

**ATTACHMENT G**

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**State and Federal Permits**



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

**MAINE GENERAL PERMIT (GP)  
AUTHORIZATION LETTER AND SCREENING SUMMARY**

Forefront Partners I, LP  
55 Lisbon Street, Suite 2400  
Lewiston, Maine 04240

CORPS PERMIT # NAE-2012-00992  
CORPS PGP ID# 12-154  
STATE ID# L-25672-2G-A-N

**DESCRIPTION OF WORK:**

To construct and maintain an 8' x 9' landing with an attached 4.33' x 40' aluminum ramp leading to a 10' x 10' intermediate float with a 12' x 20' float attached perpendicular extending southwest in Fore River off Thompson's Point. The work also includes placing fill in approximately 420 SF of intertidal area in conjunction with the construction of a 25' x 20' granite block stairway and in 386 SF of intertidal area to construct a riprap plunge pool for a storm drainage outfall for a total of 806 SF (0.018 acres) off Thompson's Point at Portland, Maine as shown on the attached plans entitled "Forefront Partners I,LP, Commercial Redevelopment, City of Portland, Thompson's Point, Maine" in 4 sheets dated April 2012. SEE ATTACHED CONDITIONS:

LAT/LONG COORDINATES : 43.64897 N 70.29191 W USGS QUAD: ME-Portland West

**I. CORPS DETERMINATION:**

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. **Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP).** Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 41 of the GP (page 18) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 12, 2015. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 12, 2016.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. **This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.**

II. STATE ACTIONS: PENDING [ ], ISSUED [ ], DENIED [ ] DATE \_\_\_\_\_

APPLICATION TYPE: PBR: \_\_\_\_\_, TIER 1: \_\_\_\_\_, TIER 2: \_\_\_\_\_, TIER 3: X, LURC: \_\_\_\_\_, DMR LEASE: \_\_\_\_\_, NA: \_\_\_\_\_

**III. FEDERAL ACTIONS:**

JOINT PROCESSING MEETING: 5-17-12 LEVEL OF REVIEW: CATEGORY 1: \_\_\_\_\_, CATEGORY 2: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 X, 404 \_\_\_\_\_, 10/404 \_\_\_\_\_, 103 \_\_\_\_\_

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

Rodney A. Howe  
RODNEY A. HOWE  
SENIOR PROJECT MANAGER  
MAINE PROJECT OFFICE

Frank J. Del Giudice  
FRANK J. DEL GIUDICE  
CHIEF, PERMITS & ENFORCEMENT BRANCH  
REGULATORY DIVISION  
DATE 8-24-12



**US Army Corps  
of Engineers** ®  
New England District

**PLEASE NOTE THE FOLLOWING GENERAL CONDITIONS FOR  
DEPARTMENT OF THE ARMY  
GENERAL PERMIT  
NO. NAE-2012-00992**

1. The following condition applies to the construction of the granite block stairway and the rip rapped stormwater plunge pool. Please note appendix A, II. Navigable Waters of the United States, Category 1, (a) Fill, 2. Work conducted in the intertidal zone must be conducted in-the dry during low water, or between Nov. 8 – Apr. 9.
2. The following condition applies to the construction of the ramp and float system. Please note appendix A, II. Navigable Waters of the United States Category 2 and (f) Structures and Floats Category 2 of the attached Programmatic General Permit.

# APPLICATION FOR A NATURAL RESOURCES PROTECTION ACT PERMIT

→ PLEASE TYPE OR PRINT IN BLACK INK ONLY

<b>1. Name of Applicant:</b> Forefront Partners I, LP		<b>5. Name of Agent:</b> DeLuca-Hoffman Associates, Inc.						
<b>2. Applicant's Mailing Address:</b> 55 Lisbon Street, Suite 2400 Lewiston, ME 04240		<b>6. Agent's Mailing Address:</b> 778 Main Street, Suite 8 South Portland, ME 04106						
<b>3. Applicant's Daytime Phone #:</b> (207) 347-1614		<b>7. Agent's Daytime Phone #:</b> (207) 775-1121						
<b>4. Applicant's Email Address (Required from either applicant or agent):</b> parallaxpartners@gmail.com		<b>8. Agent's Email Address:</b> sbushey@delucahoffman.com						
<b>9. Location of Activity: (Nearest Road, Street, Rt.#)</b> 1 Thompson's Point		<b>10. Town:</b> Portland	<b>11. County:</b> Cumberland					
<b>12. Type of Resource: (Check all that apply)</b>	<input type="checkbox"/> River, stream or brook <input type="checkbox"/> Great Pond <input type="checkbox"/> Coastal Wetland <input type="checkbox"/> Freshwater Wetland <input type="checkbox"/> Wetland Special Significance <input checked="" type="checkbox"/> Significant Wildlife Habitat <input type="checkbox"/> Fragile Mountain		<b>13. Name of Resource:</b> adjacent tidal flats of the Fore River					
			<b>14. Amount of Impact: (Sq.Ft.)</b> Fill: N/A Dredging/Veg Removal/Other:					
<b>15. Type of Wetland: (Check all that apply)</b>	<input type="checkbox"/> Forested <input type="checkbox"/> Scrub Shrub <input type="checkbox"/> Emergent <input type="checkbox"/> Wet Meadow <input type="checkbox"/> Peatland <input type="checkbox"/> Open Water <input type="checkbox"/> Other coastal wetland							
	<b>FOR FRESHWATER WETLANDS</b> <table border="0"> <tr> <td style="text-align: center;"><i>Tier 1</i></td> <td style="text-align: center;"><i>Tier 2</i></td> <td style="text-align: center;"><i>Tier 3</i></td> </tr> <tr> <td> <input type="checkbox"/> 0 - 4,999 sq ft.  <input type="checkbox"/> 5,000-9,999 sq ft  <input type="checkbox"/> 10,000-14,999 sq ft                 </td> <td> <input type="checkbox"/> 15,000 – 43,560 sq. ft.                 </td> <td> <input type="checkbox"/> &gt; 43,560 sq. ft. or smaller than 43,560 sq. ft., not eligible for Tier 1                 </td> </tr> </table>			<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>	<input type="checkbox"/> 0 - 4,999 sq ft. <input type="checkbox"/> 5,000-9,999 sq ft <input type="checkbox"/> 10,000-14,999 sq ft	<input type="checkbox"/> 15,000 – 43,560 sq. ft.
<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>						
<input type="checkbox"/> 0 - 4,999 sq ft. <input type="checkbox"/> 5,000-9,999 sq ft <input type="checkbox"/> 10,000-14,999 sq ft	<input type="checkbox"/> 15,000 – 43,560 sq. ft.	<input type="checkbox"/> > 43,560 sq. ft. or smaller than 43,560 sq. ft., not eligible for Tier 1						
<b>16. Brief Activity Description:</b>	The applicant proposes a transit oriented development over the previously developed Thompson's Point site in Portland. See Attachment 1 for additional information.							
<b>17. Size of Lot or Parcel &amp; UTM Locations:</b>	<input type="checkbox"/> _____ square feet, or <input checked="" type="checkbox"/> 27.56 acres		UTM Northing: 4,833,933 UTM Easting: 395,870					
<b>18. Title, Right or Interest:</b>	<input type="checkbox"/> own <input type="checkbox"/> lease <input checked="" type="checkbox"/> purchase option <input type="checkbox"/> written agreement							
<b>19. Deed Reference Numbers:</b>	Book#: 6579/6676 Page: 30/287	<b>20. Map and Lot Numbers:</b>	Map #: 201/202 Lot #: A-5, A-8, A-10/A-1, A-4					
<b>21. DEP Staff Previously Contacted:</b>	Marybeth Richardson	<b>22. Part of a larger project:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>After-the-Fact:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
<b>23. Resubmission of Application?:</b>	<input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No	<b>If yes, previous application #</b>	<b>Previous project manager:</b>					
<b>24. Written Notice of Violation?:</b>	<input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No	<b>If yes, name of DEP enforcement staff involved:</b>	<b>25. Previous Wetland Alteration:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
<b>26. Detailed Directions to the Project Site:</b>	Take Exit 5 off I-295 South and proceed onto Thompson's Point Connector Road, cross railroad tracks into site.							
<b>27. TIER 1</b>		<b>TIER 2/3 AND INDIVIDUAL PERMITS</b>						
<input type="checkbox"/> Title, right or interest documentation <input type="checkbox"/> Topographic Map <input type="checkbox"/> Narrative Project Description <input type="checkbox"/> Plan or Drawing (8 1/2" x 11") <input type="checkbox"/> Photos of Area <input type="checkbox"/> Statement of Avoidance & Minimization <input type="checkbox"/> Statement/Copy of cover letter to MHPC		<input checked="" type="checkbox"/> Title, right or interest documentation <input checked="" type="checkbox"/> Topographic Map <input checked="" type="checkbox"/> Copy of Public Notice/Public Information Meeting Documentation <input checked="" type="checkbox"/> Wetlands Delineation Report (Attachment 1) that contains the information listed under Site Conditions <input checked="" type="checkbox"/> Alternatives Analysis (Attachment 2) including description of how wetland impacts were Avoided/Minimized <input checked="" type="checkbox"/> Erosion Control/Construction Plan <input type="checkbox"/> Functional Assessment (Attachment 3), if required <input type="checkbox"/> Compensation Plan (Attachment 4), if required <input type="checkbox"/> Appendix A and others, if required <input checked="" type="checkbox"/> Statement/Copy of cover letter to MHPC <input type="checkbox"/> Description of Previously Mined Peatland, if required						
<b>28. FEES Amount Enclosed:</b>								

**CERTIFICATIONS AND SIGNATURES LOCATED ON PAGE 2**

**IMPORTANT: IF THE SIGNATURE BELOW IS NOT THE APPLICANT'S SIGNATURE, ATTACH LETTER OF AGENT AUTHORIZATION SIGNED BY THE APPLICANT.**

By signing below the applicant (or authorized agent), certifies that he or she has read and understood the following :

**DEP SIGNATORY REQUIREMENT**

**PRIVACY ACT STATEMENT**

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor a permit be issued.

**CORPS SIGNATORY REQUIREMENT**

USC Section 1003 provides that: Whoever in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry shall be fined not more than \$10,000 or imprisoned not more than five years or both. I authorize the Corps to enter the property that is subject to this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein.

**DEP SIGNATORY REQUIREMENT**

I certify under penalty of law that I have personally examined the information submitted in this document and all attachments hereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

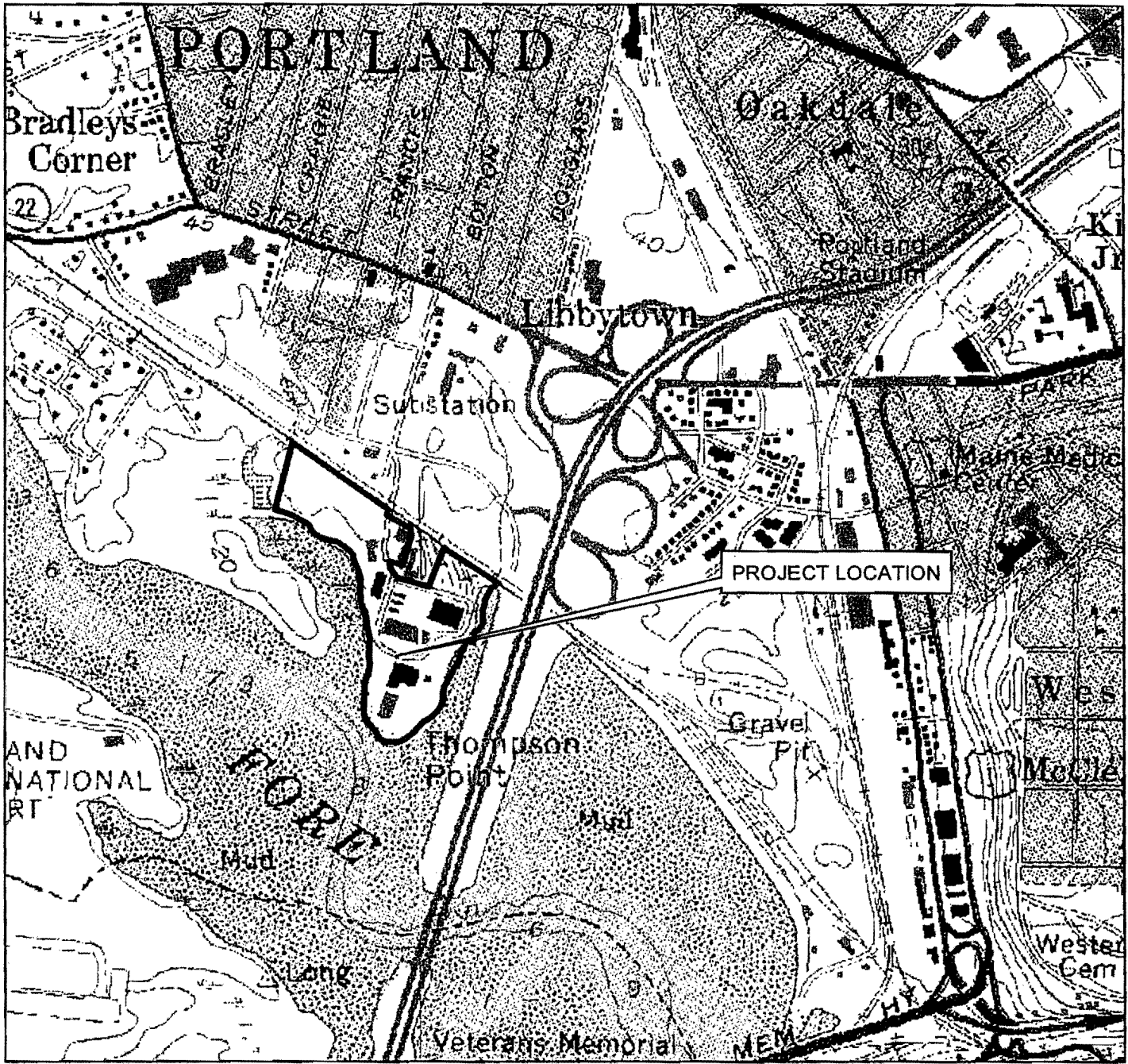
Further, I hereby authorize the DEP to send me an electronically signed decision on the license I am applying for with this application by emailing the decision to the address located on the front page of this application (see #4 for the applicant and #8 for the agent).

