

CITY OF PORTLAND, MAINE

PLANNING BOARD

Stuart O'Brien, Chair
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July 15, 2015

Avesta 72 Bishop, LLC
307 Cumberland Avenue
Portland, ME 04101

Mitchell & Associates
70 Center Street
Portland, ME 04101

Project Name:	Bishop Street Apartments		
Project ID:	2015-060		
Address:	72 Bishop Street	CBL:	293-C-002
Applicant:	Avesta 72 Bishop, LLC		
Planner:	Nell Donaldson		

Dear Mr. Moore:

On July 14, 2015, the Planning Board considered your application for a 30-unit housing development at 72 Bishop Street, the Bishop Street Apartments. The Planning Board reviewed the proposal for conformance with the standards of the subdivision and site plan ordinances of the Land Use Code. The Planning Board voted 5-0 (Morrissette and Soley absent) to approve the application with the following waivers and conditions.

WAIVERS

The Planning Board voted 5-0 (Morrissette and Soley absent) to grant the following waivers:

1. The Planning Board finds that the applicant has demonstrated that site constraints prevent the planting of all required street trees. The planning board waives the site plan standard (*Section 14-526(b)(iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall make a financial contribution of \$4,800 for 24 trees to Portland's tree fund.

SUBDIVISION REVIEW

The Planning Board voted 5-0 (Morrissette and Soley absent) that the plan is in conformance with the subdivision standards of the Land Use Code, subject to the following condition of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority.

SITE PLAN REVIEW

The Planning Board voted 5-0 (Morrissette and Soley absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval, which must be met prior to the issuance of a building permit, unless otherwise stated:

1. Beginning one year following certificate of occupancy, the applicant shall submit an annual report documenting tenant automobile ownership and parking demand, as well as measures to manage parking conditions as necessary, for review and approval by the Planning Authority;
2. The applicant shall submit a revised survey for review and approval by the city's Department of Public Services;
3. The applicant shall submit a revised grading plan for review and approval by the city's Department of Public Services;
4. The applicant shall submit a revised construction management plan which addresses the installation of the proposed sidewalk on the south side of Bishop Street to Stevens Avenue for review and approval by the Department of Public Services;
5. Prior to final submittal, the applicant shall allow for abutter review of the design of the sidewalk on the south side of Bishop Street from 72 Bishop Street to Forest Avenue/Stevens Avenue. The applicant shall submit plans for, obtain all necessary easements related to, and construct this sidewalk, including the easternmost section abutting 2-10 Bishop Street, for review and approval by the Department of Public Services;
6. The applicant shall provide copies of associated permits from Maine DEP and the Army Corps of Engineers for review and approval by the Planning Authority;
7. The applicant shall submit a revised landscaping plan which addresses the treatment of the western side of the building for review and approval by the city arborist;
8. As this development falls within the watershed of an urban impaired stream, the Capisic Brook, the applicant shall make an in-lieu compensation fee payment of \$1,927 for review and approval by the Planning Authority; and
9. The applicant shall obtain a utility easement from the Masonic Lodge or pursue alternate utility access for review and approval by the Department of Public Services and the Planning Authority.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report for application 2015-060 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

1. **Storm Water Management Condition of Approval**
The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.

The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.

A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted, signed, and recorded prior to the issuance of a building permit with a copy to the Department of Public Services.

2. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
3. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
4. **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 the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
5. **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.
6. **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.
7. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, an inspection fee payment of 2.0% of the guarantee amount, seven (7) final sets of plans, and one digital copy of the final plan set must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and 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.
9. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
10. **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

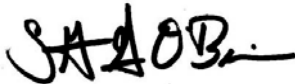
the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

11. **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.)
12. **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.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to 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 Nell Donaldson at 874-8723.

Sincerely,



Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. Performance Guarantee Packet
3. City Code, Chapter 32
4. Sample Stormwater Maintenance Agreement

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Nell Donaldson, Planner/Senior Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Acting Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Lannie Dobson, Administration, Inspections Division
Brad Saucier, 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
Keith Gautreau, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File



PLANNING BOARD REPORT PORTLAND, MAINE

Bishop Street Apartments
72 Bishop Street
Level III Site Plan and Subdivision Review
2015-060
Avesta 72 Bishop Street, LP

Submitted to: Portland Planning Board
Date: July 10, 2015
Public Hearing Date: July 14, 2015

Prepared by: Nell Donaldson, Planner
CBL: 293 C002001
Project #: 2015-060



Figure 1: 72 Bishop Street, aerial view

I. INTRODUCTION

Avesta Housing has requested a Level III site plan and subdivision review for a 3-story, 30-unit housing project, the Bishop Street Apartments, at 72 Bishop Street near Morrill's Corner. The building is designed for chronically homeless individuals around the Housing First approach, and includes a large entry lobby, community kitchen, common seating areas, and a library. Landscaping, 12 spaces of surface parking, and stormwater treatment facilities are included in the proposal. The planning board previously considered the plans for the site at a workshop in May of 2015. At that workshop, the board asked the applicant to provide additional context drawings and a staffing plan, to work with the planning division to resolve

outstanding issues around a sidewalk proposed for the south side of Bishop Street to the east, and to communicate with neighbors around their remaining questions. In the intervening time, the applicant has provided additional submittals and met with both staff and neighbors in an effort to meet these requests.

Public notice of the planning board workshop appeared in the *Portland Press Herald* on July 3 and 6, 2015, was posted on the city's web site, and was sent by mail or e-mail to 60 property owners within 500 feet as well as the Planning Division's interested citizens list.

Applicant: Brooks More, Avesta 72 Bishop Street, LP

Consultants: Bob Metcalf, Mitchell & Associates; Stephen Bradstreet, Ransom Consulting; Ben Walter, CWS Architects; Owen Haskell

II. REQUIRED REVIEWS

<i>Waiver Requests</i>	<i>Applicable Standards</i>
Street trees – To plant 6 street trees (2 in proximity to the street line and 4 in or near the right-of-way adjacent to the site), with contribution for remainder (24) to street tree fund	Site Plan Standard, <i>Section 14-526(b)2.b(iii)</i> and Technical Manual, <i>Section 4.6.1</i> . All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, with applicant contributing proportionate amount to Tree Fund. <i>30 units = 30 street trees required</i>
<i>Review</i>	<i>Applicable Standards</i>
Site Plan	<i>Section 14-526</i>
Subdivision	<i>Section 14-497</i>

III. PROJECT DATA

Existing Zoning	B-2c
Existing Use	Single-family residential
Proposed Use	Multi-family residential
Proposed Development Program	30 efficiency units, including common spaces, totaling 21, 374 SF
Parcel Size	52,383 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	826 SF	7,804 SF	6,978 SF
Building Floor Area	1,600 SF	21,347 SF	19,774 SF
Impervious Surface Area	1,206 SF	20,659 SF	19,453 SF
Parking Spaces (on site)	2	12	10
Bicycle Parking Spaces	0	12	12
Estimated Cost of Project	\$5,586,058		



Figure 2: 72 Bishop Street, existing conditions

IV. BACKGROUND & EXISTING CONDITIONS

72-78 Bishop Street lies on the south side of Bishop Street approximately 850 feet west of Morrill’s Corner. The site is presently occupied by a single-family home. Forested wetlands, housing the headwaters of the Capisic Brook, lie at the rear of the property. An office building and taxi dispatch facility sit to the east of the site, a Masonic Hall to the west, UNE property across the wetlands to the south, and Maine Moped Factory and Portland Collision lie across Bishop Street to the north.



