

CBL:

152-B-1

FOLDER NAME:

CDC

file name: 11-5-04 memo

PROJECT:

Morrill's Crossing

ADDRESS:

33 Allen Avenue

Memorandum
Department of Planning and Development
Planning Division



To: Councilor Cloutier and Members of the Community Development Committee
From: Sarah Hopkins, Development Review Services Manager
Date: November 5, 2004
Re: Packard Development: Updated Traffic Information/Public Comments
Cc.: Lee Urban, Director of Planning and Development
Alexander Jaegerman, Planning Division Director

The Community Development Committee will meet on November 10, 2004 to continue its review of the Packard Development proposal at Morrill's Corner. As the Committee is aware, Packard is requesting approval for a **conditional rezoning** of the Morrill's Corner property, as well as the **purchase of two parcels of City-owned land**.

At the Committee's last meeting, the Traffic Study was discussed in great detail. Committee members suggested that this following meeting discussion concentrate on the Conditional Rezoning "contract" and the City's Comprehensive Plan.

Please refer to the City Council packet which includes a full discussion of the Comprehensive Plan elements relevant to the Packard proposal, as well as the draft conditional rezoning document.

Lastly, the Community Development Committee will need to determine whether to make a formal recommendation to the full City Council.

Please bring

1. City Council notebooks (Planning Board Recommendation)
2. CD Memo of November 3 and Traffic Study

Attachments

1. Correspondence from Planning Board Members
2. Tom Errico's memo of November 3, 2004
3. Community Development Memo of October 8 (Draft Purchase and Sale, Appraisal, Brownfields Study)

MEMO

To: Portland City Council
From: John Anton, Planning Board member
Date: September 28, 2004

RE: Packard Development Contract Rezoning – “Morrill’s Crossing”

Planning Board Chair Delogu has already shared with you his thoughts on the Packard proposal in his memo of September 3, 2004. I believe that his memo correctly categorizes the Planning Board’s handling of the proposal as open, comprehensive and thorough. Because of the Board’s split decision, I thought it appropriate to supplement Chair Delogu’s memo with one of my own, detailing the reasons I felt it necessary to vote against recommending the Council’s approval of the rezoning proposal. Like Chair Delogu, I speak only for myself.

My consideration of this issue is underpinned by three assumptions – the site is currently blighted and needs to be redeveloped; the city needs the tax revenues that will be generated from future redevelopment; and the proposal needs to be consistent with the city’s Comprehensive Plan. With these three assumptions in mind, two key questions need to be answered:

- 1) Is the Packard Contract Rezoning the Right Proposal for the Site?
- 2) Is the Packard Contract Rezoning Consistent with the Comprehensive Plan?

I believe the answer to both questions is no. My reasoning is outlined below.

Why the Packard Contract Rezoning is not the Right Proposal for the Site:

1. *Proposal Accelerates the Degradation of Forest Avenue from Neighborhood Arterial to Multi-Lane Quasi-Highway:* Despite traffic morasses like Morrill’s Corner and Woodford’s Corner, in many locations the character of Forest Avenue remains that of a neighborhood commercial street. Residences are mixed with businesses, structures are built close to the street and on-street parking sits adjacent to sidewalks.

The Morrill’s Crossing proposal will add several thousand car trips per day to the already troubled intersection. To accommodate this significant increase in traffic, the developer will have to add a lane to Forest and Allen Avenues. The addition of the lane creates an intersection that is even more hostile to and dangerous for pedestrians, bicyclists and other non-automobile users than it is today.

2. *Proposal is not an Integrated Mixed-Use Development:* Despite the developer’s good faith efforts to redesign the proposal as a mixed-use development, the proposal remains primarily a typical supermarket shopping center development with additional uses tacked on the edges of the site to suggest a mix of uses. The

resulting pastiche does not integrate the uses into a thoughtful whole; instead it creates an assembly of users in a single place without overall guidance.

3. *Economic Benefits of the Proposal are Overstated:* The proposal purports to offer 250 new jobs, \$1 million in traffic improvements and \$350,000 in annual property taxes. To my mind, the jobs are a zero-sum game – there is only a finite amount of demand for supermarkets in metropolitan Portland. If this store succeeds, others – older outposts of other chains, mom & pop groceries – will fail. While the union jobs offered by Stop and Shop may be superior to those at other markets, I do not see them as added jobs to the community.

I have discussed the transportation improvements above. The developer needs to invest \$1 million to maintain traffic flow at the same (albeit excruciating) levels as they are today. However, an additional lane of automotive traffic will be added to the already dysfunctional mix, further intimidating non-automotive users. I do not see the traffic “improvements” as a benefit of the proposal, but rather as a cost.

Finally, we all know that the city has pressing financial needs. Adding \$350,000 to the property tax rolls is certainly appealing. However, I would argue that the only tax benefit of this proposal is one of timing. If the proposal goes forward, the city will see these taxes within the next few years. If the Morrill’s Corner area undergoes the thorough neighborhood-based planning and rezoning effort that it deserves, I believe that this site can generate similar tax revenues from different uses. It may take longer, but I believe that it is worth the time.

4. *Proposal is One of Expediency rather than Planning:* The traffic congestion, garbled zoning and blighted sites (such as this one) of Morrill’s Corner have cried out for years for a concerted planning effort from the city. Instead the city has directed its limited resources to other planning efforts (disproportionately focused on the peninsula). Because the city has not conducted a thorough planning exercise for Morrill’s Corner in recent memory, we now have a neighborhood master plan being created by a supermarket developer rather than the city and its residents. Not surprisingly, the resultant plan is organized around a very large supermarket.

Why the Packard Contract Rezoning is Inconsistent with the Comprehensive Plan:

1. *Proposal Does Not Respect the Scale and Character of Traditional Development Patterns:* Page 15 of Volume I of the Comprehensive Plan describes as a distinctive characteristic of the city that “Portland retains a small town feel with a built environment that is scaled for people, pedestrian-friendly and is accessible to the community.” On Page 17 of that same volume, describing Future Directions for Portland, the Plan encourages managed growth by “developing new buildings that respect the scale and character of traditional development patterns.”

Traditional commercial development patterns in Morrill's Corner are best exemplified by the structures on Bishop Street near its intersection with Stevens and Forest. These structures are built to the sidewalk with walk-up access to upper floors and a mix of on-street and off-street parking. In contrast, at the center of the Morrill's Crossing proposal is a 4-acre parking lot with close to 600 spaces adjacent to an approximately 70,000-square-foot single-story supermarket. While the Morrill's Crossing proposal may offer hints of traditional development patterns at its fringes, at its core it is a suburban-style supermarket.

2. *Proposal is Counter to City's Transportation Plan:* The Transportation Plan component of the Comprehensive focuses on the need to move away from automotive dependency. Page 23 of the Comprehensive Plan instructs the City to "link the transportation plan with land use planning policies in the City and region to guide decision-making for development and infrastructure investment." This linkage should "ensure that future growth does not foster auto dependency." Further, the City should "weigh investment decisions for automotive infrastructure against alternative transportation modes."

The Morrill's Crossing proposal devotes 4 acres to almost 600 surface parking spaces. Several thousand auto trips per day are forecast to be generated. It strains credulity that the addition of a bus stop (without additional service) and a pedestrian trail loop somehow makes the Morrill's Crossing proposal anything but a traditional auto-centric shopping center design. Additionally, the \$1 million in new infrastructure proposed by the developer is automotive infrastructure that promotes auto dependency by making Morrill's Corner more hostile to and dangerous for pedestrians, bicyclists and other non-automotive users.

3. *Proposal is Inconsistent with the Neighborhood-Based Planning Initiative of the Comprehensive Plan:* Volume II of the Comprehensive Plan enumerates nine Major Implementation Initiatives, one of which is Neighborhood-Based Planning. (See pages 7 and 8 of Volume II.) Among the key objectives of the Neighborhood-Based Planning is to "address future growth, emerging issues and community transitions in order to preserve and improve the quality of life in Portland's neighborhoods."

Morrill's Corner lies at the intersection of two of the city's eighteen neighborhoods, neither of which to my knowledge has engaged in the planning exercise described in the Implementation Plan. While it is not reasonable or desirable to halt development pending the implementation of neighborhood-based planning, it is likewise not reasonable or desirable to act on a 20-acre contract zones absent such a plan. To my mind, a developer-managed design modification exercise is not a substitute for a neighborhood-based plan.

4. *Contract Rezoning is not consistent with Existing and Permitted uses in the original zones.* I am not attempting to make a legal argument on this issue. The four attorneys who serve on the Board, as well as Corporation Counsel, each have their own interpretations of this statutory requirement and I will certainly defer to their expertise. However, in my view as an informed lay person, it is disingenuous to argue that the small piece of the site that is zoned B-2 justifies a contract rezoning that allows the uses that are not permitted in the IL and R-5 zones that make up 90% of the site.

Summary:

As Chair Delogu notes in his memo, decisions regarding large-scale development projects are made in an imperfect world where few things are either black or white. I believe that the split on the Planning Board reflects respectful disagreement about the merits of the Packard proposal. To my mind, the merits of the Packard proposal are short-term quick fixes (a good supermarket employer and an immediate infusion of property taxes) that are more than offset by its long-term shortcomings (degradation of Forest Avenue to solely automotive functionality, increased perception of planning process as developer-driven rather than citizen-driven and failure to plan for a healthy and sustainable tax base).

MEMO

To: Portland City Council

From: O. E. Delogu, Chm., Portland Planning Board

Date: September 3, 2004

Subject: Packard Development Corp.'s Contract Rezoning Proposal

Introductory Note: On August 24, 2004 at a regularly scheduled meeting of the Portland Planning Board, and after public hearing on the matter, the Board on a divided 3-3 vote has forwarded the Packard Development Corp.'s Contract Rezoning Proposal in the vicinity of Morrill's corner to the City Council for its disposition of this matter. Chairman Delogu, Mr. Silk, and Mr. Patterson voted to recommend Council approval of the contract rezoning and as part of that undertaking, sale of the City owned parcels within the project site. Ms. Tevanian, Mr. Beal, and Mr. Anton voted in the negative; for reasons that varied slightly among them, they would not recommend approval of the contract rezoning or sale of the City owned land to facilitate the proposed Packard Corp. development.

This memo speaks only for myself, although I believe it is fair to say that many (though perhaps not all) of the views expressed in this memo are shared by Mr. Silk, and Mr. Patterson who also voted to recommend that the Council approve the proposed contract rezoning. It must be assumed that most of the views expressed in this memo (and certainly the affirmative recommendation) are not shared by those Board members who voted in the negative. All members of the Board, however, understand that if the Council approves the contract rezoning and sells the city owned land within the project site to Packard, that the developer (Packard) will still have to meet all of the City's ordinances and standards relative to Site Plan Approval. The outcome of Site approval process obviously cannot be predicted at this point. What can be stated is that these proceedings before the Board will be undertaken in the same open, comprehensive, and thorough manner that characterized the Board's handling of the contract rezoning proposal.

Factors Suggesting Approval of Packard's Contract Rezoning Proposal:

1. The approximately 20 acre project site is presently blighted by almost any definition; it is bisected by three different and inconsistent zoning designations; and, most importantly, **it has remained largely unused for almost 20 years.** Packard's development proposal, admittedly driven by profit motives, and the desire to put a first, a flagship "Stop and Shop" facility in Maine's largest city, would dramatically alter and improve the present deplorable conditions.
2. The developer after numerous public meetings in the neighborhood, planning board workshops, discussions with staff, and internal debate has moved from a more singular development proposal that featured a large grocery store (with some supporting shops), to a more well-designed mixed use development proposal that features a smaller major grocery facility, many smaller shops, office uses, townhouse residential development, and the retention of two long-time existing uses. The present development proposal is connected to adjacent neighborhoods at many points; it is pedestrian and bicycle friendly; it affords on-site bus and RTS connections; and retains over 40% of the project site in green space, park, playground, and trail uses.

3. The recently completed \$1 million dollar Department of Transportation improvements to traffic flow in the Morrill's corner area have for the most part worked—traffic flow is better today than it was. This demonstration that capital investments can improve traffic movement in even difficult locations should not be ignored. **But there is no more DOT money, and little likelihood that City money can be provided for further improvements.** Packard, as part of its proposal, is prepared to invest in excess of \$1 million additional dollars (private money) to address both the increment in traffic its development will give rise to, and to further improve the overall flow of traffic at Morrill's corner and surrounding intersections.

4. **The Planning Board's own traffic expert (consultant Tom Erico) has indicated that with this additional capital investment his calculations indicate that this development will not exacerbate traffic problems in the Morrill's corner area; that DOT "level of service" requirements can be met; that only relatively minor, "fine-tuning" adjustments (which are usually part of the site review process) remain to be dealt with.**

5. **Packard's present development proposal is overall, in compliance with the City's Comprehensive Plan, and furthers many of the stated goals and objectives of that plan.** Though there may well be language in the Plan, that if read literally, or in isolation, would seem to preclude this development, there are many more references in various sections and subsections of the plan that suggest the appropriateness of this development. For example, in volume 1 of the City's Comprehensive Plan:

on pg. 17, in discussing the need to rehabilitate areas, the Plan suggests "...developing new buildings that respect the scale and character of traditional development patterns....pedestrian oriented and accessible." That is the case here.

on pg. 28, in discussing commercial development, the Plan suggests that we "accommodate the City's commercial activity within a range of functionally and physically defined commercial centers." This proposal is part of that range, and is certainly physically defined.

on pg. 29, in discussing capital improvements, the Plan suggests that we "explore and develop alternative capital improvement funding sources other than the property tax." That is happening here—Packard is not asking the City to make infrastructure improvements; they are not seeking a TIF, and they are putting in place \$1 million in traffic improvements that neither the City or DOT is prepared to fund.

on pg. 37, in discussing economic development, the Plan suggests that we "recognize that jobs and prosperity improve the standard of living for residents....[and] reduce tax burden[s] on residential property owners." The Packard proposal will produce several hundred jobs and will provide over \$350,000 annually in property tax revenue.

on pg. 38, in discussing economic development, the Plan suggests that we "recognize that a well managed industry is [or at least, can be] a good neighbor." Nothing in the Packard proposal suggests that will not be possible here.

on pg. 41, in discussing neighborhood economic development, the Plan suggests that we "...provide several major locations for a variety of retail, service and office uses." That is the case here.

on pg. 41, again, in discussing neighborhood economic development, the Plan suggests that we may need to "Restructure the City's zoning ordinances to accurately reflect the [a] hierarchy of commercial centers. That is precisely what Packard's contract

rezoning proposes.

Other examples of Comprehensive Plan language, particularly in the recently adopted housing component of the Plan, supporting some aspect of Packard's integrated proposal could be presented, but the above examples seem sufficient. They lead me to conclude that in an imperfect world where few things (certainly not larger scale development projects) are either black or white, the Packard proposal is more in accordance with the City's Comprehensive Plan (by a fairly wide margin) than not. These factors individually and taken together bear out the conclusion stated at the outset of this paragraph.

6. Though implied or noted briefly in preceding paragraphs, it should be stated clearly that Packard's development proposal represents an approximately \$20 million dollar investment in the city; hundred's of jobs (many well-paying and with benefits) will be created; based on present property tax rates, something on the order of \$350,000 will be realized annually when the project is completed; and (beyond the open space and traffic improvement already commitments) an existing "brown fields" area in an abandoned industrial portion of the site will be remediated by the developer (the costs of this remediation will not be small).

7. The hearings held to date have not surfaced any irremediable factors or conditions that would/ should bar Parckard's contract rezoning proposal at this stage of Council action. All of the city's site approval ordinances and technical standards dealing with sewerage, water, storm water, lighting, noise, traffic, etc. will, of course, have to be met. That is the purpose of the Site Plan Approval process. But nothing to date suggests that these ordinances/standards can not be met, or that Packard is not prepared to do what is necessary to meet them.