  
SIGNATURE OF AGENT/APPLICANT

Date: 4/26/12

**NOTE: Any changes in activity plans must be submitted to the DEP and the Corps in writing and must be approved by both agencies prior to implementation. Failure to do so may result in enforcement action and/or the removal of the unapproved changes to the activity.**

(pink)



USGS LOCATION MAP  
THOMPSON'S POINT  
PORTLAND, MAINE

SOURCE: MAINE OFFICE OF GIS - MAPS

DeLuca-Hoffman Associates, Inc.  
778 MAIN STREET, SUITE 8  
SOUTH PORTLAND, ME 04106  
207-775-1121  
www.delucahoffman.com

DRAWN: DED  
CHECKED: SRB  
DATE: SEPTEMBER 2010  
FILENAME: 2982-USGS  
SCALE: 1 inch = 1,000 feet

FIGURE

2

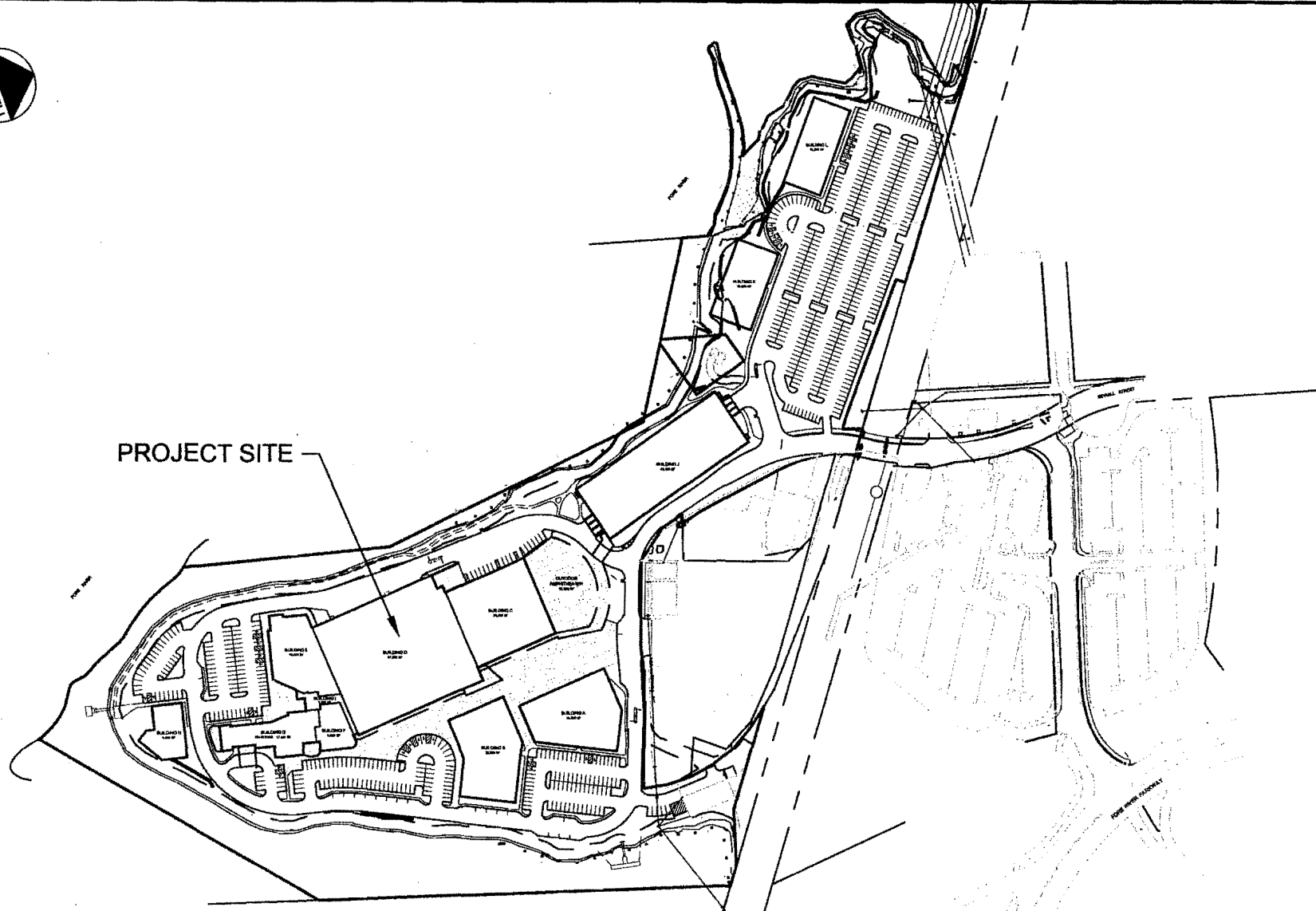
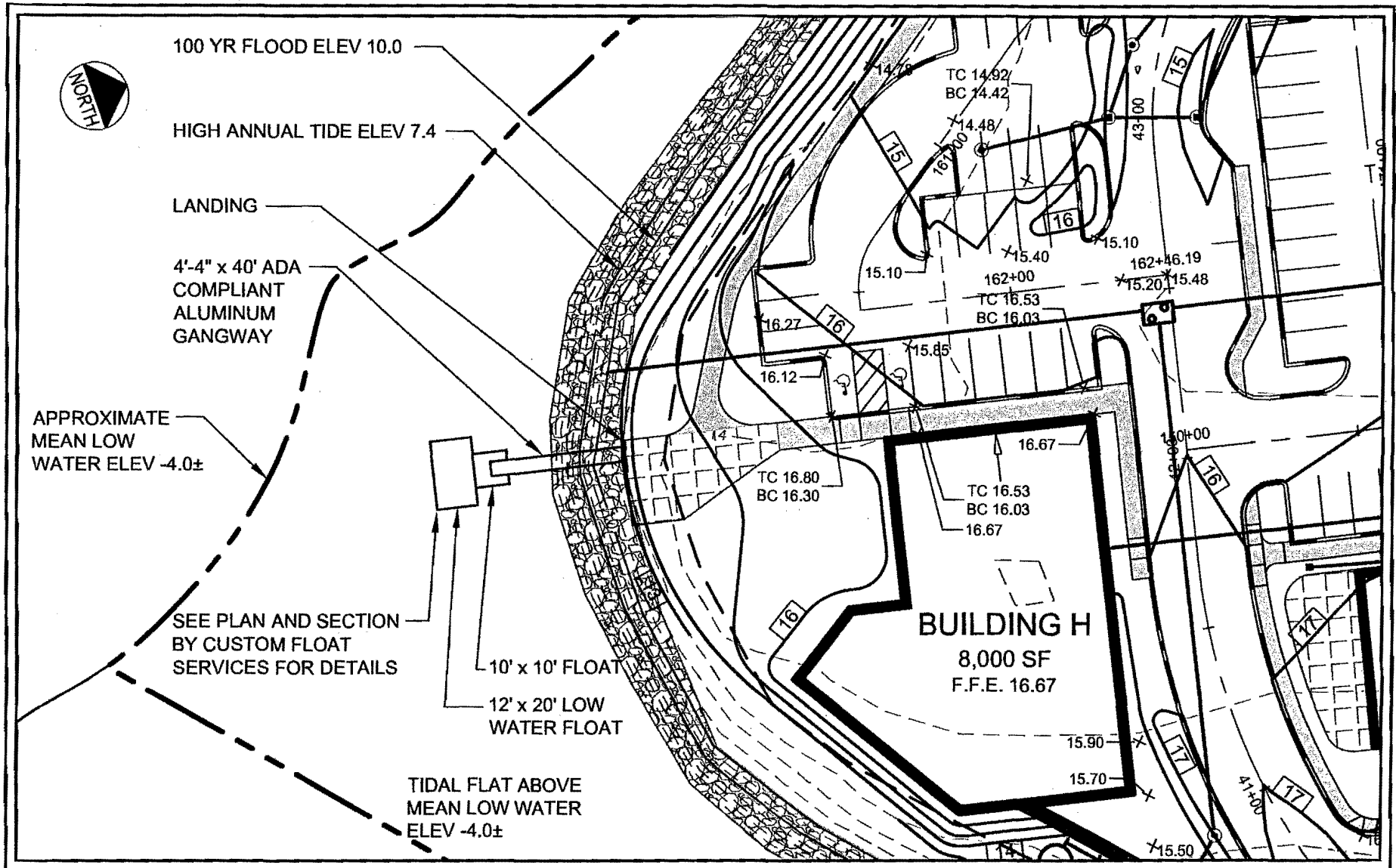
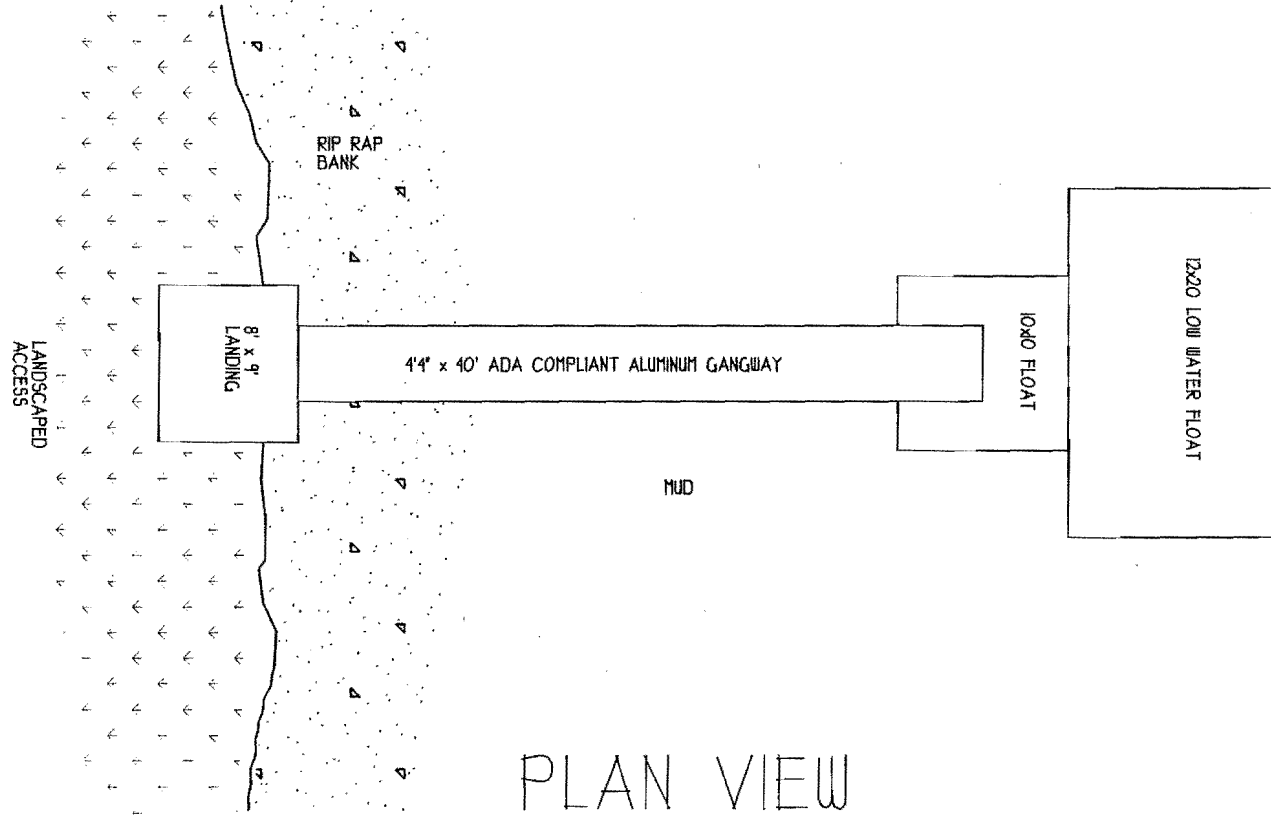


FIGURE:  1	BOOK: 6579 6875	PAGE: 30 287	LOCATION: CITY OF PORTLAND THOMPSON'S POINT	PROPOSED ACTIVITY: COMMERCIAL REDEVELOPMENT	PROJECT APPLICANT: FOREFRONT PARTNERS I, LP
	LEGAL DESCRIPTION: SEE ALTA SURVEY BY SEBAGO TECHNICS INC	WATER BODY: FORE RIVER	ABUTTERS: SEE ATTACHMENT 10	SCALE: 1" = 300' DATUM: -	DELUCA-HOFFMAN ASSOCIATES, INC.

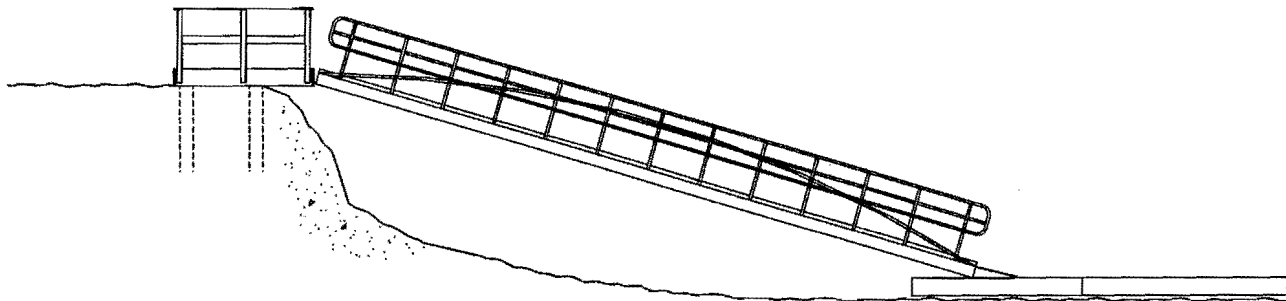


<b>FIGURE:  2</b>	<b>BOOK:</b> 6579 6875	<b>PAGE:</b> 30 287	<b>LOCATION:</b> CITY OF PORTLAND THOMPSON'S POINT	<b>PROPOSED ACTIVITY:</b> COMMERCIAL REDEVELOPMENT	<b>PROJECT APPLICANT:</b> FOREFRONT PARTNERS I, LP
	<b>LEGAL DESCRIPTION:</b> SEE ALTA SURVEY BY SEBAGO TECHNICS INC	<b>WATER BODY:</b> FORE RIVER	<b>ABUTTERS:</b> SEE ATTACHMENT 10	<b>SCALE:</b> 1" = 40' <b>DATUM:</b> -	<b>DELUCA-HOFFMAN ASSOCIATES, INC.</b>
					<b>DATE:</b> APR 2012