Figure 3: Existing zoning, 72 Bishop Street

The site and its neighboring properties were recently rezoned, at the applicant’s request, from Moderate Impact Industrial (IM) to Business B-2c. An IM zone lies across Bishop Street and a Residential R-5 zone lies at the site’s rear. A single-family residential neighborhood is located approximately 400 feet to the east on Mayfield Street in an R-5 zone.

V. PROPOSED DEVELOPMENT

The proposal for the Bishop Street Apartments focuses around the development of a three-story, 30-unit building to house formerly homeless individuals, many with significant medical conditions, much in the same vein as Avesta Housing’s two other Housing First projects in the city, Florence House and Logan Place. The proposal is a direct response to a call from the City Council identifying the need for additional permanent housing for homeless individuals in locations beyond the city’s peninsula. The building’s 30 efficiency units would be constructed with shared library, kitchen, meeting, laundry, and interior and exterior social spaces. The building would also include a “private medical office and care room” (*Attachment V*). The main entrance is proposed via a vestibule off Bishop Street, and the plans include a sidewalk connection on the south side of Bishop Street to the east. 12 parking spaces are proposed, as is landscaping. Stormwater treatment would also be provided on site (*Figure 4*).

The applicant has provided an updated staffing plan in the revised submittal (*Attachment V*). This memo augments that submitted with the preliminary plans (*Attachment M*), and provides references to studies documenting the success of the Housing First model. As previously proposed, Avesta would develop the site, provide building maintenance, and serve as the landlord for the eventual tenants of the building, and Preble Street would provide on-site supportive services. In their original staffing memo, Preble Street describes a plan to staff 10 full-time employees at the site, including “one coordinator, one supervisor, and one team leader managing seven housing support workers” (*Attachment M*). The revised memo reinforces Preble Street’s plan to station three staff on site at all times, as “[t]his pattern allow monitoring of the entry, common space, and individual units to ensure safety and to respond to specific tenant concerns while enabling workers to intervene in individual crises as required” (*Attachment V*). Based on the Preble Street web site for Logan Place, it is assumed that these staff would not only monitor the building, but support tenants in “developing and enhancing life skills,” “help with...household management, shopping, use of transportation, and meal preparation,” and “facilitate access to community resources, such as health clinics, and mental health and substance abuse services.” The project narrative further states that “[m]edical staff will be available on site during specific hours and will coordinate daily with Preble Street...to coordinate referrals, follow up, and monitoring of individual tenants” (*Attachment A*).

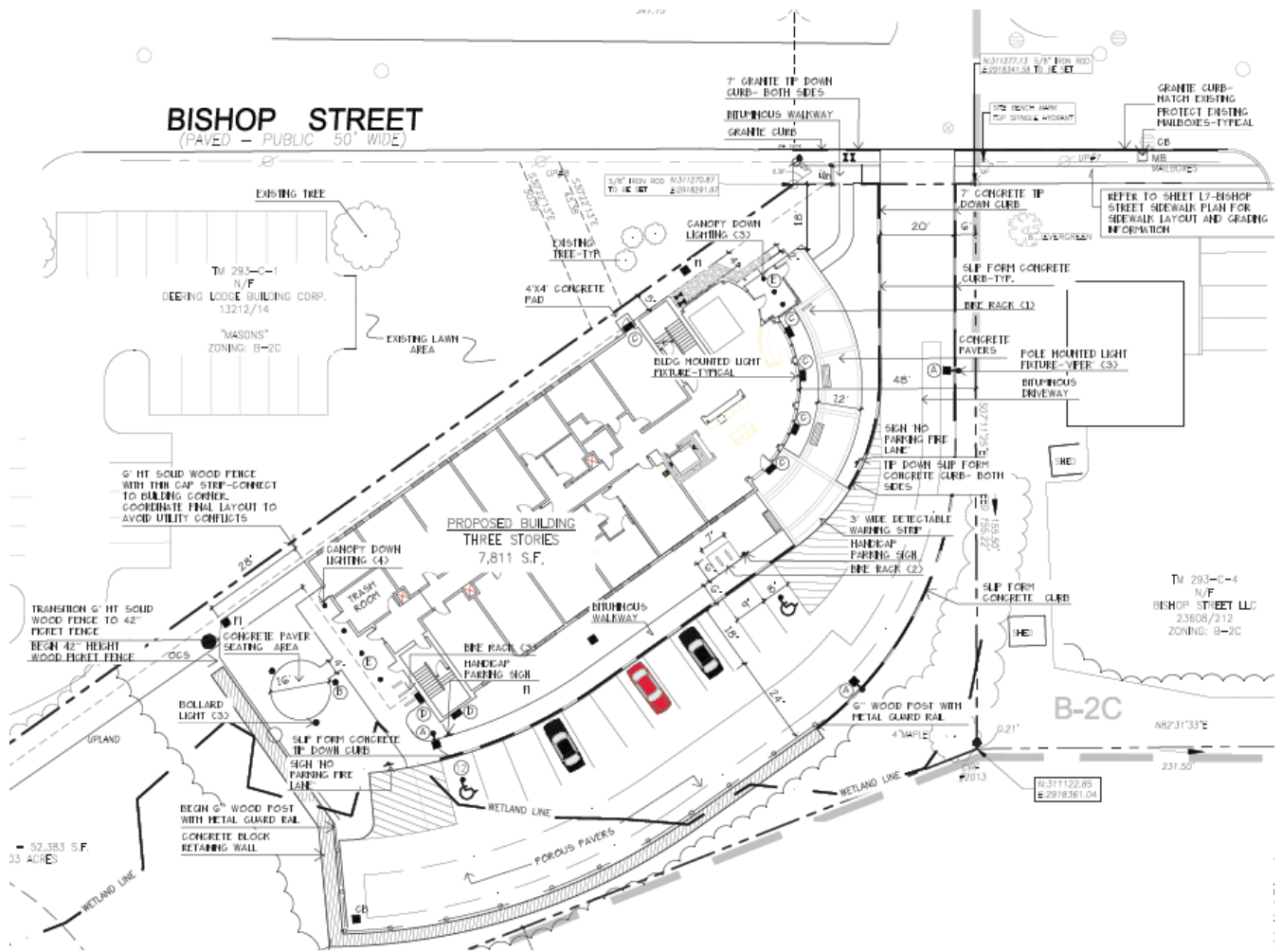


Figure 4: Final site plan, Bishop Street Apartments

VI. PUBLIC COMMENT

The Planning Division received correspondence from one neighbor following the workshop on this proposal. This email questioned the parking assumptions contained in staff’s review, specifically whether residents of the proposed development would be permitted to own cars (*Attachment PC-1*). This question is discussed in detail below.

