfront Port Development Zone (WPDZ) and is subject to the zone specific and general conditional use standards due to the proposed uses which are identified as conditional uses within the WPDZ. Zone specific standards are intended to ensure adequate waterfront access to water-dependent and marine-related users while the general standards facilitate site compatibility between conditional uses and uses permitted by right. Conditional use applications, when submitted in conjunction with a site plan or administrative authorization, are required to go before the Planning Board for review and approval.

A total of thirty-eight (38) notices were sent to property owners within 500 feet of the site and interested party list. A legal ad ran on July 2<sup>nd</sup> and 3<sup>rd</sup>, 2018 of the Portland Press Herald. As of the writing of this report, no public comments have been received by the Planning Office.



Figure 1: Proposed development site with zoning context

<b>Applicant Name</b>	Cyrus Hagge, Project Management, INC
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**II. PROJECT DATA**

Existing Zoning	Waterfront Port Development Zone (WPDZ)
Existing Use	Previously occupied by Advantage Gas Works and Matheson Gas
Proposed Use	Warehouse/Light Industrial
Parcel Size	.575 Acres
Building Size	6,903 SF
Number of Units to be Demolished	None
Building Footprint	5,237 SF (1924), 1,666 SF (1910)

**III. PROPOSED PROJECT DESCRIPTION**

The former CoachWorks site consists of two separate structures, including a 5,237 square foot metal building constructed in 1924 that features 6 large overhead doors along and a smaller 1,666 square foot two-story wooden structure constructed in 1910. The current use of the property is auto and truck repair with an office on the upper level of the wood frame structure. Other current uses of this property include boat repair, boat storage, auto parts, auto body repair shop, storage of fishing equipment and multi-use storage. The majority of this lot is paved.



Figure 2: Site at present with wood frame building at right and metal building at left

Under this proposal, the applicant is seeking to reuse the site in its existing condition for a limited period of time, with future redevelopment of a portion of the site anticipated for early next year. According to the applicant, the goal of this project is to provide small 1,000 to 2,500 square foot spaces for users engaged in small trade, craft and marine businesses. The primary tenant will be SailMaine, who is seeking to relocate to this site, and they are requesting conditional use approval for marine repair services, yacht brokerage, boat storage and the storage and repair of fishing equipment. Other potential users encompass welding and metal working/fabrication,

carpentry/cabinet shops and craft production and print making.

Traffic impacts and parking needs are anticipated to be significantly less than those of the previous tenant, CoachWorks. The estimated number of weekday trips will decline from more than 250 down to approximately 60, and the parking analysis shows a similar decline, with 20 spaces needed as opposed to 30 previously. The site at present features sufficient space to accommodate this need.

**IV. DEVELOPMENT REVIEW**

The proposed uses, which include warehousing and low impact industrial uses are identified as conditional uses under Section 14-319. Permitted Uses under the WPDZ zoning regulations. As a result, this development proposal is subject to the zone specific conditional use standards, Section 14-320, and the general standards for conditional uses, Section 14-474. The applicant’s responses to these standards are included as Attachments A and B respectively. A separate administrative authorization application was filed for review of the site plan, which is not subject to Planning Board review.

**A. ZONE SPECIFIC CONDITIONAL USE STANDARDS – SEC. 14-320(a)**

The project site is located in the Waterfront Port Development Zone (WPDZ) and does not feature direct water access. As identified within the application, conditional use approval is being sought for the following uses:

Marine:

- Marine repair and machine shops
- Marine retail and wholesale sales
- Boat storage facilities
- Fabrication, storage and repair of fishing equipment.