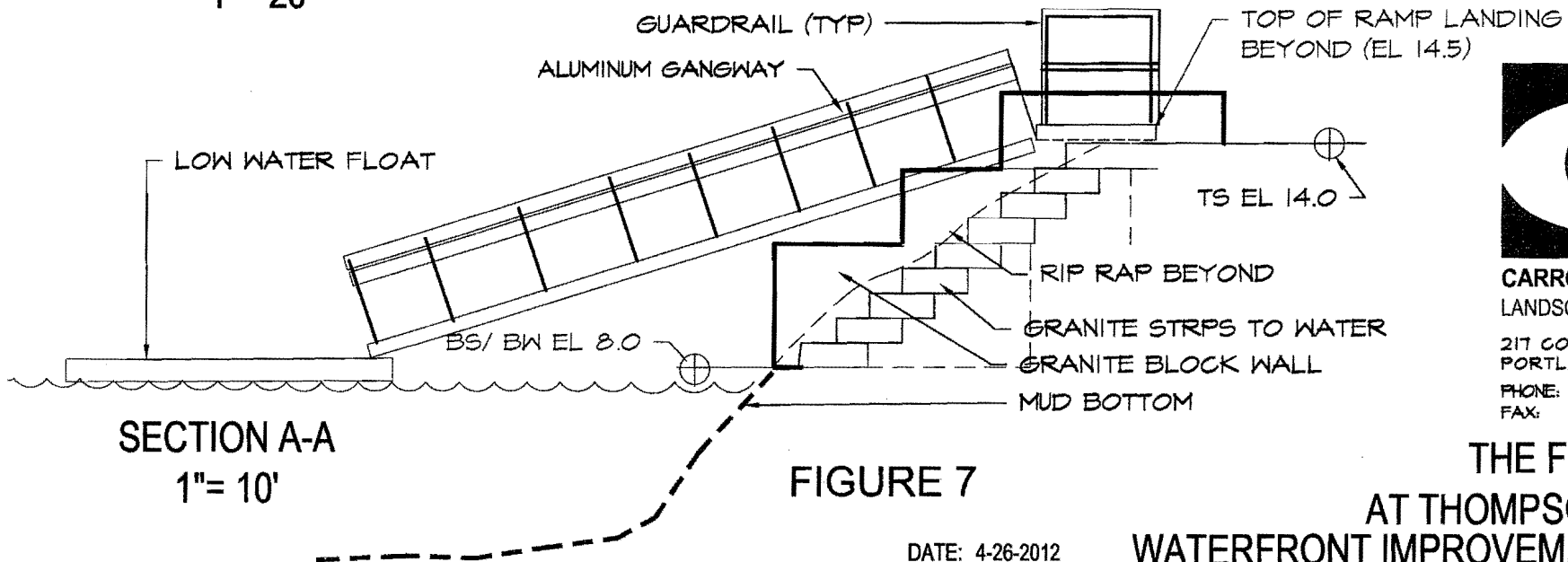
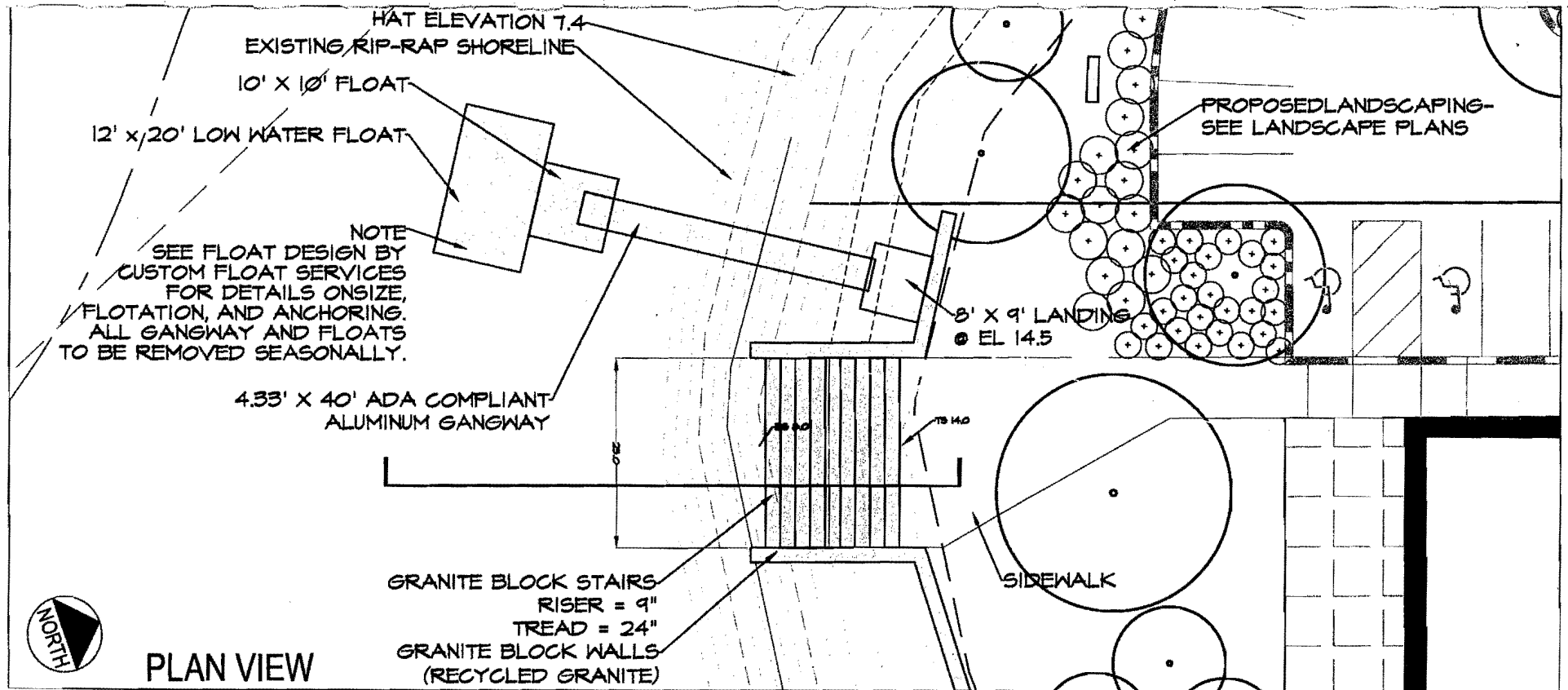
PLAN VIEW



SIDE ELEVATION

FIGURE:  
5

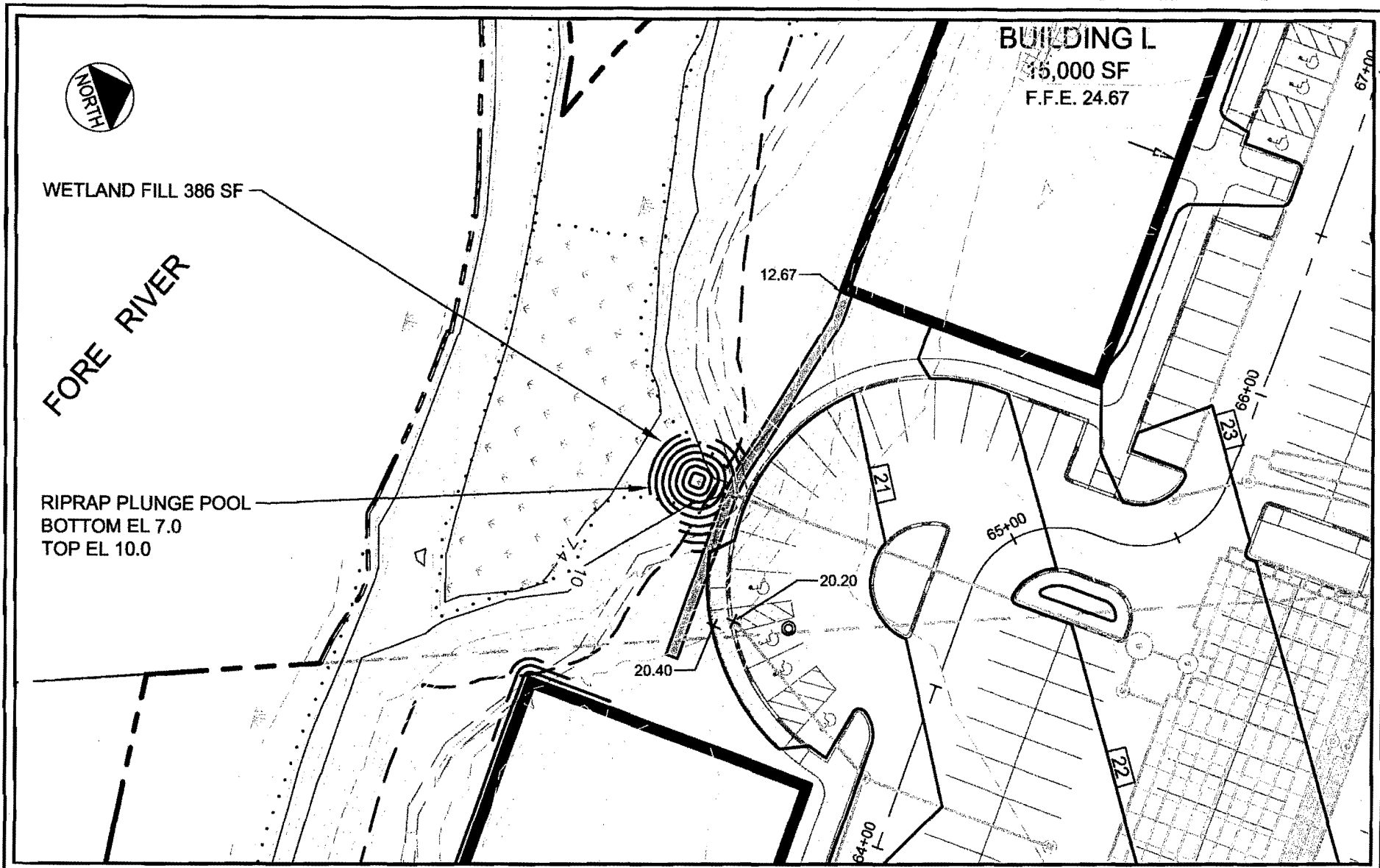
THE FOREFRONT AT THOMPSON'S POINT PLAN #1		REV
FOR: CHRIS THOMPSON / JON JENNINGS	DATE: 11/21/11	
DRAWN BY: MPD	SCALE: NOT TO SCALE	
DESIGNED BY:		
 <small>By Design Ship Outfitters, Inc.</small>		



**CARROLL ASSOCIATES**  
LANDSCAPE ARCHITECTS  
217 COMMERCIAL STREET  
PORTLAND, MAINE 04101  
PHONE: (207) 712-1552  
FAX: (207) 712-0112

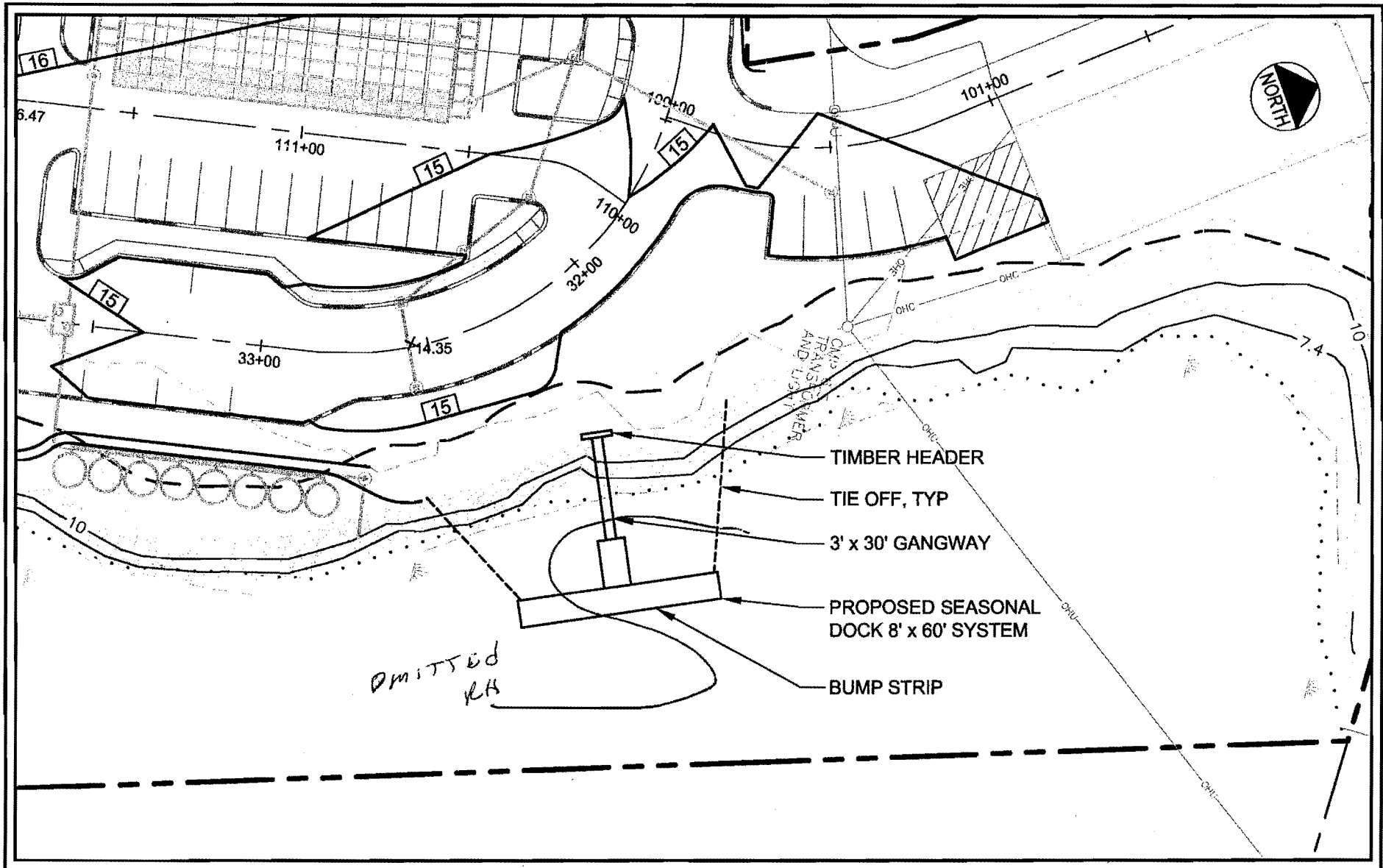
**THE FOREFRONT  
AT THOMPSON'S POINT  
WATERFRONT IMPROVEMENTS PLAN**

DATE: 4-26-2012



<b>FIGURE:</b>  <b>6</b>	<b>BOOK:</b> 6579 6875	<b>PAGE:</b> 30 287	<b>LOCATION:</b> CITY OF PORTLAND THOMPSON'S POINT	<b>PROPOSED ACTIVITY:</b> COMMERCIAL REDEVELOPMENT	<b>PROJECT APPLICANT:</b> FOREFRONT PARTNERS I, LP
	<b>LEGAL DESCRIPTION:</b> SEE ALTA SURVEY BY SEBAGO TECHNICS INC	<b>WATER BODY:</b> FORE RIVER	<b>ABUTTERS:</b> SEE ATTACHMENT 10	<b>SCALE:</b> 1" = 40' <b>DATUM:</b> -	<b>DELUCA-HOFFMAN ASSOCIATES, INC.</b>

**DATE:** APR 2012



<b>FIGURE:</b>  <p style="font-size: 2em; text-align: center;">3</p>	<b>BOOK:</b> 6579 6875	<b>PAGE:</b> 30 287	<b>LOCATION:</b> CITY OF PORTLAND THOMPSON'S POINT	<b>PROPOSED ACTIVITY:</b> COMMERCIAL REDEVELOPMENT	<b>PROJECT APPLICANT:</b> FOREFRONT PARTNERS I, LP
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REPLY TO ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

MAINE GENERAL PERMIT (GP)
AUTHORIZATION LETTER AND SCREENING SUMMARY

Forefront Partners I, LP
55 Lisbon Street, Suite 2400
Lewiston, Maine 04240

CORPS PERMIT #: NAE-2012-00992 amendment
CORPS PGP ID#: 12-154
STATE ID#: L-25672-2G-A-N

DESCRIPTION OF WORK:

Department of the Army permit NAE-2012-00992 authorized you to construct and maintain an 8' x 9' landing with an attached 4.33' x 40' aluminum ramp leading to a 10' x 10' intermediate float with a 12' x 20' float attached perpendicular extending southwest in Fore River off Thompson's Point. As requested your permit is hereby amended to shift the pier location slightly west and construct a 6' x 16' pile and timber pier with an attached 4' x 50' ramp leading to an 12'X24' intermediate float cut at an angle with a 10' x 60' line of bottom moored floats attached at an angle extending southwest in Fore River off lot 13 at Thompson's Point at Portland, Maine as shown on the attached plans entitled " the Forefront at Thompson's Point Seasonal Dock System by FST" in 3 sheets

LAT/LONG COORDINATES : 43.64897 N 70.29191 W USGS QUAD: ME-Portland West

I. CORPS DETERMINATION:

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP). Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 41 of the GP (page 18) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 12, 2015. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 12, 2016.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.