8. Finally, it was suggested during the course of Board debate that state statutes bar this contract rezoning, and that "public purpose" requirements, needed to justify highway widening, are not met. In my view neither of these assertions is correct. The statutes require that: "...rezoned areas [be] consistent with the existing and permitted uses within the original zones." That requirement is met; all of the uses contemplated in the present Packard development proposal are permitted in one or more of the existing zoning districts that bifurcate these twenty acres; in addition, the uses being proposed are similar to uses that exist in immediately adjacent areas. In short, whether one looks at what exists nearby, or what is permitted by the underlying zoning (or both)—a contract rezoning is not barred. As for the "public purpose" requirement: Maine case law makes clear that blight removal, job creation, inducing private capital investment that in turn increases municipal property tax revenues all meet "public purpose" requirements of the law.

Conclusion: The Packard Development Corporation proposal that is before the City Council today is vastly improved over what was on the drawing board a year or so ago. What is before the Council is a well-designed, mixed use development. Packard has shown considerable flexibility and imagination. They have listened to many people including their own technical and design team. The public review process engaged in to date has worked—it has contributed significantly to these improvements. For the reasons noted above in paragraphs 1-8, I would urge the Council's passage of the contract zoning amendment, and the sale to Packard of the city owned parcels within the project site. Then the Site Plan Approval process can be unfolded. If Packard successfully completes that phase of the approval process then both it, and the City will be significantly benefitted in the many ways noted above, and for many years to come.

Hopkins



Wilbur Smith Associates

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November 3, 2004

Attachment 2

Ms. Sarah Hopkins
Development Review Services Manager
Department of Planning & Development
City of Portland
389 Congress Street
Portland, Maine 04101

Subject: Peer Traffic Review for Packard Development Project

Dear Sarah:

The following presents my initial comments relative to the review of traffic information transmitted to me in conjunction with the Packard Development project at Morrill's Corner. The following comments are based upon my review of the October 2004 Traffic Impact and Access Study prepared by Vanasse Hangen Brustlin, Inc. (VHB).

1. The applicant continues to investigate solutions that address safety problems that may be created by the Packard Development site drive. It is my opinion that improvement options are available including turn prohibitions or changes to existing driveways that would produce safer conditions. The applicant should continue to seek solutions.
2. Minor street impacts need to be addressed. I have asked the applicant to address all unsignalized intersections in the study area as it relates to identifying possible mitigation strategies.
3. The applicant has updated intersection turning movement volumes for all study area intersections. I find the traffic volumes used to be acceptable.
4. The study area identified by the applicant in the traffic study is acceptable.
5. All signalized intersections operate at acceptable levels of service with the implementation of mitigation strategies. I would note that I am working with the applicant and MaineDOT on resolving assumptions utilized in the analyses and revisions of the calculations may be necessary.
6. The vehicle crash history has been updated to account for data available from MaineDOT for the most recent three-year period (2001 to 2003). Additionally, the applicant has prepared detailed crash diagrams. The applicant needs to provide a conclusion summary of the data.

Factor

7. I continue to review information as it relates to queuing data in the Morrill's Corner area. Calculations submitted today seem to indicate that vehicle queues can be accommodated without creating any potential safety or operational problems, assuming mitigation (above what was proposed previously). Further review will be necessary before I present my final opinion on this issue.
8. I have asked the applicant to revise their assumptions for the calculation of existing levels of service and delay. I can not provide a comparison between existing and future conditions until the revised calculations are provided.
9. I have reviewed the revised traffic generation estimate for the proposed project and find the methods to be acceptable. I would note that I have asked for supporting documentation for the determination of Primary, Pass-By, and Diverted trip percentages.
10. Parking demand calculations indicate that adequate parking can be provided for average demand periods, but not for peak December shopping periods. The applicant has provided information from parking studies conducted by Stop N' Shop that indicates their stores have lower parking generations rates than what was assumed in the calculations. I have asked for supporting data from those parking studies and will provide my opinion of parking adequacy at that time.

Please do not hesitate to call should you have any questions.

Sincerely,



WILBUR SMITH ASSOCIATES

Thomas A. Errico, P.E.

Senior Transportation Engineer

Memorandum
Department of Planning and Development
Planning Division



To: Councilor Cloutier and Members of the Community Development Committee
From: Sarah Hopkins, Development Review Services Manager
Date: October 8, 2004
Re: Packard Development: Draft Purchase and Sale
Cc.: Lee Urban, Director of Planning and Development
Alexander Jaegerman, Planning Division Director

Attached please find a draft purchase and sale agreement between the City and Packard Development. This agreement includes the purchase of two City-owned lots: the Magnolia Street lot and the Cambridge Street lot. Because of the contamination issues related to the Cambridge Street lot, the price and process of purchase is treated differently.

Along with the draft purchase and sale agreement, attachments include the property appraisal, the draft contract for rezoning, as recommended by the Planning Board, and the Brownfields Site Assessment Report.

The proposed purchase price for the Magnolia lot is \$175,000. The purchase price for the contaminated lot on Cambridge Street is \$355,000, with the understanding that this money will be used as a credit for the remediation of the site. Should the remediation cost rise above \$355,000, Packard Development will be responsible for the additional costs. Once mitigated, the lot will then be designed and constructed for use as a multi-purpose recreational field for use by the public.

There are a number of conditions placed on the closing of the property, as well as opportunities for repurchase of some or all of the development parcel by the city.

- If defects are found resulting from a boundary plan and survey done of the property which cannot be cured by the City and affects Packard's use of the property, the purchase price will be refunded.
- There will be no closing on the property until Site Plan approval has been granted by the Planning Board.
- There will be no closing if any litigation, legislative, or legal action exists or is pending that would bar the sale or the intended use of the property.
- Packard must begin construction within 12 months of the closing.
- All permits must be received from all permitting authorities, including necessary environmental permits related to the remediation.

There is also an option for the City to repurchase the previously owned City parcels, should the developer fail to begin substantial construction of the development within twelve (12) months after closing.

Schedule for Review by the Community Development Committee and City Council

October 13 -	CDC review of Purchase and Sale Agreement
November 1 -	First Reading by Council
November 3 -	CDC Hearing on Traffic/Site Issues
November 8 -	Council Workshop
November 10 -	Second CDC Hearing on Packard Issues
November 15 -	Second Reading by the Council

Attachments

1. Draft Purchase and Sale
2. City-Owned Property Appraisal
3. Brownfields Site Assessment Report Prepared by the MDEP
4. Contract for Rezoning

PACKARD.P&S DMK.5
10.07.04

AH.1

PURCHASE AND SALE AGREEMENT

AGREEMENT made as of the _____ day of _____, 2004, by and between the **CITY OF PORTLAND**, a body politic and corporate, with a place of business at 389 Congress Street, Portland, Maine (hereinafter "**CITY**") and **PACKARD DEVELOPMENT, LLC** a Delaware Limited Liability Company, with a mailing address of One Wells Avenue, Newton, Massachusetts 02159 (hereinafter "**DEVELOPER**").

WHEREAS, DEVELOPER seeks to develop an area at or near Morrill's Corner in said Portland, including a portion of **CITY**'s property, as a mixed use development, including residential units, retail space, offices and improved recreation space, among other uses, and has requested a conditional rezoning for the project;

WHEREAS, DEVELOPER responded to a **CITY** Request for Proposals for the sale of City-owned property located in the vicinity of Magnolia Street (hereinafter the "**RFP**"), which is adjacent to property in which **DEVELOPER** has acquired right, title or interest; and

WHEREAS, the parties have agreed to terms of the sale of the Magnolia Street parcel and the associated so-called "Burt" property on Cambridge Street, as further described below;

NOW, THEREFORE, in consideration of the mutual promises herein, **CITY** and **DEVELOPER** agree as follows:

1. **PROPERTY.**

CITY agrees to sell the property delineated on Tax Maps and Lots as 151A-A-13 (Cambridge Street property), 435-G-10, 11, 12, and 26 (Magnolia Street property), more particularly described in Exhibit A attached hereto and incorporated herein by reference, (hereinafter "**PROPERTY**") to **DEVELOPER**; and **DEVELOPER** agrees to purchase the **PROPERTY** in accordance with the provisions hereof.

2. **USE.**

PACKARD.P&S DMK.5

10.07.04

The **PROPERTY** shall be used by **DEVELOPER** for development in accordance with the provisions of the Conditional Rezoning Agreement between **CITY** and **DEVELOPER** (hereinafter "Development").

3. **CONSIDERATION.**

The purchase price for the **PROPERTY** shall be as follows:

a. **DEVELOPER** shall pay to **CITY** the total sum of One Hundred Thousand Seventy-Five Thousand Dollars (\$175,000.00) for parcels 435-G-10, 11, 12 and 26. The deposit amount of One Thousand Dollars (\$1,000.00), previously submitted with **DEVELOPER**'s RFP response, shall be credited toward this amount. The remainder due shall be paid in full at closing.

b. **DEVELOPER** shall pay to **CITY** Three Hundred Fifty-Five Thousand Dollars (\$355,000.00) for parcel 151A-A-13. The consideration for parcel 151A-A-13 shall be placed in escrow fund that may be drawn down by **DEVELOPER** solely for the purpose of remediation of the environmental contamination existing upon lot 151A-A-13, after confirmation by **CITY**, through the Engineering Division of the Department of Public Works, or at the discretion of **CITY**, such other environmental consultant as may be needed, that such amounts are attributable to the cleanup of this parcel. In the event that the costs of remediation of the site exceed \$355,000.00, then **DEVELOPER** shall be solely responsible for costs in excess of that amount required to complete sufficient remediation to allow the installation of the multi-purpose recreational field required by the terms of the Conditional Rezoning Agreement between **DEVELOPER** and **CITY** (hereinafter the "required remediation"). In the event that the cost of the required remediation is less than \$355,000.00, then the remainder of the escrow funds shall be paid to **CITY** at the completion of the required remediation.

4. **TITLE.**

Title to the **PROPERTY** shall be conveyed by Municipal Quitclaim deed without covenant, insurable by a title insurance policy available at standard rates. **DEVELOPER** shall conduct a title search within ninety (90) days of the execution of this **AGREEMENT** and may, at its discretion, terminate this **AGREEMENT** if title is found uninsurable at standard rates within ten (10) days after the ninety (90) day period by written notice to **CITY**. Failure to do so shall waive **DEVELOPER**'s right to terminate this **AGREEMENT** for any title defects which were in existence as of the date of this **AGREEMENT**.

In the event that a boundary plan and survey is performed on behalf of **DEVELOPER** and is unacceptable to **DEVELOPER** due to defects which affect **DEVELOPER**'s use of the **PROPERTY**, **CITY** shall have the right but not the obligation to cure said defects within one hundred eighty (180) days after receipt of written notice from **DEVELOPER** of such defect. In the event that the City can not cure the defect within said time period, or chooses not to do so, **DEVELOPER** shall be entitled to a full refund of its deposit paid under the terms of this Agreement, this Agreement shall be terminated and the parties shall be relieved of all other obligations under this Agreement.

PACKARD.P&S DMK.5

10.07.04

5. POSSESSION.

Full possession of the **PROPERTY** will be given to **DEVELOPER** at the time of transfer of title.

6. RISK OF LOSS.

The risk of loss or damage to the **PROPERTY** by fire or otherwise, until transfer of title hereunder, is assumed by **CITY**. The **PROPERTY** shall be delivered to **DEVELOPER** in substantially the same condition as of the date of this **AGREEMENT**.

7. CLOSING.

Closing on the sale of the **PROPERTY** shall occur when all permits have been acquired and all appeal periods have expired, but in no event later than September 1, 2005, at the offices of **CITY**, subject to the conditions set forth in this **AGREEMENT**. The time period for closing may be extended by the City Manager by written notice, provided that **DEVELOPER** is working to satisfy conditions of this **AGREEMENT** or that the delays are caused by events that are beyond the control of the **DEVELOPER**.

8. CONDITIONS TO CLOSING.

a. **DEVELOPER** may enter the **PROPERTY** to inspect, survey and conduct tests in order to develop plans and obtain permits necessary to construct and operate Development. **DEVELOPER** shall not conduct testing of any kind without prior written approval of **CITY**. **DEVELOPER** shall restore the **PROPERTY** to its original state after testing is completed. **DEVELOPER**'s obligation to close is contingent on receipt of satisfactory test results showing the **PROPERTY** can be used following appropriate environmental remediation for the purpose for which **DEVELOPER** intends. In the event that **DEVELOPER** does not complete the purchase of the **PROPERTY**, it shall provide copies to **CITY** free of charge, of all test results obtained. All testing shall be conducted within ninety (90) days of the execution of this **AGREEMENT**.

b. **DEVELOPER** has obtained all required municipal, state and federal approvals required for construction of the Development;

c. **DEVELOPER** has obtained approval of a conditional rezoning for the Development from the City Council. **DEVELOPER** understands that approval of this Agreement does not insure that the City Council will approve of a conditional rezoning for the Development.

d. No litigation or legislative or legal action exists or is pending at time of closing that would bar the sale or the intended use of the **PROPERTY** by **DEVELOPER**.

9. CONDITIONS WHICH SURVIVE CLOSING.

PACKARD.P&S DMK.S

10.07.04

DEVELOPER shall substantially begin construction of the Development within twelve (12) months after closing.

10. **TERMINATION.**

This **AGREEMENT** may be terminated by **DEVELOPER** for the following reasons:

- a. Inability of **CITY** to convey title insurable at standard rates, as described in paragraph 4 of this **AGREEMENT**;
- b. Acquisition of a boundary plan and survey unacceptable to **DEVELOPER** which defects have not been cured by **CITY**;
- c. **DEVELOPER** can not develop the **PROPERTY** due to environmental or geotechnical conditions after the **DEVELOPER** has expended all reasonable efforts to obtain the required permits from the Maine Department of Environmental Protection;
- d. Necessary approvals from Maine Department of Transportation and other permitting authorities including but not limited to the Portland Planning Board are not received within nine (9) months of this **AGREEMENT**;
- e. Litigation or other action exists or is pending at time of closing that precludes **DEVELOPER's** ability to use the **PROPERTY** for the Development.

In the event of such termination, the parties shall have no further obligation to the other and shall be relieved of all obligations hereunder.

11. **ACCEPTANCE OF CONDITIONS OF SITE.**

DEVELOPER agrees to accept the condition of the **PROPERTY** as is, where is, with no warranties or representations by **CITY** as to its condition. **CITY** will share with **DEVELOPER** any information, including environmental information, it has about the **PROPERTY**.

12. **REPURCHASE OPTION.**

In the event **DEVELOPER** fails to substantially begin construction of the Development within twelve (12) months after closing, **CITY** shall have the right but not the obligation to repurchase the **PROPERTY** by giving a ninety (90) day written notice of its intent to repurchase. **CITY** shall have one hundred eighty (180) days to tender payment to **DEVELOPER** for the purchase. **DEVELOPER** may, at its option, transfer the **PROPERTY** to **CITY** prior to payment should **DEVELOPER** deem it advisable to do so. If transfer of the **PROPERTY** is to occur prior to payment by **CITY**, payment arrangements shall be negotiated by **DEVELOPER** and **CITY** at time of transfer.

PACKARD.P&S DMK.S
10.07.04

In the event that **CITY** exercises its right to repurchase the property, it shall repay to **DEVELOPER** the purchase price paid by **DEVELOPER** to **CITY** for the **PROPERTY**.

13. **BINDING EFFECT/ ASSIGNABILITY.**

This **AGREEMENT** shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This **AGREEMENT** is not assignable by either party, except that **DEVELOPER** may assign rights under this agreement to a related entity established for the purpose of ownership of the real estate that is subject to the Conditional Rezoning Agreement.

14. **ENTIRE AGREEMENT.**

This **AGREEMENT** represents the entire and complete agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the **PROPERTY**.

