



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Paul R. LePage  
GOVERNOR

David Bernhardt  
COMMISSIONER

Applicant: Thompson's Point Development Company Inc.  
Project Location: Thompson's Point Rd, Portland, ME  
Portland Tax Map 201 Lot(s) 8, 9 and 10 and Map 202 Lots 2, 4 and 5  
Project: Mixed use Development  
Identification #: Reg. 01-00155-A-N  
Permit Category: 200 Plus PCE  
Traffic Engineer: Thomas Gorrill  
Gorrill-Palmer Consulting Engineers  
PO Box 1237  
15 Shaker Rd.  
Gray, ME 04039

Pursuant to the provision of 23 M.R.S.A. § 704-A and Chapter 305 of the Department's Regulations, the Maine Department of Transportation (MaineDOT) has considered the application of Thompson's Point Development Company Inc with supportive data, agency review and other related materials on file.

**PROJECT DESCRIPTION**

The applicant proposes to construct a 97,697 sf event center/convention hall/exhibit hall; 32,000 sf concert hall plus outdoor venue for up to 4,800 attendees; 378,000 sf of office space; 4,000 sf of medical office space; 20,000 sf gym and rehabilitation center; 125 room hotel; 6,000 sf of restaurant space (high-turnover sit down). The site is forecast to generate 734 AM and 1,091 PM weekday peak hour trip ends.

**Findings**

Based on a review of the files and related information, MaineDOT approves the Traffic Movement Permit Application of Thompson's Point Development Company Inc. subject to the following conditions:

**MITIGATION**

**On-Site Mitigation**

**All Site Entrances**

All entrances shall have overhead illumination provided, if not existing, to illuminate the intersections per MaineDOT standards at a minimum. Overhead lighting shall have an average of



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0.6 to 1.0 foot candles, with the maximum to minimum lighting ratio of not more than 10:1 and an average to minimum light level of not more than 4:1.

### Thompson's Point Road

Thompson's Point Road shall be widened to accommodate an 8 foot shared bike/pedestrian path, a 3 foot wide grass esplanade, a 3 foot shoulder with granite curb, an 11 foot wide outbound lane, and 11 foot wide flush concrete median, an 11 foot wide inbound lane and a 3 foot shoulder with granite curb. This section will be constructed from the site driveway to the Fore River Parkway. The 250 feet of flush median closest to Fore River Parkway shall be designated as an exclusive left turn lane outbound. The shared bike/pedestrian path shall have a crossing built at the Sewall Street cul de sac and the path extended to the existing sidewalk on Sewall Street. Another pedestrian crossing shall be installed where the current pedestrian crossing is at the bus/train station. Both crossings shall have solar powered/radio interconnected pedestrian activated rectangular rapid flashing beacon lights installed.

### Thompson's Point Development

No sporting events or concerts shall begin between 4 pm and 7pm Monday through Friday.

During large sporting and concert events, the applicant shall ensure that there are flaggers and uniformed police officers present to ensure that there will be two inbound lanes prior to the event and two exit lanes after the event. Flaggers/uniformed police officers shall be stationed to ensure that pedestrians are able to cross at either of the two crosswalks, at the Transportation Center Entrance to let busses in or out and also at the transportation center parking lot entrances to ensure that transportation center patrons leaving the parking lots are merged into the out-bound flow. Uniformed police officers shall be present after an event to direct traffic at the Thompson's Point Road/Fore River Parkway intersection. Retro-reflective traffic cones shall be used by the development to create the reversible lane. Flaggers will direct vehicles into the proper lanes.

### Off-Site Mitigation

#### Fore River Parkway/Thompson's Point Road/I-295 Exit 5A off-ramp

The Southbound off ramp at Exit 5 A shall be reconstructed to have a separate 13 foot wide left turn lane and 13 foot wide through lane. The widths include the

required curb offset. The left lane shall extend back 200 feet. Install Queue detector at the ramp gore area to act as pre-emption for the signal should the queue spill back that far.

Modify traffic signal timing and phasing accordingly.

#### Fore River Parkway/Congress St/I-295 Exit 5 B off-ramp

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Widen the southbound off-ramp to accommodate a 5 foot wide right shoulder, two 12 foot wide right turn lanes and a 2 foot curb offset for a distance of 125 feet with an appropriate taper. Install Queue detector at the ramp gore area to act as pre-emption for the signal should the queue spill back that far.

Re-stripe Congress Street Westbound to accommodate a longer westbound left turn lane, extend back to the end of the island (to the slip lane from Park Ave to Congress St).

Modify traffic signal timing and phasing accordingly.

#### Congress St/Stevens Ave

Restripe Steven's Avenue to an exclusive left and a shared left/thru/right and modify traffic signal timing and phasing accordingly.

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Congress St/Westbrook St

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Congress/Frost St

The developer shall pay an impact fee in the amount of \$15,000 for inlaid thermoplastic paint skips, retro-reflective back plates and overhead lane usage signage. This money will be put towards improvements funded by PIN 19078.00.

#### Transportation Demand Management

In lieu of additional mitigation, Transportation Demand Management shall be used to offset the traffic impacts on the roadway network. The City has implemented a Transportation Oriented Development Tax Increment Financing District for the Thompson's Point Development. This development would benefit from some increased transit connections to the airport and Old Port, funding for handicap accessible taxis or for increase in parking at the Transportation Center.

#### Overall

A. Provide all necessary auxiliary signs, striping and pavement markings to implement the improvements described herein according to State of Maine and/or National standards.

Portland Thompson's Point Mixed use development

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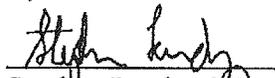
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B. All plantings and signs (existing and/or proposed; permanent and/or temporary) shall be placed and maintained such that they do not block available sight distances and do not violate the State's "Installations and Obstructions" law. No signage or plantings shall be allowed within the "clear zone" if they constitute a deadly fixed object as determined by MaineDOT. All signs shall meet MRSA Title 23, Chapter 21, Section 1914: "On-Premise Signs".

C. If any of the supporting data or representations for which this permit is based changes in any way or is found to be incorrect / inaccurate, the applicant shall request in writing from MaineDOT a decision of what impacts those changes will have on the permit. The applicant will then be required to submit those changes for review and approval and additional mitigation as a result of those changes may be required at the expense of the applicant.

D. Because the proposed project affects the state highway and drainage systems and requires improvement to that system, the applicant must obtain approval of the design plans and coordinate work through MaineDOT's State Traffic Engineer, who can be reached at (207)-624-3620 in Augusta.

By:



Stephen Landry, P.E.

Assistant State Traffic Engineer

Date: 6/13/12



STATE OF MAINE  
Department of Environmental Protection

PAUL R. LEPAGE  
GOVERNOR

PATRICIA W. AHO  
COMMISSIONER

July 2012

Forefront Partners I, LP  
55 Lisbon St., Suite 2400  
Lewiston, ME 04240  
ATTN: Chris Thompson

RE: Natural Resources Protection Act Application, Portland  
DEP #L-25672-2G-A-N / #L-25672-FS-B-N

Dear Mr. Thompson:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit or thoughts on how the Department processed this application please get in touch with me directly. I can be reached at (207) 592-1692 or at [Marybeth.richardson@maine.gov](mailto:Marybeth.richardson@maine.gov).

Sincerely,

A handwritten signature in blue ink that reads "Marybeth Richardson".

Marybeth Richardson, Project Manager  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

pc: File

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
RAY BLDG., HOSPITAL ST

BANGOR  
106 HOGAN ROAD  
BANGOR ME 04401  
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PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
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WEB SITE: [WWW.MAINE.GOV/DEP](http://WWW.MAINE.GOV/DEP)



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

DEPARTMENT ORDER

IN THE MATTER OF

FOREFRONT PARTNERS I, LP	) NATURAL RESOURCES
PROTECTION	
Portland, Cumberland County	) COASTAL WETLAND ALTERATION
THE FOREFRONT AT THOMPSON'S POINT	) SIGNIFICANT WILDLIFE HABITAT
L-25672-2G-A-N (approval)	) WATER QUALITY CERTIFICATION
L-25672-FS-B-N (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of FOREFRONT PARTNERS I, LP with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: Thompson's Point is an approximately 27.5-acre peninsula of land extending into the Fore River that has a 150-year history of industrial development. In the early part of the twentieth century the site was used primarily as a railroad maintenance facility. It was later used by the federal government for war-related activities such as munitions production. Subsequent uses included the operation of a concrete products manufacturing facility and other commercial activities, and the staging and stockpiling of construction materials.

B. Summary: The applicant proposes to demolish existing structures and redevelop almost the entire project site with a number of buildings, including an events center and concert hall, outdoor amphitheater, hotel, sports medicine and athletic performance lab, parking structure, office building, surface parking, trails, public space, and small boat/kayak access. Activities contemplated by the applicant that require Natural Resources Protection Act review are those that will occur within 75 feet of the highest annual tide (HAT) line, including clean up and removal of existing debris, stockpiles, and solid waste; building demolition; clearing and grubbing in advance of new topsoil for soil stabilization, landscaping, and trails; access drive and parking area construction; new buildings; installation or replacement of stormwater outfalls; installation of utilities; installation of a seasonal dock at the south end of the peninsula; a small hand carry boat/kayak launch; and a public access ramp. Within 25 feet of the HAT line, the only proposed activities will be grading for new landscaping and drainage work.

The proposed project will result in approximately 386 square feet of freshwater wetland fill within the northwesterly "panhandle" of the site associated with a drainage outfall and grading. Under current conditions, the shoreline is riprapped around the majority of the project site. In areas not containing riprap currently, the shoreline is naturally vegetated. No significant disturbance is proposed within these areas. A total of ten drainage outfalls

are proposed and the total extent of riprap enhancement associated with the drainage work is approximately 100 linear feet.

The proposed project is shown on a set of plans, the first of which is titled "The Forefront at Thompson's Point," prepared by DeLuca-Hoffman Associates, Inc. and dated August 2011, with a latest revision date on any sheet of July 12, 2012. The project site is located on Thompson's Point, off Congress Street, in the City of Portland.

The proposed project is subject to review under the Site Location of Development Act. Pursuant to M.R.S.A. Section 489-A, the City of Portland has delegated review authority and is conducting that review.

C. Current Use of the Site: A portion of the project site is utilized as storage for refrigerated dairy trailers. Various other commercial tenants lease space throughout the remaining site. There are currently nine structures and at least several additional foundations located on the site. The majority of the approximately 4,100 linear feet of shoreline at the site has been armored with riprap. Approximately five acres of the site lie below the HAT line.

## 2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph of the project site. Department staff visited the project site in July of 2011.

The proposed project is located adjacent to the Fore River, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The project site is currently almost completely developed with paved areas, gravel areas, and a number of buildings and foundations. Some of the buildings are functional and contain commercial space and others are in various stages of disrepair. The developed areas extend to the top of the slope down to the river, which is armored with riprap. Existing wooded areas are limited to the far northwest corner of the site.

Overall, the existing site is heavily developed with little visual appeal. Current uses include construction staging, a wood salvage operation, and semi-trailer box storage. Most of the existing structures appear to be marginally maintained and are in average to poor condition. The proposed project is expected to increase the visual appeal of the site by introducing new buildings and implementing an integrated landscape enhancement plan.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicant submitted an erosion control report and supporting plans for the proposed project, dated March 2012. Based on its review of this information, the Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and stated that the mudflats and riparian areas below the HAT line are valuable shorebird feeding area on the west side of the peninsula and roosting area on the east side of the peninsula. MDIFW commented that the proposed project includes activities within the associated upland buffer areas that may have the potential to adversely affect shorebirds using the mudflats in the area. As a result of two site visits and multiple revisions to the delineation of the roosting area and the feeding area buffers based on onsite conditions, neither buffer extends onto the project site more than 50 feet from mean high water.

In response to MDIFW's concerns, the applicant revised the layout of the project to avoid and minimize potential impacts within the buffer areas, and worked with MDIFW to develop a landscape plan (revision dated July 12, 2012) that provides adequate vegetative screening of the mapped shorebird feeding area between the shoreline and proposed pedestrian trail, and limits vegetation within the shorebird roosting area buffer to lower profile shrubs that are expected to maintain visibility for the shorebirds and minimize the threat of increased raptor predation. The applicant has agreed to install interpretive signage at the proposed south end boat launch. The signage will identify the presence and significance of shorebird habitat and will be designed with MDIFW's input. Additionally, the applicant has agreed to install a raised viewing platform overlooking the salt marsh and mudflat communities in the northwest portion of the site.

In a review memorandum dated July 13, 2012, MDIFW commented: "Given the steps that the applicant has taken to maintain and enhance mapped Significant Wildlife Habitats at this site we do not feel that project completion will result in any significant adverse impact to the resource."

Based on MDIFW's review, the Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant may use lumber treated with chromated copper arsenate (CCA) to construct the floats. To protect water quality, any CCA treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction. Provided any CCA treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to alter 386 square feet of an emergent freshwater wetland in the northwestern portion of the site to regrade an area and install a stormwater outfall pipe. Other proposed impacts below the HAT line include less than 100 square feet of alteration associated with the installation of multiple drainage outfalls, most of which will replace existing outfalls. Additionally, approximately 513 square feet of coastal wetland will be altered, through shading, as a result of the seasonal installation of floats at the south end of the peninsula.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. **Avoidance.** No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a coastal wetland alteration permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternatives analysis for the proposed project completed by DeLuca-Hoffman Associates, Inc. Because the proposed project is a transit-oriented development, the applicant selected the project site due to its proximity to the highway, passenger rail service, and bus service, all within a short distance to the Portland Jetport. There are currently no other sites in Portland that can offer the amount of land availability and the location required for this type of project, which will offer a range of activities integrating office, hospitality, and cultural uses with a focus on sustainability. The proposed layout includes approximately 386 square feet of wetland fill within the northwesterly "panhandle" of the site associated with a drainage outfall and grading. This alteration was determined to be unavoidable.

B. **Minimal Alteration.** The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The site is currently almost completely developed and the proposed project offers opportunities to improve the scenic character of the area as well as the water quality of runoff from the site. The applicant incorporated a number of measures into the project design and layout to minimize potential impacts to shorebird roosting and feeding areas as described in Finding 4.

C. **Compensation.** In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicant has avoided and minimized wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided any CCA treated lumber used for the project is cured on dry land as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of FOREFRONT PARTNERS I, L.P. to alter coastal wetlands and adjacent areas as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Any CCA treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 27<sup>th</sup> DAY OF July, 2012.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Michael Kulers for  
Patricia W. Aho, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

MR/L25672AN&BN/ATS#74653&74756



## Natural Resource Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

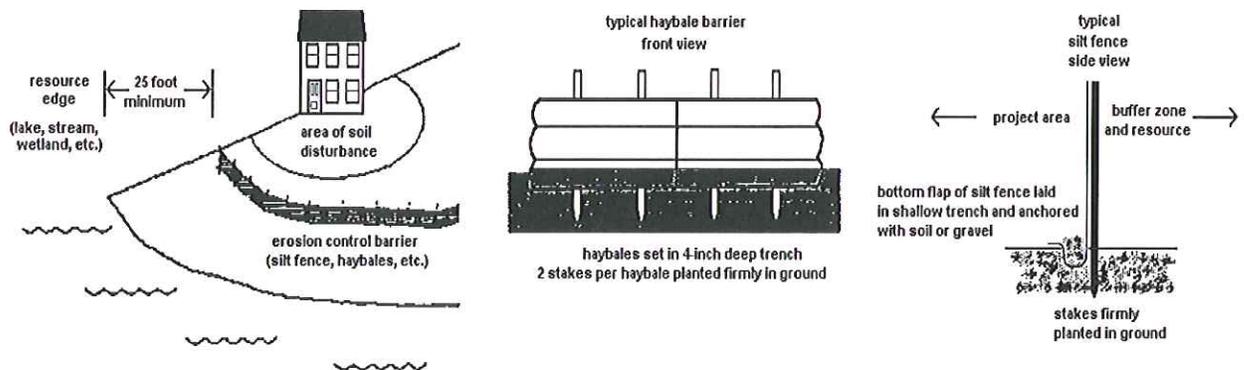


STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333

### Erosion Control for Homeowners

#### Before Construction

1. If you have hired a contractor, make sure you discuss your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



#### During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.

3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **After Construction**

1. After your project is finished, seed the area. Note that all ground covers are not equal. For example, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high-maintenance areas. But this same seed mix is a poor selection for stabilizing a road shoulder or a cut bank that you don't intend to mow. Your contractor may have experience with different seed mixes, or you might contact a seed supplier for advice.
2. Do not spread grass seed after September 15. There is the likelihood that germinating seedlings could be killed by a frost before they have a chance to become established. Instead, mulch the area with a thick layer of hay or straw. In the spring, rake off the mulch and then seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away or being eaten by birds or other animals.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.

#### **Why Control Erosion?**

##### **To Protect Water Quality**

When soil erodes into protected resources such as streams, rivers, wetlands, and lakes, it has many bad effects. Eroding soil particles carry phosphorus to the water. An excess of phosphorus can lead to explosions of algae growth in lakes and ponds called blooms. The water will look green and can have green slime in it. If you are near a lake or pond, this is not pleasant for swimming, and when the soil settles out on the bottom, it smothers fish eggs and small animals eaten by fish. There many other effects as well, which are all bad.