II. STATE ACTIONS: PENDING [ ], ISSUED [ ], DENIED [ ] DATE \_\_\_\_\_

APPLICATION TYPE: PBR: \_\_\_\_\_ TIER 1: \_\_\_\_\_ TIER 2: \_\_\_\_\_ TIER 3: X LURC: \_\_\_\_\_ DMR LEASE: \_\_\_\_\_ NA: \_\_\_\_\_

III. FEDERAL ACTIONS:

JOINT PROCESSING MEETING: 5-17-12 LEVEL OF REVIEW: CATEGORY 1: \_\_\_\_\_ CATEGORY 2: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 X , 404 \_\_\_\_\_ 10/404 \_\_\_\_\_, 103 \_\_\_\_\_

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA\_NO \_\_\_\_\_, USF&WS\_NO \_\_\_\_\_, NMFS\_NO \_\_\_\_\_

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://per2.nwp.usace.army.mil/survey.html

Rodney A. Howe
RODNEY A. HOWE
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

FRANK J. DEL GIUDICE
FRANK J. DEL GIUDICE
CHIEF, PERMITS & ENFORCEMENT BRANCH
REGULATORY DIVISION
DATE 4-16-2014

**MEMORANDUM FOR FILE**

SUBJECT: Forefront Partners I,LP NAE-2012-00992 amendment

**1. PRELIMINARY JURISDICTIONAL DETERMINATION:**

The State of Maine has performed a **preliminary jurisdictional determination** with which the Corps concurs. (OR)  
 Our preliminary determination of jurisdiction is that the aquatic resources within the review area are waters of the United States due to the presence of: (Check all that apply)

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**2. SECTION 106 COORDINATION**

Coordination with the State Historic Preservation Officer Yes/ N/A (circle one). Determination & date:  
           No effect by 10 day default; 8/10/12 No effect;            May effect;            No Adverse effect

Coordination with the Tribal Historic Preservation Officer(s) Yes/ N/A (circle one).  
Determination & date: 5/27/12 No effect by default;            No effect;            May effect;            No Adverse effect

**3. ENDANGERED SPECIES CONSULTATION: USFWS/NMFS (circle one or both).**

Determination & date: 6/7/12 No effect;            Not likely to adversely effect

**4. ESSENTIAL FISH HABITAT (EFH): EFH PRESENT Y / N (circle one).**

IF YES: Based on the terms and conditions of the PGP, which are intended to ensure that authorized projects cause no more than minimal environmental impacts, the Corps of Engineers has preliminary determined that this project will not cause more than minimal adverse effects to **EFH** identified under the Magnuson-Stevens Fisheries Conservation and Management Act.

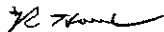
Determination & date:            No recommendations received;            No effect; 6/7/12 May Adversely effect.

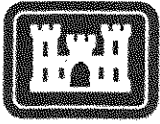
EFH recommendations: Normal TOYR construction window and Cat 2 Standards for installation.

**IMPACTS:** 0.0 Short-term;            Long-term; 0.0 Cumulative. (Brief description)

**Environmental impacts are minimal both individually and cumulatively Y / N (circle one).**

The original permit authorized an 8' x 9' landing with an attached 4.33' x 40' aluminum ramp leading to a 10' x 10' intermediate float with a 12' x 20' float attached perpendicular extending southwest in Fore River off Thompson's Point. This amendment authorizes the permittee to shift the pier location slightly west and construct a 6' x 16' pile and timber pier with an attached 4' x 50' ramp leading to an 12' x 24' intermediate float cut at an angle with a 10' x 60' line of bottom moored floats attached at an angle extending southwest in Fore River off lot 13 at Thompson's Point at Portland. The structure meets Corps guidelines for structures placed in navigable waters and there are no FNP's in the vicinity. Impacts to navigation in the immediate vicinity are considered minimal. The federal resource agencies have reviewed the original project and recommended normal TOYR restriction for construction. They determined the project is eligible for a Cat 2 GP as proposed. The permit is conditioned accordingly.

  
Rodney Howe  
Senior Project Manager  
Maine Project Office



**US Army Corps  
of Engineers** ®  
New England District

**WORK-START NOTIFICATION FORM**  
(Minimum Notice: Two weeks before work begins)

\*\*\*\*\*  
 \* MAIL TO: U.S. Army Corps of Engineers, New England District \*  
 \*  
 \* Policy Analysis/Technical Support Branch \*  
 \* Regulatory Division \*  
 \* 696 Virginia Road \*  
 \* Concord, Massachusetts 01742-2751 \*  
 \*\*\*\*\*

Corps of Engineers Permit No. NAE-2012-00992 was issued Forefront Partners I, LP. The permit authorized the permittee to construct a 6' x 16' pile and timber pier with an attached 4' x 50' ramp leading to an 12'X24' intermediate float cut at an angle with a 10' x 60' line of bottom moored floats attached at an angle extending southwest in Fore River off lot 13 at Thompson's Point at Portland, Maine. The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

**PLEASE PRINT OR TYPE**

**Name of Person/Firm:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Telephone Numbers:** ( ) \_\_\_\_\_ ( ) \_\_\_\_\_

**Proposed Work Dates:** Start \_\_\_\_\_ Finish \_\_\_\_\_

**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\*\*\*\*\*

**FOR USE BY THE CORPS OF ENGINEERS**

**PM:** Howe \_\_\_\_\_ **Submittals Required:** \_\_\_\_\_

**Inspection Recommendation:** \_\_\_\_\_

\_\_\_\_\_



**US Army Corps  
of Engineers**®  
New England District

(Minimum Notice: Permittee must sign and return notification  
within one month of the completion of work.)

**COMPLIANCE CERTIFICATION FORM**

**Corps of Engineers Permit No:** NAE-2012-00992

**Name of Permittee:** Forefront Partners I, LP

**Permit Issuance Date:** \_\_\_\_\_

Please sign this certification and return it to the following address upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

\*\*\*\*\*

\* MAIL TO: U.S. Army Corps of Engineers, New England District \*  
 \* Policy Analysis/Technical Support Branch, ATTN: PAS\*  
 \* Regulatory Division \*  
 \* 696 Virginia Road \*  
 \* Concord, Massachusetts 01742-2751 \*

\*\*\*\*\*

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

**I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.**

\_\_\_\_\_  
*Signature of Permittee*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Date of Work Completion*

( ) ( )

*Telephone Number Telephone Number*



# BOARD OF HARBOR COMMISSIONERS

---

## PORT OF PORTLAND, MAINE

### Application for a Marine Construction Permit

#### DECISION

Date of public hearing:  
August 14, 2014

Name and address of applicant:  
Thompson's Point Development Company  
501 Danforth Street  
Portland, ME 04102

Location of project for which permit is requested:  
Thompsons Point  
Fore River

Description of project:  
Construction of a seasonal dock system

#### For the Record:

Names and addresses of witnesses (proponents, opponents and others):  
Bo Kennedy, FST

Exhibits admitted (e.g. renderings, reports, etc.):  
Marine Construction permit application packet prepared by FST

Summary of testimony presented:  
Applicant outlined the proposed project and answered questions from the board.

#### Findings of Fact and Conclusions of Law:

1) Waiver of 25ft rule as defined in Rule 16.2(b):

The Board of Harbor Commissioners may grant a waiver of the 25 foot rule if it finds that it would be unfair, inappropriate or unnecessary to apply the rule in a particular situation.

Granted \_\_\_\_ Not Granted \_\_\_\_

Reason: N/A

RECEIVED

AUG 20 14

F.S.&T.

Factors to be considered by the Board:

- a. Whether the particular marine structure or obstruction under consideration, even if allowed to be constructed or placed within 25 feet of a sideline, will permit a channel that will adequately allow the passage of vessels;
- b. Whether existing marine structures or obstructions make it impossible for a channel wide enough to allow the passage of vessels to exist, regardless of the placement or construction of the marine structure under consideration;
- c. The intended use of the marine structure of obstruction;
- d. Whether granting a waiver would significantly reduce an abutting property owner's use of that abutting property, including but not limited to the owner's ability in the future to attach a marine structure to that abutting property;
- e. Any boundary lines between properties that extend into the harbor as described in deeds, maps or plans; and
- f. Any other factor the Board believes is relevant to whether a waiver should be granted in a particular case.

2) The marine structure or obstruction will not substantially or unreasonably interfere with navigation, including its impact on convenient channels for the passage of vessels.

Satisfied  Not Satisfied

Reason:

3) The marine structure or obstruction will not injure the rights of others.

Satisfied  Not Satisfied

Reason:

4) The marine structure or obstruction will not threaten public safety.

Satisfied  Not Satisfied

Reason:

**Conclusion:** (check one)

Option 1: The Board finds that the standards described above have been satisfied and therefore GRANTS the permit.

Option 2: The Board finds that while the standards described above have been satisfied, certain additional conditions must be imposed to minimize adverse effects on navigation and/or public safety, and therefore GRANTS the permit SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the standards described have NOT all been satisfied and therefore DENIES the permit.

Dated:

8-18-14



Jeff C. Liick  
Harbor Master  
Port of Portland  
By Direction

**BOARD OF HARBOR COMMISSIONERS  
PORT OF PORTLAND**

**PERMIT-A**

***TO BE POSTED IN A CONSPICUOUS PLACE AT THE CONSTRUCTION SITE***

To: Thompsons Point Development Company  
501 Danforth Street  
Portland, ME 04102

The Board of Harbor Commissioners for the Port of Portland has carefully considered your application, dated the 22<sup>th</sup> day of July, 2014 for a permit authorizing:

Construction of a seasonal float system

Having given public notice of this pending application, as required by law, and therein designated the 8<sup>th</sup> day of May 2014, at 5:00 o'clock in the afternoon prevailing time as the time when they would meet at Portland City Hall, to examine this issue and hear all interested parties, and having met at the time and place mentioned and examined the location of this proposed construction project and having heard all interested parties, the Board of Harbor Commissioners for the Port of Portland hereby issues this permit which authorizes you to proceed under all applicable local and federal regulations hereinafter stated, and to maintain within the limits mentioned in the permit application.

In addition, the construction project described above must be surrounded by a containment boom unless the Board of Harbor Commissioners for the Port of Portland has waived this requirement in writing, either as part of the above-listed conditions, or in a separate statement.

This permit is limited authorization, which contains a stated set of conditions with which the permit holder must comply. If a contractor performs the work for you, both you and the contractor are responsible for assuring that the work is done in conformance with the conditions and limitations of this authorization. Please be sure that the person who will be performing the work has read and understands these conditions.

Performing any work not specifically authorized by this permit, or that fails to comply with its conditions, may subject you to the enforcement provisions of Harbor Commission regulations. If any change in plans or construction methods is found necessary, please contact the Harbor Commission immediately to discuss modifications to your authorization. Any change must be approved by the Harbor Commission before it is undertaken.

Nothing in this permit shall be construed to justify or authorize any invasion to the private rights of others. Moreover, nothing in this permit shall limit or modify the authority of the Board of Harbor Commissioners for the Harbor of Portland with its applicable statute. Attested copies will be submitted to the U. S. Army Corps of Engineers, the Department of Environmental protection, the City of Portland, and the City of South Portland.

In Witness Whereof, of the Board of Harbor Commissioners for the Port of Portland hereunto affix their corporate seal on this 14<sup>th</sup> day of August, 2014. The work authorized to this permit must be completed on or before the 14<sup>th</sup> day of August 2015.



Federal Aviation Administration  
Air Traffic Airspace Branch, ASW-520  
2601 Meacham Blvd.  
Fort Worth, TX 76137-0520

Aeronautical Study No.  
2010-ANE-904-OE

Issued Date: 12/21/2010

Steve Bushey  
DeLuca-Hoffman Associates  
778 Main Street  
South Portland, ME 04106

**\*\* FEASIBILITY REPORT \*\***

The Federal Aviation Administration has conducted a limited aeronautical review concerning the feasibility of a structure described as follows:

Structure:	Feasibility Study (commercial buildings)
Location:	Portland, ME
Latitude:	43-39-03.79N NAD 83
Longitude:	70-17-28.48W
Heights:	150 feet above ground level (AGL) 175 feet above mean sea level (AMSL)

The results of this review can be found on the attached page(s).

NOTE: THE RESULTS OF OUR LIMITED REVIEW IS NOT AN OFFICIAL DETERMINATION OF FINDINGS BUT ONLY A REPORT BASED ON THE GENERAL OR ESTIMATED INFORMATION SUPPLIED FOR THE STRUCTURE. ANY FUTURE, OFFICIAL AERONAUTICAL STUDY MAY REVEAL DIFFERENT RESULTS.

If we can be of further assistance, please contact our office at (847) 294-7575. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2010-ANE-904-OE.

**Signature Control No: 131185695-134672885**

( FSB )

Vivian Vilaro  
Specialist

Attachment(s)  
Additional Information

## **Additional information for ASN 2010-ANE-904-OE**

### Feasibility Study for Aeronautical Study No. 2010-ANE-904-OE

This informal feasibility report is based on the data submitted by the sponsor. This is not a formal determination but only a report based on the information furnished to this office. Please keep in mind that there is always a possibility that the final outcome of a formal aeronautical study might prove to be different from the results of this informal feasibility study.

1. The proposed site would be located approximately 3279 feet (0.53 nautical miles) northeast of the Runway 29 threshold of the Portland International J Airport (PWM) in Portland, ME.
2. Based on Part 77, notice to the FAA would be required and the structure does not exceed the obstruction standards. This information is based on airport information currently on file with the FAA.
3. This informal feasibility report does not supercede or override any state, county or local laws or ordinances.
4. Based on the unofficial nature of this study, the FAA shall not be held responsible for any type of commitment entered into by the sponsor based solely on this informal feasibility report.
5. If the location or overall AMSL height changes, the results of this feasibility study are will not apply.
6. Please refer to the ASN noted above on any future correspondence concerning this feasibility report or if you do file formal notice with the FAA concerning the structure.