15. **HEADINGS AND CAPTIONS.**

The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **GOVERNING LAW.**

This **AGREEMENT** shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

17. **NOTICE.**

Any notice required or permitted under this **AGREEMENT** shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

For the CITY :	City of Portland Attn: City Manager 389 Congress Street Portland, ME 04101
With a copy to:	Portland Corporation Counsel
For the BUYER :	Packard Development Paul S. Cincotta One Wells Avenue Newton, MA 02459

PACKARD.P&S DMK.5
10.07.04

With a copy to:

Natalie Burns, Esq.
Jensen Baird Gardner & Henry
P.O. Box 4510
Portland, ME 04112-4510

19. **DEPOSIT.**

DEVELOPER has paid to **CITY** the sum of One Thousand Dollars (\$1,000) as a deposit on the **PROPERTY**. This amount shall be credited toward the final purchase price. In the event that **DEVELOPER** does not complete the purchase within thirty (30) days of the completion of the requirements described in Paragraph 8 of this **AGREEMENT** including any extensions thereof, the deposit shall be retained by **CITY** as liquidated damages unless **DEVELOPER** terminates under paragraph 10 of this **AGREEMENT**, in which event such deposit shall be returned to **DEVELOPER**.

IN WITNESS WHEREOF, the parties have hereunto caused this instrument to be signed and sealed in their respective names and capacities as of the day and year first above written.

CITY OF PORTLAND

WITNESS

By: _____
Joseph E. Gray, Jr.
Its City Manager

PACKARD DEVELOPMENT, LLC

WITNESS

By: _____
Printed name: _____
Its: _____

AMIDON APPRAISAL COMPANY
477 Congress Street, Suite 323
Portland, ME 04101-3439
TEL: (207) 879-6056
FAX: (207) 879-0217
E-MAIL: pmamidon@maine.rr.com
WEBSITE: www.amidonappraisal.com

April 8, 2004

Paul S. Cincotta
Packard Development
1 Wells Avenue
Newton, MA 02459

Dear Mr. Cincotta:

In accordance with your request, an inspection has been made of two land parcel located off Allen Avenue in the Morrill's Corner neighborhood of Portland, Maine to determine the market value of the fee simple interest of the property. The smaller of the two parcels contains an estimated 23,482 SF (0.54 AC) of land and is identified by the City of Portland Assessment office as Map 435, Block G, Lots 10, 11, 12, and 26. According to the city, the owner of record is the Liberty Group, Inc. The larger of the two parcels contains an estimated 134,558 SF (3.09± AC) and is identified as Map 151A, Block A, Lot 13. According to assessment records, this parcel is owned by the City of Portland.

This appraisal is considered to be a complete appraisal presented in a summary appraisal report format as defined by the Uniform Standards of Professional Appraisal Practice. As a complete appraisal, the Departures Provision of the Uniform Standards of Professional Appraisal Practice has not been invoked. It is my understanding the purpose of this appraisal is to assist with the potential acquisition of the parcels to be used in conjunction with the abutting property for development into a shopping center anchored by Stop 'n Shop. The intended users of the report are Packard Development and Packard's legal and financial advisors. Based upon my analysis, it is my opinion that the market value of the fee simple interest of the properties as of March 24, 2004, is as follows:

Market Value of the Fee Simple Interest of 0.54± AC Parcel

SIXTY-TWO THOUSAND DOLLARS

(\$62,000)

Market Value of the Fee Simple Interest of 3.09± AC Parcel

THREE HUNDRED FIFTY-FIVE THOUSAND DOLLARS

(\$355,000)

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, stated herein, and are my personal, unbiased professional analyses, opinions, and conclusions. I hereby certify that Patricia M. Amidon and Naomi R. Welsh have personally inspected the subject and that to the best of my knowledge and belief all statements and information contained in this appraisal are true and correct and that all pertinent information is included. I hereby certify that I have no financial interest in the appraised properties and my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

Please review the following summary report that describes the process of arriving at the above stated values. If you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,



Patricia M. Amidon, MAI

Maine Certified General Appraiser #113

New Hampshire Certified General Appraiser #523

Massachusetts Certified General Appraiser #5724

Enclosure

EXECUTIVE SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS

Morrill's Corner, Portland, Maine

	0.54± AC Parcel	3.09± AC Parcel	
Property Address:	Magnolia Street, Portland, Cumberland County, Maine	Cambridge Street, Portland, Cumberland County, Maine	
Owner:	Liberty Group, Inc.	City of Portland	
Estate Appraised:	Fee simple	Fee simple	
Site Area:	The parcel also considered as a 0.54± AC parcel with 130 feet of frontage on Magnolia Street, a paper street in the vicinity of the subject.	The subject property is a quadrilateral-shaped 3.09± AC land parcel with an estimated 50 feet of frontage on Cambridge Street.	
Improvements:	The site 0.54± AC parcel is an unimproved, vacant land parcel.	The 3.09± AC parcel was improved with industrial buildings that were severely damaged by fire and demolished in the past.	
Assessment Data:	The 0.54± AC subject property is identified as Map 435, Block G, Lots 10, 11, 12, 26	The 3.09± AC subject property is identified as Map 151A, Block A, Lot 13	
	Land	\$21,740	\$315,950
	Building	\$0	\$0
	Total	\$21,740	\$315,950
	Tax Levy	\$582.63	Exempt
	Tax Rate	\$26.80/\$1,000	\$26.80/\$1,000
	Tax Ratio	82%	82%
Zoning:	Residential 5 (R5) and a Community Business Zone (B2)	Low Impact Industrial Zone (IL)	
Date of Inspection:	March 24, 2004	March 24, 2004	
Inspected By:	Patricia M. Amidon, MAI Naomi R. Welsh	Patricia M. Amidon, MAI Naomi R. Welsh	
Date of Appraisal:	March 24, 2004	March 24, 2004	
Highest & Best Use:	Commercial development	Commercial development	
Market Value:	\$62,000	\$355,000	
5-Year Ownership:	No transfer in last five years	No transfer in last five years	
Current Use:	Vacant land	Vacant land	

DEFINITION OF THE APPRAISAL PROBLEM

The subject property to be appraised consists of two land parcels including:

- A 0.54± AC parcel located on Magnolia Street, owned by the Liberty Group, Inc. according to the City of Portland Assessor; and
- A 3.09± AC parcel, with frontage on Cambridge Street owned by the City of Portland.

Each of these parcels abuts a larger land parcel that is intended for development into a shopping center to be anchored by a Stop 'n Shop supermarket. The purpose of this appraisal is to assist in negotiations for the potential acquisition of the parcels to be used in conjunction with this abutting property for development. The intended users of the report are Packard Development and Packard's legal and financial advisors.

BACKGROUND INFORMATION

The subject property is located within the City of Portland, one of 14 municipalities within the Greater Portland Area. The city is located in the southwestern part of Maine and is bordered by the City of South Portland and the Fore River to the south, the City of Westbrook to the west, the Town of Falmouth to the north, and the waters of Casco Bay to the east. Portland is located approximately 100 miles to the northeast of Boston, Massachusetts and encompasses 22.4 square miles of land area.

Greater Portland is the most densely populated region of the state. The population growth of Greater Portland, Portland, and South Portland between 1970 and 2000 is outlined in the table below.

	1970	1980	1990	2000
Greater Portland (14 communities)	157,321	170,676	186,436	202,457
Portland	65,116	61,572	64,358	64,249
South Portland	23,267	22,712	23,163	23,324

According to census data for 2000, the total population for the Greater Portland Area is 202,457 persons representing an overall increase between 1990 and 2000 of 8.60%. Between 1980 and 1990, the population grew 9.23%, and between 1970 and 1980, by 8.49%. Both the Cities of Portland and South Portland demonstrated a decrease in population between 1970 and 1980 as people moved out to the suburbs and an increase between 1980 and 1990 as the boom times of the 1980s witnessed the development of various residential projects within city limits. The decrease between 1990 and 2000 is most likely a reflection of the continuation of residential development in outlying suburbs such as Scarborough and Falmouth during the recession of the late 1980s and early 1990s while

residential development within city limits came to a virtual halt. Population within Portland is anticipated to continue to increase slowly as residential development within city limits is once again taking place.

Cumberland County, the location of the City of Portland, has a 2000 per capita income of \$23,949 and a median household income of \$44,048, the highest of the 16 counties within the state. The area offers numerous opportunities to dispose of this income. The Maine Mall, located in South Portland, is the largest mall in the state. In the last 30 years the Maine Mall area has evolved from farmland into the largest retail, commercial, and office complex north of Boston and currently employs more than 3,000 people. Each year the Mall's 140 businesses draw 13 million visitors to its 1.2 million square feet of retail space.

The Maine Mall area saw the greatest amount of development during the early 1990s despite difficult economic times and has recently undergone another major development phase. In late spring of 1999, the South Portland Planning Board voted to rezone the area formed by Running Hill Road, the Maine Turnpike and Cummings Road from Professional Office that prohibits retail to a zone that permits retail. A 275,000 SF shopping center has recently been completed in this area that houses Target, Old Navy, Applebee's, and other national retailers. Another completed development is a 75,000 SF shopping center anchored by Christmas Tree Shops on Payne Road in Scarborough between Circuit City and Pet Quarters. The major inhibitor of development near the mall is the limited amount of available land with adequate utilities.

The economy of the area is considered to be well diversified and relatively healthy, growing at a sustainable pace. The most recently available November 2004 unemployment rate for the Portland labor market is 3.0%, which compares favorably with 4.9% for the state and 5.6% for the nation. Maine never actively participated in the economic boom of the mid- and late 1990s fueled by the dot.com bubble and as a result did not suffer from the dot.com bust. The events of September 11, 2001, actually assisted the Maine economy in two important ways. First, as a state that relies heavily on the tourist trade (after all, the motto on our state's license plates is "Vacationland") the area has benefited from Americans, particularly New Englanders, taking more local vacations. Transient lodging facilities, restaurants, and retail stores as well as peripheral services have enjoyed this trend. Second, many educated people have migrated to Maine in search of the simpler, less hectic life of the more metropolitan areas of New York and Washington, DC. This trend has increased the talent pool of the state.

Another development that is taking place and fueling the economic well being of the area is the ongoing upgrading of the infrastructure. This upgrading includes the widening of the Maine Turnpike from four lanes to six lanes from York to Portland, a \$135 million project expected to be completed within the next two years, as well as the construction of new turnpike exits, one of which specifically serves the Portland International Jetport. The Jetport itself has recently undergone a redesign to improve traffic flow, an expansion to accommodate more carriers, and an increase in parking.

A significant transportation improvement is the resumption of passenger rail service between Portland and Boston that commenced December 2001. This change has increased the attractiveness of the Portland area to new residents, some of whom travel to Boston to work on a daily basis. While this trend is more prevalent in York County south of the subject area, this influx of well educated residents is having a positive effect on the Portland economy. New business is also more likely to locate in the Portland area as a result of this trend as the labor pool is better educated and more available to fill new employment needs than previously. In addition to these infrastructure changes, the telecommunications industry continues to improve communications and Internet service in the area. Portland is considered to be very well supplied with fiber optic cable to many areas of the downtown business district. Recently, Oxford Networks has been installing wireless broadband service to permit companies such as Unum and Maine Medical Center to more easily utilize remote locations and be connected with their central facilities.

Of the sixteen counties in the state, Cumberland County has the most robust economy as reflected in the county having the state's lowest unemployment rates, highest per capita income, and real estate development projects. This real estate development has placed upward pressure on land values, and the supply of land is limited. The Greater Portland Area office market is enjoying the relatively high occupancy rates, and large office space, that is, space in excess of 20,000 SF, is in short supply. Rental rates have generally remained below those required to spur new construction. However, several new office buildings have been constructed on a build to suit basis. These include:

- the construction of Harbor View Block, a 40,400 SF, three-story Class A office building at 145 Commercial Street primarily for Merrill Lynch;
- the completion of a 50,000 SF office building on Marginal Way in Portland for occupancy by the Department of Human Services;
- the construction of the 100,000 SF Wright Express office building on Gorham Road near the Maine Mall;
- the completion of a new 125,000 SF office building for Banknorth at Exit 10 of the Maine Turnpike in Falmouth;
- the construction of a new 125,000 SF office building and accompanying 500-car parking garage in downtown Westbrook for Disability Reinsurance Management;
- the completion of a 50,000 SF office building on Marginal Way and Preble Street for AAA Northern New England;
- the construction of a 29,000 professional office building at 2 Cabot Street in Westbrook near Exit 8 of the Maine Turnpike;

- the planning of a 120,000 SF Class A office building at the intersection of Fore Street and Franklin Arterial near Commercial Street and an 800 space parking garage.

In addition to office building construction, new transient lodging facilities include:

- the construction of a new hotel on the former W.L. Blake property at the corner of Commercial Street and Franklin Arterial on the Portland peninsula consisting of a 120-room Hilton Garden Hotel;
- the construction of an 88-room Hilton Hotel in close proximity of the Portland Jetport, the 100-room Portland Harbor Hotel at the corner of Union and Fore Streets on the Portland peninsula, and a 90-room Marriott Courtyard on Outer Congress Street;

Other major development projects in the Portland area include:

- the development of a ten lot commercial and retail subdivision on Western Avenue by V & E Enterprises, five lots of which have been sold and two of which are leased;
- the completion of the total renovation of a 32,000 SF retail building on the corner of Marginal Way and Preble Street for Wild Oats natural grocer; of which 8,000 SF will be sub-leased to another retailer;
- the planning of a new Mercy Hospital on 40 ± AC off St. John Street on the Portland peninsula;
- the planning of a cruise ship terminal to be known as Oceangate at the Bath Iron Works facility on the Portland waterfront, presently being leased by Ciambro for the construction of off shore oil exploration and recovery platforms;
- the development of three new industrial mini-parks including Windward Circle in South Portland, New Portland Parkway in Gorham, and Bayside Mini-Park on the Portland peninsula;
- the development of a 56,000 SF research center for the Gulf of Maine Research Institute on the Portland waterfront that broke ground July 2003 with completion anticipated in 2005;
- the completion of a new psychiatric hospital on the Westbrook/Portland line off Hutchins Drive.

As of the date of death March 24, 2004 the City of Portland is considered to be a vital commercial and industrial district within the Greater Portland Area with a stable population and an established commercial and industrial base to serve the regional

population. The national economy has seen a steady downturn for more than a year but recent figures indicate a slow recovery. For example, the stock market, which exhibited considerable volatility, is now showing some gains. The state is working with reduced revenues as a result of the economic slow down, but is adjusting spending to reflect income. On a more local level, because Greater Portland never really benefited from the dotcom boom, the area is not suffering from the dotcom bust. The poor showing in the stock market coupled with the lowest mortgage rates in 30 years has created a renewed interest in real estate as an investment vehicle.

NEIGHBORHOOD

The subject properties are located at the terminus of dead end side streets within a densely developed residential neighborhood located off the east side of Allen Avenue in Portland, Maine. Land uses in the immediate neighborhood consist primarily of single and multi-family dwellings. Allen Avenue is a local connector street and major commuter route between Forest Avenue to the south and Washington Avenue to the north. Forest Avenue runs perpendicular to Allen Avenue and is one of the most heavily traveled roads in the state of Maine. The intersection of Forest and Allen Avenues is known locally as Morrill's Corner and is controlled by a traffic light. The posted speed limit within the residential neighborhood is 25 mph and 35 mph on Forest and Allen Avenues.

The rear and/or side property line of each of the subject properties abuts an older industrial complex that has frontage on Allen Avenue and rights-of-way from Forest Avenue. The residential neighborhood was originally built to provide housing for the workers in the industrial complex. The industrial complex is no longer used for its original purpose. Many of the buildings are no longer functional and are at the end of their economic life. Tenants within the complex include Bruno's Restaurant and Tavern, a bingo hall, and a boxing arena. The complex is one of the larger land parcels in Portland and is considered to be available for redevelopment. The complex as well as several abutting properties are under contract to Packard Development for development into a neighborhood shopping center to be anchored by a Stop 'n Shop supermarket.

The larger neighborhood includes Morrill's Corner. Land uses within this larger neighborhood include a mix of restaurants, services, industrial, and residential uses. Restaurants include the McDonald's fast food restaurant, Subway sandwich shop, the Wok Inn and Bruno's Restaurant and Tavern. Service facilities include Meineke Muffler, Maaco Auto Painting and Bodyworks, Filler'up Please Car Wash, and a convenience store with gas pumps. Current industrial uses include a fully enclosed sewage treatment plant. Allen Avenue Apartments, a 36± unit multi-family property, is located several lots to the north of Morrill's Corner and abuts the 0.54± AC subject.