##### **To Protect the Soil**

It has taken thousands of years for our soil to develop. Its usefulness is evident all around us, from sustaining forests and growing our garden vegetables, to even treating our septic wastewater! We cannot afford to waste this valuable resource.

##### **To Save Money (\$\$)**

Replacing topsoil or gravel washed off your property can be expensive. You end up paying twice because State and local governments wind up spending your tax dollars to dig out ditches and storm drains that have become choked with sediment from soil erosion.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

#### HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0016

Paul R. LePage  
GOVERNOR

David Bernhardt  
COMMISSIONER

LEGAL SERVICES Tel: (207) 624-3020 Fax: (207) 624-3021  
MDOT TTY TEL: 888-516-9364

April 3, 2012

Danielle P. West-Chuhta  
Associate Corporation Counsel  
389 Congress Street  
Portland, ME 04101-3509

**Re: Railroad Decision #364**

Dear Ms. West-Chuhta:

I enclose Railroad Decision # 364, dated April 3, 2012, signed by David Bernhardt, P.E., Commissioner of the Maine Department of Transportation. Decision # 364 relates to the City of Portland's petition to establish a public highway crossing over railroad tracks at Sewall Street in Portland, Maine.

If you have any questions regarding the above, please contact me.

Very truly yours,

*Richard N. Hewes*  
Richard N. Hewes  
Attorney for MaineDOT

RNH/jas  
Enclosure

- cc: Nathan Moulton, Manager, Rail Transportation, MaineDOT w/enc.
- David Fink, President, Pan Am Railways w/enc.
- Central Maine Power Co., Land Management Dept. w/enc.
- Cumberland County Commissioners w/enc.
- Langdon Street Real Estate w/enc.
- Mercy Hospital w/enc.
- Northern New England Rail Authority w/enc.
- Portland Water District w/enc.
- Thompson's Point Inc. w/enc.
- The Waynflete School w/enc.
- Kat Beaudoin w/enc.
- Robert Bremm, Ritter Project Management w/enc.
- Tony Donovan, Fishman Realty Group w/enc.
- James Howard, Esq. w/enc.

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PRINTED ON RECYCLED PAPER

MAINE DEPARTMENT OF TRANSPORTATION

RAIL DECISION - RR # 364

REGARDING:

Petition pursuant to 23 M.R.S.A. § 7202 by the City of Portland to Establish a Public Highway Crossing Over Railroad Tracks at Sewall Street in Portland, Maine.

ABSTRACT:

On September 7, 2011, the City of Portland petitioned the Maine Department of Transportation to establish a public grade crossing for highway traffic on Sewall Street in Portland, Maine at Railroad Mile Post 1.92 on the Mountain Division Branch Line. Portland Terminal Company has owned a private railroad crossing at that location for decades. Rail traffic is operated by Springfield Terminal Railway Company. The owner of the rails and the operator of rail traffic are owned by Pan Am Railways. This decision, RR # 364, establishes a public grade crossing on Sewall Street after the conditions outlined herein are satisfied.

Hearing was held February 27, 2012

Location of hearing: Portland City Hall

The petition is granted

Date of Decision: April 3, 2012

Commissioner: David Bernhardt, P.E.

Hearing Officer: Richard N. Hewes, Esq.

## I. PROCEDURAL BACKGROUND

On September 7, 2011, pursuant to 23 M.R.S.A. § 7202, the City of Portland ("City") petitioned the Maine Department of Transportation ("Department") to establish a public highway crossing ("Crossing") over railroad tracks in Portland at Sewall Street. The tracks are owned by Portland Terminal Company, train traffic is operated by Springfield Terminal Railway Company and Pan Am Railways owns Portland Terminal Company and Springfield Terminal Railway Company (these three entities are separately and collectively referred to as the "Railroad"). Tracks currently cross over a private way immediately to the south of the terminus of Sewall Street at Mile Post 1.92 on the Mountain Division Branch Line. The City requests that a public crossing be established where the private crossing now exists.

Hearing on the aforementioned petition was ordered to be held at the City Hall in Portland at 6:00 o'clock in the evening on November 22, 2011. Asserting membership in a class that could be substantially and directly affected by Railroad Decision #364, Pan Am applied for intervenor status. At the November 22, 2011 hearing, Pan Am's motion for intervenor status was granted without objection. The City asked for a continuance. Representatives of the railroad were present and did not object. The City and Pan Am had not yet finalized an agreement on fundamental aspects of the Crossing, but felt they could reach agreement on those issues through further communications. The hearing was continued and rescheduled for January 12, 2012. The January hearing was cancelled because of a snow storm. The matter was rescheduled and a public hearing was held February 27, 2012 at Portland City Hall.

## II. NOTICE

Exhibit 18 is a copy of the January 18, 2012 cover letter with attached notice of the February 27, 2012 hearing that was sent to the following interested parties, including abutters and stakeholders:

City of Portland  
Nathan Moulton, Manager, Rail Transportation, MaineDOT.  
George Thayer, Springfield Terminal Railway Company/Maine Central Railroad  
David Fink, President, Pan Am Railways  
Central Maine Power Co.  
Cumberland County Commissioners  
Langdon Street Real Estate  
Mercy Hospital  
Northern New England Rail Authority  
Portland Terminal Co.  
Portland Water District  
Thompson's Point Inc.  
The Waynflete School  
Kat Beaudoin, Integrated Planning Solutions  
Robert Bremm, Ritter Project Management  
Tony Donovan, Maine Rail Transit Coalition

James Howard, Esq.

Exhibits 19 and 20 are pages from the February 7 and 13, 2012 editions of the Portland Press Herald, a newspaper that has general circulation in the area affected by the City's petition. These pages contain notices which state that the hearing would be held February 27, 2012 at 6:00 p. m, in the Portland City Hall. Notice was proved to have been given in the manner prescribed by 23 MRSA § 7202 and 5 MRSA § 8053. Hearing on the aforementioned petition was held at the time and place stated in the notice. The hearing officer viewed the crossings on the day of the hearing and his observations are part of the evidence.

### III. EVIDENCE

#### A. Exhibits.

##### Exhibit #

1. September 7, 2011 hearing request from Danielle P. West-Chuhta, Esq., Counsel for the City of Portland.
2. Sign-up sheet for November 22, 2011 hearing.
3. Maine Sunday Telegram's Classified Section's Tear Sheet of Notice of Hearing published October 30, 2011 which indicated the hearing would be held at the Portland Transportation Center on November 22, 2011 at 6:00 p.m.
4. Notice of Hearing which indicated that the hearing would be held at the Portland Transportation Center on November 22, 2011 at 6:00 p.m.
5. Copy of Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated October 27, 2011 enclosing the Notice of Hearing which indicated that the hearing would be held at the Portland Transportation Center.
6. Notice of Hearing indicating a new location for the hearing being held on November 22, 2011 to be the Portland City Hall.
7. Copy of Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated November 3, 2011 enclosing the Notice of Hearing indicating the new location for the hearing to be held on November 22, 2011 to be the Portland City Hall.
8. Undeliverable return envelope with hearing notice mailed to Northern New England Rail Authority.
9. Email to Patricia Quinn at NNEPRA dated November 15, 2011, enclosing a copy of the Notice of Hearing with the new location of Portland City Hall incorporated.
10. Portland Press Herald Newspaper Classified Section Tear Sheet with Notice of

Hearing published November 4, 2011 with the new location of Portland City Hall incorporated.

11. Maine Sunday Telegram Classified Section Tear Sheet with Notice of Hearing published November 6, 2011 with the new location of Portland City Hall incorporated.
12. Pan Am Railways Application for Intervenor Status.
13. Email from Danielle West-Chuhta, Esq. waiving the City of Portland's objections to the Application for Intervenor Status.
14. November 22, 2010 hearing transcript.
15. Portland Press Herald Newspaper's Classified Section's Tear Sheet of Notice of Hearing published December 22, 2011.
16. Portland Press Herald Newspaper's Classified Section's Tear Sheet of Notice of Hearing published December 29, 2011.
17. Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated December 12, 2011 with Notice of the January 12, 2012 Hearing.
18. Letter to Danielle P. West-Chuhta, Esq. and Interested Parties dated January 18, 2012 with Notice of the February 27, 2012 Hearing.
19. Portland Press Herald Newspaper Tear Sheet (p. D 6) published February 7, 2012 with Advertised Notice of February 27, 2012 Hearing.
20. Portland Press Herald Newspaper Tear Sheet (p. D 3) published February 13, 2012 with Advertised Notice of February 27, 2012 Hearing.
21. Sign-in Sheet for Attendees of the February 27, 2012 Public Hearing.
22. September 7, 2012 petition for hearing with margin notations.
23. Subdivision plat of the area of the proposed Sewall Street crossing.
24. Written testimony by Gregory Mitchell, City of Portland.
25. Public Hearing Submission by City of Portland with photos, plans and descriptions of proposed crossing and Thompson's Point development.
26. Email (two pages) confirming that Pan Am Railways and the developer of Forefront at Thompson's Point reached agreement relative to the Crossing.

A. Public Comments.

Danielle P. West-Chuhta, Esquire, Associate Corporation Counsel for the City, spoke in support of the petition to establish the Crossing. Ms. West offered Exhibit 22, the request for hearing, and Exhibit 23, a plat map showing the area surrounding the Crossing and the planned extension of Sewall Street. The Crossing is located at Mile Post 1.92 on the Mountain Division Branch Line. Trains travel at 10 miles per hour through the Crossing area. The Crossing will be at grade and the purpose of the Crossing will be to create a way for highway traffic to travel to and from Thompson's Point, which will be developed in the near future.

The terminus of Sewall Street, a town way, is at the northern boundary of the railroad corridor. A private way, also known as Sewall Street, continues through the Crossing and runs into Thompson's Point. The tracks currently run through that private way. The City plans to extend Sewall Street about 130 feet to the south of the existing crossing. When this piece of road is accepted as a public way, the tracks will be located within a public street. The City requests that a public crossing be established where the private crossing now exists.

Gregory Mitchell, Acting Director of the City's Department of Planning and Urban Development said that the Crossing is part of a larger plan to develop Thompson's Point, a peninsula to the south of the Crossing that extends into the Fore River. The planned development will be a world class destination that will provide access to cultural functions, athletic events and other entertainment activities. Officials from the Portland Fire Department have reviewed plans for the proposed Crossing and approve of the design.

Christopher Thompson, a representative of Forefront Partners I, LP, the company that plans to develop Thompson's Point, said that Thompson's Point will be converted into a 27 acre complex called the Forefront at Thompson's Point. The development will have an event center, a concert hall and amphitheater, a sports medicine facility, a hotel, a restaurant, office buildings and a parking garage. The event center will offer 3500 basketball fans the chance to view Portland's local professional team. Vendors and entrepreneurs will be able to display their wares at trade shows in a 44,000 foot facility. Music enthusiasts will have the opportunity to enjoy concerts at a 4500 seat auditorium and office space will be available as well. The Forefront at Thompson's Point will serve to connect walking trails to the Portland Transportation Center. Given the large number of people expected to use this facility, the existing crossing must be upgraded to facilitate the flow of public highway traffic to and from Thompson's Point.

Stephen Bushey, an engineer who works for Deluca Hoffman Associates, spoke in favor of the Crossing. He offered Exhibit 25, a brochure entitled Public Hearing Submission by City of Portland. Exhibit 25 contains photos, plans and descriptions of the Crossing area, including the planned development. Surface parking will be available for 712 vehicles and the parking garage will have space for 732 cars.

The Crossing will be constructed sometime between 2012 and 2014 at a cost of about \$500,000 - \$600,000. The two sets of tracks currently in place, a main line and a siding, will be in the proposed Crossing. The Crossing will be about 36 feet wide and will have three lanes for automobiles. Incoming and outgoing traffic will each have a dedicated lane. The middle lane

will be reversible to accommodate incoming or outgoing automobiles when traffic is heavy. A path on the west side of the inbound automobile lane will be available for pedestrians.

Flashing warning lights will be attached to a cantilevered structure over the Crossing to warn highway travelers about passing rail traffic. Pedestrian access will be controlled by automatic gates. Gates will not be installed over automobile lanes. The reversible middle lane will be used for heavy traffic during peak hours. Traffic control workers will direct traffic as needed. According to Exhibit 26, the developer has concluded an agreement with the Railroad that obligates the developer to reimburse the cost of improving the Crossing.

To access the planned development, highway traffic must enter the Thompson's Point Access Road from the Fore River Parkway. Once on the access road, travelers will move in an easterly direction until they turn onto Sewall Street at a 90 degree angle and travel south toward the Crossing. Southbound motorists travel down a slight decline that begins about 50 feet north of the Crossing. The tracks cross Sewall Street in an east-west direction at the bottom of that dip in the road. Sewall Street runs in a north-south direction and intersects the tracks at a ninety degree angle. The approach for motorists leaving Thompson's Point is level.

Automobile traffic is expected to pass through the proposed crossing during peak hours at the rate of 955 total trips. The highway speed limit at the crossing will be 25 miles per hour. After southbound motorists turn onto Sewall Street, they will have sight distance of about 500 feet to the Crossing. Highway traffic approaching from Thompson's Point can view the Crossing from a distance of 300 feet.

Two to four freight trains per week move through the Crossing. No passenger train traffic uses the Crossing at this time. Track speed is ten miles per hour. Randall Pike, P. E., a member of the firm that will design the Crossing, said that eastbound trains will have sight distance on their approach to the Crossing of several thousand feet and westbound trains will have sight distance of about 1000 feet to the Crossing.

The surrounding area is generally industrial. A parking lot and passenger loading area in the rear of the Portland Transportation Center are on the northeast quadrant of the Crossing. A power transmission facility and two story metal building are on the northwest quadrant. An Amtrak office resembling a mobile home is on the southeast quadrant. A fenced parking lot that holds dozens of trailers is on the southwest quadrant. An Amtrak passenger station is located about 600 feet to the east of the Crossing.

Nathan Moulton, Manager of Rail Transportation for the Department, said that the Department supports the proposed Crossing. Exhibit 26 states that the Department will be provided with plans of the Crossing for review and approval. Signage, pavement markings, gates, lights and other safety installations must be approved by the Department and will conform to the Manual on Uniform Traffic Control Devices.

Robert Burns, a lawyer for the Railroad, confirmed that the Railroad and the developer were close to reaching an agreement for the development of the Crossing. James Howard, a lawyer for the developer of Thompson's Point, said that the parties were close to finalizing

financial concerns and that safety and design issues were resolved. Robert Haines, a Portland resident, spoke in favor of the Crossing, but expressed doubt that the access road would accommodate inevitable congestion during big events. Dory Waxman, a former City Councilor and a resident of Portland, spoke in favor of the Crossing and stressed that traffic during big events would be manageable because designers would anticipate traffic congestion problems.

#### IV. FINDINGS AND CONCLUSIONS

Based on exhibits, hearing testimony and site visits, the following findings are made:

1. Parties. The City of Portland petitioned the Maine Department of Transportation to issue an order establishing a public crossing. Portland Terminal Company owns the railroad in the proposed crossing area and Springfield Terminal Railway Company operates rail traffic. Pan Am Railways owns these two entities.
2. Location of Proposed Crossing. The proposed Crossing will be located at Mile Post 1.92 on the Mountain Division Branch Line, the site of a private crossing.
3. Status of Existing Crossing. The existing crossing is private. The terminus of Sewall Street, a town way, ends on the northern edge of the rail corridor. A private way, also named Sewall Street, runs in a southerly direction over the tracks to Thompson's Point. The City plans to extend Sewall Street an additional 130 feet south of the existing crossing. When this road is accepted as a public way, the tracks will be located within a public street.
4. Crossing Geometry. Two sets of tracks, a mainline and a siding, run through Sewall Street to form a double-track crossing. The rails run in an east-west direction and intersect Sewall Street at a 90 degree angle. Sewall Street runs in a north-south direction.
5. Sight Distance. Eastbound trains will have sight distance on the approach to the Crossing of several thousand feet and westbound trains will have sight distance of about 1000 feet. Southbound motorists will approach on a decline and will have a clear view of the Crossing for about 500 feet. Motorists traveling north on Sewall Street from Thompson's Point will have sight distance of about 300 feet.
6. Railroad Traffic. Four trains pass through the Crossing each week. Timetable speed over the rails is 10 miles per hour.
7. Highway Traffic. Automobile traffic is expected to pass through the Crossing during peak hours at the rate of 955 total trips. The speed limit for automobiles will be 25 miles per hour. The highway in the Crossing will be 36 feet wide with three lanes for automobile traffic. One lane will be dedicated for incoming highway traffic and one lane will be dedicated to outgoing vehicles. The middle lane will be reversible to accommodate either incoming or outgoing vehicles when traffic is heavy. A paved path will facilitate the flow of pedestrian traffic.

8. Purpose. The Crossing will allow public highway traffic to pass through the railroad corridor and flow into the planned development at Thompson's Point.
9. Area Land Use. A parking lot and passenger loading area for the Portland Transportation Center are on the northeast quadrant of the Crossing. A power transmission facility and a two story metal building occupy the northwest quadrant. An Amtrak office resembling a mobile home is on the southeast quadrant. A parking lot that holds dozens of trailers is on the southwest quadrant. An Amtrak passenger station is located about 600 feet to the east of the crossing.
10. Construction and maintenance. The Crossing is expected to be constructed between 2012 and 2014. The estimated cost is \$500,000 to \$600,000.
11. Design. The Railroad and Forefront Partners I, LP have reached agreement on the design of the Crossing. The Department will be provided with the plans for review and approval to ensure that the design meets safety requirements. Officials from the Portland Fire Department approve of the proposed Crossing.

