
City of Portland Major Development Review Application

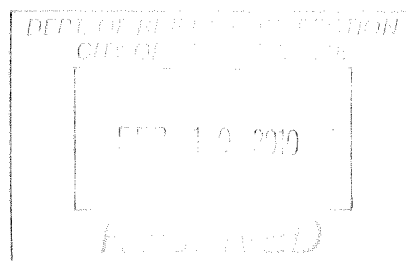
**Maine Yacht Center
Portland, Maine**

Submitted to:

*City of Portland, Maine
Planning Division
February 5, 2010*

Prepared by:

**Blais**
civil engineers
780 Broadway
South Portland, Maine 04106
(207) 767-7300



February 5, 2010
BCE File: 09112

City of Portland
Department of Planning and Urban Development
389 Congress Street
Portland, ME 04101

**Re: Major Development Review Application-Maine Yacht Center,
100 Kensington Street**

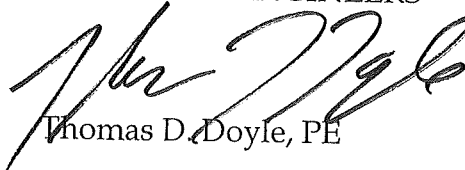
Dear Sir/Madam:

On behalf of Maine Yacht Center, we are pleased to submit the enclosed Major Development Review Application for the proposed boat storage area located off Kensington Road.

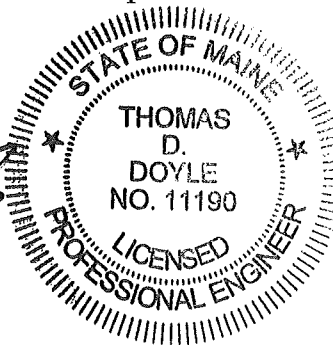
Please review the attached application, associated documents, and drawings and call us if you have any questions or require further information.

Sincerely,

BLAIS CIVIL ENGINEERS



Thomas D. Doyle, PE



encl:

1. Seven (7) copies of the following:
 - a. Development Review Application and attachments; and
 - b. Plan Set.
2. One (1) copy of Plan Set (11x17).
3. \$100 (Fee Difference between Minor & Major Development) Fee Check

cc: Brian Harris - Maine Yacht Center
Lawrence Clough, Tompkins, Clough, Hirshon & Langer, P.A.
File

Cover sheet

Cover Letter

1. Major Development Review Application and Site Plan Checklist
2. Neighborhood Meeting Certification
3. Deed Information and Conditional Zone Agreement
4. Written Statements
5. Easement Information
6. MNAP, Inland Fisheries & Wildlife, MHPC, Maine Clean Harbors Program and DEP VRAP- Cert. of Completion Letters
7. Stormwater Report/Soils & Site Information
8. Financial and Technical Capacity



Development Review Application
PORTLAND, MAINE

Department of Planning and Urban Development,
Planning Division and Planning Board

PROJECT NAME: Maine Yacht Center

PROPOSED DEVELOPMENT ADDRESS:

100 Kensington Street

PROJECT DESCRIPTION:

Addition of parking area for outside boat storage.

CHART/BLOCK/LOT: Tax Map 429, Block G, Lots 1-7 & Tax Map 430, Block E, Lots 1-4

CONTACT INFORMATION:

APPLICANT

Name: Brian Harris
Address: 100 Kensington St.
Portland, ME
Zip Code: 04103
Work #: 207-842-9000
Cell #: 207-749-4294
Fax #: _____
Home: _____
E-mail: brian@maineyacht.com

PROPERTY OWNER

Name: Maine Yacht Center LLC
Address: (Same as Applicant)
Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

BILLING ADDRESS

Name: Maine Yacht Center
Address: (Same as Property Owner)
Zip: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

Name: Thomas Doyle
Address: 780 Broadway
South Portland, ME
Zip Code: 04106
Work #: 207-767-7300
Cell #: _____
Fax #: _____
Home: _____
E-mail: tdoyle@blaisce.com

ARCHITECT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

CONSULTANT

Name: Blais Civil Engineers
Address: (Same as Engineer)

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: Lawrence R. Clough
Address: 3 Canal Plaza, P.O. Box 15060
Portland, ME
Zip Code: 04112-5060
Work #: 207-874-6700
Cell #: _____
Fax #: 207-874-6705
Home: _____
E-mail: lclough@tchl.com

PROJECT DATA

The following information is required where applicable, in order complete the application

Total Site Area	49,073	sq. ft.
Proposed Total Disturbed Area of the Site	49,073	sq. ft.

(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)

IMPERVIOUS SURFACE AREA

Proposed Total Paved Area	0	sq. ft.
Existing Total Impervious Area	18,790	sq. ft.
Proposed Total Impervious Area	39,152	sq. ft.
Proposed Impervious Net Change	20,362	sq. ft.

BUILDING AREA

Existing Building Footprint	1,600	sq. ft.
Proposed Building Footprint	0	sq. ft.
Proposed Building Footprint Net change	-1,600	sq. ft.
Existing Total Building Floor Area	1,600	sq. ft.
Proposed Total Building Floor Area	0	sq. ft.
Proposed Building Floor Area Net Change	-1,600	sq. ft.
New Building	no	(yes or no)

ZONING

Existing	R-3
Proposed, if applicable	Conditional / Contract I-L

LAND USE

Existing	Partially Developed
Proposed	Parking Area

RESIDENTIAL, IF APPLICABLE

Proposed Number of Affordable Housing Units	N/A
Proposed Number of Residential Units to be Demolished	N/A
Existing Number of Residential Units	N/A
Proposed Number of Residential Units	N/A
Subdivision, Proposed Number of Lots	N/A

PARKING SPACES

Existing Number of Parking Spaces	0
Proposed Number of Parking Spaces	18
Number of Handicapped Parking Spaces	0
Proposed Total Parking Spaces	18

BICYCLE PARKING SPACES

Existing Number of Bicycle Parking Spaces	N/A
Proposed Number of Bicycle Parking Spaces	N/A
Total Bicycle Parking Spaces	N/A

ESTIMATED COST OF PROJECT

Please check all reviews that apply to the proposed development

Design Review	<input checked="" type="checkbox"/>	Stormwater Quality	
Flood Plan Review	<input type="checkbox"/>	Traffic Movement	
Historic Preservation	<input type="checkbox"/>	Zoning Variance	
Housing Replacement	<input type="checkbox"/>	Historic District/Landmark	
14-403 Street Review	<input type="checkbox"/>	Off Site Parking	
Shoreland	<input type="checkbox"/>	Multi-Family Dwelling	
Site Location Act Local Review	<input type="checkbox"/>	B-3 Pedestrian Activity Review	
Single Family Dwelling	<input type="checkbox"/>	Change of Use	
2 Family Dwelling	<input type="checkbox"/>		

APPLICATION FEE:

Check all reviews that apply. Payment may be made in cash or check to the City of Portland.

<p>Major Development (more than 10,000 sq. ft.)</p> <p><input checked="" type="checkbox"/> Under 50,000 sq. ft. (\$500.00)</p> <p><input type="checkbox"/> 50,000 - 100,000 sq. ft. (\$1,000.00)</p> <p><input type="checkbox"/> Parking Lots over 100 spaces (\$1,000.00)</p> <p><input type="checkbox"/> 100,000 - 200,000 sq. ft. (\$2,000.00)</p> <p><input type="checkbox"/> 200,000 - 300,000 sq. ft. (\$3,000.00)</p> <p><input type="checkbox"/> Over 300,000 sq. ft. (\$5,000.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 plus applicable application fee)</p>	<p>Plan Amendments:</p> <p><input type="checkbox"/> Planning Staff Review (\$250.00)</p> <p><input type="checkbox"/> Planning Board Review (\$500.00)</p> <p>Subdivision:</p> <p><input type="checkbox"/> Subdivision (\$500.00) + amount of lots _____ (\$25.00 per lot) \$ _____ + (applicable Major site plan fee)</p>
<p>Minor Site Plan Review</p> <p><input type="checkbox"/> Less than 10,000 sq. ft. (\$400.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 plus applicable application fee)</p>	<p>Other Reviews</p> <p><input type="checkbox"/> Site Location of Development (\$3,000.00) (except for residential projects which shall be \$200.00 per lot _____)</p> <p><input type="checkbox"/> Traffic Movement (\$1,000.00)</p> <p><input type="checkbox"/> Stormwater Quality (\$250.00)</p> <p><input type="checkbox"/> Section 14-403 Review (\$400.00 + \$25.00 per lot)</p> <p><input type="checkbox"/> Other _____</p>

DEVELOPMENT REVIEW APPLICATION SUBMISSION

Submissions shall include seven (7) packets with folded plans containing the following materials:

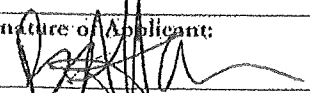
1. Seven (7) full size site plans that must be folded.
2. Application form that is completed and signed.
3. Cover letter stating the nature of the project.
4. All Written Submittals (Sec. 14-525.2 (c), including evidence of right, title and interest.
5. A stamped standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 100 feet.
6. Plans and maps based upon the boundary survey and containing the information found in the attached sample plan checklist.
7. Copy of the checklist completed for the proposal listing the material contained in the submitted application.
8. One (1) set of plans reduced to 11 x 17.

Refer to the application checklist (page 9) for a detailed list of submittal requirements.

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 14) which includes the Subdivision Ordinance (Section 14-491) and the Site Plan Ordinance (Section 14-521). Portland's Land Use Code is on the City's web site: www.portlandmaine.gov. Copies of the ordinances may be purchased through the Planning Division.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

This application is for site review only; a Performance Guarantee, Inspection Fee, Building Permit Application and associated fees will be required prior to construction.

<p>Signature of Applicant:</p> 	<p>Date:</p> <p>2/4/10</p>
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✓	_____	* An estimate of the time period required for completion of the development	7
✓	_____	* A list of all state and federal regulatory approvals to which the development may be subject to, the status of any pending applications, anticipated timeframe for obtaining such permits, or letters of non-jurisdiction.	8
✓	_____	* Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved.	
✓	_____	* Evidence of applicant's right title or interest, including deeds, leases, purchase options or other documentation.	
✓	_____	* A description of any unusual natural areas, wildlife and fisheries habitats, or archaeological sites located on or near the site.	
✓	_____	A jpeg or pdf of the proposed site plan, if available.	
✓	_____	Final sets of the approved plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.	

Note: Depending on the size and scope of the proposed development, the Planning Board or Planning Authority may request additional information, including (but not limited to):

- | | |
|--|---|
| <ul style="list-style-type: none"> - drainage patterns and facilities - erosion and sedimentation controls to be used during construction - a parking and/or traffic study - emissions - a wind impact analysis | <ul style="list-style-type: none"> - an environmental impact study - a sun shadow study - a study of particulates and any other noxious - a noise study |
|--|---|

Neighborhood Meeting Certification

I, (applicant/consultant) hereby certify that a neighborhood meeting was held on (date) at (location) at (time).

I also certify that on (date at least seven days prior to the neighborhood meeting), invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development or within 1000 feet of a proposed development in an industrial zone and the residents on the "interested parties" list.

Signed,



9/28/09 (date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

Neighborhood Meeting Minutes

Maine Yacht Center 9/23/09

Engineer Steve Blais arrives at 5:20 to start setting up drawings & enlarged photos.

Several people start to trickle in and sign-in for meeting by 5:35pm.

Brian begins speaking, introduces parties @ 5:40pm:

We are trying to rezone upper lot where white house from R3 to IL with a contract zone for specific use.

With pictures Brian explains the area in which we are trying to rezone.

What we would like to do is tear down house, remove maple trees, level and gravel to lot to use area in winter for boat storage and spring/summer for overflow parking.

Attendee asked if trailer storage was going to occur in summer.

Response: Trailer storage would not happen in summer months, just in winter.

Attending: What do you need this space for?

Attendee: Storage and maintenance there?

Response: Yes that is correct in accordance with EPA and with guidelines set by MMTA

Attendee: What are guidelines?

Brian: Rules and regs are in our contract and explain how all our customers have to sign contract and they are responsible to operate and work with in terms of contract.

Attendee: Where will maintenance be occurring?

Response: Major refits & major maintenance work will occur inside the building. The idea of this expansion is not to create a "do it yourself yard" not direction we are going in.

Attendee: Do you have to take the trees down?

Response: Yes, because we are required to create storm water run-off area, the trees are in the area the lot naturally grades to so topography places the retention area right where the trees are.

Attendee: Trees do awful lot to add to neighborhood, did you investigate putting storm drainage elsewhere so it won't remove trees.

Steve Blais responds: We looked at many different options and the location of the retention area and its profile are the best solution. They facility currently has a Voretechnics underground filtration system for storm water run off but these systems are no longer recongnized by the State or the City.

Attendee: What part will be paved?

Steve shows on the diagrams where the areas will be and where it will need to be treated.

Steve explains what materials are considered pervious and impervious to a raindrop.

Attendee: Will you be increasing slips?

Response: Original permit allows us to increase more slips but at this time we have no intention of increasing slips at this time.

Noise issue: Some people were concerned about noise of trailer several other attendees chimed in that it would create no more noise than dogs barking in the neighborhood or lawn mower or leaf blower.

Attendee: Concerns of boat work going on and fire concerns> > What do we have for fire suppression up in boat storage area.....

Brian: There is a hydrant and the majority of boats will be up there in fall and then shrink-wrapped and nothing will be done on them until spring.

Attendee: Gated or wide open.

Three will be landscaped trees, but no security gate to keep people out.

Attendee: Discussing problems at other yards and uncleanness of yards in South Portland and hoping the same doesn't happen here that occurs at yards like Aspasia & South Port with boat racks.

Attendee: Are you considering boat racks?

Response: No rack storage at all...

Attendee: Have you entertained anything to improve the aesthetics and don't want to be confused they are going to neighborhood.

Response: Explain the screening & landscape plan.

Steve and Brian bring out the diagrams to show what the aesthetic plan and landscaping will look like & entertain suggestions.

Attendee: Complains that steel building takes away the view of ocean as they drive down Kensington...

Another attendee Mike Flaherty interjects: MYC has improved the neighborhood from Webber Oil days and you can enjoy this area and it has actually enhanced the property value from oil trucks days and brought new value> Another attendee Kevin Noone also agrees and says that he much prefers it and there is very little traffic/noise compared oil days.....Both say they are in support of MYC and would urge other neighbors to realize the value this has added to area.

Steve brings out the diagrams which show the 15ft hedges, where smaller boats will be on northern edge of property and larger in southern area of property. Explains the storm water treatment device. Also thinking stockade wooded fence vs. chain link fence.

Attendee: Is water going to create a mosquito problem if drainage is a problem?

Response: Intent is the soil filter doesn't retain water for long periods of time with under drains and some bark. They have been doing these systems for 4-5 years now and seem to work well now and kinks are worked out.

Attendee: Is there one we can look at somewhere to see how it functions?

Response: We'll investigate that.

Attendee: City right of way-is there anything we can plant there to make it more aesthetically pleasing?

Steve: We can ask city and see if they would allow us to plant in city right of way. We will explore that; it would be in our interest to explore with city.

Attendee: Can you drive on storm water treatment area?

Response: No you can't drive on it. Can't mow it more than twice a year. Roots interfere with filtration system.

Attendee: What reason does filtration have to be on street side?

Response: Grading issue the way the water flows and trying not to disturb too much.

Attendee: Will it end up with other drainage system? Where will it end up?

Steve: With ME DOT we negotiated that it could run into rail road ditch.

Attendee: If those are American Chesnut trees and you can't remove them....you can't put that drainage system in.

Response Steve: I'd come up with alternatives, with manpower & \$\$\$. Are they constructible or not very feasible- that's the issue. This is just most cost effective & best solution because the topography goes that way is the placement as shown on diagram.

Attendee: A lot of wondering what other alternatives are available and discussing major earthwork move.

Response: It's just not cost effective and the other options and would require a major construction site/disruption that earthwork would create.

Same attendee: Needs clarification of where diagram is and where trees are and if things can be moved further south.

Response: Explaining how regs and rules are very black and white and hybrid designs that may work for area really don't work with city & state laws.

Attendee: Some regs of city are absolutely absurd why do they need to be so controlling.

Response Steve: This has to happen the way it does to best streamline and make sure things work.

Attendee: Does the buffer continue past storm drain area?

Steve: There is landscaping and a fence.

Attendee: I'm for the expansion and he enjoys saying he lives down street from marina, but wants to see something tasteful to look at as you go down the street.

Response Brian: That is our intent for neighbors and for our customers to have things look nice and tidy.

Attendee: Can we talk about the entrance of this...

Brian: Long and skinny lot we will be bringing boats up western side of railway, shows on diagram why we need access points where we do in order to move boats around and have access to boats .

Attendee: Stop sign requested at Veranda & Kensington Street.

Lots of discussion about where stop sign used to be and talking about wanting it back.

Response Brian: He'd have no problem with stop sign.

Steve: From traffic perspective we aren't going to increase, we are just creating an increase in storage and a better workspace and more parking.

Attendee: Could the entrance we gated?

Brian: Yes we could gate entrance to space.

6:35 people start to leave.....

Discussion of use of area for parking in spring as overflow lot so marina customers don't park on street.

A few people mentioned a gate on entrance to new area.

Talking about why we picked the trees, the screening .

Attendees: Mentioned interest in walking trail and when Portland trails will start building it...

Response Brian: Easement is staying & we aren't encroaching on that easement.

Attendee: Are you concerned with security?

Response Brian: We have security cameras and use a security company to patrol the facility . No major lighting or chain link fence will be in new area. Basically if someone wants to get in they will anyway- so current system with security patrols & cameras will remain in place.

Attendee: We lived with oil for a long time.....I wouldn't want oil back.....

Attendee Mike: You are great neighbor, how many people are down here peak season?

Response Brian: You are all welcome to come down and the facility.....

6:45pm Things wrap up-Brian thanks everyone for coming.

People have a few small discussions and most have positive feedback and thanked us for having meeting. Diagrams are on display for closer inspection.....a few neighbors approach diagrams for a closer look before leaving.

7pm: All attendees have departed.



MAINE YACHT CENTER, LLC

100 Kensington Street
Portland, Maine 04103
Tel. (207) 842-9000 • Fax (207) 842-9274
brian@maineyacht.com

September 10, 2009

Dear Neighbor,

Please join us for a neighborhood meeting to discuss our plans for a contract/conditional agreement to rezone a portion of our property (upper lot on north end) from R-3 (Residential) to the I-L (Light Industrial) zone subject to a detailed contract zone agreement with the City that restricts the property to the boatyard related uses separated from Kensington Street by a landscape buffer and hedge that will generally shield the upper lot from the neighborhood.

Meeting Location: Maine Yacht Center customer lounge
Meeting Date: September 21st. 2:30 PM
Meeting Time: 5:30 pm

The rezoning would permit us to more fully utilize our existing facilities by using the upper lot for seasonal overflow parking, the storage of boats, masts, stands and related marine equipment as well as maintenance work. The existing commercial building will be removed and no new buildings will be permitted. Any boat with a significant amount of repairs will be moved inside our main building.

All work will be performed in accordance with the requirements and standards of the Maine Department of Environmental Protection's Best Management Practices for Maine's Boatyards and Marinas as well as its Clean Boatyards and Marinas program.

The City code requires that property owners within 500 feet of the proposed development and residents on an interested parties list, be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, I urge you to give me a call. We truly want to be an asset to the neighborhood and we need your input.

Sincerely,

Brian A. Harris, General Manager
Maine Yacht Center

Note:

Under Section 14-32(C) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874.8721 or send written correspondence to the Department of Planning and Development, Planning Division 4th Floor, 389 Congress St. Portland, ME 04101 or by email to: bab@portlandmaine.gov.

