

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

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Stuart G. O'Brien, Vice Chair  
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May 20<sup>th</sup>, 2013

David Latulippe  
C J Developers, Inc.  
35 Primrose Lane  
Freeport, ME 04032

Portland Property Holdings, LLC  
2 Main Street  
Topsham, ME 04086

Project Name: **Commercial Development including gas station and convenience store with ATM**  
Project ID: 2013-086 CBL: 237-A-012  
Address: 2282 Congress Street, Portland  
Joint Applicants: C J Developers, Inc. and Portland Property Holdings, LLC  
Planner: Jean Fraser

Dear Mr Latulippe:

On May 14<sup>th</sup>, 2013, the Planning Board considered the Level III Site Plan and Traffic Movement Permit application for the commercial development at 2282 Congress Street to construct a commercial development that includes a 3,850 sq. ft. convenience store with an ATM and fuel station (14 filling dispensers plus a future compressed natural gas pump and electric recharging stations), a small farmstand associated with the convenience store, and 26 parking spaces. The Planning Board reviewed the proposal for conformance with the Conditional Rezoning Agreement as approved by the City Council on March 4<sup>th</sup>, 2013 and with standards of the Site Plan, Traffic Movement Permit, and Stormwater Permit.

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 24 -13 for the commercial development at 2282 Congress Street relevant to the Site Plan, Traffic Movement Permit and Stormwater Permit reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board voted 4-0 (Morrisette, O'Brien and Hall absent) to approve the application with the following waivers and conditions as presented below:

### WAIVERS

1. *Driveway Design:*

The Planning Board voted 4-0 (Morrisette, O'Brien and Hall absent) to waive Technical Standard, Section 1.7.1.4, which specifies a maximum of 36 feet wide for a major commercial driveway, to allow a 38 ft wide driveway that accommodates the large vehicles anticipated to require regular access to the site.

2. *Parking Aisle:*

The Planning Board voted 4-0 (Morrisette, O'Brien and Hall absent) to waive Technical Standard, Section 1.14, Figures I-28 to I-32 which require a 24 foot wide drive aisle, to allow wider aisles as shown in the approved site layout plan ([Plan 5](#) as attached to this Report).

## **TRAFFIC MOVEMENT PERMIT**

Based upon the City of Portland's Delegated Review Authority, the Planning Board voted 4-0 (Morrissette, O'Brien and Hall absent) that the proposed plan is in conformance with 23 MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits, with the following conditions of approval:

- i. That the applicant shall contribute \$5000 to an account maintained by the City that will be used to fund traffic improvements to the intersection at Congress Street/Hutchins Drive/Skyway Drive; and
- ii. That a post-occupancy signal warrant study shall be conducted one year after opening. If a traffic signal is warranted or the queuing lanes prove inadequate, the applicant shall be responsible for all costs associated with design and implementation of the traffic signal or improvements to such queuing lanes; and
- iii. That the operation of the right turn into the site from Congress Street shall be monitored for one year following opening. If the crash data suggests a problem exists, the applicant shall be responsible for installing a right-turn lane.

## **STORMWATER MANAGEMENT PERMIT**

That based upon the City of Portland's Delegated Review Authority, the Portland Planning Board voted 4-0 (Morrissette, O'Brien and Hall absent) that the plan is in conformance with the standards for a Storm Water Permit application for the commercial development at 2282 Congress Street and grants a permit subject to the following condition:

- i. That the applicant and all assigns, must comply with the conditions of Chapter 32 Storm Water including Article III. Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction storm water management plan and sediment & erosion control plan as included Attachment G.1-3 of this Report, and as based on the Long Creek Watershed District standards/requirements and state permits and guidelines.

## **SITE PLAN REVIEW**

The Planning Board voted 4-0 (Morrissette, O'Brien and Hall absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

- i. That this site plan approval is subject to the Conditional Zone Agreement as approved by the City Council on March 4, 2013, and that C J Developers Inc. shall sign and record the aforementioned Conditional Zoning Agreement prior to the issuance of a building permit, and if the CZA is assigned, C J Developers Inc. shall provide notification of the assignment to the City; and
- ii. That the signed and recorded access easement from Maine Turnpike Authority for the area of the proposed access from Congress Street shall be submitted to the Planning Authority prior to the issuance of a building permit; and
- iii. That a copy of the MDEP Stormwater Discharge approval shall be submitted to the Planning Authority prior to the issuance of a building permit. If there are significant modifications to the stormwater system as a result of the MDEP review, then an amended site plan would be required for approval by the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised off-site improvements plan that addresses Tom Errico's memorandum dated 05.09.2013 regarding the left turn accommodations, crosswalk design with ADA landing, and painted crosswalk on Blueberry, for review and approval by the Planning Authority prior to the issuance of a building permit; and

- v. That the applicant shall submit a revised Landscaping Plan (with notes), for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit, that meets the recommendations set out in Jeff Tarling's e-mail dated 5.10.2013; and
- vi. That all necessary permits and licenses shall be obtained from the Federal, State (including MDEP) or local authorities in respect to the fuel storage, compressed natural gas installation and electric charging stations; and
- vii. That commercial signage shall be subject to separate sign reviews and permits, and that the project shall meet the I-M noise requirements; and
- viii. That a plan showing the signage and pavement markings that support the on-site circulation shall be reviewed and approved by the Planning Authority prior to installation, with installation to be completed prior to the issuance of a Certificate of Occupancy.

#### STANDARD CONDITIONS OF APPROVAL

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

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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

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

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

**Attachments:**

1. Traffic Engineering Review comments, e-mail from Tom Errico dated 5.9.2013
2. City Arborist comments, e-mail from Jeff Tarling dated 5.10. 2013
3. Planning Board Report #24-13
4. City Code, Chapter 32
5. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Alexander Jaegerman, FAICP, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Jean Fraser, Planner  
Philip DiPierro, Development Review Coordinator, Planning  
Marge Schmuckal, Zoning Administrator, Inspections Division  
Tammy Munson, Inspection Division Director  
Lannie Dobson, Administration, Inspections Division  
Gayle Guertin, Administration, Inspections Division  
Michael Bobinsky, Public Services Director  
Katherine Earley, Engineering Services Manager, Public Services  
Bill Clark, Project Engineer, Public Services  
David Margolis-Pineo, Deputy City Engineer, Public Services  
Doug Roncarati, Stormwater Coordinator, Public Services  
Greg Vining, Associate Engineer, Public Services  
Michelle Sweeney, Associate Engineer  
John Low, Associate Engineer, Public Services  
Rhonda Zazzara, Field Inspection Coordinator, Public Services  
Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Jeremiah Bartlett, Public Services  
Captain Chris Pirone, Fire Department  
Danielle West-Chuhta, Corporation Counsel  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**CC:** David Margolis-Pineo <DMP@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeremiah Bartlett <JBartlett@portlandmaine.gov>  
**Date:** 5/9/2013 11:23 AM  
**Subject:** 2282 Congress Street - Final Traffic Comments

Jean – The following represents my final comments and also presents a status update on my April 18, 2013 preliminary comments.

## April 18, 2013 Comments Status

- It is suggested that the pedestrian facility between Congress Street and the proposed convenience store building be as direct as possible. This may require the loss of some of the 9 parking spaces located along the front of the property.  
**Status: The applicant has revised the site plan to improve the crosswalk alignment and given constraints with Maine Turnpike Authority property, I find the proposed condition to be acceptable.**
- Parking supply seems excessive for the type and scale of the proposed land use. Supporting documentation on the parking needs shall be provided.  
**Status: The applicant has revised the site plan and is now proposing to construct 26 parking spaces with an option for future expansion of the parking supply if deemed necessary. I find the proposed condition to be acceptable.**
- Auto-turn analyses shall be provided that supports on-site circulation aisle widths and the width of the driveway entrance on Congress Street. The applicant should also provide information on the number of large trucks anticipated to enter and exit the site.  
**Status: The site plan has been revised based upon discussions with the applicant and I find the proposed plan to be acceptable. I would note that the applicant did add a raised concrete apron at the driveway entrance and I find this condition to be acceptable. A waiver for driveway width is required and given large truck turning requirements, I support a waiver from City standards.**
- It is unclear whether there are vehicle circulation restrictions on site (e.g. one-way vs. two-way). Signage and pavements markings shall clearly support proposed circulation restrictions.  
**Status: It is my understanding that the revised site plan accounts for a one-way circulation around the back side of the convenience store. Signage and pavement markings should be provided.**
- Many aisle widths exceed City standards and waivers from our technical standards may be necessary. As noted above, supporting information will be required before I render any decision on waivers.  
**Status: Given the specific needs of on-site vehicle circulation and accessibility to fueling areas, I find the proposed layout to be acceptable and support waivers from City standards.**

## Traffic Study/New Comments

- I find the methods used in the traffic study to be acceptable.
- The analysis indicated the Congress Street/Site Drive/Blueberry Road intersection will operate at acceptable levels of service following build-out of the project. I concur with this conclusion.
- A signal warrant analysis was conducted at the Congress Street/Site Drive/Blueberry Road intersection. According to the applicant a traffic signal is not warranted. I concur with this conclusion, but suggest that a post-occupancy signal warrant study be conducted one year after opening. If a traffic signal is warranted, the applicant shall be responsible for all costs associated with design and implementation of the traffic signal.

- According to a warrant analysis for a right-turn lane entering the site from Congress Street, a right-turn lane is warranted. At this time I concur with the applicant that provision of a right-turn lane entering the site is not preferred given that it will increase the crosswalk length. I would suggest that conditions be monitored one year following opening and if crash data suggests a problem exists, the applicant shall be responsible for installing a right-turn lane.
- The Congress Street/Skyway Drive/Hutchins Drive intersection is projected to have movements that will operate at an unacceptable level of service following the construction of the project. In addition, while not a High Crash Location per MaineDOT criteria, the intersection does display a pattern of rear-end collisions. The City has been collecting funds from developments in the area for the implementation of improvements to mitigate congestion and safety deficiencies. Based upon prior contribution methods, the applicant shall contribute \$5,000.00 towards improvements at the subject intersection.
- The applicant has developed an improvement plan for Congress Street such that left-turn accommodations are provided. I support the general concept of the plan provided in the application. Final design plans shall be submitted to the City for review and approval (It should be noted that adjustments to the design may be required during this review process).
- A pedestrian crosswalk is being proposed on Congress Street between the project site and Blueberry Road. Through the contract rezone process the crosswalk was to include a refuge median island in addition to a flashing sign warning system. Given vehicle turning needs, a refuge island is not feasible at this location. In lieu of the refuge island the applicant shall construction an ADA accessible landing on the northwest radius of Blueberry Road. In addition, the crosswalk pavement marking shall consist of durable paint. Final design elements shall be reviewed and approved by the City.
- Per City standards the applicant is required to construct a sidewalk along their property frontage (60 feet of frontage). The project does not meet sidewalk waiver requirements. In lieu of constructing the required sidewalk, the applicant shall install a painted crosswalk on the Blueberry Road approach to Congress Street.

If you have any questions or comments, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director

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**From:** Jeff Tarling  
**To:** Jean Fraser  
**CC:** David Margolis-Pineo  
**Date:** 5/10/2013 11:06 AM  
**Subject:** 2282 Congress Street Project

Hi Jean -

I reviewed the recent landscape plan submission for the 2282 Congress Street project and offer the following comments, conditions:

a) Tree Save - the 'tree-save', tree thinning area along Congress Street is improved and meets our recommendations. Additional 'tree-save' areas along the Western property line and towards Skyview Drive will need to be marked prior to site work and as approved by the City Arborist. There may be trees to be thinned or removed due to poor condition or risk. (Thinning trees for views is not recommended - thinning trees for safety and condition is.) Standard tree protection measures shall be used during construction, these include protection of tree root zones, identifying trees to protected, construction fencing or tagging where needed. No storage of equipment or construction materials in tree protection root zone areas. The area around the Shagbark Hickory is one of the tree protection zones.

b) Trees in parking lot - In the area shown as snow storage, and addition one to two trees could be set back away from the edge of pavement to still allow snow clearing and meet the parking lot tree / shrub standards.

Overall the landscape plan is acceptable as shown with the recent improvement and suggested conditions.

Thanks,

Jeff Tarling  
City Arborist



# PLANNING BOARD REPORT

Commercial Development including gas station and convenience store with ATM

2282 Congress Street

Level III Site Plan and Traffic Movement Permit

Project ID #2013-086

CJ Developers, Inc. and Portland Property Holdings LLC., Joint Applicants

Submitted to: Portland Planning Board Public Hearing Date: May 14 <sup>th</sup> , 2013	Prepared by: Jean Fraser, Planner Date: May 10 <sup>th</sup> , 2013 <b>Planning Board Report # 24-13</b>
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## I. INTRODUCTION

David Latulippe of CJ Developers, Inc. has applied (jointly with Portland Property Holdings LLC) for site plan approval in accordance with the Conditional Rezoning Agreement (CZA) that was recommended by the Planning Board on February 12, 2013 and the City Council on March 4, 2013 (Attachment 1). The CZA varied the underlying I-M zone to allow commercial uses including a convenience store, bank with ATM and gas station, subject to conditions regarding a pedestrian crossing of Congress Street, traffic, landscape and lighting to be addressed in the site plan.

The zoning context is shown on the plan below; the site is C22 but this number will be updated.

The applicant has requested that the proposed site plan go direct to a Planning Board hearing in view of the extensive discussions that took place in connection with the review of the Conditional Rezoning. The proposals are essentially as shown in the CZA Concept Plan except that the bank and one drive through have been removed, a small farmstand has been added, and the area of proposed impervious surface has been reduced by about 7%.



Staff plan based on City of Portland GIS data

The site plan proposals are for a commercial development that includes a 3,850 sq. ft. convenience store with an ATM and a fuel station with 14 filling dispensers plus a future compressed natural gas pump and electric recharging stations. The applicant has recently added a small farm stand associated with the convenience store, which would be available to local producers at no rent similar to a “farmer’s market”.

The lot has approximately 60 linear feet of frontage on Congress Street at the western edge of the site, and an access easement has been secured from MTA (who own the two frontage lots) to allow the site access to be better located opposite Blueberry Road.

Required reviews: The site plan is subject to review in the context of the CZA and I-M zoning requirements that were not varied by the CZA. The scale of the proposals would have triggered a Level II Site Plan review at staff level, but the CZA explicitly requires this site plan to be reviewed by the Planning Board. The proposal is being reviewed under the Land Use Code provision 14-526 (Site Plan) and Traffic Movement Permit (delegated authority from the State). The project is located within the Long Creek Watershed District and must obtain a Water Discharge Permit from the MDEP in addition to a Stormwater Permit from the City of Portland (delegated review).

The project requires the following waivers, which are supported by reviewers:

<i>Requested Waiver</i>	<i>Standard and any waiver provisions</i>
<b>Driveway Design:</b> the driveway width (38ft) exceeds the maximum in order to allow for the large vehicles anticipated to require regular access to the site.	<i>Technical Manual Section 1.7.1.4</i> which specifies a maximum of 36 feet wide for a major commercial driveway.