## V. ORDER

Based upon the evidence and the applicable law, it is hereby ORDERED that the City of Portland's Application to Establish a public highway crossing along the planned extension of Sewall Street at Mile Post 1.92 on the Mountain Division Branch Line is granted upon the fulfillment of the following conditions:

1. The City shall lay out and accept a public way across the Mountain Division Branch Line at Railroad Mile 1.92 in Portland.
2. The following actions shall be taken and safety measures installed:
  - a) All safety measures including signalization, gates, bells, signage, lights and pavement shall be properly designed and constructed in accordance with the Department's Standard Specifications and Standard Details in effect at the time the Department approves the Crossing.
  - b) All safety measures that are required or recommended by the Manual on Uniform Traffic Control Devices (MUTCD) in effect when the Department approves the Crossing shall be properly located and installed.
  - c) Final design plans for traffic lanes at or near the Crossing shall be submitted to the Department for approval at least 30 days before construction of the Crossing commences. Construction shall not begin until the Department approves the plans.

- d) The Railroad and the City shall coordinate the planning, construction and testing of all signals and other safety devices to ensure that they are properly synchronized and in good working order before the Crossing is opened for use.
- e) All pedestrian access transitions at the Crossing shall be designed and installed in compliance with the Americans with Disabilities Act (ADA).
- f) Street lighting shall be installed at the crossing. Said lighting shall comply with all federal, state and local requirements.
- g) The City shall be responsible for the cost of constructing the Crossing. The Railroad shall be responsible for operating and maintaining the Crossing.
- h) If the Crossing has not been approved by the Department for public use by January 1, 2017, then the authority to establish the Crossing under this order shall expire unless the City or the Railroad petitions the Department before January 1, 2017 to modify this Decision for an extension of the deadline.

MAINE DEPARTMENT OF TRANSPORTATION



David Bernhardt, P. E.  
Commissioner

**VI. APPEAL RIGHTS**

Pursuant to 23 M.R.S.A. § 7202, this decision shall be final and binding on all parties unless an appeal from this decision is taken. Any party wishing to appeal must, within 14 days from the date of the filing of this decision, file in the office of the Maine Department of Transportation its reasons for appeal and shall cause to be served on any other interested parties, a copy of the reasons for appeal certified by the department. The department must be made a party to the appeal.

Pursuant to the requirements of 5 M.R.S.A. § 11001 et seq. appellate procedures also apply to an appeal of this decision. Pursuant to 5 M.R.S.A. § 11002, a petition for review of this decision shall be filed within 30 days after receipt of notice of this decision if the appeal is taken by a party to the proceeding for this decision. Any other person aggrieved shall have 40 days from the date the decision was rendered to petition for review. If the review sought is from the Department's failure or refusal to act, the petition for review shall be filed within 6 months of the expiration of the time within which the action should reasonably have occurred.

Pursuant to 5 M.R.S.A. § 11002 (2), the petition shall specify the persons seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief which may be in the alternative. Copies of the petition for review shall be served by Certified Mail, Return Receipt Requested, upon the Maine Department of Transportation, all parties to the proceedings, and the Department of the Maine Attorney General.

CITY OF PORTLAND, MAINE  
PLANNING BOARD

---

Carol Morrissette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk  
Patrick Venne

June 15, 2012

Chris Thompson, PhD  
Parallax Partners, Inc.  
55 Lisbon Street, Suite 2400  
Lewiston, ME 04240

Steve Bushy, PE  
Deluca Hoffman Engineers  
78 Main Street, Suite 8  
South Portland, Maine 04106

Project Name: The Forefront at Thompson's Point  
Project ID: Application # 2011-274  
Address: Thompson's Point, Portland, Maine CBL: 201-A-5  
Applicant: Chris Thompson, PhD, Thompson's Point Development Company, Inc  
Planner: Bill Needelman, Senior Planner

Dear Mr. Thompson,

On June 5, 2012, the Planning Board considered Thompson's Point Development Company's application for a mixed-use event center, concert venue, hotel, restaurant and office complex on Thompson's Point. The Planning Board reviewed the proposal for conformance with the standards of the Shoreland Zoning Regulations, Flood Plain, Subdivision Ordinance and Site Plan Ordinance, including Site Location of Development Act. The Planning Board voted by the following motions to approve the application with the following waivers and conditions as presented below.

**A. Waivers**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for application # 2011-274 relevant to the Portland's Land Use Code and Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board finds that two or more criteria for sidewalk waiver, as provided under Sec.14 –506 (b), (are) met, namely that: There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site; and, a safe alternative-walking route is reasonably available by way of a sidewalk on the other side of the street; and therefore the requirement for sidewalks along the easterly sideline of the Sewell Street extension.  
**Vote: 4-0 (Silk, Lewis, and O’Brien absent) Motion Passed.**
2. The Planning Board waives the Technical Standard for flooding as provided *Technical Manual III. 4. E.(2) Waiver of the flooding standard due to direct discharge into the ocean, a great pond, or major river segment.*  
**Vote: 4-0 (Silk, Lewis, and O’Brien absent) Motion Passed.**
3. The Planning Board waives the Technical Standard for *public street light specifications* under Technical Manual Section 10.2  
**Vote: 4-0 (Silk, Lewis, and O’Brien absent) Motion Passed.**
4. The Planning Board waives the Technical Standard requiring full cut off light fixtures, Section XV: Site Lighting Standards, 3 to allow architectural lighting.  
**Vote: 4-0 (Silk, Lewis, and O’Brien absent) Motion Passed.**

## **B. Subdivision**

**The Board voted 4-0 (Silk, Lewis, and O’Brien absent) to approve the subdivision of property by the following motion:**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application # 2011-274 relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (is) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

- i. *Easements:* Prior to the issuance of any certificates of occupancy, the applicant shall provide for the review and approval of City Corporation Counsel, easements (and/or licenses as applicable) for the following:
  - a. Department of Public Services vehicles to use the private drive system for turn-around access when maintaining the Sewell Street extension.
  - b. Public access and conditions of use to the site, including use of trails, sidewalks, the central plaza, and water access facilities

- ii. *Declaration of Easements, Covenants and Restrictions Document:* Prior to recording of the subdivision plat, the applicant shall provide for City Corporation Counsel review and approval a revised Declaration of Easements, Covenants and Restrictions document consistent with the review comments provided in Section 6.b.iiib of Planning Board Report #27-12, which is attached.
- ii. *Street Lighting:* The proposed street lights on the public portion of the Sewell Street extension are to be privately owned, metered and maintained by the Forefront at Thompson's Point. The City shall grant a license for such a purpose at the time of street acceptance.
- iv. *Subdivision Plat:* That prior to recording, the applicant submit for Planning Authority review and approval a revised subdivision plat for planning board signature and recording. The plat shall reflect the number of buildings within corresponding lots intended for phase one construction. Additionally, the subdivision plat shall note conditions of public access to the roads, plazas, waterfront access points and pathways on the site, and all easements for city vehicle for access and turning.

### **C. Site Plan**

**The Board voted 4-0 (Silk, Lewis, and O'Brien absent) to approve the Site Plan by the following motion:**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application # 2011-274 relevant to the Site Plan Ordinance, the standards for Site Location of Development and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (is) in conformance with the Site Plan standards of the land use code, subject to the following conditions of approval:

- i. *Retaining Walls:* Prior to issuance of a building permit, revised site plans shall be submitted for Planning Authority review and approval including a note requiring the Contractor to provide design and stamped engineering drawings for either large block modular wall systems (such as Redi-Rock or Stone Strong), or reinforced small block walls (such as Anchor or Keystone Block).
- ii. *Stormwater:* Prior to issuance of a building permit, the applicant shall submit to the Planning Authority for review and approval, revised plans and specifications addressing the following stormwater issues:
  - a. *Filterra Systems (Zones B & G):*
    - Include a note on the Stormwater Management Plans stating that roof runoff from the parking garage deck will enter an internal oil/water separation device with grit chamber prior to entering the Filterra Unit.

- In addition to the Grading Plan, provide revised Stormwater Management Plans indicating the location of Filterra units.
- b. StormFilter Systems (Zone F):
- Final Stormwater Management Plans and detail sheets noting the trench drain sump.
- iii. *Off-site improvements:* Prior to the issuance of a building permit, the applicant shall provide for Public Services Authority review and approval construction plans and details for all off-site site public improvements including Sewell Street sidewalks, crosswalks and ADA compliance at the Sewell, Congress and Whitney Street intersection, and pedestrian signals crossing Thompson’s Point Connector Road at the Fore River Parkway. Construction of these improvements shall be completed prior to issuance for an occupancy permit for the event center and/or concert hall.
- iv. *Offsite construction rights:* Prior to issuance of a building permit, the applicant will provide for City Corporation Counsel’s review and approval adequate right, title and interest to construct off site drive entrances onto abutting properties, namely Suburban Propane and NNEPRA, as shown on the submitted site plans.
- v. *Traffic:* Prior to issuance of a building permit, the applicant will provide for Planning Authority review and approval the following information:
- A revised event management plan that includes provisions for addressing peak hour traffic impacts during conventions and other events taking place during the business day.
- vi. *Revised Circulation:* Prior to issuance of a building permit, the applicant will provide for Planning Authority review and approval for the westerly portion of the site showing an amended pickup and drop off area between buildings K and L.
- vii. *Emergency Access:* If the developer installs the internal traffic control gates shown on the submitted site plans, the same “click to enter” devices proposed for the Sewell Street cul-de-sac will need to be provided and coordinated with City Public Safety for emergency vehicle access to the site.
- viii. *Site Lighting:* Prior to issuance of a final building permit, the applicant will provide final site and architectural lighting plans and specifications for Planning Authority review and approval based on the applicant’s May 24 submittal.

- ix. *Tree Preservation:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval plans showing a revised location for buildings L and K (or the combined building alternative) and associated parking that protects existing trees and significant vegetation between the proposed development and the waters of the Fore River and the Fore River Trail.
- x. *Architectural Plans:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval Final phase 1 architectural plans that are generally consistent with the with material submitted to the Planning Board at Public Hearing.
- xi. *Wildlife Habitat Preservation and Landscaping Plans:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval an amended landscaping plan consistent with final NRPA submission documents; and, that the applicant receive approval from MDEP for NRPA approval for development impacts to significant wildlife habitat.
- xii. *Off-street Loading:* Prior to issuance of a building permit, the applicant shall submit to the Planning Authority for review and approval, revised plans and specifications showing off street loading bays for buildings A and the combined building K and L phase one alternative consistent with Division 21 of the Land Use Code.
- xiii. *B-5 Noise Standards:* Prior to issuance of a building permit, the applicant shall submit to the Zoning Authority for review and approval, acoustical information demonstrating adherence to the performance standards of the B-5 zone.

#### **STANDARD CONDITIONS OF APPROVAL**

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.
2. **Subdivision Waivers** Pursuant to 30-A M RSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.

4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Note on Stormwater Management Inspection and Monitoring** The applicant and all assigns, must comply with the conditions of Chapter 32 Storm Water including Article III. Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/sub-contractor must comply with conditions of the construction storm water management plan and sediment & erosion control plan based on the applicant's submitted materials and applicable city standards and state guidelines.
6. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
7. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
9. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
10. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

11. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
12. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If there are any questions, please contact Bill Needelman, Senior Planner at 874-8722 and [wbn@portlandmaine.gov](mailto:wbn@portlandmaine.gov)

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

Attachments

1. Planning Board Report #27-12
2. City Code, Chapter 32
3. Performance Guarantee Packet

**Electronic Distribution:**

<p>cc: Greg Mitchell, Interim Director of Planning and Urban Development Alexander Jaegerman, Planning Division Director Barbara Barhydt, Development Review Services Manager Bill Needelman, Senior Planner Philip DiPierro, Development Review Coordinator, Planning Marge Schmuckal, Zoning Administrator, Inspections Division Tammy Munson, Inspection Division Director Lannie Dobson, Administration, Inspections Division Gayle Guertin, Administration, Inspections Division Michael Bobinsky, Public Services Director Katherine Earley, Engineering Services Manager, Public Services Bill Clark, Project Engineer, Public Services David Margolis-Pineo, Deputy City Engineer, Public Services Doug Roncarati, Stormwater Coordinator, Public Services</p>	<p>Greg Vining, Associate Engineer, Public Services Michelle Sweeney, Associate Engineer John Low, Associate Engineer, Public Services Mike Farmer, Project Engineer, Public Services Jane Ward, Administration, Public Services Jeff Tarling, City Arborist, Public Services Captain Chris Pirone, Fire Department Thomas Erriso, P.E., TY Lin Associates David Senus, P.E., Woodard and Curran Rick Blackburn, Assessor's Department Approval Letter File</p>
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**PLANNING BOARD REPORT  
PORTLAND, MAINE**

The Forefront at Thompson's Point, Portland, Maine  
Thompson's Point, Portland, Maine  
Level III Site Plan, Subdivision and Site Location of Development Review  
Application # 2011-274  
Thompson's Point Development Company, Inc., Applicant

Submitted to: Portland Planning Board: Public Hearing Date: June 5, 2012 CBL: 201-A-5	Prepared by: Bill Needelman, Senior Planner Date: June 1, 2012 Planning Board Report Number: #27-12
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**1. Introduction**

Parallax Partners, Inc., doing business as Thompson's Point Development Company, Inc. is requesting a public hearing with the Planning Board to review their proposal for a mixed-use redevelopment at Thompson's Point. Thompson's Point consists of approximately 30 acres of land located adjacent to the Portland Transportation Center. The applicant proposes to redevelop the property into a mixed use development including, as part of proposed phase 1, an event center, hotel, sports medicine facility, parking structure, restaurant, two office buildings and accessory uses.

*Notice*

Notice has been sent to 252 area property owners and individuals on the interested parties list. Notice was printed in the May 30 and May 31, 2012 editions of the *Portland Press Herald*. The applicant held a neighborhood meeting on June 21, 2011 when the application was first submitted, which meets City requirements. Neighborhood meeting material is provided in the introduction of the applicant's submission, Volume 1, submitted with the May 1, 2012 workshop material.

*Applicant's Submitted Material*

In addition to materials provided for the May 1, 2012 Planning Board workshop, the applicant has provided two new documents for the Board's consideration at the Public Hearing: (1) a response to Planning Board member comments from the May 1 Workshop dated May 15, 2012; and, (2) a response to issues raised by the Planning Staff, including those outlined in the May 1 workshop memo, dated May 24, 2012. The two new documents were provided in advance to Planning Board members. These same documents as well as the May 1 workshop documents are available on the Planning Board meeting website at:

[http://www.ci.portland.me.us/planning.htm#Current\\_Backup\\_Material](http://www.ci.portland.me.us/planning.htm#Current_Backup_Material).

City staff has reviewed the application and written materials and the staff’s analysis is provided below. Board members will note that the text of this memo is largely a restatement of comments provided for the May 1 workshop except where updated to reflect new information or additional analysis. This project has been presented to the Planning Board as a Master Plan at four previous workshops including a public site walk.

*Applicable Reviews*

The proposal is subject to Level III Site Plan, Subdivision and Site Location of Development Review by the City of Portland. All Phase 1 buildings are proposed for site plan review and approval. Phase 2 buildings and their lots are proposed for subdivision approval and future site plan review.

<b>Waivers</b>	<b>Standards Reference</b>
Flooding Standards	<i>Technical Manual III. 4. E.(2) Waiver of the flooding standard due to direct discharge into the ocean, a great pond, or major river segment.</i>
Sidewalk from the easterly sideline of the Sewell street extension	Subdivision Section 14-506, <i>Waiver criteria</i>
Public street light specifications	Street light specifications from the Technical Manual, Section 10.2 to allow private street lights on the public street extension of the Sewell Street right of way.
Site Lighting – Cutoff fixture requirement	Technical Standard requiring full cut off light fixtures, Section XV: Site Lighting Standards, 3. to allow architectural lighting
<b>Site Plan Review</b>	Site Plan Standards – 14-526
<b>Site Location of Development (Delegated Review)</b>	<i>Technical Manual, Section 14</i>
<b>Subdivision</b>	Subdivision Standards - Section 14-497

In addition to local review, the project is subject to the following state and federal permitting:

- U.S. Army Corps of Engineers General or Individual Permit (Wetland Impact)
- Natural Resources Protection Act (NRPA) Permit issued by MDEP.
- MDOT Traffic Movement Permit (to be issued by MDOT)
- MDEP Air Emissions License

**2. Project Data**

Total Site Acreage: 27.56 acres  
 Total Proposed Disturbed area: 19.66 acres  
 Zone: B-5 Urban Commercial Mixed-Use Zone  
 Existing Uses: Manufacturing, Construction and Storage  
 Proposed Subdivision: 19 lots plus common space and public street parcels  
 Proposed Use: Mixed Use Commercial Including:  
 Project Phasing: ***Phase 1 (Subdivision and site plan approval)***

- 80,000 SF Event Center
  - 29,600 SF Concert Hall
  - 80,000 SF Hotel (125 rooms)
  - 24,000 SF Sports Medicine and Physical Fitness Facility
  - 732 Space Structured Parking Facility
  - 718 Space Surface Parking Lots
  - 6,000 SF Restaurant
  - 60,000 SF Class A Office Building
  - 120,000 SF Class A Office Building
  - Public Access Trail (Existing to be retained)
  - Publicly Accessible Small Boat Launch and Kayak Access
  - +/- 4000 SF Rehabilitated service building
- Phase 2 (Subdivision approval only)***
- +/-75,000 SF Class A Office Building
  - +/-75,000 SF Class A Office Building
  - +/-34,000 SF Class A Office Building
  - Restaurant/Office building (Size TBD)

Existing Total Impervious Area: Approx. 700,000 SF  
 Proposed Total Impervious Area: +/-740,000 SF (61%)

Proposed Building Footprint: 262,300 SF  
 Existing Total Building Floor Area: 110,581 SF  
 Proposed Total Building Floor Area: 820,900 SF

Proposed Vehicle Parking: 1450 Spaces  
 Proposed Bicycle Parking: 88 Spaces (as per City Ordinance)

### **3. Right, Title and Interest**

The applicant has submitted a letter from their attorney, dated May 17, 2011, confirming that the property owner, Thompson's Point Incorporated, has a written agreement to sell the property to Parallax Partners, Inc. or its assignee, Thompson's Point Development Company, Inc. Under the terms of the agreement, the applicant has site control and the right to pursue development permits for the project. Corporation Counsel and Planning and Economic Development Director previously submitted a memo confirming that the applicant's letter adequately meets City requirements for verification of Right, Title and Interest.