MAINE YACHT CENTER MEETING ATTENDEES 9/23/09

	FIRST NAME	LAST NAME	ADDRESS
1	STEVE	BUGEN	81 JORDAN ST
2	Sandra	Jackson	35 Berwick St.
3	Karen	Horn	23 Berwick St.
4	Karen	GERSEN	13 Lennox St.
5	Don	PETERSON	13 LENNOX ST.
6	Richard	Jendrasko	11 Kendall St.
7	Bernice	Jendrasko	11 Kendall St.
8	BOB + KOEN	VAN WERT	10 KENDALL
9	Judy Donahue	DONAHUE	9 Woodsnorth St.
10	Michael	FLAHERTY	45 BERWICK ST
11	Rich	GALLO	21 KENSINGTON ST.
12	Victoria	Fisk	3 Chester St
13	Tom	Carter.	
14	MARGARET	RYAN	24 BERWICK
15	JAG	SETLIFE	"
16	Andrew	Chapman	20 Berwick St
17	Betsy		
18	Jambler	Slustell	14 Berwick St.
19	Helen	ANDREWS	2 Chester St.
20	Steve Von Vocht	VON VOGT	19 Lennox St. Portland ME
21	Peter	GARNEY	20 Vail St
22			
23			
24			
25			

Att 5

0052734

BK 5720 PG 073

QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

FSF MAINE PARTNERS, LLC, a Colorado Limited Liability Company, having a mailing address of 344 Madison, Denver, Colorado 80206

For Consideration Paid, GRANTS TO:

YACHT HAVEN LLC, a Maine Limited Liability Company, with a mailing address of 65 Kensington Street, Portland, Maine 04103, with Quitclaim Covenant, the land together with any buildings or improvements thereon in Portland, Cumberland County, State of Maine, described on Schedule A attached.

Being the same premises conveyed to the Grantor herein by Deed of Webber Oil Company, dated January 14, 2000 and recorded in the Cumberland County Registry of Deeds in Book 15282, Page 298.

Parcel No. 1 described on Schedule A is subject to the rights and easements granted by Sun Oil Company to Central Maine Power Company by instrument dated May 8, 1970 and recorded in the Cumberland County Registry of Deeds in Book 3146, Page 256.

Excepting from Parcel No. 1 the premises conveyed by Webber Petroleum Company to David P. Bradford and Anne K. Bradford by deed recorded January 28, 1983 and recorded in the Cumberland County Registry of Deeds in Book 6109, Page 328.

Parcels No. 1, 2 and 3 described on Schedule A are subject to the following:

- a) Terms, conditions, rights and easements as set forth in an instrument from Webber Petroleum Company to Portland Water District dated December 21, 1976 and recorded in the Cumberland County Registry of Deeds in Book 3964, Page 320.
- b) Rights and easements granted to Central Maine Power Company as set forth in an instrument from Webber Petroleum Company dated January 23, 1984 and recorded in the Cumberland County Registry of Deeds in Book 6417, Page 266.
- c) Rights and easements granted to Central Maine Power Company as set forth in an instrument from Webber Petroleum Company dated April 30, 1984 and recorded in the Cumberland County Registry of Deeds in Book 6528, Page 116.
- d) Terms, conditions, rights and easements as set forth in an instrument from Webber Petroleum Company to Portland Water District dated August 6, 1985 and recorded in the Cumberland County Registry of Deeds in Book 6867, Page 324.
- e) All other customary easements now of record, if any, for utilities and drainage.

BK 15720 PG 074

D) Other covenants and restrictions now of record, if any.

Parcels No. 2 and No. 3 are subject to the following:

a) Restrictions as set forth in the deed from Windsor Land Company to Hugh J. Chisholm dated March 2, 1907 and recorded in the Cumberland County Registry of Deeds in Book 804, Page 201.

The premises are conveyed SUBJECT TO the condition that they shall be restricted from being used as a gasoline station or for the wholesale distribution or storage of heating oil, liquid petroleum gas, gasoline or other automotive fuel. The restriction shall not prohibit the use of the Premises as a marina and the attendant retail sale of gasoline, diesel fuel, motor oil and products normally stocked in an auto parts type store. This condition shall run with the land and shall inure to the benefit of Webber Oil Company, and the real estate of said corporation in Portland, Cumberland County, Maine, now owned or hereafter acquired.

By acceptance of this deed the Grantee, for itself and its successors and assigns, agrees as follows:

1. In accordance with requirements of the Maine Department of Environmental Protection in connection with the Voluntary Response Action Plan ("the VRAP"; see M.R.S.A. Section 343-E) for the property submitted by Grantor and Webber Oil Company, no groundwater extraction wells may be installed or used on the property, without prior written permission from the Department of Environmental Protection, its successors or assigns.

2. Yacht Haven, LLC shall hold harmless Webber Oil Company, its directors and officers, their successors and assigns from any claims arising from any use or development of the property by Yacht Haven LLC or its employees, contractors, agents, successors and assigns, which do not comply with the workplan submitted by Webber Oil Company to the Maine Department of Environmental Protection in connection with the VRAP.

IN WITNESS WHEREOF, FSF MAINE PARTNERS, LLC has caused this instrument to be signed by Fritz C. Voekler, its duly authorized Manager, this 22 day of August, 2000.

FSF MAINE PARTNERS, LLC



By 
Its Manager

SCHEDULE A

BK 5720 PG 076

PARCEL NO. 1

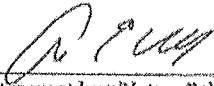
A certain lot or parcel of real estate situated in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows: Beginning at the southwesterly corner of Parcel No. 3 and running North $53^{\circ} 06' 30''$ East bounding northwesterly on said Parcel No. 3, on Kensington Street, and on land now or formerly of Raymond P. and Arlene M. Doyle one hundred ninety-five and fifty-six hundredths (195.56) feet to a point; thence turning an interior angle of $90^{\circ} 00'$ and running South $36^{\circ} 53' 30''$ East bounding northeasterly on said land now or formerly of Raymond P. and Arlene M. Doyle, on said land now or formerly of Paul H. and Ellen K. Abildgaard, on land now or formerly of James H. Martin, on land now or formerly of Vincent J. and Irma Kennedy, on land now or formerly of Voramus L. and Emma C. Frye, and on land now or formerly of State of Maine approximately one thousand two hundred eighty (1,280) feet to the mean low water mark of Casco Bay; thence running in a generally westerly direction along the mean low water mark of Casco Bay approximately one thousand two hundred fifty (1,250) feet to a point on the southerly side of a pier extending easterly from the main right of way of Canadian National Railways; thence running South $78^{\circ} 48'$ West by said pier and bounding southerly on land now or formerly of Canadian National Railways approximately one hundred ten (110) feet to a point; thence turning an interior angle of $86^{\circ} 52' 10''$ and running North $8^{\circ} 04' 10''$ West bounding westerly on land now or formerly of Canadian National Railways ten (10) feet to a point; thence turning an interior angle of $93^{\circ} 07' 50''$ and running North $78^{\circ} 48'$ East bounding northerly on land now or formerly of Canadian National Railways fifteen and two hundredths (15.02) feet to a point; thence turning an interior angle of $266^{\circ} 52' 10''$ and running North $8^{\circ} 04' 10''$ West bounding westerly on land now or formerly of Canadian National Railways nine hundred four and twenty-one hundredths (904.21) feet to a point; thence turning an interior angle of $90^{\circ} 00'$ and running North $81^{\circ} 55' 50''$ East bounding northerly on land now or formerly of Canadian National Railways eight (8) feet to the westerly line of Parcel No. 2; thence turning an interior angle of $90^{\circ} 00'$ and running South $8^{\circ} 04' 10''$ East bounding easterly on Parcel No. 2 and on Parcel No. 3 seventy (70) feet to the point of beginning, making an interior angle of $298^{\circ} 49' 20''$ with the first described course; containing ten and seven tenths (10.7) acres of land.

BK 15720 PG 075

THE STATE OF MAINE
Cumberland, ss.

August 22, 2000

Then personally appeared the above-named Fritz C. Voekler, Manager of FFSF
Maine Partners, LLC and acknowledged the foregoing instrument to be his free act and
deed in his capacity and the free act and deed of said limited liability company.



Attorney at Law/Notary Public
Alan F. Wolf

BK 15720PG077

Also conveying hereby, insofar as the Grantor has the right or title to convey, an easement to install, maintain, repair and replace pipe lines for conveyance of gasoline, oils and fuels of all types with all necessary fixtures and appurtenances thereto, including utility lines for illuminating and servicing pipe lines and docks, from the existing dock and from the proposed dock as shown on a plan entitled "Proposed Sale of Land to Sun Oil Company" recorded in the Cumberland County Registry of Deeds, Plan Book 66, Page 9, northerly over, across and under the railway right of way to a point located southwesterly of the storage tanks along the route as shown on said Plan; also the right to install, maintain, repair, and replace a suitable walkway for foot passage from said proposed dock northerly to the mainland; also the right to support said pipe lines and walkway upon the seawall, except that said pipe lines and walkway to be located southerly of said seawall shall be at least fifteen (15) feet from railway trestle and shall be supported by an independent structure within said railway right of way; also the right to enter upon the railway right of way for all the above purposes and also to maintain, repair, replace and enlarge the existing dock as well as to erect, maintain, repair, replace and enlarge the proposed dock, all as shown on said Plan.

Also conveying hereby such riparian and shore rights as the Grantor has appurtenant to the above described premises.

Subject to a sewer easement for a ten inch (10") pipe and extending across the above described premises to Casco Bay.

Subject to right of Canadian National Railway Company to enter upon the above described premises for the purpose of maintaining, repairing and replacing the seawall.

Subject to the rights of others in and to any portion of said parcel which may be a part of the original Atlantic and St. Lawrence Company right of way condemned in 1930 for railroad purposes.

BK 15720PG078

PARCEL NO. 2

A certain lot or parcel of real estate situated in Portland, County of Cumberland and State of Maine, situated on the westerly side of Kensington Street in said Portland and bounded and described as follows:

Beginning at an iron pipe, said pipe being at the northwesterly corner of Parcel No. 3 and the southwesterly corner of the herein described property; thence North $8^{\circ} 16' 30''$ West four hundred thirty-five and thirty-nine hundredths (435.39) feet along land of Canadian National Railway through an iron pipe to Interstate Route 295; thence North $49^{\circ} 03' 30''$ East one hundred eighteen and ninety-two hundredths (118.92) feet along Interstate Route 295 to an iron pipe; thence South $8^{\circ} 15'$ East four hundred sixty-four and sixteen hundredths (464.16) feet along Kensington Street to an iron pipe; thence South $62^{\circ} 12'$ West one hundred five and ninety-nine hundredths (105.99) feet along Parcel No. Three to the point of beginning.

PARCEL NO. 3

A certain lot or parcel of real estate situated in Windsor Heights, so-called, in the East Deering section of the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning on the westerly side of Kensington Street at the southeasterly corner of Lot #23 as shown on the plan of Windsor Heights, said plan being recorded in Cumberland County Registry of Deeds, Plan Book 10, Page 83;

Thence southerly thirty-one and forty-seven hundredths (31.47) feet on a straight prolongation of the westerly side of said Kensington Street to the northwesterly line of land now or formerly of the Grand Trunk Railway Company of Canada;

Thence southwesterly along said northwesterly line to the westerly corner of land of said Railway Company and the easterly line of the right of way of said Railway Company;

Thence northerly along said right of way, a distance of fifty (50) feet, to the southwesterly corner of said Lot #23;

Thence northeasterly along the southeasterly line of said Lot #23 to the point of beginning.

8K 5720PG079

Containing three thousand nine hundred and thirty-three
(3,936) square feet, more or less.

Said parcel is designated on said Plan as Sherwood
Street but was never laid out or accepted by the
City of Portland.

Subject to the rights of other property owners of
lots shown on said Plan in and to this parcel.

Subject to easements, restrictions and conditions
of record, easements or restrictions visible
upon the ground and any state of facts which
an accurate survey would disclose.

RECEIVED
RECORDED REGISTRY OF DEEDS

2000 SEP 11 PM 2:06

CUMBERLAND COUNTY

John B. C. Brien

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3 **CONDITIONAL ZONE AGREEMENT**

4 This Agreement made this 18th day of December, 2009 by MAINE YACHT
5 CENTER, LLC, a Maine limited liability company formerly known as Yacht Haven LLC,
6 with a principal place of business in Portland, Maine (hereinafter "Maine Yacht Center").

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WITNESSETH:

WHEREAS, Maine Yacht Center owns real property located at 45-81 Kensington Street fronting on Casco Bay in the City of Portland, consisting of parcels shown on the City's Tax Map 429, Block G, Lots 1 to 7 and on Tax Map 430, Block E, Lots 1, 2, 3 and 4, Block B Lots 13, 15 and X-1, being more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 15720, Page 73 (collectively the "Property"); and

WHEREAS, Maine Yacht Center proposes to improve its existing commercial marine facility in order to allow for the outdoor storage of boats, masts and stands, seasonal minor repair and maintenance of boats, masts, stands and accessory marine equipment, and to construct stormwater control facilities in accordance with Chapter 32 of the City's Code of Ordinances on a portion of the Property designated as Tax Map 429, Block G, Lots 1-7 and also on Tax Map 430, Block E, Lots 1 to 4 (the "Affected Property");

WHEREAS, on other portions of its Property presently zoned I-L Industrial, Maine Yacht Center made a substantial investment in its 400 feet of water front property to create an attractive full service marina and boatyard including a 990 foot long, 650 ton floating concrete breakwater, a marina basin with 80 boat slips, a newly dredged 8 foot deep fairway channel, and a new 300' x 140' building which incorporates 35,000 sq ft of boat storage and workshop space, offices, bathrooms, shower, laundry, customer lounge and store, with modern stormwater and utility services complying with the environmental standards and with the Maine Department of Environmental Protection's Clean Marinas & Boatyards Program and most recently is constructing a 80 ton travel lift and bottom washing containment area facility, and desires to use the Affected Property in order to support its existing facilities;

WHEREAS, the Affected Property is surrounded by Kensington Street, Interstate 295 and the former Canadian National railroad corridor now owned by the State of Maine Department of Transportation (See Cumberland County Registry of Deeds Book 10924, Page 91);

WHEREAS, the Affected Property is currently zoned "R-3" Residential;

WHEREAS, the Property has been previously used as a petroleum storage and heating oil distribution facility (now removed, remediated and discontinued);

WHEREAS, the other portions of the Maine Yacht Center's Property is presently zoned "I-L" Industrial;

WHEREAS, the State of Maine has a 400 year tradition of boat building and repair;

1 WHEREAS, the City's Comprehensive Plan, indicates that the I-L zone is intended to
2 provide areas in which low impact industrial uses will be compatible with adjacent residential
3 units and provide a buffer between residential neighborhoods and the I-M industrial zone; and
4

5 WHEREAS the City's Comprehensive Plan finds that the City is a "waterfront city"
6 with one of the finest harbors on the east coast, and calls for the City to encourage private and
7 public sector waterfront investments and to create waterfront centered economic development;
8 and
9

10 WHEREAS, the Comprehensive Plan indicates that it is a goal of the City to facilitate
11 public access along shore areas; and

12 WHEREAS, due to the Affected Property's location on the shore and between an
13 established residential neighborhood and moderate industrial use, this rezoning will provide a
14 buffer between the residential neighborhood and the I-M zone and facilitate public access along
15 the shore; and

16 WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon,
17 recommended the rezoning of the Affected Property as aforesaid, subject, however, to certain
18 conditions contained in this Agreement; and
19

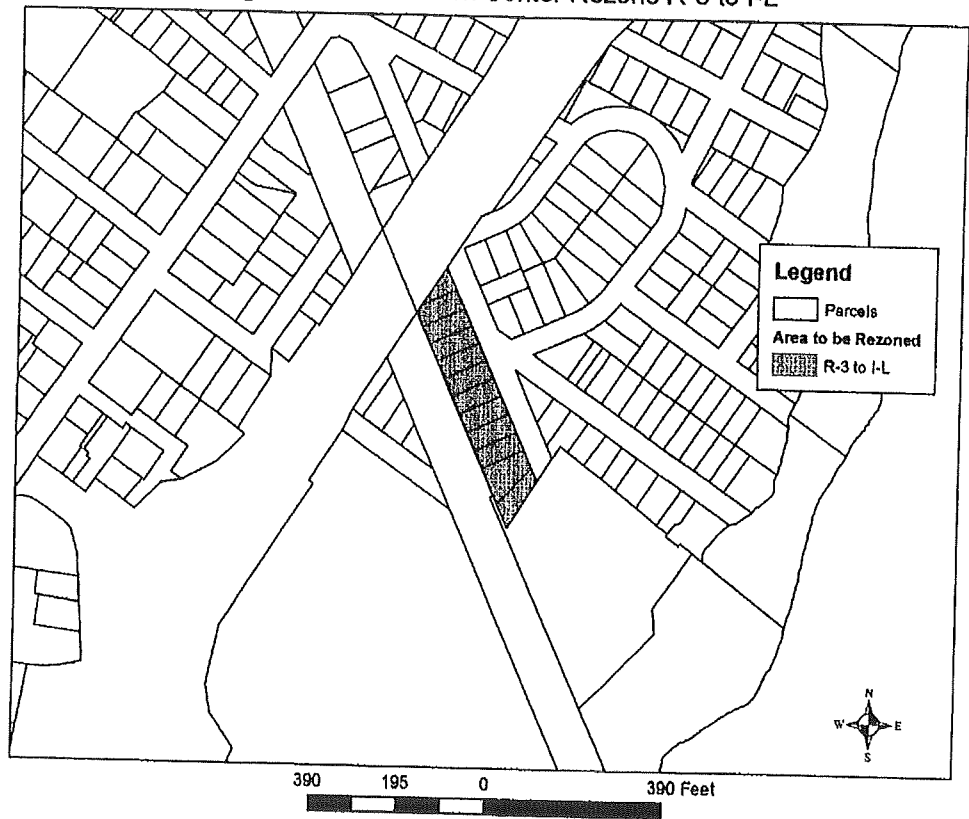
20 WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and
21 Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due
22 deliberation thereon, has determined that because of the unusual nature and unique location of
23 the proposed development, and its minimal impact on and compatibility with the surrounding
24 community, it is necessary and appropriate to recommend the rezoning of the Affected Property
25 as aforesaid, with the following conditions and restrictions set forth in this Agreement; and
26

27 WHEREAS, the Portland City Council has on December 7, 2009 approved this
28 Agreement in its entirety, by City Council Order No. 99-09/10, a true copy of which is attached
29 hereto as Exhibit A (the "Order");
30

31 NOW, THEREFORE, in consideration of the rezoning, Maine Yacht Center covenants
32 and agrees as follows:
33

34 1. The City hereby amends the Zoning Map of the City of Portland dated December
35 2000, as amended from time to time and on file in the Department of Planning and
36 Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the
37 Code, by adopting the map change amendment shown below, namely a rezoning to conditional
38 I-L Industrial of the Affected Property subject to the terms and conditions of this Agreement.
39 If this Agreement is not recorded within sixty (60) days of the effective date of the City
40 Council's approval of said rezoning, then the rezoning shall become null and void and the
41 zoning of the Property shall revert to the pre-existing R-3 zone.

Figure 1: Maine Yacht Center Rezone R-3 to I-L



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2. Maine Yacht Center is authorized to establish and maintain only the following uses on the Affected Property in accordance with the Preliminary Site Plan attached hereto as Exhibit B:

- a. a commercial marine facility for the open air/outdoor storage of boats (less than 90 ft. in height from the top of the mast to the waterline and/or less than 30 ft. in height from the keel to the top of a boat without a mast) on trailers or stands (vertical stacking of boats is prohibited), and seasonal maintenance and minor repair of boats, trailers, masts and stands, which shall be limited to buffing and waxing, sanding, varnishing and painting, installing and removing winter covers and frames, fitting of new zincs and the removal and installation of propellers and other minor repairs all of which shall be in connection with the routine seasonal winterizing and commissioning of boats, but with no major or structural repairs, major engine repairs, sandblasting, bottom high pressure washing or overnight lodging permitted;
- b. Eighteen (18) motor vehicle parking spaces for use by customers, employees and visitors to the Property as designated on the attached Plan; and

- 1 c. stormwater and erosion control facilities and landscape buffer areas as
2 designated on the attached Plan;
- 3 d. the trail easement granted to the City of Portland and recorded in the
4 Cumberland County Registry of Deeds in Book 20400, Page 277 as accepted by
5 City Council Order #55-03/04 the terms of which are incorporated by reference
6 (the "Trail Easement").
7 (collectively the "Permitted Uses").

8 All work done on the Affected Property shall be performed in accordance with the
9 requirements and standards of the Maine Department of Environmental Protection's
10 Best Management Practices for Maine's Boatyards and Marinas as well as the State of
11 Maine Clean Boatyards and Marinas program, or any similar standards subsequently
12 adopted by the Maine Department of Environmental Protection.
13

14 Boat owners working on their own boats must follow the policies outlined in the MYC
15 Best Management Practices for outside storage customers, a copy of which is attached
16 as Exhibit C.
17

18 3. The use of the Affected Property, by virtue of this contract rezoning, shall be limited
19 to the aforementioned Permitted Uses, and such uses shall be the only uses allowed on the
20 Affected Property and shall supersede any other permitted uses contained within the I-L
21 industrial zone as specified in the Portland Land Use Ordinance.