The applicant has provided neighborhood meeting minutes which demonstrate that neighbors asked questions about the proposed sidewalk on the south side of Bishop Street, wetland impacts, the architecture, and the tenant population (*Attachment T*). At the planning board workshop, neighbors raised similar concerns, questioning the potential wetland and traffic safety impacts of the project, as well as the plans for the proposed Bishop Street sidewalk, building staffing, and tenant composition. It should also be noted that, during the associated zoning map amendment review, a number of neighbors expressed concerns with respect the project’s environmental, traffic, and security impacts, as well as the project’s scale. Light and noise trespass were also discussed.

The applicant has met on site with neighbors on several occasions following the workshop on this proposal.

VII. RIGHT, TITLE, & INTEREST

The applicant has provided a deed as evidence of right, title, and interest (*Attachment C*).

VIII. FINANCIAL & TECHNICAL CAPACITY

The applicant has provided two letters as evidence of Avesta’s technical capacity to develop affordable housing. The applicant has also provided a letter from Gorham Savings Bank expressing an interest in financing the project (*Attachment H*).

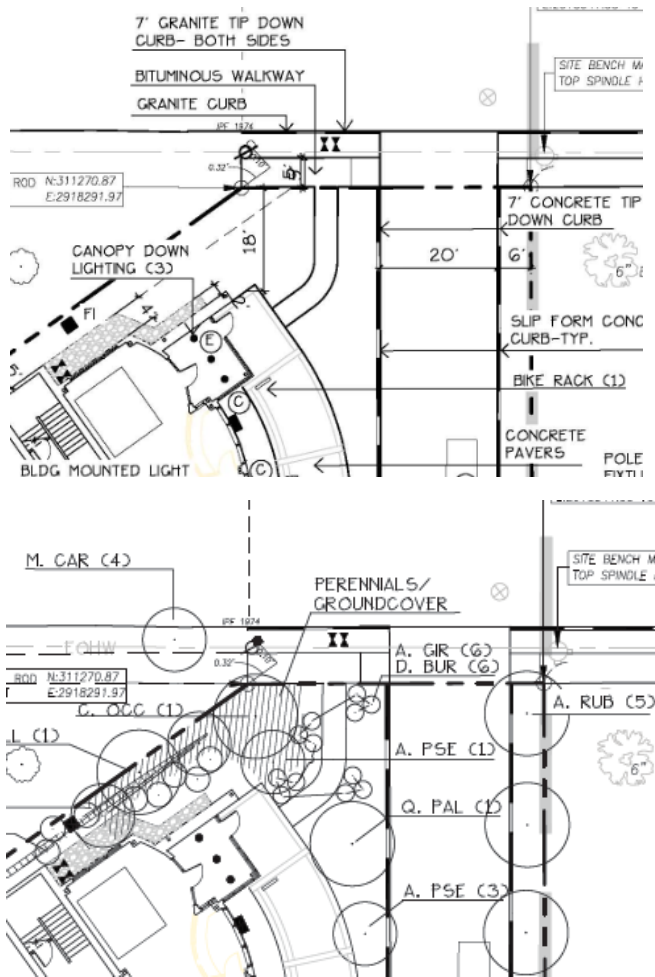


Figure 5: Bishop Street frontage and setback with revised landscaping

IX. ZONING ANALYSIS

The applicant has submitted a zoning analysis, which notes that the development, as proposed, does not meet two requirements of the B-2c zone (*Attachment I*). These include the following:

1. *Front Yard Maximum.* The B-2c zone establishes a front yard maximum of 10 feet, which the applicant continues to propose to exceed. At its closest point, the building is planned to sit 18 feet from the front property line (*Figure 5*). The ordinance does provide for an exception, stating that “the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable” (*Section 14-185*). The applicant has claimed in their site plan submittal that 72 Bishop is an irregularly shaped lot and that they have sited the building as close to the street as possible. The applicant writes,

“[t]he property is 50 feet wide at the property line and does not offer the ability to locate a 24 foot driveway and the primary building façade towards the street. Because of the low traffic volume entering the site and to allow the building to be as close to the road as possible, the driveway was designed as 20’ wide. The building is located as close as possible to the front property line (18’) to achieve the appearance of an active street front” (*Attachment I*).

The B-2 dimensional requirements also include a provision that, “[w]here setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by city arborist, and a combination of landscaping no less than 4 feet deep, ornamental brick or stone walls or ornamental fencing” (*Section 14-185*). In the revised submittal, the applicant has added perennials/groundcover, hackberry and red maple trees, and azaleas and daphnes in the space between the building and the street line in an effort to provide sufficient edge treatment in this location (*Figure 5*). The arborist has reviewed the plans and generally found them satisfactory. The applicant is requesting that the board approve the project with the proposed deviation from the front yard maximum of the B-2c.

2. *Residential Parking Requirement.* Division 20 of the land use ordinance requires one parking space per dwelling unit for residential development in the B-2, B-2b, and B-2c zones. At this ratio, the project would be required to provide 30 parking spaces for the 30 residential units. However, *Section 14-332.2(b)* of the ordinance also provides an exception for affordable housing, whereby “the planning board

may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one parking space per affordable housing unit, regardless of the size of the structure.” The applicant has proposed 12 spaces, less than the 30 technically required by ordinance, explaining that the project is expected to generate limited demand based on comparables from Avesta’s experience at Logan Place. The applicant’s traffic engineer, Gorrill-Palmer, writes that the parking demand at Logan Place is generally a product of staff, outside medical providers, and social workers. Given anticipated staffing levels at the Bishop Street Apartments, they estimate a total demand for the Bishop Street site of 11 spaces (*Attachment M*).