The subject's immediate neighborhood was bordered by large tracts of undeveloped land with paper streets. Wescott & Payson, II purchased approximately 16.0± AC of this

vacant land in December 2001 and developed two projects including a 10-lot single-family residential subdivision known as University Park and 30-unit affordable housing apartments. Of the ten lots of University Park, three have been developed, and several remain available for sale. The three developed lots are single family homes heated with natural gas and listed at a starting price of \$279,000. Another developer, Niles Construction, purchased 8.60± AC and developed a 33-unit condominium project known as Radcliffe Glen.

The table below lists the annual traffic flow within the neighborhood in the years indicated.

Intersection	1997	1998	1999	2000
Allen Ave N/O Goodridge Ave	19,580	NA	NA	25,420
Forest Ave NW/O Allen Ave	NA	NA	NA	31,950
Washington Ave SE/O Allen Ave	NA	22,160	22,400	26,610

This table demonstrates that traffic flow increases annually. This increase is anticipated to continue into the foreseeable future.

Utilities available from the street include municipal water and sewer, natural gas, above ground telephone, electric and cable TV. Downtown Portland is within eight minutes commuting time via Forest Avenue. Properties in the subject neighborhood are relatively well maintained with minimal outwards signs of significant deferred maintenance. The recent residential developments in the area render the older industrial complex a prime target for commercial development.

IDENTIFICATION AND HISTORY OF THE SUBJECT PROPERTY--

0.54± AC Parcel

The subject property currently consists of a 0.54± AC land parcel located at the terminus of Magnolia Street, Portland, Cumberland County, Maine, and is identified by the City of Portland Assessor as Map 435, Block G, Lots 10, 11, 12, 26. According to assessment records, the property has been under the same ownership of the Liberty Group, Inc. for more than five years. The Liberty Group, Inc. purchased the property from David A Peterson and Sons on April 26, 1984 as recorded in the Cumberland County Registry Book 6435, Page 180. A copy of this document is attached to this report. As of the date of valuation of March 24, 2004, the land remains unimproved.

DESCRIPTION OF THE SUBJECT PROPERTY — 0.54± AC Parcel

A detailed description of the site is presented below:

- Area: According to information provided by the City of Portland Assessor, the area of the property is 0.54± AC.
- Frontage: Based on the Assessor's Map 435, the property has 130 FF along Magnolia Street. Magnolia Street in the area of the subject is an unimproved paper street.
- Shape: Irregular polygon. Please consult the attached plot plan of the property.
- Access: The property may be accessed from its road frontage along Magnolia Street. A proposal by Packard Development would enable the property to be accessed by Allen Avenue by way of the adjacent property.
- Topography: The site slopes downward from the grade of Magnolia Street.
- Vegetation: The site consists of natural growth including wetland vegetation including reeds, and scrub natural scrub growth.
- Drainage: The land drains into wetlands located within the property.
- Wetlands: Based on inspection, the site is considered to have wetlands located in the center of the lot. The amount and location of the wetland area will affect development potential.
- Utilities: Public utilities available to the site in the street include electricity and telephone, municipal water and sewer, and natural gas.
- Soils: According to the United States Department of Agriculture Soil Conservation Service, the soils of the site consist of Walpole fine sandy loam, Buxton silt loam, 3 to 8% slopes, and Hollis fine sandy loam, 3 to 8% slopes. These soils are considered to have moderate to very severe limitations to development due to high seasonal water table.
- Easements & Restrictions: The legal description does not refer to any easements or restrictions.

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- Hazardous Waste: The Appraiser observed construction debris on the property during inspection. However, the Appraiser is not qualified to make a determination as to the hazardous waste situation on site. This appraisal assumes an environmentally clean site.
- Street Improvements: Allen Avenue is a city maintained, paved road with one lane in each direction and wide shoulders. Magnolia Street is a city maintained, paved, dead end street with one lane in each direction and narrow, sandy shoulders, which ends quite abruptly before the subject property. Utilities available from the street include electricity and telephone services, municipal water and sewer, and natural gas.
- Improvements: The site is presently unimproved.
- Adjacent Uses: Allen Avenue Apartments, single family residences, and the older industrial complex abut the subject.
- Zoning: Community Business Zone (B-2)
Residential Zone (R-5)
- Flood Hazard Zone: According to the Federal Emergency Management Agency (FEMA) Flood Hazard Maps, the site is located within Zone X as shown on Portland Community Panel #230051 0007 C, effective date December 8, 1998. Zone X includes areas of minimal flooding. As such, if the property were financed with federal funds, flood hazard insurance would not be required.
- Functional Adequacy: The functional adequacy of the site is determined by the soils, wetlands, deeded easements and restrictions, shape, and utility availability among other features. The property possesses soils with moderate to very severe limitations to development. All utilities necessary for development are available in the street. The Appraiser is unaware of any easements or restrictions that would negatively impact value. The area is within the influence of the residential developments and is well connected to the larger transportation network. The irregular shape of the parcel, and the soil type in this zone, could be a detriment. However, in its present location with the adjacent older industrial complex off of Allen Avenue, the parcel is an ideal configuration for development and signage. Therefore, the site is deemed functionally adequate.

IDENTIFICATION AND HISTORY OF THE SUBJECT PROPERTY— 3.09± AC Parcel

The subject property consists of a vacant land parcel of 3.09± AC land parcel located on Cambridge Street, in Portland, Cumberland County, Maine. The City of Portland Assessor records the address as Cornell Street (Assessor's card), Cambridge Street (Assessor's map) and identifies the property as Map 151A, Block A, Lot 13. The property was formerly the site of the Burt Company, an industrial facility that was severely damaged by fire. Subsequent to the fire, the damaged buildings were demolished.

The most recent recorded instrument, a claim of lien, is a Notice of Lien Under Dangerous Buildings Statute to Norman S. Reef and Raymond H. Reef from the City of Portland on November 18, 1998 as recorded in the Cumberland County Registry of Deeds Book 14316, Page 298 on November 19, 1998. A copy of this instrument is attached to this report.

Prior to the claim of lien, a transfer occurred on May 6, 1988 when John M. Kendall and Herman B. Kendall sold the subject property to Norman S. Reef and Raymond R. Reef as recorded in the Cumberland County Registry of Deeds Book 8279, Page 185 on May 10, 1988. Formerly, this parcel of land was part of a plan of land for Merrill Industries prepared by Owen Haskell, Inc., shown as "Now or Formerly The Burt Company." A copy of this deed is also attached to this report.

DESCRIPTION OF THE SUBJECT PROPERTY—As a 3.09± AC Parcel

A detailed description of the site is presented below:

- Area: According to information provided by the City of Portland Assessor, the area of the property is 3.09± AC.
- Frontage: Based on the legal description and assessor's map, the property has 50 FF at the terminus of Cambridge Street.
- Shape: Irregular. Please consult the attached plot plan of the property.
- Access: The property may be accessed from its road frontage along Cambridge Street. A proposal by Packard Development would enable the property to be accessed from Allen Avenue by way of the abutting property.
- Topography: The site slopes downward from southwestern corner to the northeastern corner of the property.

- Vegetation: The site consists of natural tree growth along the northeastern property line with scrub and grassland throughout the remainder of the property.
- Drainage: The land drains into a stream that bisects the property in a west to east direction. The location of the stream will impact development.
- Wetlands: Based on inspection, the site is considered to have wetlands associated with the stream and in the southern area of the lot.
- Utilities: Public utilities available to the site in the street include electricity and telephone, municipal water and sewer, and natural gas as well as cable TV.
- Soils: According to the United States Department of Agriculture Soil Conservation Service, the soils of the site consist of Scantic silt loam, Buxton silt loam, 3 to 8% slopes, and Hollis fine sandy loam, 3 to 8% slopes. These soils are considered to have moderate to very severe limitations to development due to high seasonal water table. During Inspection, the Appraiser noticed numerous sinkholes throughout the property indicating unstable soils, probably mostly cut and fill.
- Easements & Restrictions: The legal description includes a right of way for the benefit of the owner to Morrill's Corner. This would have a positive effect on land value with access to Forest Avenue.
- Hazardous Waste: The Appraiser observed no obvious signs of the existence of hazardous waste on the property during inspection. However, the Appraiser is not qualified to make such a determination. This appraisal assumes an environmentally clean site.
- Street Improvements: Forest Avenue is a town maintained, paved road with two lanes in each direction and narrow shoulders. Cambridge Street is a city maintained, paved, dead end street with one lane in each direction and narrow, sandy shoulders, which terminates at the subject property. Utilities available from the street include electricity and telephone services, municipal water and sewer, and natural gas.
- Improvements: The site is presently unimproved.

- Adjacent Uses:** The subject is roughly quadrilateral shaped with road frontage on Cambridge Street, with a right of way to Morrill's corner. A storage facility and a treatment plant abut the property to the east. These properties are accessed from Quarry Road. The residential neighborhood runs adjacent to the property to the north and northeast. The older industrial complex is located on the western property line, making the subject property a target for redevelopment.
- Zoning:** Low Impact Industrial Zone (I-L).
- Flood Hazard Zone:** According to the Federal Emergency Management Agency (FEMA) Flood Hazard Maps, the site is located within Zone X as shown on Portland Community Panel #230051 0007 C, effective date December 8, 1998. Zone X includes areas of minimal flooding. As such, if the property were financed with federal funds, flood hazard insurance would not be required.
- Functional Adequacy:** The functional adequacy of the site is determined by the soils, wetlands, deeded easements and restrictions, shape, and utility availability among other features. The property possesses soils with moderate to very severe limitations to development. All utilities necessary for development are available in the street. The right of way to Morrill's Corner allows direct access from Forest Avenue. The area is within the influence of the residential developments and is well connected to the larger transportation network. The location of the drainage swale, and the soil type in this zone, could be a detriment. However, in its present location with the adjacent older industrial complex off of Allen Avenue, the parcel is an ideal configuration for development and signage. Therefore, the site is deemed functionally adequate.

ZONING

The 0.54 AC subject property is currently located within the Residential 5 Zone (R-5) and the Community Business Zone (B-2). The 3.09± AC subject property is currently located entirely within the Low Impact Industrial Zone (I-L). These zones will be described separately below.

Residential Zone (R-5)

The Residential Zone (R-5) is established to provide appropriate areas of the city for medium-density residential development characterized by single-family and low-intensity multifamily dwellings on individual lots. However, in order to ensure the stability of

established medium-density neighborhoods, residential conversions are controlled and substantially sized parcels are provided for planned residential unit development.

Permitted uses include the following:

- (a) Single- and two-family dwellings.
- (b) Multiplex development.
- (c) Planned Residential Unit Development
- (d) Handicapped family unit
- (e) Single-family, multi-component, manufactured housing.
- (f) Parks.
- (g) Home occupation.
- (h) Municipal uses.
- (i) Special needs independent living units.

Special exceptions include:

- (a) Sheltered care group homes.
- (b) Alteration of a structure, existing and not in residential use as of January 1, 1984, to three or more dwelling units.
- (c) Conversions of two family or multiplex structures into lodging houses.
- (d) Municipal buildings and municipal uses.
- (e) Elementary, middle, and secondary school.
- (f) Care facilities.
- (g) Church or other place of worship.
- (h) Private club or frat organization.
- (i) Hospital.
- (j) College, university, or trade school.

The space and bulk regulations of this zone include:

Minimum lot area	3,000 SF
Maximum building height	35'
Minimum street frontage	50'
Minimum front yard setbacks	20'
Minimum side yards	15'
Minimum rear yards	20'

Compliance – The subject property as it currently exists is considered to be in compliance with the zoning ordinance. However, because the subject is located on the paper portion of Magnolia Street, any development of the site would need to address access issues.

Community Business Zone (B-2)

The purpose of the Community Business Zone is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services serving the adjoining neighborhoods and the larger community. The Community Business Zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile and pedestrians. Development should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

Permitted uses include the following:

- (a) Any residential use permitted in the residential zone abutting or nearest the lot.
- (b) In any structure with commercial uses in the first floor, multi-family dwellings are permitted above the first floor.
- (c) General, business, and professional offices.
- (d) Personal Services
- (e) Offices of building tradesmen.
- (f) Restaurants, except shall close no later than 11 p.m.
- (g) Drinking establishments.
- (h) Billiard parlors.
- (i) Mortuaries or funeral homes.
- (j) Miscellaneous repair services, excluding motor vehicle repair services.
- (k) Communication studios or broadcast and receiving facilities.
- (l) Health clubs and gymnasiums.
- (m) Veterinary Hospitals, excluding outdoor kennels.
- (n) Theaters and performance Halls
- (o) Hotels or motels of less than 150 rooms.
- (p) Dairies in existence as of November 15, 1999.
- (q) Bakeries in existence as of November 15, 1999.
- (r) Bakeries including retail sales within principal structures.
- (s) Drive-through associated with a permitted use, except on a lot abutting a residential zone.
- (t) Private club or fraternal organization.
- (u) Care facilities.
- (v) Clinics.
- (w) Kindergarten, elementary, middle, and secondary schools.
- (x) College, university, trade schools.
- (y) Municipal Buildings and uses.
- (z) Lodging houses.
- (aa) Day care facilities.
- (bb) Utility substations.
- (cc) Bed and breakfast.
- (dd) Studios for artists and craftspeople.

Conditional uses include the following:

- (a) Major and minor auto service stations.
- (b) Car washes.
- (c) Drive-throughs.
- (d) Automobile dealerships.
- (e) Printing and Publishing establishments.
- (f) Wholesale distribution establishments.
- (g) Research and development establishments.

The space and bulk regulations of this zone include:

Minimum lot area	10,000 SF
Maximum building height	45'
Minimum street frontage	50'
Minimum front yard setbacks	None
Minimum side yards	10'
Minimum rear yards	10'

Compliance – The subject property as it currently exists is considered to be in compliance with the zoning ordinance. However, because the subject is located on the paper portion of Magnolia Street, any development of the site would need to address access issues.

Low Impact Industrial Zone (I-L)

The low impact industrial zone is intended to provide areas in which low impact industrial uses will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the medium impact or high impact industrial zones, or will stand alone as a smaller scale industrial district.

Permitted uses include the following:

- (a) Low impact industrial uses.
- (b) Research and development.
- (c) Indoor amusement and recreation centers.
- (d) Plant and tree nurseries.
- (e) Lumber yards.
- (f) Commercial kitchens.
- (g) Building contractors and outside storage of related construction equipment.
- (h) Repair services.
- (i) Day care facilities.
- (j) Dairies.
- (k) Intermodal transportation facilities.
- (l) Utility substations.

- (m) Marinas.
- (n) Distribution centers, warehouses, and wholesale businesses under 10,000 SF.
- (o) Back office uses.
- (p) Incidental accessory uses.

The space and bulk regulations of this zone include:

Minimum lot area	None
Maximum building height	45'
Minimum street frontage	60'
Minimum front yard setbacks	25'
Minimum side yards	40'
Minimum rear yards	40'
Maximum impervious surface ratio	65%
Pavement setback from lot boundary	15'

Compliance – The subject property as it currently exists is considered to be in compliance with the zoning ordinance.

FLOOD HAZARD ZONE

According to the Appraiser's interpretation of the Federal Emergency Management Agency (FEMA) Flood Hazard Maps, the entirety of both subject properties is located within Zone X as shown on Community Panel #230051 0007 C, effective date December 8, 1998. Zone X includes areas of minimal flooding. As such, if the property were financed with federal funds, flood hazard insurance would not be required.