Industrial:

- Low impact industrial uses
- Light manufacturing
- Manufacture of products
- Welding and metal fabrication
- Storage of materials incidental to proposed uses
- Carpentry, woodworking and cabinet shops
- Art and craft production
- Print Making

Uses identified as conditional uses within this zone are subject to five additional standards that are intended to ensure water access to water-dependent and marine-related users. Those standards are as follows:

In addition to the provisions of section 14-474 (c)(2) such uses will:

1. Not impede or preclude existing or potential water-dependent development on other lots;
  - a. Applicant Response: 121 Cassidy Point Drive is not a waterfront lot and separated from the nearest water front lot by Cassidy Point Drive.
  - b. Staff Comment: The development site, 121 Cassidy Point Drive is unique in the context of the WPDZ as it has no direct water access and existing rights-of-way provide ample access for other users. All non-marine uses being proposed are to be housed entirely within the existing structures and will in no way impede water-dependent development on other lots. Marine-related activities associated with SailMaine will occur outside of the two structures.
2. Allow for adequate access to the water;
  - a. Applicant Response: 121 Cassidy Point Drive is not a waterfront lot and separated from the nearest water front lot by Cassidy Point Drive.

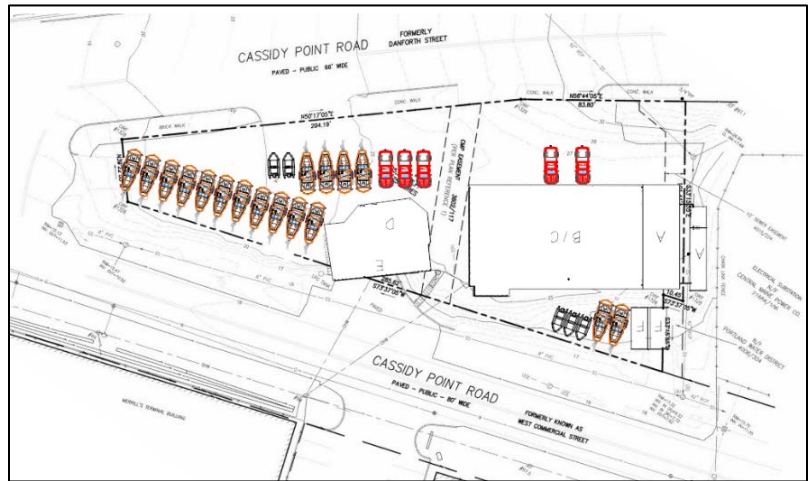


Figure 3: Proposed site plan showing areas for boat storage

- b. Staff Comment: See previous staff comment.
3. Be compatible with water dependent and marine uses;
  - a. Applicant Response: 121 Cassidy Point Drive is not a waterfront lot and separated from the nearest water front lot by Cassidy Point Drive.
  - b. Staff Comment: The primary tenant for this facility is a marine-related enterprise that will benefit from its location within the WPDZ. Other uses being proposed do not preclude marine-related and water-dependent development and are uses typical of an industrial port zone.
4. Operationally support one or more water dependent use(s), or be located in a building or structure that is physically adaptable or relocatable to make way for future development of water-dependent uses; and
  - a. Applicant Response: 121 Cassidy Point Drive is not a waterfront lot and separated from the nearest water front lot by Cassidy Point Drive.
  - b. Staff Comment: As stated in the previous staff comment, SailMaine is a marine-related use that will benefit from its location and benefit other marine-related and water-dependent users. Proposed activities include marine repair, yacht brokerage, boat storage and the storage and repair of fishing equipment.
5. Meet any additional performance and dimensional standards
  - a. Outdoor Storage: All storage of materials shall be indoors or in sealed storage containers with no offsite runoff
    - Staff Comment: Applicant's proposal features exterior storage of boats and marine equipment, identified within certain locations on-site. Storage of this equipment is not to occur higher than 45 feet above grade. Non-marine activities will be housed entirely within existing structures.
  - b. Noise: All onsite conditional uses shall be indoor and will not exceed the maximum 55 decibel level
  - c. Vibration: All on site vibration shall be imperceptible without instruments at lot boundaries.
  - d. Environmental Regulations: The proposed changes of use will comply with all federal and state environmental statutes and regulations.
  - e. Discharge into Harbor areas: The proposed changes of use will not discharge into the harbor water areas.
  - f. Storage of vehicles: No unregistered vehicles will be stored on the premises for more than 60 days.
  - g. Landfill of docking & berthing areas: N/A

