



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE  
GOVERNOR

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COMMISSIONER

*12-9-6-1  
-65ker@dep.com*

December 10, 2012

Mr. Stephen B. Mohr  
Mohr & Seredin Landscape Architects  
18 Pleasant Street  
Portland, Maine 04101

Dear Mr. Mohr:

Thank you for submitting the plans concerning vegetation removal and replanting on behalf of Canal Landing, LLC, to the Maine Department of Environmental Protection (Department) for review. The property on West Commercial Street is the prospective site of the relocated Portland Yacht Services. The use associated with this business is considered to be at least partially functionally water dependent, thus requiring development directly adjacent to and/or over the resource.

The City of Portland has zoned this area as a Waterfront Port Development Zone (WPD Zone). This zoning district, due to its location and historic development, contains less stringent development standards than normally required by the Mandatory Shoreland Zoning Act (Act) and the Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances. The Act allows the Department to approve less stringent ordinances when special local conditions warrant such a deviation. In addition, the Act through both its purpose and various sections supports allowances for commercial fisheries/maritime uses in the shoreland zone. However, both the City of Portland's Zoning Ordinance and State statute, 38 MRSA § 439-A(6), contain provisions concerning vegetation removal that must be followed. The construction of this section of the Act does not allow the department to approve municipal ordinances that contain clearing standards that are less stringent than this statutory section. This is reflected in Department Order 56-2011, which conditionally approved the City of Portland's ordinance amendment for the WPD Zone to include the statutory requirements.

The proposed plans for the relocation of the Portland Yacht Services, requires a great deal of vegetation removal, not only for the siting of structures, parking and access, but also for the potential need for site remediation of contamination from past uses. This clearing would exceed the provision found at 38 MRSA § 439-A(6)(C), which states that "selective cutting of no more than 40% of the trees 4.5 inches or more in diameter, measured at 4 1/2 feet above ground level, is allowed in any 10-year period . . ."

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The plan and accompanying letter submitted to the Department includes calculations concerning the number of existing trees over four and one half (4.5) inches in diameter, the number of those trees to be removed, and the number of trees that will be replanted. Currently, the site contains 152 trees over 4.5 inches in diameter, measured at four and one half (4 ½) feet above ground, within the 250 foot shoreland zone.<sup>1</sup> The proposal aims to remove 137 trees, 4.5 inches or more in diameter. Under the 40% provision, 61 trees would be allowed to be removed. This would mean 91 trees would need to be retained. The plan calls for 15 of the trees 4.5 inches or more in diameter to be retained, and the landowner proposes to plant 78 additional trees which would result in a net removal of approximately 39 percent of the trees in the shoreland zone. Along with the tree planting, the landscaping plan also proposes to plant additional vegetation.

Department review of this proposal and accompanying plan finds it to be consistent with the general purposes of the Act. Sufficient vegetation will both be retained and replanted, the use of this property for maritime purposes is strongly supported by the Act, and remediation of contaminated areas will improve the site overall.

When working with municipalities on replanting plans, the Department generally advises that native vegetation be planted, and under certain circumstances is mandated by law and rule. The plan provided to the Department calls for a significant number of Eastern Cottonwood trees (*Populus deltoids*) to be replanted. Eastern Cottonwood, while not native, has become quite naturalized in Maine. Due to their rather fast growing rate they are good trees for providing windbreaking properties, they grow well along rivers, and are good trees for providing shading. Through the municipal permitting process, the City of Portland may require the planting of native vegetation, but the Department would not find issue with allowing the planting of these trees in this particular instance.

In any replanting effort, especially of this magnitude, the Department generally recommends that an applicant provide for a three year maintenance plan, which seeks to retain an at least 80 percent survival rate. Again, during the local permitting process this may be something the City of Portland will require as a condition of the permit, but is not mandated by the Department.

The Department will forward this letter to the City of Portland to notify them that the plan presented to the Department would be acceptable to meet the purpose and intent of the Act. If you have any questions about this opinion please feel free to contact me at (207) 557-0353 or via email at [deirdre.schneider@maine.gov](mailto:deirdre.schneider@maine.gov); or Michael Morse at (207) 822-6328 or at [michael.j.morse@maine.gov](mailto:michael.j.morse@maine.gov).

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<sup>1</sup> Please note that the letter submitted to the Department stated that there were 152 trees four inches or more in diameter as measured at 4 ½ feet above ground. A subsequent email from Mr. Mohr to the Department, dated November 29, 2012, clarified that this was in fact a typographical error, and the 152 trees represented those trees that measured 4.5 inches or more in diameter.

Letter to Mohr  
(12/10/12)  
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Sincerely,

A handwritten signature in cursive script that reads "Deirdre Schneider".

Deirdre Schneider

cc: Mr. Phineas Sprague, Canal Landing, LLC  
Mr. Bill Needleman, Senior Planner, City of Portland  
Mr. Michael Morse, DEP, Southern Maine Regional Office