In his original review comments, Tom Errico, the city’s traffic engineer, assumed that the applicant would restrict tenant parking. At the board’s workshop in May, Avesta corrected this assumption, stating that tenant car ownership would not, in fact, be limited. In response, Mr. Errico has reconsidered Gorrill-Palmer’s parking demand estimates and revised his comments on the proposed parking supply, writing,

The applicant has requested a waiver from the City's Technical Standards as it relates to off-street parking requirements. Gorrill-Palmer has provided a summary of parking needs based primarily on staffing requirements. According to the analysis, 12 parking spaces will be sufficient for demand needs...

It is suggested that an annual monitoring report be provided to the Planning Authority as it relates to parking and automobile ownership by tenants and if parking demand cannot be accommodated on-site, the applicant shall identify strategies to manage parking conditions.

A condition of approval has been drafted to address this comment.

X. SITE PLAN SUBMISSION REQUIREMENTS (*Section 14-527*) and SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (*Section 14-496*)

In their final submittal, the applicant provided a revised survey in an attempt to address comments by Bill Clark, the city’s surveyor (*Attachment 2*). Mr. Clark’s comments on the revised survey were not available for publication in this report. In addition, the applicant has indicated that, due to the availability of the surveyor, a survey for the eastern end of Bishop Street could not be submitted prior to hearing. A final revised survey, addressing the comments of Mr. Clark, has been included as a condition of approval.

The applicant has noted that the grading plan will require revisions based on survey edits requested on the part of Mr. Clark. Thus, the review and approval of the revised grading plan has also been included as a condition of approval.

Mr. Clark, David Margolis-Pineo, of the city’s Department of Public Services, and Jen Thompson, Associate Corporation Counsel, have reviewed the draft subdivision plat and provided comments (*Attachments 2, 3, and 4*). The applicant has submitted a revised plat in an attempt to address these comments. Given additional changes which will be necessary following the planning board hearing, a final subdivision plat has been included as a condition of approval.

Lastly, the applicant has submitted a construction management plan in the final submittal (*Plan 25*). This plan depicts the location of construction fencing and a construction entrance, but contains no information about proposed work in the right-of-way to the east of the site. Mr. Errico has asked for revisions as a condition of approval. He writes,

The applicant has submitted a construction management plan for site work and I find it to be acceptable. A construction management plan for construction of the sidewalk will be required

and should be submitted for review and approval.

XI. SUBDIVISION REVIEW (Section 14-497(a))

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland's subdivision ordinance. Staff comments are below.

1. Water, Air Pollution

Currently, the vast majority of the site is covered in grass or low scrub brush, and drains to the wetlands to the south, which serve as the headwaters of the Capisic Brook, an urban impaired stream. The proposed development would result in an increase of over 19,000 SF in impervious surface and change drainage patterns on the site. All runoff is proposed to flow through treatment systems which will mitigate for both quality and quantity. David Senus, consulting civil engineer, has reviewed the stormwater management plan (*Attachment N*). Given the findings of this review, the proposal is not expected to generate undue air or water quality impacts.

2 & 3. Adequacy of Water Supply

The applicant has provided evidence of capacity from the Portland Water District (*Attachment G*).

4. Soil Erosion

The applicant has provided a soil survey noting that "soils on the site are representative of the urban environment," including "fill material, relic topsoil and glaciomarine deposits including silty clay." The geotechnical report recommends excavation of fill material and backfilling with compacted granular borrow below the development site. The project is not expected to cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition results.

5. Impacts on Existing or Proposed Highways and Public Roads

The applicant has provided a traffic study, prepared by Gorrill-Palmer Consulting Engineers. Tom Errico, the city's consulting traffic engineer, has reviewed this traffic study and provided comments, discussed in detail under site plan review below.

6. Sanitary Sewer/Stormwater Disposal

The applicant has provided a wastewater capacity letter from the Department of Public Services (*Attachment G*). A review of the proposed stormwater management system is discussed in detail below.

7. Solid Waste

The applicant has proposed an internal trash and recycling room for residential use and has stated that a private hauler will be contracted for the removal of solid waste. The application states that the "hauler will back into the driveway off of Bishop Street [and]...wheel container units to the truck." Given this, the development is not anticipated to cause a burden on the city's system.

8. Scenic Beauty

This proposal is not deemed to have an adverse impact on the scenic beauty of the area.

9. Comprehensive Plan

The applicant has provided a narrative regarding consistency with the city's comprehensive plan (*Attachment K*). Consistency with the comprehensive plan is discussed in more detail under site plan review below.

10. Financial and Technical Capacity

As noted above, the applicant has submitted a letter from Gorham Savings Bank indicating the intent to consider project financing (*Attachment H*). Letters attesting to the proficiency of Avesta Housing have also been provided (*Attachment H*).

11. Wetland/Water Body Impacts

Altogether, the proposed development would impact just over 3,000 SF of wetlands. The applicant has made efforts to minimize this impact by siting the building as far from the wetland as possible, proposing limited parking and thus limited pavement, and designing retaining walls rather than grading at the project's rear. As noted above, the applicant proposes to treat all stormwater proposed to enter these wetlands. This system and wetland impacts are discussed in detail below.

12. Groundwater Impacts

There are no anticipated detrimental impacts to groundwater supplies.

13. Flood-Prone Area

Per the city's existing flood maps, the development is not proposed in a flood zone.

XII. SITE PLAN REVIEW (Section 14-526)

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

1. Transportation Standards

a. Impact on Surrounding Street Systems

The applicant has provided trip generation, access, and crash analyses prepared by Tom Gorrill of Gorrill-Palmer Consulting Engineers (*Attachment M*). The Gorrill-Palmer study estimates trip generation based on data collected at Logan Place, which is managed by Preble Street in much the same fashion as is anticipated at Bishop Street. Based on the Logan Place data, Gorrill-Palmer estimates a total of 13 AM peak hour and 11 PM peak hour vehicular trip ends to/from the site, mostly as a product of staff. Preble Street, who will provide services at the building, has written that all tenants will be afforded bus passes, that Preble Street has an account with Elite Taxi for emergency use, and that many clients will qualify for subsidized paratransit service. Given the low anticipated traffic volumes, no vehicular level of service analysis for area intersections was conducted.

Mr. Errico has reviewed the trip generation estimates and provided the following comments,

I have reviewed the traffic generation estimate prepared by Gorrill-Palmer and concur with the estimate that approximately 13 trips are projected to be generated during the AM peak hour and 11 trips during the PM peak hour. Based upon this level of traffic, I do not expect the project to have a significant impact to traffic safety and operations in the study area. It should be emphasized that while the tenants of the project are not expected to own cars, it is expected that they will be using the proposed sidewalk to gain access to METRO buses at Forest Avenue and general commercial land uses in the area.