TAX ASSESSMENT

The 0.54 AC subject property is identified as Map 435, Block G, Lots 10, 11, 12, 26 and the 3.09± AC subject property is identified as Map 151A, Block A, Lot 13 with assessed values as follows:

Map\Block\Lot(s)	435\G\10,11,12,26	151A\A\13	Total
Land	\$21,740	\$315,950	\$337,690
Building	\$0	\$0	\$0
Total	\$21,740	\$315,950	\$337,690
Tax Levy	\$582.63	Exempt	\$582.63
Tax Rate	\$26.80/\$1,000	\$26.80/\$1,000	\$26.80/\$1,000
Tax Ratio	82%	82%	82%

As a city owned property, no taxes are collected on the property located on Map 151A, Block A, Lot 13. If the 3.09± AC parcel were not city-owned and tax exempt, the taxes would be \$8,467.46 individually, \$9,050.09 combined. According to the City of Portland Assessor Office, the property would have a market value equal to the assessed value divided by 82% or \$385,305 for the 3.09± AC property and \$26,512 for the 0.54± AC property.

AVAILABLE MORTGAGE FINANCING

According to mortgage sources, a mortgage for a property such as the subject would most likely be financed locally at a rate of 225 to 300 basis points above prime, presently at 4%, for a term ranging between 15-20 years, after development of the parcel, with a short term 6 month rate for raw land, with a 50% loan-to-value ratio for raw land. As of the date of valuation of March 4, 2004, the range in interest rates was quoted as from 6.25% to 7.00%. If the property to be financed is an investment property, the financial institutions generally require a debt-coverage ratio from between 1.20 to 1.35, with the lower rate for credit worthy clients. The mortgage sources emphasized that each loan is written on an individual basis and depending on the particulars of the loan applicant and the property, these mortgage parameters could vary considerably.

SUPPLY AND DEMAND ANALYSIS

The purpose of this section of the report is to analyze the supply and demand for land within the subject properties' market area as of the date of valuation. Supply in this discussion refers to the amount of land available for sale at various prices, and demand refers to the amount of land desired for purchase at various prices. The supply varies indirectly, but not necessarily proportionately, with demand and vice versa. That is, when supply is low and demand is high, an upward pressure is placed on value; and when supply is high and demand low, negative pressure is placed on value.

The subject property consists of a 0.54 AC land parcel located on Magnolia Street and a 3.09± AC land parcel located on Cambridge Street. The properties located within the Morrill's Corner neighborhood. The 0.54 AC property has an estimated 47 feet of frontage on the paper portion of Magnolia Street. The 3.09 AC property has an estimated 40 feet of frontage at the terminus of Cambridge Street and a right of way to Forest Avenue. The traffic count on Forest Avenue has one of the highest counts in the state of Maine, and the parcels would enjoy high visibility as part of the adjacent property. The area is very well served by the transportation network. Due to the positive aspects of the properties' location, demand for the subject is considered high.

The supply is considered to be limited due to the small amount of larger commercial land parcels left in the City of Portland. Portland as a developed urban area, continues to

be a target for more development. The lack of available land area has caused more marginal land parcels (that is land encumbered with easements, with poor soils types, and/or wetlands) to be sought after and purchased for development. The two subject parcels are included in plans for redevelopment of the older industrial complex that abuts both subjects. Including the subject properties, the redevelopment project consists of a total 20.02± AC.

To conclude, as of the date of valuation, the supply of land available for development is considered to be limited while demand is considered to be relatively high. This imbalance tends to place an upward pressure on value.

MARKETING TIME ESTIMATE

Marketing Time (Prospective)

“The reasonable marketing time is an estimate of the amount of time it might take to sell a property interest in real estate at the estimated market value level during the period immediately after the effective date of an appraisal.”¹

The estimated prospective marketing time to sell the property in its “as is” condition during the period immediately after the effective date of appraisal is estimated to be six months or less. Marketing time differs from exposure time - the latter is always presumed to precede the effective date of an appraisal (see Exposure Time below).

The Appraisers’ estimate of marketing time is based on a review of listing reports for land parcels in southern Maine, information gathered through sales data verification and interviews with market participants.

EXPOSURE TIME ESTIMATE

Exposure Time (Retrospective)

“The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.”²

The estimated exposure time to sell the property in its ‘as is’ condition is presumed to have occurred prior to the effective date of the appraisal and is estimated at six months or

¹ Advisory Opinion G-7 of the Uniform Standards of Professional Appraisal Practice (USPAP)

² Ibid.

less. Exposure time differs from marketing time - the latter is the period immediately after the effective date of an appraisal (see Marketing Time above).

The exposure time varies for different types of real estate under various market conditions. The reasonable exposure period is a function of price, time, and use (zoning).

The Appraisers' estimate of exposure time is based on a review of listing reports for land parcels located in southern Maine, information gathered through sales data verification, and interviews with market participants.

HIGHEST AND BEST USE

In the Twelfth edition of the Appraisal of Real Estate, the Appraisal Institute defines Highest and Best Use as:

The reasonable probable and legal use of vacant land or an improved property, which is physically possible, legally permissible, appropriately supported, financially feasible and that results in the highest value. (p. 305)

To estimate the highest and best use, four elements are considered. These four elements will be discussed briefly below.

Possible Uses

The physical aspects of the property dictate the constraints on the possible uses of the subject property. Both subject properties contain soils types with moderate to very severe limitations to development. However, these limitations can be overcome by municipal water and sewer. Both are sufficiently large to support development. Both are accessible from public ways. However, access is only available through a relatively densely populated residential area. The smaller of the two parcels only has frontage on the paper portion of the street. The larger only has frontage at the terminus of a residential street. When these physical characteristics are taken into consideration, a variety of uses are possible including but not limited to residential, recreational, commercial, and even industrial uses. Possible uses also include development in conjunction with the abutting property.

Permissible Uses

The 0.54± AC parcel is located within the R3 and B2 Zones while the 3.09± AC parcel is located within the IL Zone. These zones permit a variety of residential, commercial and/or industrial uses. Permissible uses also include development in conjunction with the abutting property.

Feasible Use

The feasible use of the subject property is primarily dictated by market conditions of supply and demand. As of the date of valuation, the supply of land in the area is considered to be limited while demand is considered to be high. As such, an upward pressure is placed on value. Feasible uses include residential and/or commercial development. Due to the access issues of both properties, the feasible use of the subject properties includes development in conjunction with abutting properties.

Maximally Productive Use

The next step in determining the highest and best use for the subject property is to determine which of the uses that are possible, permissible and feasible is the use or uses which produce the highest return. Because residentially developable land tends to sell for lower unit values than commercial land in the subjects' marketplace (see the Sales Comparison Approach below), the highest and best use is commercial development. If the subjects are to be developed commercially, the highest and best use is commercial development in conjunction with the abutting property.

VALUATION

The traditional approaches to value include the Cost, the Sales Comparison, and the Income Capitalization Approaches, and in each of these approaches, the Appraiser develops the factual data, analysis, and reasoning leading to a value estimate. The following statements indicate the basic content of the approaches that are available to the Appraiser.

"In the cost approach, an estimated reproduction or replacement cost of the building and land improvements as of the date of appraisal is developed together with an estimate of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences. To the depreciated building cost estimate, entrepreneurial profit and the estimated value of the land are added. The total represents the value indicated by the cost approach.

In the sales comparison approach, the subject property is compared to similar properties that have been sold recently or for which listing prices or offering figures are known. Data for generally comparable properties are used and comparisons are made to demonstrate a probable price at which the subject property would be sold if offered on the market.

In the income capitalization approach, the current rental income to the property is calculated with deductions for vacancy and collection loss and expenses. The prospective net operating income of the property is then estimated. To support this estimate, operating statements for the subject property in previous years and for comparable properties are reviewed along with available operating cost estimates. An applicable capitalization method and appropriate capitalization rates are developed and used in computations that lead to an indication of value."³

The three approaches are seldom completely independent. An appraisal is composed of a number of integrated, interrelated, and inseparable procedures that have a common objective - a convincing, reliable estimate of value. Notwithstanding the fact that there are three (3) separate approaches to value the complexity of a given appraisal assignment may call for a "one-approach" system and not make separate presentations. Once the applicable approaches are completed, the Appraiser reconciles the facts as represented by the individual approaches into a final value estimate.

In the valuation of the subjects, the Sales Comparison Approach to value has been utilized. Due to the lack of improvements on the property, the Cost Approach is deemed inappropriate. Due to the lack of income generation, the Income Approach is deemed inappropriate. Because the highest and best use is commercial development in

³ Appraisal Institute. The Appraisal of Real Estate. 10th ed. Chicago: 1992

conjunction with the abutting property, the Appraiser has valued the subjects as part of the 20.02± AC proposed shopping center development.

SALES COMPARISON APPROACH

The Sales Comparison Approach is based on the premise that a buyer will not pay more for one property than for another that is equally desirable. Two steps are involved in this approach. These steps are:

- Step 1.) Researching sales of properties which are considered to share degrees of similarity with the subject property due to their highest and best use, location, physical characteristics and overall utility; and
- Step 2.) Adjusting the sales prices to reflect differences between the comparable sales and the subject to arrive at a value indication for the subject.

Each of these two steps is detailed below.

Step 1.) Researching Sales of Similar Properties – Because the highest and best use of the subject properties is considered to be commercial development in conjunction with the abutting property, the Appraiser has researched sales of developable land located within the cities of Portland and South Portland. The Appraiser has identified a total of eleven sales that have occurred between September 9, 1998 and April 2, 2004. Ten of the eleven sales represent actual transfers, and one sale (Sale #10) represents a contract that never closed. Parcel sizes of the sales range from 2.70 AC to 47.22 AC, and unit prices range from \$12,813/AC to \$222,222/AC.

Sale #1 represents the transfer of the land parcel located at 237 Ray Street in Portland on April 2, 2004 for \$600,000 or \$222,222/AC. The property consists of a 2.70± AC land parcel with 50± FF on Ray Street and 700± FF on a paper street. At the time of sale, the parcel was approved for a 10-lot single-family subdivision. The site is relatively level at street grade and is served by municipal water and sewer, telephone and electric services as well as cable TV.

Sale #2 is the transfer of a 3.40± AC land parcel located on Southeast Road in South Portland on March 5, 2004 for \$361,000 or \$106,176/AC. The parcel has approximately 540± FF on the road and is located in a Residential Zone. This property is a level lot suitable for subdivision. At the time of sale, the site was improved with a baseball field and several outbuildings which are considered to have no contributory value. The site is relatively level at street grade and is served by municipal water and sewer, telephone and electric services as well as cable TV.

Sale #3 represents the sale of 670 Westbrook Street in South Portland on September 25, 2003 for \$1,080,000 or \$125,290/AC. The property consists of an 8.62± AC site with 577±

FF on the road. The topography of the site is relatively level to sloping downward from road grade. Available utilities include municipal water and sewer, gas, telephone, electric and cable services. This property is located between Redbank and Courtland Court, two multi-family properties. The grantee is the owner of Redbank. The lot is intended for multi-family development.

Sale #4 represents the land parcel located off County Way in Portland on the Portland peninsula on June 27, 2002 for \$3,100,000 or \$77,500/AC. The property consists of a 40± AC located to the rear of St. John Street with frontage along County Way, the access road to the county jailhouse. This parcel is located in the IL District, and all utilities necessary for development are available. The property is intended for the new Mercy Hospital that will require the construction of a spur off I-295.

Sale #5 represents the sale of 125 Wescott Road in South Portland on June 27, 2002 for \$125,000 or \$31,017/AC. The property consists of 4.03± AC lot with 275± FF. Utilities include municipal water, telephone, gas, electric, and cable services. The property is located in the Residential Zone and abuts the South Portland Municipal Golf Course. The topography of the site slopes downward from road grade, and the site included significant ledge. Subsequent to this sale, the property was developed into a 10-lot single-family subdivision.

Sale #6 is the sale of an 8.60± AC land parcel located at 191 Harvard Street in Portland. The sale took place January 15, 2002 for \$125,000 or \$14,535/AC. The property includes a total of 100± FF and is located in the subject neighborhood. Utilities include municipal water, telephone, gas, electric, and cable services. The topography of the site is level at street grade. Subsequent to this sale, the property was developed into a 33-unit condominium project known as Radcliff Glen.

Sale #7 represents the transfer of a 16.0± AC land parcel located on Yale and Harvard Streets in Portland on December 21, 2001 for \$205,000 or \$12,813/AC. This lot is located within the subject neighborhood off Allen Avenue. Subsequent to this sale, the land has been subdivided into 10 single-family building lots and a 30-unit affordable housing apartment complex known as University Park.

Sale #8 represents the transfer of a 19.19± AC land parcel located at 125 Pope Street in South Portland on July 20, 2001 for \$1,700,000 or \$88,588/AC. This lot has 525 FF and was purchased by National Semiconductor for future expansion of their manufacturing facility. All utilities necessary for development are available.

Sale #9 represents the transfer of a 47.22± AC lot located on Western Avenue in South Portland on October 27, 2000 for \$2,550,000 or \$54,003/AC. The site has an estimated 1,100 feet of frontage and a relatively level topography at street grade. Subsequent to this sale, the property was developed into a commercial subdivision. Occupants of the new subdivision include the Curtainshop, Outback Steakhouse, Young's Furniture and Eggspectation restaurant.

Sale #10 represents the sale of a 47.04± AC parcel located off Rand Road in Portland on December 7, 1999 for \$1,707,565 or \$36,300/AC. The land abuts the Maine Turnpike and has access from Rand Road. The property was originally under contract for development into the US Postal Service for a mail sorting and distribution center. Due to neighborhood opposition, the property was purchased by the City of Portland for conservation.

Sale #11 is that of the 26.46± AC lot located at 246 Allen Avenue in Portland within the subject neighborhood on September 9, 1998 for \$300,000 or \$11,338/AC. The site has an estimated 450± FF on Allen. Subsequent to this sale, the site has been developed into a 62-unit condominium complex known as Delaware Court.

These comparable sales are summarized on a spreadsheet on a following page and are described in more detail on sales data sheets attached to this report.

AH3

BROWNFIELDS SITE ASSESSMENT REPORT

BURT COMPANY – PORTLAND, MAINE

February 24, 1999

Prepared by:

Brian Beneski

Maine Department of Environmental Protection

**Brownfield Site Assessment
Burt Company- 1 Cambridge Street, Portland Maine**

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**Brownfield Site Assessment
Burt Company- 1 Cambridge Street, Portland Maine**

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1.0 INTRODUCTION

The Maine Department of Environmental Protection (MEDEP) has prepared this Brownfields Site Assessment Report (BSA) regarding the Burt Company Site in Portland, Maine for the United States Environmental Protection Agency (USEPA). The purpose of this report was to collect information concerning conditions at the Site, to assess the potential threat to human health and the environment, and to characterize the sources of contamination present at the Site.

2.0 SITE DESCRIPTION

2.1 Site Location

The Burt Company Site (the Site) is located at 1 Cambridge Street in Portland, Cumberland County, Maine at latitude 43° 41' 19" and longitude 70° 17' 20" (Figure 1). The Site is approximately 3.1 acres in size, and is listed on the Portland Tax Assessor's map 151-A, lot 13 (1).

2.2 Site Description

The site is located on the boundary of a residential/industrial area of the City of Portland (see Figure 2). The site is bordered to the northeast by residential housing, to the southeast by a warehouse, to the southwest by railroad tracks, and to the northwest by a large paved parking lot. The only vehicle access to the property is from the northeast via Cambridge Street, a residential street. A fence exists on the northwest side of the property and partially along the northeast side, and includes a gate across the access from Cambridge Street. The area surrounding the site is served by municipal water and sewer; the closest drinking water well to the site is located approximately five miles southwest of the Site in the town of Scarborough (1).

The site is covered by vegetation, mostly grass and weeds, with a few trees scattered throughout the site, particularly on the southern corner of the site. Three buildings are located on the property and were utilized by Burt Company; two buildings utilized for manufacturing, one as an office and the other as a garage (Figure 3). However, excessive vandalism and fires to these structures since the time the Site was left vacant have rendered them unusable. A small stream bisects the Site, entering from a culvert on the northeast, flowing underneath a portion of one of the manufacturing buildings, and into Milliken Brook, which flows along the southern boundary, and exits the eastern corner of the Site.