### **4. Proposed Development and Background**

The proposed project is being presented as a single subdivision with two phases of site plans. At previous workshops, the applicant proposed a single entity as owner of the real estate, who will enter into leases with tenants for each of the proposed uses. This lease arrangement triggers subdivision review in accordance with Maine Statute. Only phase 1 of the site plan is requested for approval at this time.

The subdivision of property is shown on a draft subdivision plan as sheet C-2.0 of the plan set (included in the May 1 Workshop material.) There are 19 lots shown along with common space around the private roads and the central plaza. Each lot is associated with an individual building or parking area. There is a +/-150 foot extension of public street on to the site along the Sewell Street right of way accessed from the Thompson Point Connector across the Pan Am rail right of way. The naming of this street will be finalized as part of the City Council's accepting the public street following construction. While located on a portion of the Sewell Street corridor, functionally, the new street is an extension of the Thompson's Point Connector roadway and will likely be named accordingly.

The site plan review is separated into two phases. Phase 1 includes the primary complex of buildings as well as the parking garage, an additional office building on the main plaza and a phase one alternative for a single building on the westerly "panhandle" of the site. Phase 2 includes three or four additional office buildings (with the number of buildings determined by phase 1 construction) and a restaurant/office building. The buildings are identified by letters on the "Overall Site Plan", sheet C-3.0 of the plan set (revised with the May 24 submission.)

Lot #	Building #	Phase	Building Area (footprint)	Use
1	A	1	24000	Office
2	B	2	23000	Office (future)
3	C	1	29600	Concert Hall
4	D	1	67000	Event Center
5	E	1	16000	Fitness, medical office
6	F	1	6000	Restaurant
7	G	1	12400	Hotel (125 rooms)
8	H	2	8000	Restaurant/Office (future)
9	J	1	42700	Parking garage (732 spaces)
10	K	2	15000	Office (future)
11	L	2	15000	Office (future)
12	Service	1	4000+/-	Maintenance (rehabilitated existing building)
13	NA	1	NA	Parking lot (+/-275 spaces)
14	NA	1	NA	Parking lot (+/-74 spaces)
15	NA	1	NA	Parking lot (+/-95 spaces)
16	NA	1	NA	Parking lot (+/-73 spaces)
17	NA	1	NA	Parking lot (+/-33 spaces)
18	NA	1	NA	Outside Amphitheater (19,600 sf)
19	NA	1	NA	Parking lot (+/-129 spaces)

*Phase 1* project components are summarized below. Rendered architectural elevation drawings of the Phase 1 buildings are provided at the conclusion of the May 1 workshop plan set.

- Lot 4: Event Center (D) and Lot 3 Concert Hall (C):  
This facility will be used as an athletics practice facility for basketball and indoor soccer/lacrosse. The facility will house the Portland Red Claws D-League basketball team, hosting approx. 3,500 seat basketball games. The approx. 28,000 SF concert hall portion of the facility will host mid-size concerts of up to 4,500 seats. The two attached facilities will be designed to connect in order to accommodate larger events such as trade

shows and conferences with up to 45,000 SF of open floor space. The Concert Hall is also associated with the Lot 18 amphitheater which could hold an additional 2500 seats. Modifications and or alternative layouts for the concert hall and amphitheater may be presented at the workshop.

- Lot 7: Hotel (G):  
The hotel, currently proposed adjacent to the Event Center, will be approx. 80,000 SF and will house approx. 125 rooms, a ballroom and meeting space.
- Lot 5: Sports Medicine and Physical Fitness Facility (E):  
A sports medicine and athletic performance lab of approx. 16,000 SF that will offer rehabilitation and wellness training. The facility is currently proposed adjacent to the parking structure and Event Center. An additional four floors of office will site above creating a 5 story, 80,000 sf structure.
- Lot 9: Structured Parking Facility (J):  
The proposed parking structure, adjacent and connected to the Event Center, will include 732 parking spaces. The garage will serve users of the Forefront and of the Portland Transportation Center.
- Lot 6: Restaurant (F):  
Proposed 6,000 SF restaurant directly connected to the Event Center.
- Lot 1: Office Building (A):  
Proposed Class A office building, approx. 120,000 SF at the easterly, central portion of the site adjacent to the central plaza
- Public Access and Open Space:  
As part of the review for the NRPA permit, the applicant has revised the plans for the trail on the site. The rustic shoreline trail around the perimeter of the peninsula is replaced with a concrete walkway to better meet Inland Fisheries and Wildlife requirements. The rustic trail along the panhandle is retained. The applicant also proposes a publicly accessible small boat and kayak access at the westerly end of the site.

*Phase 2* of the project includes the following components as depicted on Overall Site Plan, sheet C-3.0

- Lots 10 and 11: Office Buildings (K and L):  
Two 75,000 SF office buildings proposed at the northwesterly end of the site (Buildings K and L); a 34,000 SF office building proposed as part of the central portion of the development (Building B); and, a 20,000 SF restaurant/office building located at the far southerly end of the peninsula (Building H.)
- Lot 2: Office Building (B):  
34,000 square foot office building, referred to as a “cultural center” suggesting that a museum may be considered.
- Lot 8: Restaurant/ Office Building (H):

A 20,000 SF three story building sited at the water's edge adjacent to the kayak ramp.

All Phase 2 uses will share the surface and structured parking proposed as part of Phase One. If additional parking is deemed necessary to accommodate proposed Phase Two uses, an additional parking deck above a portion of surface parking or expansion of the Phase One parking structure may be included as part of the Phase Two proposal. Such a determination would be evaluated as of the site plan review for future buildings.

*Notes on "alternative layouts"*

The revised overall site plan, drawing C-3.0 with the May 24 submission, is the primary graphic basis for approval before the Planning Board. Plan C-3.0 includes two "alternative layout" scenarios for the Board's consideration.

*Panhandle Lots:* The subdivision plat, C-2.0 with the May 1 Workshop material, shows lots that generally correspond to and include the footprints of individual buildings. The applicant is seeking subdivision approval of two building lots (lots 10 and 11) in the westerly panhandle while simultaneously seeking phase 1 site plan approval of a single building on this same part of the site. The applicant seeks this arrangement so that if the phase 1 combined building does not attract a tenant within the phase 1 construction sequence, it would not then be necessary to return to the Planning Board for a revised subdivision to add an *additional* lot. Based on an approval of the Overall Site Plan as submitted, applicant would have the flexibility to market both the larger building and the two smaller buildings on *approved lots* for phase two construction. The smaller buildings (buildings L and K) are phase 2 buildings that have an equivalent floor area as the phase 1 combined building, but are not located on precisely the same portion of land.

*Amphitheater Lots:* The concert hall, building c and lot 3, is adjacent to the outside amphitheater, lot 18. At the May 1 Workshop, the applicants showed renderings of a scenario which eliminates the concert hall and places an office structure on the general location of the amphitheater, moving the amphitheater to the south, adjacent to the events center, building D.

The proposed alternatives do not suggest additional lots or higher intensity of use. ***Based on an approval as submitted, the applicant would need to revise the subdivision plat for recording to reflect the actual number of buildings within corresponding lots. Providing a final subdivision mylar for recording is suggested as a condition of approval.***

## **5. Transportation and On-Site Circulation:**

Site access is proposed via Thompson's Point Connector Road through the signalized intersection at Thompson's Point Road with the Fore River Parkway and the I-295 southbound off-ramp. The Applicant proposes to widen the existing roadway beginning at the southerly side of the dead end of Sewall Street to three lanes, including two vehicle lanes and an emergency access lane, continuing south across the railroad tracks and onto the Thompson's Point site. Emergency services propose to access the site via Sewall Street, a dead end street with lockable gate.

Egress from the site will also be via the Thompson's Point Connector Road. During larger events, all vehicles will be directed to the right at Fore River Parkway towards I-295 and downtown in order to prevent traffic through residential neighborhoods off of Congress Street. Larger events will require police presence and flaggers to direct traffic. The size of events requiring police presence is to be determined by the City. Temporary signage will be required to provide wayfinding to Congress Street heading west.

The existing private railroad crossing at the southerly end of Sewall Street will be upgraded by the applicant to public crossing standards in accordance with Maine Department of Transportation (MDOT) guidelines and will remain at-grade. Where the Thompson's Point Connector Road turns south to the site, it joins a remnant of the Sewell Street city right of way. The proposed subdivision extends Sewell Street onto the subject property for 150-175 feet to accommodate a public rail crossing of the Pan Am rail right of way. MDOT has conditionally approved a public crossing of the rail line, subject to the crossing's being a public way. The MDOT approval of the public crossing is included with this report as Attachment 1. Access easements for City vehicles to use the private portions of the Forefront access drive for turning will be needed for inclusion in the subdivision documents.

#### *Revised Circulation*

With this submission, the applicant proposes a significant amendment to the internal site circulation pattern that addresses several issues from the previous submission. The perimeter drive around the Thompson's Point peninsula is now proposed to have one-way one travel on the westerly (rear) side of the event center complex. The shift from two-way to one way flow allows the following:

- a. creation of a 6-foot, curb-separated concrete walkway adjacent to the perimeter road;
- b. addition of parallel parking spaces to replace surface spaces removed from the southerly tip of the peninsula and the "panhandle"; and,
- c. replacement of the rustic shoreline trail with the concrete walkway to better meet Inland Fisheries and Wildlife requirements.

Planning Staff, consulting traffic engineer, Tom Errico, and Fire Safety Officer, Lt. Chris Pirone have reviewed the circulation change and recommend its approval.

#### *MDOT Traffic Movement Permit*

The development proposal is subject to MDOT Traffic Movement Permit regulations. The size of the project exceeds City of Portland delegated review authority, thus the State will be processing the TMP application. A scoping meeting was held with at City Hall on June 17, 2011. MDOT'S draft findings that are proposed as conditions for the Traffic Movement Permit and the on-site circulation are described under the Transportation Standards in the Site Plan review below.

## 6. Staff Review:

The application and supporting documents have been reviewed by City staff from the Departments of Planning and Urban Development, Fire Safety, Public Services, Parking and the Corporation Counsel's Office. The plans have also been reviewed by consulting engineers for civil engineering and traffic.

### **a. Zoning Review: B-5, Shoreland, Flood Plain**

*The following comments were submitted by Zoning Administrator, Marge Schmuckal, based on the March 21 submission by the applicant team. Updated information or comments are provided in bold italics.*

#### **i. B-5 Zone:**

*Use:* The project is located in a B-5 Zone. The proposed uses are permitted uses in this zone.

*Dimensional Requirements:* There are no B-5 dimensional setbacks required. The maximum building height is 65'. I have reviewed the building sketches. They prompt several questions. Is the level of the grade around the buildings the same and therefore there would be no need to figure the average grade? It is also noted on the hotel elevation that there is a wedge or floor higher than the 65'. I would like more information explaining that higher portion of the building. ***Final building height determinations will be made with the submission of construction documents for review with the building permit.***

It is also recommended that FAA be contacted concerning both the height of the buildings and for the height of any cranes to construct those buildings.

*Parking:* 14-332.1(g) states, "No off street parking shall be required." I have not made any zoning determination concerning parking.

*Sound:* It is again mentioned that the B-5 Zone has maximum sound limits. Any sounds/noise emanating from the project shall meet those requirements. This office will require separate permits showing dBAs of any HVACs installed. ***The applicants have engaged an acoustical engineer and additional material for the Board's review is anticipated for presentation at the Public Hearing. Planning Staff is recommending a condition of approval that acoustical information demonstrating adherence to the performance standards of the B-5 zone be provided to the Zoning Administrator prior to issuance of a building permit.***

#### **ii. Shoreland Zone:**

On 8/15/2011 The City Council amended the Shoreland Zoning to allow a minimum building setback of 25' from the Highest Annual Tide (HAT). The State has published the HAT for Portland to be an elevation of 7.4 feet NGVD 29. The 25 feet is an area of no disturbance. I would like further information to clarify how the structures closest to the 25' setback will not disturb the protected area (footings, construction work etc.).

***The Zoning Administrator has determined that restoration of areas disturbed for construction will meet this requirement as long as the vegetation clearance requirements are otherwise met.***

I have received documentation from Jeffrey Williams, licensed forester FI#3600 and Everett Towle, licensed forester LF#3135, concerning compliance with the clearing requirements for the Shoreland Zone. The information shows that the clearing will be in compliance with the 40% maximum clearance within any 10 year period.

***iii. Flood Plain Management:***

The Floodplain shown on FEMA map panel 13 indicates part of the property is within the area of a given zone A2 (which is mislabeled at AE on several maps). The elevation given is 10'. Any structure within the areas shown on panel 13 A2 area will need to comply with filling out floodplain applications and certificates of elevation. (Planning Staff note: The only portions of the site subject to Flood Plain Management standards are the extreme shoreline perimeter of the peninsula and the westerly "pan handle." Three proposed buildings are potentially partially within the horizontal extent of the flood plain management area, though their proposed finished floor elevations are well above the minimum required under the applicable regulations. The Zoning Administrator has provided follow up information indicating that the base flood elevation for Thompson's Point is 10.2 feet NGVD 29. The applicant has been asked to account for this information in future building permit documents.

***iv. Vehicle Loading, Division 21:***

The submittal does not show any loading areas. I would like further comment regarding compliance with Division 21, off-street loading requirements. ***Division 21 is the "off-street" loading provision of the Land Use code. Generally, any building over 100,000 sq ft will need to identify a "loading bay" of a minimum of 14'x50'. Given that the entire site is private, "on-street" loading is not an issue. The central event complex is provided with 3 designated loading bays, which satisfies the applicable requirements. Building A is located on the central plaza, which will be able to satisfy the loading needs of the building when needed. The phase 1 panhandle alternative is 150,000 sq ft, and no loading bay is identified. The applicant should clarify for the Board which portion of the site is intended for truck loading or a condition of approval will be needed.***

v. ***Signage:***

Separate permits are required for any new signage. (Planning Staff note: The applicant has submitted comprehensive “wayfinding” signage details with the March 21 packet. Building signage and other corporate, team, or place-making signage will need to be submitted for zoning review.) ***Additional signage material was provided with the site lighting material submitted on May 24, Attachment B, Page 2. The applicant is requesting internally illuminated signage for the event center and hotel. Additionally, the material indicates that a graphics panel is proposed for “written messages as well as video graphics in color.” The applicant should be aware that for signage visible from public travel ways, scrolling messages and video imaging is prohibited by state law.***

vi. ***Offsite Zoning Issues Raised By Planning Board Member Silk at the May 1 Workshop***

At the May 1 Workshop, Board Member Silk raised questions regarding the conformance with zoning for off-site office parking lots to be used for event parking. Planning Staff, the Zoning Administer, and Corporation Counsel have discussed the issue and the Zoning Administrator has determined that event parking is likely a permitted accessory use provided that it is incidental and subordinate to the primary use - especially if used during non-office hours. Business lots in multiple zones near to the Civic Center, Portland Stage, the Portland Company complex, and Hadlock Field/Expo routinely sell parking during events. Likewise, none of the above mentioned facilities provide the entirety of their peak event parking demand on site.

Mr. Silk was concerned that the subject development was premised on some degree of offsite parking which would cause the Sewell Street office users to open their lots to event parking in a “residential professional” RP zone, which was inconsistent with the purpose of the zone and the expectation of abutting residential abutters.

In the May 15 submission, the applicants address this issue by reiterating their commitment to provide sufficient parking to meet their parking demand through an agreement with Mercy Hospital to use their Fore River Parkway lots for events during non-business hours. A shuttle would be provided from Mercy to the site for times of peak demand and there is a lit multi-use pathway available to those who wish to walk. The applicant’s assertion is that by providing parking, both on site and through off-site agreements with Mercy, that they meet their parking demand. Planning staff supports this premise. Those property owners near to the site that choose to offer parking for a fee will need to meet their individual zoning requirements and conditions of site plan approval.

