

Maine Turnpike Authority

2360 Congress Street
Portland, Maine 04102

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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.

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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 I 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