2.3 Site Activity/History

2.3.1 Manufacturing History

Available information regarding the site indicates that Portland Billiard Ball Corporation began operating at the Site in 1895 manufacturing billiard balls. Sometime after this date, the company changed its name to the Burt Company and added the manufacture of clay casino gaming chips to its operation. The company utilized compression molding manufacturing and injection molding processes for both gaming chips and billiard balls (1).

In 1984, the Burt Company was sold to Arthur Girard who continued to operate under the Burt Company name. In 1985 The Brothers Corporation purchased the property. The Brothers Corporation continued operations under the Burt Company name until 1988 when the company was reorganized as CHIPCO International, Inc. Also in 1988, the company began using a manufacturing process utilizing offsite injection molding and printing of the product. With a shift to offsite manufacturing, most of the manufacturing equipment, inventory and materials were consequently sold to Atlantic Molding, Inc. (1).

In May of 1988, R.F. Investment Trust purchased the site, and subsequently leased the property in 1989 to Bekor Industries, Inc., an asbestos abatement firm. In October of 1989 the first of numerous fires damaged several of the buildings on site. After this fire Bekor Industries vacated the Site; the property has been idle ever since (1).

2.3.2 Regulatory History

In March of 1990 the Portland Fire Department, while responding to a fire reportedly set by vandals, observed and reported to the MEDEP various chemicals and powders were unsecured and were released into the environment. The MEDEP subsequently sent notifications to the current property owner which requested that the property be secured and the hazardous substances be stabilized and properly disposed of. Although Mr. Reef partially fenced the property, he did not indicate a willingness to properly address the hazardous substances at the site (1).

In May of 1990, the MEDEP contracted with LRS Environ-Services, Inc. to secure and stage the hazardous wastes at the Site. LRS performed the site work from May 23, 1990 to June 7, 1990, stockpiling approximately 45 cubic yards of contaminated soil and 180 overpacked drums of waste material. The wastes were temporarily staged on site until MEDEP could make final disposal arrangements. In December 1990, MEDEP completed a Preliminary Assessment report of the Site; this report recommended that a Screening Site Inspection be performed at the Site. In April of 1991, the MEDEP formally designated the Site as an Uncontrolled Hazardous Substance Site (1).

Brownfield Site Assessment Report
Burt Company Site - 1 Cambridge Street, Portland Maine

In November of 1991, the Portland Water District obtained samples from Milliken brook in an attempt to locate a source of elevated cadmium levels at the Portland Wastewater Treatment Plant. Only low levels of cadmium were detected, and the district concluded that the Site was not the source of the cadmium at the treatment plant (1).

Additional work was conducted by LRS in April of 1991 to: inventory the drummed waste staged on site; collect samples for disposal considerations; and pack the material in a more secure manner. In May of 1992 LRS utilized the following contractors for disposal of the material on Site: Michigan Disposal, Inc. for the disposal of stockpiled soil and overpacked wastes; Jet-Line Services, Inc. for the disposal of 3,500 gallons of No.2 and No. 6 heating fuel; General Chemical, Inc for the disposal of various flammable oil and water mixtures; and Frontier Chemical Waste Process, Inc. for the disposal of alkaline and ethyl alcohol waste solutions (1).

In November of 1992, Roy F. Weston, Inc. (RFW), completed a Final Site Inspection Report on the Site for the USEPA. Fieldwork conducted for this report included the collection and analysis of soil samples at the Site. Although the report itself made no conclusions, USEPA recommended additional work under CERCLA, using the results of the soil sampling as the basis of their conclusion (2).

Since the final removal of the stockpiled material in the May of 1992 and the field work for the RFW report in April of 1992, no additional investigative or remedial work has been conducted at the Site, with the exception of the field work conducted in June of 1998 for this report.

As of November of 1998, the City of Portland has begun abatement work of the asbestos in the buildings on site. The City anticipates demolishing the buildings on site in the later part of 1998 (3).

2.4 Potential Sources of Contamination

The raw materials formerly used on-site by the Portland Billiard Corporation, Burt Company, and Brothers Corporation include many hazardous and nonhazardous substances as defined under Title 40, part 261 of the code of Federal Regulations. Pigments and filler materials containing lead, antimony, cobalt, zinc, nickel, chromium, cadmium, and barium compounds were commonly used in past manufacturing operations at the site. Other materials possibly used onsite include TEK-SOL, a solvent composed mainly of aromatic hydrocarbons (1).

No information is available about waste disposal practices during manufacturing at the Site. Therefore, MEDEP conducted the fieldwork using field conditions such as "staining" and "filled areas" as possible source areas.

Current conditions at the site indicate that two areas may have been utilized for waste disposal from the manufacturing process. These areas are on the eastern portion of the Site and are separated from each other by the stream bisecting the site. Both of these

areas exhibit the characteristics of being "filled". It is also possible that waste material may have also been discharged into the stream as it runs underneath the main manufacturing facility. The possibility also exists that waste has been haphazardly discharged around the back areas of the manufacturing buildings.

3.0 SOURCE ASSESSMENT

3.1 Previous Sampling

Sampling was first conducted at the Site by MEDEP in March of 1990. Sample of spilled bags of lead monosilicate and dye were collected and analyzed for total metals and EP TOX metals. To determine the impact of the spilled material, representatives from MEDEP returned to the Site in May of 1990 to collect samples from soil in front of and underneath the floorboards in the garage for volatile organic compounds (VOCs) and EPTOX metals. After conducting a soil removal in this area, MEDEP returned in September 1990 to collect post excavation samples after a soil removal in this same area. From the post excavation results it appears that the removal action was successful (1).

RFW conducted a sampling event for a USEPA contracted Site Investigation in June 1990. This sampling event concentrated on surficial soil (six samples) and sediment samples (six samples) of the unnamed stream and Milliken Brook (Figure 3). A summary of the compounds detected during the RFW sampling can be found on Table 1 along with the MEDEP "Remedial Action Guideline for contaminated soil (RAG)" residential level for that respective compound. Compounds listed on Table 1 are those that were detected at levels three times greater than reference concentration (i.e., background samples, sample detection limit, or sample quantitation limit).

Arsenic and Lead were the only compounds detected at levels above the MEDEP's Remedial Action Guidelines for Contaminated Soil. Arsenic exceeded the 10 mg/kg residential standard at locations SS-03 (31.8 mg/kg), SS-04 (33.6 mg/kg), and SD-11 (10.8 mg/kg). Lead exceeded the 375 mg/kg residential guideline at locations SS-03 (2,230 mg/kg), and SS-04 (1,600 mg/kg). SS-04 was a duplicate sample taken of SS-03 for quality control purposes.

Since previous sampling on surficial soil and sediment had been done, sampling for the BSA concentrated on groundwater and subsurface soil in an effort to determine if any "source areas" of hazardous substances exist.

3.2 BSA Assessment Methodology/Field Schedule

On July 1 and July 2, 1998 representatives of the MEDEP visited the Site for the purpose of conducting the fieldwork for this BSA. A Concord Environmental "Little White Wagon" hydraulic direct push hammer was utilized in conjunction with a Geoprobe® soil boring system. A 1 inch outside diameter PVC microwell was installed in each soil boring to allow collection of overburden groundwater. Groundwater samples were also obtained using Geoprobe®'s mill slotted well point system.

Table 1
Summary of compounds Detected during RFW Sampling

Compound	Sample locations detected	Highest Level	RAG
Arsenic	SS-03; SS-04; SD-07,SD-11	33.6 mg/kg	10 mg/kg
Aluminum	SD-11	30,800 mg/kg	-
Barium	SS-03; SS-04	6,900 mg/kg	10,000 mg/kg
Copper	SS-03; SS-04	539 mg/kg	650 mg/kg
Cobalt	SD-11	20.5 mg/kg	-
Chromium	SD-11	64.4 mg/kg	960 mg/kg
Iron	SD-11	43,900 mg/kg	-
Lead	SS-03; SS-04	2,230 mg/kg	375 mg/kg
Mercury	SS-01; SS-03; SS-04	1.4 mg/kg	60 mg/kg
Sodium	SS-03; SS-04	441 mg/kg	-
Magnesium	SD-11	11,300 mg/kg	-
Manganese	SD-11	608 mg/kg	-
Potassium	SD-11	9,910 mg/kg	-
Thallium	SD-11	0.42 mg/kg	-
Vanadium	SS-03; SS-04; SD-11	442 mg/kg	-
Zinc	SS-03; SS-04;	680 mg/kg	1,500 mg/kg
Fluoranthene	SS-02; SS-03; SS-04;	0.390 mg/kg	-
Pyrene	SS-02; SS-03; SS-04	0.200 mg/kg	-
Aroclor 1260	SD-07	0.350 mg/kg	2.2 mg/kg
RAG – Remedial action guideline			
- no RAG available			

3.2.1 Soil Boring Methodology

Locations of the soil borings can be seen in Figure 4. Please refer to Appendix A for soil boring logs. The Large Bore Sampling probe was utilized at four locations (GP – 1 through GP - 4). At two other locations, a Geoprobe® Systems Mill – Slotted Well Point with a Geoprobe® Systems manual hammer was utilized to create the borehole for microwell installation. Soil samples from the Borings were field screened with a photo ionization detector (PID) following the standard MEDEP protocol as outlined in the "Procedural Guidelines for Establishing Standards for the Remediation of Oil Contaminated Soil and Groundwater in Maine".

3.2.2 Microwell Installation/Sampling Methodology

After reaching the end point of the boring, a 1 inch PVC well with a 10 slot screen was then inserted into the soil boring hole immediately after the withdrawal of the

Geoprobe® unit. Filter sand was then placed around the PVC well to fill the annulus around the screen. A bentonite seal was placed at the top of the annulus to prevent direct surface water infiltration.

After installation of the microwell, 1/4 inch polyethylene tubing was inserted into each well, and a peristaltic pump was then used to draw a sample of the groundwater from the well. Since the overburden of the Site consisted of a relatively tight formation, the initial purge rates were set at the lowest possible flow, and the appropriate sample containers were filled after one tubing volume was purged to assure the collection of the groundwater samples from the well. Field personnel then attempted to develop the microwell at a constant flow rate while maintaining a constant water level. If further development was possible, additional samples were collected. If a second sample with lower silt content was collected, the initial samples were discarded. If the well did not recharge adequately to allow further development, field personnel allowed the well to recharge for several hours before attempting to collect additional samples.

3.3 Sampling Locations

Samples were collected from six locations on site. The sampling locations can be seen of Figure 3, the rationale for the locations are described below.

GP-1: An area of the site with the appearance of being a fill/waste disposal area.

GP-2: An area of the site with the appearance of being a fill/waste disposal area.

GP-3: An area of stained soil. Located "behind" back maintenance building, a likely area for "lazy employee waste disposal".

GP-4: Located downgradient of the main manufacturing facility, in area most likely to be impacted if material was discharged in the stream as it flows under the main building.

SS-1: Located in the stained soil area downgradient of the back manufacturing building.

SS-2: Located between manufacturing buildings in an area with nearby fuel oil tanks.

3.4 Analytical Parameters

Table 2 presents the media and sample analysis for each location. An attempt was made at each location to obtain groundwater samples for the following parameters: volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), and the following metals: lead; antimony; cobalt; zinc; nickel; chromium; cadmium; barium, copper; mercury; arsenic; selenium; and silver. At locations where groundwater recharge did not allow collection of the full parameter list, a decision was made using field conditions for that specific location for the priority of analysis. At some locations where groundwater was unavailable for sampling, soil samples were analyzed instead.

TABLE 2
Sample Parameter/Media for Brownfield Site Inspection

Sample location	Media	analytical parameters
GP-1	groundwater	volatile organic compounds
	soil (6' – 8')	metals
GP-2	groundwater	volatile organic compounds
	groundwater	semivolatile organic compounds
	groundwater	metals
	soil (2' – 4')	volatile organic compounds
	soil (4' – 6')	semivolatile organic compounds
GP-3	soil (4' – 6')	metals
	groundwater	volatile organic compounds
	groundwater	semivolatile organic compounds
	groundwater	metals
	soil (2' – 4')	metals
GP-4	soil (6' – 8')	semivolatile organic compounds
	groundwater	volatile organic compounds
	groundwater	semivolatile organic compounds
	groundwater	metals
	soil	semivolatile organic compounds
SS-1	soil	metals
	groundwater	volatile organic compounds
	groundwater	semivolatile organic compounds
SS-2	groundwater	metals
	groundwater	volatile organic compounds
	groundwater	semivolatile organic compounds

4.0 ANALYTICAL RESULTS

A summary of the analytical results can be seen on Table 3 & 4, laboratory data sheets in Appendix B. In the text of this report, the number in parentheses is either the maximum exposure guidelines for that compound (for a water sample) or RAGs (for a soil sample).

4.1 GP-1

GP-1 is located in the northeast fill area. Field PID readings for all borings were less than 10 ppm. Methyl t-butyl ether (MTBE) was detected in the VOC analysis at 1.12 µg/L (36 µg/L). The following metals were detected: Lead at 47 mg/kg (375 mg/kg), cobalt at 14 mg/kg, zinc at 180 mg/kg (1,500 mg/kg), nickel at 57 mg/kg (3,800 mg/kg), chromium at 68 mg/kg (950 mg/kg), barium at 210 mg/kg, copper at 36 mg/kg (650 mg/kg), arsenic at 26 mg/kg (10 mg/kg), and mercury at 0.16 mg/kg (60 mg/kg).

TABLE 3
Summary of Analysis - Soil

Compound	GP-1	GP-2	GP-3	GP-4	RAG
Lead	47	830	4.2	7.0	375
Zinc	180	3,600	25	21	1,500
Copper	36	73	8	6.2	650
Arsenic	26	220	ND	4	10
Cadmium	ND	47	ND	ND	27
Barium	210	230	33	12	10,000
Cobalt	ND	4.3	ND	ND	-
Nickel	57	17	9.4	5.0	3,800
Chromium	68	170	17	9.4	950
Selenium	ND	13	ND	ND	950
Dichloromethane	NS	0.810	ND	ND	-
Diethyl phthalate	NS	10	ND	ND	-
Dibutyl phthalate	NS	120	ND	ND	-
Di phthalate	NS	14	ND	ND	-
Di n octyl phthlate	NS	2.6	ND	0.26	-
Phenol	NS	ND	ND	0.1	-
2-methol phenol	NS	ND	ND	0.19	-

Concentrations in milligrams per kilogram

RAG - MEDEP Remedial action Guidelines; - no RAG for compound

NS - compound not sampled for at that location

ND - compound not detected at that location

Table 4
Summary of Analysis - Groundwater

METAL	GP-2	GP-3	GP-4	SS-1	MEG
Lead	0.057	ND	ND	0.004	0.05
Cobalt	0.015	ND	ND	0.004	-
Zinc	3.3	0.045	0.06	0.39	-
Nickel	0.020	0.045	ND	0.006	0.15
Chromium	0.004	ND	ND	ND	0.10
Barium	0.70	0.065	0.051	0.22	1.0
Copper	0.011	0.007	ND	0.022	-
Arsenic	0.91	0.006	0.005	0.047	0.050
Selenium	0.006	ND	ND	ND	0.010
MTBE	1.12	ND	5.28	3.77	35
DI Phthalate	1.5	ND	2.1	ND	25

Concentrations in milligrams per liter for metals, micrograms per liter for organic compounds

ND - Compound not detected at that location

MEG - State of Maine maximum exposure guidelines for drinking water

- no MEG for that compound

4.2 GP-2

GP-2 is located in the southeast fill area. The highest PID reading was recorded for the boring at 4' - 6', which had a reading of 11.2 ppm. All other intervals had readings less than 10 ppm. Different colors were observed in the soil of borings 2' - 4' (red), and 4' - 6' (purple, red, and orange), indicating that this area may have been used for the disposal of dye or off spec billiard balls and/or gaming chips.

No volatile organic compounds were detected in the groundwater. Dichloromethane was detected at 0.810 mg/kg and MTBE at <0.005 mg/kg in the soil sample submitted for VOC analysis.