It should be noted that, during the workshop, one neighbor expressed concerns regarding traffic safety on Bishop Street. With respect to vehicular traffic safety, the Gorrill-Palmer study pulled crash data from the area, including Morrill's Corner and the intersection of Bishop Street and Warren Avenue. Mr. Errico writes,

The crash data provided by the applicant notes that the Morrill's Corner intersection(s) had significant crashes over the report 2011 to 2013 three-year period. While the Forest Avenue/Stevens Avenue/Bishop Street intersection was not classified as a High Crash Location, it still had 30 reported crashes. The Forest Avenue/Allen Avenue intersection is a High Crash Location and had 53 reported collisions. Given that the project is not generating a significant amount of traffic, I do not expect safety conditions to be exacerbated.

b. *Access and Circulation*

As a corollary to the low vehicular trip generation noted above, the development poses the potential to generate significant pedestrian traffic. In fact, the relatively limited parking supply proposed by the applicant virtually guarantees a larger than average pedestrian mode share. Further, it should be noted that, during the associated zone change review, pedestrian access to goods, services, and transit connections at Morrill’s Corner formed a central component of the applicant’s argument for the selection of this site for the purposes of housing. During that review, the board questioned the applicant regarding the adequacy of pedestrian access from the site to both businesses and public transportation. In reports to the board, Mr. Errico noted the lack of sidewalk on Bishop Street and stated that, at the time of development, "a sidewalk system, without gaps, should be provided between uses on Bishop Street and Forest Avenue." It should also be reiterated that, during the board workshop on this matter, neighbors expressed concerns regarding pedestrian safety on Bishop Street.

In response to Mr. Errico’s comments, the applicant previously provided preliminary plans showing a proposed sidewalk extending for approximately 500’ east of the site on the south side of Bishop Street to the location of a short segment of existing sidewalk at 12 Bishop Street (*see proposed sidewalk as blue line in Figure 6*). This plan left what currently exists as a 125 foot open curb cut at the corner of Bishop Street and Stevens Avenue adjacent to the property at 2-10 Bishop Street (*see purple line in Figure 6*). Staff notified the applicant prior to the planning board workshop that they would be required to provide a sidewalk in this location and thus extend the sidewalk all the way to Forest Avenue/Stevens Avenue, as stated during the zone change review. At the workshop, the applicant argued that they shouldn't be required to complete this last sidewalk segment, citing the cost implications.

At the request of the board and in the time since the workshop, staff has engaged the applicant in an attempt to resolve this outstanding issue. In order to soften the financial impact of the sidewalk construction, DPS staff offered the applicant recycled granite curbing at the city's reduced price for both the outstanding sidewalk segment as well as the entire stretch of proposed sidewalk from the site to Forest Avenue/Stevens Avenue. Ultimately, in their July 9 response to comments, the applicant agreed “to construct the last section of sidewalk (continuous open curb cut section)” (*Attachment X*). They noted, “[w]e have had initial discussions with City staff concerning the potential of the City providing the used granite required for this added section of sidewalk and will continue to have discussion as the design of the sidewalk improvements are finalized.” Given the timing of this resolution, the design and construction of the entire sidewalk, from 72 Bishop Street to Stevens Avenue/Forest Avenue, has been drafted as a condition of approval.



Figure 6: Bishop Street sidewalk to Morrill’s Corner as proposed by applicant (blue) and requested by staff (blue and purple)

Regarding the sidewalk plans, it should also be noted that, as currently designed, the installation of the sidewalk will require both temporary construction and permanent grading easements. Mr. Margolis-Pineo writes,

It is recommended that as a condition of approval, the applicant be required to obtain all necessary construction easements to complete this project.

In their final submittal, the applicant states that they have “met with the abutters to review the design of the sidewalk and the need to obtain grading easements along their respective frontages” (*Attachment X*). DPS and planning staff have offered to facilitate the development of these easements.

With respect to on-site circulation, staff has reviewed the layout of pedestrian access and generally found it acceptable. Vehicular access is proposed via a 20’ curb cut from Bishop Street. Mr. Errico has reviewed the driveway layout and found it acceptable.

c. Public Transit Access

The proposed development is not located along a public transit route (*Figure 7*). As such, no provisions for transit access are required on the site. The proposed sidewalk to Morrill’s Corner, assuming it extends to Stevens Avenue, will serve as a pedestrian connection to existing transit service. At the board’s request, staff has approached Metro regarding current plans to rearrange existing bus stops at Morrill’s Corner. No response was received from Metro prior to the publication of this report. Bruce Hyman, the city’s Transportation Program Manager, is pursuing the potential for relocating bus stops with Metro.

d. Parking

As noted under the zoning review above, Division 20 of the land use ordinance requires one parking space/unit for residential development located in the B-2, B-2b, or B-2c zone, but the applicant has