22 4. No temporary or permanent structures (including, but not limited to, buildings, tents,
23 enclosures and sheds) other than covers directly attached to boats shall be used, constructed,
24 erected or placed upon the Affected Property.

25 5. The Affected Property will be developed substantially in accordance with the
26 Preliminary Site Plans submitted by Blais Civil Engineers attached hereto as Exhibit B (the
27 "Improvements"), with the details of landscape buffering, fence and gate design being subject
28 to Planning Board approval as set forth below.

29 6. After receiving site plan approval from the Planning Board and obtaining all
30 applicable city permits (including, but not limited to a demolition permit), and before
31 constructing any additional improvements on the Affected Property, Maine Yacht Center shall
32 demolish the existing 3,150 square foot office building located on the Affected Property.

33 In addition, as part of the site plan review process, Maine Yacht Center shall submit a
34 landscape plan that provides adequate buffering along Kensington Street, which may include
35 shrubs, trees, fence and gate in locations approved by the Planning Board with input from the
36 City Arborist. The planted landscape buffering along Kensington Street shall be installed and
37 permanently maintained by Maine Yacht Center. Such planted landscape buffering, fence and
38 gate shall also remain in perpetuity and shall not be eliminated by Maine Yacht Center or its
39 successors, provided that, to the extent applicable, the planted landscape buffering may be
40 maintained according to standards contained within the *National Arborist Association, Inc.*
41 *Standards for Tree Care Operations.*

1 7. The proposed improvements of the Affected Property as depicted on Exhibit B shall
2 be subject to site plan review under the provisions of the Portland Land Use Code and this
3 Agreement.

4 8. For the Affected Property, the underlying dimensional requirements of the I-L zone
5 shall apply and are modified as follows:

6 (a) Maximum impervious surface ratio of sixty-five percent is hereby amended to
7 permit a 85% ratio in accordance with the "Proposed Gravel Area" and the storm water
8 system and "Crushed Stone Channel" surfaces as shown on the Preliminary Site Plan;

9 (b) Minimum side yard setback of twenty-five feet generally and forty feet if the side
10 property line abuts a residential zone are hereby amended as follows:

11 i. a zero (0) foot setback from the Property boundary for the "Proposed Gravel
12 Area" and for any and all boats, masts, stands and ancillary equipment as shown
13 on Exhibit B; but

14 ii. a five (5) foot setback from a portion of the Trail Easement located along the
15 northerly property line as shown on Exhibit B for any and all boats, masts,
16 stands and trailers placed on the "Proposed Gravel Area." Boats, masts, stands
17 and trailers shall not be allowed to intrude or overhang into said five (5) foot
18 setback area or the Trail Easement.

19 (c) Minimum rear yard setback of twenty-five feet generally and forty feet if the rear
20 property line abuts a residential zone are hereby amended as follows:

21 i. a zero (0) foot setback from the Property Line and from the Trail Easement,
22 as long as it remains in effect, for the "Proposed Gravel Area" as shown on
23 Exhibit B. Boats, masts, stands and trailers shall not be allowed to intrude or
24 overhang into the Trail Easement.

25 (d) Minimum front yard setback of twenty-five feet generally is hereby amended as
26 follows:

27 i. a zero (0) foot setback from the Property Line for the landscape buffer, fence,
28 gate and stormwater improvements as generally shown on Exhibit B and as
29 more particularly modified by the Site Plan approval process; and

30 ii. a fifteen (15) foot setback from Kensington Street for the "Proposed Gravel
31 Area" and for any and all boats, masts, stands and trailers on the "Proposed
32 Gravel Area." Boats, masts, stands and trailers shall not be allowed to intrude or
33 overhang into the landscape buffer or stormwater improvements as generally
34 shown on Exhibit B and as the particulars may be modified by the Site Plan
35 approval process.

36 (e) Pavement setback from lot boundary of Fifteen (15) feet for driveways, parking lots
37 and other paved circulation areas is hereby amended as follows:

1 i. a zero (0) foot setback for the "Proposed Gravel Area" and pavement to be
2 used for boat storage and maneuvering as shown on Exhibit B.

3 9. Maine Yacht Center shall install a sidewalk(s) and resurface the existing sidewalk on
4 the east side of Kensington Street running from the Interstate highway overpass to Winsor
5 Terrace. Maine Yacht Center shall also contribute \$2,500.00 to the City for trail improvements
6 in the vicinity of the Affected Property with preference given to the Trail Easement area, to be
7 utilized within five (5) years of the date of the Planning Board's approval of the site plan for
8 the Affected Property or returned to Maine Yacht Center.
9

10 10. No lighting has been proposed on the Affected Property. If any such lighting shall
11 be requested in the future, Maine Yacht Center shall seek and receive approval from the
12 Planning Authority for said lighting.
13

14 11. Maine Yacht Center and its customers (i.e. persons using its facilities to store and
15 maintain their boats, masts, stands or related marine equipment) shall not engage in
16 maintenance activities on their boats, masts, stands or related marine equipment between the
17 hours of 6:00 pm and 8:00 am except during a hurricane or tropical storm warning or watch as
18 declared by a governmental authority.
19

20 12. Maine Yacht Center shall require that its customers (i.e. persons using its facilities
21 to store and maintain their boats, masts, stands or trailers) comply with the rules and
22 regulations of the Maine Yacht Center, attached hereto as Exhibit C.
23

24 13. Maine Yacht Center shall be responsible for ongoing maintenance of the Affected
25 Property, including snowplowing, sanding, sweeping, lighting, trash pickup (at least weekly),
26 etc. and shall operate the facility in accordance with the requirements of the Maine Department
27 of Environmental Protection's Best Management Practices Manual for Maine's Boatyards and
28 Marinas.
29

30 14. Maine Yacht Center shall annually submit to the Planning Authority evidence of
31 certification under the State of Maine Clean Boatyards and Marinas program, and comply with
32 all standards of said program.
33

34 15. The provisions of this Agreement are intended to replace and/or supersede the
35 requirements of the underlying I-L zone. As stated above, to the extent not otherwise altered
36 herein, the zoning requirements for the I-L zone (including, but not limited to, sections 14-235
37 and 14-236) shall apply to the Affected Property.

38 16. As a condition of this rezoning, the Planning Board shall be substituted for the
39 Planning Authority for purposes of evaluating and approving Maine Yacht Center's initial site
40 plan for the Affected Property.
41
42

43 17. In the event of a breach by Maine Yacht Center or its successors or assigns of the
44 zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of
45 Appeals or a court determines such breach), the Planning Board, after notice, reasonable

1 opportunity to cure and hearing, may recommend to the City Council that the conditional zone
2 and this Agreement be amended, or be rescinded, such rescission to result in the termination of
3 this Agreement and a reversion of the Affected Property to the R-3 zone requirements in place
4 before the execution of this Agreement.

5 18. The above stated restrictions, provisions, and conditions are an essential part of the
6 rezoning, shall run with the Property, shall bind and benefit Maine Yacht Center, any entity
7 affiliated with Maine Yacht Center that takes title to the Affected Property, its successors and
8 assigns, and any party in possession or occupancy of said Affected Property or any part thereof,
9 and shall inure to the benefit of and be enforceable by the City of Portland, by and through its
10 duly authorized representatives. Maine Yacht Center shall file a counterpart original of this
11 Agreement in the Cumberland County Registry of Deeds.
12

13 19. This Agreement shall be enforced pursuant to the land use enforcement provisions
14 of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code.
15


16 20. If any of the restrictions, provisions, conditions, or portions thereof set forth herein
17 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such
18 portion shall be deemed as a separate, distinct, and independent provision and such
19 determination shall not affect the validity of the remaining portions hereof.
20

21 21. Except as expressly modified herein, the development shall be governed by and
22 comply with the provisions of the Portland City Code and any applicable amendments thereto
23 or replacement thereof.
24

25 Witness its hand and seal on the date set forth above.

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Witness

MAINE YACHT CENTER, LLC

by: 
BRIAN A. HANES, its Manager

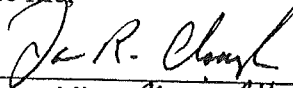
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State of Maine
County of Cumberland, ss

December 18, 2009

Then personally appeared before me the above named Brian Harris in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said limited liability company.

Before Me,



Notary public Maine Attorney at Law

Name: Lawrence R. Clough

Me Yacht CZA - Final 12-7-09.Doc
12/18/2009 14:11

A TRUE COPY
ATTEST: Linda C. Cohen
Linda C. Cohen, MMC, City Clerk
Portland, Maine
DATE: 12/8/09

Order 99-09/10
Tab 15 11/2/09

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

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

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

CONDITIONAL ZONE AGREEMENT

This Agreement made this _____ day of _____, 2009 by **MAINE YACHT CENTER, LLC**, a Maine limited liability company formerly known as Yacht Haven LLC, with a principal place of business in Portland, Maine (hereinafter "Maine Yacht Center").

WITNESSETH:

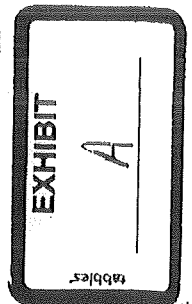
WHEREAS, Maine Yacht Center owns real property located at 45-81 Kensington Street fronting on Casco Bay in the City of Portland, consisting of parcels shown on the City's Tax Map 429, Block G, Lots 1 to 7 and on Tax Map 430, Block E, Lots 1, 2, 3 and 4, Block B Lots 13, 15 and X-1, being more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 15720, Page 73 (collectively the "Property"); and

WHEREAS, Maine Yacht Center proposes to improve its existing commercial marine facility in order to allow for the outdoor storage of boats, masts and stands, seasonal minor repair and maintenance of boats, masts, stands and accessory marine equipment, and to construct stormwater control facilities in accordance with Chapter 32 of the City's Code of Ordinances on a portion of the Property designated as Tax Map 429, Block G, Lots 1-7 and also on Tax Map 430, Block E, Lots 1 to 4 (the "Affected Property");

WHEREAS, on other portions of its Property presently zoned I-L Industrial, Maine Yacht Center made a substantial investment in its 400 feet of water front property to create an attractive full service marina and boatyard including a 990 foot long, 650 ton floating concrete breakwater, a marina basin with 80 boat slips, a newly dredged 8 foot deep fairway channel, and a new 300' x 140' building which incorporates 35,000 sq ft of boat storage and workshop space, offices, bathrooms, shower, laundry, customer lounge and store, with modern stormwater and utility services complying with the environmental standards and with the Maine Department of Environmental Protection's Clean Marinas & Boatyards Program and most recently is constructing a 80 ton travel lift and bottom washing containment area facility, and desires to use the Affected Property in order to support its existing facilities;

Given first reading on 11/2/09; Postponed on 11/16/09
Amended and Passed 12/7/09 9-0

SEAL



WHEREAS, the Affected Property is surrounded by Kensington Street, Interstate 295 and the former Canadian National railroad corridor now owned by the State of Maine Department of Transportation (See Cumberland County Registry of Deeds Book 10924, Page 91);

WHEREAS, the Affected Property is currently zoned "R-3" Residential;

WHEREAS, the Property has been previously used as a petroleum storage and heating oil distribution facility (now removed, remediated and discontinued);

WHEREAS, the other portions of the Maine Yacht Center's Property is presently zoned "I-L" Industrial;

WHEREAS, the State of Maine has a 400 year tradition of boat building and repair;

WHEREAS, the City's Comprehensive Plan, indicates that the I-L zone is intended to provide areas in which low impact industrial uses will be compatible with adjacent residential units and provide a buffer between residential neighborhoods and the I-M industrial zone; and

WHEREAS the City's Comprehensive Plan finds that the City is a "waterfront city" with one of the finest harbors on the east coast, and calls for the City to encourage private and public sector waterfront investments and to create waterfront centered economic development; and

WHEREAS, the Comprehensive Plan indicates that it is a goal of the City to facilitate public access along shore areas; and

WHEREAS, due to the Affected Property's location on the shore and between an established residential neighborhood and moderate industrial use, this rezoning will provide a buffer between the residential neighborhood and the I-M zone and facilitate public access along the shore; and

WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Affected Property as aforesaid, subject, however, to certain conditions contained in this Agreement; and

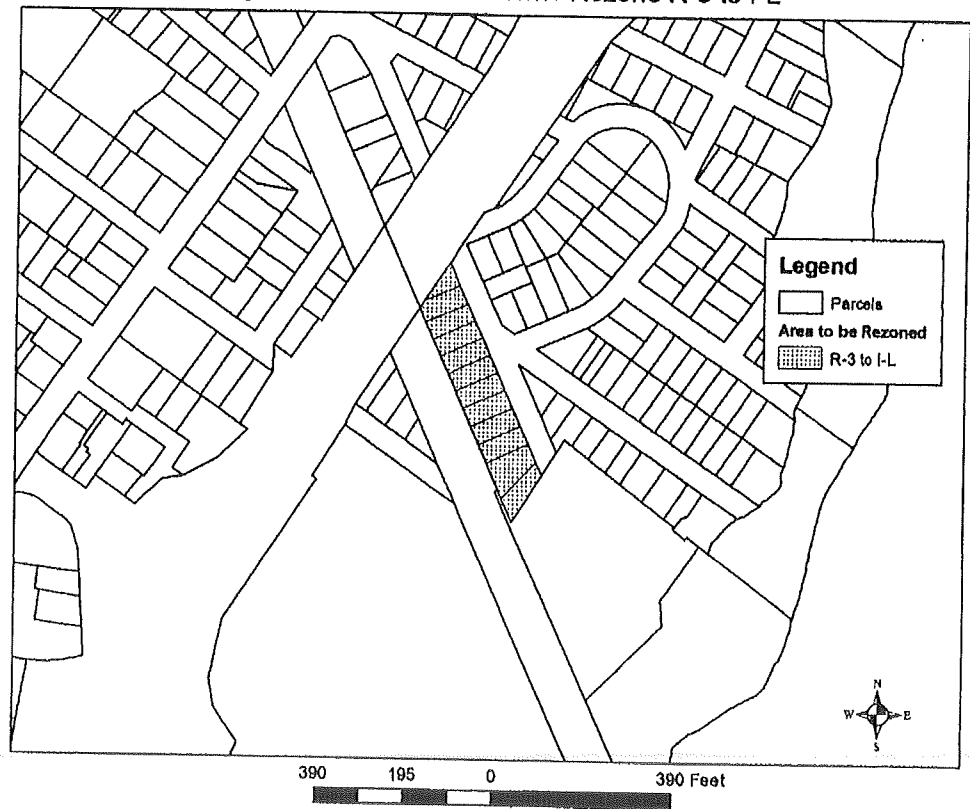
WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the unusual nature and unique location of the proposed development, and its minimal impact on and compatibility with the surrounding community, it is necessary and appropriate to recommend the rezoning of the Affected Property as aforesaid, with the following conditions and restrictions set forth in this Agreement; and

WHEREAS, the Portland City Council has on December 7, 2009 approved this Agreement in its entirety, by City Council Order No. 99-09/10, a true copy of which is attached hereto as Exhibit A (the "Order");

NOW, THEREFORE, in consideration of the rezoning, Maine Yacht Center covenants and agrees as follows:

1. The City hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment shown below, namely a rezoning to conditional I-L Industrial of the Affected Property subject to the terms and conditions of this Agreement. If this Agreement is not recorded within sixty (60) days of the effective date of the City Council's approval of said rezoning, then the rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-3 zone.

Figure 1: Maine Yacht Center Rezone R-3 to I-L



2. Maine Yacht Center is authorized to establish and maintain only the following uses on the Affected Property in accordance with the Preliminary Site Plan attached hereto as Exhibit B:

- a. a commercial marine facility for the open air/outdoor storage of boats (less than 90 ft. in height from the top of the mast to the waterline and/or less than 30 ft. in

height from the keel to the top of a boat without a mast) on trailers or stands (vertical stacking of boats is prohibited), and seasonal maintenance and minor repair of boats, trailers, masts and stands, which shall be limited to buffing and waxing, sanding, varnishing and painting, installing and removing winter covers and frames, fitting of new zincs and the removal and installation of propellers and other minor repairs all of which shall be in connection with the routine seasonal winterizing and commissioning of boats, but with no major or structural repairs, major engine repairs, sandblasting, bottom high pressure washing or overnight lodging permitted;

- b. Eighteen (18) motor vehicle parking spaces for use by customers, employees and visitors to the Property as designated on the attached Plan; and
- c. stormwater and erosion control facilities and landscape buffer areas as designated on the attached Plan;
- d. the trail easement granted to the City of Portland and recorded in the Cumberland County Registry of Deeds in Book 20400, Page 277 as accepted by City Council Order #55-03/04 the terms of which are incorporated by reference (the "Trail Easement").

(collectively the "Permitted Uses").

All work done on the Affected Property shall be performed in accordance with the requirements and standards of the Maine Department of Environmental Protection's Best Management Practices for Maine's Boatyards and Marinas as well as the State of Maine Clean Boatyards and Marinas program, or any similar standards subsequently adopted by the Maine Department of Environmental Protection.

Boat owners working on their own boats must follow the policies outlined in the MYC Best Management Practices for outside storage customers, a copy of which is attached as Exhibit C.

3. The use of the Affected Property, by virtue of this contract rezoning, shall be limited to the aforementioned Permitted Uses, and such uses shall be the only uses allowed on the Affected Property and shall supersede any other permitted uses contained within the I-L industrial zone as specified in the Portland Land Use Ordinance.

4. No temporary or permanent structures (including, but not limited to, buildings, tents, enclosures and sheds) other than covers directly attached to boats shall be used, constructed, erected or placed upon the Affected Property.

5. The Affected Property will be developed substantially in accordance with the Preliminary Site Plans submitted by Blais Civil Engineers attached hereto as Exhibit B (the "Improvements"), with the details of landscape buffering, fence and gate design being subject to Planning Board approval as set forth below.

6. After receiving site plan approval from the Planning Board and obtaining all applicable city permits (including, but not limited to a demolition permit), and before

constructing any additional improvements on the Affected Property, Maine Yacht Center shall demolish the existing 3,150 square foot office building located on the Affected Property.

In addition, as part of the site plan review process, Maine Yacht Center shall submit a landscape plan that provides adequate buffering along Kensington Street, which may include shrubs, trees, fence and gate in locations approved by the Planning Board with input from the City Arborist. The planted landscape buffering along Kensington Street shall be installed and permanently maintained by Maine Yacht Center. Such planted landscape buffering, fence and gate shall also remain in perpetuity and shall not be eliminated by Maine Yacht Center or its successors, provided that, to the extent applicable, the planted landscape buffering may be maintained according to standards contained within the *National Arborist Association, Inc. Standards for Tree Care Operations*.

7. The proposed improvements of the Affected Property as depicted on Exhibit B shall be subject to site plan review under the provisions of the Portland Land Use Code and this Agreement.

8. For the Affected Property, the underlying dimensional requirements of the I-L zone shall apply and are modified as follows:

(a) Maximum impervious surface ratio of sixty-five percent is hereby amended to permit a 85% ratio in accordance with the "Proposed Gravel Area" and the storm water system and "Crushed Stone Channel" surfaces as shown on the Preliminary Site Plan;

(b) Minimum side yard setback of twenty-five feet generally and forty feet if the side property line abuts a residential zone are hereby amended as follows:

i. a zero (0) foot setback from the Property boundary for the "Proposed Gravel Area" and for any and all boats, masts, stands and ancillary equipment as shown on Exhibit B; but

ii. a five (5) foot setback from a portion of the Trail Easement located along the northerly property line as shown on Exhibit B for any and all boats, masts, stands and trailers placed on the "Proposed Gravel Area." Boats, masts, stands and trailers shall not be allowed to intrude or overhang into said five (5) foot setback area or the Trail Easement.

(c) Minimum rear yard setback of twenty-five feet generally and forty feet if the rear property line abuts a residential zone are hereby amended as follows:

i. a zero (0) foot setback from the Property Line and from the Trail Easement, as long as it remains in effect, for the "Proposed Gravel Area" as shown on Exhibit B. Boats, masts, stands and trailers shall not be allowed to intrude or overhang into the Trail Easement.