- h. Off-street parking: All off street parking shall meet the standards of Division 20 (off-street parking).
- Staff Comment (Tom Errico, Traffic Engineer with T.Y. Lin): I have reviewed the projects (referring to 121 Cassidy Point Drive in addition to 128 Cassidy Point Drive) as it relates to the Conditional Use Standards and Conditions. Specifically, “The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.” As it relates to this specific standard, I find that the projects comply and will not substantially increase traffic and parking conditions.
- i. Off-street loading: All off-street loading shall meet the standards of Division 21.
- j. Flood plain regulations: This property does not have waterfront access and is not located in the flood plain.
- k. Lighting: All lighting shall be shielded to prevent direct light sources from interfering with vessels transiting the harbor. These sources will not have an adverse impact on adjacent residential zones.
- Staff Comment: At this point in time, a lighting plan has not been provided. As part of the administrative authorization review, the staff will request additional information on site lighting and will require that any future lights be compliant with Section 10 of the City’s Technical Manual.
- l. Signage: Any signage will be in compliance with Division 22 of this article.
- m. Storage of pollutants: There will not be storage of pollutants or oily wastes on site.
- n. Compatibility with marine uses: The proposed conditional uses are compatible with nearby marine uses.
- Staff Comment: The applicant has indicated that all non-marine operations will be internal to the building and that there shall be no exterior storage of materials related to those uses.
- o. Design and visual character: Outside of a new entrance door, no new structures or exterior changes are proposed as part of this application.
- Staff Comment: The staff notes that Phase II of this development will involve demolition of the existing wood frame structure and construction of a new metal building. At that time, the design and visual character standard shall apply.

The staff finds the proposal to be compliant with all applicable zone specific conditional use standards.



**B. GENERAL CONDITIONAL USE STANDARDS – SEC. 14-474**

All conditional uses are subject to the general conditional use standards as listed under Section 14-474, which are intended to ensure compatibility and integration of a conditional use with other surrounding uses permitted by right. This is achieved through three separate standards related to traffic/parking impacts, unsanitary or harmful conditions and site design. The specific standards are as follows:

1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone;
  - a. Applicant Response: The proposed changes of use will reduce the amount of traffic in this area. Cassidy Point Drive is a major intermodal transportation center with direct access to Route 1 and I-295. The proposed uses will have a reduced impact over the current use, the Coachworks auto and truck repair business. The number of trips generated by the new uses, will reduce the number of trips from over 250 per day down to 60 per day. The hours of operation, pavement and number of parking spaces will not interfere with the neighboring marine and trucking uses.
  - b. Staff Comment (Tom Errico, Traffic Engineer with T.Y. Lin): I have reviewed the projects (referring to 121 Cassidy Point Drive in addition to 128 Cassidy Point Drive) as it relates to the Conditional Use Standards and Conditions. Specifically, “The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.” As it relates to this specific standard, I find that the projects comply and will not substantially increase traffic and parking conditions.
2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
  - a. Applicant Response: All of the proposed uses are internal to the buildings, except for the outdoor storage of boats. There are no proposed changes to the site that would create noise, glare, dust, odors or lighting. All trash will be disposed of using dumpsters. The only external improvement is to bring in a new sewer line from lower Cassidy Point Drive to the large building.
  - b. Staff Comment: The staff agrees that the proposed uses will not have an adverse impact as it relates to noise, glare, dust, sewage disposal, emissions to the air, odor, lighting or litter. As a condition of approval, the staff is suggesting that additional information be provided regarding site lighting and the location of exterior waste receptacles.
3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

- a. Applicant Response: There are no changes proposed to the existing site and the site will have no impact on surrounding properties.
- b. Staff Comment: As this proposal involves reuse of an existing site with very limited exterior modifications, the staff finds the proposal to be compatible with surrounding uses and performance standards of the WPDZ.

The staff finds the proposal to be generally compliant with the city's general standards for conditional uses and is suggesting one condition of approval related to site lighting and siting of exterior waste storage.

#### V. STAFF RECOMMENDATIONS

The Planning Division recommends approval of the conditional use application with the recommended condition of approval listed under the proposed Planning Board motion.