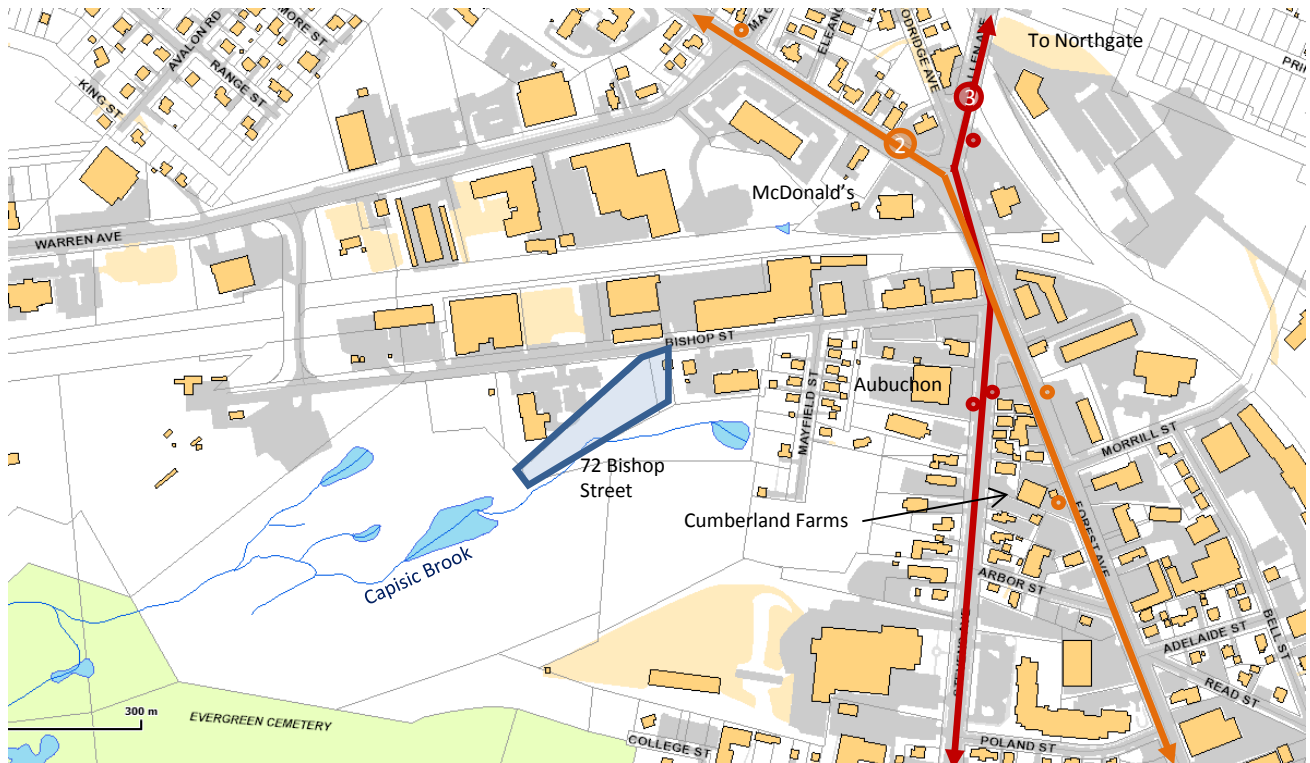


Figure 7: Existing transit service, Morrill’s Corner

requested an exception under the affordable housing provisions of the land use ordinance. Mr. Errico has generally expressed his support, suggesting a condition as noted above. Mr. Errico has also reviewed the parking lot layout and driveway condition and found them acceptable.

The final plans include 6 bicycle racks providing 12 bike parking spaces. All of these are located on private property, as the right-of-way in front of the site is constrained. One of these racks is proposed at the building's front; the other five are at the side or rear. The 12 spaces proposed meet the site plan standard of two spaces/five dwelling units for residential structures.

e. Transportation Demand Management

A transportation demand management plan is not required. However, as noted above, the project has been designed to incorporate some transportation demand management strategies, including paratransit services and transit subsidies.

2. Environmental Quality Standards

a. Preservation of Significant Natural Features

As noted previously, the Capisic Brook crosses onto the southwestern corner of the site. This segment of the Capisic is often cited by the Department of Public Services as one of the city's cleanest water resources; the *Capisic Brook Watershed Management Plan*, which was published in 2012, documents results of a 2003 monitoring program which determined that the east tributary of the Capisic, which roughly parallels Bishop Street here, met Class C water quality standards. Doug Roncarati, of the city's Department of Public Services, has reported that staff from the Maine Department of Environmental Protection have found that water quality in this segment of the brook has actually improved since the 2003 monitoring program and now meets Class A water quality standards (*Attachment 3*).

Given this, there are concerns about stream impacts and wetland disturbance on the site. The applicant has made efforts to site the building over 75 feet from the stream, minimize wetland disturbance to just over 3,000 SF, and develop adequate plans to treat stormwater prior to discharge. In their revised submittal, the applicant states that "the proposed infrastructure to treat stormwater quality exceeds DEP Chapter 500 standards for an urban impaired stream as well as the expectation for preserving the Capisic Brook Watershed" (*Attachment U*). In addition to reviewing the stormwater treatment system, discussed below, Mr. Sensus has reviewed wetland impacts and spoken to the Maine DEP's and Army Corps of Engineers' review of the wetland impacts of the proposal,

The Applicant has noted that an NRPA Tier 1 Permit Application and an ACOE Category 1 Permit Application will be submitted to the MaineDEP and ACOE, respectively, and that copies of the applications will be submitted under separate cover; copies of the permit approvals should be provided upon receipt.

A condition of approval has been drafted in this regard.

Similarly, it should be noted that a peer review conducted in 2007 by Call of the Wild Consulting and Environmental Services for the Gullivers Field area immediately south of Bishop Street found that that site provides "very significant migratory passerine (songbird) stopover habitat for both the spring and fall migrations. In fact, this area is a premier destination site for spring birding because of the large variety of bird species and numbers." The review concludes, "this area is a well-documented, important ecological area in Portland that Call of the Wild recommends permanent protection [sic]..." The applicant has made efforts to minimize the impact of the development on the forested area around the wetlands at the property's rear. At the request of Jeff Tarling, the city's arborist, the applicant has added a note on the site and landscaping plans stating that the contractor will demarcate tree saves and wetland protection areas prior to construction.



Figure 9: 72 Bishop Street, existing vegetation as seen from the north, with Gullivers Field at rear

b. Landscaping and Landscape Preservation

As noted above, the site is currently forested at rear around the Capisic Brook and associated wetlands (Figure 9). In the final plans, the applicant proposes to preserve a considerable amount of this forested area, including existing vegetation on the eastern and southwestern sides of the site. The applicant has revised the proposed landscaping on the UNE property

line to include native plantings, as requested by Mr. Tarling; added plantings at the street edge, as noted above; and added understory plantings along the building's east facade. The applicant also continues to propose understory plantings at the rear of the building.

In the workshop memo, staff commented on the location of the plantings, requesting that the applicant consider adding or relocating some of the understory landscaping to the western side of the building to buffer the development from the adjacent Masonic Lodge parking area. The revised plans continue to show the elimination of two existing trees and no new landscaping in this location, as this area is constrained in size and proposed with a vegetated soil filter. At the suggestion of the arborist, the revised plans do depict four trees in the right-of-way in front of the Masonic Lodge as a means of softening this perspective on the building. The applicant has stated that these trees could be relocated to the Mason's property adjacent to the site contingent on an agreement with the Mason's. Staff has drafted a condition of approval suggesting that the treatment of this western side of the building be resolved for review and approval by the arborist.

The applicant has requested a waiver from the street tree provisions of the ordinance, which require that a proposal include street trees at a ratio of one per unit planted in the right-of-way at 30 – 45 feet on center. The site plan ordinance includes language which allows the planting of street trees in the front yard within 10 feet of the property line in cases when site constraints prevent planting in the right-of-way. Two of the applicant's trees fall within this range, and, as previously discussed, the applicant has also proposed four additional trees in the right-of-way in front of the Masonic Lodge to the site's west. DPS staff has indicated that this location is acceptable and, assuming they remain, that they should be counted toward the street tree requirement. Contributions to the tree fund for the remaining 24 trees will be required.

c. Water Quality/Storm Water Management/Erosion Control

The applicant has submitted a revised stormwater management narrative by Ransom Consulting which describes the plan to treat the stormwater from 19,000 SF of additional impervious surface through the use of paver drain and filtered roof drain systems, both of which would lead to R-Tanks for storage and ultimately outlet near the wetlands at rear. Mr. Senus has reviewed the narrative and the associated stormwater plans and has no outstanding comments. It should be noted that, as the project lies within the

watershed of an urban impaired stream, the applicant will be required to make an in-lieu compensation fee payment of \$1,927. This has been included as a condition of approval.