<p><b>Parking Lot and Parking Space Design:</b> The parking aisles are also designed for circulation by large truck vehicles and therefore exceed the maximum width in several locations.</p>	<p><i>Technical Manual Section 1.14</i> which specifies a maximum of 24 feet for parking aisles.</p>
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**II. PUBLIC NOTICING**

This Hearing was noticed to 65 parties including property owners, interested citizens, and those who wrote to the Planning division in relation to the conditional rezoning (all were in support; one concerned about the new Blueberry/Congress intersection). A legal notice also appeared in the May 6<sup>th</sup> and 7<sup>th</sup> 2013 editions of the *Portland Press Herald*. There have been no public comments as of the time of completing this report.

A Neighborhood Meeting was held on April 10, 2013 and attended by one person; the certificate with notes and sign up sheet is included in Attachment K.

**IV. PROJECT DATA**

<p>Existing Zoning:                  Proposed Use:                  Parcel Size:                   Impervious Surface Area:                      Existing:                      Proposed:                      Net Change:                  Building Area:                      Existing Floor Area:                      Proposed Floor Area:                      Proposed Building Footprint:                  Vehicle Parking:                      Proposed Car Parking:                      No. of Handicapped Spaces:                  Bicycle Parking Spaces:                      Proposed:                  Estimated Cost of Project:                  Uses in Vicinity:                   Applicant Name:                  Consultants:</p>	<p>Industrial (Moderate Impact)                  Convenience store with ATM and gas station with 14 fueling stations, and small farm stand                  146,361 sq. ft. including 5,227 sq ft subject to MTA easement)                   Undeveloped- 0 sq. ft.                  56,855 sq ft as shown on plan; 62,033 sq. ft for future full build out                  56,855 sq ft as shown on plan; 62,033 sq. ft for future full build out                   0                  4,066 sq ft (3,850 sq. ft. convenience store; 216 sq ft farmstand)                  4,066 sq ft (3,850 sq. ft. convenience store; 216 sq ft farmstand)                   26 car parking spaces plus area for truck parking                  2 (included in the 26)                   8 (meets the requirement)                  \$2-3 million                  This wider area is industrial but includes many general offices and animal facilities and set in a campus-like setting; this site is bounded on 3 sides by roads (Turnpike , Skyway Drive and Congress Street), with the “back” of Methadone Clinic to the west.                   David LaTulippe                  DeLuca Hoffman Engineers</p>
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**V. EXISTING CONDITIONS**

The existing site is located on the south side of outer Congress Street, opposite Blueberry Road, near the Turnpike bridge. It is currently undeveloped, with wetlands in the southwest corner and mature vegetation around the western perimeter.

To the south it abuts Skyway Drive, a limited access road serving the turnpike exit 46, the park & ride and the MTA Headquarters to the west. Blueberry Road (location of *Ecomaine*) is opposite the site on Congress Street, with the turnpike to the east, the Methadone Clinic to the west and a veterinarian practice to the north (other side of Congress and also abutting the turnpike).



**VI. PROPOSED DEVELOPMENT**

The applicant proposes to develop a 3,850 sq ft convenience store with gas station, ATM and farmstand (Plans 5-8). The bank that was shown in the earlier concept plan associated with the CZA (Attachment 1) has been removed. A fuel canopy and compressor building for compressed natural gas fuel are also included. The small farmstand has been added near Congress Street as part of a landscaped area; the applicant’s e-mail explaining the operation of the farmstand is included in Attachment M. Staff support the addition of the farmstand in the context of supporting local food producers and facilitating access to local food and consider it consistent with zoning.

The site plan (Plan 5) shows 12 gas fueling stations under the canopy plus 2 diesel fuel dispensers at a separate island at the rear of the site. A future Compressed Natural Gas pump is shown with the gas pumps under the canopy and a future electric vehicle charging station (4 bays) is included on the east side of the paved area.

A single access from Congress Street is proposed, located opposite Blueberry Road over MTA-owned land that is subject to an agreed but not executed easement (Attachment C.13). During the CZA review the Planning Board had supported the potential connection to Skyway Drive (shown as dotted lines on the CZA concept plan) but the Maine Turnpike Authority (MTA) has confirmed that they do not support this connection as it impacts the efficiency of Skyway Drive (Attachment 2).

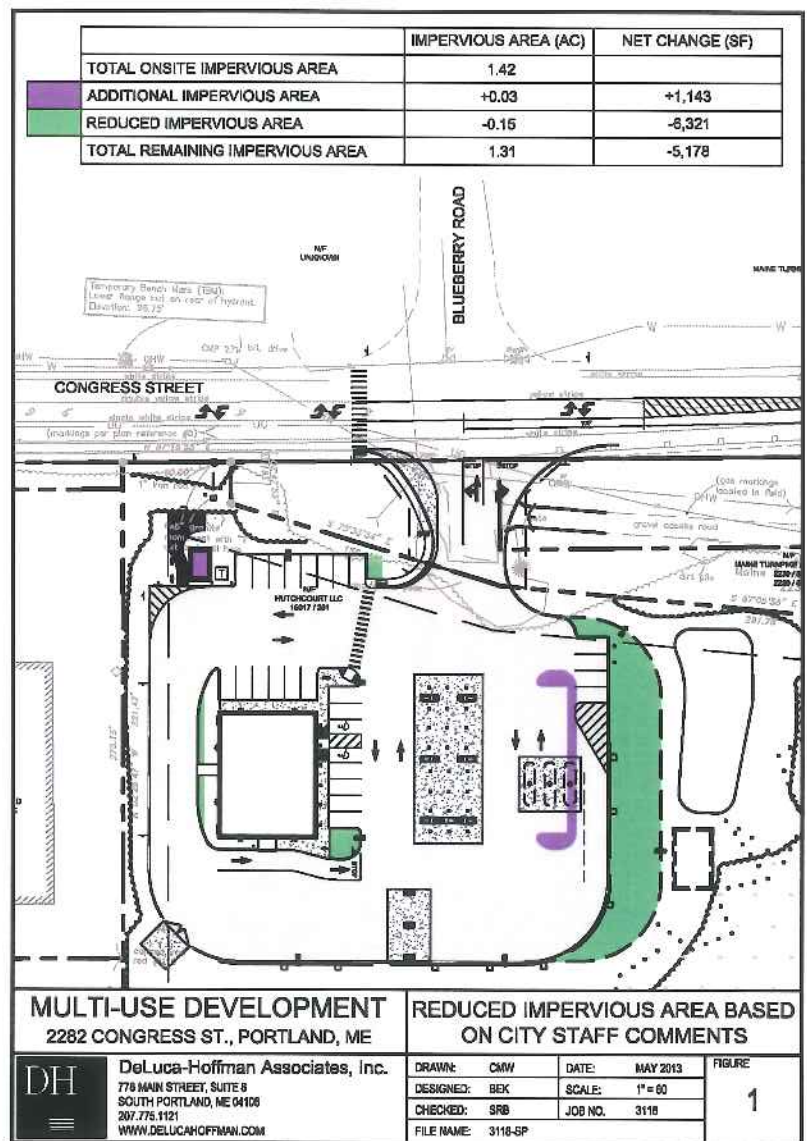
During the review staff raised concerns about the extent of the impervious surface (over 40% of the site), which was designed to accommodate maximum peak parking demand and provide ideal turning areas for very large tractor trailers. Although all of the stormwater run off would be treated, the key issue was that this created an expanse of pavement that was not consistent with the campus-like character required by the CZA.

The applicant reconsidered the parking and truck maneuvering requirements and was able to reduce the impervious area by 7% as summarized in the sketch at right.

Car parking for customers of the convenience store is now at 26 spaces, reduced from 32 spaces in the original site plan. The layout allows for the creation of parking spaces (in the green area of plan to the right) if future peak demand indicates a need for additional parking. Eight bicycle parking spaces are included and a truck parking area.

Pedestrian accommodations include the crosswalk on Congress Street as required by the CZA and an internal walkway linking the Congress Street crosswalk and the convenience store.

Landscaping has been incorporated around the periphery to buffer the development and create the “campus-like” character required by the CZA. The scope for internal landscaping is limited by the underground stormwater system and fuel storage, and the turning areas required for internal circulation.



**VII. REVIEW ON CONTEXT OF THE CONDITONAL REZONING AGREEMENT**

The Conditional Rezoning Agreement (Attachment 1) was reviewed by the Planning Board over three meetings and unanimously approved by the City Council on March 4, 2013. The Agreement is with CJ Developers Inc who were the applicants for the rezoning. CJ Developers Inc have not executed the agreement because they do not have

ownership of the site (see Purchase and Sale Agreement and recent Assignment of the Option to Portland Property Holdings in Attachment C). The City's Corporation Counsel has advised that the execution of the conditional zoning agreement can be a condition of the site plan and that the CZA may be assigned by CJ Developers (Attachment 10).

The final proposals have been reviewed in the context of the CZA and staff consider that the proposals now meet the CZA requirements. The supporting analysis is set out below:

1. *The property shall be developed substantially in accordance with the conceptual site plan shown on Attachment 2. The site layout plan may be amended, modified or altered with the Portland Planning Board approval in connection with the site plan review process;*

Staff comment: The overall scale of built development and layout of the proposals has remained as in the concept plan.

2. Permitted uses: *Those uses allowed in the IM zone. In addition, the Property shall be permitted to be used for the following uses:*
  - a. *Major auto service station. Natural gas and electricity fuel shall be included in the fuels that the major auto service station is allowed to sell.*
  - b. *Bank or ATM (with a drive through)*
  - c. *Convenience Store (without a drive through)*
  - d. *Restaurant (without a drive through)*

Staff comment: Marge Schmuckal, Zoning Administrator, has confirmed that the farmstand is in accordance with this provision (Attachment 4).

3. Planning Board Site Plan Approval: *The major auto service station, convenience store/restaurant and bank project must obtain final site plan from the Portland Planning Board. Included within any application for such approval are the following requirements:*
  - a. *CJD shall submit a traffic study establishing its ability to meet all the traffic safety requirements to the satisfaction of the CITY's Traffic Engineer, including information on integration of a possible future connection to Skyway Drive; and,*

Staff comment: The City's Traffic Engineer has confirmed that the project is acceptable in relation to safety requirements, subject to conditions (see Site Plan Review and Attachment 7). The submitted Traffic Studies (Attachment F.1 and F.2) included a preliminary analysis of the potential connection to Skyway Drive and the results indicated that the level of service at the Skyway Drive and turnpike intersection would degrade with a 4th approach from the proposed site. The MTA are not supportive of the connection (Attachment 2). The applicant has designed the site plan such that this connection is possible in the event it is reconsidered in the future.

- b. *CJD shall submit a detailed site plan addressing the bank drive through and associated stacking capacity, landscaping, architecture and protection of pedestrians.*

Staff comment: The bank drive through is no longer part of the proposals. The site plan has addressed landscaping, and protection of pedestrians as discussed under the Site Plan review. The elevations of the proposed convenience store and gas station canopy are included in Plans 25 and 26.

- c. *CJD shall include Landscape, Architectural and Lighting Plans that achieve a campus like character for the project.*

Staff comment: The proposed architecture (Plans 25 and 26) appears to be consistent with a campus like character. Board will need to consider whether the landscaping (which staff recommends should be augmented near the truck parking area) and the light fixture ("Prolific", see Attachment I.4) is consistent with the aim to achieve a campus like character (both discussed in Site Plan Review below)

4. Community Contribution: shall install a new crosswalk on Congress Street from the project site to the sidewalk on the north side of Congress Street. The crosswalk shall include the following features:
  - a. A pedestrian island in Congress Street. The island shall be raised and include granite curbing. The location, size (width and length) and material shall be determined by the City;
  - b. Rectangle Rapid Flash Beacon warning lights. Three sets of the warnings lights shall be installed (on each side of Congress Street and in the median island);
  - c. The crosswalk and all accessories shall be ADA complaint and include sidewalk ramps and connections to the existing sidewalk;
  - d. Durable pavement markings and supplemental signs; and
  - e. Drainage and pavement improvements, as required by the Planning Authority and/or the Department of Public Services.

*This full combination of the above items is above and beyond the usual site plan requirement that would apply to this project for a striped crosswalk as shown in the Conceptual Site Plan in Attachment 2 Plan.*

Staff comment: The pedestrian crosswalk has been provided generally to the satisfaction of the Consulting Traffic Engineer, who has requested removal of the island and addition of an ADA accessible landing, with final details to be reviewed by the City. This requirement is included in potential condition iv.

## VIII. DEVELOPMENT REVIEW

### A. SITE PLAN SUBMISSION REQUIREMENTS (Section 14-527)

The applicant has submitted all of the required materials for a final plan. The letter confirming financial capability is included at Attachment D.

#### Right, title and Interest (See Attachment C)

The original applicant (CJ Developers Inc) had a P&S Agreement with the owner which was dependent on the receipt of zoning and site plan approvals. Since the site plan application was submitted CJ Developers Inc have assigned this Agreement and its associated rights and obligations to Portland Property Holdings, LLC (Attachment C.4). Portland Property Holdings LLC are now added as joint applicants. The CZA remains in CJ Developers Inc name and is a precondition for the site plan review. Corporation Counsel has advised that since the CZA can be assigned (Attachment 10) that the joint party arrangement is satisfactory and that the execution of the CZA should be a site plan condition.

The proposed driveway access from Congress Street is across land owned by the Maine Turnpike Authority (MTA). An easement to C J Developers Inc was agreed by the MTA on 4.25.2013 and a confirming e-mail and the easement language is enclosed at Attachment C.14.

### B. SITE PLAN STANDARDS (Section 14-526)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations. Staff comments are listed below.

#### 1. Transportation Standards

##### a. Traffic Movement Permit (TMP)

The Traffic Study and Scoping Report (Attachment F) confirmed that a Traffic Movement Permit is required because the proposed trip generation reaches a high of 277 trip ends in the weekday PM peak (ie it exceeds the 99 trip ends which trigger a TMP). A Scoping meeting was held on April 16, 2013 and a further Traffic Impact Study was received on April 23, 2013 to address the several issues raised at the Scoping meeting.

The Planning Division requested that those who had commented on the rezoning application be notified of the TMP Scoping meeting (the public may attend and observe), particularly *Ecomaine* who had written during the conditional rezoning review (the letter arrived after the PB Hearing; copy attached for information in Attachment 11).

*Ecomaine* is located on Blueberry Road and raised the question of a possible signal at the intersection with the new project drive, given the fact that Congress Street is busy commuter route and *Ecomaine* has many turning trucks at that location. The Traffic Studies (Attachment F) indicate that a signal is not warranted at this location, but Tom

Errico, Consultant Traffic Engineer, is recommending a post-occupancy signal warrant be conducted, with the applicant responsible for signal installation (Attachment 7, extract below).