PAUL R. LEPAGE  
GOVERNOR

MAINE HISTORIC PRESERVATION COMMISSION  
55 CAPITOL STREET  
65 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333

EARLE G. SHETTLEWORTH, JR.  
DIRECTOR

March 29, 2013

RECEIVED APR - 2 2013

Greg A. Mitchell, Director  
Economic Development Department  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Project: MHPC #0812-11; Forefront at Thompson's Point, proposed commercial development;  
Maine Historic Building Record documentation  
Location: Portland, ME

Dear Mr. Mitchell:

The Commission is in receipt of the final Maine Historic Building Record narrative history and description from Sutherland Conservation & Consulting for the subject project. This narrative meets the requirements of the Schedule of Documentation for the former Maine Central Railroad Machine Shop and Car Repair Shop/Planing Mill at Thompson's Point, Portland, Maine.

Under separate cover from Todd Caverly, we have received the photographic documentation for the Thompson's Point facility. The photographic documentation meets the requirements of the Schedule of Documentation.

The submittals described above satisfy Stipulation A of the Memorandum of Agreement between the Economic Development Administration, the Maine State Historic Preservation Officer, the City of Portland, and Forefront Partners I, LP.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Kirk F. Mohney  
Deputy State Historic Preservation Officer

cc: Amy Cole Ives, Sutherland Conservation & Consulting  
Todd Caverly

# NOTICE OF INTENT TO COMPLY WITH MAINE CONSTRUCTION GENERAL PERMIT

PLEASE TYPE OR PRINT IN **BLACK INK ONLY**

Name of Applicant (Owner):		Forefront Partners I, LP Attn: Chris Thompson		Applicant Mailing Address:		501 Danforth Street	
Town/City:		Portland		State:		Maine	
Daytime phone: (with area code)		207-747-5288		Email if available:		parallaxpartners@gmail.com	
Project Location: (Town/City):		Portland		UTM Northing: (if known)		4,833,933	
Map #:		201/202		Lot #:		A-5, A-8, A-10/ A-1, A-4	
Creating a common plan of development or sale?		Yes <input checked="" type="checkbox"/> No		Part of a larger project?		Yes <input checked="" type="checkbox"/> No	
Name of waterbody(ies) to which the disturbed area drains, or name municipality if drains to an MS4:				Fore River			
Does site drain to an Impaired Waterbody (C)? If so, give name:		No					
Detailed directions to site, including address if available:		1 Thompson's Point Road - Portland, Maine					
Description of project and its purpose:		The construction is associated with an overall plan to develop Thompson's Point with a mixed use development. The development is subject to a Site Location of Development Permit as approved by the City of Portland through the delegated review authority.					

I am filing notice of my intent to carry out work which meets the requirements of the Construction General Permit (effective 3/10/03). I have a copy of the Construction General Permit. I have read and will comply with all of the standards. I have attached all the required submittals. *Notification forms cannot be accepted without the necessary attachments.*

- ALL: A check (non-refundable) made payable to: "Treasurer, State of Maine." **See DEP fee schedule for correct fee.** You must know # of acres being permitted to determine the fee.
- ALL: A U.S.G.S. topo map or Maine Atlas & Gazetteer map with the project site clearly marked. (previously submitted)
- ALL: Drawing of the proposed activity (site plan). (previously submitted)
- ALL: An ESC plan. (Interim Plan enclosed)
- IF this form is not being signed by the landowner or lessee of the property, attach documentation showing authorization to sign.
- IF any construction activity will occur in essential habitat, attach written approval from the Dept. of Inland Fisheries & Wildlife.

I authorize staff of the Departments of Environmental Protection to access the project site for the purpose of determining compliance with the general permit. I also understand that **this permit is not valid until approved by the Department or 14 days after receipt by the Department, whichever is less.**

Signature of Applicant:		Date:	6/18/14
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Keep the bottom copy as a record of permit. Send the form with attachments via certified mail to the Maine Dept. of Environmental Protection at the appropriate regional office. The DEP will send a copy to the Town Office as evidence of the DEP's receipt of notification. No further authorization by DEP will be issued after receipt of notice. Check with DEP Staff to determine the expiration date on this permit. **Work carried out in violation of any standard is subject to enforcement action.**

OFFICE USE ONLY	Ck.#	1190	Date	6/18/2014	Staff	MR	Staff	
NOI #	FP	58116			Acc. Date	6-23-14	Def. Date	After Photos

GLS ✓





STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Paul R. LePage  
GOVERNOR

David Bernhardt  
COMMISSIONER

LEGAL SERVICES Tel: (207) 624-3020 Fax: (207) 624-3021  
MDOT TTY TEL: 888-516-9364

April 3, 2012

Danielle P. West-Chuhta  
Associate Corporation Counsel  
389 Congress Street  
Portland, ME 04101-3509

**Re: Railroad Decision #364**

Dear Ms. West-Chuhta:

I enclose Railroad Decision # 364, dated April 3, 2012, signed by David Bernhardt, P.E., Commissioner of the Maine Department of Transportation. Decision # 364 relates to the City of Portland's petition to establish a public highway crossing over railroad tracks at Sewall Street in Portland, Maine.

If you have any questions regarding the above, please contact me.

Very truly yours,

*Richard N. Hewes*  
Richard N. Hewes  
Attorney for MaineDOT

RNH/jas  
Enclosure

- cc: Nathan Moulton, Manager, Rail Transportation, MaineDOT w/enc.  
David Fink, President, Pan Am Railways w/enc.  
Central Maine Power Co., Land Management Dept. w/enc.  
Cumberland County Commissioners w/enc.  
Langdon Street Real Estate w/enc.  
Mercy Hospital w/enc.  
Northern New England Rail Authority w/enc.  
Portland Water District w/enc.  
Thompson's Point Inc. w/enc.  
The Waynflete School w/enc.  
Kat Beaudoin w/enc.  
Robert Bremm, Ritter Project Management w/enc.  
Tony Donovan, Fishman Realty Group w/enc.  
James Howard, Esq. w/enc.

H:\\$Legal-shared\Hewes\Railroad Decisions\RR Hearing #364 - Portland\ Ltr to Interested Parties 4 4 12 Decision.doc



PRINTED ON RECYCLED PAPER

MAINE DEPARTMENT OF TRANSPORTATION

RAIL DECISION - RR # 364

REGARDING:

Petition pursuant to 23 M.R.S.A. § 7202 by the City of Portland to Establish a Public Highway Crossing Over Railroad Tracks at Sewall Street in Portland, Maine.

ABSTRACT:

On September 7, 2011, the City of Portland petitioned the Maine Department of Transportation to establish a public grade crossing for highway traffic on Sewall Street in Portland, Maine at Railroad Mile Post 1.92 on the Mountain Division Branch Line. Portland Terminal Company has owned a private railroad crossing at that location for decades. Rail traffic is operated by Springfield Terminal Railway Company. The owner of the rails and the operator of rail traffic are owned by Pan Am Railways. This decision, RR # 364, establishes a public grade crossing on Sewall Street after the conditions outlined herein are satisfied.

Hearing was held February 27, 2012

Location of hearing: Portland City Hall

The petition is granted

Date of Decision: April 3, 2012

Commissioner: David Bernhardt, P.E.

Hearing Officer: Richard N. Hewes, Esq.

## I. PROCEDURAL BACKGROUND

On September 7, 2011, pursuant to 23 M.R.S.A. § 7202, the City of Portland ("City") petitioned the Maine Department of Transportation ("Department") to establish a public highway crossing ("Crossing") over railroad tracks in Portland at Sewall Street. The tracks are owned by Portland Terminal Company, train traffic is operated by Springfield Terminal Railway Company and Pan Am Railways owns Portland Terminal Company and Springfield Terminal Railway Company (these three entities are separately and collectively referred to as the "Railroad"). Tracks currently cross over a private way immediately to the south of the terminus of Sewall Street at Mile Post 1.92 on the Mountain Division Branch Line. The City requests that a public crossing be established where the private crossing now exists.

Hearing on the aforementioned petition was ordered to be held at the City Hall in Portland at 6:00 o'clock in the evening on November 22, 2011. Asserting membership in a class that could be substantially and directly affected by Railroad Decision #364, Pan Am applied for intervenor status. At the November 22, 2011 hearing, Pan Am's motion for intervenor status was granted without objection. The City asked for a continuance. Representatives of the railroad were present and did not object. The City and Pan Am had not yet finalized an agreement on fundamental aspects of the Crossing, but felt they could reach agreement on those issues through further communications. The hearing was continued and rescheduled for January 12, 2012. The January hearing was cancelled because of a snow storm. The matter was rescheduled and a public hearing was held February 27, 2012 at Portland City Hall.

## II. NOTICE

Exhibit 18 is a copy of the January 18, 2012 cover letter with attached notice of the February 27, 2012 hearing that was sent to the following interested parties, including abutters and stakeholders:

City of Portland  
Nathan Moulton, Manager, Rail Transportation, MaineDOT.  
George Thayer, Springfield Terminal Railway Company/Maine Central Railroad  
David Fink, President, Pan Am Railways  
Central Maine Power Co.  
Cumberland County Commissioners  
Langdon Street Real Estate  
Mercy Hospital  
Northern New England Rail Authority  
Portland Terminal Co.  
Portland Water District  
Thompson's Point Inc.  
The Waynflete School  
Kat Beaudoin, Integrated Planning Solutions  
Robert Bremm, Ritter Project Management  
Tony Donovan, Maine Rail Transit Coalition

James Howard, Esq.

Exhibits 19 and 20 are pages from the February 7 and 13, 2012 editions of the Portland Press Herald, a newspaper that has general circulation in the area affected by the City's petition. These pages contain notices which state that the hearing would be held February 27, 2012 at 6:00 p. m, in the Portland City Hall. Notice was proved to have been given in the manner prescribed by 23 MRSA § 7202 and 5 MRSA § 8053. Hearing on the aforementioned petition was held at the time and place stated in the notice. The hearing officer viewed the crossings on the day of the hearing and his observations are part of the evidence.

### III. EVIDENCE

#### A. Exhibits.

##### Exhibit #

1. September 7, 2011 hearing request from Danielle P. West-Chuhta, Esq., Counsel for the City of Portland.
2. Sign-up sheet for November 22, 2011 hearing.
3. Maine Sunday Telegram's Classified Section's Tear Sheet of Notice of Hearing published October 30, 2011 which indicated the hearing would be held at the Portland Transportation Center on November 22, 2011 at 6:00 p.m.
4. Notice of Hearing which indicated that the hearing would be held at the Portland Transportation Center on November 22, 2011 at 6:00 p.m.
5. Copy of Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated October 27, 2011 enclosing the Notice of Hearing which indicated that the hearing would be held at the Portland Transportation Center.
6. Notice of Hearing indicating a new location for the hearing being held on November 22, 2011 to be the Portland City Hall.
7. Copy of Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated November 3, 2011 enclosing the Notice of Hearing indicating the new location for the hearing to be held on November 22, 2011 to be the Portland City Hall.
8. Undeliverable return envelope with hearing notice mailed to Northern New England Rail Authority.
9. Email to Patricia Quinn at NNEPRA dated November 15, 2011, enclosing a copy of the Notice of Hearing with the new location of Portland City Hall incorporated.
10. Portland Press Herald Newspaper Classified Section Tear Sheet with Notice of

Hearing published November 4, 2011 with the new location of Portland City Hall incorporated.

11. Maine Sunday Telegram Classified Section Tear Sheet with Notice of Hearing published November 6, 2011 with the new location of Portland City Hall incorporated.
12. Pan Am Railways Application for Intervenor Status.
13. Email from Danielle West-Chuhta, Esq. waiving the City of Portland's objections to the Application for Intervenor Status.
14. November 22, 2010 hearing transcript.
15. Portland Press Herald Newspaper's Classified Section's Tear Sheet of Notice of Hearing published December 22, 2011.
16. Portland Press Herald Newspaper's Classified Section's Tear Sheet of Notice of Hearing published December 29, 2011.
17. Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated December 12, 2011 with Notice of the January 12, 2012 Hearing.
18. Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated January 18, 2012 with Notice of the February 27, 2012 Hearing.
19. Portland Press Herald Newspaper Tear Sheet (p. D 6) published February 7, 2012 with Advertised Notice of February 27, 2012 Hearing.
20. Portland Press Herald Newspaper Tear Sheet (p. D 3) published February 13, 2012 with Advertised Notice of February 27, 2012 Hearing.
21. Sign-in Sheet for Attendees of the February 27, 2012 Public Hearing.
22. September 7, 2012 petition for hearing with margin notations.
23. Subdivision plat of the area of the proposed Sewall Street crossing.
24. Written testimony by Gregory Mitchell, City of Portland.
25. Public Hearing Submission by City of Portland with photos, plans and descriptions of proposed crossing and Thompson's Point development.
26. Email (two pages) confirming that Pan Am Railways and the developer of Forefront at Thompson's Point reached agreement relative to the Crossing.

A. Public Comments.

Danielle P. West-Chuhta, Esquire, Associate Corporation Counsel for the City, spoke in support of the petition to establish the Crossing. Ms. West offered Exhibit 22, the request for hearing, and Exhibit 23, a plat map showing the area surrounding the Crossing and the planned extension of Sewall Street. The Crossing is located at Mile Post 1.92 on the Mountain Division Branch Line. Trains travel at 10 miles per hour through the Crossing area. The Crossing will be at grade and the purpose of the Crossing will be to create a way for highway traffic to travel to and from Thompson's Point, which will be developed in the near future.

The terminus of Sewall Street, a town way, is at the northern boundary of the railroad corridor. A private way, also known as Sewall Street, continues through the Crossing and runs into Thompson's Point. The tracks currently run through that private way. The City plans to extend Sewall Street about 130 feet to the south of the existing crossing. When this piece of road is accepted as a public way, the tracks will be located within a public street. The City requests that a public crossing be established where the private crossing now exists.

Gregory Mitchell, Acting Director of the City's Department of Planning and Urban Development said that the Crossing is part of a larger plan to develop Thompson's Point, a peninsula to the south of the Crossing that extends into the Fore River. The planned development will be a world class destination that will provide access to cultural functions, athletic events and other entertainment activities. Officials from the Portland Fire Department have reviewed plans for the proposed Crossing and approve of the design.

Christopher Thompson, a representative of Forefront Partners I, LP, the company that plans to develop Thompson's Point, said that Thompson's Point will be converted into a 27 acre complex called the Forefront at Thompson's Point. The development will have an event center, a concert hall and amphitheater, a sports medicine facility, a hotel, a restaurant, office buildings and a parking garage. The event center will offer 3500 basketball fans the chance to view Portland's local professional team. Vendors and entrepreneurs will be able to display their wares at trade shows in a 44,000 foot facility. Music enthusiasts will have the opportunity to enjoy concerts at a 4500 seat auditorium and office space will be available as well. The Forefront at Thompson's Point will serve to connect walking trails to the Portland Transportation Center. Given the large number of people expected to use this facility, the existing crossing must be upgraded to facilitate the flow of public highway traffic to and from Thompson's Point.