Diethyl phthalate was detected in the groundwater sample submitted for SVOC analysis at 1.5 µg/L. The following compounds were detected in the soil sample submitted for SVOC analysis: Diethyl phthalate at 10 mg/kg; dibutyl phthalate at 120 mg/kg; di (2 ethylhexyl) phthalate at 14 mg/kg; and di n octyl phthalate at 2.6 mg/kg.

Levels of Lead and arsenic in the groundwater from GP-2 exceeded their respective MEGs. Levels of Lead, zinc, and cadmium in the soil borings exceeded its respective RAGs.

4.3 GP-3

GP-3 was located in an area of surface staining behind the back maintenance building. Field PID readings were 10.6 ppm for boring interval 2' - 4', and 14.7 ppm for boring interval 4' - 6'.

No compounds were detected in the groundwater sample submitted for VOC analysis. No soil samples were submitted for VOC analysis.

No compounds were detected in the soil sample or groundwater sample submitted for SVOC analysis.

No MEGs or RAGs were exceeded for any of the compounds that were detected.

4.4 GP-4

GP-4 was located northerly adjacent to the stream that flows beneath the main manufacturing building. The purpose of this sampling location was to determine if waste material was discharged into the stream as it flows beneath the building. The highest field headspace reading at this location was 16.3 ppm in the 4' - 6' boring; all others were below 10 ppm.

MTBE was the only VOC detected in the groundwater sample from this location. The only compound detected in the SVOC groundwater analysis was di (2ethylhexyl)

phthalate at 2.1 µg/L. Di (2ethylhexyl) phthalate was also detected in the soil SVOC sample at 0.26 mg/kg. Additionally, phenol and 2-methol phenol were detected in the soil sample of the SVOC analysis at 0.1 mg/kg and 0.19 mg/kg, respectively.

No MEGs or RAGs were exceeded for any of the compounds detected.

4.5 SS-1

Since SS-1 was a driven point only for the collection of groundwater, no soil samples from this location were obtained. MTBE was the only compound detected in the VOC analysis at 3.77 µg/L. No compounds were detected in the sample submitted for SVOC analysis. The following metals were detected: lead - 0.004 mg/l (0.05 mg/l); cobalt - 0.004mg/l; zinc - 0.39 mg/l; nickel - 0.006 mg/l (0.15 mg/l), barium - 0.22 mg/l (1.0 mg/l), copper - 0.022 mg/l; arsenic - 0.047 mg/l (0.050 mg/l). As can be seen, no concentrations exceeded the MEGs for its respective compound.

4.6 SS-2

Since SS-2 was a driven point only for the collection of groundwater, no soil samples were obtained. No compounds were detected in either the VOC or SVOC sample analysis.

5.0 DISCUSSION

From the visual observations and analytical results, it appears that the only area of the Site was used for waste disposal is in the vicinity of GP-2. Metals appear to be the only contaminants found in any elevated level, most likely from the dyes used in coloring the billiard balls and gaming chips. In addition to colors being observed in the soil samples, the highest soil levels for lead, zinc, chromium, arsenic, and barium were detected in samples from GP-2. However, only lead and arsenic exceed the MEGs in the groundwater sample obtained from the microwell installed in this area.

GP-1 had elevated levels of metals as well, however none of the levels in the soil sample for GP-1 exceeded the RAGs, with the exception of arsenic.

The compounds detected in elevated levels in GP-2 were not detected above reference concentrations in the sediment samples collected downstream from this area (SD-07 and SD-11), indicating that this source area does not appear to be impacting Milliken Brook.

Additionally, sampling conducted by RFW in 1992 indicated the presence of lead and arsenic above Maine's RAGs in the area of sample SS-03 and SS-04.

6.0 CONCLUSIONS

There appears to be two areas of the site impacted above current health guidelines. These two areas consist of the waste disposed of in the area of GP-2, and the area of RFW sample location SS-03 and SS-04.

Since the surrounding area is served by municipal water, the levels of metals in the soil at GP-2 would not warrant removal unless this area was excavated; in that instance the material excavated would have to be characterized and disposed of appropriately. Additionally, some type of cap or cover system should be installed over this area to assure that the contamination is not available to those accessing the site, as well as notification placed on the deed to assure future users of the site to be aware of this particular area. The need for deed restrictions would be unnecessary if a removal of this waste material was conducted.

Additional investigative work should be done in the area of RFW sample location SS-03 and SS-04 to determine the size of the area with lead and arsenic concentrations above the RAGs. Excavation for offsite treatment and disposal or installation of a cap or cover system or cap may be prudent remedial techniques for addressing this area. As with the case with the source area near GP-2, deed restrictions would be required if capping or cover system was chosen as the remedial option; deed restrictions would be unnecessary if the contamination was excavated and disposed of or treated properly off site.

References

1. Roy F. Weston. Final Site Inspection Report – Burt Company, Portland Maine. November 20, 1992.
2. Smith, Nancy. USEPA Region 1. EPA Form #100-3, Remedial Site Assessment Decision for Burt Company, Portland Maine. February 23, 1993.
3. Beneski, Brian. Maine DEP. Telephone Conversation log for Burt Company, Portland Maine. October 30, 1998.



© 1993 DeLorme Mapping.

LEGEND

- | | | | |
|-----|----------------------|---|--------------------|
| —●— | Population Center | — | Street, Road |
| — | State Route | — | Major Street/Road |
| — | Geo Feature | — | State Route |
| — | Town, Small City | — | Interstate Highway |
| — | Hill | — | US Highway |
| — | Park | — | Railroad |
| — | Interstate, Turnpike | — | River |
| — | US Highway | — | Open Water |

Scale 1:31,250 (at center)

2000 Feet

1000 Meters

Mag 14.00

Wed Nov 04 15:31:25 1998

Figure 1
Site Location
 Brownfield Site Assessment Report
 Burt Company - 1 Camouflage Street
 Portland, Maine

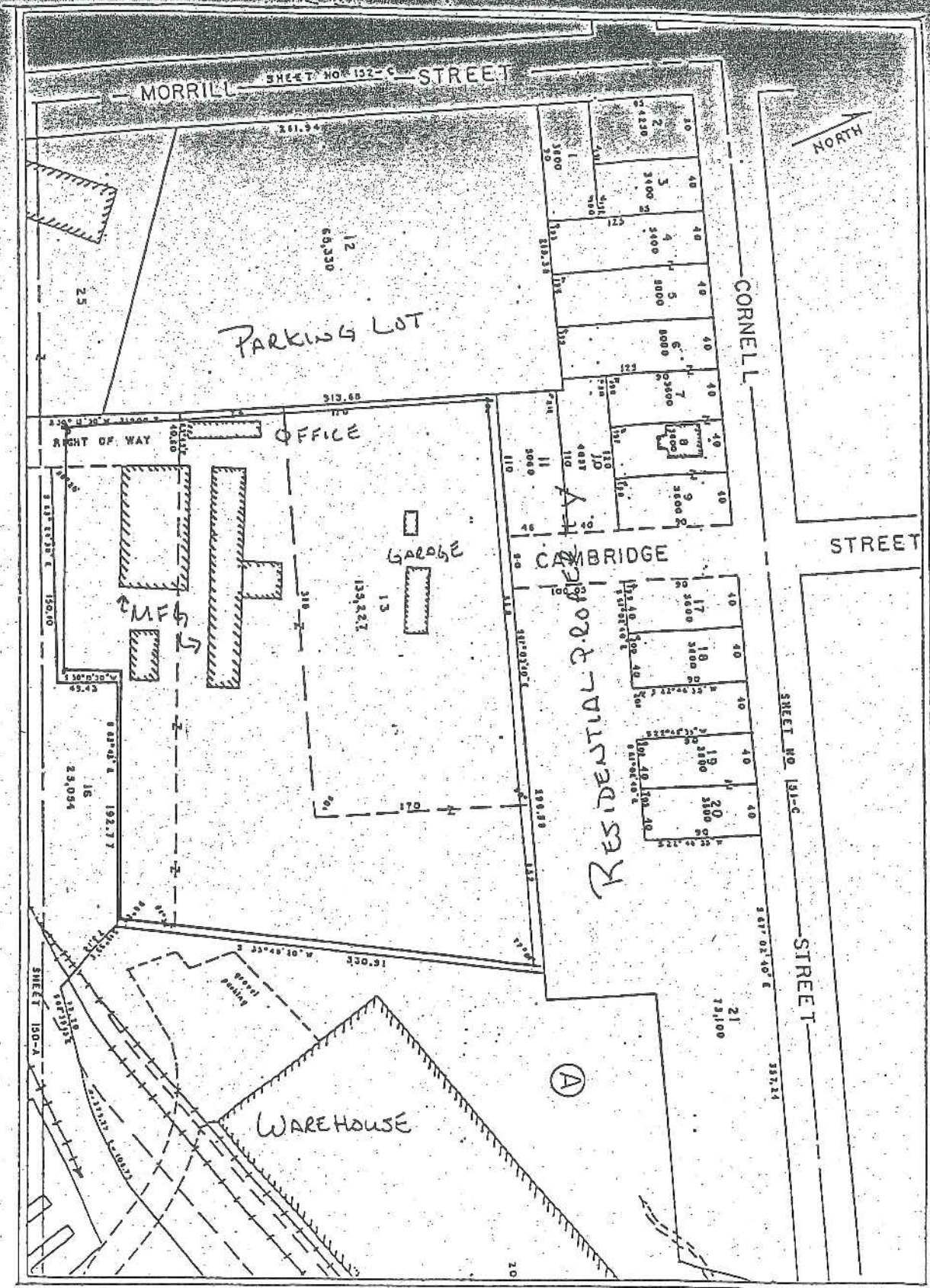
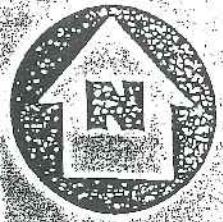
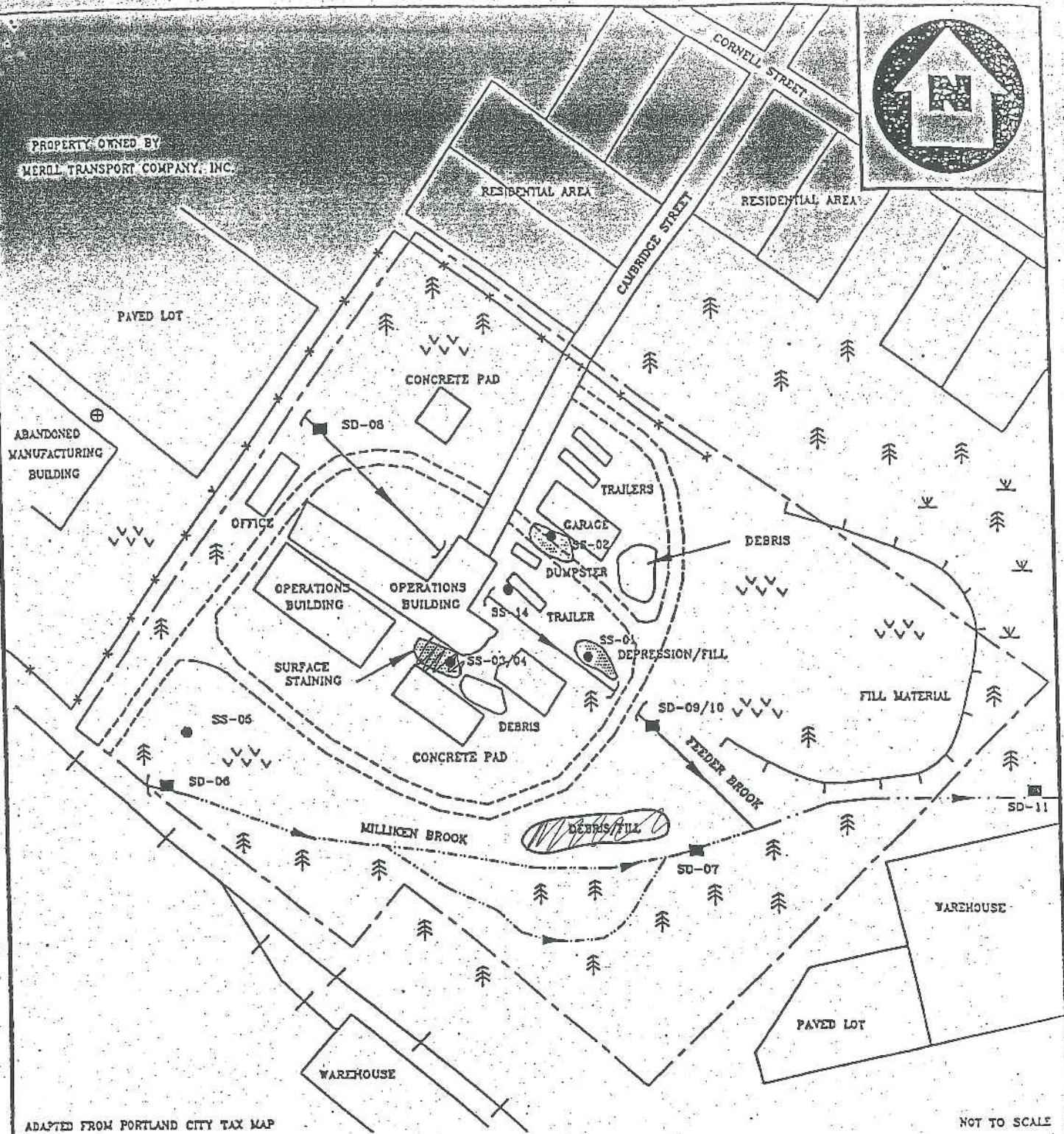


Figure 2
 Site Map
 Brownfield Site Assessment Report
 Burt Company – 1 Cambridge Street
 Portland, Maine



PROPERTY OWNED BY
MEROL TRANSPORT COMPANY, INC.



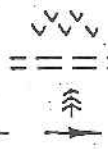
ADAPTED FROM PORTLAND CITY TAX MAP

NOT TO SCALE

LEGEND



FENCE WITH GATE
SOIL SAMPLE LOCATION
PROPERTY BOUNDARY
RAILROAD TRACKS



GRASSY AREA
DIRT ROAD
WOODED AREA
INTERMITTENT BROOK

SEDIMENT SAMPLE LOCATION
MONITORING WELL
WETLAND AREA
CULVERT

SITE SKETCH
BURT COMPANY
PORTLAND, MAINE

Figure 3
Sampling by RFW
Brownfield Site Assessment Report
Burt Company - 1 Cambridge Street
Portland, Maine

CONDITIONAL ZONE AGREEMENT

PACKARD DEVELOPMENT, LLC

AGREEMENT made this ___ day of _____, 2004 by **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

WITNESSETH

WHEREAS, PACKARD seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**") (See Exhibit A); and

WHEREAS, PACKARD proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

WHEREAS, the PROPERTY is currently located in three different zoning districts, R-5, B-2 and I-L; and

WHEREAS, the purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility; and

WHEREAS, substantial public improvements will be required to support any redevelopment of the **PROPERTY**, including but not limited to traffic improvements in the Morrills Corner area; and

WHEREAS, PACKARD has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY**, subject, however, to certain conditions; and

WHEREAS, the CITY by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

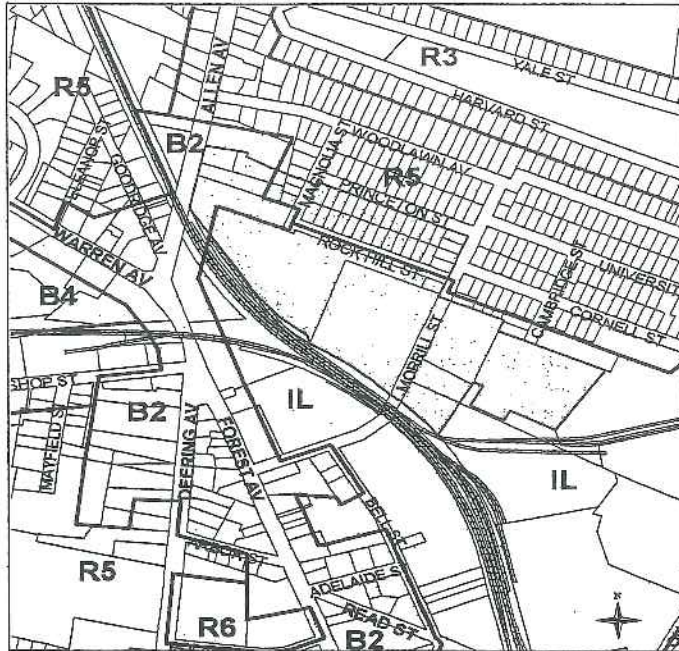
WHEREAS, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

WHEREAS, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

WHEREAS, on _____, 2004, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

NOW, THEREFORE, in consideration of the rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. _____, the City amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



**Proposed Rezoning for Morrill's Corner
from IL, B2 and R5 to Conditional B2**

RD 0 02 100100 P001

Map prepared by the City of Portland's
Department of Planning & Development and the GIS Workgroup

June 2004

This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:

- a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;
- b. Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.