Extracted below are Tom Errico's final comments re TMP (underlining refers to a suggested condition of TMP approval which has been incorporated in the motion for the Board to consider):

- *I find the methods used in the traffic study to be acceptable.*
- *The analysis indicated the Congress Street/Site Drive/Blueberry Road intersection will operate at acceptable levels of service following build-out of the project. I concur with this conclusion.*
- *A signal warrant analysis was conducted at the Congress Street/Site Drive/Blueberry Road intersection. According to the applicant a traffic signal is not warranted. I concur with this conclusion, but suggest that a post-occupancy signal warrant study be conducted one year after opening. If a traffic signal is warranted, the applicant shall be responsible for all costs associated with design and implementation of the traffic signal.*
- *According to a warrant analysis for a right-turn lane entering the site from Congress Street, a right-turn lane is warranted. At this time I concur with the applicant that provision of a right-turn lane entering the site is not preferred given that it will increase the crosswalk length. I would suggest that conditions be monitored one year following opening and if crash data suggests a problem exists, the applicant shall be responsible for installing a right-turn lane.*
- *The Congress Street/Skyway Drive/Hutchins Drive intersection is projected to have movements that will operate at an unacceptable level of service following the construction of the project. In addition, while not a High Crash Location per MaineDOT criteria, the intersection does display a pattern of rear-end collisions. The City has been collecting funds from developments in the area for the implementation of improvements to mitigate congestion and safety deficiencies. Based upon prior contribution methods, the applicant shall contribute \$5,000.00 towards improvements at the subject intersection.*

b. *Parking and Circulation on Site*

Tom Errico, the Consultant Traffic Engineer, reviewed the initial submission (Attachment 7) and raised concerns particularly regarding the number of parking spaces and the excessive aisle widths along with detailed comments regarding the internal pedestrian facility. The April 23, 2013 submission provided data and other information in support of the parking provision and aisle widths (Attachment L), but staff still considered that the paved area was underutilized and more than necessary for the proposed uses.

Tom Errico met with the applicant and his engineering advisers on April 30<sup>th</sup> 2013 to further understand the functional requirements of the proposed development and consider whether there was some scope for reducing parking and circulation area pavement. The applicant responded positively by reorganizing the internal circulation and reducing the parking provision from 32 spaces to 26 spaces, as shown in Attachment O (and inserted above on page 3), which highlights in green the reduced imperious surface area. It is understood that that this area may be needed in the future if found necessary to meet parking or other needs. Turning templates were submitted (Attachments N.7 and N.8) that show the circulation areas are warranted to allow large vehicles to maneuver.

Mr Errico has confirmed that the revised proposals are acceptable and he supports waivers to allow the driveway and aisle widths as proposed (Attachment 7). The Board may wish to consider what level of review (if any) should be stipulated for any future change from pervious to impervious.

The site access on Congress Street allows for left turns from Congress Street into the site and Plan 5 (Site Layout) shows the associated new pavement marking and signs. Potential condition *iv* incorporates the comments from Mr Errico:

*The applicant has developed an improvement plan for Congress Street such that left-turn accommodations are provided. I support the general concept of the plan provided in the application. Final design plans shall be submitted to the City for review and approval (It should be noted that adjustments to the design may be required during this review process). (Attachment 7)*

Parking for eight bicycles has been provided near the convenience store and meets the ordinance requirement.

c. *Snow Storage*

The applicant has indicated the snow storage areas on the final site plan, see Plan 5, which is satisfactory.

d. *Internal Pedestrian Access and sidewalks*

The proposal includes an internal pedestrian link from the convenience store to the pedestrian crosswalk across Congress Street (as required by the CZA), which in turn connects to the sidewalk on the north side of Congress Street. Tom Errico, consulting Traffic Engineer, has commented that these proposals are acceptable (Att. 7).

The site plan ordinance requires the installation of sidewalks (curbing is already in place) along the frontage of the site. In this case the majority of the frontage is in MTA ownership, leaving approximately 60 linear feet of lot frontage. The applicant has requested a waiver from the provision of a sidewalk along this stretch (Attachment E).

Staff note that all recent developments in this area have been required to provide sidewalks or contribute to the cost of such provision. In this case staff suggest that in lieu of constructing this isolated stretch of sidewalk, that the applicant paint a crosswalk across Blueberry Road to connect the completed sections of sidewalk on the north side of Congress Street. This would improve the safety for pedestrians coming to the convenience store from Unum and points east as well as from the Veterinary facility opposite the site (Attachment 7). The potential condition of approval *iv.* includes this requirement.

2. Environmental Quality Standards

a. *Landscaping and Landscape Preservation*

The initial submission included a Landscape Plan that staff considered did not address the CZA requirement for “campus-like character” nor the Site plan ordinances (Attachment 3 and 8). The City Arborist met the design team on site and advised on tree preservation and new planting.

The final Landscape Plan (Plan 8) reflects a number of improvements (relocation of the dumpster; addition of the farmstand and landscaped area near Congress Street, more extensive buffer planting). However, the City Arborist, Jeff Tarling, has two small recommendations to address both the CZA objective of achieving a “campus like character” and the site plan ordinance requirements for retaining trees (Attachment 8):

*a) Tree Save - the 'tree-save', tree thinning area along Congress Street is improved and meets our recommendations. Additional 'tree-save' areas along the Western property line and towards Skyview Drive will need to be marked prior to site work and as approved by the City Arborist. There may be trees to be thinned or removed due to poor condition or risk. (Thinning trees for views is not recommended - thinning trees for safety and condition is.) Standard tree protection measures shall be used during construction, these include protection of tree root zones, identifying trees to protected, construction fencing or tagging where needed. No storage of equipment or construction materials in tree protection root zone areas. The area around the Shagbark Hickory is one of the tree protection zones.*

*b) Trees in parking lot - In the area shown as snow storage, and addition one to two trees could be set back away from the edge of pavement to still allow snow clearing and meet the parking lot tree / shrub standards.*

*Overall the landscape plan is acceptable as shown with the recent improvement and suggested conditions.*

A potential condition of approval includes these recommendations.

b. *Water Quality, Storm Water Management and Erosion Control*

In addition to compliance with the MaineDEP Basic and General Standards (city review under delegated authority re Stormwater Permit), the site is within the Long Watershed District which requires a Stormwater Discharge Permit from the MDEP and potential fees to the Watershed District. The site is the only site within the City of Portland that is within the Long Creek Watershed and staff met with the Tamara Lee Pinard, Executive Director of the Long Creek Watershed Management District (organized by the applicant) to clarify what permits and fees were applicable and to avoid duplicating reviews and fee payments.

The meeting and follow up discussions concluded:

- That the applicant is required to obtain a stormwater discharge license due to the project location in the Long Creek Watershed;
- That the project would be an individual permit holder and is therefore subject to payment of Stream Restoration and Monitoring Fees to the LCWMD;

- That the project will not be subject to the City of Portland Urban Impaired Stream standard nor associated fees (see detailed determination in [Attachment 10](#));
- That the Stormwater Permit (with delegated review by the City) would be reviewed usual.

The applicant has submitted the Stormwater Discharge application to the MDEP and an extract is included in [Attachment G.4.](#); an update from the MDEP is included at [Attachment 13](#). A potential condition of approval is proposed:

- That a copy of the MDEP Stormwater Discharge approval shall be submitted to the Planning Authority prior to the issuance of a building permit. If there are significant modifications to the stormwater system as a result of the MDEP review, then an amended site plan would be required for approval by the Planning Authority prior to the issuance of a building permit; and*

#### *Stormwater Permit*

[Plan 6](#) (Grading and Drainage) shows the stormwater system which is described in [Attachment G.1](#); details are included in [Plans 9.1, 9.2 & 9.3](#). The system comprises a stormwater detention basin on the east side of the site and an underground treatment system (“Stormtreats”) on the south side.

The proposals were revised to address the earlier Peer Engineer comments, and the final proposals are considered acceptable with no conditions ([Attachment 5](#)). The standard potential condition for the Stormwater Permit is included (referencing Chapter 32 and the submitted Stormwater management Plans), and it has been modified to refer to the Long Creek Watershed District requirements.

#### *c. Public Safety and Fire Prevention*

The site layout does not appear to present any public safety issues, and is well lit.

Captain Chris Pirone has reviewed the proposed project and the submitted code analysis ([Attachment B](#); also [Att. N](#) re truck maneuvering templates) and has confirmed there are no site plan issues ([Attachment 6](#)).

Since fuel storage is part of the gas station proposal, the proposals will be subject to State and MDEP rules, and a potential condition regarding these requirements has been included.

#### *d. Availability and Adequate Capacity of Public Utilities*

All of the utilities have confirmed capacity for the development on this site- see [Attachment H](#).

### 3. Site Design Standards

#### *a. Exterior Lighting*

A lighting/ photometric plan has been submitted ([Plan 10](#)), with details included in [Attachment I](#). These reflect revisions made to address staff comments ([Attachment 3](#)) and generally meet the City Technical Standards. There are several areas where the lighting levels are slightly higher than the specified maximums, but these do not impinge on the neighboring property and are justified by the unique combination of uses including the farmstand and convenience store pedestrian circulation. The Technical Standard allows for some exceptions where need is demonstrated and the design meets IESNA standards (confirmed by applicant in [Att.L](#)).

The light fixtures meet Site Plan standards but there is one fixture (“Prolific” – see [L4](#)) which appears somewhat “industrial” rather than “campus-like”. The applicant has investigated alternatives, but this fixture is favored for its longevity/low power requirements.

#### *b. Noise and Vibration*

The proposals will need to meet the requirements of the I-M zone and provide information to the Zoning Administrator.

#### *c. Signage*

Internal signage and pavement markings have been shown on [Plan 5](#) and Tom Errico has asked for signage and pavement markings to clarify where one-way and two-way operation is allowed on the site. This question was still under discussion as the time this Report was completed and an update will be provided at the hearing. The Zoning Administrator has noted that separate permits are required for the construction and for any new signage. The project includes at least 2 pylon signs and these will be subject to separate sign reviews.

d. *Zoning Related Design Standards*- There are no specific design standards, except as included within the CZA.

#### IX. STAFF RECOMMENDATION

The applicant has worked to address staff comments and has improved the layout considerably by reducing the impervious surface area. The addition of the farm stand and associated landscaped area near Congress Street is a welcome initiative. The project is considered to be consistent with the Conditional Zoning Agreement with a couple of minor questions as to whether the interior landscaping and the design of the light fixture are satisfactory in the context of the requirement for a “campus like” character.

The combination of CZA, TMP and Long Creek Watershed requirements have presented a challenge for the development. The comprehensive application submittal and follow up has helped reviewers focus on the few outstanding issues and staff recommend approval subject to several potential conditions.

#### X. PROPOSED MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 24 -13 for the commercial development at 2282 Congress Street relevant to the Site Plan, Traffic Movement Permit and Stormwater Permit reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

#### WAIVERS

1. *Driveway Design:*

The Planning Board (**waives/ does not waive**) Technical Standard, Section 1.7.1.4, which specifies a maximum of 36 feet wide for a major commercial driveway, to allow a 38 ft wide driveway that accommodates the large vehicles anticipated to require regular access to the site.

2. *Parking Aisle:*

The Planning Board (**waives/ does not waive**) Technical Standard, Section 1.14, Figures I-28 to I-32 which require a 24 foot wide drive aisle, to allow wider aisles as shown in the approved site layout plan (Plan 5 as attached to this Report).

#### TRAFFIC MOVEMENT PERMIT

That the Planning Board finds that the proposed plan [**is/is not**] in conformance with 23 MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits.

*Potential conditions of approval:*

- i. That the applicant shall contribute \$5000 to an account maintained by the City that will be used to fund traffic improvements to the intersection at Congress Street/Hutchins Drive/Skyway Drive; and
- ii. That a post-occupancy signal warrant study shall be conducted one year after opening. If a traffic signal is warranted, the applicant shall be responsible for all costs associated with design and implementation of the traffic signal; and
- iii. That the operation of the right turn into the site from Congress Street shall be monitored for one year following opening. If the crash data suggests a problem exists, the applicant shall be responsible for installing a right-turn lane.

#### STORMWATER MANAGEMENT PERMIT

That based upon the City of Portland’s Delegated Review Authority, the Portland Planning Board finds the plan [**is/ is not**] in conformance with the standards for a Storm Water Permit application for the commercial development at 2282 Congress Street and [**grants/does not grant**] a permit subject to the following condition:

*Potential condition of approval:*



- i. That the applicant and all assigns, must comply with the conditions of Chapter 32 Storm Water including Article III. Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction storm water management plan and sediment & erosion control plan as included Attachment G.1-3 of this Report, and as based on the Long Creek Watershed District standards/requirements and state permits and guidelines.

#### **SITE PLAN REVIEW**

The Planning Board finds that the plan [is/is not] in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

*Potential conditions of approval:*

- i. That this site plan approval is subject to the Conditional Zone Agreement as approved by the City Council on March 4, 2013, and that C J Developers Inc. shall sign and record the aforementioned Conditional Zoning Agreement prior to the issuance of a building permit, and if the CZA is assigned, C J Developers Inc. shall provide notification of the assignment to the City; and
- ii. That the signed and recorded access easement from Maine Turnpike Authority for the area of the proposed access from Congress Street shall be submitted to the Planning Authority prior to the issuance of a building permit; and
- iii. That a copy of the MDEP Stormwater Discharge approval shall be submitted to the Planning Authority prior to the issuance of a building permit. If there are significant modifications to the stormwater system as a result of the MDEP review, then an amended site plan would be required for approval by the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised off-site improvements plan that addresses Tom Errico's memorandum dated 05.09.2013 regarding the left turn accommodations, crosswalk design with ADA landing, and painted crosswalk on Blueberry, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- v. That the applicant shall submit a revised Landscaping Plan (with notes), for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit, that meets the recommendations set out in Jeff Tarling's e-mail dated 5.10.2013; and
- vi. That all necessary permits and licenses shall be obtained from the Federal, State (including MDEP) or local authorities in respect to the fuel storage, compressed natural gas installation and electric charging stations; and
- vii. That commercial signage shall be subject to separate sign reviews and permits, and that the project shall meet the I-M noise requirements.

