

# CITY OF PORTLAND, MAINE

## PLANNING BOARD

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Brandon Mazer, Vice Chair  
David Eaton  
David Silk  
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Lisa Whited

October 4, 2018

Ben Blunt, Langdon Street Real Estate Inc  
7 Langdon Street  
Concord NH 03301

Stephen Sawyer, Sebago Technics, Inc.  
75 John Roberts Road  
South Portland, ME 04106

Project Name: **Portland Transportation Center Parking Expansion**  
Level III Site Plan, Traffic Movement Permit (TMP) and Site Location of Development  
Project ID: (UI) #2018-002  
Address: 100 Sewall Street (Thompson's Point Connector), Portland  
CBL: 77-A-1; 190-C-1  
Applicant: Langdon Street Real Estate Inc  
Planner: Jean Fraser

Dear Mr. Blunt and Mr. Sawyer:

On September 25, 2018, the Planning Board considered Level III Site Plan, Traffic Movement Permit and Site Location of Development (SLODA) applications for a proposed expansion of the surface parking associated with the Portland Transportation Center (PTC) near Thompsons Point. The proposals comprise the addition of 2.8 acres of surface parking lot to the south-west, to create approximately 300 additional vehicle parking spaces.

The Planning Board reviewed the proposal for conformance with the standards of the Site Plan, Traffic Movement Permit, and Site Location of Development Act. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) to approve the application with the following waivers and conditions 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 the public hearing on September 25, 2018 for (UI) 2018-002 (Portland Transportation Center) (relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) that it finds, based on the restrictions associated with the need to preload the site for 1-1.5 years, that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Sections relating to parking lot design, planting and lighting. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) to waive the relevant *Technical Manual* standards for a period of up to 2 years to allow the preload phase to be completed, subject to ongoing monitoring to ensure that the preload area is safe for public access at all times. It should be noted that the overall final site plan meets the Technical Standards except regarding the parking aisles noted below.

2. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) that it finds, based upon the consulting traffic engineer's review ([Attachment 1](#)), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.14 *Parking Lot and Parking Space Design*. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) to waive the *Technical Manual* standard (Technical Manual Section 1.14) to allow the parking lot aisle widths as shown on the approved site plan, as supported by the Traffic Engineering reviewer.
3. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) that it finds, based upon the consulting traffic engineer's review (Attachment 5), that a sidewalk along the frontage of the site on Thompson's Point Connector is not recommended. This is due to the fact it was expressly omitted during previous site plan reviews because it would create a much less safe condition for pedestrians compared to other readily available routes, as beyond the bus stop there is no ongoing sidewalk into Thompsons Point. There is a safe alternative walking route on the other side of Thompsons Point Connector with associated street crossings, hence no reasonable expectation for pedestrian usage at this location. The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) therefore to waive the requirement for a sidewalk along the Portland Transportation Center frontage.

## **B. SITE LOCATION OF DEVELOPMENT**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on September 25, 2018 for application for (UI) 2018-002 (Portland Transportation Center) relevant to the Site Location of Development Act (SLOD) regulations; and the testimony presented at the Planning Board Hearing:

The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) that the plan is in conformance with the Site Location of Development Act regulations, subject to all of the waivers and conditions of the site plan approval for this application and in addition subject to the following conditions:

1. That the applicant shall inform the MDEP and the Portland Planning Authority when the pre-load phase has been completed, and confirm the timing for completion of final plan as approved.
2. That if, assuming the pre-load phase is implemented, the entirety of the final proposals subject of this approval have not been substantially commenced and ongoing within 3 years from the date of this approval a SLOD amendment shall be required to bring the site into compliance.
3. That all stormwater installation shall be supervised by an independent "third party" engineer and reports submitted as required under Chapter 500.
4. That a contract for maintenance of the soil filter in the pre-load phase shall be in place prior to the start of construction for the pre-load, and that a separate contract shall be in place prior to the start of construction of the final stormwater system.
5. That prior to the commencement of the final site plan construction in the vicinity of the wetlands, the applicant shall submit an updated letter from the Maine Historic Preservation Commission (MHPC) that confirms the Commission has reviewed the final project plans, and the applicant shall comply with the MHPC recommendations for archaeological monitoring as required.

## **C. TRAFFIC MOVEMENT PERMIT**

Based upon the City of Portland's Delegated Review Authority, the Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) to approve the Traffic Movement Permit application, as submitted, subject to the following conditions:

1. That the applicant shall contribute \$10,000 to the bicycle wayfinding component of the City's *Portland Peninsula Vehicular Wayfinding Plan* (between Portland Downtown and PTC), prior to the use of the preload area for public parking. This is required in order to increase the number of bicycling and walking trips to and from the downtown by Portland resident users of the PTC, and also for visitors that may choose to travel to Portland by inter-city bus or passenger rail rather than drive.
2. That the applicant shall revise the plans for the immediate terminal area prior to the completion of the preload stage of the project, including signage details and design of the bicycle storage, to address the comments of Tom Errico, Traffic Engineering Reviewer dated 9.20.19 in order to encourage alternative modes, manage access, and minimize impacts on the wider highway network.

#### D. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board report for the public hearing on September 25, 2018 for (UI) 2018-002 (Portland Transportation Center) relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

The Planning Board unanimously voted 5-0 (Eaton absent; Smith recused) that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions:

##### Prior to the start of construction (no building permit would be required)

1. That the applicant shall post a Performance Guarantee for the final site plan project construction elements, to be posted prior to the commencement of the pre-load contract; reductions to the Performance Guarantee may only be processed in relation to the completion of the final project construction elements.
2. That the applicant shall revise the plans prior to the completion of the preload stage of the project to address the outstanding detailed stormwater, engineering, bicycle parking number and design, and planting review comments, and address the questions of bicycle parking and peripheral/parking lot planting, for final review and approval by the Planning Authority.
3. That the applicant shall revise the Construction Management Plan, prior to the commencement of the preload fill and construction, for review and approval by the Planning Authority and Department of Public Works.

##### Ongoing

4. That the applicant shall arrange for the preload areas used by the public be inspected weekly during the preload phase, with any identified safety issues resulting from settlement or interim infrastructure to be addressed immediately.
5. That the applicant shall continue to participate with other interested stakeholders in a process that aims to develop a PTC master plan that helps achieve the wider community benefits of an attractive and convenient integrated transportation center.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application #2018-002, 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. 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.
3. Performance Guarantee and Inspection Fees A performance guarantee covering the final site plan project construction elements (see Site Plan condition 1 above), inspection fee payment of 2.0% of the guarantee amount and three (3) final sets of plans must be submitted to and approved by the Planning and Urban Development Department and Public Works Department prior to the commencement of the preload contract. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
4. Defect Guarantee A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
- 5a. Preconstruction Meeting Preload: *Prior to the commencement of the preload 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 Works representative and owner to review the construction schedule and critical aspects of the preload work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved civil plans. 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.
- 5b. Preconstruction Meeting Final: *Prior to the commencement of the construction of the final stormwater and site plan elements* A second pre-construction meeting shall be arranged by the contractor and held at the project site, to include the contractor, Development Review Coordinator, Public Works representative and owner, in order to review the construction schedule, critical aspects of the final site work and all details as noted in 5a. above.
6. Construction Management Plans The applicant, contractor and subcontractors are required to conform to the approved Construction Management Plan (Submission WS1), and all conditions contained within the project's approval, for the entire duration of the project. Any amendments to the approved Construction Management Plan shall be reviewed and approved by the Department of Public Works prior to the execution. The Planning Authority and the Department of Public Works have the right to seek revisions to an approved Construction Management Plan.
7. 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.)
8. Storm Water Management Condition of Approval  
The developer/contractor/subcontractor must comply with conditions of the construction storm water management plan and sediment and erosion control plan based on City standards and state guidelines. The owner/operator of the approved stormwater management system, and all assigns. shall comply with the conditions

of Chapter 32 Storm water including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.