(d) Minimum front yard setback of twenty-five feet generally is hereby amended as follows:

i. a zero (0) foot setback from the Property Line for the landscape buffer, fence, gate and stormwater improvements as generally shown on Exhibit B and as more particularly modified by the Site Plan approval process; and

ii. a fifteen (15) foot setback from Kensington Street for the "Proposed Gravel Area" and for any and all boats, masts, stands and trailers on the "Proposed Gravel Area." Boats, masts, stands and trailers shall not be allowed to intrude or overhang into the landscape buffer or stormwater improvements as generally shown on Exhibit B and as the particulars may be modified by the Site Plan approval process.

(e) Pavement setback from lot boundary of Fifteen (15) feet for driveways, parking lots and other paved circulation areas is hereby amended as follows:

i. a zero (0) foot setback for the "Proposed Gravel Area" and pavement to be used for boat storage and maneuvering as shown on Exhibit B.

9. Maine Yacht Center shall install a sidewalk(s) and resurface the existing sidewalk on the east side of Kensington Street running from the Interstate highway overpass to Winsor Terrace. Maine Yacht Center shall also contribute \$2,500.00 to the City for trail improvements in the vicinity of the Affected Property with preference given to the Trail Easement area, to be utilized within five (5) years of the date of the Planning Board's approval of the site plan for the Affected Property or returned to Maine Yacht Center.

10. No lighting has been proposed on the Affected Property. If any such lighting shall be requested in the future, Maine Yacht Center shall seek and receive approval from the Planning Authority for said lighting.

11. Maine Yacht Center and its customers (i.e. persons using its facilities to store and maintain their boats, masts, stands or related marine equipment) shall not engage in maintenance activities on their boats, masts, stands or related marine equipment between the hours of 6:00 pm and 8:00 am except during a hurricane or tropical storm warning or watch as declared by a governmental authority.

12. Maine Yacht Center shall require that its customers (i.e. persons using its facilities to store and maintain their boats, masts, stands or trailers) comply with the rules and regulations of the Maine Yacht Center, attached hereto as Exhibit C.

13. Maine Yacht Center shall be responsible for ongoing maintenance of the Affected Property, including snowplowing, sanding, sweeping, lighting, trash pickup (at least weekly), etc. and shall operate the facility in accordance with the requirements of the Maine Department of Environmental Protection's Best Management Practices Manual for Maine's Boatyards and Marinas.

14. Maine Yacht Center shall annually submit to the Planning Authority evidence of certification under the State of Maine Clean Boatyards and Marinas program, and comply with all standards of said program.

15. The provisions of this Agreement are intended to replace and/or supersede the requirements of the underlying I-L zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the I-L zone (including, but not limited to, sections 14-235 and 14-236) shall apply to the Affected Property.

16. As a condition of this rezoning, the Planning Board shall be substituted for the Planning Authority for purposes of evaluating and approving Maine Yacht Center's initial site plan for the Affected Property.

17. In the event of a breach by Maine Yacht Center or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice, reasonable opportunity to cure and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Affected Property to the R-3 zone requirements in place before the execution of this Agreement.

18. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit Maine Yacht Center, any entity affiliated with Maine Yacht Center that takes title to the Affected Property, its successors and assigns, and any party in possession or occupancy of said Affected Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. Maine Yacht Center shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

19. This Agreement shall be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code.

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

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

Witness its hand and seal on the date set forth above.

MAINE YACHT CENTER, LLC

Witness

by: _____
_____, its Manager

State of Maine
County of _____, ss _____, 2009

Then personally appeared before me the above named _____ in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said limited liability company.

Before Me,

Notary public
Name: _____

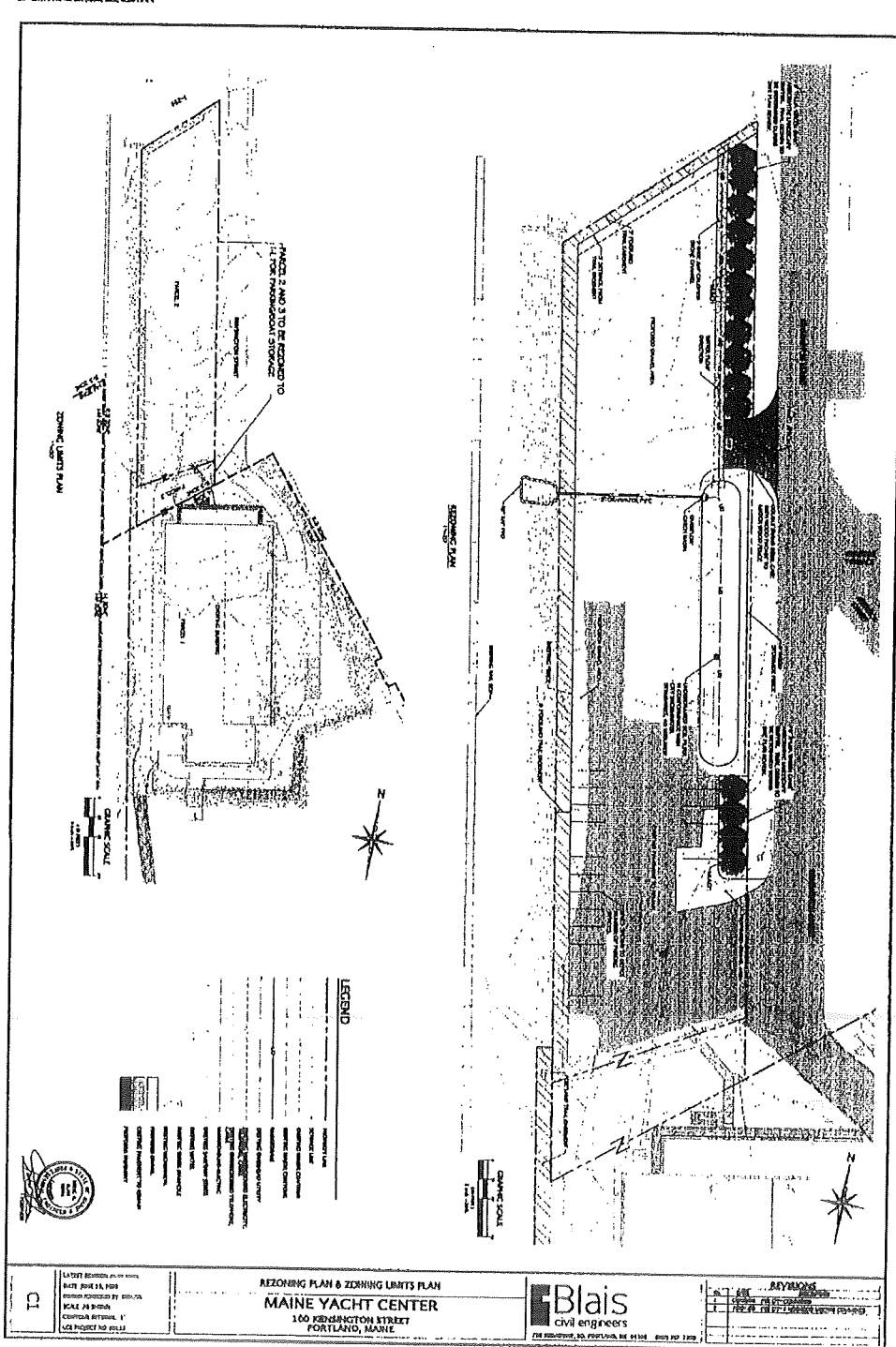
Me Yacht CZA - Redlined 12-7-09.Doc
12/08/2009 14:55

Exhibit A

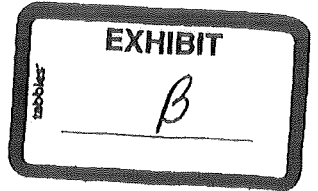
1
2
3
4

EXHIBIT B

Note: configuration of final landscape buffer, fence and gate is subject to Planning Board approval



5
6





MAINE YACHT CENTER, LLC

100 Kensington Street
Portland, Maine 04103

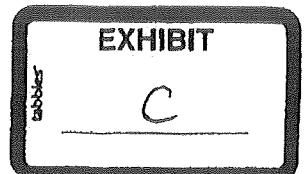
Tel. (207) 842-9000 • Fax (207) 842-9274

BEST MANAGEMENT PRACTICES

When working on a boat outside, the following practices must be followed in the interests of providing a safe and clean work environment:

- 1) All sanding must be done with vacuum sanders.
- 2) No sand blasting is allowed.
- 3) Tarps must be laid down and secured to the ground under the work area in such a way as to collect all scraping and other materials. These tarps and residue must be properly disposed of immediately following the completion of the work.
- 4) All sandpaper discs, roller covers, paint trays, etc. should be immediately picked up and disposed of properly.
- 5) At no time may gas, fuel, contaminated rags, paint cans, fuel cans, etc. be stored around the work area or on the ground.
- 6) Fuel, bilge water, oil, or any other liquids removed from the boat must be disposed of properly.
- 7) Spill prevention kits must be present and located adjacent to the work area.
- 8) If jack stands must be moved, they must be moved by MYC personnel.
- 9) Any time work is conducted 6 or more feet from the ground, adequate fall protection must be provided by the vessel owner. This includes secure footing and lashings when using ladders, secure scaffolding with fall prevention when working on vessel topsides and appropriate fall prevention devices including lifelines and safety platforms when working on deck.
- 10) Bottom washing is only permitted by MYC staff in the area designated for washing.
- 11) Bending on/off sails is not permitted when the vessel is on land unless it is done so by MYC personnel
- 12) Used shrink wrapping must be properly disposed of or recycled. It may not be deposited in MYC dumpsters.
- 13) Outside work is only permitted between the hours of 8am and 7pm.
- 14) MYC recommends the removal of halyards in boats stored with the mast up. Boats stored with masts up must secure all lines and accessories so as to eliminate undue noise produced from contact with the mast.
- 15) Any boat cover must be tight fitting. Those without heat shrink covers must secure tarps so as to reduce undue noise from wind action.
- 16) MYC recommends the use of Hydrocoat bottom paint because it is water based, requires no sanding from season to season, has a low copper content and does not produce strong odors during application.

Received
Recorded Register of Deeds
Dec 28, 2009 02:55:40P
Cumberland County
Pamela E. Lovley



**WRITTEN STATEMENTS
MAJOR DEVELOPMENT REVIEW APPLICATION
MAINE YACHT CENTER
PORTLAND, MAINE
FEBRUARY 5, 2010**

- Description of proposed uses to be located on site.

This project will include the demolition of the existing office building and construction of a gravel parking area in its place for outside boat storage. Boat with less than 90 ft. in height from the top of the mast to the waterline and/or less than 30 ft. in height from the keel to the top of a boat without a mast on trailers or stands will be allowed onsite for storage.

Seasonal maintenance and minor repair of boats, trailers, masts and stands will be permitted onsite.

Eighteen parking spaces will be constructed along the southern side of the property.

- Boat Owner responsibilities.

Boat owners working on their own boats must follow the policies outlined in the MYC (Maine Yacht Center) Best Management Practices for outside storage customers.

- Permitted uses.

Only the permitted uses from the City of Portland Amendment to City Code Sec. 14-49 (Zoning Text and Map Amendment) RE: conditional Rezoning for Property in the vicinity of Kensington Street, dated 12/08/09 shall be permitted and shall supersede any other permitted uses contained within the I-L industrial zone as specified in the Portland Land Use Ordinance.

No temporary or permanent structures other than covers directly attached to boats shall be used, constructed, erected or placed upon the Affected Property.

- Development plan.

The property will be developed substantially in accordance with the Preliminary Site Plans submitted by Blais Civil Engineers.

The existing 3,150 sf office building shall be removed before constructing any additional site improvements.

- Landscaping.

Maine Yacht Center will submit a landscape plan to be approved by the Planning Board and City Arborist showing plant, fence, and gate materials and locations. The landscape buffer, fence and gate shall be installed and maintained by Maine Yacht Center and remain in perpetuity and shall not be eliminated by Maine Yacht Center or its successors, provided that, to the extent applicable, the planted landscape buffering may be maintained according to standards contained within the National Arborist Association, Inc. Standards for Tree Care Operations.

- Dimensional Requirements.

See C2 Layout & Materials Plan for dimensional requirements and proposed conditions.

- Additional provisions.

Maine Yacht Center shall install a sidewalk and resurface the existing sidewalk on the east side of Kensington Street running from the Interstate highway overpass to Winsor Terrace. As well as contribute \$2,500 to the City for trail improvements in the vicinity with preference given to the Trail Easement.

- Lighting

No lighting will be provided for the site.

- Maine Yacht Center and customers responsibility

Maine Yacht Center and its customers shall not engage in maintenance activities between the hours of 6:00 pm and 8:00 am except during a hurricane or tropical storm warning or watch as declared by a government authority.

Maine Yacht Center customers shall comply with the rules and regulations of the Maine Yacht Center.

Maine Yacht Center shall be responsible for ongoing property maintenance including snowplowing, sanding, sweeping, lighting, trash pickup (weekly), and shall operate the facility in accordance with the requirements of the Maine Department of Environmental Protection's Best Management Practices Manual for Maine's Boatyards and Marinas.

Maine Yacht Center shall annually submit to the Planning Authority evidence of certification under the State of Maine Clean Boatyards and Marinas Program.

Maine Yacht Center shall file an original copy of the signed conditional zone agreement in the Cumberland County Registry of Deeds.

- I-L zone requirements.

The zoning requirements for the I-L zone shall apply to the Maine Yacht Center unless the conditional requirements have replaced or superseded the standard I-L zoning requirements.

The Planning Board shall be substituted for the Planning Authority for purposes of evaluating and approving Maine Yacht Center's initial site plan.

- In the event of breach of contract by Maine Yacht Center or its successors.

In the event of a breach of contract for the conditional contract zone by the Maine Yacht Center or its successors will result in the termination of the conditional approval of the contract zone to the I-L Zone and the affected property will revert back to the R-3 zone requirements in place before the execution of the agreement.

- Quantity and type of residential, if any.

N/A

- Total land area of the site?

Total land area of site: 49,073 square feet.

- Total floor area, total disturbed area and ground coverage of each proposed building and structures?

No buildings or structures are proposed for the site

- General summary of existing and proposed easement or other burdens?
 - Maine Yacht Center has granted to the City of Portland a trail easement along the northern and western portion of the project. This easement is for the purpose of constructing a trail along the property;
 - Maine Yacht Center has granted to the City of Portland a drainage easement over, under and along the site for maintenance of their storm drain;
 - The MaineDOT has granted Maine Yacht Center a drainage easement for discharge of storm drainage from the onsite stormwater treatment system to an existing drainage swale along the railroad tracks along the western boundary of the site; and
 - The Portland Water District owns an easement for a water and sewer line running through the project site. This easement is for maintenance of the existing water and sewer lines. A copy of these easements has been included with this submission package.

- Type, quantity and method of handling solid waste disposal?

Due to the nature of the project being a storage/parking area, no collecting for solid wastes is anticipated.

- Applicant's evaluation of availability of off-site public facilities, including sewer, water and streets.

The project is proposing the expansion of its boat storage area and isn't proposing to utilize any off-site public utilities at this time.

- Description of existing surface drainage and a proposed stormwater management plan or description of measures to control surface runoff.

Please refer to the enclosed stormwater management report by BCE dated January 2010 for descriptions of existing and proposed conditions as well as measures utilized to control surface runoff.

- An estimate of the time period required for completion of the development.

The Owner plans to finish this project within one year of breaking ground.

- A list of all state and federal regulatory approvals to which the development may be subject to, the status of any pending applications, the Anticipated timeframe for obtaining such permits or letters of non-jurisdiction.
 - To the best of our knowledge, because this project will not impact any natural resources, and because it will disturb less than one acre of land, it is not subject to any state permits.
 - There are currently no pending applications for this project.
 - A copy of the DEP-Certification of Completion of a VRAP dated January 19, 2000 for the site has been included.
 - To the best of our knowledge we are within compliance and have satisfied all rules and regulations that govern the proposed site at 100 Kensington Street.
- Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved.

A letter of intent to finance the project from Maine Yacht Center is enclosed.

We have also technical capability information for Blais Civil Engineers.

- Evidence of applicant's right, title or interest, including deeds, leases, purchase options or other documentation.

We have enclosed the applicant's existing deed for the subject property with this application

- A description of any unusual natural areas, wildlife and fisheries habitats, or archaeological sites located on or near the site.

There are no unusual natural areas, wildlife and fisheries habitats or archaeological sites located on or near the site as indicated in the attached response letters from the various agencies.

Blais Civil Engineers has prepared this application and is providing the site/civil engineering design for the project. Mr. Doyle is a project engineer at BCE. His resume along with the president's is enclosed for reference.

BCE 09112

DRAINAGE EASEMENT

In consideration of the payment of one dollar, MAINE YACHT CENTER, LLC, a Maine Limited Liability Company with a place of business in Portland, Maine ("Grantor"), hereby grants to the CITY OF PORTLAND, a Maine municipality organized and existing under the laws of the State of Maine, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 ("Grantee") a perpetual easement over, under and along the parcel of land which is more particularly delineated as the 'hatch' marked area and described as maintenance easement boundary for City of Portland storm drain in Exhibit A which is attached hereto (hereinafter referred to as the "Easement Area").

The purpose of this Easement is to permit the Grantee to enter upon the Easement Area with construction equipment, motor vehicles, building supplies and personnel for the purpose of constructing, installing and maintaining a drainage system within the Easement Area. The "Drainage System" includes, but is not limited to, the installation, construction, maintenance, repair and replacement of trenches, pipes, culverts, detention and retention facilities, stilling basins, and other appurtenances, necessary or convenient for the operation and maintenance of the said Drainage System, including the temporary storage of materials.

If, in exercising the rights granted by this easement, the surface of the Easement Area should be disturbed, the Grantee will restore the disturbed area, as nearly as reasonably possible, to the condition it was in prior to such work being performed.

Reserving to Grantors the use and enjoyment of the Easement Area for any purposes which will not unreasonably interfere with the use of this easement for the purposes herein set forth.

Both Grantors and Grantee acknowledge that this easement is being provided to Grantee for purposes of public Drainage System without charge. It is understood that the use herein granted is non-exclusive.

To have and to hold the said Easement and all rights granted hereunder to the said City of Portland, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this easement to be executed by Sherman A. Scott, its duly authorized Managing Partner, this 8 day of November, 2004

WITNESS:

MAINE YACHT CENTER, LLC

Jean-Lucuzzi

By: SA Scott
Its: Managing Partner
Print Name: Sherman A. Scott

STATE OF LOUISIANA
PARISH OF IBERIA, SS

11/08, 2004

Personally appeared the above-named Sherman A. Scott of Maine Yacht Center, LLC, as aforesaid, who acknowledged the foregoing Instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

Phillip L. [Signature]
Attorney at Law NOTARY 014250
SEAL

Exhibit A

A storm drainage easement situated southwesterly of, but not adjacent to, the southerly end of Kensington Street in the City of Portland, Cumberland County, State of Maine, and bounded and described as follows:

COMMENCING at a 5/8" rebar with red plastic cap stamped "PRS INC. ME PLS 1320" at the most northwesterly corner of Parcel 1 as described in a deed from FSF Maine Partners, LLC to Yacht Haven, LLC, dated August 22, 2000 and recorded in the Cumberland County Registry of Deeds in Deed Book 15720, Page 73, said rebar is also located in the easterly line of lands of the Atlantic and Saint Lawrence Railway (formerly of the Canadian National Railway Company);

THENCE, S09°57'40"E ninety-five and fourteen hundredths feet (95.14') along the northeasterly line of lands now or formerly of said Canadian National Railway Company to the **POINT OF BEGINNING**;

THENCE CONTINUING S09°57'40"E two hundred thirty-six and eight hundredths feet (236.08') along the northeasterly line of lands now or formerly of said Canadian National Railway Company to a 5/8" rebar with red plastic cap stamped "PRS INC. ME PLS 1320";

THENCE CONTINUING S09°57'40"E thirty-five and ninety-three hundredths feet (35.93') along the northeasterly line of lands now or formerly of said Canadian National Railway Company to a point;

The next four courses are through lands now or formerly of said Yacht Haven, LLC;

THENCE N80°02'20"E twenty-three and sixty-nine hundredths feet (23.69') to a point;

THENCE S53°18'25"E thirty-nine and eighty-one hundredths feet (39.81') to a point;

THENCE N80°02'20"E seventy-four and eighteen hundredths feet (74.18') to a point;

THENCE S28°24'20"E two hundred forty-nine and thirty-eight hundredths feet (249.38'±) more or less to the mean low water mark of Casco Bay;

THENCE N61°35'40"E twenty and no hundredths feet (20.00') along the apparent mean low water mark of said Casco Bay;

The remaining courses are through lands now or formerly of said Yacht Haven, LLC;

THENCE N28°24'20"W two hundred forty-two and seventy-one hundredths feet more or less (242.71'±) along a line that is parallel to and twenty and no hundredths feet (20.00') northeasterly of the seventh course described above to a point that is located N80°02'17"E twenty-one and eight hundredths (21.08') from the end of the sixth course described above ;

THENCE N09°57'40"W twenty and no hundredths feet (20.00') to a point;

THENCE S80°02'20"W eighty-six and sixty-four hundredths feet (86.64') to a point;

THENCE N53°18'25"W forty-three and eighteen hundredths feet (43.18') to a point;

**Exhibit A
(continued)**

THENCE N09°57'40"W two hundred forty-nine and fifty-five hundredths feet (249.55') along a line that is parallel to and thirty and no hundredths feet northeasterly of the first described course to a point;

THENCE S80°02'20"W thirty and no hundredths feet (30.00') to lands now or formerly of said Canadian National Railway Company and the **POINT OF BEGINNING;**

The above described storm drainage easement contains 15,657.5 square feet more or less.