#### Attachments

#### **PLANNING BOARD REPORT ATTACHMENTS**

1. Conditional Zoning Agreement and associated Concept Plan
2. Letter from MTA concerning Skyway Drive connection (3.14.2013) and City reply
3. Staff review e-mails dated April 10 and 18, 2013
4. Marge Schmuckal Memorandum, dated 4.10.2013 and 4.30.2013
5. David Senus Memorandum, Dated 4.18.2013 and (final) 5.1.2013
6. Capt. Chris Pirone Memorandum, dated 5.8.2013
7. Tom Errico Memorandum, preliminary dated 4.18.2013 and final dated 5.9.2013
8. Jeff Tarling e-mail preliminary 4.17.2012 and 5.2.2013 and (final) 5.10.2013
9. David Margolis-Pineo, DPS not received at the time the Report completed
10. Danielle West-Chuhta, Corporation Counsel, 4.24.2013(re assign. of option) & 4.22.2013 (re Long Creek fees)
11. *Ecomaine* letter 2.15.2013 (re rezoning; included as background)

**APPLICANT'S SUBMITTAL**

- A. Cover letter and Site Plan Application 4.1.2013, as updated by letters of April 23 and May 2 (see below)
- B. Development Description and Fire Department information
- C. Right, Title and Interest including Assignments and status of MTA easement
- D. Financial Capability letter
- E. Conformity with applicable Design Standards
- F. Traffic
  - 1. TMP Application and Request for Scoping meeting (extract) dated April 2013
  - 2. TMP Traffic Impact Study dated 4.23.2013 (Response to TMP Scoping meeting)
- G. Stormwater Reports
  - 1. Stormwater Management Plan (Extract)
  - 2. Erosion and Sedimentation Control Report (Extract)
  - 3. Inspection and Maintenance Manual for Stormwater Management and Related Stormwater Facilities
  - 4. Long Creek Individual Application for Post-construction discharge of Stormwater to the Long Creek (extract) 4.9.2013 and status e-mail dated 5.9.2013 (circulated separately).
- H. Utility and Capacity Letters
- I. Lighting information
- J. Construction Management Plan
- K. Neighborhood Meeting Certificate dated
- L. DeLuca Hoffman Response letter to comments 4.23.2013
- M. E-mail re farmstand 4.24.2013
- N. DeLuca Hoffman Response letter to comments 5.2.2013
- O. Comparison of impervious surface original April submission vs 5.2.2013 final revision

**PLANS**

- Plan 1 C-1.0 Cover Sheet
- Plan 2 C-1.1 General Notes and Legend
- Plan 3 Boundary Survey
- Plan 4 C-1.3 Existing conditions
- Plan 5 C-2.0 Site Layout Plan
- Plan 6 C-3.0 Grading and Drainage Plan
- Plan 7 C-4.0 Utility Plan
- Plan 8 C-5.0 Landscape Plan
- Plan 9 C-6.0 Erosion & Sediment Control Plan
- Plan 10 C-7.0 Photometric Plan
- Plan 11 C-8.0 Landscape Details
- Plan 12 C-8.1 Utility Details
- Plan 13 C-8.2 Miscellaneous Details
- Plan 14 C-8.3 Site Details
- Plan 15 C-8.4 Site Details
- Plan 16 C-8.5 Electrical and Lighting Details
- Plan 17 C-8.6 Erosion Control Details
- Plan 18 C-8.7 Erosion Control Details
- Plan 19 C-8.8 Erosion Control Details
- Plan 20 C-9.0 Stormwater Management: Channel Protection and Flooding Basin
- Plan 21 C-9.1 Stormwater Management: StormTreat Systems
- Plan 22 C-9.1 Stormwater Management: Underground Storage Details
- Plan 23 Predevelopment Watershed Plan
- Plan 24 Postdevelopment Watershed Plan
- Plan 25 A1 Exterior Elevations
- Plan 26 A2 Canopy Elevations

**AS APPROVED BY CITY COUNCIL ON 3.4.2013**

**AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR PROPERTY  
IN THE VICINITY OF 2282 CONGRERSS STREET**

**ORDERED,** that the zoning map and text of the City of Portland, dated December 2000, as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

**CONDITIONAL REZONING AGREEMENT**

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by CJ DEVELOPERS, INC. of Cumberland County ("CJD") with a place of business in 35 Primrose Lane, Freeport, Maine, and its successors and assigns.

**WITNESSETH:**

WHEREAS, CJD is or will be the owner of the property located at 2282 Congress Street, Portland, Maine (The "Property") more particularly described and shown on the Portland Assessors Map 237, Block A as Lot 12 and in a deed in the Cumberland County Registry of Deeds at Book , Page ; and,

WHEREAS, CJD did request a rezoning of the property located at 2282 Congress Street, in Portland, in order to permit the establishment and operation of a major auto service station, convenience store, restaurant (without a drive thru) and bank (with a drive thru) on 3.24 acres; and,

WHEREAS, in 1999 the City rezoned this property with a Contract Zone (C22) to allow a 4 story hotel development. That development did not proceed and the associated conditional agreement has expired.

WHEREAS, the Property is currently in the IM zone and is difficult to develop for an industrial use because of its limited size, MTA easements and wetland areas; and

WHEREAS, the Property is located in an unique and isolated location with the turnpike on one side, busy streets on two sides, and a developed lot on the other side, which together would limit the loss of industrial land and provide a convenient location for commercial uses to serve the adjoining industrial employment area; and

WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A.M.R.S.A Sec.4352(8), and after notice and hearing and due deliberation thereon, recommended the rezoning of the property as aforesaid, subject, however, to certain conditions; and,

**AS APPROVED BY CITY COUNCIL ON 3.4.2013**

WHEREAS, the CITY by and through its City Council has determined that said rezoning would be pursuant to and consistent with the CITY'S comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

WHEREAS, the CITY has determined that because of the unusual nature of the proposed development it is necessary or appropriate to impose by agreement the following conditions or restrictions in order to insure that the rezoning is consistent with the CITY's comprehensive land use plan.

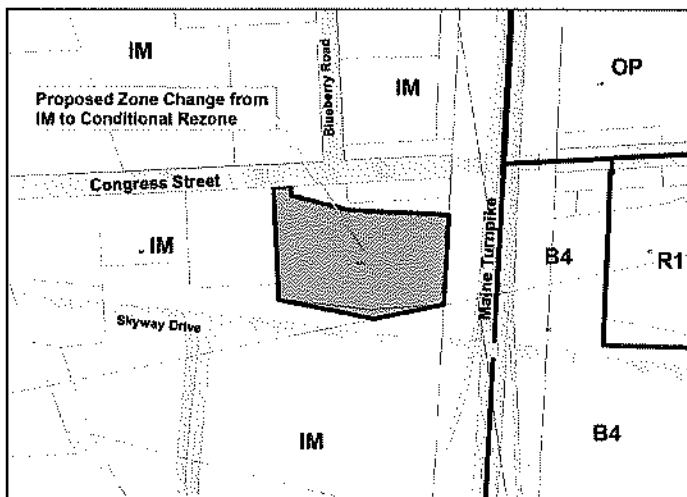
WHEREAS, the City's Comprehensive Plan seeks to "provide maximum mobility in a balanced transportation system, which encompasses all modes, to support the economic vitality and quality of life of the Portland community."

WHEREAS, CJD has agreed to enter into this Agreement and the Amendment with its concomitant terms and conditions, which shall hereinafter bind CJD, its successors and assigns; and,

WHEREAS, the Portland City Council has on \_\_\_\_\_, 2013 approved this Agreement in its entirety, by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1 (the "Order");

NOW, THEREFORE, in consideration of the rezoning of the Property, CJD agrees to be bound by the following terms and conditions:

1. The CITY shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporate by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, by adopting conditional IM zone amendment shown below;



Proposed Conditional Rezoning from IM for 2282 Congress Street

2. The property shall be developed substantially in accordance with the conceptual site plan shown on Attachment 2. The site layout plan may be amended, modified or altered with the Portland Planning Board approval in connection with the site plan review process;

**AS APPROVED BY CITY COUNCIL ON 3.4.2013**

3. **Permitted uses:** Those uses allowed in the IM zone. In addition, the Property shall be permitted to be used for the following uses:
  - a. Major auto service station. Natural gas and electricity fuel shall be included in the fuels that the major auto service station is allowed to sell.
  - b. Bank or ATM (with a drive through)
  - c. Convenience Store (without a drive through)
  - d. Restaurant (without a drive through)
  
4. **Planning Board Site Plan Approval:** The major auto service station, convenience store/restaurant and bank project must obtain final site plan from the Portland Planning Board. Included within any application for such approval are the following requirements:
  - a. CJD shall submit a traffic study establishing its ability to meet all the traffic safety requirements to the satisfaction of the CITY's Traffic Engineer, including information on integration of a possible future connection to Skyway Drive; and,
  - b. CJD shall submit a detailed site plan addressing the bank drive through and associated stacking capacity, landscaping, architecture and protection of pedestrians.
  - c. CJD shall include Landscape, Architectural and Lighting Plans that achieve a campus like character for the project.
  
5. **Community Contribution:** shall install a new crosswalk on Congress Street from the project site to the sidewalk on the north side of Congress Street. The crosswalk shall include the following features:
  - a. A pedestrian island in Congress Street. The island shall be raised and include granite curbing. The location, size (width and length) and material shall be determined by the City;
  - b. Rectangle Rapid Flash Beacon warning lights. Three sets of the warnings lights shall be installed (on each side of Congress Street and in the median island);
  - c. The crosswalk and all accessories shall be ADA complaint and include sidewalk ramps and connections to the existing sidewalk;
  - d. Durable pavement markings and supplemental signs; and
  - e. Drainage and pavement improvements, as required by the Planning Authority and/or the Department of Public Services.

This full combination of the above items is above and beyond the usual site plan requirement that would apply to this project for a striped crosswalk as shown in the Conceptual Site Plan in Attachment 2 Plan.

6. The provisions of the Agreement, including the permitted major auto service station, restaurant and bank uses, are intended to be supplemental to the uses and requirements of the underlying I-M zone. The project must still adhere to all applicable dimensional requirements, other requirements and performance standards of the IM zone and obtain separate permits for all signage.

**AS APPROVED BY CITY COUNCIL ON 3.4.2013**

7. If a building permit has not been pulled within two (2) years of the date of this Agreement, the zone shall revert to I-M; provided that CJD may extend this Agreement by one (1) year at the discretion of the Director of Planning and Urban Development.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject premises, shall bind CJD, their heirs successors and assigns, as permitted by this Agreement, of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the CITY, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portion hereof.

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

In the event that CJD, or any successor, fails to continue to utilize the property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board and/or the Court, pursuant to among other things, M.R. Civ. P. 80B, shall have the authority to resolve the issue resulting in the breach of this Agreement or the failure to operate. The resolution may include a recommendation to the City Council that the site be rezoned to I-M or any successor zone and that this Agreement be terminated, requiring a cessation of the major auto service station, restaurant and bank use.

WITNESS:

CJ DEVELOPERS, INC.

\_\_\_\_\_

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

David Latulippe  
Its President

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2013

Personally appeared the above named David Latulippe, and acknowledged the foregoing instrument to be his free act and deed of CJ Developers, Inc.

Before me,

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

**Attachments:**

- 1. City Council Order No. 154-12/13
- 2. CONCEPT 3 Plan dated 1.30.2013



LOCATION MAP  
10-4

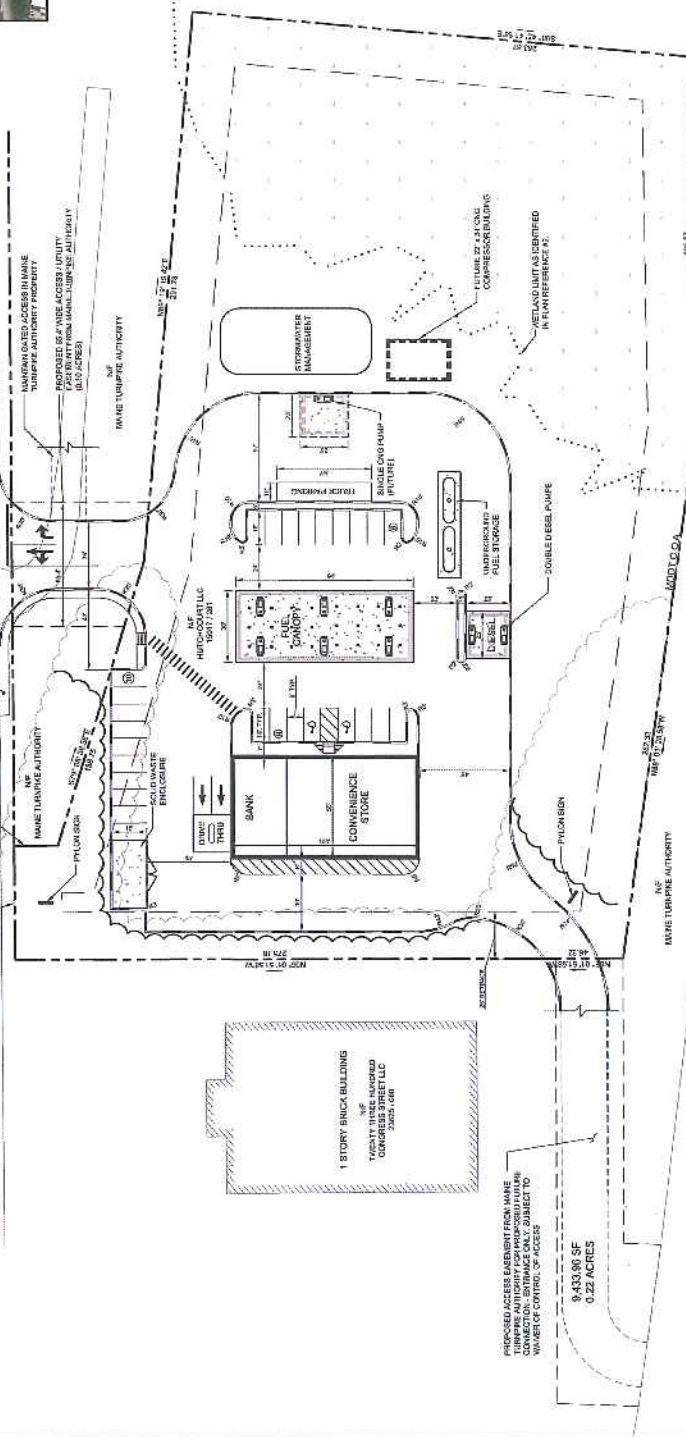
**CONGRESS STREET**

OFFICE IMPROVEMENTS SUBJECT TO PERMITS OF A TRAFFIC ENGINEER

BLUEBERRY ROAD

SKYWAY DRIVE

SKYWAY DRIVE



CITY OF PORTLAND, MAINE - PERFORMANCE STANDARDS EXISTING INDUSTRIAL SUBDIVISION

CRITERIA	REQUIRED
USE - CONVENIENCE STORE W/ FUEL	NOT PERMITTED
MINIMUM LOT SIZE	NONE
FRONT YARD SETBACK	1' FROM THE FRONT PROPERTY LINE FOR EACH 1' OF BUILDING HEIGHT
REAR YARD SETBACK	1' FROM EACH SIDE OR REAR FOR EACH 1' OF BUILDING HEIGHT UP TO 25'
SIDE YARD SETBACK	75'
MAXIMUM HEIGHT	75'
MINIMUM IMPERVIOUS SURFACE	75%
PAVEMENT SETBACK FROM LOT BOUNDARIES	10'
MINIMUM STREET FRONTAGE	60'
MAXIMUM FLOOR AREA RATIO	-
MINIMUM LOT WIDTH	-

REQUESTING CONDITIONAL REZONE TO ALLOW USE

**NOTES:**

- THIS PLAN IS THE BASIS FOR CONCEPTUAL PLANNING AND SHALL NOT BE USED FOR PERMITS OR CONSTRUCTION WITHOUT THE REVIEW OF THE CITY OF PORTLAND PLANNING DEPARTMENT AND THE CITY ENGINEER.
- THESE DRAWINGS ARE THE PROPERTY OF DELUCA-HOFFMAN ASSOCIATES, INC. AND SHALL REMAIN THE PROPERTY OF DELUCA-HOFFMAN ASSOCIATES, INC. IN ALL CIRCUMSTANCES.
- ALL DIMENSIONS ARE IN FEET AND INCHES. DIMENSIONS ARE SHOWN UNLESS OTHERWISE SPECIFIED.
- PROPERTY IS LOCATED WITHIN THE INDUSTRIAL (I) ZONE ZONING 5.0. PROPERTY IS LOCATED IN A FLOOD ZONE 10-BASED ON 100-YEAR FLOOD. PROPERTY IS LOCATED IN A FLOOD ZONE 10-BASED ON 500-YEAR FLOOD. PROPERTY IS LOCATED IN AN AREA OF MINIMAL FLOODING.