**b. Subdivision Review**

***i. Subdivision Plan Overview***

The subdivision is designed with building footprints and each defining a “lot” within the development and other areas, including the perimeter drive and portions of pedestrian plazas, to be held in common by an association. Parking areas are additionally defined as individual lots or are attached to an adjacent building. The B-5 zone does not constrain lots by size or street frontage requirements which allows a subdivision design using this approach. The subdivision in effect is treated like a planned unit development. The applicant has provided a draft subdivision plat as sheet C-2 in the plan set provided with the May 1 Workshop material.

In addition to the proposed lots, the subdivision includes a short, +/-175 foot, extension of the Sewell Street public right of way onto the site. The right of way extension is needed to ensure that the street crossing over the rail road tracks is designated as a “public crossing” by the Maine Department of Transportation.

***ii. Phasing:***

The project before the Planning Board is a “phased” development, but the applicants request that the entire subdivision of the site is approved with the initial phase. The proposal requests that all lots (building footprints and common areas) are approved with this application. Accordingly, all common infrastructure will be constructed with the initial phase of construction.

The phasing will be executed through sequential approval of individual buildings through site plan review. “Phasing” for the Forefront refers solely to site plan review for buildings not intended for immediate construction (and for which there are no civil engineering or architectural plans.) The Subdivision does not propose to employ the “sectional recording” provisions that would allow dividing the approval and subsequent performance guarantee requirements into consecutive independent phases.

***iii. Staff Review:***

Planning Staff has provided the following general comments on subdivision requirements based on the March 21 submission.

***a. Right title and interest:*** Curb returns onto NNEPRA and Suburban Propane sites are beyond the subject property and will require construction right title and interest. ***The applicants are working on securing this permission and a condition of approval is recommended.***

***b. Review of Declaration of Easements, Covenants and Restrictions (ECR) Document***

The applicant has developed declaration of easements and restrictions under Tab 2, attachment C in their May 1 submission binder. Associate Corporation Counsel, Danielle West-Chuta has reviewed the ECR document and has provided the following comments:

- 1) I did not see any discussion or description of the easements for the public trail and boat launch - will this be discussed in a separate document (other than section 5.1)?;
- 2) The document mentions in several places that lot owners cannot do things without the approval of the declarant/association- I would just like it added that the City

may also need to sign off on work that is done on the lots/property and that compliance with local and state land use regulations is required.;

- 3) Trash and snow removal - should be more spelled out in the document - Although I did see some general references to trash removal in the document (i.e. section 3.8, etc.), I did not see anything specific about snow and I did not see anything that definitively says that trash removal is the responsibility of the lot owners and/or the declarant and/or the association. This should be spelled out and I want it to be clearly stated that the City of Portland does not have any responsibility for trash removal since a city street is not involved.
- 4) In section 1.2 - it indicates that the Declaration shall control in the event of a discrepancy between the Subdivision Plan, Declaration and Bylaws - I think that this is ok with regard to the Association running the entire project, but I want it made clear that the City's approvals (including the Site Plan and Subdivision Approvals) are what controls in terms of requirements and specifications for the entire property.;
- 5) I do not see anything about the use of the plaza area and control of that space - I do not think this is something the City has to be involved in managing, but I just was wondering (based on past conversations with the developers) if they were going to include a reference to the uses of that area being decided by the Association.; and
- 6) Section 4.6.1 talks about signs - should also indicate that City approval may also be necessary for the installation of a sign.
- 7) Add provisions for requiring participation in the development TDM program.

***A condition of subdivision approval is recommended that requires prior to recording of the subdivision plat submission of a revised Declaration of Easements, Covenants and Restrictions document for review and approval of City Corporation Counsel consistent with the review comments above. Additionally, that the subdivision plat be revised to note conditions of public access to the roads, plazas, waterfront access points and pathways on the site, and all easements for city vehicle for access and turning.***

***b. Subdivision Standards:***

The subdivision standards below are relevant to the entire site. The standards language is summarized below in *italics*, with planning staff comment and analysis following in regular font.

*(a) Review criteria. When reviewing any subdivision for approval, the Planning Board shall consider, among others, the following review criteria (listed in summary.)*

- 1. Will not result in undue water or air pollution.*

The site plan, grading and utility plans are designed to adequately address stormwater quality and to minimize pollution from the site. See the Site Plan discussion below. Undue air pollution is not anticipated.

- 2.3. *Has sufficient water available for the reasonably foreseeable needs of the subdivision and will not cause unreasonable burden on an existing water supply;*

Utility Capacity letters have been provided and sufficient capacity to serve has been determined. See site plan review below.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;*

The site is designed to minimized erosion and the site's location as a peninsula in the Fore River will mitigate any loss of absorptive capacity from the current condition.

5. *Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highway or public roads existing or proposed;*

The project is designed to be consistent with a MDOT Traffic Movement Permit, which has been conditionally submitted pending completion of the Planning Board's review. The traffic impacts of the project are discussed in the Site Plan portion of this memo.

6. *Will provide for adequate sanitary waste and storm water disposal and will not cause an unreasonable burden on municipal services if they are utilized;*

A Portland Water District pump station is located on an out parcel of the property and the District determines the sanitary sewer capacity to serve for this project. Currently, combined stormwater from the site enters the pump from existing lines. The project will be separating stormwater from existing combined lines on site, which is anticipated to provide significant improvements during rain events. Development related sanitary flow will however increase significantly. The District's review has been on-going and sewer capacity letter from is anticipated prior to the Public Hearing.

Stormwater will be managed in an entirely private system that outlets into the Fore River. Stormwater management is more thoroughly addressed in the Site Plan portion of this memo.

7. *Will not cause an unreasonable burden on the ability of the city to dispose of solid waste and sewage if municipal services are to be utilized;*

Solid waste is to be privately handled and disposed. (Tab 8 in the applicant's May 1 workshop submittal.) Sewage is addressed above and in the Site Plan portion of this memo.

8. *Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department*

*of inland fisheries and wildlife or by the city, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*

*Natural Beauty:* The site is almost entirely developed with pavement, gravel lot or underutilized industrial space. The northwest portion of the site previously was site of a baseball diamond and contains significant hardwood trees near the shoreline, most of which are to be preserved. The City Arborist has recommended additional tree preservation in this area and the applicant has responded with a slight adjustment to the building and parking layout to respond to this recommendation. Based on the May 24 submission, the minor adjustments to the site layout will not likely preserve the target trees and the City Arborist is recommending an additional shift in parking and site infrastructure (a retaining wall) several feet to the north at the southerly side of the panhandle. ***A condition of approval is recommended with the site plan motions.***

The applicant has provided with the May 24 submission a revised “Overall Site Plan, Drawing C-3.0” that shows the project phasing that the Planning Board is asked to act on. Also provided, with the May 15 response to Planning Board member comments, page 3, are revised landscaping details for the phase 2 building footprints that show the treatment of these sites in the event that phase 2 does not move forward. The applicant proposes an interim condition of up to 4 years where the phase 2 building footprints are loamed and seeded with grass lawn. After 4 years, a planting treatment is proposed that includes trees, shrubs and pedestrian pathways (May 15 submission, Attachment C.) ***Planning Staff recommends that the proposed approach meets applicable site plan landscaping standards.***

*Historic Sites:* The existing buildings on site are not covered by the City of Portland Historic Preservation program; however, the State of Maine Historic Preservation Commission has provided a letter opining that the two major masonry buildings are likely eligible for designation to the National Register of Historic Places due to the scarcity of early railroad structures remaining in Portland. The applicants are not proposing preservation of the buildings and are exploring documentation of the buildings and their history as mitigation method to account for their loss as part of Federal historic preservation requirements tied to project funding.

Prior to the rail development of the site, the early nineteenth century Cumberland and Oxford Canal crossed the site with evidence of the channel and tow path still visible at the northwest portion of the site at the water’s edge. The proposed development will not interfere with the remnant landforms of the Cumberland and Oxford Canal.

*Significant Wildlife/Natural Areas:* State Inland Fisheries and Wildlife staff has provided correspondence that indicates that a significant feeding and roosting area for migratory shore birds exists along the westerly shore of the peninsula. The

applicants have applied to the Department of Environmental Protection for a permit under NRPA resulting from the IF&W determination. As noted above, the applicant has removed the rustic shoreway path and is in the process of revising the landscaping plan to respond to IF&W concerns and to best preserve the shorebird habitat. Additional landscape design changes are anticipated to further protect significant shorebird habitat.

The site was also identified as potentially within the habitat for the endangered New England cottontail rabbit, though the previously developed character of the site negates any significant chance that the proposed development will have an impact on critical habitat. IF&W has by email to the applicant signed off on review of the site for cottontail rabbit habitat. See the Site Plan discussion below.

*Shoreline Access:* The shoreline of the Thompson's Point peninsula is currently ringed with an unimproved trail, which is part of the Portland Trails network. The trail is now proposed to transition from a rustic unimproved path to a perimeter paved walkway along the primary access drive. At the easterly side of the peninsula, the proposed design shows a paved sidewalk along the interior edge of the private roadway which transitions to the water side of the roadway at the southerly tip of the peninsula behind the event center extending between the parking garage and the water to connect to the existing rustic pathway running south of the westerly panhandle.

Direct access to the waters of the Fore River is proposed with a kayak launch ramp at the far southerly tip of the peninsula. The applicant has been asked to describe the parking and vehicle access to the ramp and the terms and conditions for public use. The latest submission describes three parking spaces dedicated to water access. Terms and conditions for public access to the water should be included within the subdivision "declaration of easements and restrictions" and be appropriately noted on the subdivision plat.

9. *Is in conformance with the land development plan or its successor;*

The site is zoned B-5 in compliance with the Comprehensive Plan and proposed uses are permitted in the B-5 zone.

10. *The subdivider has adequate financial and technical capacity to meet the standards of this section;*

The applicant has provided an extensive list of hotel, commercial and residential projects undertaken by the development team in addition to participants and qualifications of the project consulting team. Additionally, TD Bank has confirmed their interest in financing the development as well as expressing their confidence in the development team. Technical and financial capacity information is provided under Tab 2 of the applicant's May 1 workshop submission binder. The applicant has additionally provided information related to the Tax Increment Financing agreement approved by the City, which includes a

great deal of additional financial information relevant to the project.

11. *Water Quality and Shoreland Zoning;*

The site is nearly entirely subject to Shoreland Zoning regulations, which are addressed in the Zoning discussion of this memo. With the exception of stormwater outfalls, all structures and paved surfaces will be set 25 feet back from high water at the shoreline, as consistent with Shoreland Zoning regulations.

Stormwater quality is addressed in the Site Plan Standards portion of this memo below.

12. *Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;*

The site is almost entirely impervious surface area (725,710 sq. ft.) with no stormwater treatment. The proposal includes a modest (7884 sq. ft.) increase in impervious surface; however, the proposed stormwater management techniques will benefit approximately 95% of the site with some degree of stormwater quality treatment. Ground water contamination is not anticipated to increase. Given the site's location as a peninsula in the Fore River, ground water quantity is not an issue of concern.

13. *Is or is not in a flood-prone area, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps.*

The perimeter of the peninsula is located within the "A-2" flood plain with a base flood elevation of 10.2 feet NGVD 1929. In "A" flood plains, regulations require that finished floors are elevated 2 feet above the base flood resulting in a 12.2 foot minimum finished floor elevation for any building that may be partially within the designated flood plain area. Three of the phase II buildings potentially will need to adhere to these regulations: building H (at the southerly tip of the peninsula) and buildings L and K, on the westerly "pan handle." The applicant's grading plans (sheets 4.1 and 4.2) show the finished floor elevations of these building between 16.67' and 24.67' respectively.

14. *All potential wetlands within the proposed subdivision shall be identified on any maps.*

The site contains both coastal and freshwater wetlands at the perimeter of the property, all of which are delineated on the grading and erosion control plans (sheets 4-5)

15. *Any river, stream or brook within or abutting the proposed subdivision shall be identified on any map.*

The site is located along tidally influenced portions of the Fore River, as regulated

under the Shoreland Zoning ordinance.

***c. Site Plan Review.***

The applicant has provided adequate information for the review under site plan for Buildings A, C, D, E, F, G, I and J. Buildings B, H, K and L are proposed as building footprints only (to be approved as lots within the subdivision) and will return to the Board for site plan review as appropriate. As noted above, there are two phase 1 alternatives subject to approval: a combined building K and L in the panhandle; and, a layout where the concert hall is not constructed and is replaced with a phase 2 office building in the location of the amphitheater. The amphitheater would remain a phase 1 development component, but would shift south to be located adjacent to the event center (building D.) Board members should note that the animated renderings shown at the May 1 Workshop were based on the alternative layouts shown on drawing C-3.0.

As noted above under subdivision standard on natural beauty (page 15 of this report) and responding to Planning Board comments, the applicant's May 15 response (page 3) shows the revised landscaping details and treatment for the phase 2 building footprints in the event that phase 2 does not move forward.

Tab 9 of the applicant's submittal binder includes a narrative describing their approach to meeting all of the applicable site plan standards. Board members should review Tab 9 as a companion to the staff review comments below.

Additionally, the applicants have addressed the Board's comments from the May 1 workshop in the May 15 submission, and staff comments in the May 24 submission.

***Site Plan Standards Review, Sec. 14-526***

The site plan standards language is summarized below in *italics*, with planning staff comment and analysis following in regular font.

*(a) Transportation Standards*

The Forefront project accommodates vehicle, transit, bicycle and pedestrian transportation through a combination of site design, demand management, event management, and proximity to existing infrastructure and transportation services.

The site is complicated by its isolated peninsular geography, which is further separated from the city by the Portland Terminal Company right of way. The site's isolation is mitigated by its proximity to almost every major form of transportation serving the City. The site is adjacent or directly connected to the following transportation resources and services:

- The Downeaster passenger train service and intercity busses at the Portland Transportation Center (PTC);
- Route 295 exit 5 providing direct highway access both north and south;
- The Fore River Parkway providing direct access to the western waterfront (to the

Old Port), Veterans Bridge (to South Portland), and Congress Street to Downtown and points west;

- Greater Portland Metro Bus Route 5 connecting to the Downtown, the Jetport and the Maine Mall;
- The Fore River Parkway Trail connecting to the off-road bicycle and pedestrian network;
- Portland Trails recreational trails along the Fore River; and,
- Sewell Street connecting pedestrian and emergency access to Congress Street.

With the exception of emergency vehicles, all passenger and service vehicles entering the site will use the Thompson's Point Connector to the Sewell Street extension with a crossing of the railroad right of way to the south and west of the bus/train station. Bicycles and pedestrians will have the choice of following the same route if originating from the Fore River Parkway, or they can join the primary drive from Sewell Street if coming from Congress Street or private parking located along Sewell Street. While Sewell Street is a cul-de-sac with no public vehicle connection to the Portland Transportation Center or the subject site, bikes, pedestrians and emergency vehicles are provided direct access via a path link and emergency gate. Conversations with Greater Portland Metro Bus staff indicate that local busses could use this same gated connection in the future if such a route amendment were desired.

*Fore River Parkway Trail Connection:* A separate City project to connect the Fore River Parkway Trail to Congress Street sidewalks is funded and planned for construction ahead of the anticipated occupancy of the Forefront project. (Concept alignment shown to right.) The plan coordinates with the



revised Overall Site Plan, C-3.0, except that neither plan includes a pedestrian crossing signal for the crosswalk over the Thompson's Point Road from the current terminus of the Fore River Parkway Trail. ***A condition of approval is suggested that a pedestrian signal be installed prior to issuance of a certificate of occupancy for the event center.***

*Traffic Movement Permit:* The project is subject to a Traffic Movement Permit (TMP) for issuance by Maine Department of Transportation. A draft TMP has been issued and is included as Tab 6, attachment C of the applicant's May 1 workshop submittal.

*City Transportation Review:* City review staff members have worked to coordinate the transportation review of the project to avoid conflicts between agencies and to ensure that appropriate standards have been met. Consulting Traffic Engineer, Tom Errico has provided a detailed and iterative review of the project, extending back to the Planning Board's earlier work with the proposal in 2011. A cumulative account of Mr. Errico's review comments, applicant's responses, and current status are provided in the applicant's May 1 submission in Volume 2, final tab. Mr. Errico will be available at the Public Hearing to answer Planning Board member questions. At this time, Planning Staff, Public Services, and Mr. Errico are recommending that the project meets the site plan transportation standards, subject to conditions described below.

Individual Transportation Standards are addressed below.

1. *Impact on Surrounding Street Systems:*

*The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D".*

Through the traffic movement permit process, the applicant and MDOT have identified three off-site intersections that require physical mitigation due to projected traffic impacts of the proposed development:

1. Thompson's Point Road/Fore River Parkway (and the Rt 295 exit 5 off ramp;)
2. Fore River Parkway/Congress Street; and
3. Congress Street/Stevens Avenue (and Westgate Plaza.)

The TMP additionally requires contributions toward future improvements of the above intersections, as well as contributions toward Congress and Westbrook Street and Congress and Frost Street.

*Congress and Stevens Intersection:* The TMP requires additional and expanded turn lanes and augmentation at the first two intersections above.

The Congress Street/Stevens Ave intersection is, however, tightly constrained and the TMP requires restriping Stevens Ave to a thru-right-left and exclusive left turn lane. This intersection generated discussion at the previous workshop due to a drop in the anticipated level of service at the intersection.