Stephen Bushey, an engineer who works for Deluca Hoffman Associates, spoke in favor of the Crossing. He offered Exhibit 25, a brochure entitled Public Hearing Submission by City of Portland. Exhibit 25 contains photos, plans and descriptions of the Crossing area, including the planned development. Surface parking will be available for 712 vehicles and the parking garage will have space for 732 cars.

The Crossing will be constructed sometime between 2012 and 2014 at a cost of about \$500,000 - \$600,000. The two sets of tracks currently in place, a main line and a siding, will be in the proposed Crossing. The Crossing will be about 36 feet wide and will have three lanes for automobiles. Incoming and outgoing traffic will each have a dedicated lane. The middle lane

will be reversible to accommodate incoming or outgoing automobiles when traffic is heavy. A path on the west side of the inbound automobile lane will be available for pedestrians.

Flashing warning lights will be attached to a cantilevered structure over the Crossing to warn highway travelers about passing rail traffic. Pedestrian access will be controlled by automatic gates. Gates will not be installed over automobile lanes. The reversible middle lane will be used for heavy traffic during peak hours. Traffic control workers will direct traffic as needed. According to Exhibit 26, the developer has concluded an agreement with the Railroad that obligates the developer to reimburse the cost of improving the Crossing.

To access the planned development, highway traffic must enter the Thompson's Point Access Road from the Fore River Parkway. Once on the access road, travelers will move in an easterly direction until they turn onto Sewall Street at a 90 degree angle and travel south toward the Crossing. Southbound motorists travel down a slight decline that begins about 50 feet north of the Crossing. The tracks cross Sewall Street in an east-west direction at the bottom of that dip in the road. Sewall Street runs in a north-south direction and intersects the tracks at a ninety degree angle. The approach for motorists leaving Thompson's Point is level.

Automobile traffic is expected to pass through the proposed crossing during peak hours at the rate of 955 total trips. The highway speed limit at the crossing will be 25 miles per hour. After southbound motorists turn onto Sewall Street, they will have sight distance of about 500 feet to the Crossing. Highway traffic approaching from Thompson's Point can view the Crossing from a distance of 300 feet.

Two to four freight trains per week move through the Crossing. No passenger train traffic uses the Crossing at this time. Track speed is ten miles per hour. Randall Pike, P. E., a member of the firm that will design the Crossing, said that eastbound trains will have sight distance on their approach to the Crossing of several thousand feet and westbound trains will have sight distance of about 1000 feet to the Crossing.

The surrounding area is generally industrial. A parking lot and passenger loading area in the rear of the Portland Transportation Center are on the northeast quadrant of the Crossing. A power transmission facility and two story metal building are on the northwest quadrant. An Amtrak office resembling a mobile home is on the southeast quadrant. A fenced parking lot that holds dozens of trailers is on the southwest quadrant. An Amtrak passenger station is located about 600 feet to the east of the Crossing.

Nathan Moulton, Manager of Rail Transportation for the Department, said that the Department supports the proposed Crossing. Exhibit 26 states that the Department will be provided with plans of the Crossing for review and approval. Signage, pavement markings, gates, lights and other safety installations must be approved by the Department and will conform to the Manual on Uniform Traffic Control Devices.

Robert Burns, a lawyer for the Railroad, confirmed that the Railroad and the developer were close to reaching an agreement for the development of the Crossing. James Howard, a lawyer for the developer of Thompson's Point, said that the parties were close to finalizing

financial concerns and that safety and design issues were resolved. Robert Haines, a Portland resident, spoke in favor of the Crossing, but expressed doubt that the access road would accommodate inevitable congestion during big events. Dory Waxman, a former City Councilor and a resident of Portland, spoke in favor of the Crossing and stressed that traffic during big events would be manageable because designers would anticipate traffic congestion problems.

#### IV. FINDINGS AND CONCLUSIONS

Based on exhibits, hearing testimony and site visits, the following findings are made:

1. Parties. The City of Portland petitioned the Maine Department of Transportation to issue an order establishing a public crossing. Portland Terminal Company owns the railroad in the proposed crossing area and Springfield Terminal Railway Company operates rail traffic. Pan Am Railways owns these two entities.
2. Location of Proposed Crossing. The proposed Crossing will be located at Mile Post 1.92 on the Mountain Division Branch Line, the site of a private crossing.
3. Status of Existing Crossing. The existing crossing is private. The terminus of Sewall Street, a town way, ends on the northern edge of the rail corridor. A private way, also named Sewall Street, runs in a southerly direction over the tracks to Thompson's Point. The City plans to extend Sewall Street an additional 130 feet south of the existing crossing. When this road is accepted as a public way, the tracks will be located within a public street.
4. Crossing Geometry. Two sets of tracks, a mainline and a siding, run through Sewall Street to form a double-track crossing. The rails run in an east-west direction and intersect Sewall Street at a 90 degree angle. Sewall Street runs in a north-south direction.
5. Sight Distance. Eastbound trains will have sight distance on the approach to the Crossing of several thousand feet and westbound trains will have sight distance of about 1000 feet. Southbound motorists will approach on a decline and will have a clear view of the Crossing for about 500 feet. Motorists traveling north on Sewall Street from Thompson's Point will have sight distance of about 300 feet.
6. Railroad Traffic. Four trains pass through the Crossing each week. Timetable speed over the rails is 10 miles per hour.
7. Highway Traffic. Automobile traffic is expected to pass through the Crossing during peak hours at the rate of 955 total trips. The speed limit for automobiles will be 25 miles per hour. The highway in the Crossing will be 36 feet wide with three lanes for automobile traffic. One lane will be dedicated for incoming highway traffic and one lane will be dedicated to outgoing vehicles. The middle lane will be reversible to accommodate either incoming or outgoing vehicles when traffic is heavy. A paved path will facilitate the flow of pedestrian traffic.



8. Purpose. The Crossing will allow public highway traffic to pass through the railroad corridor and flow into the planned development at Thompson's Point.
9. Area Land Use. A parking lot and passenger loading area for the Portland Transportation Center are on the northeast quadrant of the Crossing. A power transmission facility and a two story metal building occupy the northwest quadrant. An Amtrak office resembling a mobile home is on the southeast quadrant. A parking lot that holds dozens of trailers is on the southwest quadrant. An Amtrak passenger station is located about 600 feet to the east of the crossing.
10. Construction and maintenance. The Crossing is expected to be constructed between 2012 and 2014. The estimated cost is \$500,000 to \$600,000.
11. Design. The Railroad and Forefront Partners I, LP have reached agreement on the design of the Crossing. The Department will be provided with the plans for review and approval to ensure that the design meets safety requirements. Officials from the Portland Fire Department approve of the proposed Crossing.

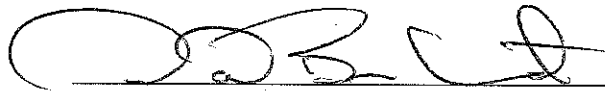
## V. ORDER

Based upon the evidence and the applicable law, it is hereby ORDERED that the City of Portland's Application to Establish a public highway crossing along the planned extension of Sewall Street at Mile Post 1.92 on the Mountain Division Branch Line is granted upon the fulfillment of the following conditions:

1. The City shall lay out and accept a public way across the Mountain Division Branch Line at Railroad Mile 1.92 in Portland.
2. The following actions shall be taken and safety measures installed:
  - a) All safety measures including signalization, gates, bells, signage, lights and pavement shall be properly designed and constructed in accordance with the Department's Standard Specifications and Standard Details in effect at the time the Department approves the Crossing.
  - b) All safety measures that are required or recommended by the Manual on Uniform Traffic Control Devices (MUTCD) in effect when the Department approves the Crossing shall be properly located and installed.
  - c) Final design plans for traffic lanes at or near the Crossing shall be submitted to the Department for approval at least 30 days before construction of the Crossing commences. Construction shall not begin until the Department approves the plans.

- d) The Railroad and the City shall coordinate the planning, construction and testing of all signals and other safety devices to ensure that they are properly synchronized and in good working order before the Crossing is opened for use.
- e) All pedestrian access transitions at the Crossing shall be designed and installed in compliance with the Americans with Disabilities Act (ADA).
- f) Street lighting shall be installed at the crossing. Said lighting shall comply with all federal, state and local requirements.
- g) The City shall be responsible for the cost of constructing the Crossing. The Railroad shall be responsible for operating and maintaining the Crossing.
- h) If the Crossing has not been approved by the Department for public use by January 1, 2017, then the authority to establish the Crossing under this order shall expire unless the City or the Railroad petitions the Department before January 1, 2017 to modify this Decision for an extension of the deadline.

MAINE DEPARTMENT OF TRANSPORTATION



David Bernhardt, P. E.  
Commissioner

**VI. APPEAL RIGHTS**

Pursuant to 23 M.R.S.A. § 7202, this decision shall be final and binding on all parties unless an appeal from this decision is taken. Any party wishing to appeal must, within 14 days from the date of the filing of this decision, file in the office of the Maine Department of Transportation its reasons for appeal and shall cause to be served on any other interested parties, a copy of the reasons for appeal certified by the department. The department must be made a party to the appeal.

Pursuant to the requirements of 5 M.R.S.A. § 11001 et seq. appellate procedures also apply to an appeal of this decision. Pursuant to 5 M.R.S.A. § 11002, a petition for review of this decision shall be filed within 30 days after receipt of notice of this decision if the appeal is taken by a party to the proceeding for this decision. Any other person aggrieved shall have 40 days from the date the decision was rendered to petition for review. If the review sought is from the Department's failure or refusal to act, the petition for review shall be filed within 6 months of the expiration of the time within which the action should reasonably have occurred.

Pursuant to 5 M.R.S.A. § 11002 (2), the petition shall specify the persons seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief which may be in the alternative. Copies of the petition for review shall be served by Certified Mail, Return Receipt Requested, upon the Maine Department of Transportation, all parties to the proceedings, and the Department of the Maine Attorney General.



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Paul R. LePage  
GOVERNOR

David Bernhardt  
COMMISSIONER

Applicant: Thompson's Point Development Company Inc.  
Project Location: Thompson's Point Rd, Portland, ME  
Portland Tax Map 201Lot(s) 8, 9 and 10 and Map 202 Lots 2, 4 and 5  
Project: Mixed use Development  
Identification #: Reg. 01-00155-A-N  
Permit Category: 200 Plus PCE  
Traffic Engineer: Thomas Gorrill  
Gorrill-Palmer Consulting Engineers  
PO Box 1237  
15 Shaker Rd.  
Gray, ME 04039

Pursuant to the provision of 23 M.R.S.A. § 704-A and Chapter 305 of the Department's Regulations, the Maine Department of Transportation (MaineDOT) has considered the application of Thompson's Point Development Company Inc with supportive data, agency review and other related materials on file.

**PROJECT DESCRIPTION**

The applicant proposes to construct a 97,697 sf event center/convention hall/exhibit hall; 32,000 sf concert hall plus outdoor venue for up to 4,800 attendees; 378,000 sf of office space; 4,000 sf of medical office space; 20,000 sf gym and rehabilitation center; 125 room hotel; 6,000 sf of restaurant space (high-turnover sit down). The site is forecast to generate 734 AM and 1,091 PM weekday peak hour trip ends.

**Findings**

Based on a review of the files and related information, MaineDOT approves the Traffic Movement Permit Application of Thompson's Point Development Company Inc. subject to the following conditions:

**MITIGATION**

**On-Site Mitigation**

**All Site Entrances**

All entrances shall have overhead illumination provided, if not existing, to illuminate the intersections per MaineDOT standards at a minimum. Overhead lighting shall have an average of



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Portland Thompson's Point Mixed use development

Reg. 01-00155-A-N

Page 2 of 4

0.6 to 1.0 foot candles, with the maximum to minimum lighting ratio of not more than 10:1 and an average to minimum light level of not more than 4:1.

### Thompson's Point Road

Thompson's Point Road shall be widened to accommodate an 8 foot shared bike/pedestrian path, a 3 foot wide grass esplanade, a 3 foot shoulder with granite curb, an 11 foot wide outbound lane, and 11 foot wide flush concrete median, an 11 foot wide inbound lane and a 3 foot shoulder with granite curb. This section will be constructed from the site driveway to the Fore River Parkway. The 250 feet of flush median closest to Fore River Parkway shall be designated as an exclusive left turn lane outbound. The shared bike/pedestrian path shall have a crossing built at the Sewall Street cul de sac and the path extended to the existing sidewalk on Sewall Street. Another pedestrian crossing shall be installed where the current pedestrian crossing is at the bus/train station. Both crossings shall have solar powered/radio interconnected pedestrian activated rectangular rapid flashing beacon lights installed.

### Thompson's Point Development

No sporting events or concerts shall begin between 4 pm and 7pm Monday through Friday.

During large sporting and concert events, the applicant shall ensure that there are flaggers and uniformed police officers present to ensure that there will be two inbound lanes prior to the event and two exit lanes after the event. Flaggers/uniformed police officers shall be stationed to ensure that pedestrians are able to cross at either of the two crosswalks, at the Transportation Center Entrance to let busses in or out and also at the transportation center parking lot entrances to ensure that transportation center patrons leaving the parking lots are merged into the out-bound flow. Uniformed police officers shall be present after an event to direct traffic at the Thompson's Point Road/Fore River Parkway intersection. Retro-reflective traffic cones shall be used by the development to create the reversible lane. Flaggers will direct vehicles into the proper lanes.

### Off-Site Mitigation

#### Fore River Parkway/Thompson's Point Road/I-295 Exit 5A off-ramp

The Southbound off ramp at Exit 5 A shall be reconstructed to have a separate 13 foot wide left turn lane and 13 foot wide through lane. The widths include the

required curb offset. The left lane shall extend back 200 feet. Install Queue detector at the ramp gore area to act as pre-emption for the signal should the queue spill back that far.

Modify traffic signal timing and phasing accordingly.

#### Fore River Parkway/Congress St/I-295 Exit 5 B off-ramp

Portland Thompson's Point Mixed use development

Reg. 01-00155-A-N

Page 3 of 4

Widen the southbound off-ramp to accommodate a 5 foot wide right shoulder, two 12 foot wide right turn lanes and a 2 foot curb offset for a distance of 125 feet with an appropriate taper. Install Queue detector at the ramp gore area to act as pre-emption for the signal should the queue spill back that far.

Re-stripe Congress Street Westbound to accommodate a longer westbound left turn lane, extend back to the end of the island (to the slip lane from Park Ave to Congress St).

Modify traffic signal timing and phasing accordingly.

#### Congress St/Stevens Ave

Restripe Steven's Avenue to an exclusive left and a shared left/thru/right and modify traffic signal timing and phasing accordingly.

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Congress St/Westbrook St

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Congress/Frost St

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Transportation Demand Management

In lieu of additional mitigation, Transportation Demand Management shall be used to offset the traffic impacts on the roadway network. The City has implemented a Transportation Oriented Development Tax Increment Financing District for the Thompson's Point Development. This development would benefit from some increased transit connections to the airport and Old Port, funding for handicap accessible taxis or for increase in parking at the Transportation Center.

#### Overall

A. Provide all necessary auxiliary signs, striping and pavement markings to implement the improvements described herein according to State of Maine and/or National standards.