Bearings referenced herein are based on a Standard Boundary Survey for Webber Petroleum Company, Kensington Street, Portland, Maine, Dated May 16, 1989, Revised August 24, 1989, Prepared by Richard Perry Jr., P.L.S., 586 Hammond Street, Bangor, Maine 04401.

PURPOSE:

The purpose of this deed is to amend the Sherwood Street Sewer Outlet easement agreement between the City of Portland and the Grand Trunk Railway that was made on September 23, 1907. A copy of this agreement is located in the City of Portland Public Works Dept, Engineering Archives Vault located at 55 Portland St., Portland, Maine.

The purpose of this deed is to release that portion of the old 1907 easement which falls within the bounds of Parcel 1 as described in the deed to Yacht Haven, LLC (Book 15720, Page 73) and to replace it with the new easement as described above.

This deed description is based on a plan titled "Maintenance Easement of City of Portland Storm Drain, 100 Kensington Street, Portland, Maine," dated September 28, 2004 by the Sheridan Corporation, Job #030017. Surveyor of record Elwood Ellis, P.L.S.

Meaning and Intending to convey a storm drainage easement across lands described in a deed from FSF Maine Partners, LLC to Yacht Haven, LLC, dated August 22, 2000 and recorded in the Cumberland County Registry of Deeds in Deed Book 15720, Page 73. Yacht Haven, LLC changed its name to Maine Yacht Center, LLC on July 22, 2002 as per the Secretary of State, Bureau of Corporations.

Received
Recorded Register of Deeds
Nov 24 2004 02:45:17P
Cumberland County
John B O'Brien

File
250

Quit-Claim Deed

CORPORATION - WITH COVENANT

From

WEBBER PETROLEUM COMPANY

To

PORTLAND WATER DISTRICT

Dated 19 76.

State of Maine,

ss. Registry of Deeds

Received 19

at H., M., M., and

recorded in Book 1 877, Page

Attest:

Register.

FROM THE OFFICE OF
VERRILL DANA PHILBRICK
PUTNAM & WILLIAMSON
Two Canal Plaza
Portland, Maine 04112

LORING, SHORT & HARMON, LAW STATIONERS
PORTLAND, MAINE

3. 49

320

Know all Men by these Presents,

That WEBBER PETROLEUM COMPANY,

a Corporation organized and existing under the laws of the State of Maine and located at Bangor in the County of Penobscot and State of Maine in consideration of One Dollar (\$1.00) and other valuable considerations

paid by PORTLAND WATER DISTRICT, a quasi-municipal corporation organized and existing under the laws of the State of Maine and located at Portland in the County of Cumberland and State of Maine, ~~and whose mailing address is~~

the receipt whereof it does hereby acknowledge, does hereby ~~rent~~ release, bargain, sell and convey, and forever quit-claim unto the said

PORTLAND WATER DISTRICT, its successors ~~heirs~~ and assigns forever,

~~xxx extent of xxx parcel of land~~ the right perpetually to enter at any and all times upon a certain strip of land situated in the City of Portland, in the County of Cumberland and State of Maine, said strip being shown on a plan filed with the Portland Water District, 225 Douglass Street, Portland, Maine, bounded and described as follows: Beginning at a point on the southwesterly sideline of Kensington Street, said point lying North 23° 46' 55" West along said sideline one hundred seventy-five and eighty-two hundredths (175.82) feet from the southerly terminus of said Kensington Street; thence South 74° 41' 25" West one hundred one and ten hundredths (101.10) feet, more or less, to land of Canadian National Railway; thence by said Railway North 23° 46' 55" West twenty-five and twenty-eight hundredths (25.28) feet to a point; thence North 74° 41' 25" East One hundred one and ten hundredths (101.10) feet, more or less, to the southwesterly sideline of Kensington Street; thence by said Kensington Street South 23° 46' 55" West twenty-five and twenty-eight hundredths (25.28) feet, more or less, to the point of beginning. Said strip containing 2,528 square feet.

Courses refer to Grid North.

Being a portion of the premises conveyed to the Grantor by Sun Oil Company of Pennsylvania by deed dated September 19, 1975 and recorded in Cumberland County Registry of Deeds in Book 3774, Page 281.

And to construct and perpetually maintain through and across said strip conduits or pipe lines for conveying water and sewage and to lay, relay, repair, maintain and remove water and sewage pipe or pipes upon or under said strip, with all necessary fixtures or appurtenances, together with the right at all times to make connections with said conduits or pipe lines to land adjoining said strip by means of pipes or services, to install electric or other energized control lines and appurtenances upon or under said strip; to trim, cut down and remove bushes and trees and to remove grass and crops growing on said strip to such extent as in the judgment of the Grantee is necessary for any of the above purposes and to enter upon said strip at any and all times for any of the foregoing purposes; reserving to the Grantor, its successors and assigns, the use and enjoyment of said strip for such purposes only as will in no way

interfere with the perpetual use thereof by the Grantee, its successors and assigns, for the purposes above mentioned, provided that no building or any kind of permanent structure will be erected on said strip by the Grantor, its successors and assigns; and that the Grantor, its successors and assigns, shall not remove earth from said strip or place fill thereon without the written permission of the Grantee, provided nevertheless, the Grantor herein specifically reserves the right to construct a parking lot upon the fore-described parcel consisting of one foot of contracted gravel and up to two inches of asphalt paving thereon.

322

To Have and to Hold the same, together with all the privileges and appurtenances thereunto belonging, to the said

PORTLAND WATER DISTRICT, its Successors

Heirs and Assigns forever.

And the said Grantor Corporation does covenant with the said

PORTLAND WATER DISTRICT, its Successors

Heirs and Assigns, that it will Warrant and Forever Defend the premises to the said Grantee, its Successors Heirs and Assigns forever, against the lawful claims and demands of all persons claiming by, through, or under it.

In Witness Whereof, the said WEBBER PETROLEUM COMPANY

has caused this instrument to be sealed with its corporate seal and signed in its corporate name by Larry K. Mahaney, its President

thereunto duly authorized, this twenty-first day of December in the year one thousand nine hundred and seventy-six.

Signed, Sealed and Delivered in presence of

WEBBER PETROLEUM COMPANY
(Corporate Name)

Small & Brown

By *Larry K. Mahaney*
Larry K. Mahaney
Its President

(Corporate Seal)

State of Maine, } ss.
Penobscot

December 21, 1976.

Personally appeared the above named Larry K. Mahaney, President of said Grantor Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me,

Paul T. Red

Justice of the Peace.

Notary Public.
Attorney at Law.

JAN 17 1977

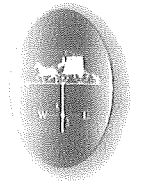
REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 3 H 48 M PM, and recorded in

BOOK 3964 PAGE 320. *Margaret L. Fisher* Register



1 inch = 20 feet



PORTLAND WATER DISTRICT
 225 Douglass Street
 Portland, ME 04104

Legend

- | | | | |
|----------------|-------------------|-------------------|------------|
| ● Blow Off | ① Fire Service | ● Air Valve | ● Sleeve |
| ● By Pass | ● Hydrant Control | ● Date Change | ● Tee |
| ⊗ Distribution | ① Service | ● Material Change | ● Hydrants |
| ■ End of Main | ● Transmission | ▲ Reducer | |

Kensington Street

Portland



Disclaimer: This map is suitable for preliminary study and analysis and is based on PWD record information. PWD is not liable for any damages whatsoever resulting from inaccurate data or from errors made in the location and marking of its infrastructure.

Drawn By: J. Paschal

Prepared For: Blais Civil Engineering

Scale: As Noted

Date: December 23, 2009

Doc#: 114196 Bk:20400 Pg: 279

EXHIBIT A

Beginning at a point on the easterly sideline of Kensington Street at the northeast corner of the land of the Grantor as shown on Topographic Plan Prepared for Yacht Haven, LLC, prepared by Post Road Surveying, dated 10/02/00; thence running S 47° 18' 01" W a distance of 118.62 feet; thence turning and running S 09° 57' 40" E a distance of 417.00 feet; thence turning and running S 80° 02' 20" W a distance of 8.00 feet; thence turning and running S 09° 57' 40" E a distance of approximately 419 feet to the mean high tide elevation of 9.6 feet; thence turning and running N 80° 02' 20" E a distance of 8.00 feet; thence turning and running N 09° 57' 40" W a distance of approximately 411 feet; thence turning and running N 80° 02' 20" E a distance of 8.00 feet; thence turning and running N 09° 57' 40" W a distance of 420.63 feet; thence turning and running N 47° 18' 01" E a distance of 109.11 feet; thence turning and running N 09° 57' 40" W a distance of 9.51 feet back to the point of beginning.

Received
 Recorded Register of Deeds
 Oct 16, 2003 10:11:26A
 Cumberland County
 John E. O'Brien

Together with and hereby granting to Grantee the right to enter upon the Grantor's property on foot and at reasonable times in order to ensure compliance with the terms hereof.

The Grantee by acceptance of this Easement Deed agrees to terminate the easement on the westerly portion of the property (not including the area from Kensington Street to the westerly property line), if the Grantee acquires the adjacent St. Lawrence and Atlantic Railroad property and a trail running perpendicular to the Grantor's property is ever built on said property.

To have and to hold the said Easement and all rights granted hereunder to the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this easement to be executed by Sherman A. Scott, its duly authorized Managing Partner, this 31 day of July, 2003.

WITNESS:

MAINE YACHT CENTER, LLC

[Signature]

By: [Signature]
Its: Managing Partner
Print Name: Sherman A. Scott

STATE OF LOUISIANA
PARISH OF IBERIA, ss.

7-31-03, 2003

Personally appeared the above-named Sherman A. Scott of Maine Yacht Center, LLC, as aforesaid, who acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

[Signature]
Alan E. Wolk
Notary Public/Attorney-at-Law

DEED OF TRAIL EASEMENT

In consideration of the payment of one dollar, MAINE YACHT CENTER, LLC, a Maine Limited Liability Company with a place of business in Portland, Maine ("Grantor"), hereby grants to the CITY OF PORTLAND, a Maine municipality organized and existing under the laws of the State of Maine, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 ("Grantee") a perpetual eight foot (8.00') wide easement over a strip of land (the "Easement Area") running from Kensington Street to the westerly edge of the Grantor's property bordering the railroad and running along the westerly sideline of Grantor's property until reaching the high water mark, which Easement Area and property are more particularly described in Exhibit A attached hereto. This easement is for the purpose of constructing a trail along the Grantor's property and for conserving the Easement Area as provided herein.

Together with and hereby granting to Grantee the right to construct, maintain, replace, relocate and repair within the Easement Area a trail (paved or unpaved) up to eight (8) feet in width (the "Trail") together with bridges, guard rails, retaining walls, signage and other similar appurtenances for purposes of pedestrian, bicycle and similar non-motorized (other than wheelchair and emergency vehicles which shall be permitted) recreational uses by the public, which uses may include without limit, nature observation, use by rollerbladers, skateboarders, cross country skiers and such other recreational uses as may now or in the future arise, subject, however, to such rules which Grantee may adopt from time to time in the interests of public safety and/or to protect the Easement Area.

Together with and hereby granting to Grantee an easement across the Grantor's property in such locations as may be reasonably acceptable to Grantor for purposes of bringing in workers, vehicles and equipment for the aforesaid construction, maintenance, replacement, relocation and repair of the Trail and appurtenances.

Both Grantor and Grantee acknowledge that this easement is being provided to Grantee for purposes of public recreation without charge. It is understood that the use herein granted is non-exclusive and that the primary use which Grantor makes of its land (of which the Easement Area is a part) is commercial and non-recreational. Furthermore, it is understood that the Grantor is under no obligation to construct the trail.

Reserving to the Grantors and its successors and assigns, the use and enjoyment of said parcel for such purposes only as will in no way interfere with the safe and proper use thereof by the Grantee for the purposes above-mentioned.

Together with and hereby granting to Grantee the right within the Easement Area to periodically trim trees and to remove dead, diseased or fallen trees (including "leaners") and to selectively clear undergrowth and make plantings to (1) prevent erosion, (2) provide views of Casco Bay and (3) provide for public safety, all in accordance with good forestry and landscaping management practices, it being the intent hereof that this easement shall also be a conservation easement pursuant to 33 M.R.S.A. § 476 et seq.

Att. 1
Order 55-03/04
Tab 5 9-15-03

JAMES F. CLOUTIER (MAYOR) (A/L)
PETER E. O'DONNELL (1)
KAREN A. GERAGHTY (2)
NATHAN H. SMITH (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN W. GRIFFIN (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

ORDER ACCEPTING TRAIL EASEMENT
RE: 65 KENSINGTON STREET

ORDERED, that the City hereby accepts a trail easement from Maine Yacht Center LLC, as detailed in Attachment 1, for purposes noted within said easements (for providing a trail to the waters of Casco Bay for pedestrian, bicycle and similar non-motorized [other than wheelchairs, snow removal equipment etc.] recreational uses by the general public).

A TRUE COPY
ATTEST: Linda C. Cohen
Linda C. Cohen, CMC, City Clerk
Portland, Maine

DATE 10/15/03

SEAL

Theresa L. Bourgojn
Theresa L. Bourgojn
Notary Public, Maine
My Commission Expires October 28, 2007

SEAL

10
Quit-Claim Deed

CORPORATION - WITH COVENANT

From

WEBBER PETROLEUM COMPANY

To

M PORTLAND WATER DISTRICT

Dated August 6, 19 85

State of Maine,

in Registry of Deeds

Received 19

at H., M., and

recorded in Book, Page

Attest:

Register.

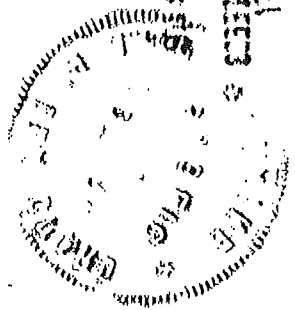
FROM THE OFFICE OF

LORING, SHORT, & HARMON, LAW STATIONERS
PORTLAND, BRUNSWICK, LEWISTON,
AUGUSTA & BANGOR, MAINE

RECEIVED

RECORDED BY S. S. ...

RECORDED BY S. S. ...



Know all Men by these Presents,

That WEBBER PETROLEUM COMPANY,

a Corporation organized and existing under the laws of the State
of Maine and located at Bangor
in the County of Penobscot and State of Maine
in consideration of One Dollar (\$1.00) and other valuable
considerations

paid by PORTLAND WATER DISTRICT, a quasi-municipal corporation
organized and existing under the laws of the State of Maine and
located at Portland in the County of Cumberland and State of Maine,
~~and whose name and address are~~

the receipt whereof it does hereby acknowledge, does hereby ~~release,~~
~~release, bargain, sell and convey,~~ and forever quit-claim unto the said

PORTLAND WATER DISTRICT, its successors ~~heirs~~ and assigns forever,

~~excepted in, but on premises~~

the right perpetually to enter at any and all times upon a certain
strip of land situated in the City of Portland, in the County of
Cumberland and State of Maine, bounded and described as follows:
Beginning at a point on the southwesterly sideline of Kensington
Street, said point being one hundred seventy and seventy-six hundredths
(170.76) feet as measured North 23°-46'-55" West along said side-
line from the southerly terminus of said Kensington Street; thence
South 74°-41'-25" West one hundred one and ten hundredths (101.10)
feet to land of Canadian National Railway; thence by said Railway
North 23°-46'-55" West five and six hundredths (5.06) feet to the
southwest corner of another easement from the Grantor to the
Grantee dated December 21, 1976 and recorded in the Cumberland
County Registry of Deeds in Book 3964, Page 320; thence North
74°-41'-25" East along said other easement one hundred one and ten
hundredths (101.10) feet to the southwesterly sideline of
Kensington Street; thence South 23°-46'-55" East five and six
hundredths (5.06) feet to the point of beginning. Said strip
containing 511 square feet.

Courses refer to Grid North,
Being a portion of the premises conveyed to the Grantor by Sun Oil
Company of Pennsylvania by deed dated September 19, 1975 and
recorded in Cumberland County Registry of Deeds in Book 3774,
Page 281.

And to construct and perpetually maintain through and across said
strip conduits or pipe lines for conveying water and sewage and
to lay, relay, repair, maintain and remove water and sewage pipe or
pipes upon or under said strip, with all necessary fixtures or
appurtenances, together with the right at all times to make connec-
tions with said conduits or pipe lines to land adjoining said strip
by means of pipes or services, to install electric or other
energized control lines and appurtenances upon or under said strip;
to trim, cut down and remove bushes and trees and to remove grass
and crops growing on said strip to such extent as in the judgment
of the Grantee is necessary for any of the above purposes and to
enter upon said strip at any and all times for any of the fore-
going purposes; reserving to the Grantor, its successors and
assigns, the use and enjoyment of said strip for such purposes
only as will in no way interfere with the perpetual use thereof

by the Grantee, its successors and assigns, for the purposes above mentioned, provided that no building or any kind of permanent structure will be erected on said strip by the Grantor, its successors and assigns, and that the Grantor, its successors and assigns, shall not remove earth from said strip or place fill thereon without the written permission of the Grantee, provided nevertheless, the Grantor herein specifically reserves the right to construct a parking lot upon the fore-described parcel consisting of one foot of contracted gravel and up to two inches of asphalt paving thereon.

To Have and to Hold the same, together with all the privileges and appurtenances thereunto belonging, to the said

PORTLAND WATER DISTRICT, its Successors

Heirs and Assigns forever.

And the said Grantor Corporation does covenant with the said

PORTLAND WATER DISTRICT, its Successors

Heirs and Assigns, that it will Warrant and Forever Defend the premises to the said Grantee, its Successors

Heirs and Assigns forever, against the lawful claims and demands of all persons claiming by, through, or under it.

In Witness Whereof, the said WEBBER PETROLEUM COMPANY

has caused this instrument to be sealed with its corporate seal

and signed in its corporate name by Larry K. Mahaney

, its President

thereunto duly authorized, this 6th day of August

in the year one thousand nine hundred and eighty-five

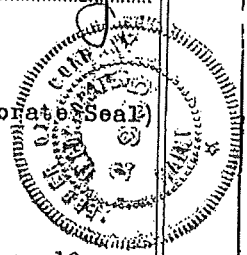
Signed, Sealed and Delivered in presence of

James C. Goff

WEBBER PETROLEUM COMPANY
(Corporate Name)

By *Larry K. Mahaney*
Larry K. Mahaney
Its President

(Corporate Seal)



State of Maine } ss.
County of Penobscot

August 6, 1985

SEAL

Personally appeared the above named Larry K. Mahaney, President of said Grantor Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

SEAL

Before me,

Jane F. Blanchard
Justice of the Peace.

Notary Public.

Attorney at Law.

Jane F. Blanchard

James J. Walsh
My Commission Expires June 22, 1992

RECEIVED

1985 AUG 20 PM 2:48

RECORDED REGISTRY OF DEEDS
CUMBERLAND COUNTY



- -

LICENSE AGREEMENT

This Agreement is made and entered into this 10th day of July, 2009, by MAINE DEPARTMENT OF TRANSPORTATION, as Department, and MAINE YACHT CENTER, LLC as Licensee, for the use of a parcel of land is a RR ditch line located in Portland for overflow drainage of a parcel owned by the Licensee, said land being part of Department's Grand Trunk rail line. Said parcel is more fully described as follows:

Said parcel of land is the ditch line of the Grand Trunk Rail line. Said parcel is reflected on RR Val sheet V.26/22 of Right of Way and Track Map of the Grand Trunk RR dated June 30, 1917.