The impact of the restriping is anticipated to shorten the queue length and delay for the Steven's Avenue approach, but to lengthen queues and delay for Congress Street westbound. Based on the original LOS evaluation, the overall service rating of the intersection was anticipated to fall from "C" to "F" in the PM peak hour (although the service level should go no further than "E" with proper implementation of the TDM plan, according to the project traffic engineers Gorrill Palmer.) The above ratings are based on a maximum use scenario with overlapping events at the Forefront at the PM peak hour commute. The draft State TMP, however, stipulates that weekday events at the Forefront will be prohibited from starting from between 4:00 and 7:00pm to reduce impacts to the afternoon commute.

At the request of the City's consulting traffic engineer, Tom Errico, the applicant has provided an updated LOS evaluation reflecting the implications of the event start time restriction from the TMP. The applicant's traffic engineers removed event generated pm peak hour trips from the analysis, which resulted in the following anticipated levels of service:

LOS Summary - Congress Street at Steven's Avenue (Signalized)					
Condition	2013 PM Peak Hour				Overall
	EB (Cong.)	WB (Cong.)	NB (Plaza)	SB (Stevens)	
1. Pre Existing	C	C	C	D	C
2. Post Existing	C	D	C	E / F	D
3. Pre w/ dual lefts	C	C	D	D	C
4. Post w/ dual lefts	C	D	D	D	D
5. Pre w/ dual lefts & right turn	C	C	C	C	C
6. Post w/ dual lefts & right turn	C	C	C	C	C

As can be seen from the table results, the overall level of service for the intersection is forecast to operate at a "D" or better for all scenarios. Without any mitigation, the Steven's Avenue approach (SB) is forecast to operate at a level of service E/F with the traffic from the proposed project added to the intersection, which prompted the recommendation to restripe that approach for a left and left/thru/right lane. As can be seen, that restriping resulted in all approaches as well as the overall level of service of "D" or better. The peak hour factors were also adjusted to represent an intersection at this level of capacity by increasing the EB approach from a 0.88 which was recorded in an off-peak season to the default of 0.92.

**Conclusion:** The proposed project will mitigate their impact and meet the City Ordinance by restriping Steven's Avenue.

Mr. Errico generally agrees with the Gorrill Palmer conclusions shown above, though it is likely that some peak hour event traffic will result from events that start during earlier business hours and from a modest number

of patrons arriving early to evening events. *Mr. Errico recommends that the applicant's event management plan be amended to include provisions for addressing peak hour traffic impacts during conventions and other events taking place during the business day.*

Given the above context, the project's impact to the street system is recommended to be acceptable.

2. *Access and Circulation:*

a. *Site Access and Circulation.*

- (i) *The development shall provide safe and reasonable access and internal circulation for the entire site for all users of the site.*

At the May 1 Workshop, staff presented two issues that appear to have been resolved with the current proposal:

1. The need for a sidewalk along the westerly perimeter road, as described above in Section 5, page 7 above; and,
2. Whether to have a sidewalk or a taxi stand on the southerly side of the Thompson Point road in front of the bus station.

On closer inspection of available right of way, it does not appear possible to connect a public sidewalk from the entrance to the bus/train station entry drive all the way to the existing bus shelter. Currently, all pedestrians access the Metro bus shelter along internal sidewalks in the station pick up and drop off area. While it may be preferable to have an additional public sidewalk at the road's southerly sideline, the right of way cannot accommodate more than the minimum 3-lane road section needed for event management and emergency access, and the 8 foot shared use path, due to a pinch point located at the roads sharp turn south. A 3 car taxi stand is currently proposed and is supported by staff.

### *Circulation*

Internal circulation for vehicles is organized around a perimeter roadway providing access to parking facilities and buildings on the site. The roadway is proposed as a two direction, two lane travel way with 11-14 foot lanes and granite curbing. As noted above, the two-land section transitions to a single 16 foot one-way road to the west of the event center to accommodate a 6-foot sidewalk which replaces the rustic shoreway trail. Board Members should look to the revised overall site plan, C-3.0 in the May 24 submission to review circulation as some amendments are only shown on this plan.

### Pedestrians

Pedestrians using the site will use the proposed 8 foot multiuse pathway on the Thompson's Point Connector, which transitions to the Sewell Street extension onto the site. Once crossing the railroad tracks and the entrance to the westerly parking lot, pedestrians can take a sidewalk west to the panhandle and buildings K and L or can proceed along the parking garage on a widened pathway to the start of the perimeter road and entrance to the event center plaza. Pedestrians will need to cross the perimeter road using a 25-foot wide stamped pavement crosswalk located

just south of the garage. The crosswalk accesses a covered walkway that encircles the northerly wall of the outside concert amphitheater and routes pedestrians either to the entrance of the event center or to the central plaza.

To the west of the main complex of buildings, the stone dust path at the shoreline has been removed. The proposed paved sidewalk sets back at least 25 feet from high water and is consistent with shoreland zone requirements. This amendment addresses many previous concerns expressed regarding the suitability of the stone dust path as a primary circulation facility for the westerly portion of the site.

From the southerly end of the parking garage, a paved path extends westerly to an existing trail south of proposed buildings K and L (phase 2) which further continues to the west as part of the Portland Trails system. The footprints of buildings K and L are shown on top of the existing trail and the applicant has shown an adjustment to the path to wrap around the edge of the phase 1 combined building alternative. This is the area that the City Arborist is recommending a marginal shift in the building(s) for tree preservation, which should give the trail a bit more buffer from the buildings. The recommendation for additional tree preservation will therefore also provide trail and pedestrian circulation benefits.

Portland Trails Comments: At the May 1 meeting, Portland Trails noted a desire for additional connection across the perimeter road. An additional pedestrian crosswalk is now provided across the perimeter roadway south of the medical office building and the phase 1 landscape plan addendum (May 15 submission, Attachment C) shows an additional crosswalk to the southerly end of the peninsula

Sewell Street is also anticipated to be a significant pedestrian corridor to the site. Neighborhood patrons and patrons who may use off-site parking are expected to use Sewell Street in large numbers during events. Staff is recommending that the applicant upgrade the Congress and Sewell/Whitney Street intersection to have ADA compliant pedestrian crossings in all four directions and to connect missing sidewalk links along the entire length and on both sides of Sewell Street. The applicant has provided a note on the overall site plan, C-3.0 that states the improvements “may be completed in cooperation with the City of Portland.” ***Planning and Public Services staff are recommending a condition of approval requiring that the applicant prepare offsite improvement plans of Sewell Street sidewalks and cross walks for review and approval,***

***and implement their construction prior to issuance of an occupancy permit of the events center.***

#### Vehicles

In general, the site's circulation appears to meet applicable standards, but the consulting traffic engineer, Tom Errico continues to have questions regarding the design of the vehicle turnaround/drop off area between Phase 2 buildings K and L. The phase 1 alternative building circulation appears fine, but the phase 2 alternative pick up and drop off "circle" between buildings K and L is not acceptable due to conflicting backing movements onto a high volume access drive to the 400+ car parking lot. ***A condition of approval is suggested to revise the pick-up and drop-off area to remove conflicting movements.***

Additional circulation comments are provided in the April 17 response letter (final tab, Volume 2 of the applicant's May 1 workshop submittal.)

(ii) *Points of access and egress shall be located to avoid conflicts with existing turning movements and traffic flows.*

Access and egress to the site will be from the Thompson's Point drive via Exit 5 and the Fore River Parkway. The drive is proposed to be expanded to a three lane section with a center turn lane for normal days. During events, middle lane will be managed to allow two lanes to travel in the direction of greatest demand (into the site at the beginning of events and away from the site at the conclusion of events). The revised roadway plans also show an 8 foot wide shared pedestrian/bike pathway connecting the Fore River Parkway trail to the site along the northerly sideline of the Thompson's Point Connector. The southerly side of the Thompson's Point Connector currently has a 5 foot sidewalk along the southeasterly parking area with connection to the Fore River Parkway trail. Pedestrian connections to the Metro bus shelter located to the west of the PTC are provided through the interior of the PTC pick up and drop off area.

During normal days without events, the Connector and its function as access to the Portland Transportation Center will not experience significant change over the existing condition. During events, the "Event Management Plan" (Tab 6, Attachment A of the applicant's May 1 Workshop submission) indicates that a combination of uniformed police and Forefront staff flaggers will direct traffic at various locations. Starting from the Fore River Parkway intersection, officers/flaggers will ensure that event patrons will be directed past the PTC to onsite parking within the Forefront

complex. Flaggers will also be located on-site at and preceding the Forefront garage entry to ensure that queued vehicles will not block access to the PTC entrance and parking, to safeguard function of the Concord Bus service areas, and to avoid any potential for queuing vehicles from stopping on the railroad tracks.

During larger events, traffic exiting the Thompson's Point Connector road will be restricted to right turn only to facilitate a smooth and efficient clearing of traffic. Travelers who ordinarily would turn left onto the Fore River Parkway to access Congress Street will need to use the Route 295 Exit 5 ramp.

*(iii) Drive up features*

Two traffic gates are proposed on site along the perimeter drive to manage traffic and parking.

*b. Loading and Servicing.*

Any building larger than 100,000 square feet will require a dedicated loading area. The event/concert complex shows a loading area with two loading docks along the westerly side of the structure. Building loading is addressed in the zoning discussion above.

*c. Sidewalks.*

*(i) All proposed developments shall provide sidewalks along all frontages in accordance with Sections 14-498 and 14-499 of the City Code,*

The project's street frontage is limited to the small portion of Sewell Street that is proposed to extend onto the site as an extension of the Thompson's Point Connector. As noted above, the Connector/Sewell Street extension is proposed to have a 8' multi use pathway along the northerly/westerly sideline which is to provide the site with pedestrian and bicycle access. The pathway is proposed for bituminous asphalt, which is consistent with the sidewalk material policy for this part of the city.

The easterly side of the Sewell Street extension is not proposed to have sidewalk. At the rail crossing, the Sewell Street right of way is constrained by property ownership. Staff agrees with the applicant's design, which consolidates pedestrians to the westerly side of the right of way, as the safest way to bring pedestrians over the railroad tracks to destinations at the Forefront. Any pedestrian coming from the Fore River Parkway or the PTC will be directed

to a pedestrian crossing at the Thompson's Point Connector/Sewell Street intersection onto the multi-use path. Given that all destinations at the Forefront are located from the westerly side of the street, and that the pedestrian crossing of the rail road will need to be gated, the proposed design appears to be intuitive to use and safe to manage.

Having sidewalk on only one side of Sewell Street at the site requires a waiver from the requirements of Sections *14-498 and 14-499 of the City Code*.

Staff recommends that the project meets two of the standards for waiving the sidewalk requirement under Section 14-506; namely:

*1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.*

At the location of the proposed pedestrian crossing of the railroad tracks, pedestrians are actively discouraged from using the easterly side of Sewell Street (where the waiver is requested.) Pedestrians are routed to the westerly side of Sewell Street for the following reasons:

1. All of the Forefront destinations will be accessed from the westerly side of the street;
  2. After crossing the railroad tracks, the only sites on the easterly side of the street are NNEPRA and Suburban Propane, which are not sites where pedestrians are encouraged;
  3. The right of way is too narrow for sidewalk on both sides of the street (assuming an 8 foot multi-use path, which is recommended);
  4. Pedestrians on the easterly side of Sewell Street would need to cross the street and/or the perimeter drive in order to access destinations on the site, adding to congestion and event management complexity, and,
  5. The easterly side of the street at the PTC is dominated by large bus curb cuts, which are not suited for pedestrian traffic.
- 3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.*

The safe route available will be the 8 foot multi-use pathway on the westerly side of the Sewell Street and its extension over the railroad tracks and onto the site.

*(iii) Continuous internal walkways shall be provided between existing or planned public sidewalks adjacent to the site,*

*transit stops and street crossings and primary building entrances on the site.*

In addition to the existing Route 5 Metro bus shelter at the PTC, the applicants propose a sheltered on-site Metro bus stop and pullout loading area adjacent to the northerly entrance to primary pedestrian plaza of the site. The applicants propose a typical Metro shelter that will meet City technical standards.

3. *Public Transit Access:*  
See 2.iii, above.

4. *Parking:*

- a. *Location and Required Number of Vehicle Parking Spaces:*

- (i) *Off-street parking*

As a development of over 50,000 square feet, the Planning Board establishes the number of required parking spaces based on the applicant's analysis as reviewed by the City Parking Manager and the consulting traffic engineer.

*Parking Supply and Demand:* The applicants are proposing to construct 1450 parking spaces on site. Building J is a 732 space parking garage and 718 surface parking spaces are spread throughout the site with the majority of surface spaces concentrated in a 400+ space lot located in the northwesterly portion of the site. The revised Overall Site Plan C-3.0 has shifted 19 surface parking spaces from the westerly panhandle and the southerly parking lot by Building E to parallel parking along the one-way section of the westerly perimeter roadway.

The applicant's traffic analysis, Tab 6, page 13, of the May 1 Workshop submission includes a parking demand analysis that states the 1400 spaces will satisfy the day-to-day needs of the full build out, and that the project's mix of uses and TDM should reduce the demand to 1260 spaces. All 1450 spaces proposed are to be constructed in phase 1 of the project, resulting in an oversupply of parking for typical office/hotel/restaurant uses.

The surplus parking will be used for events, Red Claws games, and concerts. The traffic analysis predicts parking demand for larger events at 1900 spaces, which TDM measures should reduce to +/- 1710 spaces. The balance of parking demand over 1450 spaces is predicted to be accommodated in private lots in the Thompson

Point area. Given that most major events will happen during the evening or weekends, off-site private parking lot owners will have an incentive to offer event parking when their lots are typically empty.

As noted above, the applicant has an agreement with Mercy Hospital to allow shuttled parking for events. The off-hours parking supply at the Mercy lot will more than accommodate excess demand from the Forefront.

(ii) *Where a parking study is required, the City encourages Transportation Demand Management (TDM) strategies to be employed.*

The applicant have provided a TDM plan that sets a traffic and parking reduction target of 10%. The TDM plan was reviewed by the Planning Board at a previous workshop and is provided with this memo as Attachment A.

(iii) *Developments proposing to exceed minimum parking requirements by 10% or more must demonstrate through a parking analysis that the amount of parking is appropriate for the proposed use of the site.*

See the Parking Supply and Demand discussion above.

(iv) *Parking spaces and aisles shall meet applicable dimensional standards as detailed in Section 1 of the Technical Manual.*

The parking dimensional standards have been met by the proposed design.

(v) *Parking lots, except for temporary lots to be used for less than one year, shall be constructed of a permanent and durable hard surface that is not subject to ponding or erosion.*

All parking areas are to be permanently paved.

b. *Location and Required Number of Bicycle Parking Spaces:*

Bicycle parking totaling 88 spaces are distributed throughout the site, in compliance with Site Plan and Technical Standards.

c. *Motorcycle and Scooter Parking.*

The applicant has indicated that two-wheeled vehicle parking will be allowed in the parking garage, but details have not been provided.

*d. Snow Storage.*

A revised snow storage plan has been provided

5. *Transportation Demand Management (TDM):*

The project is required to submit a TDM plan for reducing traffic trips and parking demand generated by the development. The plan was originally submitted to the Planning Board for workshop review in September and has not been revised. Planning Staff has provided the following comments to the applicant related to their TDM Plan:

1. TDM: The “Declaration of Easements, Covenants and Restrictions” should spell out the requirement of association members to participate in the TDM program for the development (the “micro” TDMs.)

*Note: A revised “Declaration” document was provided as of the writing of this report and is provided as Attachment B herein. This document will be reviewed by Corporation Council for conformance of review comments.*

2. The Event Management Plan, May 1 Workshop submission, Tab 6, Attachment A, Page 2, should contain a provision requiring coordination between event management monitoring and TDM monitoring. Likewise, the TDM plan should have reciprocal provisions.

In general, the TDM plan appears to be consistent with applicable City Technical Standards.

*(b) Environmental Quality Standards*

1. *Preservation of Significant Natural Features:*

- a. Significant natural features by incorporating them into site design. Significant natural features shall be defined as:*

- (i) Populations of trees and plants listed on the Official List of Endangered and Threatened Plants in Maine, published by the Maine Natural Areas Program. NA*

- (ii) Habitat for species appearing on the official state of*

*federal list of endangered or threatened animal species;*

New England Cottontail Rabbit have been known to live near the site, but are not expected to exist on the subject property. IF&W staff biologists have provided email correspondence indicating that no Cottontail rabbit habitat occurs on site.

(iii) *High and moderate value waterfowl and wading bird habitat including nesting and feeding areas, as defined by the Department of Inland Fisheries and Wildlife;*



The State of Maine Department of Inland Fisheries and Wildlife (IF&W) have determined that a Natural Resource Protection Act Permit is needed due to the significant wildlife habitat for migratory shore birds found to be on site. Migrating shorebirds apparently feed in the mud flats of the Fore River and roost on the rip rap shore of the point during the bird's summer migration from the arctic to points south. While no significant alteration to the shore is proposed, IF&W has indicated to City staff that the proposed program is inconsistent with continued use of the shore line by migratory birds. To meet State requirements for habitat preservation, the applicant has proposed circulation and landscaping changes to minimize impacts to the identified habitat. In addition to the proposed site plan changes, the applicant will likely be asked to pay a mitigation fee to the State for use in habitat preservation or augmentation off-site.