#### VI. PLANNING BOARD MOTIONS

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 84-2018 relevant to the conditional use standards; and the testimony presented at the planning board hearing, the Planning Board finds that the plan [is or is not] in conformance with the conditional use standards of the land use code, subject to the following conditions of approval that must be met prior to the issuance of a certificate of occupancy:

1. The applicant shall provide updated information regarding future site lighting, specifically the location of lighting and relevant lighting details demonstrating compliance with Section 10 of the Technical Manual.
2. The applicant shall provide an updated site plan showing the location of the proposed dumpster along with details for its enclosure, demonstrating compliance with the site plan ordinance

#### VII. ATTACHMENTS

##### STAFF REVIEW

1. T.Y. Lin Review Comment

##### APPLICANT'S SUBMITTAL

- A. Cover Letter
- B. Project Description
- C. Application
- D. Conditional Use Checklist
- E. Proposed Uses
- F. General Conditional Use Standards Narrative
- G. WPDZ Conditional Use Standards Narrative
- H. Purchase and Sale Agreement
- I. Traffic Memo

##### PLANS

- Plan 1      Site Plan



Matthew Grooms <mgrooms@portlandmaine.gov>

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## 121 and 128 Cassidy Point Road - Conditional Use Traffic Review

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Tom Errico <thomas.errico@tylin.com>

Tue, Jul 3, 2018 at 9:03 AM

To: Matthew Grooms <mgrooms@portlandmaine.gov>

Cc: Keith Gray <kgray@portlandmaine.gov>, Bruce Hyman <bhyman@portlandmaine.gov>, Jeremiah Bartlett <JBartlett@portlandmaine.gov>, Barbara Barhydt <bab@portlandmaine.gov>

Hi Matt – I have reviewed the projects as it relates to the Conditional Use Standards and Conditions. Specifically, *“The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.”* As it relates to this specific standard, I find that the projects comply and will not substantially increase traffic and parking conditions.

If you have any questions, please contact me.

Best Regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director

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Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP

Director, Planning &amp; Urban Development Department

## Performance Guarantee, Inspection Fee, and Infrastructure Financial Contribution Packet

### A. Site Plan/Subdivision Performance Guarantees Required

Portland's Land Use Code requires all developers with approved site plan and/or subdivision applications to submit a performance guarantee to the City prior to the start of any construction or site improvements. The performance guarantee represents 100% of the total cost of site improvements, as determined by the City. The code further requires developers to pay an inspection fee of 2% of the performance guarantee amount to the City for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications. (Portland's Land Use Code, Sections 14-501 and 14-530)

### B. Cost Estimate Form and Inspection Fee

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. Please submit an itemized cost estimate form to determine the detailed costs of both public and private site improvements to the Planning Division for review and approval. The cost estimate form is included as [Attachment 1](#). The approved amount on the Cost Estimate form is the amount to be covered by the performance guarantee and is the basis for calculating the 2% inspection fee.

### C. Acceptable Types of Performance Guarantees

The accepted forms of a performance guarantee, covering the amount approved on the Cost Estimate form, must be one of the following options consistent with the attached templates, with **NO** exceptions:

1. A letter of credit from a bank/credit union (Attachment 2)
2. A deposit into a bank-held escrow account (Attachment 3)
3. A deposit into a City-held escrow account (Attachment 4)

**NOTE: No land use application of any kind shall be processed, reviewed or issued, no signed subdivision plat shall be released or recorded, and no building permit of any kind shall be issued unless all fees have been paid and every aspect of the proposed development is in compliance with City Codes as determined by the Development Review Coordinator in the Planning Division.**

The developer is eligible to receive up to three reductions from the performance guarantee in a calendar year equal to the estimated cost of the completed improvements. In no case, however, shall any performance guarantee be reduced 1) in any line item where improvements remain to be completed; or 2) to a value which is less than the estimated cost of completing all remaining required improvements; or 3) to a value less than 10% of the Performance Guarantee.

At the conclusion of the project, the City will release 90% of the performance guarantee after the Development Review Coordinator determines that site improvements have been satisfactorily completed at the time of the final inspection. The City will then retain a 10% defect guarantee to cover the workmanship and durability of materials used in construction. The defect guarantee will be released one (1) year from date of acceptance, subject to the Development Review Coordinator inspecting the site and finding it in compliance with the approved site plan.

#### **D. Housing Replacement Performance Guarantees**

For those projects that are subject to Portland's Housing Preservation and Replacement Ordinance (Section 24-483) and have an approved plan, then a performance guarantee is required for housing replacement. An owner or developer must post a performance guarantee in the form of a letter of credit in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Fund, if the applicant had chosen that option. The guarantee shall be valid for no more than three years, after which the full amount shall be provided to the City's Housing Trust Fund, if replacement units meeting the code do not have certificates of occupancy. The guarantee can be released upon the issuance of a certificate of occupancy for the replacement units. A suggested template for a Housing Replacement Performance Guarantee is included as Attachment 5.

#### **E. Infrastructure Accounts**

Contributions to infrastructure accounts may be required as part of the conditions of site plan approval. The contributions must be submitted prior to the issuance of any permits, unless stated otherwise in the approval. The form for submitted required contributions is included as Attachment 6.

#### **F. Administrative Process for Submitting Performance Guarantee**

- **Step 1 - Cost Estimate**  
Submit completed cost estimate form to Planning Division for review and approval. Once approved, use this total amount as the performance guarantee amount in Step 2.
- **Step 2 - Performance Guarantee**  
Complete a draft of 1 of the 3 attached performance guarantee templates, inputting project specific information into blank and bracketed areas, and submit to the Planning Division for final approval. Once staff approved the draft, the applicant shall submit the official signed original performance guarantee document, which for option 1) or 2) must be on Bank/Credit Union letterhead with original signatures.
- **Step 3 - Submit Performance Guarantee, Inspection Fee, and Infrastructure Contributions**  
Submit the final original Performance Guarantee, the required inspection fee, and any infrastructure contributions to the Planning Division. The Planning Division will confirm that the final documents are accurate and acceptable.
- **Step 4 - Release of Recording Plat and Permits**  
Only after the performance guarantee is issued, fees paid, and all other conditions of site plan approval and compliance are met, will the recording plat be released for recording at the Cumberland County Registry of Deeds and/or City permits issued.

**Contact:** Please email the cost estimate form to [jdealaman@portlandmaine.gov](mailto:jdealaman@portlandmaine.gov)

After the cost estimate is approved, all subsequent paperwork can be submitted by mail to 389 Congress Street, 4<sup>th</sup> Floor, Portland, ME 04101, Attn: James Dealaman.

Please call 207-874-8721 with any questions.

#### 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 Escrow Form with the City of Portland
5. Housing Replacement Performance Guarantee Form
6. Infrastructure Financial Contribution Form with the City of Portland



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 the quantities of plant material and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

**INSPECTION FEE (to be filled out by the City)**

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

**TEMPLATE – PERFORMANCE GUARANTEE LETTER OF CREDIT**

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 Applicant]  
[Insert: Address of Project, Portland, Maine]  
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Applicant] (hereinafter referred to as “Applicant”), 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 the City of Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65.

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 Applicant 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 Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.



The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this Letter of Credit that the expiration date 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 Brendan O’Connell, 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, 530 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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant 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

TEMPLATE –ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

SITE PLAN/SUBDIVISION

PERFORMANCE GUARANTEE

ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

[ACCOUNT NUMBER]

[Date]

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

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

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “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 the Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Applicant].

[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 Applicant 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 Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the [Bank], by written certification, to reduce the available amount of the escrowed

money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Escrow Account will automatically expire on **[Insert date one year from the date of this Escrow Account]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this Escrow Account that the expiration date 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 Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this 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 Escrow Account 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, 530 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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant 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: \_\_\_\_\_

TEMPLATE - PERFORMANCE GUARANTEE ESCROW ACCOUNT  
with the City of Portland

Applicant’s Tax Identification Number: \_\_\_\_\_

Applicant’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 noninterest 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 the Portland Code of  
Ordinances Chapter 14 §§ 501, 530and Chapter 25 §§46-65.

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 Applicant 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 Applicant 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 Applicant 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 Brendan O’Connell,  
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 City, 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, 530 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 one years from the date of this performance  
guarantee] (“Expiration Date”), or on the date when the City determines that all improvements guaranteed  
by this Performance Guarantee are satisfactorily completed, whichever is later, provided that the expiration

date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>.

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

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.

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**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 Applicant.
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.

**TEMPLATE - PERFORMANCE GUARANTEE FOR  
COMPLIANCE WITH HOUSING REPLACEMENT ORDINANCE**

Demolition and Housing Replacement  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]

**[Insert Date]**

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

**Re: [Insert Project Address] Demolition and Housing Replacement**

**[Insert Name of Lender]** (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of **[Insert Name of Applicant]** (“Applicants”), held for the exclusive benefit of the City of Portland (“City”), in the aggregate amount of **[Insert exact amount to be determined by the City]**. These funds represent the estimated cost of **[Insert Amount]** for the housing replacement fee applicable to the demolition of **[insert number of units demolished]** dwelling units if no replacement units are constructed, as approved on \_\_\_\_\_ (“**Demolition Approval**”) and as required under Portland Code of Ordinances Chapter 14-483(j).

In the event that Applicant fails to satisfy its housing replacement obligation, 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, if any.

The housing replacement requirement shall be deemed satisfied upon the City’s issuance of a Certificate of Occupancy for **[insert number of units to be replaced]** dwelling units located in the City of Portland provided that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

After construction of each of the replacement units has been completed, the City, as provided in Chapter 14 of the Portland Code of Ordinances, may authorize the Bank, by written certification along with the return of the original of this Letter of Credit, to reduce the available amount of the escrowed money by the full amount of the Letter of Credit.

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.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this

Letter of Credit that the expiration date 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 Brendan O'Connell, 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 that the Bank provides notice of its election to discontinue this Letter of Credit and Applicant has not satisfied its housing replacement obligation, 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 signed by the Director of Planning and Urban Development, at Bank's offices located at Portland Maine stating that:

this drawing results from notification that the Bank has elected to discontinue its Letter of Credit No. \_\_\_\_\_.

Date: \_\_\_\_\_ By: \_\_\_\_\_

**[Name]**

**[Title]**

Its Duly Authorized Agent

**Contribution Form (Watershed, Tree, and Infrastructure Accounts)  
Planning and Urban Development Department - Planning Division**

<b>Application ID:</b>		<b>Planner:</b>	
<b>Project Name:</b>		<b>Date of Form:</b>	
<b>Project Address:</b>			
<b>Applicant's Name:</b>			
<b>Applicant's Address:</b>			
<b>Project Description:</b>			

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Retained by City	Funds not Expended	Expiration Date:	Amount
Infrastructure #1	710-0000-236-98-00						\$
Infrastructure #2	710-0000-236-98-00						\$

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Amount
Transportation Fund	710-0000-238-01-00			\$
Infrastructure (Tree Fund)	242-3100-341-00-00	PR0045		\$
Watershed (Nason's Brook)	257-3100-327.10-00	CFUP03		\$
Watershed (Fallbrook)	257-3100-327.10-00	CFUP02		\$
Watershed (Capisc Brook)	257-3100-327.10-00	CFUP01		\$

<b>Total Amount:</b>	\$
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\* Funds not expended or encumbered by the expiration date, shall be returned to contributor within 6 months of said date.

\* Office Use Only

**FORM OF CONTRIBUTION: (Please check the applicable box below for an Infrastructure Account only)**

<b>Cash Contribution</b>
<b>Escrow Account</b>

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

The City shall periodically draw down funds from Public Works, which form shall specify use of City Account # as shown above.

**Electronic Distribution:**

Tiffany Mullen, Finance Department  
 Joanna Coey, Principal Financial Officer, Recreation and Facilities Mgt.  
 Stuart O'Brien, City Planning Director  
 Barbara Barhydt, Development Review Services Manager, Planning Division  
 Jeremiah Bartlett, Public Services Department  
 Christopher Branch, Public Services Director

Philip DiPierro, Development Review Coordinator, Planning Division  
 Katherine Earley, Engineer Services Manager, Public Services  
 Michael Farmer, Project Engineer, Public Services Department  
 David Margolis Pineo, Deputy City Engineer, Public Services Department  
 Jeff Tarling, City Arborist, Public Services Department  
 Planner for the Project