Licensee herein acknowledges that the term Department, wherever used in this agreement, shall include not only the **Maine Department of Transportation**, but also any Operator licensed by the Department of Transportation, currently **St. Lawrence and Atlantic Railroad**, to provide rail service on the Grand Trunk Rail line. Use of said parcel and drainage shall be in conformance Maine Yacht Center engineering plans prepared by Blais Civil Engineers and submitted to the Department, and made part of this document as Attachment A. This License shall be subject to the following terms and conditions:

1. **TERM.** The Term of the License will commence on June 9, 2009 and will continue until termination by the Licensee or by the Department if the property is required for railroad operations or Licensees use of the property creates operational or maintenance issues for the Department that cannot be resolved between the parties. Termination shall be carried out by 60 days written notice. The provisions of Paragraph 11 herein shall survive any termination.
2. **RENT.** The Licensee shall pay to the Department a fee of \$100.00 for expenses in connection with the preparation and execution of this License and, in addition thereto, Licensee agrees to pay as rental for the premises on a yearly basis the sum of \$0.00 payable in advance annually on the anniversary date of this License. If this License is terminated for any reason other than default by Licensee, the rental fee shall be prorated on a daily basis and any balance due Licensee shall be refunded upon restoration of the

- -

premises pursuant to the terms of paragraph 15 of this agreement.

3. OCCUPANCY. Licensee agrees that the premises shall be used and occupied by Licensee as defined above. Neither the premises nor any part thereof shall be used at any time during the term of this License by Licensee for any other purpose. Licensee's use of the premises shall not interfere in any way with the operation of the railroad track, including without limitation the movement of trains thereon. Licensee shall make any drainage improvements the Department requires to the Railroad drainage and ditch line as part of this agreement. Licensee shall be responsible for securing any permits or approvals necessary to its use of the premises and shall comply with all environmental and sanitary laws, and all statutes, ordinances, rules, and orders of appropriate governmental authorities pertaining to the premises, to its activities thereon and to all other activities occurring in connection with the exercise of the rights granted under this agreement.
4. UTILITIES. Department shall pay for the following: None
Licensee shall pay for the following: All utilities.
Licensee shall pay any local, State or Federal taxes assessed on this agreement.
5. ASSIGNMENT AND SUBLETTING. Licensee shall not sublet the premises, or any part thereof, or assign this License.
6. MAINTENANCE AND REPAIR. Licensee shall, at its own expense, keep and maintain the premises in good and sanitary condition during the term of this License and not suffer waste to same.
7. ALTERATIONS. All approved alterations and improvements to the property are depicted in the attached engineering plan, Attachment A. Additional improvements require the approval of the Department. All costs related to improvements to the property shall be the responsibility of the Licensee.
8. INSURANCE. Licensee shall carry personal property and equipment insurance sufficient to cover the value of all personal property and equipment on the Department's property. Licensee shall carry insurance

- -

coverage in an amount not less than **\$1,000,000.00** for both personal injury and property damage occurring as a result of Licensee's activities and presence on, and its use, alteration and occupation of any of the Department's property; said coverage to apply to any and all claims or causes of action resulting in death, bodily injury or property damage; said amount being applicable to all such claims brought by any person or arising out of any single occurrence. Such policy shall name St. Lawrence and Atlantic Railroad as and additional insured and shall also name the Maine Department of Transportation as an additional insured, but for each such policy coverage and limits applicable to the Maine Department of Transportation shall only be in the amount of **\$400,000.00** which amount shall include court costs, interest, and all other costs, and shall extend only to those acts and omissions for which the Maine Department of Transportation is liable pursuant to 14 M.R.S.A. §8104-A of the Maine Tort Claims Act, as amended. And furthermore, the coverage, specified by this clause shall not extend to any act or omission by the Maine Department of Transportation for which governmental immunity has been granted pursuant to 14 M.R.S.A. §8103, as amended. Nothing contained herein shall affect, eliminate, remove, or alter the protections afforded the Maine Department of Transportation by any section of the Maine Tort Claims Act, 14 M.R.S.A. §8101 et seq, as amended. Licensee shall provide proof of insurance to Department at the time of the execution of this License.

9. DANGEROUS MATERIALS. Licensee shall not keep or have on the premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
10. RIGHT OF ENTRY. Licensee shall allow Department to enter the premises at all reasonable hours. Licensee shall allow Department to enter the premises at all times in the case of an emergency. Furthermore, Department need not give Licensee notice of its intent to enter when it is impracticable to do so or an emergency exists. Department retains the right to use the premises during the term hereof so long as such use

does not actually interfere in the Licensee's activities.

11. INDEMNIFICATION AND WAIVER. Licensee shall indemnify and save Department harmless from all liability, loss, cost, damage, harm or expense, including attorney's fees, arising out of or relating to Licensee's use and occupation of the Department's property. Licensee agrees to hold Department harmless from any claims for damages no matter how caused. Licensee waives all present and future claims against Department, as such, that might be considered as exceptions to the immunity otherwise provided to Department by the Maine Tort Claims Act.
12. ACCESS. Licensee shall be solely responsible for obtaining any other rights of access required for its purposes.
13. NO WARRANTIES. Department makes no warranty or representation about the condition of the premises and it shall be the Licensee's responsibility to determine whether any improvements to the premises are necessary in order to allow its use thereof. In the event such improvements are required, the work shall be performed by the Licensee at the expense of the Licensee, subject to the provisions of paragraph 7 of this License, and all such improvements shall be the property of the Department.
14. SEVERABILITY. Should a provision or any part of this agreement be declared void by a court of competent jurisdiction, the other provisions and parts of this agreement shall remain in force.
15. SURRENDER. Licensee shall surrender the premises to Department on the expiration or sooner termination of the License. If License is terminated prior to expiration date by Department due to a need for the land for rail operations, Said premises to be restored to the same conditions as when received.
16. HOLDING OVER. Any holding over by Licensee under this License, without Department's written consent, shall constitute trespass. The parties mutually agree that any personal property placed on the property by the Licensee and remaining on the Department's property fourteen (14) days after the termination of this

License shall be deemed abandoned and title thereto shall vest automatically in the Department.

17. NONPAYMENT OF RENT OR OTHER DEFAULT. Upon default in the payment of rent, or any part thereof, or if any default is made in the performance of any of the terms or conditions described above, the License shall terminate immediately at the option of the Department. Department shall give Licensee written notice of such termination.

18. WAIVER. Waiver by Department of any breach of condition under this License must be in writing and is not a waiver of any other condition or duty of Licensee or of any subsequent breach of the same condition or duty.

19. NOTICES. All notices under this License shall be addressed as follows and shall be mailed by certified mail, return receipt requested:

Department:

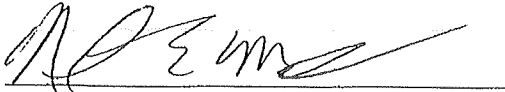
Licensee:

Maine Department of
Transportation
2 Child Street
16 State House Station
Augusta, Maine 04333
Attn: Director
Office of Freight Transportation

Maine Yacht Center
100 Kensington St.
Portland, ME 04103
Attn. Brian Harris

Witness

STATE OF MAINE DEPARTMENT
OF TRANSPORTATION

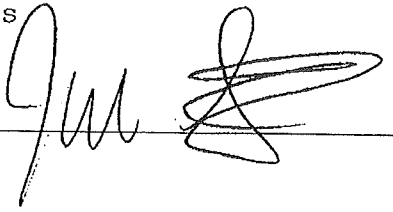


By




Robert Elder, Director
Office of Freight

Witness

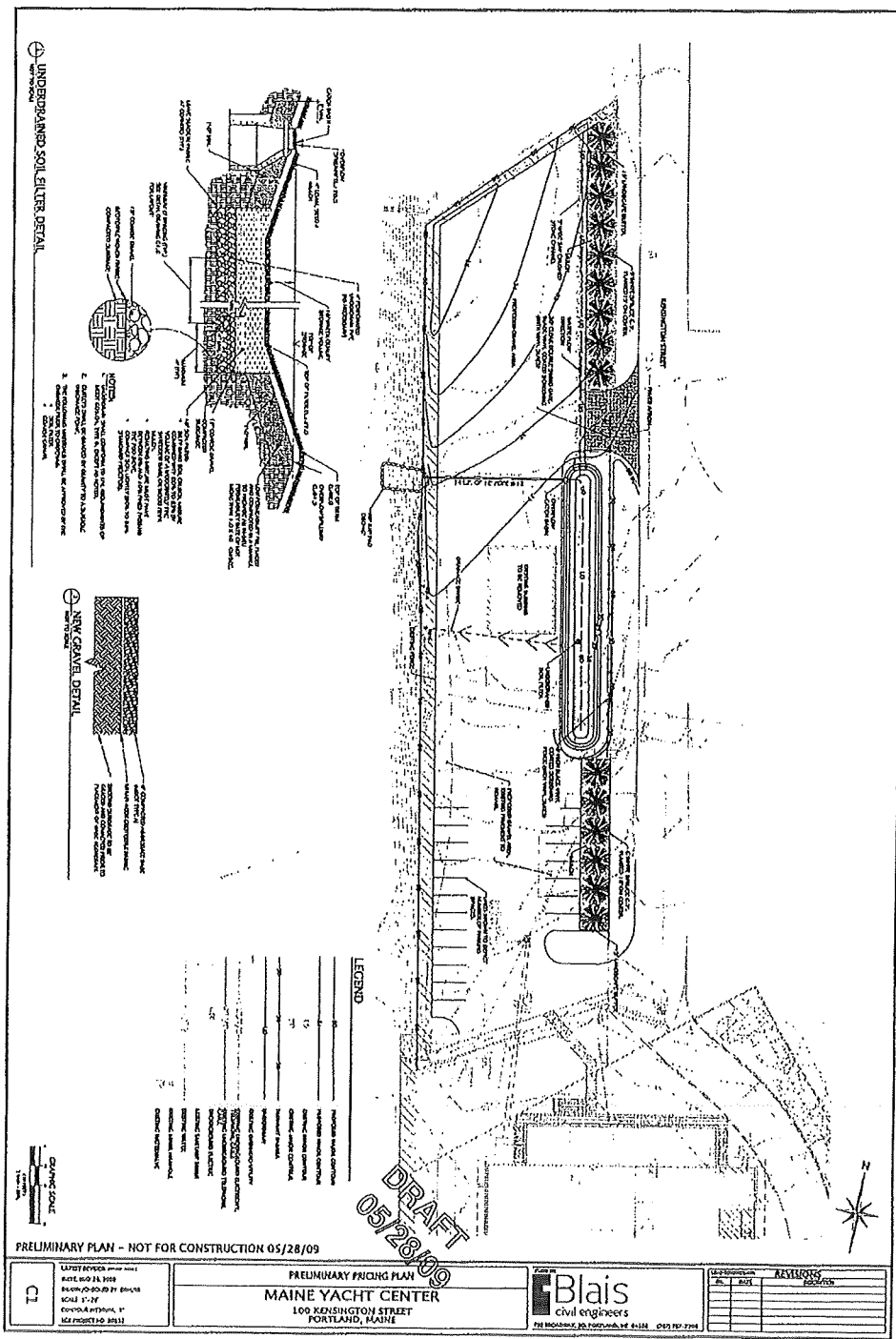


LICENSEE:
MAINE YACHT CENTER, LLC

By 

Brian Harris

Meineyachtdrain 6-9-09.Doc
06/10/2009 10:35





January 6, 2010
BCE File: 09112

Maine Natural Areas Program
Maine Department of Conservation
159 Hospital Street, State House Station #93
Augusta, ME 04333-0093

**Re: Maine Yacht Center, 100 Kensington Street, Portland, Maine
Development Impact Research**

Dear Sir or Madam:

Enclosed please find location map for the proposed development project just off Kensington Street in Portland, Maine.

Please review this material and inform us of any impact this construction may have on rare or endangered species or communities. Thank you in advance for your help.

Sincerely,

BLAIS CIVIL ENGINEERS

A handwritten signature in black ink, appearing to read 'Tom Doyle', is written over the typed name.

Thomas D. Doyle, PE

encl: Drawing 1, Location Map, dated 01/04/10

cc: Brain Harris, Maine Yacht Center
File



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

ELIZA TOWNSEND
ACTING COMMISSIONER

January 21, 2010

Thomas Doyle
Blais Civil Engineers
780 Broadway
South Portland, Maine 04106

Re: Rare and exemplary botanical features in proximity to: Maine Yacht Center Proposed Development, Portland, Maine.

Dear Mr. Doyle:

I have searched the Natural Areas Program's Biological and Conservation Data System files in response to your request of January 6, 2010 for information on the presence of rare or unique botanical features documented from the vicinity of the project site in Portland, Maine. Rare and unique botanical features include the habitat of rare, threatened, or endangered plant species and unique or exemplary natural communities. Our review involves examining maps, manual and computerized records, other sources of information such as scientific articles or published references, and the personal knowledge of staff or cooperating experts.

Our official response covers only botanical features. For authoritative information and official response for zoological features you must make a similar request to the Maine Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, Maine 04333.

According to the information currently in our Biological and Conservation Data System files, there are no rare botanical features documented specifically within the project area. This lack of data may indicate minimal survey efforts rather than confirm the absence of rare botanical features. You may want to have the site inventoried by a qualified field biologist to ensure that no undocumented rare features are inadvertently harmed.

If a field survey of the project area is conducted, please refer to the enclosed supplemental information regarding rare and exemplary botanical features documented to occur in the vicinity of the project site. The list may include information on features that have been known to occur historically in the area as well as recently field-verified information. While historic records have not been documented in several years, they may persist in the area if suitable habitat exists. The enclosed list identifies features with potential to occur in the area, and it should be considered if you choose to conduct field surveys.

This finding is available and appropriate for preparation and review of environmental assessments, but it is not a substitute for on-site surveys. Comprehensive field surveys do not exist for all natural areas in Maine, and in the absence of a specific field investigation, the Maine Natural Areas Program cannot provide a definitive statement on the presence or absence of unusual natural features at this

www.maine.gov/doc
PHONE: 207-287-4900
FAX: 207-287-2400
TTY: 888-577-6690

site.

The Natural Areas Program is continuously working to achieve a more comprehensive database of exemplary natural features in Maine. We would appreciate the contribution of any information obtained should you decide to do field work. The Natural Areas Program welcomes coordination with individuals or organizations proposing environmental alteration, or conducting environmental assessments. If, however, data provided by the Natural Areas Program are to be published in any form, the Program should be informed at the outset and credited as the source.

The Natural Areas Program has instituted a fee structure of \$75.00 an hour to recover the actual cost of processing your request for information. You will receive an invoice for \$75.00 for our services.

Thank you for using the Natural Areas Program in the environmental review process. Please do not hesitate to contact me if you have further questions about the Natural Areas Program or about rare or unique botanical features on this site.

Sincerely,



Sarah Demers
Environmental Review Coordinator
Maine Natural Areas Program
207-287-8670
sarah.demers@maine.gov

Enclosures

Rare and Exemplary Botanical Features in the Project Vicinity

1/21/2010

Documented within a Four-Mile Radius of the Maine Yacht Center Proposed Development, Portland, Maine.

<u>Scientific Name</u>	<u>Common Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
<i>Carex polymorpha</i>	Variable Sedge	2006-07-12	G3	S1	E	In Maine, habitat is between downslope seeps (with horsetails and wetland sedges) and upslope mixed oak/huckleberry forest. Preferred soil type is Deerfield Loamy Sand.
<i>Calmia latifolia</i>	Mountain-laurel	1985-08-01	G5	S2	SC	Rocky or gravelly woods and clearings, sometimes swamps.
<i>Polygonum tenue</i>	Slender Knotweed	1902-09-07	G5	SH	PE	Dry open soil (chiefly acid)
<i>Chimaphila maculata</i>	Spotted Wintergreen	1991-09	G5	S2	E	Dry woods.
<i>Viola palmata</i>	Palmate-leaved Violet	1908	G5	SH	PE	Rich deciduous woods, shaded calcareous ledges, etc.
<i>Carex polymorpha</i>	Variable Sedge	1911	G3	S1	E	In Maine, habitat is between downslope seeps (with horsetails and wetland sedges) and upslope mixed oak/huckleberry forest. Preferred soil type is Deerfield Loamy Sand.
<i>Carex polymorpha</i>	Variable Sedge	1911-06-29	G3	S1	E	In Maine, habitat is between downslope seeps (with horsetails and wetland sedges) and upslope mixed oak/huckleberry forest. Preferred soil type is Deerfield Loamy Sand.

Rare and Exemplary Botanical Features in the Project Vicinity

1/21/2010

Documented within a Four-Mile Radius of the Maine Yacht Center Proposed Development, Portland, Maine.

<u>Scientific Name</u>	<u>Common Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
<i>Allium canadense</i>	Wild Garlic	1918-07-16	G5	S2	SC	Alluvial woods, thickets, and meadows.
<i>Allium tricoccum</i>	Wild Leek	1978-06-28	G5	S3	SC	Rich hardwood forests, usually alluvial.
<i>Catantbera flava</i> var. <i>herbiola</i>	Pale Green Orchis	1907-07-05	G4T4Q	S2	SC	Swampy woods, bottomlands, swales, and wet shores.
<i>Elymus hystrix</i>	Bottlebrush Grass	1905-09-13	G5	S3	SC	Rich, rocky, or alluvial deciduous forests.
<i>Pteris hexagonoptera</i>	Broad Beech Fern	1872-08	G5	S2	SC	Rich, often rocky, hardwood forests.
<i>Eleocharis engelmannii</i>	Engelmann's Spikerush	1916-08-31	G4G5Q	SH	PE	Wet sand, peat or mud
<i>Splenium platyneuron</i>	Ebony Spleenwort	1910-06-06	G5	S2	SC	Rich partly forested slopes, rocky ledges, and dry, circumneutral outcrops.

Rare and Exemplary Botanical Features in the Project Vicinity

1/21/2010

Documented within a Four-Mile Radius of the Maine Yacht Center Proposed Development, Portland, Maine.

<u>Scientific Name</u>	<u>Common Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
Potamogeton vaseyi	Vasey's Pondweed	1901-08-04	G4	S2	SC	Quiet muddy or calcareous waters.
Adlumia fungosa	Allegheny Vine	1860-10	G4	S1	T	Wet or recently burned woods, rocky wooded slopes.
Arabis missouriensis	Missouri Rockcress	1905-06-11	G5?Q	S1	T	Circumneutral bluffs, ledges or rocky woods.
Suaeda calceoliformis	American Sea-blite	1932-09-12	G5	S2	T	Rocky or gravelly saltmarshes and sea-strands.
Zannichellia palustris	Horned Pondweed	1913-09-13	G5	S2	SC	Fresh, brackish or alkaline waters, and stream edges.
Aureolaria pedicularia	Fern-leaved False Foxglove	1902-09-02	G5	S3	SC	Dry deciduous woods and clearings.
Polygala cruciata var. aquilonia	Marsh Milkwort	1903-08-18	G5T4	SH	PE	Wet pinelands, savannas, peats, and sands.

Rare and Exemplary Botanical Features in the Project Vicinity

1/21/2010

Documented within a Four-Mile Radius of the Maine Yacht Center Proposed Development, Portland, Maine.

<u>Scientific Name</u>	<u>Common Name</u>	<u>Last Seen</u>	<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
<i>obelia siphilitica</i>	Great Blue Lobelia	1905-09	G5	SX	PE	Rich low woods and swamps
<i>Wolffia columbiana</i>	Columbia Water-meal	2002-08-04	G5	S2	SC	Ponds, and still waters.
<i>lilium canadense</i>	Wild Garlic	1921-07-26	G5	S2	SC	Alluvial woods, thickets, and meadows.
<i>saxifraga pensylvanica</i>	Swamp Saxifrage	1913-06-11	G5	S3	SC	Wet meadows, swamps, boggy thickets, and seeping banks.
<i>rosaspina pectinata</i>	Comb-leaved Mermaid-weed	1906-09-29	G5	S1	E	Sandy bogs of the coastal plain
<i>ostea aurantiacum</i>	Wild Coffee	1910-06-19	G5	S1	E	Rich woods and thickets.
<i>onicera dioica</i>	Mountain Honeysuckle	1905-06	G5	S2	E	Rocky banks, dry woods and thickets.

Rare and Exemplary Botanical Features in the Project Vicinity

1/21/2010

Documented within a Four-Mile Radius of the Maine Yacht Center Proposed Development, Portland, Maine.