**PLAN REFERENCES:**

- CONCEPTUAL PLANNING AND PRELIMINARY ENGINEERING REPORT FOR THE DEVELOPMENT OF A CONVENIENCE STORE WITH FUEL STATION AND OFFICE BUILDING, PREPARED BY DELUCA-HOFFMAN ASSOCIATES, INC. FOR THE CITY OF PORTLAND PLANNING DEPARTMENT DATED 06/15/18.
- CONCEPTUAL PLANNING AND PRELIMINARY ENGINEERING REPORT FOR THE DEVELOPMENT OF A CONVENIENCE STORE WITH FUEL STATION AND OFFICE BUILDING, PREPARED BY DELUCA-HOFFMAN ASSOCIATES, INC. FOR THE CITY OF PORTLAND PLANNING DEPARTMENT DATED 06/15/18.

**DELUCA-HOFFMAN ASSOCIATES, INC.**  
 20771 DELUCA DRIVE  
 PORTLAND, ME 04106  
 WWW.DELUCA-HOFFMAN.COM

**PROJECT:** MULTI-USE DEVELOPMENT  
**PROJECT ADDRESS:** 2200 SKYWAY DRIVE, PORTLAND, MAINE  
**SHEET TITLE:** CONCEPT 3  
**DATE:** 06/15/18  
**DESIGNED BY:** [Name]  
**CHECKED BY:** [Name]  
**SCALE:** 1" = 20'  
**PROJECT NO.:** 2113  
**REVISIONS:** 3 REVISIONS

NO.	DATE	DESCRIPTION
1	06/15/18	PRELIMINARY CONCEPT
2	06/15/18	REVISIONS FOR CLIENT REVIEW
3	06/15/18	REVISIONS FOR CLIENT REVIEW
4	06/15/18	REVISIONS FOR CLIENT REVIEW
5	06/15/18	REVISIONS FOR CLIENT REVIEW

**NORTH**

1" = 20' (1" = 30' A.)

**PRELIMINARY - NOT FOR CONSTRUCTION**

PROJECT: MULTI-USE DEVELOPMENT  
 PROJECT ADDRESS: 2200 SKYWAY DRIVE, PORTLAND, MAINE  
 SHEET TITLE: CONCEPT 3  
 DATE: 06/15/18  
 DESIGNED BY: [Name]  
 CHECKED BY: [Name]  
 SCALE: 1" = 20'  
 PROJECT NO.: 2113  
 REVISIONS: 3 REVISIONS



# PORTLAND MAINE

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**Planning & Urban Development Department**  
Jeff Levine, AICP, Director

**Planning Division**  
Alexander Jaegerman, FAICP, Director

March 6<sup>th</sup>, 2013

David Latulippe  
C J Developers, Inc.  
35 Primrose Lane  
Freeport, ME 04032

**RE: Application for Conditional Rezoning (originally I-M to B-4 Map amendment)**  
**2282 Congress Street, Portland**  
**APP. NO: # 2012-609**  
**CBL: 237-A-012**

Dear Mr Latulippe: *David*

On February 12<sup>th</sup>, 2013 the Portland Planning Board voted 6-0 (O'Brien absent) to recommend the conditional rezoning and associated Conditional Zone Agreement to the City Council for its approval, subject to revising and adding a 'whereas' clause.

On March 4<sup>th</sup>, 2013 the City Council considered Order 154-12/13, Amendment to City Code §14-49 (Zoning Text and Map Amendment) Re: Conditional Rezoning for Property in the Vicinity of 2282 Congress Street. The City Council unanimously voted to pass the amendment.

The Conditional Zone Agreement, along with a reference to the Book and Page of the deed to the property, must be signed and recorded at the Cumberland County Registry of Deeds soon after the property is acquired and prior to the submission of any related site plan application. Please work directly with the Corporation Counsel to finalize the agreement and associated documentation, and send the Planning Division a copy of the agreement once it is recorded.

A certified copy of the agreement, in Order No 154-12/13 as passed, is available from the City Clerk's Office. Attachment 2 (as approved and attached to this letter) should be appended to it, and the blanks filled in, prior to final signature and recording.

If there are any questions, please contact Jean Fraser, Planner, at 874-8728 or at [jf@portlandmaine.gov](mailto:jf@portlandmaine.gov).

Sincerely,

Alexander Jaegerman  
Planning Division Director

Attachment: Attachment 2 (Concept Plan 3) to Order 154-12/13

**cc. Electronic circulation:**

Jeff Levine, AICP, Director of Planning and Urban Development  
Alexander Jaegerman, FAICP, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Danielle West-Chultha, Corporation Counsel  
Jean Fraser, Planner  
Marge Schmuckal, Zoning Administrator, Inspections Division  
David Margolis-Pineo, Deputy City Engineer, Public Services

Jeff Tarling, City Arborist  
Doug Roncarati, Stormwater Coordinator, Public Services  
Captain Chris Pirone, Fire Department  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File



*Maine Turnpike Authority*

2360 Congress Street  
Portland, Maine 04102

Daniel E. Wathen, Augusta, Chairman  
Diane M. Doyle, Saco, Vice Chairman  
Robert D. Stone, Lewiston.  
Gerard P. Conley, Sr., Portland  
John E. Dority, Augusta  
James F. Cloutier, Portland  
Bruce A. Van Note, Deputy Commissioner DOT, ex officio

Peter Mills, Executive Director  
Peter S. Merfeld, P.E., Chief Operations Officer  
Douglas Davidson, Treasurer & Director of Finance  
Jonathan Arey, Secretary & General Counsel



March 14, 2012

Barbard Barhydt  
Development Review Manager  
City of Portland  
389 Congress Street, Room 308  
Portland, Maine 04101

Re: CJ Properties Congress Street Development

Dear Ms. Early,

I am writing on behalf of the Maine Turnpike Authority regarding a proposed development at 2282 Congress Street which was approved for conditional rezoning by Order 154 - 12/13 of the City Council on March 4th. The MTA does not oppose the overall concept of this project and is in fact currently in discussions with the developer about transferring an easement over MTA land to use as an entrance from Congress Street. We are concerned, however, that the developer appears to be pursuing a second entrance to the property from Skyway Drive. We believe an entrance to the property from Skyway would be highly disruptive to traffic using the MTA's Jetport interchange and Skyway Drive itself, an important link in the City's transportation infrastructure that is already facing challenges.

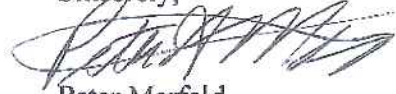
The MTA originally constructed Skyway Drive as part of its Jetport Interchange project and it has become a useful segment of road not only for turnpike travelers, but for local traffic as well, due to the fact that it connects two major city routes. The MTA has believed strongly from the beginning that adequate functioning of this transportation link requires that Skyway Drive be a controlled access route. This is why when we transferred Skyway Drive to the City in 2004, the deed expressly required it be "maintained as a controlled-access public right of way" and that no curb cuts or other access to the road would be permitted without the permission of the MTA (the relevant deed provisions are attached to this letter).

MTA staff has explained to the developer that these deed restrictions require the MTA's approval for any entrance from Skyway Drive, and we further explained that we would not grant that approval. We were therefore surprised and disappointed to see that the Skyway Drive entrance remained on the developer's plans of the project as submitted for the conditional rezoning, and was specified as part of the traffic study to be submitted to the City.

*Maine Turnpike Authority*

I do not know how much of this has been shared with the City to this point, or if an entrance on Skyway Drive will be part of the developer's site plan. However, we thought it best to clearly submit for the record that the MTA opposes, and will not approve, any proposal for an entrance on Skyway. We believe we would continue to oppose that proposal regardless of what any traffic analysis done by the developer's consultant might show. Traffic analyses are not infallible and it is our opinion that this transportation link is too important to risk its functionality for the sake of a secondary entrance to a retail development.

Sincerely,



Peter Merfeld  
Chief Operations Officer

(207) 482-8116

Cc: Kathi Earley, Engineering Manager  
David Latulippe, CJ Properties

thence  $S84^{\circ}26'24''E$  282.25 feet along land of the Grantor and land now or formerly of George M. Hutchins to a monument with bronze tablet to be set at a corner, said monument also being 80:00 feet northerly of, as measured along a line at right angles to the Connector Road Baseline, Sta. 24+00.00;

thence  $N86^{\circ}47'41''E$  196.87 feet along land of the Grantor and land now or formerly of George M. Hutchins to the POINT OF BEGINNING

Bearings in the above description are based on the Maine State Plane Coordinate System, West Zone, N.A.D. 83. Parcel I contains 5.14 acres, more or less.

Meaning and intending to convey a portion of the premises conveyed to the within Grantor by the following conveyances:

- (1) Notice of Layout and Taking by the Maine Turnpike Authority from George M. Hutchins, dated 31 March 1997 and recorded in the Cumberland County Registry of Deeds (the "Registry") in Book 13008, Page 18.
- (2) S.B. Holdings, Inc. to Maine Turnpike Authority, dated October 8, 1997 and recorded in the Registry in Book 13371, Page 189.
- (3) Portland Water District to Maine Turnpike Authority, dated August 20, 1998 and recorded in the Registry in Book 14359, Page 317, as affected by (a) a Corrective Quitclaim Deed with Covenant, dated January 15, 1999, and recorded in the Registry in Book 14481, Page 191; (b) a Release Deed from George Hutchins to the Maine Turnpike Authority, dated January 22, 1999, recorded in the Registry in Book 14509, Page 14 and (c) a Quitclaim Deed from the Maine Turnpike Authority to C&A Properties, dated August 6, 1999, recorded in the Registry in Book 15057, Page 10.
- (4) C&A Properties to Maine Turnpike Authority, dated August 16, 1999, and recorded in the Registry in Book 15057, Page 16.

SUBJECT, however, to the Easement Deed from the Maine Turnpike Authority to the Portland Water District, dated August 28, 1998 and recorded in the Cumberland County Registry of Deeds in Book 14359, Page 320.

ALSO SUBJECT, however, to a certain Right of First Refusal granted from the Maine Turnpike Authority to the Portland Water District, dated August 28, 1998 and recorded in the Cumberland County Registry of Deeds at Book 14359, page 325.

ALSO SUBJECT, however, to an Indenture from the Maine Turnpike Authority to Granite State Gas Transmission, Inc., dated May 21, 1997, recorded in the Registry in Book 14071, Page 284.

ALSO SUBJECT to the condition that no curb cuts or other access from Parcel 1 to the adjacent right-of-way shall be permitted or made without the consent of the Maine Turnpike Authority or its successor.

ALSO SUBJECT, however, to all matters of public record.

EXCEPTING AND RESERVING to Grantor an easement and right-of-way above, over, across and under Parcel 1 described herein for (i) the flow of water and other substances and (ii) purposes of constructing, installing, maintaining, modifying, and removing any and all drainage equipment and other equipment and installations deemed necessary or desirable by Grantor for the flow of water and other substances through, over and across Parcel 1 for the benefit of the property now or hereafter owned by Grantor adjacent to or in the vicinity of Parcel 1.

ALSO, EXCEPTING AND RESERVING to Grantor an easement and right-of-way above, over, across and under Parcel 1 described herein for the installation, construction, maintenance, repair and any future upgrading of any and all sewers, drains and public and/or private utilities, including, without limitation, communication wires, lines or cables, electrical energy and telephone lines and poles, and sewer laterals all as deemed necessary or desirable by Grantor or its successor and assigns for the benefit of the property now or hereafter owned by Grantor or its successor and assigns adjacent to or in the vicinity of Parcel 1.

FURTHER, Parcel 1 described herein shall at all times be maintained as a controlled-access, public right-of-way. Except for vehicular access from Congress Street at the westerly end of Parcel 1 in the City of Portland, no additional vehicular or pedestrian access to the property described herein shall be permitted without the express written consent of the Grantor. Grantee, by its acceptance of this deed, covenants that it shall at all times maintain the premises described herein in the same manner, with the same public access, as provided to all other public right-of-ways owned or otherwise maintained by the City of Portland. The conveyance of this Parcel 1 from Grantor to Grantee is made on strict reliance on Grantee's, and its successors' and assigns', obligation to maintain Parcel 1 as a public right-of-way and that Grantor shall have all rights and remedies available to Grantor under law or in equity (including, without limitation, specific performance) in the event Grantee or any of its successors or assigns breaches or otherwise violates this condition and Grantee's covenants. Grantee shall not convey or otherwise transfer any interest in the property described above without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

Parcel 2

**COMMENCING** at the intersection of the baselines of the Maine Turnpike Median (Station 2302+87.75) and Congress Street (Station 99+99.97); in the City of Portland, County of Cumberland, State of Maine, thence southerly along the Maine Turnpike Median Baseline, *S02°49'23"W 442.79 feet* to Station 2298+44.96 on said baseline; thence turning and continuing easterly and at right angles to the aforesaid median baseline station a distance of 254.53 feet to a monument with bronze tablet to be set at a corner located on a line dividing



# PORTLAND MAINE

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**Planning & Urban Development Department**  
Jeff Levine, AICP, Director

**Planning Division**  
Alexander Jaegerman, FAICP, Director

March 26, 2013

Peter Merfield, Chief Operations Officer  
Maine Turnpike Authority  
2360 Congress Street  
Portland, ME 04102

Re: CJ Properties, Congress Street Development

Dear Mr Merfield:

Thank you for your letter of March 14, 2013 regarding the MTA concerns with CJ Properties's suggested entrance from Skyway Drive into the commercial development proposed for the property at 2282 Congress Street. The City Council adopted a conditional rezoning agreement on March 4, 2013 to allow the development of a gas station, including alternative fuels, a convenience store and a bank on this site. The concept plan attached to the agreement (refer to attachment), does depict a one-way entrance from Skyway Drive into the site along with a note referring to a proposed easement from MTA for the proposed connection (entrance only), subject to a waiver of controlled access.

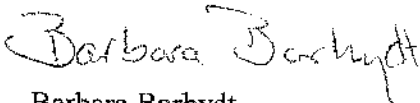
The City understands Skyway Drive is a controlled access road and that the MTA wishes to safeguard the transportation function of Skyway Drive. During the review of the zoning amendment application, staff and the Planning Board understood that the developer was pursuing discussions with the MTA and that these discussions were ongoing.