3. Public Infrastructure and Community Safety Standards

a. Consistency with Related Master Plans

As noted above, the project is generally deemed consistent with related master plans, especially those plans addressing the need for affordable housing. *Housing: Sustaining Portland's Future* highlights the need for supportive housing with a goal particularly targeted towards this housing type. The housing plan recommends that the city should “[e]ncourage proposals from developers that will transition homeless families and individuals out of emergency shelters and transitional facilities into permanent housing, including single room occupancy (SRO) units.” In addition, the report of the city’s Homelessness Prevention Task Force, issued in November 2012, includes recommendations designed to address the city’s issues with homelessness, many of which apply here. Among these, the report recommends “a focus on providing appropriate permanent housing and support in the community for individuals, families, and youth as quickly as possible...Meeting this goal will...require constructing three new housing first units consisting of 35 units each and appropriate supports for people who are chronically homeless (4).”

b. Public Safety and Fire Prevention

At prior meetings related to the related zone change request, responding to neighborhood concerns, board members requested that the applicant provide information related to the potential security and safety impacts of the proposed development. Board members asked explicitly for police department data related to security around Avesta’s existing Housing First developments. The applicant provided a testimonial from Vernon Malloch of the Portland Police Department regarding Logan Place, stating that “Logan Place has successfully served as a tested model with no significant impact on the surrounding neighborhood” (*Attachment S*), but the board stressed the importance of additional information.

In response, the Portland Police Department provided an analysis of calls for service at Logan Place between 2005 and 2014 (*Attachment T*). The analysis includes explanations of the number of calls of various types, including, most prominently, refusing to leave/bothering and behavioral complaints. The memo also addresses drug-, assault-, and weapons-related calls, noting that many of these involved false alarms or repeat violators. The memo states that “few calls [at Logan Place] resulted in police reports or arrests. None of the [calls for service] were for serious crime types,” and concludes that “[w]e can anticipate an increase in police calls for service with development of any otherwise vacant parcel. Housing of the chronically homeless as takes place at Logan Place further increases the likelihood of an increase. Data review suggests there has been no negative impact on the neighborhood from a public safety standpoint. Other reports and studies have shown the population targeted for housing in this model draw significantly more police resources when they are homeless.” The applicant has provided references for these studies in their revised submittal (*Attachment V*).

Given the concerns about public safety and security on site, the applicant has generally made efforts to use site design to balance issues regarding natural surveillance and visual impacts to adjacent residential properties. In the final submittal, the applicant has indicated that there will be building-mounted surveillance cameras for monitoring the exterior seating area at the site’s rear. The applicant has also provided a photometric plan meeting the city’s technical standards (*Plan 24*).

With respect to fire prevention, the applicant proposes to provide 6” water service from Bishop Street for the building’s internal sprinkler system. An existing hydrant is located just to the east of the site entrance. At the request of Keith Gautreau, of the city’s Fire Prevention Bureau, the applicant has added ‘No Parking Fire Lane’ signs adjacent to the striped areas of the parking lot. Fire has indicated their general approval.

c. *Availability and Capacity of Public Utilities*

The applicant has proposed to bring water for both fire suppression and domestic service from a 12” water main in Bishop Street. Sewer will be serviced from an existing 8” line in Bishop Street and natural gas will be supplied from an existing 8” line in Bishop Street. The applicant has provided capacity letters for both water and sewer (*Attachment G*). Electrical, telephone, and cable service is proposed via a pole from Bishop Street to the west of the site. This arrangement requires an easement from the direct abutter, the Masonic Lodge. The applicant has contacted the abutter in an effort to reach an agreement regarding this easement. A condition of approval has been drafted in this regard.

4. Site Design Standards

a. *Massing, Ventilation, and Wind Impact*

No comments.

b. *Shadows*

No comments.

c. *Snow and Ice Loading*

The applicant has indicated in their preliminary submittal that they would contract with a private plow company to maintain the driveway and sidewalk in the event of snow. Snow storage is depicted at the southwest edge of the parking lot in the plans. The applicant has stated explicitly that snow will not be placed in the adjacent wetland, and has added a note to the plat to indicate this.

d. *View Corridors*

There are no comments.

e. *Historic Resources*

There are no comments.

f. *Exterior Lighting*

The applicant has provided a photometric plan and cut sheets for all exterior lighting (*Plan 24 and Attachment P*). The photometric plan shows no light trespass, and all fixtures meet the city’s *Technical Manual* standards.

g. *Noise and Vibration*

No comments.

h. *Signage and Wayfinding*

No signage or wayfinding is proposed at this time.

i. *Zoning-Related Design Standards*

In the final submittal, the applicant has provided context drawings as requested by the board (*Plans 20-23*). These drawings depict the proposed building within the context of both existing development as well as potential development as allowed by the recent rezoning. The images also show the design from front and rear.

Planning staff reviewed the plans and drawings for conformance with the multi-family design standards (*Design Manual, Section (i)*). Caitlin Cameron, the city’s urban designer, documented the findings of the review, writing,

Standard 1 – The surrounding context tends to be more commercial in use and character. Additionally, the neighboring residential context is most often single-family or other small-scale buildings. Therefore, the multi-family, large-scale building proposed is not

the same type of residential project and is therefore not able to have the same character. The project uses a mix of building materials that, in combination with the fenestration, projections, and the varying forms and roof lines, provide positive visual interest as stipulated in the Standard.

Standard 2 – A building in a B-2 zone should contribute to the street wall. However, this property has an usual lot configuration and very little frontage. As such, it is understandably difficult to build to the street. The principal entry is relatively close to the street and provides good visibility. A direct pedestrian path is provided from the sidewalk to the main entry.



Figures 10 and 11: Bishop Street Apartments in context from front and rear.

Standard 3 – The project provides a garden space and screening and landscaping elements as required by the Standard. The outdoor seating area is screened from neighboring parking lots with a 6' solid wood fence. A 42" wood picket fence separates the wetland area from the seating area. Consider providing additional landscaping/screening to the Northwest property line to buffer dwelling units from the neighboring parking lots.

Standard 4 – Overall the project has a high level of fenestration to provide resident access to light and air. Storage is provided.

Standard 5 – Parking is well screened and positioned away from the street.

Standard 6 – Not Applicable

It should be noted that previous comments from staff related to the treatment of the building bays has been resolved with no change to the building elevations.

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the planning board approve the proposed Bishop Street Apartments at 72 Bishop Street.