<u>Scientific Name</u>		<u>Global Rarity Rank</u>	<u>State Rarity Rank</u>	<u>State Protection Status</u>	<u>Habitat Description</u>
<u>Common Name</u>	<u>Last Seen</u>				
Allium tricoccum Wild Leek	2003-06-17	G5	S3	SC	Rich hardwood forests, usually alluvial.

STATE RARITY RANKS

- S1 Critically imperiled in Maine because of extreme rarity (five or fewer occurrences or very few remaining individuals or acres) or because some aspect of its biology makes it especially vulnerable to extirpation from the State of Maine.
- S2 Imperiled in Maine because of rarity (6-20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- S3 Rare in Maine (20-100 occurrences).
- S4 Apparently secure in Maine.
- S5 Demonstrably secure in Maine.
- SU Under consideration for assigning rarity status; more information needed on threats or distribution.
- S#? Current occurrence data suggests assigned rank, but lack of survey effort along with amount of potential habitat create uncertainty (e.g. S3?).

Note: State Rarity Ranks are determined by the Maine Natural Areas Program.

GLOBAL RARITY RANKS

- G1 Critically imperiled globally because of extreme rarity (five or fewer occurrences or very few remaining individuals or acres) or because some aspect of its biology makes it especially vulnerable to extinction.
- G2 Globally imperiled because of rarity (6-20 occurrences or few remaining individuals or acres) or because of other factors making it vulnerable to further decline.
- G3 Globally rare (20-100 occurrences).
- G4 Apparently secure globally.
- G5 Demonstrably secure globally.
- GNR Not yet ranked.

Note: Global Ranks are determined by NatureServe.

STATE LEGAL STATUS

Note: State legal status is according to 5 M.R.S.A. § 13076-13079, which mandates the Department of Conservation to produce and biennially update the official list of Maine's Endangered and Threatened plants. The list is derived by a technical advisory committee of botanists who use data in the Natural Areas Program's database to recommend status changes to the Department of Conservation.

- E ENDANGERED; Rare and in danger of being lost from the state in the foreseeable future; or federally listed as Endangered.
- T THREATENED; Rare and, with further decline, could become endangered; or federally listed as Threatened.

NON-LEGAL STATUS

- SC SPECIAL CONCERN; Rare in Maine, based on available information, but not sufficiently rare to be considered Threatened or Endangered.
- PE Potentially Extirpated; Species has not been documented in Maine in past 20 years or loss of last known occurrence has been documented.

Visit our website for more information on rare, threatened, and endangered species!
<http://www.maine.gov/doc/nrimc/mnap>

ELEMENT OCCURRENCE RANKS - EO RANKS

Element Occurrence ranks are used to describe the quality of a rare plant population or natural community based on three factors:

- **Size:** Size of community or population relative to other known examples in Maine. Community or population's viability, capability to maintain itself.
- **Condition:** For communities, condition includes presence of representative species, maturity of species, and evidence of human-caused disturbance. For plants, factors include species vigor and evidence of human-caused disturbance.
- **Landscape context:** Land uses and/or condition of natural communities surrounding the observed area. Ability of the observed community or population to be protected from effects of adjacent land uses.

These three factors are combined into an overall ranking of the feature of **A, B, C, or D**, where **A** indicates an excellent example of the community or population and **D** indicates a poor example of the community or population. The Maine Natural Areas Program tracks all occurrences of rare (S1-S3) plants and natural communities as well as A and B ranked common (S4-S5) natural communities.

Note: Element Occurrence Ranks are determined by the Maine Natural Areas Program.

Visit our website for more information on rare, threatened, and endangered species!
<http://www.maine.gov/doc/hrime/mnap>



January 6, 2010
BCE File: 09112

Brian Lewis, Regional Fisheries Biologist
Department of Inland Fisheries & Wildlife
358 Shaker Road
Gray, Maine 04039

**Re: Maine Yacht Center, 100 Kensington Street, Portland, Maine
Development Impact Research**

Mr. Lewis:

Enclosed please find location map for the proposed development project just off Kensington Street in Portland, Maine.

Please review this material and inform us of any impact this construction may have on wildlife or important and significant wildlife habitat. Thank you in advance for your help.

Sincerely,

BLAIS CIVIL ENGINEERS

A handwritten signature in black ink, appearing to read 'Tom Boyle', is written over the typed name.

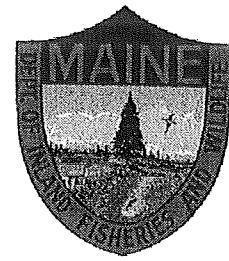
Thomas D. Boyle, PE

encl: Drawing 1, Location Map, dated 01/04/10

cc: Brian Harris, Maine Yacht Center
File



Maine Department of Inland
Fisheries and Wildlife
358 Shaker Road
Gray, Maine 04039



Telephone: 207-657-2345 ext.113
Fax: 207-657-2980
Email: brian.lewis @maine.gov

John Elias Baldacci, Governor

Roland Martin, Commissioner

January 25, 2010

Thomas Doyle
780 Broadway
South Portland, Maine 04106

RE: Maine Yacht Center, Portland

Dear Thomas Doyle,

I have reviewed your request for fishery resource information, and there are no known threatened/endangered fish species or habitat in the vicinity of the proposed project. There are also no known inland fisheries resources within the proposed project area. Because the parcel in question borders tidal waters you may wish to contact the Maine Department of Marine Resources for comments regarding this project. Our regional riparian buffer policy is outlined below.

Stream systems are vulnerable to environmental impacts associated with increased development and encroachment. If present, this project should be sensitive to these resource issues by including provisions for riparian buffers and minimizing any other potential stream impacts. Our regional buffer policy requests 100 foot undisturbed buffers along both sides of any stream or stream-associated wetlands. Buffers should be measured from the upland wetland edge of stream-associated wetlands, and if the natural vegetation has been previously altered then restoration may be warranted. This buffer requirement improves erosion/sedimentation problems; reduces thermal impacts; maintains water quality; supplies leaf litter and woody debris for the system; and provides valuable wildlife habitat. Protection of these important riparian functions insures that the overall health of the stream habitat is maintained.

Stream crossings, if applicable, must include provisions for adequate fish passage, and any in-stream work needs to be done between the first of July and the first of October. Project design should minimize the number of stream crossings. If you have any additional questions or concerns then feel free to contact us.

Sincerely,

Brian Lewis
Fishery Specialist
MDIFW



December 29, 2009
BCE File: 09112

Mr. Scott Lindsay, Regional Wildlife Biologist
Department of Inland Fisheries & Wildlife
358 Shaker Road
Gray, Maine 04039

**Re: Maine Yacht Center, 100 Kensington Street, Portland, Maine
Development Impact Research**

Mr. Lindsay:

Enclosed please find location map for the proposed development project just off Kensington Street in Portland, Maine.

Please review this material and inform us of any impact this construction may have on wildlife or important and significant wildlife habitat. Thank you in advance for your help.

Sincerely,

BLAIS CIVIL ENGINEERS

A handwritten signature in black ink, appearing to read 'Tom Doyle', is written over the typed name.

Thomas D. Doyle, PE

encl: Drawing 1, Location Map, dated 01/04/10

cc: Brian Harris, Maine Yacht Center
File

John E. Baldacci
Governor



Roland D. Martin
Commissioner

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Wildlife Division – Region A
358 Shaker Rd.
Gray, ME 04039
Phone: (207) – 657-2345 x 110
Fax: (207) – 657-2980
Scott.Lindsay@maine.gov

January 22, 2010

Thomas Doyle
Blais Civil Engineers
780 Broadway
South Portland, ME 04106

Dear Mr. Doyle

You have contacted this office requesting information on any known wildlife habitat of management concern occurring at or adjacent to the Maine Yacht Center located on 100 Kensington St. in Portland.

Based upon a review of the most current data available, there are no known essential wildlife habitats, nor any documented occurrences of rare, threatened or endangered species at or adjacent to this property. Offshore, there is an area designated a high value tidal wading bird and waterfowl habitat. This area is so designated because of the mudflat habitat and utilization by tidal wading birds and waterfowl. I have attached a map showing this. The habitat is indicated by a green polygon. This habitat is considered significant wildlife habitat under NRPA. MDIFW does not currently have wildlife specific guidelines for this type of habitat.

Your inquiry did not specify what activity is being proposed as this site, so I cannot provide any recommendations.

Sincerely,

Scott Lindsay

Scott Lindsay
Regional Wildlife Biologist



January 6, 2010
BCE No.: 09112

Maine Historic Preservation Commission
65 State House Station
Augusta, Maine 04333

**Re: Maine Yacht Center, 100 Kensington Street, Portland, Maine
Development Impact Research Request**

Dear Sir or Madam:

Enclosed please find material relating to a proposed development project at 100 Kensington Street in Portland, Maine. The enclosed graphic shows the location.

Please review this material and your files and inform us of any impact this construction may have on historic, archaeological or architectural properties. Thank you in advance for your help.

Sincerely,

BLAIS CIVIL ENGINEERS



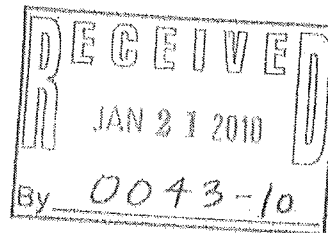
Thomas D. Doyle, PE

encl: Drawing 1, Location Map, dated 01/04/10

cc: Brain Harris, Maine Yacht Center
File

Stancampiano, Robin

From: Thomas Doyle [tdoyle@blaisce.com]
Sent: Thursday, January 21, 2010 4:14 PM
To: Stancampiano, Robin
Subject: Maine Yacht Center-Portland ; 100 Kensington Street



Attachments: Location Map, 100121.pdf, 100121,09112,Site Plan.pdf

Good Afternoon Ms. Stancampiano,

Dan Houle from our office contacted your office regarding the Maine Yacht Center project we are working on in Portland. I have attached a site plan of the project.

The project entails the removal of an existing office building (built 1979) which is to be replaced with a gravel area to be used for outside storage of boats during the summer months.

There are no houses on or adjacent to the site that are 50 years or older.

Please let us know if need any additional information to complete your review.

Thanks,

Tom

Thomas D. Doyle, PE, CPESC
Blais Civil Engineers, PA
207-767-7300
BlaisCE.com

Based on the information submitted, I have concluded that there will be no historic properties affected by the proposed undertaking, as defined by Section 106 of the National Historic Preservation Act. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

Kirk F. Mohnney
Kirk F. Mohnney, Deputy State Historic Preservation Officer
Maine Historic Preservation Commission

1/29/10
Date



0005649

DK15299PG035

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

DEPARTMENT ORDER

IN THE MATTER OF

YACHT HAVEN, LLC.	)	COMMISSIONER'S
P.O. BOX 7860	)	CERTIFICATION OF
PORTLAND, MAINE 04112-7860	)	COMPLETION OF
	)	REMEDIAL ACTIONS
WEBBER OIL COMPANY	)	UNDER A VOLUNTARY
700 MAIN STREET	)	RESPONSE ACTION
BANGOR, MAINE 04401	)	PLAN

JURISDICTION

This certification of completion of a Voluntary Response Action Plan ("VRAP") is made pursuant to the authority vested in the Commissioner of the Maine Department of Environmental Protection ("DEP") or the Commissioner's delegatee under Title 38 M.R.S.A. § 343-E.

FINDINGS OF FACT

1. The covered property is currently owned by the Webber Oil Company ("Webber"); Yacht Haven, LLC, is purchasing the property for redevelopment as a marina. The property is approximately 6.25 acres in size, has a street address of 93 Kensington Street, Portland, Maine, and is further identified on the City of Portland Tax Map 430 as Lot B-13. The property was historically used as a marine oil terminal by Webber. A map of the property ("site" and/or "property") is included as "Attachment A-Site Location Map".
2. The land use in the vicinity of the properties is mixed industrial/residential.
3. The area is served by public water and sewer.
4. Acadia Environmental Technology ("Acadia") the environmental consultant for the project, has completed two reports on the subject property: "Soil and Groundwater Quality Investigation, 93 Kensington Street, Portland, Maine" (May 1997), and "Soil Quality Evaluation and Soil Removal, Former Webber Oil Co. Terminal, 93 Kensington Street, Portland, Maine" (September 1998). These reports document the nature and extent of petroleum contamination at the property, as well as past and recent remedial actions at the property.
5. In 1994, 370 tons of petroleum contaminated soil were removed from the property under the direction of Bradford Hahn, a geologist from the Department's Division of Technical Services.

YACHT HAVEN, LLC.	2	COMMISSIONER'S
P.O. BOX 7860	)	CERTIFICATION OF
PORTLAND, MAINE 04112-7860	)	COMPLETION OF
	)	REMEDIAL ACTIONS
WEBBER OIL COMPANY	)	UNDER A VOLUNTARY
700 MAIN STREET	)	RESPONSE ACTION
BANGOR, MAINE 04401	)	PLAN

These soils were associated with the removal of two 6000 gallon underground storage tanks ("UST") which were used for diesel fuel storage.

6. In September 1998, additional soil removal activities were conducted. A "Baseline-1" cleanup level was established by the Department for the site following the criteria enumerated in the DEP's "Procedural Guidelines for Establishing Standards for the Remediation of Oil Contaminated Soil and Ground Water in Maine". As a "Baseline-1" site, all petroleum saturated soils and free-product on groundwater was required to be removed or remediated. Following the "Baseline-1" criteria, approximately 120 tons of petroleum contaminated soil were removed from the dike area where four (4) large aboveground storage tanks ("AST") were located. Remaining petroleum contaminated soils are below the Department's cleanup objective for the site, and will be covered with 4-8 feet of clean fill during the redevelopment of the property as a marina.

CONCLUSIONS

1. Yacht Haven, LLC, and the Webber Oil Company, as co-applicants to the VRAP Program, have submitted a Voluntary Response Action Plan to the Commissioner pursuant to 38 M.R.S.A § 343-E for the property located at 93 Kensington Street and further identified on City of Portland Tax Map 430 as Lot B-13.
2. Site assessments conducted at the site included investigation reports that adequately identify the nature and extent of the discharges, releases, and threatened releases to the surface and subsurface soils at the property.
3. Yacht Haven, LLC, and the Webber Oil Company have completed remedial actions addressing the potential sources of contamination on the property and have also demonstrated to the satisfaction of the Commissioner that the necessary remedial actions are complete.
4. Provided that Yacht Haven, LLC, and the Webber Oil Company and their successors and/or assigns comply with the conditions of this certification, the response actions that have been completed and the activities associated with the continued use of the site will not cause, contribute, or exacerbate discharges, releases, or threatened releases, if they exist at the site, that are not required to be removed or remediated under the VRAP.

THEREFORE, pursuant to 38 M.R.S.A. § 343-E(5), Martha G. Kirkpatrick, Commissioner, Maine Department of Environmental Protection certifies, subject to the conditions set forth below, that remedial actions have been completed Yacht Haven, LLC, and the Webber Oil Company for the property located at the intersection 93 Kensington Street, and further identified on City of Portland

BK 15299PG037

YACHT HAVEN, LLC.	)	3	COMMISSIONER'S
P.O. BOX 7860	)		CERTIFICATION OF
PORTLAND, MAINE 04112-7860	)		COMPLETION OF
	)		REMEDIAL ACTIONS
WEBBER OIL COMPANY	)		UNDER A VOLUNTARY
700 MAIN STREET	)		RESPONSE ACTION
BANGOR, MAINE 04401	)		PLAN

Tax Map 430 as Lot B-13. Upon issuance of this CERTIFICATE, Yacht Haven, LLC, and the Webber Oil Company, and the persons qualified for protection under 38 M.R.S.A. § 343-E(6) are entitled to protection from liability to the extent provided by 38 M.R.S.A. § 343-E(1). This protection from liability is limited to the matters addressed by and identified in the Voluntary Response Action Plan and is subject to the qualifications and conditions set forth below and in 38 M.R.S.A. § 343-E.

CONDITIONS

1. The installation of drinking water wells on the property is prohibited without prior written permission from the DEP, its successors or assigns.
2. Yacht Haven, LLC, and the Webber Oil Company shall provide their immediate successor and/or assigns of the site with a copy of this certification of completion of remedial actions.
3. A copy of this certificate for the site located 93 Kensington Street, Portland, Maine, and further identified on City of Portland Tax Map 430 as Lot B-13, shall be recorded at the Cumberland County Registry of Deeds. A copy of the recorded document must be supplied to the Department's VRAP Program.

DONE AND DATED AT AUGUSTA, MAINE, THIS 19th DAY OF January, 2000.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Martha G. Kirkpatrick
Martha G. Kirkpatrick, Commissioner

This Order prepared by Nicholas J. Hodgkins, Bureau of Remediation & Waste Management.

Bohm/order/Yelthvn/NH/mab

BK 15299PG038

YACHT HAVEN, LLC.	4	COMMISSIONER'S
P.O. BOX 7860	)	CERTIFICATION OF
PORTLAND, MAINE 04112-7860	)	COMPLETION OF
	)	REMEDIAL ACTIONS
WEBBER OIL COMPANY	)	UNDER A VOLUNTARY
700 MAIN STREET	)	RESPONSE ACTION
BANGOR, MAINE 04401	)	PLAN

STATE OF MAINE
KENNEBEC, ss.,

January 19, 2000

Then personally appeared the above-named Martha G. Kirkpatrick, Commissioner of Environmental Protection, and acknowledged the foregoing instrument to be her free act and deed, and the free act and deed of the Department of Environmental Protection.

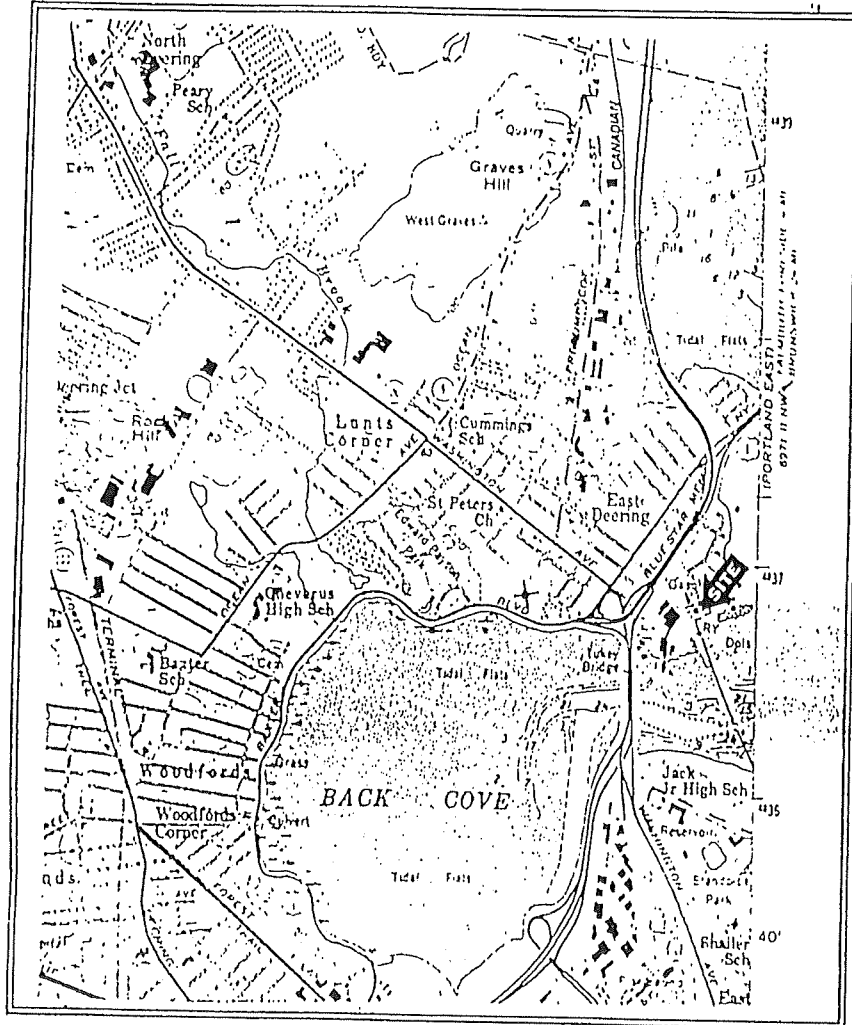
Before me,

Lynn Bangs
Notary Public

SEAL

Lynn Bangs
(Print Name) 4/1/04

BK 15299PG039



Attachment A
Site Location Map
93 Kensington St.
USGS 7.5 Minute Topographic Map
Portland East, Maine
Scale 1:24,000

RECEIVED
RECORDED REGISTRY OF DEEDS

2000 JAN 31 AM 11:45

CUMBERLAND COUNTY

John B O'Brien

**STORMWATER MANAGEMENT REPORT
MAINE YACHT CENTER
PORTLAND, MAINE
February 5, 2010**

INTRODUCTION

The subject property (Site) owned by Maine Yacht Center is located at 65 Kensington Street in Portland, Maine. Stormwater runoff from this project discharges to a closed drainage system on Kensington Street, and to the east, and an existing swale along the existing railroad tracks, to the west of the property.