With the elimination of the stone dust trail and landscaping amendments to mitigate predator risk to feeding and roosting birds, Planning Staff recommends that the applicant has met the local standard for preservation subject to the following conditions:

***That the applicant provide an amended landscaping plan consistent with final NRPA submission documents; and, that the applicant receive approval from MDEP for NRPA approval for development impacts to significant wildlife habitat.***

Tab 10 of the applicant's May 1 Workshop submittal included correspondence with the State of Maine regarding significant habitat issues.

(iv) *Aquifers NA*

(v) *Waterbodies See Stormwater Management*

2. *Landscaping and Landscape Preservation:*

The applicant has determined, with the agreement of the Zoning Administrator, that the project has met the requirements for tree preservation in the Shore Land Zone. The City Arborist has reviewed the plans and inspected the site and recommends additional tree preservation in the area of Phase 2 buildings K and L, which is the same as the phase 1 combined building alternative. Specifically, there are a small number of mature red oaks and a small stand of sapling white oaks that could be preserved near the water's edge by shifting building and parking layout a small degree. While the revised Overall Site Plan, C-3.0 shows a slight shift away from existing vegetation in these areas, the City arborist does not believe that the current plan will successfully preserve the target trees. This same area is where the Traffic Engineer recommends changes to the vehicle turnaround/drop off area. ***A tree preservation condition of approval is suggested.***

b. *Site Landscaping.*

The City Arborist has reviewed the landscaping plans and finds that the plans meet or exceed the applicable standards for internal and external buffering and for parking areas. See sheet L-1.0 to L-2.0 in the May 1 Workshop plan set.

3. *Water Quality, Stormwater Management and Erosion Control:*

The applicants are proposing an aggressive and multi-faceted approach to managing and treating stormwater exiting the site. Given the site's location adjacent to the Fore River, stormwater flooding standards are not at issue due to the capacity of the receiving body and a waiver from flooding standards is requested. Stormwater quality is to be managed through multiple systems of tree box filters and subsurface filter installations. Tab 7, Volume 2 of the applicant's May 1 Workshop submittal provides a complete description of stormwater management.

Currently, there are 16.89 acres of impervious surface and no stormwater treatment. The proposal increases impervious surface to 16.95 acres with stormwater treatment for 95% of paved and built areas.

Erosion control for the site during construction will be important due to the site's size and location on the Fore River. See Tab 7, attachment C of the May 1 Workshop submittal for the erosion control plan.

Consulting engineer, Dave Senus, has reviewed the plans for stormwater management and erosion control and provided detailed comments. The applicant's April 17 letter (final Tab, Volume 2) includes the review comments and responses. Mr. Senus recommends that the project design meets the standards for Site Plan and Site Location of Development under delegated authority, subject to the following clarifying conditions:

*A. General Engineering.*

*Retaining Walls: Prior to issuance of a building permit, the site plans shall be amended to include a note requiring the Contractor to provide design and stamped engineering drawings for either large block modular wall systems (such as Redi-Rock or Stone Strong), or reinforced small block walls (such as Anchor or Keystone Block).*

*B. Stormwater: Prior to issuance of a building permit, the applicant shall submit to the Planning Authority for review and approval, revised plans and specifications addressing the following stormwater issues:*

*i. Filterra Systems (Zones B & G):*

*a. Include a note on the Stormwater Management Plans stating that roof runoff from the parking garage deck will enter an internal oil/water separation device with grit chamber prior to entering the Filterra Unit.*

*b. In addition to the Grading Plan, provide revised Stormwater Management Plans indicating the location of Filterra units.*

*ii. StormFilter Systems (Zone F):*

*a. Final Stormwater Management Plans and detail sheets noting the trench drain sump.*

*(c) Public Infrastructure and Community Safety Standards.*

*1. Consistency with City Master Plans:*

*a. The proposal appears consistent with applicable approved master plans*

*b. As noted in the Subdivision discussion above, easements for access for City vehicles will be needed.*

*2. Public Safety and Fire Prevention:*

*(a) Natural surveillance that promotes visibility of public spaces and areas.*

All of the principle open spaces on the development are visible with clear lines of site from multiple vantage points and/or

buildings with windows.

The lighting plan shows a well distributed level of lighting over the parking and circulation areas, but some rear building areas, secondary circulation areas, and the central plaza appear to be under lit for general safety and security purposes. Lighting issues are additionally addressed under site plan standard 14-526 (d)6. below.

The Board may consider requiring the following:

1. Additional circulation lighting between buildings A and B (Building B is a Phase 2 building suggesting that building mounted lights on Building A may be the appropriate Phase 1 solution.)
2. Additional light in the center of the central pedestrian plaza (currently showing 0.0 foot candles).
3. Security lighting on the water side of buildings where the Fore River Trail lies between the building and the water. Motion activation or other energy saving provisions may be considered.

Conditions of approval addressing the above issues are included with site lighting discussion below and in the suggested motions portions of this report.

- (b) *Access control that promotes authorized and/or appropriate access to the site.*

The site appears to have a greater than usual degree of access control for a parcel of this size due to:

1. The single point of access over the railroad tracks; and,
2. The internal traffic control gates.

While the developers have not yet determined whether or not to install the control gates, the layout of the development appears to provide adequate access control and promotes appropriate use of the site.

- (c) *Territorial reinforcement that promotes a sense of ownership and responsibility through environmental design.*

Territorial reinforcement implies that the site is defined and maintained consistent with its intended use. The geography of the Thompson's Point peninsula provides clear cues defining the limits of the development. Ongoing management and maintenance will be needed to continually enforce the ownership of the site and the public's perception of safety when visiting.

- (d) *Provide adequate emergency vehicle access to the site in*

*accordance with City standards for street widths and turning radii, as described in Section 1 of the Technical Manual.*

Captain Chris Pirone has indicated his approval of the project design as submitted for access of emergency vehicles.

If the developer chooses to install the internal traffic control gates shown as “optional” on the plans, the same “click to enter” devices proposed for the Sewell Street cul-de-sac will need to be included. A condition of approval is provided in the suggested motions.

- (e) *Be consistent with City public safety standards, Section 3 of the City of Portland Technical Manual, including but not limited to availability and adequacy of water supply and proximity of fire hydrants to structures.*

Captain Chris Pirone has indicated his approval of the project design as submitted for adherence to Section 3 of the technical manual.

### 3. *Availability and Adequate Capacity of Public Utilities:*

Gas lines will need to be extended to the site as well as a new waterline. Capacity letters have been requested from all public utilities to serve the site. See Tab 3 Volume1, and Attachment C of the applicant’s response letter (final tab of Volume 2) of the applicant’s May 1 Workshop submittal.

Sewer capacity has been confirmed by email correspondence from the Portland Water District, subject to conditions outlined below. Water supply, gas, and electricity capacity letters have all been supplied in earlier submissions. As these letters are spread within various submission packets, Planning staff will package them together for the Boards review at the public hearing.

#### Sewer Capacity Conditions, Portland Water District:

1. *It has been determined that the existing pump station does have adequate capacity to handle the proposed future wastewater needs as presented by the applicant. However, due to the small size of the existing pump station wetwell, the District would like to evaluate the possible use of a variable frequency drives to eliminate frequent starts and stops. Since it is not expected that the District will make this evaluation before possible Planning Board approval, it is requested that \$10,000 be placed in escrow to facilitate this change if required. If it is deemed unnecessary, the money will be returned to the applicant.*
2. *The applicant is requested to design a pump station turn around acceptable to the Portland Water District.*
3. *The applicant is requested to provide a security fence to protect the pump station. The proposed fence location and type shall be acceptable to the Portland Water District.*

4. *The construction of the applicant's proposed infrastructure may cause interference to the pump station's telemetry system requiring the antenna to be relocated. If this should happen, the applicant shall allow the District to relocate the antenna onto the applicant's property with mutual agreement to the location.*

(d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact: NA*
2. *Shadows: NA*
3. *Snow and Ice Loading: NA*
4. *View corridors: NA*
5. *Historic Resources:*
  - a. *Developments affecting designated landmarks or within designated historic districts or historic landscape districts: NA*
  - c. *Preservation and/or Documentation of Archaeological Resources.*

(c) *Historic railroad beds including but not limited to the Portland-Lewiston interurban railroad.*

The historic locations of rail lines on the site are available from City Atlas and Sanborn Maps.

(d) *Original structure and/or landforms associated with the Cumberland and Oxford Canal.*

Channel and tow roads of the Cumberland and Oxford Canal are evident at the northwesterly pan handle of the site. These features are located within the Shoreland High Water Setback and are not anticipated to be impacted by development.

(g) *Sites listed or eligible for listing on the National Register of Historic Places.*

There are ongoing discussions between the State of Maine Historic Preservation Commission and the applicant over the eligibility of the brick structures on the site for eligibility for inclusion on the National Register of Historic Places, but these discussions do not impact or assume the existence of archeological resources on site.

6. *Exterior Lighting:*

Following receipt of the site lighting photometrics and fixture specifications, which are included with the May 1 workshop submissions, Planning staff provided the following comments to the applicant's lighting engineer, Larry Bartlett:

*Site Lighting Review Questions and Comments: DRAFT 5-24-12*

***Parking Garage Lighting:*** *Need specifications for both roof top and internal lighting. Recommend full cutoff fixtures internally and low mounting heights for the roof top. Alternatives to pole-mounted "parking lot" lights should be explored for the garage roof.*

*Ground level security lighting should be considered at the water-side of building J? (same for buildings L and K?) Motion activation may be considered.*

***Drive lighting:*** *At the intersection of the cross walk south of the garage with the perimeter drive, recommend special treatment for pedestrian lighting. (replace the S11 light with bollards and or pedestrian scaled pole lights flanking the cross walk.) Consider special priority pole locations or other treatment for lighting of all pedestrian road crossings.*

***Traffic Control Gate:*** *No Lighting shown. If needed, should be shown and detailed.*

***Public Street Lighting:*** *S9 fixture proposed for Sewell Street extension. Would require waivers from the technical standards for: pole height (24' proposed, 30' required in tech manual) and color (green proposed, black required.) The waiver is recommended by Planning Staff to retain consistency with the private drive lighting. Question: Should the lights be privately owned with a license granted by the City?*

***Rail Crossing Lighting:*** *None proposed. What is the current lighting? Is it adequate?*

***Plaza Lighting:*** *Will the low levels of light be perceived as safe in areas lighted to .1fc or below? Should define a clear pedestrian path, with distinctive lighting, through the plaza. Additional lighting is also recommended between buildings A and B (building mounted on Building A, to ensure adequate lighting in Phase 1.)*

***Mounting Height:*** *Please provide a brief table of pole/mounting heights for all fixtures.*

**Architectural lighting:** *None has been proposed, but it is assumed. Details needed. If the applicant intends to request architectural lighting, the Planning Board should at a minimum be provided with the approach. Depending on the approach proposal, staff may recommend a condition of approval for final architectural lighting plan for staff review.*

**Water Access Lights:** *No lights are proposed. If lights are anticipated, please show.*

**Wildlife Preservation:** *Question: Is IF&W requiring/suggesting alternative lighting at the road perimeter?*

The applicants have responded to these comments with a description of a revised lighting approach for the site, which is included in the May 24 submission packet as Attachment B. Mr. Bartlett's provides specific direction on how the lighting plans are proposed to be developed, but final plans are not yet available. Additionally, the lighting plans for the parking garage are to be designed under a separate contract with the garage designer. Notes on garage lighting are provided in the cover letter of the May 24 submission.

When reviewing the May 24 material, Board Members will note that architectural lighting is proposed for the entry pavilion of the event center as well as on the hotel. The Event center pavilion is proposed to be a translucent feature with internal illumination that will distinguish and identify the main complex pedestrian entry. The hotel accent lighting is proposed as horizontal neon bands in primary colors distributed across the building façade. The Board should discuss at the Public Hearing whether exposed neon is the appropriate treatment for lighting the hotel or whether a shielded light approach should be considered.

Architectural lighting for the parking garage was shown with the garage's rendered elevation plans provided for the May 1 workshop. Planning staff does not support architectural lighting for the garage, and further recommends that full cut off interior garage fixtures be utilized to prevent light trespass from the garage.

Both the event center and the hotel are also shown with internally illuminated signs.

Based on the material submitted, Planning staff recommends that the Board conditionally approve the lighting design, subject to the following conditions:

***That final site and architectural lighting plans and specifications be provided for Planning Authority review and approval based on the applicant's May 24 submittal; and, that the parking garage utilizes full cut off interior light fixtures, is not provided with architectural lighting, and top-deck pole-mounted lights are no greater than 12 feet high and are shielded to the structure's exterior walls.***

Additionally, a waiver of the cutoff fixture requirement is suggested to allow architectural lighting of the south and easterly sides of the event center complex

and hotel.

7. *Noise and Vibration:*

Mechanical equipment will be reviewed with building permits. Exterior activities, such as concerts, will need to be kept within zoning requirements for sound levels.

8. *Signage and Wayfinding:*

Wayfinding signage is provided with the Site layout plans, C-3.1 and C-3.2. Building signage will be reviewed with the building permit applications.

9. *Zoning Related Design Standards: (i) B-5 design standards, Section 14-526(d)9.a.(i) and Design Manual, B-5, B-5b Urban Commercial Business Zones, Standards, Page 5.*

Due to the lack of public street frontage, the B-5 Design Standards are largely non-applicable to the development. The design standards for the B-5 zone promote building and parking design to attain an urban form as one would expect to find in a downtown or city core. The application of these standards to the isolated geography of Thompson's Point, however, is a challenge given the primacy placed on the "street" as the organizing framework of the standards text. In a traditional urban context, public streets typically define the shape of development patterns and routes for pedestrian and vehicular circulation. The Forefront contains only a small segment of public street associated with the rail crossing.

The Design Manual additionally contains specific standards text using a "to the extent practicable" and "whenever possible" approach, allowing the Board broad latitude in applying the standards that do meet the conditions of the site.

*The Site Plan Standards: Section 14-526(d)9.a.(i) Development in the ...B-5 zone...shall be designed to support the development of dense, mixed use neighborhoods with attractive, safe, and convenient street level pedestrian environments as demonstrated by compliance with all applicable design standards listed in the Design Manual.*

The developer's approach to the design of the Forefront is to treat the central plaza as the dominant pedestrian thoroughfare and to use the perimeter roadway for vehicular traffic and secondary pedestrian access. A smaller plaza at the southerly end of the peninsula likewise organizes pedestrian entrances and building design for the medical office building, which does not front on the central plaza. Planning staff recommends to

the Board that in applying the B-5 standards, that members think of the plazas as the “street” named in the standards.

In the westerly “pan handle” of the site, the phase 1 alternative which combines buildings K and L, the building orients toward the entry drive that serves as both access to the building and the 404 shared use space parking lot. Planning Staff recommends that the development has met the threshold of *attractive, safe, and convenient street level pedestrian environments* as noted above.

To the extent applicable, the design addresses the standards of the design manual as follows:

*B-5 Design Standards (summarized)*

*Shared Infrastructure*

The Forefront is premised on shared drives, pedestrian space, and parking infrastructure.

*Buildings should be located close to the street where practicable; and, buildings should be oriented to the street – Facades, windows and entrances.*

*Uses with public access to a building or commercial/offices uses in mixed use developments shall be oriented toward major streets whenever possible.*

Buildings in the central portion of the site are oriented along and toward the main pedestrian plaza. Of the Phase 1 buildings current under review (Buildings A, C, D, E, F, G, I and J), all have pedestrian entrances oriented to the plaza with the exception of Building J, the parking garage, and E, the Medical Office. Phase 1 also includes the combined Building K and L alternative, which orients to the westerly leg of the access drive.

The Concert Hall and Event Center include a canopy to shelter pedestrians and to define the pedestrian pathways to the shared event entrance located between the buildings

The Garage includes corner doors in close proximity to the perimeter pathway, which directs pedestrians to the plaza. The Medical Office building orients to the southerly plaza.

*Parking lots shall be located to the maximum extent practicable to the rear of properties and designed for shared use.*

The peninsular geography of Thompson's Point does not present a defined "rear" which complicates the application of this standard. The central plaza is designed as the "front" of the dominant building complex and parking adjacent to the central plaza largely reflects the intent of this standard.

## 7. Staff Recommendation:

The subject project is of unprecedented scale for Portland's recent development history and the outstanding design issues reflect ongoing details and specifications that are best resolved as construction documents are developed prior to review of building permits. The applicants have demonstrated a straight forward approach to design and adherence to the applicable standards and Planning Staff recommends that the Planning Board approve the Forefront at Thompson's Point, subject to the conditions provided below in the suggested motions.

## 8. Recommended Motions:

### a. Waivers

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for application # 2011-274 relevant to the Portland's Land Use Code and Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board finds that two or more criteria for sidewalk waiver, as provided under Sec.14 –506 (b), **(are/are not)** met, namely that: There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site; and, A safe alternative-walking route is reasonably available by way of a sidewalk on the other side of the street; and therefore **(waives/does not waive)** the requirement for sidewalks along the easterly sideline of the Sewell Street extension.
3. The Planning Board **(waives/does not waive)** the Technical Standard for flooding as provided *Technical Manual III. 4. E.(2) Waiver of the flooding standard due to direct discharge into the ocean, a great pond, or major river segment.*
4. The Planning Board **(waives/does not waive)** the Technical Standard for *public street light specifications* under Technical Manual Section 10.2
5. The Planning Board **(waives/does not waive)** the Technical Standard requiring full cut off light fixtures, Section XV: Site Lighting Standards, 3 to allow architectural lighting.