The idea of allowing turnpike users to access the site was considered a positive idea by the Planning Board and some City Councilors, as the gas station is proposed to include compressed natural gas and an electric recharging station which would benefit users of the turnpike. The conditional rezoning agreement (copy attached) was drafted to allow for that possibility; however, the City staff and the Planning Board understand that the access connection to Skyway Drive is a decision to be made by MTA and that the applicant's conditional rezoning and subsequent site plan review are not contingent on that access.

The overall commercial proposal by CJ Properties is subject to a site plan review by the Planning Board for which an application is expected to be submitted in a few weeks. A traffic movement permit with the associated traffic analysis is required for this proposal. From a site plan perspective such traffic analyses usually include context considerations and could include the impact of an entrance-only from Skyway Drive, if proposed by the developer and supported by the Maine Turnpike Authority.

Thank you for your letter which makes the MTA position on this matter clear and I will forward it to the Planning Board as part of its review of the site plan application. Please note that the MTA will receive notices of the site plan review and we will seek to stay in contact with you as the review progresses.

Sincerely



Barbara Barhydt  
Development Review Services Manager

Attachment: Conditional Rezoning Agreement

Cc: Jeff Levine, Director, Dept. of Planning and Urban Development  
Alexander Jaegerman, Planning Division Director  
Michael Bobinsky, Director, Dept. of Public Services  
Katherine Earley, Engineering Services Manager, Public Services  
Jeremiah Bartlett, PTOE, PE, Transportation Systems Engineer, Public Services  
Thomas Errico, P.E., Consulting Traffic Engineer  
David Laulippe, CJ Properties, Inc.

## Jean Fraser - Review comments to go with RE: Revised Plans and information

---

**From:** Jean Fraser  
**To:** Bushey, Steve  
**Date:** 4/18/2013 11:29 AM  
**Subject:** Review comments to go with RE: Revised Plans and information  
**CC:** Gorrill, Tom; Kennedy, Bo; Latulippe, David  
**Attachments:** 2013.04.18 2282 Congress St. Peer Review Memo.pdf

---

Steve

I have included the landscape and traffic comments below, and attached the engineering stormwater management comments. These should be taken together with the comments in my e-mail of April 10, 2013 as our formal review comments at this time.

I don't have final DPS comments and will send them when I get them but don't delay re the submission for this. And I have already recommended that an early discussion with Chris Pirone of the Fire Department would be helpful.

**Landscape:** The project needs to include a greater number of trees around the parking lot to meet the parking lot landscape standard (in site plan ordinance) and the CZA objectives re campus like character. The City Arborist (Jeff Tarling at [JST@portlandmaine.gov](mailto:JST@portlandmaine.gov) - 874 8820) has noted several areas where trees may be able to be planted, but before making suggestions he would like to discuss with the applicant.

**Traffic:** The following are Tom Errico's initial preliminary comments on the site plan and may not be representative of all issues. Per the Planner's request these are being provided quickly given the project schedule.

- It is suggested that the pedestrian facility between Congress Street and the proposed convenience store building be as direct as possible. This may require the loss of some of the 9 parking spaces located along the front of the property.
- Parking supply seems excessive for the type and scale of the proposed land use. Supporting documentation on the parking needs shall be provided.
- Auto-turn analyses shall be provided that supports on-site circulation aisle widths and the width of the driveway entrance on Congress Street. The applicant should also provide information on the number of large trucks anticipated to enter and exit the site.
- It is unclear whether there are vehicle circulation restrictions on site (e.g. one-way vs. two-way). Signage and pavements markings shall clearly support proposed circulation restrictions.
- Many aisle widths exceed City standards and waivers from our technical standards may be necessary. As noted above, supporting information will be required before I render any decision on waivers.

**Water quality/stormwater management etc-** see attached comments from our engineering peer reviewer Dave Senus at Woodard & Curran.

Thank you  
Jean

Jean Fraser, Planner  
City of Portland  
874 8728

>>> "Steve Bushey" [SBushey@DelucaHoffman.com](mailto:SBushey@DelucaHoffman.com)> 4/17/2013 12:10 PM >>

Thanks Jean,

This will work well for us. We've prepared responses to your 4.10.2013 comments and we'll await any further comments. I'll contact the Fire Dept. to resolve any outstanding issues with Capt Pirone. Tom Gorrill will handle the TMP related items directly.

Stephen Bushey, PE

Deluca-Hoffman Associates, Inc

778 Main Street

South Portland, Maine 04106

Tel. 207-775-1121

Fax 207-879-0896

[sbushey@delucahoffman.com](mailto:sbushey@delucahoffman.com)

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**From:** Jean Fraser [mailto:JF@portlandmaine.gov]  
**Sent:** Wednesday, April 17, 2013 11:52 AM  
**To:** Steve Bushey  
**Cc:** David Latulippe; Bo Kennedy; Tom Gorrill  
**Subject:** Revised Plans and information

Steve,

Further to my e-mail of 4.10.2013 I am writing to confirm:

- Please hold on any sending further submissions until we send you (in next day) the detailed Landscape, DPS and Stormwater engineering comments- these together with the 4.10.2013 e-mail will constitute our final review comments. The proposals meet zoning requirements.
- Note that a final plan application may only have one revision- but if you have explanatory information available now please send it today eg re area of pavement and traffic/parking circulation;
- Please contact Chris Pirone in the Fire Department to discuss the fire access and code analysis issues so that he can sign off on this as soon as possible (as often fire issues result in substantial revisions);
- Please note that further traffic information has been requested in relation to the TMP;
- Please submit revised proposals and all associated information to address the review comments and TMP



requests by noon on April 23rd (to allow final review as this is going straight to a hearing).

Please do not hesitate to contact me if there are any items that need further discussion or clarification.

Thank you  
Jean

*Jean Fraser, Planner*  
*City of Portland*  
874 8728

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

This message and any attachments are intended for the individual or entity named above and may contain privileged or confidential information. If you are not the intended recipient, please do not forward, copy, print, use or disclose this communication to others; please notify the sender by replying to this message and then delete it from your system.

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## Jean Fraser - 2282 Congress- Prelim comments

**From:** Jean Fraser  
**To:** Bushey, Steve; Kennedy, Bo  
**Date:** 4/10/2013 3:13 PM  
**Subject:** 2282 Congress- Prelim comments  
**CC:** Barhydt, Barbara; Latulippe, David  
**Attachments:** Section 12 - Site Lighting\_8.4.11.pdf

Steve,

Today we undertook a preliminary review of this project with a view to identifying "threshold" issues that might result in revisions to the site plan- so that there would be time for you to respond on these and time for any revisions to be reviewed for the PB report.

The most fundamental issue is Right, title and Interest: We have an 10.25.2013 e-mail from the MTA Right of Way Manager that was submitted in support of the zoning amendment. It stated:

*David LaTulippe and CJ Developers have submitted an application to the Maine Turnpike Authority to obtain an easement across MTA land to access Congress Street in conjunction with a proposed gas station and convenience store. A preliminary review by MTA staff concluded that the proposal was complete enough to present to the Board of the Maine Turnpike Authority as soon as a mutually acceptable offer of compensation is reached.*

I don't believe any further documentation has been submitted, and we need updated and more definite evidence of the applicant's right, title and interest over the MTA land before this can go for PB Hearing.

We have the following questions and concerns that result from considering the proposals in detail in the context of the site plan review standards. The review of the zoning amendment did not include a detailed site plan review of the project. The site plan needs to be "substantially in accordance with" the Concept Plan attached to the CZA but "may be amended, modified or altered with the Portland Planning Board approval in connection with the site plan review process".

At this preliminary stage we would draw your attention to several issues and recommend revisions to address these; please note there may be additional comments once all the reviewers have finalized their comments next week.

1. The area of pavement: The area seems excessive, especially in light of the reduced program (bank has been omitted); we would like to see a justification for the following:

- The number of parking spaces: there appear to be about twice the zoning requirement- this triggers the need for a parking analysis (Ordinance requirement Section 14-526 (a) (4) a. 3. ) which should be submitted asap (also please confirm the proposed number of spaces- the plan states 33 while the application data sheet says 32);
- Bicycle Parking: if you are not proposing to provide the required number of bicycle spaces you need to request a waiver with evidence of why the development is expected to generate reduced demand (see 14-

3.5

526 (a) (4) b)- bicycle parking would be for both employees and customers;

- The aisle widths: some substantially exceed the City's technical standards and we would like to see turning templates and other information that explains the need for such wide aisles. Please clarify if one-way or two-way traffic movement especially on west side.

2. Location of dumpster: The dumpster should be located in a less prominent location and away from Congress Street and from public circulation and activity (eg not next to picnic area as proposed); please clarify the anticipated truck access for its removal/emptying.

3. Fire Department issues: You have outlined in a letter dated April 1 to Captain Chris Pirone how the project addresses Fire Department issues and I suggest you contact him asap to further clarify the proposals so he can determine whether the site plan is satisfactory.

4. Snow Storage: The ordinance requires that snow storage areas be shown on the plan and the locations are important in the context of the stormwater treatment/detention system proposed.

5. Landscape and Lighting: The scale of paved areas, the limited planting, and the proposed "Prolific" light fixture are not consistent with the Conditional Zoning Agreement requirement that "*CJD shall include Landscape, Architectural and Lighting Plans that achieve a campus like character for the project*". Also the application narrative refers to proposed (landscape) buffering along Congress Street and Skyway Drive, but this is not expressed on the Landscape Plan. Please also note that the lighting proposals need to meet the standards set out in the Technical Standards (copy attached- see specific standards in 12.5 and 12.6) and at present do not meet those standards (waivers are unlikely to be recommended). The photometric plan calculations need to show the average, maximum and uniformity ratio for the specified areas.

There is a question over the indicated link to Skyway Drive in view of the MTA concerns (letter of 3.14.13), and this is still under review.

Please contact me if you have any questions or consider a meeting would be helpful regarding any of these points (I am out of the office tomorrow but in on Friday; the City offices are closed on Monday).

thank you

Jean

*Jean Fraser, Planner  
City of Portland  
874 8728*

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**MEMORANDUM**

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**To:** FILE  
**From:** Jean Fraser  
**Subject:** Application ID: 2013-086  
**Date:** 5/10/2013

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**Comments Submitted by: Marge Schmuckal/Zoning on 4/10/2013**

This proposal is meeting the conditional contract rezoning basically using the I-M Zone dimensional requirements. Parking is more than being met. Setbacks, including pavement setbacks are being met. The uses are those allowed under the conditional contract. Impervious surface ratio is being met. And the maximum building height is being met.

Separate permits are required for the construction and for any new signage.

Marge Schmuckal  
Zoning Administrator

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**MEMORANDUM**

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**To:** FILE  
**From:** Jean Fraser  
**Subject:** Application ID: 2013-086  
**Date:** 4/30/2013

*Prabhu*

---

**Comments Submitted by: Marge Schmuckal/Zoning on 4/30/2013**

I have reviewed the revised plans that now show a farm stand near the picnic area. The dumpste has been moved to another location. I have also reviewed the memo from David Latulippe that outlines how the farm stand is to be run and who runs it (the convienence store). I have determined that the retail farm stand run by the convenience store substantially is in accordance with the conceptual site plan from the zone change and meets the verbage of the conditional/contract rezoning.

All other conditions previously mentioned are still in force.

Marge Schmuckal  
Zoning Administrator

**COMMITMENT & INTEGRITY**  
**DRIVE RESULTS**

41 Hutchins Drive  
Portland, Maine 04102  
www.woodardcurran.com

T 800.426.4262  
T 207.774.2112  
F 207.774.6635

## MEMORANDUM



**TO:** Jean Fraser, Planner  
**FROM:** David Senus, P.E. & Ashley Auger, E.I.T.  
**DATE:** May 1, 2013  
**RE:** 2282 Congress St. Multi-Use Development, Level III Final Site Plan Application

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Woodard & Curran has reviewed the Response to Comments for the Level III Final Site Plan Application for the Multi-Use Development located at 2282 Congress Street in Portland, Maine.

Review of this project has been conducted under the City's Delegated Review Authority for MaineDEP Chapter 500 standards in addition to conformance with Section 5 of the City's Technical Manual, and other applicable City ordinances and standards related to water quality and construction standards.

### Documents Provided By Applicant

- Response to Comments Letter and attachments to City Planning Office dated April 23, 2013, prepared by DeLuca-Hoffman Associates, Inc., on behalf of CJ Developers, Inc. and Portland Property Holdings, LLC
- Engineering Plans, Sheets C-1.0 through C-1.3, C-2.0 through C-7.0, C-7.1, C-8.0 through C-8.8, C-9.0 through C-9.2, C-14.0, & C-14.1, revised April 18, 2013, prepared by DeLuca-Hoffman Associates, Inc., on behalf of CJ Developers, Inc.
- Response to Comments Letter to MaineDEP dated April 26, 2013, prepared by DeLuca-Hoffman Associates on behalf of Portland Property Holdings, LLC.

### Comments

- 1) All comments contained in the memorandum prepared by Woodard & Curran dated April 18, 2013 have been adequately addressed by the Applicant.

## MEMORANDUM

*on initial submission*



**TO:** Jean Fraser, Planner  
**FROM:** David Senus, P.E. & Ashley Auger, E.I.T.  
**DATE:** April 18, 2013  
**RE:** 2282 Congress St. Multi-Use Development, Level III Final Site Plan Application

Woodard & Curran has reviewed the Level III Final Site Plan Application for the Multi-Use Development located at 2282 Congress Street in Portland, Maine. The Applicant proposes to construct a convenience store/fuel station and ATM drive-thru. The project will create a total of 2.25 acres of new developed area, of which 1.57 acres will be new impervious area (building and other impervious surfaces), within the 3.36 acre project boundary.

The project will result in greater than one acre of disturbance and more than 20,000 SF of new impervious area in an Urban Impaired Stream (UIS) watershed, therefore the project is required to meet the State of Maine Department of Environmental Protection Chapter 500 Basic and General Standards. In addition, Section 5 of the City of Portland Technical Manual requires that Level III development projects submit a stormwater management plan pursuant to the regulations of Maine DEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards. Because the project will create less than 3 acres of new impervious area and is not located within the Urban Impaired Stream watersheds listed under Section 5.II.A of the City's Technical Standards, the project is not subject to meeting the Urban Impaired Stream Standard under State or local requirements.

Review of this project has been conducted under the City's Delegated Review Authority for MaineDEP Chapter 500 standards in addition to conformance with Section 5 of the City's Technical Manual, and other applicable City ordinances and standards related to water quality and construction standards.

### Documents Provided By Applicant

- Level III Site Plan Application and attachments dated April 1, 2013, prepared by DeLuca-Hoffman Associates, Inc., on behalf of CJ Developers, Inc.
- Engineering Plans, Sheets C-1.0-C-1.3, C-2.0-C-7.0, C-7.1, C-8.0-C-8.7, C-9.0-C-9.2, C-14.0, & C-14.1, dated March 28, 2013, prepared by DeLuca-Hoffman Associates, Inc., on behalf of CJ Developers, Inc.