The approximately 1.13 acre site currently hosts a 3,150 square foot office building with associated parking. The Owner plans to remove the existing office building and add additional gravel area for 18 parking spaces and outside boat storage.

This report discusses the Site's hydrological conditions and the stormwater quality treatment measures that will be implemented to mitigate stormwater impacts from this project.

DATA COLLECTION AND ASSUMPTIONS

Site Data was gathered from field observations, Aerial photography from the Maine GIS website, and topography provided by Post Road Surveying. This data was used to create a HydroCAD stormwater model, which is based on the United States Department of Agriculture's (USDA) Technical Release 20 (TR-20) and Technical Release 55 (TR-55) hydraulic programs.

Curve numbers (CNs) assigned to differing land cover and soil types were taken from tables within the HydroCAD software, which are from the SCS TR-55 manual, revised 1986. 24-hour rainfall depths were taken from the 'Stormwater Management for Maine: Volume III BMP's Technical Design Manual, January 2006'.

Time of concentrations were calculated with the HydroCAD software using the TR-55 methodologies including sheet flow, shallow concentrated flow, circular channel flow, and channel flow.

Existing and proposed watershed subcatchments are shown on the attached Drawing D1 entitled "Existing & Proposed Conditions Drainage Plan". Modeling assumptions made for both conditions are summarized in the attached HydroCAD output.

EXISTING SITE CONDITIONS

The Site currently hosts a 3,150 square foot office building and associated paved area. Topography generally slopes towards the southeast end of the property. Slopes are generally moderate on the existing development and are somewhat steep along the western side of the site.

The Site's runoff discharges to a closed drainage system on Kensington Street to the east and to an existing swale to the west of the Site. Runoff leaving the Site ultimately discharges to the Atlantic Ocean.

According to the United States Department of Agriculture and Soil Conservation Service Issued August 1974, on-Site soils include Buxton and Cut and Fill Land, which have a "D" Hydrological Soil Grouping (HSG) classification.

This project is not in a watershed of a lake most at risk of development or an urban impaired stream as defined in Chapter 502 of the Maine Department of Environmental Protection (DEP) Rules revised December 27, 2006.

PROPOSED SITE CONDITIONS

Proposed improvements include a proposed gravel parking area for boat storage, landscape buffer along Kensington Street, 18 parking spaces and associated drainage improvements. Land cover changes include converting grass areas to gravel areas. The proposed Site will have 0.9 ± acres of impervious area, and 1.1 ± acres of developed area.

WATER QUALITY

The enclosed spreadsheet titled "Maine Yacht Center, Water Quality Worksheet" summarizes the water quality computations for the proposed improvements. The increases in impervious area and developed area for the proposed gravel parking area will be treated via the proposed Underdrained Soil Filter. Drawings C3, C5 & D1 show plan views, layout and details of these treatment measures.

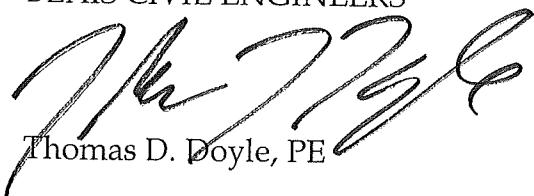
All construction will be in accordance with the most current Maine Erosion and Sedimentation Control Best Management Practices. These measures include

temporary and permanent seeding, temporary sediment barriers, erosion control mesh, culvert inlet and outlet protection, and a construction entrance.

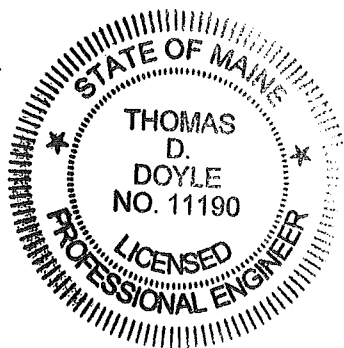
CONCLUSIONS

This project will use long-term and short-term erosion control measures as well as stormwater quality treatment measures that will mitigate environmental impacts from stormwater. This project will have no significant adverse impacts on downstream properties as a result of stormwater.

BLAIS CIVIL ENGINEERS



Thomas D. Doyle, PE



Enclosures

MAINE YACHT CENTER - BCE PROJECT # 09112
Water Quality Worksheet

Summary of Areas

	Proposed Impervious Area	Proposed Developed Area
Proposed Condition	37,945 SF	49,042 SF
Existing Condition	19,941 SF	49,042 SF
Net Increase	18,004 SF	0 SF
% of Required Treatment	95%	80%
Total Areas to be Treated	17,104 SF	0 SF

Required Treatment Area Totals

Impervious Area: 17,104 SF
 Developed Area: 0 SF

Water Quality Treatment Table

Best Management Practice	Treated Developed Area (sf)	Treated Impervious Area (sf)	Treated Landscaped/Lawn Area (sf)	Required WQ Volume (cf)	Provided WQ Volume (cf)	Required Filter Area (sf)	Provided Filter Area (sf)	Hydrologic Soils Group
Underdrained Soil Filter	17,500 SF	17,500 SF	0 SF	1,458 CF	2,528 CF	875 SF	1,027 SF	Buxton D, (Silt Loam)

Notes: 1. WQ Volume = (1.0" x Treated Impervious Area) + (0.4" x Treated Landscaped Area)
 2. Req'd Filter Area = 5% of Treated Impervious Area + 2% of Treated Landscaped/Lawn Area

09112, E&P Conditions

Prepared by Blais Civil Engineers

HydroCAD® 8.50 s/n 003530 © 2007 HydroCAD Software Solutions LLC

Type III 24-hr 2-Yr Rainfall=3.00"

Printed 1/20/2010

Page 1

Summary for Pond 1.1P: Soil Filter

Inflow Area = 0.756 ac, 78.02% Impervious, Inflow Depth = 2.45" for 2-Yr event
 Inflow = 1.57 cfs @ 12.20 hrs, Volume= 0.154 af
 Outflow = 0.73 cfs @ 12.50 hrs, Volume= 0.154 af, Atten= 53%, Lag= 18.3 min
 Primary = 0.08 cfs @ 12.50 hrs, Volume= 0.129 af
 Secondary = 0.65 cfs @ 12.50 hrs, Volume= 0.025 af

Routing by Stor-Ind method, Time Span= 0.00-48.00 hrs, dt= 0.01 hrs
 Peak Elev= 29.54' @ 12.50 hrs Surf.Area= 2,401 sf Storage= 2,623 cf

Plug-Flow detention time= 254.7 min calculated for 0.154 af (100% of inflow)
 Center-of-Mass det. time= 254.7 min (1,046.0 - 791.3)

Volume	Invert	Avail.Storage	Storage Description
#1	28.00'	3,829 cf	Custom Stage Data (Prismatic) Listed below (Recalc)
Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
28.00	1,028	0	0
29.00	1,900	1,464	1,464
30.00	2,829	2,365	3,829

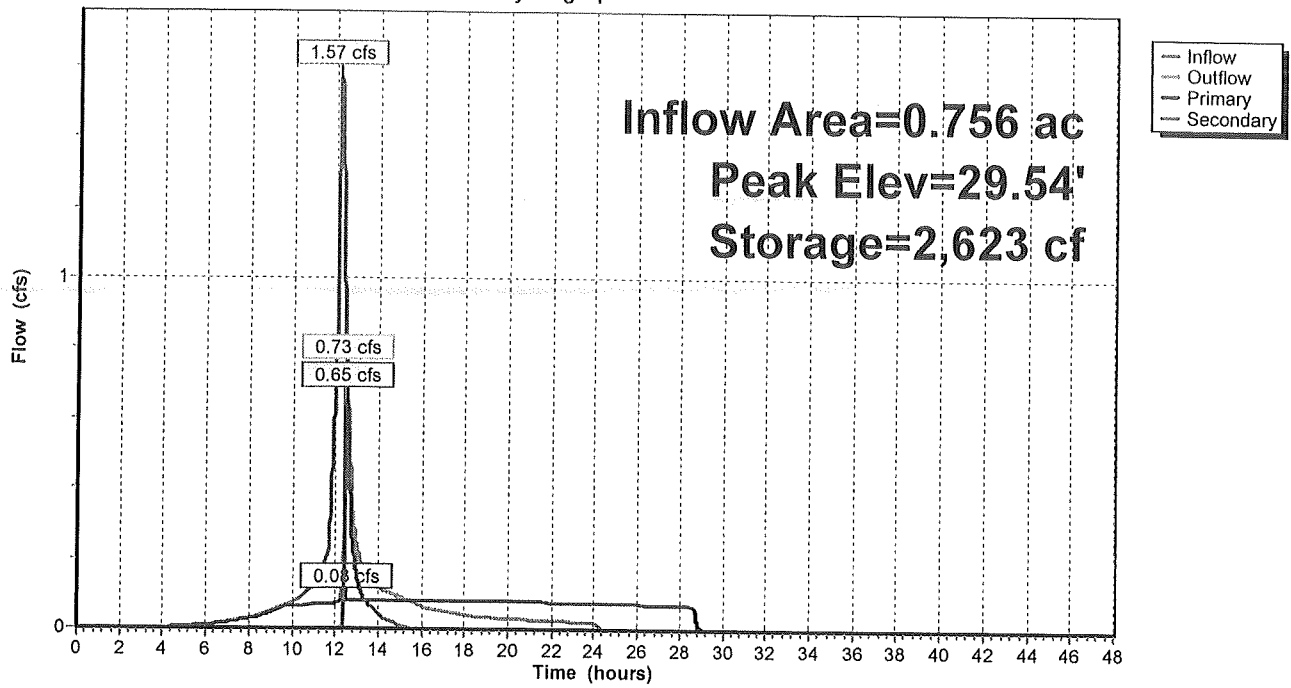
Device	Routing	Invert	Outlet Devices
#1	Primary	24.90'	12.0" x 85.0' long Culvert Ke= 0.900 Outlet Invert= 23.35' S= 0.0182 '/' Cc= 0.900 n= 0.013
#2	Device 1	24.90'	1.2" Vert. Orifice/Grate C= 0.600
#3	Secondary	29.50'	0.18' x 0.18' Horiz. Orifice/Grate X 6.00 columns X 6 rows Limited to weir flow C= 0.600

Primary OutFlow Max=0.08 cfs @ 12.50 hrs HW=29.54' (Free Discharge)
 ↑1=Culvert (Passes 0.08 cfs of 6.07 cfs potential flow)
 ↑2=Orifice/Grate (Orifice Controls 0.08 cfs @ 10.31 fps)

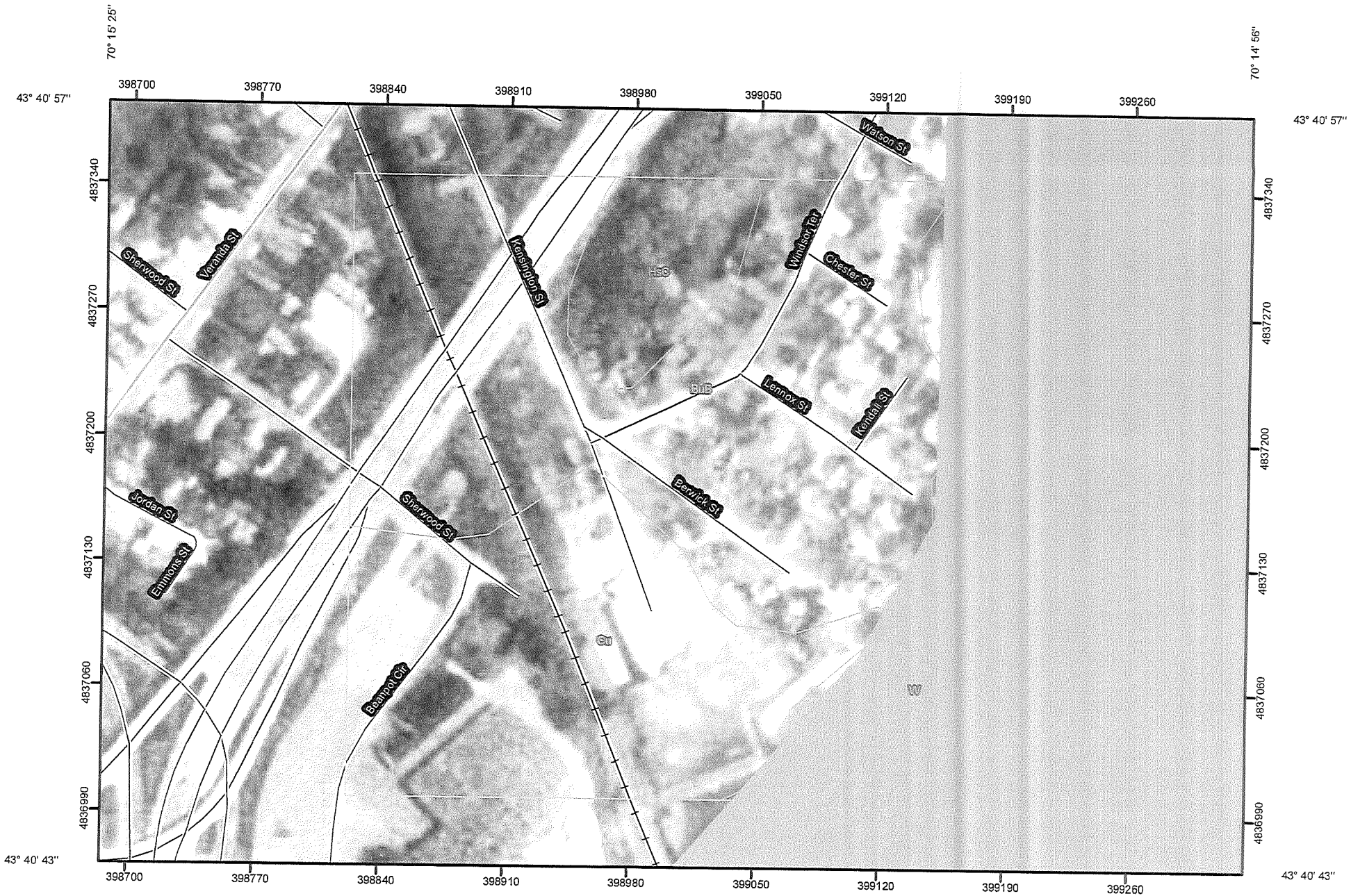
Secondary OutFlow Max=0.65 cfs @ 12.50 hrs HW=29.54' (Free Discharge)
 ↑3=Orifice/Grate (Weir Controls 0.65 cfs @ 0.64 fps)

Pond 1.1P: Soil Filter

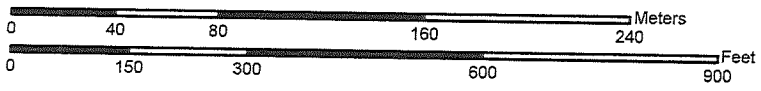
Hydrograph



Soil Map—Cumberland County and Part of Oxford County, Maine







































Map Scale: 1:3,030 if printed on A size (8.5" x 11") sheet.



Web Soil Survey
National Cooperative Soil Survey

MAP LEGEND

Area of Interest (AOI)		Very Stony Spot
 Area of Interest (AOI)		Wet Spot
Soils		Other
Soil Map Units	Special Line Features	
Special Point Features		Gully
 Blowout		Short Steep Slope
 Borrow Pit		Other
 Clay Spot	Political Features	
 Closed Depression		Cities
 Gravel Pit	Water Features	
 Gravelly Spot		Oceans
 Landfill		Streams and Canals
 Lava Flow	Transportation	
 Marsh or swamp		Rails
 Mine or Quarry		Interstate Highways
 Miscellaneous Water		US Routes
 Perennial Water		Major Roads
 Rock Outcrop		Local Roads
 Saline Spot		
 Sandy Spot		
 Severely Eroded Spot		
 Sinkhole		
 Slide or Slip		
 Sodic Spot		
 Spoil Area		
 Stony Spot		

MAP INFORMATION

Map Scale: 1:3,040 if printed on A size (8.5" × 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
 Coordinate System: UTM Zone 19N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Cumberland County and Part of Oxford County, Maine

Survey Area Data: Version 7, Jan 8, 2009

Date(s) aerial images were photographed: 4/29/1998

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Cumberland County and Part of Oxford County, Maine (ME005)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
BuB	Buxton silt loam, 3 to 8 percent slopes	15.0	47.7%
Cu	Cut and fill land	9.2	29.1%
HsC	Hollis very rocky fine sandy loam, 8 to 20 percent slopes	2.2	6.9%
W	Water	5.1	16.3%
Totals for Area of Interest		31.5	100.0%



MAINE YACHT CENTER, LLC

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Portland, Maine 04103
Tel. (207) 842-9000 • Fax (207) 842-9274
brian@maineyacht.com

January 28, 2010

City of Portland

Re: Letter of Financial Capacity

To whom it may concern:

I am writing to inform you that the financial scope of the project at 65 Kensington St. is well within the annual operational cash flow of our business.

As the General Manager of MYC, I am responsible for the yearly budget and have already allocated sufficient cash funds for this project.

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

Thank you

Brian A. Harris
General Manager

STEVE G. BLAIS, P.E.
President

Mr. Blais has over 13 years experience in civil engineering. This experience includes site design, permitting, planning and construction administration. Mr. Blais has engineered and managed large and small projects for residential, commercial and institutional clients. He is familiar with many local, state, and federal permitting processes.

Prior to starting Blais Civil Engineers, PA (formerly Land Consulting Engineers) based in South Portland, Maine in 2005, Mr. Blais gained diverse experience by working in both small and large consulting companies in Virginia, Massachusetts, and Maine .

EDUCATION

- Villanova University
 - Bachelor of Civil Engineering, 1996
 - Minor of Business, 1996
 - Member of Chi Epsilon National Engineering Honors Society

PROFESSIONAL AFFILIATIONS

- Professional Engineer licensed in Maine, New Hampshire, Massachusetts, and Virginia
- Certified Floodplain Manager, Association of State Floodplain Managers, Inc. (ASFPM)
- US Green Building Council LEED® Accredited Professional
- Certified Professional in Erosion and Sedimentation Control (CPESC)
- Certified Erosion, Sediment, and Storm Water Inspector (CESSWI)
- Associate member of the American Society of Civil Engineers
- Member of Maine Real Estate & Development Association
- Member of Maine Aggregates Association

EXPERIENCE

- Blais Civil Engineers, PA - South Portland, ME: 2005-Present. President/Engineer.
- Pinkham & Greer, Inc. - Falmouth, ME: 2002-2005. Project Manager/Engineer.
- VHB - Vanasse Hangen Brustlin, Boston, MA: 2000-2002. Engineer.
- Urban Engineering & Associates, Inc. - McClean, VA: 1998-2000. Project Engineer.
- The Reinforced Earth Company - Vienna, VA: 1996-1998. Regional Engineer.

THOMAS D. DOYLE, P.E.
Project Engineer

Mr. Doyle has over 9 years experience in civil engineering. This experience includes site design, permitting, planning and construction administration. Mr. Doyle has engineered and managed large and small projects for residential, commercial and institutional clients. He is familiar with many local, state, and federal permitting processes.

Prior to Blais Civil Engineers, PA (formerly Land Consulting Engineers) based in South Portland, Maine in 2005, Mr. Doyle gained diverse experience by working in both small and large consulting companies in Maine.

EDUCATION

- University of Maine
 - Bachelor of Civil Engineering, 1999

PROFESSIONAL AFFILIATIONS

- Professional Engineer licensed in Maine and New Hampshire
- Certified Professional in Erosion and Sedimentation Control (CPESC)
- Associate member of the American Society of Civil Engineers

EXPERIENCE

- Blais Civil Engineers, PA - South Portland, ME: 2009-Present. Project Engineer.
- Wright-Pierce - Topsham, ME: 2005-2009. Project Engineer.
- Stantec (formerly Land Use Consultants) - Portland, ME: 2003-2005. Project Engineer.
- Deluca-Hoffman Associates - South Portland, ME: 2000-2003. Design Engineer.
- City of Portland - Portland, ME: 1999-2000. Associate Engineer.