**b. Subdivision**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application # **2011-274** relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

- i. Easements:* Prior to the issuance of any certificates of occupancy, the applicant shall provide for the review and approval of City Corporation Counsel, easements for the following:
  - a. Department of Public Services vehicles to use the private drive system for turn-around access when maintaining the Sewell Street extension.
  - b. Public access and conditions of use to the site, including use of trails, sidewalks, the central plaza, and water access facilities

*iii. Declaration of Easements, Covenants and Restrictions Document:*

Prior to recording of the subdivision plat, the applicant shall provide for City Corporation Counsel review and approval a revised Declaration of Easements, Covenants and Restrictions document consistent with the review comments above (Section 6.b.iiib of this report.)

- ii. Street Lighting:* The proposed street lights on the public portion of the Sewell Street extension are to be privately owned, metered and maintained by the Forefront at Thompson's Point. The City shall grant a license for such a purpose at the time of street acceptance.
- iv. Subdivision Plat:* That prior to recording, the applicant submit for Planning Authority review and approval a revised subdivision plat for planning board signature and recording. The plat shall reflect the number of buildings within corresponding lots intended for phase one construction. Additionally, the subdivision plat shall note conditions of public access to the roads, plazas, waterfront access points and pathways on the site, and all easements for city vehicle for access and turning.

**c. Site Plan:**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application # **2011-274** relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with the Site Plan standards of the land use code, subject to the following conditions of approval:

- i. *Retaining Walls:* Prior to issuance of a building permit, revised site plans shall be submitted for Planning Authority review and approval including a note requiring the Contractor to provide design and stamped engineering drawings for either large block modular wall systems (such as Redi-Rock or Stone Strong), or reinforced small block walls (such as Anchor or Keystone Block).
- ii. *Stormwater:* Prior to issuance of a building permit, the applicant shall submit to the Planning Authority for review and approval, revised plans and specifications addressing the following stormwater issues:
  - a. *Filtterra Systems (Zones B & G):*
    - Include a note on the Stormwater Management Plans stating that roof runoff from the parking garage deck will enter an internal oil/water separation device with grit chamber prior to entering the Filtterra Unit.
    - In addition to the Grading Plan, provide revised Stormwater Management Plans indicating the location of Filtterra units.
  - b. *StormFilter Systems (Zone F):*
    - Final Stormwater Management Plans and detail sheets noting the trench drain sump.
- iii. *Off-site improvements:* Prior to the issuance of a building permit, the applicant shall provide for Public Services Authority review and approval construction plans and details for all off-site site public improvements including Sewell Street sidewalks, crosswalks and ADA compliance at the Sewell, Congress and Whitney Street intersection, and pedestrian signals crossing Thompson’s Point Connector Road at the Fore River Parkway. Construction of these improvements shall be completed ***prior to issuance for an occupancy permit for the event center and/or concert hall.***
- iv. *Offsite construction rights:* Prior to issuance of a building permit, the applicant will provide for City Corporation Counsel’s review and approval adequate right, title and interest to construct off site drive entrances onto abutting properties, namely Suburban Propane and NNEPRA, as shown on the submitted site plans.
- v. *Traffic:* Prior to issuance of a building permit, the applicant will provide for Planning Authority review and approval the following information:
 

A revised event management plan that includes provisions for addressing peak hour traffic impacts during conventions and other events taking place during the business day.
- vi. *Revised Circulation:* Prior to issuance of a building permit, the applicant will provide for Planning Authority review and approval for the westerly portion of the site showing an amended pickup and drop off area between buildings K and L.
- vii. *Emergency Access:* If the developer installs the internal traffic control gates shown on the submitted site plans, the same “click to enter” devices proposed for the Sewell

Street cul-de-sac will need to be provided and coordinated with City Public Safety for emergency vehicle access to the site.

- viii. Site Lighting:* Prior to issuance of a final building permit, the applicant will provide final site and architectural lighting plans and specifications for Planning Authority review and approval based on the applicant's May 24 submittal; except that the parking garage lighting specifications show full no architectural lighting.
- ix. Tree Preservation:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval plans showing a revised location for buildings L and K (or the combined building alternative) and associated parking that protects existing trees and significant vegetation between the proposed development and the waters of the Fore River and the Fore River Trail.
- x. Architectural Plans:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval Final phase 1 architectural plans that are generally consistent with the with material submitted to the Planning Board at Public Hearing.
- xi. Wildlife Habitat Preservation and Landscaping Plans:* Prior to a issuance of a building Permit, the applicant shall provide for Planning Authority review and approval an amended landscaping plan consistent with final NRPA submission documents; and, that the applicant receive approval from MDEP for NRPA approval for development impacts to significant wildlife habitat.
- xii. Off-street Loading:* Prior to issuance of a building permit, the applicant shall submit to the Planning Authority for review and approval, revised plans and specifications showing off street loading bays for buildings A and the combined building K and L phase one alternative consistent with Division 21 of the Land Use Code.
- xiii. B-5 Noise Standards:* Prior to issuance of a building permit, the applicant shall submit to the Zoning Authority for review and approval, acoustical information demonstrating adherence to the performance standards of the B-5 zone.

**Attachments:**

1. MDOT approval of the Public Rail Crossing
2. Revised Declaration of Easements, Covenants and Restrictions
3. Public Comments
4. Plan Set (Note Revised Overall Site Plan is contained in the Applicant's May 24 submission.

**Relevant Documents provided under Separate Cover:**

1. *Response to Planning Board Workshop Memo*, Deluca Hoffman. May 15, 2012
2. *Additional Information in Advance of Public Hearing*, Deluca Hoffman. May 24, 2012
3. *May 1, 2012 Planning Board Workshop Memo*, City of Portland Planning Division. April 24, 2012
4. *Level III – Final Site Plan Development Review Application, Volumes I and II, The Forefront at Thompson's Point*, prepared for Forefront Partners, LP. Deluca Hoffman. March 2012



# PORTLAND MAINE

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## Planning & Urban Development Department

Jeff Levine, AICP, Director

## Planning Division

Alexander Jaegerman, FAICP, Director

June 19, 2013

Chris Thompson, PhD  
Parallax Partners, Inc.  
55 Lisbon Street, Suite 2400  
Lewiston, ME 04240

Steve Bushy, PE  
Deluca Hoffman Engineers  
78 Main Street, Suite 8  
South Portland, Maine 04106

Project Name: **Amendments to** The Forefront at Thompson's Point  
Project ID: Application # 2013-116  
Address: Thompson's Point, Portland, Maine CBL: 201-A-5  
Applicant: Chris Thompson, PhD, Thompson's Point Development Company, Inc  
Planner: Bill Needelman, Senior Planner

Dear Mr. Thompson,

On June 19, 2013, the Planning Authority approved amendments to Thompson's Point Development Company's approved Subdivision and Level III Site plan for a mixed-use event center, concert venue, hotel, restaurant and office complex on Thompson's Point. The approved amendments include changes to building sizes and locations for Phase I as described in the Amendment application prepared by Deluca Hoffman Engineers dated May 6, 2013 and augmented by additional material dated June 7, 2013. The amendments are summarized in the following table excerpted from the application material:

TABLE 1				
Building	Approved June 5, 2012	Proposed May 2013	Net Change May 2013	Status May 2013
<b>PHASE 1</b>				
Building A: Institutional/Mixed Use (Phase 1)	120,000 SF	32,739 SF	-87,261 SF	Existing Brick building to remain
Building D: Event Center (Phase 1)	80,000 SF	71,850 SF	-8,150 SF (remains Ph. 1)	Size reduced due to design development; Under an interim plan scenario the footprint becomes Outdoor recreation space.
Building E: Sports Medicine and Office/Mixed Use (Phase 1)	Sports Medicine: 24,000 SF Office/Mixed Use 60,000 SF	Sports Medicine: 16,800 SF Office/Mixed Use: 35,000 SF	Sports Medicine -7,200 SF Office/Mixed Use: -25,000 SF	Sizes reduced since original approval; 25,000 SF shifted to Building K; per interim condition plan this footprint area may function as outdoor recreational space.

TABLE 1				
Building	Approved June 5, 2012	Proposed May 2013	Net Change May 2013	Status May 2013
	<u>84,000 SF</u>	<u>51,800 SF</u>	<u>-32,200 SF</u> (remains Ph. 1)	
Building F: Restaurant (Ph. 1)	6,000 SF	6,000 SF	No Change (remains Ph. 1)	Unchanged since original approval
Building G: Hotel (Phase 1)	80,000 SF (125 rooms)	70,000 SF (115 rooms)	-10,000 SF (-10 rooms) (remains Ph. 1)	Size reduced due to design development
Building K & L: Office (Phase 1)	150,000 SF	175,000 SF	+25,000 SF (remains Ph. 1)	Size increase due to tenant requirements
Building I: Vestibule (Phase 1)	3,800 SF	3,800 SF	No Change (remains Ph. 1)	Size unchanged since original; per interim condition plan this footprint area may function as outdoor recreational space.
Building J: Parking Garage (Phase 1)	732 spaces	701 Spaces	-31 spaces (remains Ph. 1)	Decreased spaces due to design development
Surface Parking	718 spaces	654 spaces	- 64 spaces	During interim period surface parking may be up to 800 spaces (Note: once garage is built, this reverts to 654 spaces)

The Planning Authority reviewed the amendments for conformance with the standards of the Shoreland Zoning Regulations, Flood Plain, Subdivision Ordinance and Site Plan Ordinance, including Site Location of Development Act. These approvals recognize that additional detail will be needed for review and approval by the Planning Authority pending further design of the buildings and site details.

#### **A. Subdivision**

- i. *Subdivision Plat:* That prior to recording, the applicant submit for Planning Authority review and approval a revised subdivision plat for signature and recording. The plat shall reflect amended building location within corresponding lots intended for phase one construction. Additionally, the subdivision plat shall note conditions of public access to the roads, plazas, waterfront access points and pathways on the site, and all easements for city vehicle for access and turning, as required in the original subdivision approval.

Site Plan approval is subject to the following conditions:

#### **B. Site Plan:**

- i. *Generally:* That prior to issuance of a building permit, the applicant submit final site plans and civil engineering plans for review and approval reflecting final building details not available at the time of amendment review. Revised plans shall be consistent with the plans submitted on May 6 and June 7, 2013 and shall provide sufficient additional detail to demonstrate adherence to City Site Plan and Technical Standards.

- ii. *Tree preservation:* That prior to any site work, the applicant will meet and coordinate with the City arborist to field locate limits of disturbance and specify tree preservation methods.
- iii. *Temporary parking lot:* The proposed surface parking lot located on the footprint of Building J (the parking garage) is approved as an interim improvement to serve occupants of the site during the construction of Phase I buildings after the issuance of a certificate of occupancy for Building K, but prior to construction of Building J. The applicant shall provide revised designs for the Building J parking lot with additional stormwater quality improvements serving the lot for review and approval of the Planning Authority prior to issuance of any Phase 1 building permit.

The interim parking lot approval is not intended to extend beyond the Phase 1 construction cycle. If after the issuance of a Certificate of Occupancy for Building K, significant construction activity ceases, related to any Phase 1 Building or completing required subdivision related improvements, for a period exceeding 180 days, the applicant shall either: commence construction of Building J; or, apply for Planning Board approval of the surface parking lot as a permanent improvement and Level III Site Plan.

- iv. *Sewer and the Portland Water District Pump Station:*
  - a. That prior to the issuance of a building permit, the applicant shall provide revised wastewater flow projection for the Phase I build out.
  - b. It has been determined that the existing pump station at Thompson's Point does have adequate pumping capacity to handle the proposed future wastewater needs as presented by the applicant. However, due to the small size of the existing pump station wet well, the District would like to evaluate the possible use of a variable frequency drives (VFD's) to eliminate frequent starts and stops. As the District will not complete this evaluation before amendment approval, the applicant shall contribute \$10,000 to be placed in escrow to facilitate this change if required after full project build-out. If it is deemed unnecessary, the money will be returned to the applicant.
  - c. There appears to be several sources of Inflow into the existing sanitary sewer system. Prior to the issuance of a building permit, the applicant shall coordinate with the Department of Public Services to evaluate the wastewater collection system on Thompson's Point by televising and dye test to determine the sources of Inflow and to eliminate or redirect the inflow sources out of the sanitary collection system.
  - d. Prior to the issuance of a building permit, the applicant shall design a pump station turn around and security fence acceptable to the Portland Water District.
  - e. The construction of the applicant's proposed infrastructure may cause interference to the pump station's telemetry system requiring the antenna to be relocated. If this should happen, the applicant shall allow the District to relocate the antenna onto the applicant's property with mutual agreement as to the location.
  - f. For the proposed restaurant, prior to the issuance of a building permit the applicant shall submit for review and approval a design for the installation of an external grease trap to treat the kitchen waste.
- v. *Fire Safety:* Prior to the issuance of a building permit, the applicant shall update the fire code compliance assessment based on the revised plan for Fire Safety review and approval.
- vi. *Sound Analysis:* Prior to the issuance of a building permit, the applicant shall update Noise Ordinance Compliance assessment based on the both the interim plan and revised full build out.

- vii. *Pedestrian circulation:* Prior to the issuance of a building permit, the applicant shall provide designs for review and approval for an additional sidewalk from primary access road along the northerly entry drive (south of the rail ROW) to create a more direct line of travel to the entry to Building K from the north.
- viii. *Outside Agency Review:* Prior to issuance of a building permit, the applicant shall provide evidence of approval or non-applicability for the proposed amendments by outside regulatory agencies including the Maine DEP under Natural Resource Protection Act and Maine DOT for the Traffic Movement Permit.

#### STANDARD CONDITIONS OF APPROVAL

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.
2. **Subdivision Waivers** Pursuant to 30-A MRS section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Note on Stormwater Management Inspection and Monitoring** The applicant and all assigns, must comply with the conditions of Chapter 32 Storm Water including Article III. Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/sub-contractor must comply with conditions of the construction storm water management plan and sediment & erosion control plan based on the applicant's submitted materials and applicable city standards and state guidelines. .
6. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
7. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of the original Planning Board approval (June 5, 2012.) The amended recording plan must be recorded within 30 days of signature by the Planning Authority.
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
9. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

10. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
11. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
12. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If there are any questions, please contact Bill Needelman, Senior Planner at 874-8722 and wbn@portlandmaine.gov.

Sincerely,



Alex Jaegerman, Planning Division Director

Attachments:

1. City Code, Chapter 32
2. Performance Guarantee Packet

**Electronic Distribution:**

CC: Greg Mitchell, Interim Director of Planning and Urban Development  
Alexander Jaegerman, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Bill Needelman, Senior Planner  
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Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Captain Chris Pirone, Fire Department  
Thomas Erriso, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File



Federal Aviation Administration  
Air Traffic Airspace Branch, ASW-520  
2601 Meacham Blvd.  
Fort Worth, TX 76137-0520

Aeronautical Study No.  
2010-ANE-904-OE

Issued Date: 12/21/2010

Steve Bushey  
DeLuca-Hoffman Associates  
778 Main Street  
South Portland, ME 04106

**\*\* FEASIBILITY REPORT \*\***

The Federal Aviation Administration has conducted a limited aeronautical review concerning the feasibility of a structure described as follows:

Structure:	Feasibility Study (commercial buildings)
Location:	Portland, ME
Latitude:	43-39-03.79N NAD 83
Longitude:	70-17-28.48W
Heights:	150 feet above ground level (AGL) 175 feet above mean sea level (AMSL)

The results of this review can be found on the attached page(s).

NOTE: THE RESULTS OF OUR LIMITED REVIEW IS NOT AN OFFICIAL DETERMINATION OF FINDINGS BUT ONLY A REPORT BASED ON THE GENERAL OR ESTIMATED INFORMATION SUPPLIED FOR THE STRUCTURE. ANY FUTURE, OFFICIAL AERONAUTICAL STUDY MAY REVEAL DIFFERENT RESULTS.

If we can be of further assistance, please contact our office at (847) 294-7575. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2010-ANE-904-OE.

**Signature Control No: 131185695-134672885**

( FSB )

Vivian Vilaro  
Specialist

Attachment(s)  
Additional Information

## **Additional information for ASN 2010-ANE-904-OE**

### Feasibility Study for Aeronautical Study No. 2010-ANE-904-OE

This informal feasibility report is based on the data submitted by the sponsor. This is not a formal determination but only a report based on the information furnished to this office. Please keep in mind that there is always a possibility that the final outcome of a formal aeronautical study might prove to be different from the results of this informal feasibility study.

1. The proposed site would be located approximately 3279 feet (0.53 nautical miles) northeast of the Runway 29 threshold of the Portland International J Airport (PWM) in Portland, ME.
2. Based on Part 77, notice to the FAA would be required and the structure does not exceed the obstruction standards. This information is based on airport information currently on file with the FAA.
3. This informal feasibility report does not supercede or override any state, county or local laws or ordinances.
4. Based on the unofficial nature of this study, the FAA shall not be held responsible for any type of commitment entered into by the sponsor based solely on this informal feasibility report.
5. If the location or overall AMSL height changes, the results of this feasibility study are will not apply.
6. Please refer to the ASN noted above on any future correspondence concerning this feasibility report or if you do file formal notice with the FAA concerning the structure.