### Comments

- 1) MaineDEP Chapter 500 Basic, General and Flooding Standards:
  - a) Basic Standards: Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in general accordance with Appendix A, B, & C of MaineDEP Chapter 500. In addition, the Applicant has included inspection and reporting requirements in reference to Chapter 32 of the City of Portland Code of Ordinances.
  - b) General Standards: The proposed StormTreat Systems will provide adequate stormwater quality control in compliance with the General Standards.
  - c) Flooding Standard: The Applicant has sufficiently demonstrated compliance with the Flooding Standard for the 2, 10 & 25-year storm events.
- 2) Because the project site falls within the Long Creek Watershed, the Applicant has noted that they are required to obtain a Waste Discharge Permit issued by the MaineDEP. We understand that the Applicant is working with MaineDEP and the Long Creek Watershed Management District (LCWMD) regarding the details of review and oversight for issuing this permit. We request that the Applicant



- provide an update to this process, and ultimately a copy of the permit for the project record. Because the Applicant will be an individual permit holder within the Long Creek watershed, they will be subject to Stream Restoration and Monitoring Fees collected and managed by the LCWMD.
- 3) The Applicant has presented an acceptable means of managing the flow and quality of stormwater runoff generated from the new impervious surfaces; however, we encourage the Applicant to review the drive lane widths and parking spaces against the functions and needs of the facility, and reduce impervious surface wherever determined to be practical.
  - 4) The plans should include proposed pipe invert elevations, pipe materials & sizes, and manhole/catch basin structure rim elevations.
  - 5) Please provide clarification, potentially additional plan view notes/details, for the pipe configuration and weir system located within structure A3 and the header/discharge pipes associated with the StormTreat system.
  - 6) The Applicant should verify that the following requirements for the proposed Underground Storage Tank (UST) are being coordinated with the appropriate agencies:
    - Registration of the new UST system with the MaineDEP, per Section 4 of Chapter 691 Rules for Underground Oil Storage Facilities.
  - 7) The Applicant has noted that gas and electric utilities are currently being coordinated and therefore are not specified on the plans. Any updates to the site plan to accommodate these utilities should be submitted to the City for review and approval. Furthermore, the Applicant is currently awaiting confirmation of capacity to serve from all utilities; confirmation should be forwarded to the City upon receipt.
  - 8) The following details should be provided:
    - a) RipRap Slope Protection
    - b) Level Lip Spreader
    - c) Bituminous Driveway Apron
  - 9) The Plans should identify snow storage locations.



Attachment S.A  
re Long Creek  
watershed District  
fishes

**From:** David Senus <dsenus@woodardcurran.com>  
**To:** Tamara Lee Pinard <tamara@cumberlandswcd.org>  
**CC:** Jean Fraser <JF@portlandmaine.gov>, "Christopher Baldwin(chris-baldwin@c...  
**Date:** 4/18/2013 10:23 AM  
**Subject:** RE: 2282 Congress Street  
**Attachments:** 2013.04.18 2282 Congress St. Peer Review Memo.pdf; Stream restoration and monitoring fees- approved 5-21-10.pdf

Hi Tamara.

Thank you for the fee information. Per my discussions with City Staff yesterday and today, because the site is not subject to the State Urban Impaired Stream Standard (less than 3 acres impervious) and because the City's technical standards do not include Long Creek under the local UIS standards list (primarily because of the separate permit/management requirements for Long Creek), we have determined that the Urban Impaired Stream standard does not apply to this project site.

With regard to Stream Restoration and Monitoring Fees, I assume those are dictated under the issuance of the Waste Discharge Permit? Is MaineDEP reviewing that application, or have they delegated that responsibility to the District? If you are not sure, I will inquire through DeLuca-Hoffman. I have noted that the Applicant will be required to pay a fee and obtain an individual waste discharge permit in my review comments, but how that process plays out falls outside of my review.

Attached are our review comments, which I'm glad to share with whoever is performing that review. If you know who that may be, please let me know.

Thanks!  
Dave

David Senus, PE (Maine), Project Manager  
Woodard & Curran, Inc.  
41 Hutchins Drive  
Portland, ME 04102  
Phone: (800) 426-4262 x3241  
Fax: (207) 774-6635

Woodard & Curran  
www.woodardcurran.com  
Commitment & Integrity Drive Results

-----Original Message-----

From: Tamara Lee Pinard [mailto:tamara@cumberlandswcd.org]  
Sent: Wednesday, April 17, 2013 1:38 PM  
To: David Senus  
Subject: FW: 2282 Congress Street

Dave,

Attached is the stream restoration and monitoring fees for individual permits. Hopefully you have received a clear answer from DEP regarding when the fees come into play (my view is the first year should be prorated based on when the discharge will be in place).

The set up on this has been left to the applicant. Half have paid everything through the first permit cycle.

5.5

Half have us invoice them yearly for their portion.

I'm in the office the rest of the day if you have any questions.

Best regards,

Tamara

Tamara Lee Pinard

Executive Director - Long Creek Watershed Management District

Stormwater Program Manager - Cumberland County Soil and Water Conservation District

35 Main Street, Suite 3

Windham, ME 04062

Tel: 207.892.4700

Fax: 207.892.4773

[tamara@cumberlandswcd.org](mailto:tamara@cumberlandswcd.org) <<mailto:tamara@cumberlandswcd.org>>

check out our website: [www.cumberlandswcd.org](http://www.cumberlandswcd.org) <<http://www.cumberlandswcd.org/>>

LCWMD Stream Restoration and Monitoring Fees  
Approved at 5-21-10 meeting of LCWMD Governing Board

<b>Stream Restoration Fee</b>				
Permit year	Total Stream Restoration Cost/yr	Annual cost/ impervious acre*	Cost/ impervious acre/ permit cycle	
Year 1: July 1, 2010-June 30, 2011	\$ 200,000	\$ 337.27		
Year 2: July 1, 2011-June 30, 2012	\$ 210,000	\$ 354.13		
Year 3: July 1, 2012-June 30, 2013	\$ 220,500	\$ 371.84		
Year 4: July 1, 2013-June 30, 2014	\$ 231,525	\$ 390.43		
Year 5: July 1, 2014-June 30, 2015	\$ 243,101	\$ 409.95	<b>\$ 1,863.62</b>	first permit cycle
Year 6: July 1, 2015-June 30, 2016	\$ 255,256	\$ 430.45		
Year 7: July 1, 2016-June 30, 2017	\$ 268,019	\$ 451.97		
Year 8: July 1, 2017-June 30, 2018	\$ 281,420	\$ 474.57		
Year 9: July 1, 2018-June 30, 2019	\$ 295,491	\$ 498.30		
Year 1: July 1, 2019-June 30, 2020	\$ 310,266	\$ 523.21	<b>\$ 2,378.50</b>	second permit cycle
	<b>\$ 2,515,579</b>	total stream restoration cost		
* Yearly cost divided by designated acres (593)				
<b>Monitoring Fee</b>				
Permit year	Total monitoring program cost/yr	Annual cost/ impervious acre*	Cost/ impervious acre / permit cycle	
Year 1: July 1, 2010-June 30, 2011	\$ 100,000	\$ 168.63		
Year 2: July 1, 2011-June 30, 2012	\$ 105,000	\$ 177.07		
Year 3: July 1, 2012-June 30, 2013	\$ 110,250	\$ 185.92		
Year 4: July 1, 2013-June 30, 2014	\$ 115,763	\$ 195.22		
Year 5: July 1, 2014-June 30, 2015	\$ 121,551	\$ 204.98	<b>\$ 931.81</b>	first permit cycle
Year 6: July 1, 2015-June 30, 2016	\$ 127,628	\$ 215.22		
Year 7: July 1, 2016-June 30, 2017	\$ 134,010	\$ 225.99		
Year 8: July 1, 2017-June 30, 2018	\$ 140,710	\$ 237.29		
Year 9: July 1, 2018-June 30, 2019	\$ 147,746	\$ 249.15		
Year 1: July 1, 2019-June 30, 2020	\$ 155,133	\$ 261.61	<b>\$ 1,189.25</b>	second permit cycle
* Yearly cost divided by designated acres (593)				

**From:** David Senus <dsenus@woodardcurran.com>  
**To:** Doug Roncarati <dar@portlandmaine.gov>, Danielle West-Chuhta <DWCHUHTA@p...>  
**CC:** Barbara Barhydt <BAB@portlandmaine.gov>  
**Date:** 4/18/2013 8:41 AM  
**Subject:** RE: 2282 Congress Street, Urban Impaired Stream Standard

Thank you Doug.

In our memorandum I will note that the applicant is required to obtain a waste discharge license due to the project location in the Long Creek Watershed, and I will note that as an individual permit holder they are subject to payment of Stream Restoration and Monitoring Fees to the LCWMD. I will also note that the project will not be subject to the Urban Impaired Stream standard.

Much appreciated.

-Dave

-----Original Message-----

From: Doug Roncarati [mailto:dar@portlandmaine.gov]  
Sent: Thursday, April 18, 2013 8:30 AM  
To: Danielle West-Chuhta; Jean Fraser; David Senus  
Cc: Barbara Barhydt  
Subject: Re: 2282 Congress Street, Urban Impaired Stream Standard

Hi Dave,

I agree with your assessment of this situation.

Doug

>>> David Senus <dsenus@woodardcurran.com> 4/17/2013 5:02 PM >>>

Hi Doug, Jean & Danielle:

We have a unique situation with this project that requires some input. Doug, sorry about playing phone tag, hopefully my email sums up the question at hand.

The project at 2282 Congress Street (Convenience Store/Gas Station) falls within the Long Creek Watershed, which is a listed "Urban Impaired Stream" (UIS) in DEP's Chapter 502. The project will create 1.57 acres of new impervious area. Under MaineDEP requirements, the UIS standard kicks in at 3 acres of new impervious area; therefore this project is not required to meet the UIS standard under State Stormwater Law. However, per City requirements:

City's Technical Standard 5) II. A. All development, except single and two family homes, subject to City of Portland review shall be required to comply with the Urban Impaired Stream Standard pursuant to MaineDEP Chapter 500 Stormwater Management Rules if they are located within these watersheds: a) Capisic Brook, b) Fall Brook, c) Nason's Brook

City Code of Ordinances, 14-526, (b) 3. c. All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to MaineDEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.

So the question at hand, does a project that falls within the Long Creek watershed need to meet the UIS Standard for compliance with the City's Code of Ordinances?

If the answer is yes, presumably the Applicant will elect to pay the fee (approx. \$8,000) in lieu of "mitigating project impacts by treating, reducing or eliminating an off-site... pre-development impervious stormwater source". The City has a MaineDEP-approved plan in place to utilize the in-lieu-fee money collected, a Compensation Fee Utilization Plan (CFUP). In that plan, it states "Long Creek projects are not included in this CFUP. Property within this watershed in the City of Portland is primarily publicly owned and will not likely be subject to Urban Impaired Stream standards. Additionally most development in the Long Creek watershed is managed and regulated under the General Permit: Post Construction Discharge of Stormwater in the Long Creek Watershed."

Clearly we have found one project that slipped between the cracks. If money is collected for this project, it would make sense that it goes to the Long Creek Watershed Management District to use in their CFUP. That said, the LCWMD will (separately) collect payment from the Applicant associated with Stream Restoration and Monitoring Fees on the order of \$7,500 either upfront, or invoiced over the next 7 years (maybe longer depending on permit renewal). The Stream Restoration and Monitoring Fees are NOT fees associated with the UIS standard, but the ultimate goal for collecting this money is the same (improving water quality in the stream).

So long story short, my recommendation would be that we hold tight to the language in the City's Technical Standards and NOT assess a fee to this project. I'm not sure if there is even a legal ground to the City requiring the applicant pay money to the LCWMD?

Glad to hear your thoughts.

Thanks

Dave

David Senus, PE (Maine), Project Manager  
Woodard & Curran, Inc.  
41 Hutchins Drive  
Portland, ME 04102

Attachment 6

**From:** Chris Pirone  
**To:** Jean Fraser  
**Date:** 5/8/2013 1:51 PM  
**Subject:** Re: Revised plans for 2282 Congress Street

Fire is all set.

Captain Chris Pirone  
Portland Fire Department  
Fire Prevention Bureau  
380 Congress Street  
Portland, ME 04101  
(t) 207.874.8405  
(f) 207.874.8410

ü Please consider the environment before printing this email.

## Jean Fraser - 2282 Congress Street - Final Traffic Comments

---

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**Date:** 5/9/2013 11:23 AM  
**Subject:** 2282 Congress Street - Final Traffic Comments  
**CC:** David Margolis-Pineo <DMP@portlandmaine.gov>, Jeff Tarling <JST@portland...>

Jean – The following represents my final comments and also presents a status update on my April 18, 2013 preliminary comments.

### April 18, 2013 Comments Status

- It is suggested that the pedestrian facility between Congress Street and the proposed convenience store building be as direct as possible. This may require the loss of some of the 9 parking spaces located along the front of the property.  
**Status: The applicant has revised the site plan to improve the crosswalk alignment and given constraints with Maine Turnpike Authority property, I find the proposed condition to be acceptable.**
- Parking supply seems excessive for the type and scale of the proposed land use. Supporting documentation on the parking needs shall be provided.  
**Status: The applicant has revised the site plan and is now proposing to construct 26 parking spaces with an option for future expansion of the parking supply if deemed necessary. I find the proposed condition to be acceptable.**
- Auto-turn analyses shall be provided that supports on-site circulation aisle widths and the width of the driveway entrance on Congress Street. The applicant should also provide information on the number of large trucks anticipated to enter and exit the site.  
**Status: The site plan has been revised based upon discussions with the applicant and I find the proposed plan to be acceptable. I would note that the applicant did add a raised concrete apron at the driveway entrance and I find this condition to be acceptable. A waiver for driveway width is required and given large truck turning requirements, I support a waiver from City standards.**
- It is unclear whether there are vehicle circulation restrictions on site (e.g. one-way vs. two-way). Signage and pavements markings shall clearly support proposed circulation restrictions.  
**Status: It is my understanding that the revised site plan accounts for a one-way circulation around the back side of the convenience store. Signage and pavement markings should be provided.**
- Many aisle widths exceed City standards and waivers from our technical standards may be necessary. As noted above, supporting information will be required before I render any decision on waivers.  
**Status: Given the specific needs of on-site vehicle circulation and accessibility to fueling areas, I find the proposed layout to be acceptable and support waivers from City standards.**

### Traffic Study/New Comments

- I find the methods used in the traffic study to be acceptable.

- The analysis indicated the Congress Street/Site Drive/Blueberry Road intersection will operate at acceptable levels of service following build-out of the project. I concur with this conclusion.
- A signal warrant analysis was conducted at the Congress Street/Site Drive/Blueberry Road intersection. According to the applicant a traffic signal is not warranted. I concur with this conclusion, but suggest that a post-occupancy signal warrant study be conducted one year after opening. If a traffic signal is warranted, the applicant shall be responsible for all costs associated with design and implementation of the traffic signal.
- According to a warrant analysis for a right-turn lane entering the site from Congress Street, a right-turn lane is warranted. At this time I concur with the applicant that provision of a right-turn lane entering the site is not preferred given that it will increase the crosswalk length. I would suggest that conditions be monitored one year following opening and if crash data suggests a problem exists, the applicant shall be responsible for installing a right-turn lane.
- The Congress Street/Skyway Drive/Hutchins Drive intersection is projected to have movements that will operate at an unacceptable level of service following the construction of the project. In addition, while not a High Crash Location per MaineDOT criteria, the intersection does display a pattern of rear-end collisions. The City has been collecting funds from developments in the area for the implementation of improvements to mitigate congestion and safety deficiencies. Based upon prior contribution methods, the applicant shall contribute \$5,000.00 towards improvements at the subject intersection.
- The applicant has developed an improvement plan for Congress Street such that left-turn accommodations are provided. I support the general concept of the plan provided in the application. Final design plans shall be submitted to the City for review and approval (It should be noted that adjustments to the design may be required during this review process).
- A pedestrian crosswalk is being proposed on Congress Street between the project site and Blueberry Road. Through the contract rezone process the crosswalk was to include a refuge median island in addition to a flashing sign warning system. Given vehicle turning needs, a refuge island is not feasible at this location. In lieu of the refuge island the applicant shall construction an ADA accessible landing on the northwest radius of Blueberry Road. In addition, the crosswalk pavement marking shall consist of durable paint. Final design elements shall be reviewed and approved by the City.
- Per City standards the applicant is required to construct a sidewalk along their property frontage (60 feet of frontage). The project does not meet sidewalk waiver requirements. In lieu of constructing the required sidewalk, the applicant shall install a painted crosswalk on the Blueberry Road approach to Congress Street.

If you have any questions or comments, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director

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Visit us online at [www.tylin.com](http://www.tylin.com)

"One Vision, One Company"

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**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**CC:** Katherine Earley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, David Margolis-Pineo <DMP@portlandmaine.gov>, Jeremiah Bartlett <JBartlett@portlandmaine.gov>  
**Date:** 4/18/2013 9:46 AM  
**Subject:** 2282 Congress Street

*Prelim*

Jean - The following are my initial preliminary comments on the site plan and may not be representative of all issues. Per your request these are being provided quickly given the project schedule.

- \* It is suggested that the pedestrian facility between Congress Street and the proposed convenience store building be as direct as possible. This may require the loss of some of the 9 parking spaces located along the front of the property.
- \* Parking supply seems excessive for the type and scale of the proposed land use. Supporting documentation on the parking needs shall be provided.
- \* Auto-turn analyses shall be provided that supports on-site circulation aisle widths and the width of the driveway entrance on Congress Street. The applicant should also provide information on the number of large trucks anticipated to enter and exit the site.
- \* It is unclear whether there are vehicle circulation restrictions on site (e.g. one-way vs. two-way). Signage and pavements markings shall clearly support proposed circulation restrictions.
- \* Many aisle widths exceed City standards and waivers from our technical standards may be necessary. As noted above, supporting information will be required before I render any decision on waivers.

If you have any questions or comments, please contact me.

Best regards,

Thomas A. Errico, PE  
 Senior Associate  
 Traffic Engineering Director  
 [T.Y. Lin International] T.Y. Lin International  
 12 Northbrook Drive  
 Falmouth, ME 04105  
 207.347.4354 direct  
 207.400.0719 mobile  
 207.781.4753 fax  
 thomas.errico@tylin.com <mailto:thomas.errico@tylin.com>  
 Visit us online at www.tylin.com <http://www.tylin.com>

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## Jean Fraser - 2282 Congress Street Project

---

**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** 5/10/2013 11:06 AM  
**Subject:** 2282 Congress Street Project  
**CC:** David Margolis-Pineo

Hi Jean -

I reviewed the recent landscape plan submission for the 2282 Congress Street project and offer the following comments, conditions:

a) Tree Save - the 'tree-save', tree thinning area along Congress Street is improved and meets our recommendations. Additional 'tree-save' areas along the Western property line and towards Skyview Drive will need to be marked prior to site work and as approved by the City Arborist. There may be trees to be thinned or removed due to poor condition or risk. (Thinning trees for views is not recommended - thinning trees for safety and condition is.) Standard tree protection measures shall be used during construction, these include protection of tree root zones, identifying trees to protected, construction fencing or tagging where needed. No storage of equipment or construction materials in tree protection root zone areas. The area around the Shagbark Hickory is one of the tree protection zones.

b) Trees in parking lot - In the area shown as snow storage, and addition one to two trees could be set back away from the edge of pavement to still allow snow clearing and meet the parking lot tree / shrub standards.

Overall the landscape plan is acceptable as shown with the recent improvement and suggested conditions.

Thanks,

Jeff Tarling  
City Arborist

## Jean Fraser - Congress Street project

8.2

**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** 5/2/2013 11:05 AM  
**Subject:** Congress Street project  
**CC:** David Margolis-Pineo

*not final -  
refers to 4-23-13 submission*

Hi Jean -

In review of the revised landscape plan for the 2282 Congress Street project:

The recent landscape plan increases the tree planting and campus feel as requested, however would like to offer the following recommendations / conditions:

**a) Congress Street edge** - In the location of the proposed 'picnic area' would like to see a greater amount of tree save / thinning then clearing. The existing birch trees and native vegetation can be thinned to allow for the garden, the value of the screening and tree save is a higher value in regards to the overall landscape function. I can meet with the applicant project team if helpful.

**b) Tree Saves** - I would like to see a greater attempt to save the mature existing trees along the project edges. These White Pine in particular offer important structure to the current landscape feel. Reducing the pavement edge along the west & Skyway Drive edge by either narrowing the driveways / parking lot or shifting the built development away from the edges. The tree save areas should be shown or mentioned on the plan and protected in the field following our standard 'tree-save' recommendations. This would include the area along Congress Street and the important Shagbark Hickory.

**c) Additional trees along the parking lot** - In the area near the stormwater feature the recent plan did not show the additional trees requested. Having trees & / or shrubs is important so this area does not appear void of vegetation. We should be able to resolve this with an additional grouping of three to five trees. I can meet to review this condition as well if needed.

Overall the revised landscape plan is improved, following up on the possible planting on the Maine Turnpike / City street right of way (outside the UNITEL right of way) is hopeful.

Thanks,

Jeff Tarling  
 City Arborist

**Jean Fraser - 2282 Congress Street**

8.3

---

**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** 4/17/2013 3:11 PM  
**Subject:** 2282 Congress Street

Hi Jean -

I reviewed the landscape plan for the proposed 2282 Congress Street project.

My recommendation is that the project needs to include a greater number of trees around the parking lot to meet the parking lot landscape standard. I noted several areas where trees may be able to be planted, before just making suggestions it might be best to be able to discuss with the applicant.

Thanks

Jeff

**From:** Danielle West-Chuhta (Danielle West-Chuhta)  
**To:** Jean Fraser  
**CC:** Barbara Barhydt  
**Date:** 4/24/2013 1:07 PM  
**Subject:** Re: Question over RTI and CZA re 2282 Congress Site Plan

I think that you could have David amend his application (instead of the letter I mention below - although the letter would work as well for the same purpose) to include Portland Property as a co-applicant.

D

>>> Jean Fraser 4/24/2013 11:55 AM >>>

Thank you - I agree its likely that Portland Property is also David, but I recall in the past that the Legal Dept (before your time) had required us to get application forms altered etc to ensure consistency and wanted to be sure as its going straight to a hearing. Jean

>>> Danielle West-Chuhta (Danielle West-Chuhta) 4/24/2013 11:30 AM >>>

Jean:

The CZA allows for assignments. The option agreement just allows the applicant (CJ Developers, Inc) the option to purchase the property - probably once the approvals have been obtained. The option does not seem to have been exercised yet, so Hutchcount LLC is still the owner (as stated in the Site Plan application). Under the assignment of the option agreement it seems that the option to purchase the property has been assigned from CJ Developers to Portland Property Holdings, LLC (which is a valid Maine company). I would bet that Portland Property Holders, LLC was created by CJ Developers, Inc. so that they could use that company to build the project on the site (Avesta does this a lot with their developments). You can just confirm this with the applicant so that you have this in writing and/or have them provide you with a letter from Portland Property Holders, LLC signing on to CJ Developers, Inc's application.

In addition, I would note that if you are concerned about assignments of the CZA you could include a condition in the approval that specifies if the CZA is assigned CJ Developers, Inc. shall provide notification of the assignment to the City.

Thanks,

Danielle

10.2

## Jean Fraser - Re: 2282 Congress Street, Urban Impaired Stream Standard

**From:** Danielle West-Chuhta (Danielle West-Chuhta)  
**To:** David Senus; Doug Roncarati; Jean Fraser  
**Date:** 4/22/2013 10:50 AM  
**Subject:** Re: 2282 Congress Street, Urban Impaired Stream Standard  
**CC:** Barbara Barhydt

I agree with Dave's analysis.

>>> David Senus <dsenus@woodardcurran.com> 4/17/2013 5:02 PM >>>  
 Hi Doug, Jean & Danielle:

We have a unique situation with this project that requires some input. Doug, sorry about playing phone tag, hopefully my email sums up the question at hand.

The project at 2282 Congress Street (Convenience Store/Gas Station) falls within the Long Creek Watershed, which is a listed "Urban Impaired Stream" (UIS) in DEP's Chapter 502. The project will create 1.57 acres of new impervious area. Under MaineDEP requirements, the UIS standard kicks in at 3 acres of new impervious area; therefore this project is not required to meet the UIS standard under State Stormwater Law. However, per City requirements:

*City's Technical Standard 5) II. A. All development, except single and two family homes, subject to City of Portland review shall be required to comply with the Urban Impaired Stream Standard pursuant to MaineDEP Chapter 500 Stormwater Management Rules if they are located within these watersheds: a) Capisic Brook, b) Fall Brook, c) Nason's Brook*

*City Code of Ordinances, 14-526, (b) 3. c. All development, except Level I minor residential development, that are located within the watershed of an Urban Impaired Stream shall comply with the Urban Impaired Stream standards pursuant to MaineDEP Chapter 500 Stormwater Management Rules, as described in Section 5 of the Technical Manual.*

So the question at hand, does a project that falls within the Long Creek watershed need to meet the UIS Standard for compliance with the City's Code of Ordinances?

If the answer is yes, presumably the Applicant will elect to pay the fee (approx. \$8,000) in lieu of "mitigating project impacts by treating, reducing or eliminating an off-site...pre-development impervious stormwater source". The City has a MaineDEP-approved plan in place to utilize the in-lieu-fee money collected, a Compensation Fee Utilization Plan (CFUP). In that plan, it states "Long Creek projects are not included in this CFUP. Property within this watershed in the City of Portland is primarily publicly owned and will not likely be subject to Urban Impaired Stream standards. Additionally most development in the Long Creek watershed is managed and regulated under the General Permit: Post Construction Discharge of Stormwater in the Long Creek Watershed."

Clearly we have found one project that slipped between the cracks. If money is collected for this project, it would make sense that it goes to the Long Creek Watershed Management District to use in their CFUP. That said, the LCWMD will (separately) collect payment from the Applicant associated with Stream Restoration and Monitoring Fees on the order of \$7,500 either upfront, or invoiced over the next 7 years (maybe longer depending on permit renewal). The Stream

10.3

Restoration and Monitoring Fees are NOT fees associated with the UIS standard, but the ultimate goal for collecting this money is the same (improving water quality in the stream).

So long story short, my recommendation would be that we hold tight to the language in the City's Technical Standards and NOT assess a fee to this project. I'm not sure if there is even a legal ground to the City requiring the applicant pay money to the LCWMD?

Glad to hear your thoughts.

Thanks  
Dave

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Commitment & Integrity Drive Results

**From:** Danielle West-Chuhta (Danielle West-Chuhta)  
**To:** Alex Jaegerman; Barbara Barhydt; Jean Fraser  
**CC:** Jeff Levine  
**Date:** 3/11/2013 10:48 AM  
**Subject:** Re: 2282 CZA timetable for recording

I think that this is fine.

>>> Jean Fraser 3/8/2013 3:04 PM >>>  
Danielle, Alex and Barbara

The attached letter went to David Latulippe to confirm the Planning Board and Council decisions on the conditional rezoning and associated CZA.

The actual CZA (attached separately) does not specify a timescale for recording the CZA so the letter specifies "*soon after the property is acquired and prior to the submission of any related site plan application*". This was inserted by staff as it seemed logical that the rezoning needed to be in place before we could consider a site plan for uses that were prohibited in the underlying zone.

David has pointed out that the banks will not allow him to purchase the property until the site plan approval is actually received. He has a P&S agreement. So he can't acquire the land nor execute the CZA until after he receives site plan approval.

Would you all be agreeable (once the site plan application goes to the PB Hearing, expected to be end of April and the application will be received soon- no PB workshop) for the site plan approval to have a condition of approval that requires the CZA to be signed and recorded prior to the issuance of a building permit for the site plan?

Or maybe there is some other way around this?

thank you  
Jean



Attachment 1) to 5.14.13  
PB Hearing  
on Site Plan



2/15/13

Public Comment

To: Carol Morrisette

Committee Chair, Portland Planning Board

From: Winfield Stratton

Project / Procurement Manager

ecomaine

Re: Proposed zoning map amendment

CJ Developers, Inc. proposal

Re CC Order 155-12/13  
Hearing 3.4.2013.

Att. D.15 to  
City Council Report #10-13  
2282 Congress St.  
Conditional Zoning

Ms. Morrisette,

I was in attendance at the February 12, 2013 Planning Board public hearing and commented on the C.J. Development Inc. request for a zoning amendment. Thank you for the opportunity to speak at the public hearing and for recognizing my concerns at the end of the meeting. On behalf of ecomaine I requested that the board consider a traffic light at the end of Blueberry Road to control traffic merging onto Congress Street. I understand that a traffic movement study will be conducted to evaluate current and anticipated increased traffic flow resulting from the addition of the proposed development.

Ecomaine is concerned and committed to the safety of employees, vendors, trash haulers, and other visitors to ecomaine. Currently, egress onto Congress Street from Blueberry Road is difficult especially during periods of heavy traffic. Sight distance is limited in each direction where Blueberry Road intersects Congress Street. Large commercial trash trucks frequently restrict visibility and driver ability to safely assess oncoming traffic.

Increased traffic volume on an already congested area, the high percentage of large commercial vehicles, as well as traffic merging onto Congress Street directly opposite Blueberry Road will each contribute to increased risk for vehicles exiting and merging onto Congress Street. These risks will be common to vehicles on Blueberry Road as well as vehicles entering and exiting the proposed development.

Ecomaine strongly supports the installation of a traffic light to control traffic flow in all directions, and requests that upon completion of the Traffic Movement Permitting a traffic light is mandated. Ecomaine wishes to be pro-active with Safety in order to eliminate all hazard risks for our employees, visitors, and the general public.

Please contact ecomaine for actual facility related traffic volume data.

Submitted By:

Winfield Stratton

ecomaine