Portland Thompson's Point Mixed use development

Reg. 01-00155-A-N

Page 4 of 4

B. All plantings and signs (existing and/or proposed; permanent and/or temporary) shall be placed and maintained such that they do not block available sight distances and do not violate the State's "Installations and Obstructions" law. No signage or plantings shall be allowed within the "clear zone" if they constitute a deadly fixed object as determined by MaineDOT. All signs shall meet MRSA Title 23, Chapter 21, Section 1914: "On-Premise Signs".

C. If any of the supporting data or representations for which this permit is based changes in any way or is found to be incorrect / inaccurate, the applicant shall request in writing from MaineDOT a decision of what impacts those changes will have on the permit. The applicant will then be required to submit those changes for review and approval and additional mitigation as a result of those changes may be required at the expense of the applicant.

D. Because the proposed project affects the state highway and drainage systems and requires improvement to that system, the applicant must obtain approval of the design plans and coordinate work through MaineDOT's State Traffic Engineer, who can be reached at (207)-624-3620 in Augusta.

By:



Stephen Landry, P.E.

Assistant State Traffic Engineer

Date: 6/13/12



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

March 6, 2013

Christopher Thompson  
Forefront Partners I, LP  
55 Lisbon Street, Suite 2400  
Lewiston, Maine 04240

Re: The Forefront at Thompson's Point, Portland:  
Voluntary Response Action Program- No Action Assurance Letter

Dear Mr. Thompson:

The Maine Department of Environmental Protection (Department) has received and reviewed an application submitted in June 2012, by your environmental consultant Credere Associates, LLC (Credere) to the Department's Voluntary Response Action Program (VRAP) for the Thompson's Point property located at 1 Thompson's Point in Portland, Maine. The following reports were compiled for this site as part of the Greater Portland Council of Government's (GPCOG) Brownfields Program and were reviewed along with this application: A Phase One Environmental Site Assessment (ESA) for the Thompson's Point property prepared by Credere, dated December 5, 2011, a Phase II ESA for Thompson's Point, prepared by Credere dated July 11, 2012, as well as a Voluntary Response Action Program Work Plan, Revision 2 dated February 27, 2013 (Work Plan). Additional documentation submitted to MDEP previously for review included two Phase I ESAs prepared by Gemini Geotechnical Associates (GGA) dated February 6, 1991 and May 16, 2006, a December 15, 1998 Test Pit Investigation report prepared by GGA, and a February 26, 1999 No Further Action Assurance Letter issued by MEDEP VRAP to a previous applicant. The current application was submitted to the Department with the request that the site participate in the VRAP and that Forefront Partners I, LP (Forefront Partners), as the applicant to the VRAP, receive the protections provided by the VRAP Law.

The Thompson's Point Property (the site) is composed of five City of Portland tax map lots (Map 201 Lots A-5, A-8, and A-10, and Map 202 Lots A-1 and A-4) totaling approximately 27.5 acres located on a peninsula along the Fore River in Portland. Land use in the area is currently primarily commercial. The site has been used historically for the following activities: a train car maintenance yard, automobile repair facilities, utility distributors (natural gas and propane), building supply retailers, metal working, concrete block manufacturing, bomb shell casing manufacturing (ordnance plant), textile manufacturing, various construction contractor offices, paperboard production, trailer storage, trucking facilities, and warehousing. The Credere Phase ESA identified the past commercial/industrial use of the property as an environmental concern and identified eight specific Recognized Environmental Concerns for further Phase II

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PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
(207) 764-0477 FAX: (207) 760-3143



investigation. The Phase II investigation concluded that there is soil and groundwater contaminated with petroleum and hazardous substances, and that other universal and special wastes are located on the site, including building materials.

Based on the information presented in the above listed reports, the Department agrees with the following recommended actions as proposed in the Work Plan:

1. Known and/or potentially contaminated soils that are disturbed during redevelopment of the site will be managed according to the Work Plan and associated December 12, 2012 Soil Management Plan (SMP). Contaminated soils that are within 12 inches of the developed ground surface or removed and replaced onsite will be covered with a marker layer and a minimum of 12 inches of clean fill, and/or 6 inches of clean sand and gravel over the contaminated soil and at least 3 inches of asphalt/concrete or brick. If excess contaminated soil is generated that cannot be re-used onsite, the material will be disposed offsite at an appropriate facility as special waste.
2. Known and/or potentially contaminated groundwater that is encountered during site redevelopment work will be managed in accordance with the Work Plan and associated December 12, 2012, Groundwater Management Plan.
3. Universal, special, and hazardous waste will be properly managed and removed from the site and disposed at an appropriate facility.
4. PCB containing building materials will be characterized and managed in an appropriate manner and in accordance with the applicable provisions of the Toxic Substances Control Act 40 CFR 761 et seq. Plans for such characterization and management shall be submitted concurrently to USEPA Region 1 and the Department for review and approval.
5. Asbestos abatement and/or management activities in onsite buildings will be conducted in accordance with all applicable State and Federal rules and regulations.
6. Lead based paint abatement/management issues shall be conducted as discussed in the Work Plan and in accordance with all applicable state and federal regulations.
7. A soil screening program will be conducted after the demolition of the site buildings and removal of the concrete slabs as discussed in the Work Plan. Activities that will be completed based on the results of the screening program are discussed in the Work Plan.
8. A deed restriction will be recorded at the Cumberland County Registry of Deeds that:
  - 1) Prohibits excavation/disturbance of soils onsite without notification of the Department, and references the existence of an Environmental Management Plan that will be developed for the site and submitted for approval by the Department prior to deed restriction recording.
  - 2) Prohibits withdrawal of groundwater without notification of the Department, and references the existence of an Environmental Management Plan that will be developed for the site and submitted for approval by the Department prior to deed restriction recording.

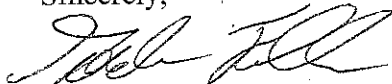
These restrictions will be placed as Declaration of Environmental Covenants consistent with this letter and in a manner that is acceptable to the Department.

Provided that the actions described above are completed to the satisfaction of the Department, Forefront Partners I, LP and its successors and/or assigns, as well as those persons identified in 38 M.R.S.A. § 343-E(6), will be granted the liability protection provided by 38 M.R.S.A. § 343-E(1) for the property located at 1 Thompson's Point, in Portland, Maine identified as Map 201 Lots A-5, A-8, and A-10, and Map 202 Lots A-1 and A-4. The Department will take no action against Forefront Partners I, LP, its successors and assigns, and all those persons identified in 38 M.R.S.A. § 343-E(6).

Once the proposed and recommended remedial measures at the property have been implemented to the satisfaction of the Department, a report demonstrating the successful completion of the tasks must be forwarded to the VRAP. A report may be submitted when all of the remedial activities have been completed for the entire property or in stages as portions of the property are remediated and ready for redevelopment. Upon determining successful conclusion of the remedial tasks, the Department will issue a Commissioner's Certificate(s) of Completion to Forefront Partners I, LP for those portions of the property where remedial activities have been completed.

If you have any questions, please call me at 207-287-4853.

Sincerely,



Gordon Fuller  
Voluntary Response Action Program  
Division of Remediation

cc: Nick Hodgkins--MEDEP  
Jedd Steinglass, Credere  
David L. Galgay, Jr—Verrill Dana LLP.



STATE OF MAINE  
Department of Environmental Protection

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

July 2012

Forefront Partners I, LP  
55 Lisbon St., Suite 2400  
Lewiston, ME 04240  
ATTN: Chris Thompson

RE: Natural Resources Protection Act Application, Portland  
DEP #L-25672-2G-A-N / #L-25672-FS-B-N

Dear Mr. Thompson:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 592-1692 or at [Marybeth.richardson@maine.gov](mailto:Marybeth.richardson@maine.gov).

Sincerely,

Marybeth Richardson, Project Manager  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

pc: File

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PRESQUE ISLE, MAINE 04769-2094  
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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

FOREFRONT PARTNERS I, LP	) NATURAL RESOURCES
PROTECTION	
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
THE FOREFRONT AT THOMPSON'S POINT	) SIGNIFICANT WILDLIFE HABITAT
L-25672-2G-A-N (approval)	) WATER QUALITY CERTIFICATION
L-25672-FS-B-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of FOREFRONT PARTNERS I, LP with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

I. PROJECT DESCRIPTION:

A. History of Project: Thompson's Point is an approximately 27.5-acre peninsula of land extending into the Fore River that has a 150-year history of industrial development. In the early part of the twentieth century the site was used primarily as a railroad maintenance facility. It was later used by the federal government for war-related activities such as munitions production. Subsequent uses included the operation of a concrete products manufacturing facility and other commercial activities, and the staging and stockpiling of construction materials.

B. Summary: The applicant proposes to demolish existing structures and redevelop almost the entire project site with a number of buildings, including an events center and concert hall, outdoor amphitheater, hotel, sports medicine and athletic performance lab, parking structure, office building, surface parking, trails, public space, and small boat/kayak access. Activities contemplated by the applicant that require Natural Resources Protection Act review are those that will occur within 75 feet of the highest annual tide (HAT) line, including clean up and removal of existing debris, stockpiles, and solid waste; building demolition; clearing and grubbing in advance of new topsoil for soil stabilization, landscaping, and trails; access drive and parking area construction; new buildings; installation or replacement of stormwater outfalls; installation of utilities; installation of a seasonal dock at the south end of the peninsula; a small hand carry boat/kayak launch; and a public access ramp. Within 25 feet of the HAT line, the only proposed activities will be grading for new landscaping and drainage work.

The proposed project will result in approximately 386 square feet of freshwater wetland fill within the northwesterly "panhandle" of the site associated with a drainage outfall and grading. Under current conditions, the shoreline is riprapped around the majority of the project site. In areas not containing riprap currently, the shoreline is naturally vegetated. No significant disturbance is proposed within these areas. A total of ten drainage outfalls

are proposed and the total extent of riprap enhancement associated with the drainage work is approximately 100 linear feet.

The proposed project is shown on a set of plans, the first of which is titled "The Forefront at Thompson's Point," prepared by DeLuca-Hoffman Associates, Inc. and dated August 2011, with a latest revision date on any sheet of July 12, 2012. The project site is located on Thompson's Point, off Congress Street, in the City of Portland.

The proposed project is subject to review under the Site Location of Development Act. Pursuant to M.R.S.A. Section 489-A, the City of Portland has delegated review authority and is conducting that review.

C. Current Use of the Site: A portion of the project site is utilized as storage for refrigerated dairy trailers. Various other commercial tenants lease space throughout the remaining site. There are currently nine structures and at least several additional foundations located on the site. The majority of the approximately 4,100 linear feet of shoreline at the site has been armored with riprap. Approximately five acres of the site lie below the HAT line.

## 2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site. Department staff visited the project site in July of 2011.

The proposed project is located adjacent to the Fore River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The project site is currently almost completely developed with paved areas, gravel areas, and a number of buildings and foundations. Some of the buildings are functional and contain commercial space and others are in various stages of disrepair. The developed areas extend to the top of the slope down to the river, which is armored with riprap. Existing wooded areas are limited to the far northwest corner of the site.

Overall, the existing site is heavily developed with little visual appeal. Current uses include construction staging, a wood salvage operation, and semi-trailer box storage. Most of the existing structures appear to be marginally maintained and are in average to poor condition. The proposed project is expected to increase the visual appeal of the site by introducing new buildings and implementing an integrated landscape enhancement plan.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicant submitted an erosion control report and supporting plans for the proposed project, dated March 2012. Based on its review of this information, the Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the mudflats and riparian areas below the HAT line are valuable shorebird feeding area on the west side of the peninsula and roosting area on the east side of the peninsula. MDIFW commented that the proposed project includes activities within the associated upland buffer areas that may have the potential to adversely affect shorebirds using the mudflats in the area. As a result of two site visits and multiple revisions to the delineation of the roosting area and the feeding area buffers based on onsite conditions, neither buffer extends onto the project site more than 50 feet from mean high water.

In response to MDIFW's concerns, the applicant revised the layout of the project to avoid and minimize potential impacts within the buffer areas, and worked with MDIFW to develop a landscape plan (revision dated July 12, 2012) that provides adequate vegetative screening of the mapped shorebird feeding area between the shoreline and proposed pedestrian trail, and limits vegetation within the shorebird roosting area buffer to lower profile shrubs that are expected to maintain visibility for the shorebirds and minimize the threat of increased raptor predation. The applicant has agreed to install interpretive signage at the proposed south end boat launch. The signage will identify the presence and significance of shorebird habitat and will be designed with MDIFW's input. Additionally, the applicant has agreed to install a raised viewing platform overlooking the salt marsh and mudflat communities in the northwest portion of the site.

In a review memorandum dated July 13, 2012, MDIFW commented: "Given the steps that the applicant has taken to maintain and enhance mapped Significant Wildlife Habitats at this site we do not feel that project completion will result in any significant adverse impact to the resource."

Based on MDIFW's review, the Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant may use lumber treated with chromated copper arsenate (CCA) to construct the floats. To protect water quality, any CCA treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction. Provided any CCA treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to alter 386 square feet of an emergent freshwater wetland in the northwestern portion of the site to regrade an area and install a stormwater outfall pipe. Other proposed impacts below the HAT line include less than 100 square feet of alteration associated with the installation of multiple drainage outfalls, most of which will replace existing outfalls. Additionally, approximately 513 square feet of coastal wetland will be altered, through shading, as a result of the seasonal installation of floats at the south end of the peninsula.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. **Avoidance.** No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a coastal wetland alteration permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternatives analysis for the proposed project completed by DeLuca-Hoffman Associates, Inc. Because the proposed project is a transit-oriented development, the applicant selected the project site due to its proximity to the highway, passenger rail service, and bus service, all within a short distance to the Portland Jetport. There are currently no other sites in Portland that can offer the amount of land availability and the location required for this type of project, which will offer a range of activities integrating office, hospitality, and cultural uses with a focus on sustainability. The proposed layout includes approximately 386 square feet of wetland fill within the northwesterly "panhandle" of the site associated with a drainage outfall and grading. This alteration was determined to be unavoidable.

B. **Minimal Alteration.** The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The site is currently almost completely developed and the proposed project offers opportunities to improve the scenic character of the area as well as the water quality of runoff from the site. The applicant incorporated a number of measures into the project design and layout to minimize potential impacts to shorebird roosting and feeding areas as described in Finding 4.

C. **Compensation.** In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided any CCA treated lumber used for the project is cured on dry land as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of FOREFRONT PARTNERS I, L.P. to alter coastal wetlands and adjacent areas as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:



1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Any CCA treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 27<sup>th</sup> DAY OF July, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kulers for  
Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

MR/L25672AN&BN/ATS#74653&74756



## Natural Resource Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

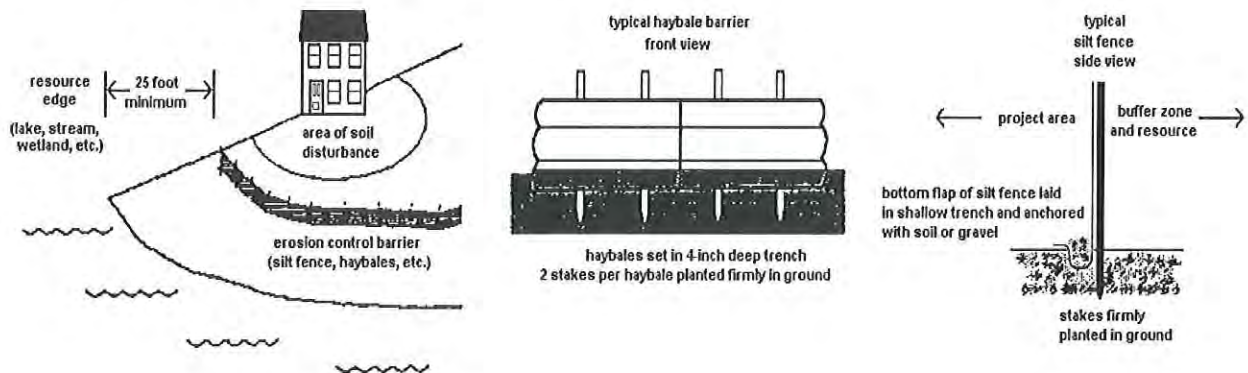


STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

### Erosion Control for Homeowners

#### Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



#### During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **After Construction**

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.
2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **Why Control Erosion?**

##### **To Protect Water Quality**

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

##### **To Protect the Soil**

It has taken thousands of years for our soil to develop. Its usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

##### **To Save Money (\$\$)**

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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## Comments - Environmental Project Review Maine Department of Inland Fisheries and Wildlife

### Wildlife Division Comments – Region A

Applicant's Name: Forefront Partners I, LP (Forefront at Thompson's Point)	
Project: L-25672-2G-A-N	Regulatory Agency: MDEP
Project Type: NRPA	Project Manager: Richardson
Comments Due Date:	Date Comments Sent: 7/13/12
<b>Project Location</b>	
Town: Portland	County: Cumberland
Waterbody: Fore River	
Wildlife Biologist(s): Camuso, Tudor, Walker	

After review of the application and consideration of the proposal's probable effect on the environment, and on our agency's programs and responsibilities, we provide the following comments:

**I. Project Description/Resource Affected:** Forefront Partners I, LP proposes to develop the 22.5 +/- acre Thompson's Point as a mixed use commercial and entertainment development to include an events center and concert hall, outdoor amphitheater, hotel, sports medicine facility, office complex, parking garage and surface parking for 780 vehicles. Additionally, the proposed development includes public amenities such as trails and a water access site. A seasonal rowing facility has also been suggested in the northeast corner of the site. It is our understanding that this last element has been removed from the current proposal and will potentially be reconsidered at a future date.

MDIF&W has mapped two Significant Wildlife Habitats in this portion of the Fore River, both of which include upland buffers that extend into the proposed development area. The mapped habitats include a Significant Shorebird Feeding Area along the western side of the peninsula and a Significant Shorebird Roosting Area along the eastern shoreline. Shorebirds that frequent Maine during the spring on their way to breeding grounds in the open tundra of northern Canada, and again in mid to late summer on their return trip south are dependent on open mudflats for feeding and, at times of high tide, require specific shoreline conditions that provide secure areas for roosting. Upland buffers associated both habitat types are critical in minimizing disturbance to migratory shorebirds by proximate human activities. Additionally, the vegetated condition of buffers associated with roosting habitat is an important factor in determining viability of the roost. Shorebirds will abandon roosts where tall woody vegetation that provides cover for raptors becomes established. Several of the shorebird species that frequent Maine during their migrations have shown long-term populations declines. These declines are, in part, due to significant losses of both migratory feeding and roosting stop over habitats.

### **II. Comments/Recommended Considerations or Conditions:**

#### **Wildlife Considerations:**

MDIFW originally mapped Shorebird Significant Wildlife Habitats and associated buffers in 2006. At that time, shorebird roosting areas were digitized with a 250-foot associated upland



buffer based on scientific literature that documented human disturbance effects. Similarly, feeding areas were digitized with a 100-foot buffer intended to minimize unnecessary disturbance to shorebird activity on the mudflats. Where roosts occur proximate to developed areas, development was clipped out of the original buffers by GIS staff to account for existing disturbances. In the case of Thompson's Point, the originally mapped roost habitat buffer varied from 25-foot offset from mean high water to 150-foot offset from mean high water based on best available aerial photos at the time. As a result of two recent site walks and multiple revisions of the delineation of the roost area and the feeding area buffers based on on-the-ground conditions, neither buffer now extends into the site more than 50-feet from mean high water.

The applicant has adjusted the initially submitted project site plan to avoid and minimize impacts within these revised buffers and has worked closely with our Department to develop a landscape plan that at once creates adequate vegetative screening of the mapped shorebird feeding area between the shoreline and proposed pedestrian trail, and limits vegetation within the shorebird roost area buffer to shrubs that will likely not exceed 4-feet in height and thereby maintain visibility for the shorebirds and minimize the threat of increased predator activity. Additionally, the applicant has agreed to install interpretive signage at the proposed south end boat launch. The signage will identify the presence of shorebird habitat and explain the significance of these habitats. Our Department will assist the applicant in designing the signage to be installed. The applicant has also agreed to install a raised viewing platform overlooking the saltmarsh and mudflat communities in the northwestern portion of the site. This structure will serve as both an attractive amenity for the project and help to build local awareness of and appreciation for local bird life.

Given the steps that the applicant has taken to maintain and enhance mapped Significant Wildlife Habitats at this site we do not feel that project completion will result in any significant adverse impact to the resource.

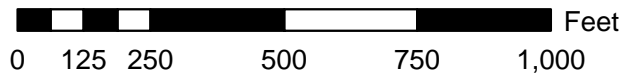
Should the rowing club be constructed during a subsequent phase of development, we do feel that the structure extending into the roost and resulting presence of shells passing along the frontage of the roost will eliminate existing habitat values. With the proposed placement of the facility, it is unlikely that any mitigation for the loss of the roost could take place on-site. We would therefore recommend mitigation for the loss of this Significant Wildlife Habitat feature in the form of a contribution to the Maine Natural Resource Conservation Program for future shorebird roost protection and monitoring. The total square footage of the revised roosting habitat is 63,764sf. Should the rowing club locate in this area, the Department feels that a contribution to the MNRCP fund of \$90,544 ( $63,764 \times 0.71 \times 2$  per MDEP guidance) would be appropriate.



**Draft II Revised Thompson's Point Shorebird Habitats**

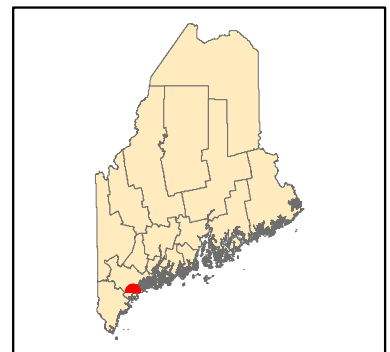


Maine Department of  
Inland Fisheries and Wildlife



Projection: UTM, NAD83, Zone 19N

Date: 6/22/2012





STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

June 2014

Forefront Partners I, LP  
55 Lisbon St., Suite 2400  
Lewiston, ME 04240

RE: Natural Resources Protection Act Application, Portland  
DEP #L-25672-4P-F-N/L-25672-FS-G-N

Dear Applicant:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 592-1692 or at [Marybeth.richardson@maine.gov](mailto:Marybeth.richardson@maine.gov).

Sincerely,

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

pc: File

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826

BANGOR  
106 HOGAN ROAD, SUITE 6  
BANGOR, MAINE 04401  
(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769  
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

FOREFRONT PARTNERS I, LP	) NATURAL RESOURCES PROTECTION ACT
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
PIER SYSTEM	) SIGNIFICANT WILDLIFE HABITAT
L-25672-4P-F-N (approval)	) WATER QUALITY CERTIFICATION
L-25672-FS-G-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of FOREFRONT PARTNERS I, LP with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

I. PROJECT DESCRIPTION:

A. History of Project: Thompson's Point is an approximately 27.5-acre peninsula of land extending into the Fore River that has a 150-year history of industrial development. In the early part of the twentieth century the site was used primarily as a railroad maintenance facility. It was later used by the federal government for war-related activities such as munitions production. Subsequent uses included the operation of a concrete products manufacturing facility and other commercial activities, and the staging and stockpiling of construction materials.

In Department Order #L-25672-2G-A-N/L-25672-FS-B-N, dated July 27, 2012, the Department approved a number of activities on the site that will occur within 75 feet of the highest annual tide (HAT) line, including: clean up and removal of existing debris, stockpiles, and solid waste; building demolition; clearing and grubbing in advance of new topsoil for soil stabilization, landscaping, and trails; access drive and parking area construction; new buildings; installation or replacement of stormwater outfalls; installation of utilities; installation of a pier system at the south end of the peninsula; and a public access ramp.

B. Summary: The applicant proposes to shift the location of the pier system to the west from its previously-approved location at the southerly tip of the Thompson's Point peninsula to align better with the proposed master plan pedestrian access. The proposed pier system will include a longer float than the previously-approved pier system that will be large enough to accommodate crew boats, or rowing shells, and will be positioned so that water access will be available during all-tide conditions. The system will consist of a permanent six-foot wide by 16-foot long timber pier located at the top of the bank, which will serve as the top/landing approach to a four-foot wide by 50-foot long seasonal gangway and a seasonal, 10-foot wide by 60-foot long float.

The proposed pier system is shown on two plans, the first titled "The Forefront at Thompson's Point Seasonal Dock System," prepared by Fay, Spofford & Thorndike and dated March 13, 2014, and the second titled "Layout Concept for Portland Rowing," prepared by Custom Float Services, Inc. and dated March 6, 2014.

C. Current Use of the Site: A realigned combined sewer overflow has been constructed along the westerly side of the peninsula. A walking trail along the "panhandle" area of the site has also been constructed. The majority of the approximately 4,100 linear feet of shoreline at the site was previously armored with riprap. Approximately five acres of the site lie below the HAT line. There are several buildings on the site that will be demolished.

## 2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including aerial photographs. Department staff visited the project site in July 2011.

The proposed project is located adjacent to the Fore River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The project site is currently almost completely developed with paved areas, gravel areas, and a number of buildings and foundations. Some of the buildings are functional and contain commercial space and others are in various stages of disrepair. The developed areas extend to the top of the slope down to the river, which is armored with riprap. Existing wooded areas are limited to the far northwest corner of the site.

Overall, the existing site is heavily developed with little visual appeal. Current uses include construction staging, a wood salvage operation, and semi-trailer box storage. Most of the existing structures appear to be marginally maintained and are in average to poor condition. The proposed project is not expected to significantly change the visual impact of the redeveloped site as approved in Department Order #L-25672-2G-A-N/L-25672-FS-B-N.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

Construction of the proposed project is expected to take several weeks. The float systems will be prefabricated and the permanent pier section will be constructed onsite and set into place. The permanent pier section will be supported on concrete foundations. Construction will be accomplished by excavating small holes that will be backfilled with concrete. The seasonal floats will be anchored with moorings. These activities are not anticipated to cause any significant source of sedimentation.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) reviewed the project approved in Department Order #L-25672-2G-A-N/L-25672-FS-B-N and stated that it should not cause any significant adverse impact to marine resources.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the project approved in Department Order #L-25672-2G-A-N/L-25672-FS-B-N and stated that the mudflats and riparian areas below the HAT line are a valuable shorebird feeding area on the west side of the peninsula and a roosting area on the east side of the peninsula. MDIFW commented that the proposed project includes activities within the associated upland buffer areas that may have the potential to adversely affect shorebirds using the mudflats in the area. As a result of two site visits and multiple revisions to the delineation of the roosting area and the feeding area buffers based on onsite conditions, neither buffer extends onto the project site more than 50 feet from mean high water.

During the Department's review of the original application in 2012, MDIFW expressed concerns about the initial design of the project because it proposed rowing floats at the northeasterly corner of the site, directly adjacent to the shorebird roosting area and its associated upland buffer. This float system was subsequently deleted from the plan, and the plan that was approved by the Department included a small hand carry boat/kayak launch float at the southern tip of the site as described in Finding 1. MDIFW did not express concerns about this seasonal structure and stated that the project when complete would not result in any significant adverse impact to the habitat.

The applicant now proposes to relocate the pier and float structure from the southernmost tip of Thompson's Point to a point on the shoreline approximately 108 feet west of the previously approved pier system, further from the shorebird roosting area, but still within

the shorebird feeding area. MDIFW reviewed the proposed project and stated in a review memorandum dated June 25, 2014, that the pier system has been relocated to an area that will be less disruptive to wildlife than the original location. MDIFW recommended that the applicant reiterate its commitment to installing interpretive signage in the vicinity of the pier structure and a viewing platform overlooking the salt marsh and mudflat communities in the northwest portion of the site. The applicant confirmed that it intends to comply with the previous permit conditions that required the installation of a viewing platform and educational placards.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) to construct the pier system. To protect water quality, all CCA-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

Provided that CCA-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to indirectly alter a total of 1,028 square feet of coastal wetland as a result of shading from the proposed pier system. The permanent pier section's supports will be located above the HAT line; therefore, no direct wetland impacts are proposed. The pier system as originally approved in Department Order #L-25672-2G-A-N/L-25672-FS-B-N included 513 square feet of indirect wetland alteration due to shading.

The Wetland Protection Rules interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project completed by Fay, Spofford & Thorndike and dated May 27, 2014 and June 12, 2014. When the project was first proposed in 2012,

the site in question was contemplated as water access for small personal kayaks, canoes and a water shuttle/taxi. The applicant stated that the purpose of the revised configuration, location, and increase in float size is to allow water access for local rowing organizations. The applicant proposes to increase the size of the floats in order to launch eight oar crew boats, or shells, which are approximately 60 feet long, out into the bay. The increased pier length is needed to walk the shell down the gangway and launch it into the water. The pier system is not intended for boats to be anchored or moored for extended periods. Because of the nature of the project purpose, some increase in impact to the coastal wetland is unavoidable.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. A permanent pier has been added to the system, but will be located above the HAT line. The gangway will be 10 feet longer than originally proposed, and the float size has been expanded to accommodate a local rowing club as described above. The proposed 60-foot long float is the minimum size necessary to safely launch rowing shells.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.



- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA-treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of FOREFRONT PARTNERS I, LP to relocate and enlarge a previously approved pier system at Thompson's Point as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

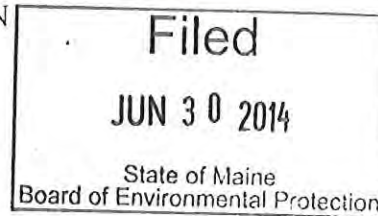
4. All CCA-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 30<sup>th</sup> DAY OF June, 2014.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Keenan  
For: Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

MR/L25672FNGN/ATS#77793, 77794



## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Revised (12/2011/DEP LW0428)

DEPLW0386 A2012



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

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### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

## WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

## OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

## WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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