2. The following plans and documents are attached and incorporated into this

Agreement:

Exhibit A: **PARCEL**

Exhibit B: Site plan and signage plan

Exhibit C: Minimum off site traffic improvements

Exhibit D: Architectural renderings

Exhibit E: Phasing plan

Exhibit F: Potential lot divisions/long term leases

3. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit D, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit D, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit D for the other structures associated with this project.

4. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.

5. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Retail establishments, business services and personal services, all as defined by Portland City Code § 14-47.
- b. Professional and business offices occupying no more than 25,000 square feet.
- c. Day care facilities and adult day care facilities.
- d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:

1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of three hundred (300) hundred shall be limited to twelve (12) times per year; and
2. the days of the week such events may be held may be limited by the City, in its discretion, based on concerns of traffic conditions, other events around the City or any other reason deemed to negatively impact public health, welfare or safety; and
3. **PACKARD** shall notify the **CITY'S** parking division four (4) weeks in advance of such event.
4. **PACKARD** shall provide an annual parking management plan to handle the requirements for parking at said events.

The initial plan shall be submitted for review as part of the site plan review for the boxing facility. The plan must include provisions for off site parking and shuttle bus transportation to the **PROPERTY**.

Thereafter, the parking management plan shall be updated annually and shall be reviewed on an annual basis by the City's Planning Authority and Parking Division, in its discretion. In any case, parking for daily use and for normal boxing club events shall be met on site.

e. Dwellings, as specified herein:

1. There shall be no fewer than ten (10) apartments (which may be combined live/work spaces) located in the building delineated on the Site Plan as "Proposed Mixed Use: Office/Prof. Service/ Retail/ Residential and "Proposed Retail"). The same shall be built in Phase I of the project. These units may serve as the replacement units for housing units to be displaced by construction of Phase I of the development in accordance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance, § 14-483 et seq. if approved by the City during site plan review. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site.

2. There shall be no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and shown on Exhibit E as Phase II. No temporary or permanent certificate of occupancy shall be granted for the grocery store building until all municipal approvals have been obtained for the Phase II townhouse development and a building permit has been issued for the first townhouse units. Building permits for at least 18 townhouses shall be obtained within 2 years of the commencement of construction of Phase II. **PACKARD** shall post a performance guarantee in the amount of \$50,000.00 per dwelling unit for the 18 townhouses required under this condition (hereinafter referred to as the "Housing Guarantee"), in a form acceptable to the **CITY**. The Housing Guarantee shall be reduced in amount for every six (6)

townhouses built and certificates of occupancy issued for such units. In the event that **PACKARD** fails to complete any or all of the 18 required townhouses, the **CITY** shall have the right to all funds remaining in the Housing Guarantee at the time of default. The **CITY** may utilize the funds in the Housing Guarantee for any housing project or housing-related purpose that it deems appropriate. Notwithstanding any contrary provision of this Agreement, **PACKARD**'s completion of the 18 townhouse unit development or the **CITY**'S call of the Housing Guarantee for any or all of the 18 required units shall satisfy **PACKARD**'s obligations under this subsection to provide 18 dwelling units in Phase II. The Housing Guarantee shall be separate from the performance guarantee required for site improvements on the townhouse site.

3. **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B, as "Area Reserved for Potential Residential Development" subject to prior subdivision and site plan review. In the event that **PACKARD** elects to construct these additional units, they must otherwise comply with the requirements established for the R-5 zoning district. Prior to construction of residential units, this area may be utilized for overflow parking for the boxing facility in the amount of no more than fifty (50) parking spaces, with the location of the parking spaces to be determined during site plan review. Should **PACKARD** wish to so use this area for parking, it must obtain site plan review and it must grant to the City an easement over the area for use by the public engaged in the use of the recreation/ open space when the parking is not needed for boxing club events. .

The Area Reserved for Potential Residential Development shall be loamed and seeded as part of Phase I of the development of the site as required by Section 5 unless a parking lot is proposed for this area in which case the parking lot proposal shall be subject to site plan approval during Phase I.

f. Accessory uses, including, but not limited to, public trails, parking facilities and structures, utility services, stormwater management systems, community meeting center, and site amenities. The uses listed in this subparagraph f shall be functionally related, physically oriented, and complementary to the principal uses of the site.

6. The uses on the **PROPERTY** will be within multiple buildings, which may be constructed in phases as specifically set forth on Exhibit E. All sections of Phase I and Phase II are required to be developed. Phase II shall be constructed in accordance with the schedule requirements set forth in Paragraph 4.

The following improvements must be constructed during Phase I: no fewer than 10 housing units in compliance with Portland City Code § 14-483 et seq., minimum off-site traffic improvements as shown on Exhibit C, the trail network shown on Exhibit B and E (except for that area labeled "Proposed Pedestrian Way in Princeton Street Right of

Way” which shall be constructed as part of Phase II), the construction of the multi-purpose field and the Area Reserved for Residential Development shall be loamed and seeded. No certificate of occupancy at this site will be issued for any purpose, unless and until such improvements are completed.

If the **PROPERTY** is constructed in Phases, in addition to the requirements contained in the Portland City Code, **PACKARD** nonetheless will be required at the outset to post a performance guarantee to cover all of the following improvements regardless of the Phase:

- Landscaping for approved portions of the plan and any temporary landscaping or screening determined necessary by the Planning Authority, in its discretion, to buffer the adjacent residential zone
- At minimum, the traffic improvements as shown on Exhibit C
- Trail amenities
- Stormwater system

7. *Development Standards.* All site plans in conformance with Exhibit B and Exhibit D (architectural renderings) may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 9 and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following additional development standards:

a. *Landscaping:* Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips as shown on Exhibit B. Development proposals shall include appropriate fencing and/or berming and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.

b. *Vehicular access.* Vehicular access to the Phase I portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other minimum off-site traffic improvements as shown on Exhibit C. A gated emergency access shall be provided at the terminus of Morrill Street as shown on Exhibit B. Vehicular access to Phase II shall be as shown on Exhibit B, with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.

c. *Signs:* Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be located as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be

coordinated with the building and landscaping design through the use of appropriate materials and finishes. Signage for the development shall meet the standards established in Section 14-369 for multi-tenant lots in the B-2 zoning district, except as otherwise approved pursuant to Section 14-526(a)(23).

d. Traffic improvements: **PACKARD** shall be responsible for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at **PACKARD'S** sole expense, following review and approval by the **CITY**. Such traffic improvements shall include, but not be limited to roadway widening, resignalization, road area for bicycles uninterrupted bike lanes, bus stops, esplanades with street trees, and sidewalks.

e. Open space improvements: In addition to the trail and other open space amenities delineated on Exhibit B, **PACKARD** shall be responsible for improving the parcel currently owned by the **CITY** and located in the vicinity of Cambridge Street (Tax Map 151A-A-13). **PACKARD** shall be responsible for the remediation of the site and for grading a level surface, installation of loam and seed or sod, creation of appropriate drainage and installation of irrigation equipment appropriate to create a multi-purpose field. **PACKARD** shall also be responsible for providing those funds necessary to purchase the playground and similar equipment necessary to improve the multi-purpose field to similar condition as the **CITY'S** Fox Street multipurpose field as it exists as of June 8, 2004. **PACKARD** shall work with the **CITY'S** Department of Parks and Recreation in determining the design and construction standards for the multipurpose field. In the event that ownership of this parcel will remain with the **CITY** or will be reconveyed to the **CITY** after the completion of improvements **PACKARD** shall be granted or shall retain an easement for its stormwater facilities, which shall be located and incorporated on this site in a manner as to allow the construction and use of the multi-purpose field. The open space in this area shall remain accessible to the users of the **PROPERTY**, as well as the general public, by use of the walking trails and any other available access.

PACKARD shall deed to the **CITY** a public recreational easement on and over the "Recreation/Open Space" area, the "Proposed Walking Trail," the sidewalk traversing the site, as well as the "Proposed Pedestrian Way in Princeton Street Right of Way" as delineated on Exhibit B. **PACKARD** shall be responsible for installing the "Proposed Walking Trail" as part of Phase I, as shown on Exhibit B and E, of the development. **PACKARD** shall grant a public recreational easement to the **CITY** for the trail. **PACKARD** shall also be responsible for construction of the multi-purpose field as set forth above in Phase I unless, after **PACKARD** has expended all reasonable efforts, permitting by the Maine DEP is held up or delayed for any reason beyond the control of **PACKARD**. In such case, **PACKARD** shall have an additional one (1) year from the issuance of required DEP permits in which to install the multipurpose field.

8. *Phasing:* **PACKARD** shall be authorized to develop the **PROPERTY** in multiple phases. These phases shall occur in accordance with the phasing plan attached hereto as Exhibit E. As specified in paragraphs 4 and 5, all sections of Phase I and Phase

It are required to be developed. The Area Reserved for Future Residential Development shall be loamed and seeded or constructed for parking/green space as otherwise approved during site plan review.

9. *CSO contribution:* **PACKARD** shall be required to contribute up to \$100,000.00 to the **CITY'S** Fall Brook Combined Sewer Overflow project.

10. *Dimensional Requirements.* The dimensional standards established in Section 14-185 for the B-2 zoning district, as further modified by this Agreement or by Exhibit B, shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**. For purposes of front yard setbacks, the front yard for each office or retail building developed on the **PROPERTY** shall have as the front yard the area between the building and Allen Avenue. The potential lot divisions for residential development and areas to be subject to long-term ground leases are delineated on Exhibit F. These locations may be changed as part of the subdivision review process. Amendments to these locations, once approved, may occur after Planning Board review and approval of the proposed amendments.

11. **PACKARD**, and its successors and assigns shall maintain the **PROPERTY** and the perimeter of the **PROPERTY** in order to ensure litter and other garbage is not spread/ blown to adjacent properties/neighborhood. **PACKARD** shall provide to the **CITY** a Maintenance Agreement which, in the event **PACKARD** or its successor fails to maintain the **PROPERTY**, would give the **CITY** the right to enter the property for purposes of cleaning up litter and debris, and charge **PACKARD** for its costs. The Property Maintenance Agreement shall include a retrieval program for shopping carts that have been removed from the **PROPERTY**.

The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the existing R-5 and I-L zones and to limit and supplement the requirements of the existing B-2 zone as set forth in this Agreement, except that the conditional uses included within Portland City Code § 14-483 are specifically excluded.

The above stated restrictions, provisions, and conditions, including all Exhibits to this Agreement, are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PACKARD**, any entity affiliated with **PACKARD** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **PACKARD** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent

provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the case of any issue related to the **PROPERTY** which is governed by this section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant. Nothing herein, however, shall bar the issuance of stop work orders.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. Following any determination of a zoning violation by the Court or the Zoning Administrator, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

WITNESS:

PACKARD DEVELOPMENT, LLC

By _____

Its: _____

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, ss.

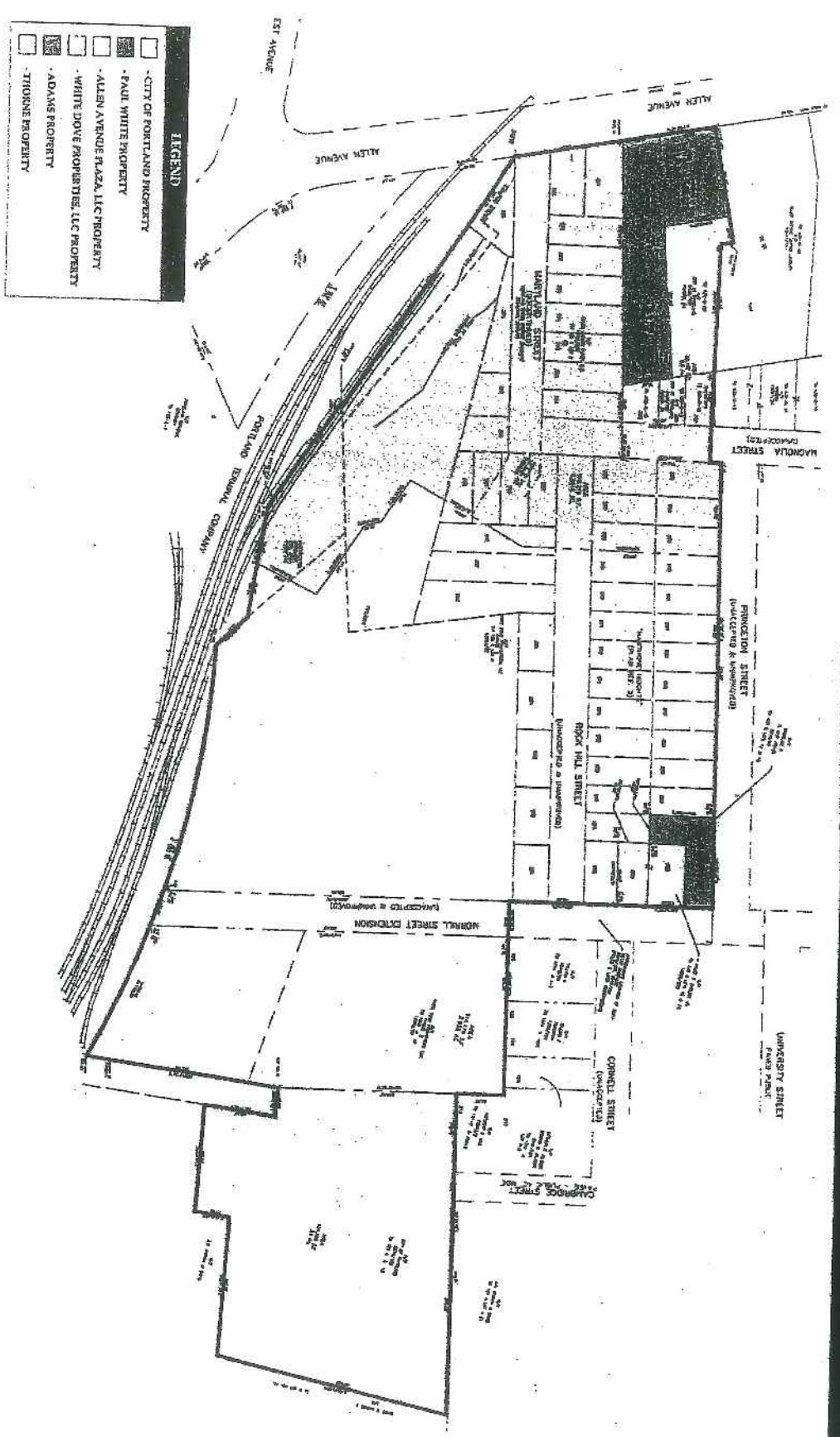
_____, 2004

Personally appeared before me the above-named _____, in his/her capacity as _____, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of Packard Development, LLC.

Before me,

Notary Public/Attorney at Law

P
 Morrill's Corner
 Portland, Maine
 Parcel Exhibit



LEGEND

- CITY OF PORTLAND PROPERTY
- PAUL WHITE PROPERTY
- ALLEN AVENUE PLAZA, LLC PROPERTY
- WHITE DOVE PROPERTIES, LLC PROPERTY
- ADAMS PROPERTY
- THORNE PROPERTY