A maintenance agreement for both of the stormwater drainage systems, as attached, or in substantially the same form, shall be submitted for review by Corporation Counsel. Once approved, the document shall be signed and recorded at the Cumberland County Registry of Deeds prior to the completion of the preload construction contract. Please submit final copies to both the Department of Planning and Urban Development and the Department of Public Works.

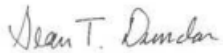
Please note that evidence of contract(s) for the maintenance of the stormwater systems must be submitted prior to the start of construction on the respective stormwater systems; the contract(s) should specify which system and associated plans/details.

9. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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 the final Performance Guarantee reduction. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Jean Fraser at (207) 874- 8728.

Sincerely,



Sean Dundon, Chair  
Portland Planning Board

**Attachments:**

1. Traffic Engineer comments dated 9.25.18 (Att 5 to PB Report re sidewalk waiver)
2. Traffic Engineer comments dated 9.20.18
3. Transportation Program Manager comments dated 9.12.18 (re condition TMP #2 and SP#2)
4. Peer Engineer Memo dated 7.13.18 (re condition SP #2)
5. Planning Board Report
6. City Code, Chapter 32
7. Sample Stormwater Maintenance Agreement
8. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart G. O'Brien, City Planning Director, Planning and Urban Development  
Barbara Barhydt, Development Review Services Manager, Planning and Urban Development  
Jean Fraser, Planner, Planning and Urban Development  
Deborah Andrews, Historic Preservation Program Manager, Planning and Urban Development  
Caitlin Cameron, Urban Designer, Planning and Urban Development  
Bruce Hyman, Transportation Program Manager, Planning and Urban Development  
Mike Russell, Director of Permitting and Inspections  
Ann Machado, Zoning Administrator, Permitting and Inspections  
Jonathan Rioux, Deputy Director, Permitting and Inspections

Jeanie Bourke, Plan Reviewer/CEO, Permitting and Inspections  
Chris Branch, Director of Public Works  
Keith Gray, Senior Engineer, Public Works  
Doug Roncarati, Stormwater Coordinator, Public Works  
Jane Ward, Engineering, Public Works  
Rhonda Zazzara, Construction Engineering Coordinator, Public Works  
Jeff Tarling, City Arborist, Public Works  
Jeremiah Bartlett, Transportation Systems Engineer, Public Works  
William Scott, Chief Surveyor, Public Works  
Mike Thompson, Fire  
Danielle West-Chuhta, Corporation Counsel  
Jennifer Thompson, Corporation Counsel  
Victoria Volent, Housing Program Manager, Housing and Community Development  
William Needelman, Waterfront Coordinator, Economic Development Department  
John Peverada, Parking Manager  
Thomas Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard and Curran  
Christopher Huff, Assessor



Jean Fraser <jf@portlandmaine.gov>

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## Portland Transportation Center - Sidewalk Waiver

1 message

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**Tom Errico** <thomas.errico@tylin.com>  
To: Jean Fraser <jf@portlandmaine.gov>

Tue, Sep 25, 2018 at 3:13 PM

Hi Jean – The south side of the Thompson's Point Connector Road does not currently have a sidewalk from the Main Terminal driveway towards Thompson's Point, with the exception of a short section at the bus shelter. The design of the sidewalk system on Thompson's Point Connector Road was based upon a detailed planning evaluation as it related to facilities to Thompson's Point and the crossing of the rail line. Based upon that evaluation, a shared use facility was programmed for the northwest side of the road due to rail crossing limitation. Given constraints and conditions, I support a waiver for constructing a sidewalk along the subject section of roadway.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
**TYLIN** INTERNATIONAL  
12 Northbrook Drive  
Falmouth, ME 04105  
+1.207.781.4721 main  
+1.207.347.4354 direct  
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Twitter | Facebook | LinkedIn | Google+

"One Vision, One Company"



Jean Fraser &lt;jf@portlandmaine.gov&gt;

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## Portland Transportation Center - Final Traffic Comments

1 message

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**Tom Errico** <thomas.errico@tylin.com>

Thu, Sep 20, 2018 at 9:13 AM

To: Jean Fraser &lt;jf@portlandmaine.gov&gt;

Cc: Keith Gray &lt;kgray@portlandmaine.gov&gt;, Bruce Hyman &lt;bhyman@portlandmaine.gov&gt;, Jeremiah Bartlett &lt;JBartlett@portlandmaine.gov&gt;, "Jeff Tarling (JST@portlandmaine.gov)" &lt;JST@portlandmaine.gov&gt;

Hi Jean – I have reviewed the application materials and offer the following final traffic comments.

- A Traffic Movement Permit Application was submitted on July 16, 2018 and a Scoping meeting was held on August 2, 2018. In response to the scoping meeting, the Applicant conducted a detailed traffic evaluation of the Terminal pick-up/drop-off area to ensure safe and efficient traffic conditions. The Site Plan was developed based upon the traffic evaluation and improvements are proposed, which I generally find to be acceptable. I find the project meets TMP requirements with the conditions noted separately.
- The Traffic Movement Permit is based upon a peak hour trip generation estimate of 426 trips, 205 entering vehicles and 221 exiting vehicles. It should be noted that these trips are currently being generated by the Transportation Center and are not “new” trips to the area. The TMP is being required due to the incremental increase in traffic over the last 10-years, a MaineDOT TMP rule requirement. This effort brings the site into MaineDOT compliance.
- The parking lot has aisle widths that do not meet City Technical standards. I support a waiver from standards given long duration parking and that space within the lot will be allocated to provision of safe pedestrian facilities.
- The site plan maintains a detectible warning panel/ramp but removes the painted access area. The applicant should provide an explanation for this change and consider removing this feature. In this same area, a parking space of 8-foot wide is proposed. This is similar to compact size parking spaces in the main lot. I find the space to be acceptable.
- Wayfinding sign layout details (size, lettering, etc.) shall be provided for review and approval to ensure readability standards are met.
- The Applicant has provided a Construction Management Plan, which I generally find to be acceptable. I would note that greater detail is required during Phase 2/3 activities, when construction activity in the Terminal area will occur. It will be critically important that safe pedestrian and bicycle conditions be provided. Additionally, it appears that access and egress movements will be permitted at the existing egress driveway. I would suggest that greater detail be provided as a condition of approval.

If you have any questions, please contact me.

Best regards,





Jean Fraser &lt;jf@portlandmaine.gov&gt;

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**PTC Parking Lot/Site Circulation Changes Comments (Rev.): #2018-002**

1 message

**Bruce Hyman** <bhyman@portlandmaine.gov>

Wed, Sep 12, 2018 at 4:24 PM

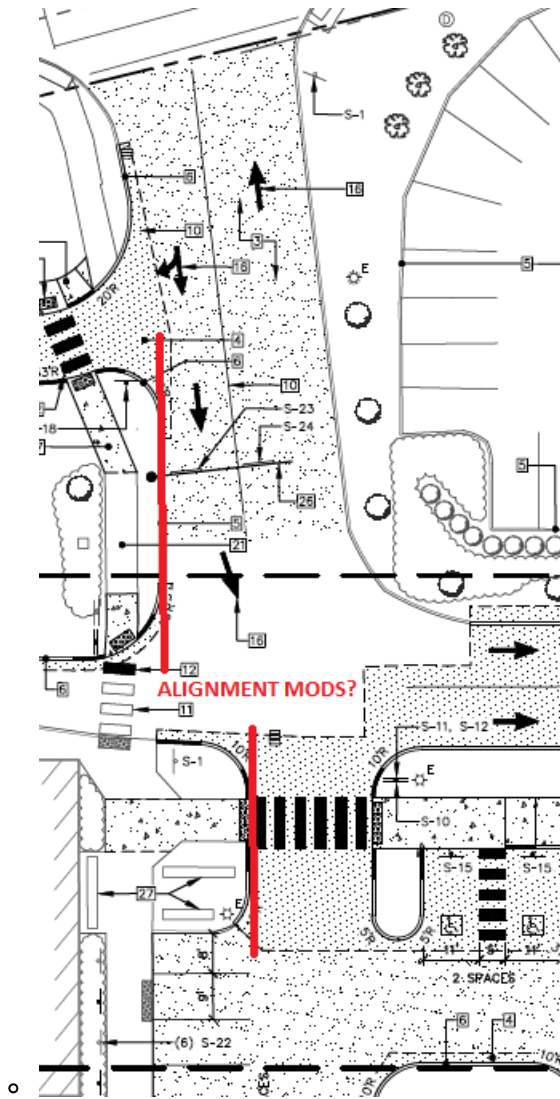
To: Jean Fraser &lt;jf@portlandmaine.gov&gt;

Cc: Tom Errico &lt;thomas.errico@tylin.com&gt;, Jeremiah Bartlett &lt;jbartlett@portlandmaine.gov&gt;, Keith Gray &lt;kgray@portlandmaine.gov&gt;, Barbara Barhydt &lt;bab@portlandmaine.gov&gt;

Good afternoon, Jean,

The following are my comments on the latest submittals by Sebago Technics following our most recent meeting:

- I find the site circulation in front of the PTC terminal much improved over the previous concept - one potential additional modification that should be considered is to provide a sidewalk extension for some length along the outside perimeter of the Drop-off lane - I anticipate that some riders who are running late for departures will exit vehicles while in the queue with baggage and would otherwise have to walk within the queueing lane area
- the pavement markings within the handicapped parking spaces is not correct and is to be corrected (it is not to be striped as/similar to the crosswalks)
- the spacing of the new bicycle racks is to be adjusted to show no less than 3' on center (o.c) between the bike racks to allow for proper usage - labels should be added to the drawing to indicate this spacing to ensure proper installation
- during the TMP scoping meeting and subsequent meetings discussing transportation/traffic strategies to reduce parking demand, the topic of wayfinding signage was raised to highlight bicycling and walking opportunities to the PTC to/from the Downtown - a commitment by the applicant to produce or contribute to a wayfinding program is recommended
- I find the tree wells, as placed in a staggered configuration within the pedestrian walkways with the parking lot, intrusive to pedestrian circulation as shown - their intrusiveness should be minimized - I could not find a detail to indicate whether tree grates or open tree wells were proposed
- consideration should be given to providing better alignment between the entry driveway and the entrance to the Short-Term Parking lot - currently these are off-set considerably - the driveway curb line/width and/or the curb extension extent could be modified to provide better alignment



- any detectable warning panels, if used at corners with public streets/row, are to be cast iron, not composite as shown in the detail sheet

Please do not hesitate to contact me if you or the applicant have any questions on the above items.

Bruce

--  
 Bruce Hyman  
 Transportation Program Manager  
 Transportation Division

Department of Planning & Urban Development  
 389 Congress Street  
 Portland, Maine 04101  
 (207) 874-8717 phone

bhyman@portlandmaine.gov  
<http://www.portlandmaine.gov/1363/Transportation-Division>  
 Yes! Transportation's Good Here ....



## MEMORANDUM



**TO:** Jean Fraser, Project Planner  
**FROM:** Lauren Swett, P.E.  
**DATE:** July 13, 2018  
**RE:** Portland Transportation Center (100 Sewall Street), Site Plan and Site Location of Development Permit Application

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Woodard & Curran has reviewed the Site Plan and Site Location of Development Permit Application submittals for the Portland Transportation Center Parking Expansion project located at 100 Thompson's Point Road in Portland, Maine. The project involves the construction of approximately 2.86 acres of new parking lot (approximately 290 parking spaces) and construction of a subsurface sand filter storm water treatment system. The project will be performed in two phases, with the first phase involving the preload of the site and the installation of a temporary parking surface with temporary stormwater management.

### Documents Reviewed by Woodard & Curran

- Site Plan and Site Location of Development Permit Application: Portland Transportation Center, dated February, 2018, prepared by Sebago Technics on behalf of Langdon Street Real Estate, Inc.
- Response to Comments dated May 10, 2018, prepared by Sebago Technics on behalf of Langdon Street Real Estate, Inc.
- Portland Transportation Center: Thompson's Point Connector Plan, revised June 21, 2018, prepared by Sebago Technics on behalf of Langdon Street Real Estate, Inc.

In addition to the document review, Woodard & Curran attended a meeting with the Applicant and the Maine DEP on June 4, 2018, and attended an application review meeting with the Maine DEP on July 9, 2018. The Applicant has made significant changes to address the comments provided at the June 4 meeting.

### Comments

- 1) Due to the preload requirements for the site, the project will be completed in phases. The Applicant has provided a phased approach to stormwater management, and has provided grading and utility plans for the preload phase. A site plan showing parking lot layout should also be provided for this phase, as the proposed underdrain soil filters will be located within the parking lot footprint, requiring a differing layout during the preload phase.
- 2) The Applicant has received Army Corps Approval, and we understand that approval from the Maine DEP for wetland impacts is pending.
- 3) The Applicant will be required to provide assurance of the completion of the final parking lot construction with the final stormwater treatment system. This will be a requirement for compliance with the Site Location of Development permit. We understand that the City and the MaineDEP will be having further discussion about this, and a condition of approval requiring construction of the final stormwater treatment system within a certain time frame will likely be required as part of the final approval.
- 4) The project is being reviewed under the City's Delegated Review Authority for the Site Location of Development Act; as such, the project must show conformance with MaineDEP Chapter 500 Basic, General, and Flooding Standards. Also, in accordance with Section 5 of the City of Portland Technical Manual, a Final Level III development project is required to submit a stormwater management plan pursuant to the regulations of MaineDEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards. We offer the following comments:
  - a) Basic Standards: Plans, notes, and details and an erosion and sediment control Inspection, Maintenance, and Housekeeping Plan have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in general accordance with Appendix A, B, & C of MaineDEP Chapter 500.



- b) General Standards: The Applicant is utilizing a subsurface sand filter in combination with a proprietary ADS chamber system to detain and treat storm water collected in the parking area to meet the quality requirements associated with the General Standards in the final condition. During the preload phase, underdrained soil filters are proposed to treat the reclaim parking lot surface. In addition, a subsurface stone drainage system is proposed as a replacement of the existing stormwater pond located within the project area. While this additional system is not in accordance with any specific DEP standards, it provides an improvement over the existing condition, and will provide for adequate treatment of existing developed areas during the short preload phase. We have the following comments on the proposed systems:
1. It appears that a liner may be necessary for the proposed interim underdrain soil filters. The note is missing from the detail.
  2. Manholes should be provided at both ends of the proposed isolator row in the final treatment system. The manholes provide access for maintenance of the system.
  3. The HydroCAD model should be reviewed versus the plans. Invert elevations for the outlet control structure do not match between the two documents.
- c) Flooding Standards: The project discharges directly to the Fore River, and therefore receives a waiver from the Flooding Standard. Please see some additional stormwater comments below.
- 5) The Applicant should review the Inspection and Maintenance Plan. Sections have been provided for post-construction inspection for the preload and final phases, however the stormwater systems listed are not consistent with the final plans.
  - 6) The outlet from the proposed stormwater chamber system is to a pipe with a 10% slope. The Applicant is proposing larger rip rap at this outlet, but please provide confirmation that the rip rap is adequately sized (size and thickness of layer) for anticipated velocities.
  - 7) While the project is not required to meet the Flooding Standard, the flow is increasing. The Applicant has modeled the existing downstream 36-inch culverts, and the model indicates that they have adequate capacity. Please provide verification of the condition of these culverts to ensure that the full capacity is available as modeled.
  - 8) Please provide some additional clarification on the grading at the western entrance to the Thompson's Point Connector Road. It appears that the driveway will be regraded, based on the proposed contour that is shown, however the area is not identified for repaving.

Please contact our office if you have any questions.

# PLANNING BOARD REPORT PORTLAND, MAINE



## Portland Transportation Center Parking Expansion

100 Sewall Street (Thompson Point connector)

Level III Site Plan. TMP and Site Location of Development (SLODA)

Project (UI) 2018-0002 CBL: 77-A-1

Langdon Street Real Estate (dba as Concord Coach Lines), Applicant

Submitted to Portland Planning Board Public Hearing Date: September 25 <sup>th</sup> , 2018	Prepared by: Jean Fraser Date: September 21 <sup>st</sup> , 2018
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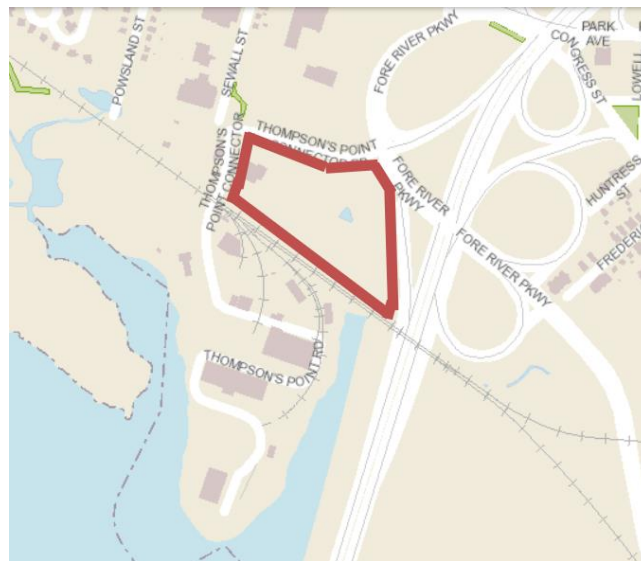
### I. INTRODUCTION

Sebago Technics Inc, on behalf of Langdon Street Real Estate, requests final approval to a Level III Site Plan, Traffic Movement Permit and Site Location of Development (SLODA) application for a proposed expansion of the surface parking associated with the Portland Transportation Center (PTC) near Thompsons Point. The project was considered at a Workshop on July 17, 2018, and since then the applicant has completed the TMP process and submitted additional information to address the questions and concerns raised by the Board.

The proposed 8.8 acre site currently has 3.46 acres of impervious surface, and the proposal is to expand the parking lot by 2.8 acres to the south-west to create approximately 300 additional vehicle parking spaces. The site is located in the B-5 zone and the Resource Protection Zone. The project is subject to review under Portland's site plan ordinance, under the City's delegated review for Site Location Development, and under the City's delegated review for a Traffic Movement Permit.

The applicant has submitted the following additional information ([WS T1-8](#)) to address the Board's concerns at the PB Workshop, which will be discussed in detail in this Report:

- **Wetlands:**
  - Vernal Pool Report ([Att WS T- 3](#))
  - MDEP NRPA Permit which includes justification information ([Att WS T 1 and 7](#))
  - Information on how mitigation monies are allocated ([WS T- 2](#))
- **Long Term Planning and Future Traffic/Parking Demand**
  - PTC Parking Garage Scoping Analysis ([WS T- 5](#))
  - TMP Sections 1-6 ([WS T- 4](#))
  - Site Traffic Analysis ([WS T- 6](#))



At the Planning Board meeting the applicant will present information that amplifies on these issues.

### II. BACKGROUND

The background material ([WS E Project Description](#)) describes the development of the PTC as the result of public / private partnerships, beginning in 1991 as the small terminal facility for Concord Coach Lines (approximately 200 parking spaces), and then adding just under 500 spaces when the Downeaster Amtrak Service was added in 2001. It outlines the recent growth in use of the facility and associated demand for low cost parking that supports the use of the train and bus transit.

It is understood that the question of increasing PTC parking supply to accommodate future growth in the use of this facility has been under discussion for some years, and the recently submitted MDOT Garage Analysis ([WS T-5](#)) provides an insight into the issues and costs involved.

Currently up to 300 additional spaces are leased from Thompson’s Point to augment the existing supply, but that lease will be terminated next year. Therefore the proposed surface expansion will provide an increased parking supply in the short term and then would offset the loss of the leased spaces.

The expansion would be carried out in two parts:

- Preload phase of 1-2 years to stabilize the filled wetland area, during which a reclaimed asphalt surface will be placed to allow parking over the entire area , with jersey barriers to control parking and temporary site lighting;
- Final completion, during which the revised layout for the area around the terminal will be implemented, and in the preload area the interim drainage etc will be removed and replaced with the permanent stormwater infrastructure and parking lot landscaping/lighting and pedestrian facilities to meet all the review standards.

**Applicant:** Langdon Street Real Estate (dba as Concord Coach Lines)

**Consultants:** Sebago Technics, Steve Sawyer (Traffic) and Will Conway (Site)

**III. REQUIRED REVIEWS**

The parking expansion proposals were originally submitted for review in the context of the [City Site Plan ordinance](#) and the [State Site Location of Development Act \(SLODA\)](#) regulations. The MDEP determined that the SLODA review would be delegated to the Planning Authority, although as per the regulations the MDEP staff have provided technical assistance, particularly regarding the way the Chapter 500 requirements would be applied on a site of this scale with a substantial preload period during which the site would also be in used for public parking. The applicant was requested to provide further stormwater treatment during the preload and an amended SLOD application and supporting documentation was received in May, 2018 to address that issue.

It was determined that the PTC needed a [Traffic Movement Permit](#) for the current levels of trip generation and impacts on the associated intersection operation. The city has delegated authority from the MDOT to review the TMP, and staff have consulted the MDOT regarding this somewhat unique project. A TMP Scoping meeting was held on 8.2.2018 where the focus was on understanding how people get to the PTC, scope for minimizing traffic impacts on the Thompson Point connector and encouraging alternative modes. The applicant undertook further survey work and staff recommend that the Permit be granted.

<i>Review</i>	<i>Applicable Standards</i>
Site Plan	Section 14-526 City’s land Use Code
Traffic Movement Permit (delegated from State)	State Regulations
Site Location of Development (delegated from State)	Section 14-Technical Manual and State Regulations

**IV. PROJECT DATA**

Existing Zoning	B5, with the “toe’ of the site also in the Stream Protection Zone		
Existing Use	Vacant, with vegetation and stormwater treatment basin for the existing parking area		
Proposed Use	Surface parking, with associated stormwater management & treatment devices		
Parcel Size	8.74 acres including 1.92 acres of MDOT land along the south edge		
	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Wetlands	2.03	0	(2.03 acres)
Impervious Surface Area	8.74 acres	11.6 acres	2.86
Parking Spaces (on site)	Approx 700 Incl Park & Ride)	300+/-	Approx 1000 (incl Park & ride)
Bicycle Parking Spaces	25	36	11
Estimated Cost of Project	tbc		

**V. PLANNING BOARD WORKSHOP DISCUSSION July 17, 2018**

The main focus of the Planning Board comments were:

- That the filling of a large wetlands, with associated impacts on the natural environment, was not justified in order to provide surface parking and meet only the current parking needs;
- There appears to be an absence of long term planning, without the development of a regional solution that improves access by all modes - needs to reflect comprehensive plan objectives;
- That if the project is approved, the large financial mitigation payment to the State should be directed in or near/be beneficial to Portland;
- What leverage is there to ensure the final project meeting all site plan standards will be completed;
- What interim management during pre-load, given possibility for uneven settlement and ongoing public access.

**VI. PUBLIC COMMENT**

A total of 44 notices were sent to property owners within 500 feet of the site and a legal ad ran in the September 14<sup>th</sup> and 17<sup>th</sup>, 2018 editions of the *Portland Press Herald*. In addition, the applicant has held two required Neighborhood meetings, one associated with the SLODA application and one for the site plan application. It is understood that one person attended. There were no public comments at the Planning Board workshop in July 2018.

**VII. SUMMARY OF KEY ISSUES**

<b>ISSUE</b>	<b>REGULATORY CONTEXT</b>	<b>REVIEW CONCERNS</b>	<b>HOW ADDRESSED</b>	<b>POTENTIAL CONDITIONS OF APPROVAL</b>
Loss of 2 acres of wetland of special significance	<i>SLODA</i> : No adverse effect on the natural environment <i>SITE PLAN</i> : Preservation of Significant natural features	That there may be adverse impacts on the environment that are not justified in full.	The submitted analysis documents consider the wetlands value, and NRPA “Findings of Fact” confirms there are no vernal pools nor species/habitats of wildlife importance; main function is stormwater treatment	None suggested
Mitigation	As above	That this should benefit the Portland area.	Further information was submitted ( <u>Att WST 2</u> ) clarifying that the funds go to a conservation grant program managed by the Maine Natural Resources Conservation Program, and will be directed towards projects that are proposed in the biophysical area around Portland (Southern Maine Region)	None suggested.
Why not a parking garage	<i>SLODA</i> : Infrastructure <i>TMP</i> : Impact on surrounding streets <i>SITE PLAN</i> : Transportation Standards	Workshop packet did not include any evidence of long term planning with a view to constructing a parking garage.	There is commitment to construction of garage but the funding and final plans not yet resolved (update on this anticipated at the meeting).  Applicant notes that Wetlands would need to be filled in now to allow for a garage anywhere on the site, in order to provide adequate parking during the construction of the garage.	Suggested: <i>That the applicant shall continue to work with all other relevant parties to achieve a PTC master plan that helps achieve the wider community benefits of an attractive and convenient integrated transportation center.</i>
Data on how people get to the terminal	TMP required this information	Need to consider long term and support alternative modes	The applicant revised the layout of the area in the vicinity of the terminal to better address the access pressures, but the question of supporting alternative modes not fully addressed.	Suggested Conditions: <ul style="list-style-type: none"> <li>• Contribution to the city's <i>Bicycle and Pedestrian Wayfinding</i> project.</li> <li>• Revisions to the plans for the immediate terminal area</li> </ul>

<b>ISSUE</b>	<b>REGULATORY CONTEXT</b>	<b>REVIEW CONCERNS</b>	<b>HOW ADDRESSED</b>	<b>POTENTIAL CONDITIONS OF APPROVAL</b>
Public use of the pre-load area without permanent infrastructure and potential uneven settlement (interim management)	<i>SITE PLAN</i> : Public Infrastructure and Community Safety Standards	Potential uneven subsidence and CPTED issues	Applicant added a plan showing interim parking layout and it includes interim lighting.	Suggested: <i>That the applicant shall continue to work with all other relevant parties to achieve a PTC master plan that helps achieve the wider community benefits of an attractive and convenient integrated transportation center.</i>
Ensuring that the final parking lot layout and features are implemented in accordance with the overall site plan	<i>SITE PLAN</i>	That the pre-load area (reclaimed asphalt, jersey barriers and temporary lighting) will continue to be used for parking without the approved improvements to meet site plan standards.		Suggested: <i>That the applicant shall post a Performance Guarantee for the final site plan project construction elements, to be posted prior to the commencement of the pre-load contract; reductions to the Performance Guarantee may only be processed in relation to the completion of the final project construction elements.</i>

**VIII. RIGHT, TITLE & INTEREST AND FINANCIAL AND TECHNICAL CAPACITY**

The applicant has submitted a copy of the applicant’s ownership deed and a letter dated 2.6.18 from People’s United Bank confirming financial capacity. The submissions were prepared by professional consultants.

**IX. EXISTING CONDITIONS**

The 3 acre site for the parking expansion is the triangle of land in the foreground of the aerial photograph below, looking north (courtesy of GOOGLE), with the 2 acres of “brown” wetlands in the southwest corner. As illustrated on the Plan 2 Existing Conditions, there are two stormwater structures on the site:

- A detension basin that was installed some years ago to provide detension and treatment for the adjacent existing parking lot near the terminal; it does not meet current Chapter 500 standards;
- Steel culverts at the southwest corner and under the railway tracks that discharge into the Fore River.

Within the site there are about 2 acres of wetlands that were surveyed in detail by Normandeau Associates, and the report is included at page 89 of the SLOD Application in Attachment WS LC – 1.

The consultants concluded that this is an emergent wetland and dominated by common reed and broad-leaved cattail with a lack of vegetation diversity. They did not make any observations of wildlife





but noted it could provide nesting habitat. They concluded that its dominant function was that of sediment and toxicant retention. The same consultants conducted a vernal pool study in April/May 2018 (attachment WST-3) but did not find evidence of any vernal pools.

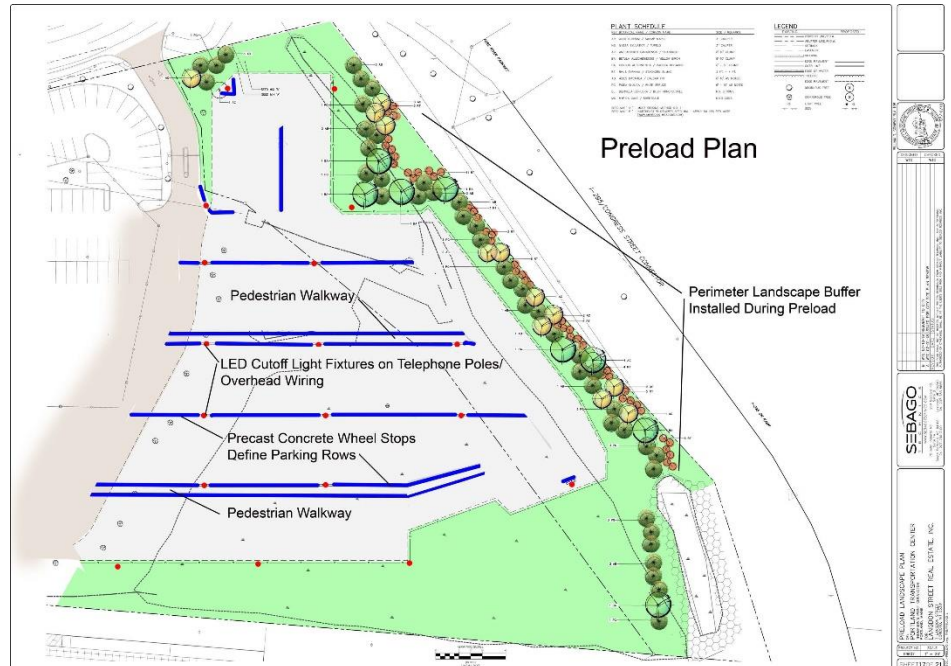
## X. PROPOSED DEVELOPMENT

### A. Preload Phase

This phase is necessary to stabilize the 60,000 sq yards of fill that would be brought in to fill the wetland area. The fill will settle and the applicants Soils Report (Attachment WS S-2) recommends a period of 12-18 months for this process, during which time there could not be any utilities within the fill soils nor any final site work.

The applicant proposes to remove the existing detention basin and introduce interim stormwater management structures within the fill level. A reclaimed asphalt surface, jersey barrier controls and temporary lighting (see Plan 4 and the diagrammatic plan to right) would allow public parking on this area during the preload phase.

Peripheral landscaping is proposed as part of this phase, but work to modify the circulation and parking in the vicinity of the terminal would not be undertaken until the preload is complete for logistical reasons.



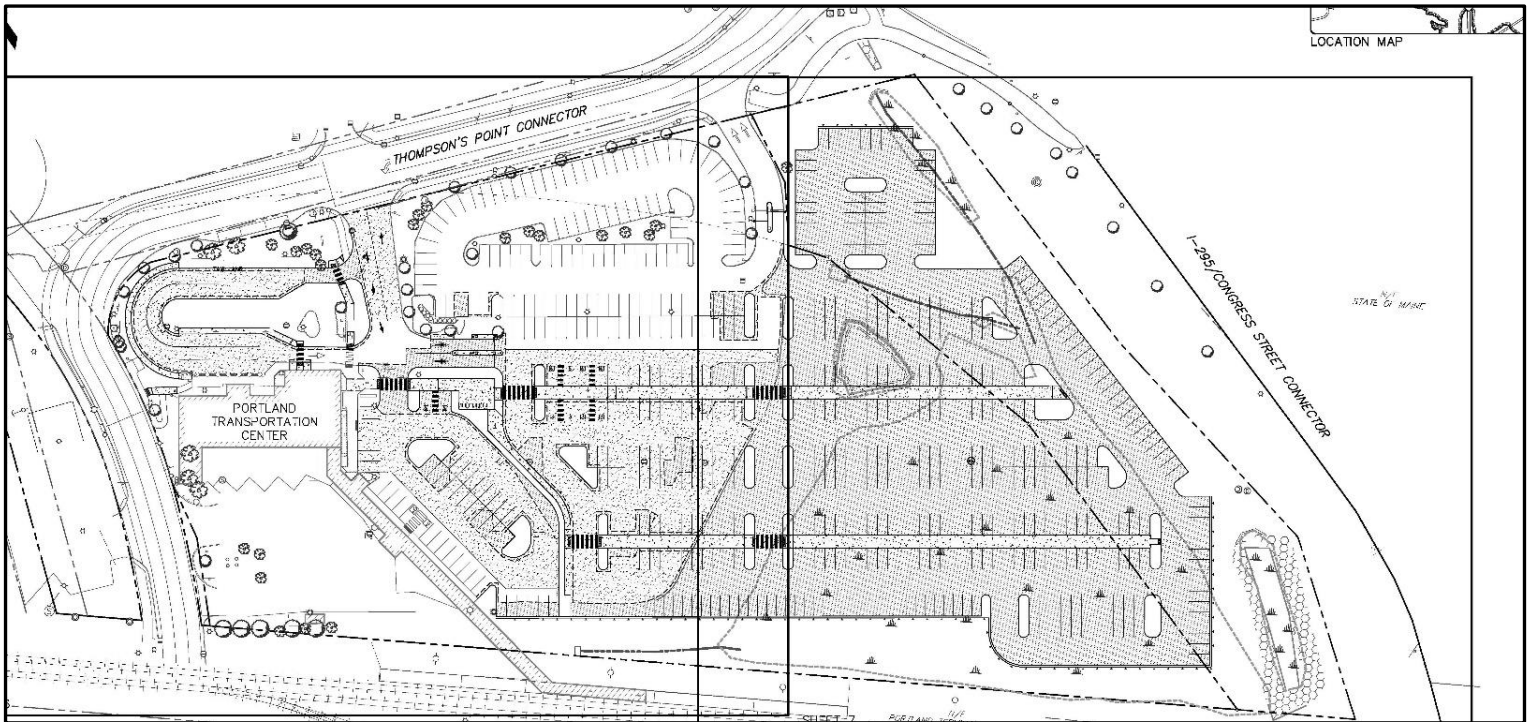
### B. Permanent completion of the project

When the preload is complete, the parking use will be interrupted for several months to allow for the removal of the reclaimed asphalt and the interim stormwater management structures, and the new construction of the permanent parking area, including (see Plan Set) :

- New stormwater system that fully meets Chapter 500 requirements to treat the run-off from both the existing and new parking areas
- Resurfacing and striping
- Revised access to better integrate the existing and new areas of parking
- Modifications to the area in front and side of the terminal currently used for drop offs, short term parking, taxis etc to better manage the different access needs in this area and prevent queuing out onto the Connector
- Parking lot landscaping, along with islands and pedestrian walkways
- Lighting

The Overall Site Plan is included below.

**Proposed Overall Site Plan (see Plan 5):**



**XI. STAFF REVIEW**

**A. ZONING ANALYSIS**

The proposed parking area is located in the B5 zone and the PTC, as an “intermodal transportation facility”, is a permitted use in this zone; the expanded parking is an ancillary use to the PTC although off street parking lots are also allowed as a permitted use in this location. The project complies with the zoning requirements of this zone.

A small part of the site in the southwest corner is also located in the Stream Protection Zone as it is within 75 feet of the Fore River. This zone seeks to conserve stream channel capacity and minimize siltation and stream bank erosion. The ordinance allows filling of material within the zone subject to a site plan review, but requires parking to be set back from the normal high water line of the stream unless the Planning Board approves a reduced setback where it is shown to be the “least extent necessary”. A reduced setback is not necessary for the project.

**B. SITE LOCATION OF DEVELOPMENT ACT (SLODA) REVIEW (Technical Manual Section 14.3. Standards)**

Financial and technical capacity.

The applicant has provided a letter from TD Bank (January 2018) as evidence of financial capacity (Attachment WS G) and noted the technical capacity involved in developing the PTC to date. The standards require that developer has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards and with the provisions of Portland’s Code of Ordinances. The Planning Board may issue a permit that conditions any site alterations upon a developer providing the Planning Board with evidence that the developer has been granted a line of credit or a loan by a financial institution authorized to do business in this State or with evidence of any other form of financial assurance the Planning Board determines to be adequate. The Planning Board shall also assess any such application in accordance with the standards set forth in Chapter 373 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.

Traffic movement. – The staff review determined that a Traffic Movement Permit was necessary for the PTC facility, although the proposed parking lot expansion did not independently trigger the requirement (Attachment 1). The applicant has completed the TMP review and an associated motion with conditions of approval are included in the report.

No adverse effect on the natural environment - The standard requires that the developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 375 of the Maine Department of Environmental Protection Site Law Regulations, as may be amended from time to time.

The proposal includes the filling of about 2 acres of wetland and the loss of 17 existing trees that surround the southern edge of the existing parking between the access and the railway. As noted above, the SLOD application contains an analysis of the wetland and this indicates that its function is largely related to stormwater quality, and the applicant has incorporated extensive stormwater quality measures into the proposals to replace that function. The applicant has drawn attention to the supporting analysis in the MDEP NRPA Tier 3 Wetland Fill Permit and associated "Findings of Fact" (included at page 26 in Attachment WS T -1).

The proposals include both peripheral and parking lot landscaping; staff consider this addresses the requirement to fit the project harmoniously into the existing natural environment.

Soil types – The standard requires the applicant to provide a map and analysis indicating the location of various soil types on-site, and suitability of such soils and ledge to support the proposed site improvements. The PTC application includes a Soil Report (Attachment WS S-2).

Ground Water - In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules as may be amended from time to time. See g. below.

Infrastructure. This standard requires that the developer has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. This standard largely does not apply, except regarding impacts on roadways which has been addressed by the TMP process. Infrastructure to address the increasing traffic and parking demand associated with the PTC eg a parking garage is addressed by a suggested condition of approval requiring continued efforts to develop and implement a master plan for meeting these needs.

Flooding and Storm water management, erosion, and sedimentation control. The SLOD standards are: The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules as may be amended from time to time. The proposed development meets the standards for storm water management in 38 MRSA §420-D as amended from time to time (See Exhibit 1) and the standard for erosion and sedimentation control in 38 MRSA §420-C as amended from time to time. In making a determination under this subsection, the Planning Board shall apply the standards set forth in Chapter 500 and 502 of the Maine Department of Environmental Stormwater Management and Direct Watersheds of Waterbodies Most at Risk from New Development Rules, as may be amended from time to time.

During the review, the question was raised as to whether the *Preload* phase was required to meet the stormwater standards in full, and guidance sought from the MDEP Regional Licensing and Compliance Manager (Bureau of Land Resources). Staff were advised that the Preload phase needed to include stormwater detention and treatment to meet Chapter 500 as far as possible. The applicant submitted additional *Preload* proposals in late May 2018, which are considered broadly acceptable to both the MDEP and the City in terms of the overall approach to stormwater management and treatment although a number of minor items remained outstanding. The applicant has addressed those residual issues in a recent response letter (WS T - 9) and revised Stormwater Report (WS T - 8), and the City's Peer Engineer Reviewer is completing a final review which will be available at the PB Hearing.

The Maine Historic Preservation Commission (MHPC) has identified the existence of a former canal (Cumberland and Oxford) generally across the southern part of the site. A walkover did not find any remains of the canal, but the Commission has stated that if the proposal requires excavation of the wetland soils, then archaeological monitoring is recommended prior to construction of the parking lot ([Attachment WS LC1](#)).

The applicant has confirmed that the Preload proposals would not disturb anything below the current surface (see Sections in [Plan 4](#)). The final stormwater details were submitted recently and after the earlier MHPC review, and staff recommend that these final plans be sent to the Commission so the Commission can confirm, prior to the commencement of construction, that they have reviewed the final “completion” plans and are satisfied that they do not require archaeological monitoring.

### **C. TRAFFIC MOVEMENT PERMIT discuss timing**

The city has delegated authority from the MDOT to review the TMP and the city’s Traffic Engineering Reviewer Tom Errico takes the lead on this review. A TMP Scoping meeting was held on 8.2.2018 where the focus was on understanding how people get to the PTC, scope for minimizing traffic impacts on the Thompson Point Connector and encouraging alternative modes. In that context mention was made of the scope for supporting/contributing to the *Bicycle and Pedestrian Wayfinding* Plan that is part of the City’s wider wayfinding initiative to encourage alternative modes (see [Attachment 3](#) for background on this).

The applicant undertook further survey work over the summer, during which peak levels of use were observed and analysed with a report submitted in late August ([WS T 6](#)) along with a revised Site Plan and Landscape Plan for the areas nearest to the terminal ([Plans 4 and 7](#)). Staff considered that the study and associated revised plans addressed the TMP-related concerns, though some details still need to be fleshed out as noted in the comments from the Traffic Engineer ([Attachment 1](#)) and the Transportation Program Manager ([Attachment 2](#)). The comments were partially addressed in the final plans, and staff recommend that the Permit be granted subject to a condition that requires a contribution to implementation of the *Bicycle and Pedestrian Wayfinding* Plan, along with revisions to the details of the site an landscape plans.

The city’s Traffic Engineering Reviewer Tom Errico has noted ([Attachment 1](#)):

- A Traffic Movement Permit Application was submitted on July 16, 2018 and a Scoping meeting was held on August 2, 2018. In response to the scoping meeting, the Applicant conducted a detailed traffic evaluation of the Terminal pick-up/drop-off area to ensure safe and efficient traffic conditions. The Site Plan was developed based upon the traffic evaluation and improvements are proposed, which I generally find to be acceptable. I find the project meets TMP requirements with the conditions noted separately.
- The Traffic Movement Permit is based upon a peak hour trip generation estimate of 426 trips, 205 entering vehicles and 221 exiting vehicles. It should be noted that these trips are currently being generated by the Transportation Center and are not “new” trips to the area. The TMP is being required due to the incremental increase in traffic over the last 10-years, a MaineDOT TMP rule requirement. This effort brings the site into MaineDOT compliance.

### **D. SITE PLAN REVIEW**

The proposed parking lot expansion was reviewed by staff for conformance with the relevant review standards of the City of Portland’s site plan ordinance. Staff comments below focus on the standards that apply to this project, given that there are no buildings or structures proposed.

#### **1. Transportation Standards**

**Impact on Surrounding Street Systems** - This has been addressed by the TMP review as noted above. Both under this standard and the SLOD the question of ensuring the infrastructure proposals meet anticipated future demands has been raised as an issue, particularly the need for parking garage. The applicant has explained that the surface parking project is needed not only to meet current parking demand, but also to facilitate the development of a parking garage

as part of a long term plan. TA potential condition of approval requires the applicant to continue to work with others towards that objective.

### ***Access and Circulation***

**PRELOAD PHASE:** During the *Preload* the parking lot layout is an extension of the existing parking pattern, and the applicant has now confirmed (In Plan 4) and in the diagrammatic above) that the parking spaces will not be striped but that jersey barriers and traffic/directional signage will be provided. Staff have recommended a short term waiver of the technical standards that would apply to a final parking lot layout.

**PERMANENT COMPLETION:** The final layout has been revised to narrow the parking drive aisles and this allows for raised and planted pedestrian walkways leading towards the terminal. The City's consultant Traffic Engineer had suggested this was an option, and supports the associated waiver ([Attachment 1](#)).

### ***Bicycle access and parking***

The applicant was previously encouraged to increase in the number of parking spaces, together with their placement and design, in order to encourage bicycle access and use. The suggested condition of approval requests further clarification and review of this site plan requirement.

### ***Construction Management Plan***

The applicant has submitted a construction management Plan ([WS I](#)) which is updated in the supporting information in [WS-T 2](#). The Traffic engineering reviewer has commented ([Attachment 1](#)):

*The Applicant has provided a Construction Management Plan, which I generally find to be acceptable. I would note that greater detail is required during Phase 2/3 activities, when construction activity in the Terminal area will occur. It will be critically important that safe pedestrian and bicycle conditions be provided. Additionally, it appears that access and egress movements will be permitted at the existing egress driveway. I would suggest that greater detail be provided as a condition of approval.*

A suggested condition of approval is included to reflect these comments.

## **2. Environmental Quality Standards**

**Preservation of Significant Natural Features** - covered by the SLODA review above. The city's standard defines significant natural features 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.*
- (ii) Habitat for species appearing on the official state of federal list of endangered or threatened animal species;*
- (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;*
- (iv) Aquifers on islands in Casco Bay, as identified in the City of Portland Island Groundwater Management Study and/or by the Maine Geological Survey;*
- (v) Waterbodies including wetlands, watercourses, significant vernal pools and floodplains. These features may also be regulated by Division 26, Shoreland Regulations, Division 26.5, Flood Plain Management Regulations and Division 26.7, Stream Protection Ordinance of the City Code, along with Sections 5 and 8 of the Technical Manual or other State regulations.*

**Landscaping and Parking Lot Landscaping**

The proposed final landscaping within the parking area has been significantly enhanced in association with the addition of the pedestrian walkways- it is shown diagrammatically at right and in [Plan 7](#).

Staff have noted that the pattern of tree placement along the pedestrian walkways would impede passage and have recommended that the trees and the lights all be on one side of the walkway ([Attachment 2](#)).

Staff also note that the landscape plans do not include much planting in the very southern part of the parking area or around the edge, and would like that to be enhanced. A potential condition of approval includes these items along with the other site plan details mentioned above.



**Water Quality/Storm Water Management/Erosion Control** – covered by SLODA review above.

**3. Public Infrastructure and Community Safety Standards**

These standards are generally met or do not apply, except that during the Preload phase there needs to be interim inspections and management to ensure that public safety is maintained at all times. A suggested condition addresses this objective.

**4. Site Design Standards**

**Historic Resources**- see SLODA review above.

**Exterior Lighting and Signage and Wayfinding**

The proposals have incorporated lighting fixtures suggested signage, but the details have not been submitted. A suggested condition of approval requests the submission of details so that these can be documented as meeting the ordinance and technical standards.

**XII. STAFF RECOMMENDATION**

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed parking lot extension at the Portland Transportation center at 100 Sewall Street.

Please note that the conditions include the requirement for a Performance Guarantee for the final construction features to be posted prior to the commencement of the preload work. This is recommended to clarify that the project is not phased but includes a period of preloading and associated interim measures. The single Performance Guarantee is intended to ensure implementation of the final approved site plan project, and the amount would be based on the final construction costs of the proposals as shown in the submitted and approved site plans, excluding the preload plans. The condition includes an extension to three years (from the usual 2) to allow time for the final completion work to commence. Please see supporting reference in the e-mail from the Associate Corporation Counsel ([Attachment 4](#)).

### XIII. PROPOSED MOTIONS

#### A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on September 25, 2018 for (UI) 2018-0002 (Portland Transportation Center) (relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board [**finds/does not find**], based on the restrictions associated with the need to preload the site for 1-1.5 years, that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Sections relating to parking lot design, planting and lighting. The Planning Board [**waives/does not waive**] the relevant *Technical Manual* standards for a period of up to 2 years to allow the preload phase to be completed, subject to ongoing monitoring to ensure that the preload area is safe for public access at all times. It should be noted that the overall final site plan meets the Technical Standards except regarding the parking aisles noted below.
2. The Planning Board [**finds/does not find**], based upon the consulting traffic engineer's review (Attachment 1), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.14 *Parking Lot and Parking Space Design*. The Planning Board [**waives/does not waive**] the *Technical Manual* standard (Technical Manual Section 1.14) to allow the parking lot aisle widths as shown on the approved site plan, as supported by the Traffic Engineering reviewer.

#### B. SITE LOCATION OF DEVELOPMENT

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on September 25, 2018 for application for (UI) 2018-0002 (Portland Transportation Center) relevant to the Site Location of Development Act regulations; and the testimony presented at the Planning Board Hearing:

The Planning Board finds that the plan [**is/is not**] in conformance with the Site Location of Development Act regulations, subject to all of the waivers and conditions of the site plan approval for this application and in addition subject to the following conditions:

1. That the applicant shall inform the MDEP and the Portland Planning Authority when the pre-load phase has been completed, and confirm the timing for completion of final plan as approved.
2. That if, assuming the preload phase is implemented, the entirety of the final proposals subject of this approval have not been substantially commenced and ongoing within 3 years from the date of this approval, then the site would be in violation of SLOD law and a SLOD amendment would be required to bring the site into compliance.
3. That all stormwater installation shall be supervised by an independent "third party" engineer and reports submitted as required under Chapter 500.
4. That a contract for maintenance of the soil filter in the preload phase shall be in place prior to the start of construction for the preload, and that a separate contract shall be in place prior to the start of construction of the final stormwater system.

5. That prior to the commencement of the final site plan construction in the vicinity of the wetlands, the applicant shall submit an updated letter from the Maine Historic Preservation Commission (MHPC) that confirms the Commission has reviewed the final project plans, and the applicant shall comply with the MHPC recommendations for archaeological monitoring as required.

### C. TRAFFIC MOVEMENT PERMIT

Based upon the City of Portland's Delegated Review Authority, the Planning Board **approves/does not approve** the Traffic Movement Permit application, as submitted, subject to the following conditions:

1. That the applicant shall contribute to the City's *Bicycle and Pedestrian Wayfinding* project (between Portland Downton and PTC), in order to increase the number of bicycling and walking trips to and from the downtown by Portland resident users of the PTC, and also for visitors that may choose to travel to Portland by inter-city bus or passenger rail rather than drive. *[The suggested amount is being determined and a revised Motion will be available for the public hearing]*
2. That the applicant shall revise the plans for the immediate terminal area, including signage details and design of the bicycle storage, to address the comments of Tom Errico, Traffic Engineering Reviewer dated 9.20.19 in order to encourage alternative modes, manage access, and minimize impacts on the wider highway network.

### D. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board report for the public hearing on September 25, 2018 for (UI) 2018-0002 (Portland Transportation Center) relevant to the Site Plan Ordinance 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 the site plan standards of the land use code, subject to the following conditions:

#### Prior to the start of construction (no building permit would be required)

1. That the applicant shall post a Performance Guarantee for the final site plan project construction elements, to be posted prior to the commencement of the pre-load contract; reductions to the Performance Guarantee may only be processed in relation to the completion of the final project construction elements.
2. That the applicant shall revise the plans to address the outstanding detailed stormwater, engineering, bicycle parking number and design, and planting review comments, and address the questions of bicycle parking and peripheral/parking lot planting, for final review and approval by the Planning Authority.
3. That the applicant shall revise the Construction Management Plan for review and approval by the Planning authority and Department of Public Works.

#### Ongoing

4. That the applicant shall arrange for the pre-load areas used by the public be inspected weekly during the pre-load phase, with any identified safety issues resulting from settlement or interim infrastructure to be addressed immediately.



5. That the applicant shall continue to work with all other relevant parties to achieve a PTC master plan that helps achieve the wider community benefits of an attractive and convenient integrated transportation center.

## **ATTACHMENTS:**

### **PB REPORT ATTACHMENTS**

1. Traffic Engineer TMP
2. Associate Corporation counsel re
3. Peer Engineer SLODA comments

### **PUBLIC COMMENT (none)**

### **APPLICANT'S SUBMITTAL**

WS A Application Form  
WS B Right Title and Interest  
WS D Zoning Assessment  
WS E Project Description  
WS F Waivers  
WS G Financial and Technical Capability  
WS I Construction Management Plan  
WS J - 2 Traffic Study Update  
WS J 1-4 Traffic Studies & Parking information  
WS K Natural Features  
WS L 2 June Stormwater Report incl Preload  
WS LC - 1 Site Location Application  
WS LC-1 MDEP SLODA Application 6.22.18  
WS S-2 Soils Report  
WS S-3 Preload Narrative 6.22.18  
WS S-4 June Stormwater responses  
WS T - 1 Federal and State Permits  
WS T - 2 Add'l Wetland Info for Hearing  
WS T - 3 PTC - Vernal Pool Memo  
WS T - 4 TMP Sections 1-6  
WS T - 5 PTC Parking Garage Scoping Analysis  
WS T - 6 Site Traffic Analysis 08-30-18  
WS T - 7 Cover e-mails explaining new info for PB Hearing  
WS T - 8 Sept Stormwater Report incl Preload  
WS T - 9 Sept Stormwater responses

## PLANS

Plan 1 COVER SHEET

Plan 2 EXISTING CONDITIONS

Plan 3 DEMO PLANS

Plan 4 All PRELOAD PLANS

Plan 5 SITE PLANS (3 sheets) (after preload)

Plan 6 GRADING & UTILITY PLANS (after preload)

Plan 7 LANDSCAPE PLANS (after preload)

Plan 8 DETAILS

Plan P7 DRAINAGE PLANS

**CHAPTER 32 STORM WATER**

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

**ARTICLE I. IN GENERAL**

**Sec. 32-1. Definitions.**

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

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

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

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

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

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

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

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

*Municipality.* "Municipality" means the city of Portland.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 32-2.           Reserved.**

**Sec. 32-3.           Reserved.**

**Sec. 32-4.           Reserved.**

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

## **ARICLE II. PROHIBITED DISCHARGES**

### **Sec. 32-16. Applicability.**

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

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

### **Sec. 32-17. Responsibility for administration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Sec. 32-20. Monitoring of discharges.**

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

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

**Sec. 32-21. Enforcement.**

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

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



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

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

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

**Sec. 32-22. Severability.**

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

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

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

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

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

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

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

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

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

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

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

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

**Sec. 32-39. Enforcement.**

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

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

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

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

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

#### **Sec. 32-40. Severability.**

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

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



**STORMWATER DRAINAGE SYSTEM  
MAINTENANCE AGREEMENT**

**For SITE PLANS (THAT ARE NOT SUBDIVISIONS)**

**IN CONSIDERATION OF** the site plan approval granted by the Planning Board/Planning Authority of the City of Portland to the proposed \_\_\_\_\_ (*name of development and project number*), and the associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit A) submitted by \_\_\_\_\_, prepared by \_\_\_\_\_ (*engineer/agent*) of \_\_\_\_\_ (address) dated \_\_\_\_\_, and pursuant to a condition thereof, \_\_\_\_\_ (*name of owner*) a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of \_\_\_\_\_, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

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

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

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

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

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

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

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

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

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



Dated at Portland, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(*name of company*)

\_\_\_\_\_  
(*representative of owner, name and title*)

STATE OF MAINE  
CUMBERLAND, ss.

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

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

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Print name: \_\_\_\_\_

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

Exhibit B: Approved Stormwater Maintenance and Inspection Agreement

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