XIV. PROPOSED MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on July 14, 2015 for application 2015-060 relevant to Portland's technical and design standards and other regulations; and the testimony presented at the planning board hearing:

1. The Planning Board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees. The planning board **waives/does not waive** the site plan standard (*Section 14-526(b)(iii)*) requiring on street tree per unit for multi-family development and concludes that the applicant shall make a financial contribution of \$4,800 for 24 trees to Portland's tree fund.

B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on July 14, 2015 for application 2015-060 relevant to the subdivision regulations; and the testimony presented at the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following condition of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority.

C. DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on July 14, 2015 for application 2015-060 relevant to the site plan regulations; and the testimony presented at

the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the site plan standards of the land use code, subject to the following conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. Beginning one year following certificate of occupancy, the applicant shall submit an annual report documenting tenant automobile ownership and parking demand, as well as measures to manage parking conditions as necessary, for review and approval by the Planning Authority;
2. The applicant shall submit a revised survey for review and approval by the city's Department of Public Services;
3. The applicant shall submit a revised grading plan for review and approval by the city's Department of Public Services;
4. The applicant shall submit a revised construction management plan which addresses the installation of the proposed sidewalk on the south side of Bishop Street to Stevens Avenue for review and approval by the Department of Public Services;
5. The applicant shall submit plans for, obtain all necessary easements related to, and construct a sidewalk on the south side of Bishop Street from 72 Bishop Street to Forest Avenue/Stevens Avenue, including the easternmost section abutting 2-10 Bishop Street, for review and approval by the Department of Public Services;
6. The applicant shall provide copies of associated permits from Maine DEP and the Army Corps of Engineers for review and approval by the Planning Authority;
7. The applicant shall submit a revised landscaping plan which addresses the treatment of the western side of the building for review and approval by the city arborist;
8. As this development falls within the watershed of an urban impaired stream, the Capisic Brook, the applicant shall make an in-lieu compensation fee payment of \$1,927 for review and approval by the Planning Authority; and
9. The applicant shall obtain a utility easement from the Masonic Lodge for review and approval by the Planning Authority.

XV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Traffic Engineer review (memo from Thomas Errico, 6/25/15)
2. Survey review (memo from Bill Clark, 6/1/15)
3. Department of Public Services review (memo from David Margolis-Pineo, 5/12/15)
4. Corporation Counsel Review (memo from Jennifer Thompson, 6/5/15)
5. Civil Engineer review (memo from David Senus, 6/12/15)
6. Design review (memo from Caitlin Cameron, 6/29/15)

APPLICANT'S SUBMITTALS

- A. Cover Letter (from Bob Metcalf, Mitchell & Associates, 4/10/15)
- B. Development Review Application, Project Data, and Checklist
- C. Right, Title, or Interest
- D. Project Description, Project Data, and Maps
- E. Abutting Property Owners

- F. Existing Soils Condition
- G. Public Utilities
- H. Technical Capability, Financial Capability, and Letter of Authorization
- I. Compliance with Applicable Zoning
- J. Waiver Request
- K. Consistency with City's Master Plan and Conformity with Design Standards
- L. Fire Department Checklist and HVAC Emissions Requirements
- M. Traffic and Parking Study
- N. Stormwater Management Plan
- O. Solid Waste Disposal and Snow Removal
- P. Light Fixtures
- Q. Environmental Quality Standards
- R. Letter from PDD
- S. PDD Calls for Service Analysis
- T. Neighborhood Meeting Minutes
- U. Cover Letter (from Bob Metcalf, Mitchell & Associates, 5/22/15)
- V. Supplemental Staffing Memo/Description of Services
- W. Cover Letter (from Bob Metcalf, Mitchell & Associates, 6/23/15)
- X. Cover Letter (from Bob Metcalf, Mitchell & Associates, 6/9/15)

PLANS

- Plan 1. Boundary & Topographic Survey
- Plan 2. Existing Conditions Plan
- Plan 3. Layout and Lighting Plan
- Plan 4. Grading, Drainage, and Utilities Plan
- Plan 5. Planting Plan
- Plan 6. Site Details
- Plan 7. Site Details
- Plan 8. Site Details
- Plan 9. Bishop Street Sidewalk Plan
- Plan 10. Erosion & Sedimentation Control Plan
- Plan 11. Draft Plat Plan
- Plan 12. Pre-Development Stormwater Plan
- Plan 13. Post-Development Stormwater Plan
- Plan 14. First Floor Plan
- Plan 15. Second Floor Plan
- Plan 16. Third Floor Plan
- Plan 17. Roof Plan
- Plan 18. Roof Drain Downspout Locations
- Plan 19. Exterior Elevations
- Plan 20. Existing Context Aerials
- Plan 21. Proposed Context Aerials
- Plan 22. Proposed Context from Bishop Street
- Plan 23. Proposed Context from Rear
- Plan 24. Photometric Plan
- Plan 25. Construction Management Plan

PUBLIC COMMENT

- PC-1. Email from Michael Joyce (5/26/15)



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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	PUBLIC			PRIVATE		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL							
Silt Fence	_____	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at

_____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$_____ [amount of performance guarantee] on behalf of _____ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on _____ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ [insert: subdivision and/ or site improvements (as applicable)] approval, dated _____ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship;
or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ****Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

- Attach the approval letter, condition of approval or other documentation of the required contribution.
- One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project

CHAPTER 32 STORM WATER

Art. I. Prohibited Discharges, §§ 32-1--32-15

Art. II. Prohibited Discharges, §§ 32-16--32-35

Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

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

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

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

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

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

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

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

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

Municipality. "Municipality" means the city of Portland.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

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

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

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

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

Sec. 32-17. Responsibility for administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-20. Monitoring of discharges.

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

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

Sec. 32-21. Enforcement.

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

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

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

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

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

Sec. 32-22. Severability.

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

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

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

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

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

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

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

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

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

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

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

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

Sec. 32-39. Enforcement.

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

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

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

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

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

Sec. 32-40. Severability.

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

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

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

For SUBDIVISIONS

IN CONSIDERATION OF the site plan and subdivision approval granted by the Planning Board of the City of Portland to the proposed _____ (name of developments and project number) shown on the Subdivision Plat (Exhibit A) recorded in Cumberland Registry of Deeds in Plan Book ____, Page ____ submitted by _____, and associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit B) prepared by _____ (engineer/agent) of _____(address) dated and pursuant to a condition thereof, _____ (name of owner), a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of _____, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

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

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

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

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

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

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

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

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

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

Dated at Portland, Maine this _____ day of _____, 2014.

(name of company)

(representative of owner, name and title)

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

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

Before me,

Notary Public/Attorney at Law

Print name: _____

Exhibit A: Subdivision Plat as recorded

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

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement