CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

Zoning Map and Text Amendments for 58 Fore Street
Applicant and Property Owner: CPB2 LLC

Submitted to: Portland City Council First Reading: March 16, 2015 Second Reading : April 6, 2015	Prepared by: Portland Planning Board Date: March 4, 2015 CBLs: 018 A001001, 018 A002, 018 A003, 018 A013, 019 A014, 446 A001, 446 A003, 446 A004, 002 X001, 002 A018

I. INTRODUCTION

This is an application for zoning map and text amendments for property at 58 Fore Street, the site of the Portland Company complex, and adjacent property, including a 50' wide strip of land owned by the State of Maine, two City-owned parking areas, and submerged lands. Established in 1846 for the manufacture of railroad equipment, the Portland Company continued and evolved as an industrial complex, manufacturing steel through 1978. It is now occupied by a variety of tenants. The property is currently zoned Waterfront Special Use Zone (WSUZ), and includes warehouses, storage buildings, and a marina with associated parking and laydown areas. The zones being applied for in place of WSUZ are the B-6 Eastern Waterfront Mixed Zone, and the Eastern Waterfront Port Zone (EWPZ). There are also proposed text amendments for the B-6, EWPZ and Shoreland Overlay zones, and an amendment to the B-6 Building Height Overlay & Building Envelopes map.

This application was reviewed by the Planning Board on the following dates: a workshop on October 21st, a workshop and site walk in November 18th, a third workshop on February 10th, and a public hearing on February 24th. Full application materials from the applicant submitted for prior workshops, as well as related historic and Comprehensive Plan documents, are stored here: http://www.portlandmaine.gov/1341/58-Fore-Street-Portland-Company

The Eastern Waterfront Building Height Study can be found at the above link or accessed directly here: http://www.portlandmaine.gov/DocumentCenter/Home/View/3378

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Consultants: Woodard & Curran & Bernstein Shur

A neighborhood meeting was held on September 16, and notes and documentation from that meeting are included in the original application materials, available on the project website or upon request from the Planning & Urban Development Department. Written public comment that has been received to date is included (Public Comment PC1 through PC 27).

II. CONTEXT

Current Uses. The property is currently occupied by a range of uses, including a full service marina, parking, warehouses, boat storage, a blacksmith facility and some accessory office space. The property is also bisected by a 50' wide strip of Maine State property land that encompasses both the Maine Narrow Gauge Railway and a public, multi-use trail that is an extension of the Eastern Promenade, maintained by Portland Trails and the City of Portland. The application also includes two adjacent City-owned lots.

Surrounding Uses. The property is contiguous with active waterfront uses to the west, bordered by the Ocean Gateway Terminal, and east of that, at the foot of Commercial and Franklin Streets, the Maine State Pier, both serving deep water dependent large vessels, including cruise ships. To the east is the Eastern Promenade. The neighborhood to the immediate north is residential, with Waterville, St. Lawrence and Atlantic Streets perpendicular to the Fore Street-side boundary of the property, and abutted by Munjoy South apartments. Also to the north but immediately west of this residential area is the India Street neighborhood, which contains residential uses and a diverse mix of commercial uses – Shipyard Brewery, parking garages, the shops of India Street, a Marriot Residence Inn, and the Eastern Cemetery.

Zoning Context. The immediately adjacent zones to 58 Fore Street are R-6 (Residential) to the east and north, ROS (Recreation and Open Space) to the east, B-6 to the west, and EWPZ to the west and south. The property is also partially in the Shoreland Zone, and partially in a flood zone.

Figure 12, Existing Zoning

Figure 2~~3~~, Aerial View of 58 Fore Street

III. PROPOSED MAP AMENDMENT

Current Zoning: Waterfront Special Use Zone (WSUZ), Shoreland Overlay
Proposed Zoning: B-6, Eastern Waterfront Port Zone (EWPZ), Shoreland Overlay
Current Uses: Warehouses, storage buildings, marina, associated parking. State of Maine Property, currently utilized by the Maine Narrow Gauge Railroad and a section of the paved, public Eastern Promenade Trail maintained by Portland Trails/City of Portland. The City Property includes gravel and paved parking areas.
Proposed Uses: None proposed at this time
Total Parcel Area: Approximately 12 acres, + submerged lands
Area to be Rezoned: Approximately 12 acres, + submerged lands

Figure 34, Proposed Zoning

In addition to the base zone map amendment, the application includes a change to the B-6 Building Height Overlay & Building Envelopes map, which currently encompasses the existing B-6 zone, and is proposed to be extended to encompass the new, easterly extent of the B-6 zone.

The proposed amended height map contains a note #3, which states that *no buildings east of Mountfort Street shall exceed 35 feet in height above the adjacent Fore Street right-of-way grade*, with the reference to the depth of this restriction extended to 100 feet. This was proposed by the applicant in response to concerns made in written and verbal public comments about the potential of buildings to rise above Fore Street greater than 35 feet.

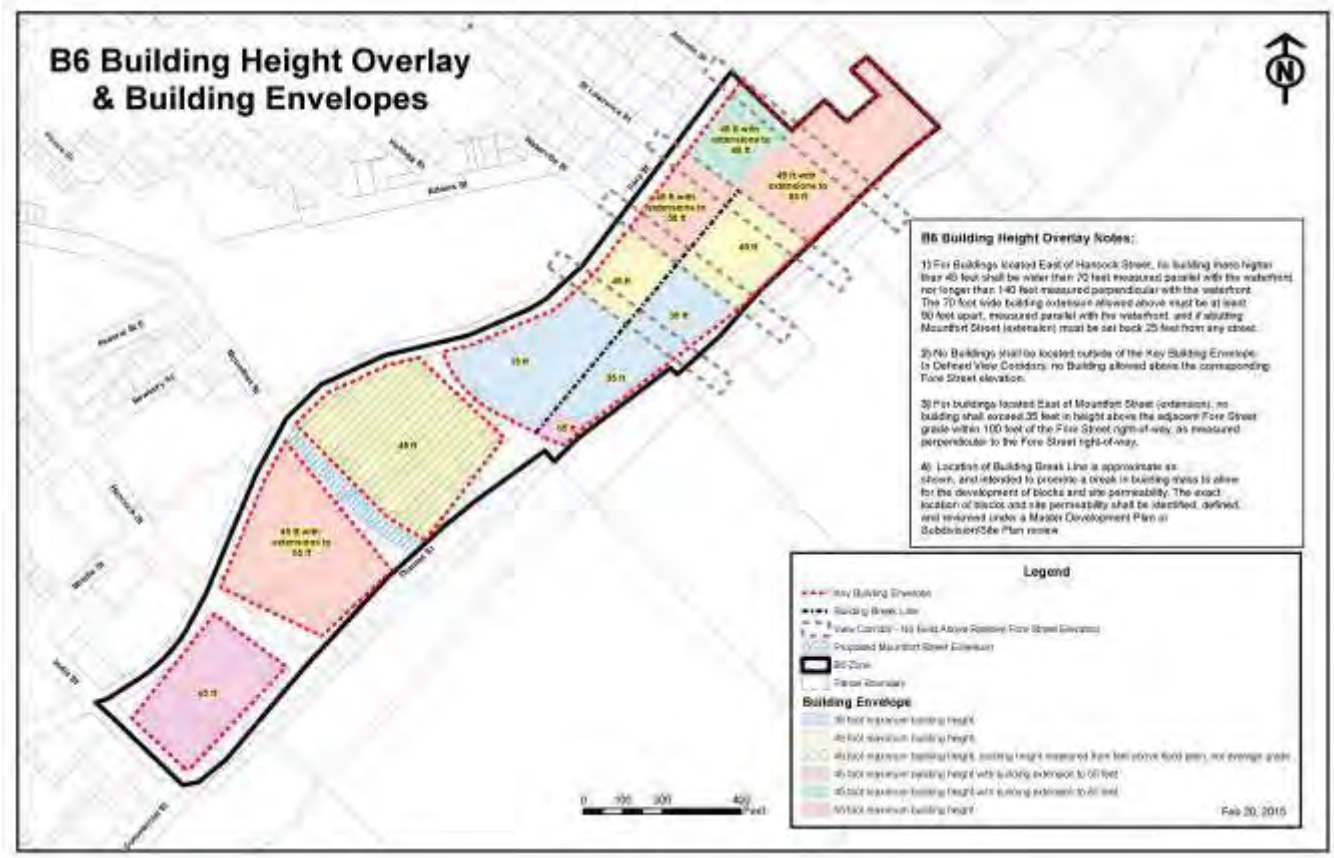


Figure 4~~5~~, Proposed B6 Building Height Overlay & Building Envelopes

IV. PROPOSED TEXT AMENDMENTS

The application includes text amendments to the following sections of the Land Use Code:

- **Sec. 14-48. Establishment of Zones (Division 1)**
  Reference to WSUZ is struck.

- **B-6 Eastern Waterfront Mixed Zone (Division 15.1)**

  The following permitted uses are proposed to be added to the B-6 zone:

  - Private clubs or nonprofit social and recreational facilities, as defined in 14-47.
  - Educational facilities.
  - Temporary events, provided that all such events on a lot do not exceed a combined total of (60) days per year and that the total floor area utilized for such uses does not exceed seventy thousand (70,000) square feet at any one (1) time.
  - Museums and art galleries.
  - A new use of underground fuel storage in B-6

  An exemption from the noise standard has been modified to include temporary activities, festivals, events and concerts. Special events are subject to their own permitting standards.

Mediation is proposed to be changed to *Meditation* – staff and the applicant view this as correction of an existing typo.

In response to concerns raised during the February 10th public comment period, the applicant has proposed a standard prohibiting brew pubs with entrances on Fore Street east of Waterville Street, and a standard limiting the hours, locations and primary functions drinking establishment in the same area.

- **Eastern Waterfront Port Zone (Division 17.5)**
  The following changes to the use standards are proposed:

  - A permitted marine use that references a maximum fuel storage of 20,000 gallons has been substituted with similar language that appears in other zones, and provides for similar functions, except that the maximum of 20,000 gallons has been removed.
  - Marinas are proposed as a permitted use east of the Ocean Gateway facility (referenced by deed). Marinas are currently a conditional use – the application proposes they remain conditional west of Ocean Gateway.
  - To be added: Marine office, including but not limited to offices of owners of marinas, wharves or their agents, and naval architects, and seafood brokers.
  - To be added: A facility for non-profit organizations whose facility may include offices, classrooms, equipment, equipment rentals, storage, and bathrooms for the public.

  The following change to the dimensional requirements is proposed:
  - Sec. 14-303. Dimensional requirements.
    ….

    4. Setback from pier line: Notwithstanding the above requirements, a minimum setback of twenty-five(25) feet from the edge of any pier, wharf or working edge of the hardened shoreline shall be required for any structure, provided that marine offices, as defined in Section 14-301(b)(12), may be located up to five (5) feet from the edge of any pier, wharf or working edge of the hardened shoreline. The setback area may be utilized for water-dependent uses and public uses and activities, subject to the provisions of sections 14-300.1 (no adverse impact) and 14-301.1 (conditional use provisions), and shall not be utilized for restaurant, drinking, or other non water-dependent uses or for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- **Waterfront Special Use Zone (Division 18.7)**
  The body of section is struck, replaced by *Reserved.*

- **Signs (Division 22)**
  References to WSUZ are struck.

- **Shoreland Regulations (Division 26)**
  References to WSUZ are struck, and references to B-6 are inserted. Any change to Shoreland Regulations require Maine DEP approval.

- **Site Plan Massing and Permeability in B-6 and EWPZ.**
  The applicant has proposed additions to the Site Plan standards that address design concerns raised over the course of Planning Board review regarding massing and permeability of future developments under the B-6 and Eastern Waterfront Port Zones. Specifically, 14-526(d) Site Design Standards: *B3, B5, B5-b, B7 Zones, and B6 and EWPZ Waterfront Zones: Development in the B3, B5, B5-b, B7 business*

zones and in the B6 and EWPZ waterfront zones 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. New development along the Eastern Waterfront should avoid large monolithic massing along all street frontages and should promote permeability through and within the development at a scale compatible with the existing street networks of the Eastern Waterfront. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that are in scale with the context to which they most closely relate .

- **Fuel Storage**
  Fuel storage is addressed in three ways in the proposed text amendments.

  1. Fuel storage in the WSUZ is eliminated, along with all other reference to this zone. The WSUZ zone currently allows for the following at 58 Fore Street: *Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels.*

  2. The B-6 zone proposes a new use: *Underground marine fuel storage provided that fuel storage structures shall be used solely for the purpose of fueling vessels.* As a mixed-use zone adjacent to the Eastern Waterfront Port zone, this is a waterfront compatible use.

  3. The proposed text amendments to the Eastern Waterfront Port Zone removes the current limitation of 20,000 gallons of fuel storage, and replaces it with the language currently in the WSUZ, the current zone of this site: ~~*Marine fuel storage and dispensing provided that on-site fuel storage structures shall be used solely for the purpose of fueling vessels and shall be limited, cumulatively, to 20,000 gallons of storage capacity within the zone;*~~*Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;*

  The applicant has provided a consultant opinion from Petroleum Marine Consultants in their submission materials for the February 10th workshop regarding the fuel storage capacity needs of a deep water marina that will accommodate both small and large transient vessels, which sites anticipated fuel capacity needs well in excess of 20,000 gallons.

  The proposed change is not a net change to fuel storage standards for this area, since it aligns with the fuel storage standard of the current zone. Nor does it hamper the functioning of the EWPZ. Any large fuel storage additions proposed for the property would be included in an application to the Planning Board, and subject full site plan and safety reviews.

Supplemental Text Amendments
Staff has included additional text amendments not in the original submission made by the applicant. These are changes to the B-6 dimensional standards, exempting the new, eastern portion of the B-6 zone from the following requirements that don't fit well the particular conditions of 58 Fore Street: a three story building minimum stories of habitable space within 25 feet of any public street (14-272.g), and a requirement that 70% of building wall or 25% or building perimeter be located along the street frontage of the lot (14-272.d). The three story minimum runs counter to the B-6 Building Height Overlay & Building Envelopes map requirements. For a parcel this size, where multiple interior buildings could be constructed, requiring a 70% of building wall be along street frontage would require all buildings constructed along the site line of Fore Street.

Full drafts of all proposed text changes are included in Attachment A.

V. ZONING ANALYSIS

Purpose of WSUZ, B6, EWPZ. The purpose of the WSUZ is defined by its constraints, as a zone sandwiched between high density residential to the north, parkland to the east, and industrial uses to the west, and the need to be compatible between these diverse land uses. It sets minimum expectations for development in the zone to be compatible with water-related and water-dependent uses, and that uses be compelled to contribute to maintenance and improvement of waterfront infrastructure.

The purpose of the B-6, eastern waterfront mixed zone is to establish a zoning district for the upland portion of the eastern waterfront area. The B-6 zone encourages this district to acquire a distinctly urban form through development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure as recommended in the Eastern Waterfront Master plan for redevelopment. The B-6 is described as a zone that that abuts a waterfront zone, not as having a water-dependent purpose itself.

The purpose of the EWPZ is more explicit in its purpose as a waterfront zone than the WSUZ, and quite detailed. It exists to nurture a wide range of deepwater-dependent industry and commerce. Piers, uplands, and circulation patterns consistent with the transportation needs of marine facilities are mentioned, as well as the encouragement of non-marine uses that support deepwater activities, provided that they do not conflict or compete for limited space with existing or anticipated deepwater-dependent needs. It's primary emphasis, however, is on the berthing and support of large vessels. The purpose statement ends on a recognized hierarchy of uses:

(a) The first priority of this zone is to protect and nurture existing and potential deepwater dependent uses (those uses requiring a minimum of 15 feet of water depth);

(b) The second priority is to allow shallow water-dependent and other permitted marine uses, so long as they do not interfere with deepwater dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure; and

(c) Other uses specified herein are allowed only if they do not interfere with and are not incompatible with higher priority uses.

Comparison of Allowed Uses

Both the WSUZ and the EWPZ contain a prohibition on uses that have adverse impacts on marine uses (Sec. 14-320.5.5 & Sec. 14-300.1), including uses that will displace an existing water-dependent use; uses that will reduce existing commercial vessel berthing space; uses, structures or activities that will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or the siting of uses that will substantially reduce or inhibit existing public access to marine or tidal waters. B-6, being an upland zone, does not contain a parallel section.

The WSUZ distinguishes allowed uses according to their location north and south of the railway tracks. A full slate of marine-related and marine-dependent uses allowed on both sides of the tracks in the WSUZ. No residential construction is allowed either as a permitted us or as a conditional use. The uses permitted north of those tracks limit new construction, unless approved under conditional or contract rezoning.

In conjunction with the standard conditions of approval for all conditional uses (Section 14-474), conditional uses in the EWPZ are allowed provided the uses do not impede or preclude existing or potential water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and can demonstrate that parking and traffic circulation does not interfere with the functional marine utility of the property.

As with other zones, uses not enumerated are not permitted. Additionally, the following uses are specified as prohibited: residential uses, amusement/theme parks, bulk freight facilities, on-site gambling casinos not accessory to and located aboard either a ferry or inter-port cruise ship.

B-6 permitted uses include a host of residential, commercial, and other uses, such as professional offices, restaurants, hotels and inns (max. 150 rooms), retail, theatre, banks, carpentry shops, brew pubs, marine product sales, marine services, bakeries and commercial kitchens, live/work spaces, multi-use trails, artists, studios, health clubs, daycare facilities.

B-6 conditional uses include meeting and exhibition facilities up to a total of 20,000 gross sf; wholesaling, providing the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of the facility occupies a building footprint of less than 15,000 square feet; drive-up banking facilities located in the interior of parking structures, subject to multiple criteria; surface and structured parking, subject to multiple criteria, including ground floor commercial requirements for structured lots; and temporary wind anemometer towers.

As with other zones, uses not enumerated are not permitted. Additionally, the B-6 use requirements specifically prohibit ground mounted telecommunication towers; waste, scrap, and/or byproduct storage and processing facilities; auto service stations; and drive-up facilities, excepting bank drive-ups in interior parking structures.

In sum, neither the WSUZ nor the EWPZ allow residential uses or anything but ancillary non-residential, non-marine uses. They tackle this issue through different tools – the WSUZ allowing a greater range of non- marine-dependent uses north of the rail line that splits the zone and through limits on new construction, and EWPZ through a narrower list of combined possible uses and strong language regarding the necessary marine compatibility of non-marine uses. The emphasis in the list of permitted uses for EWPZ is on marine-dependent uses, with most marine-related uses being conditionally allowed. The allowed uses of the B-6 zone are varied.

Comparison of Dimensional Requirements:

	WSUZ	EWPZ	B-6
Min. Lot Size	None	None	None
Min. Street Frontage	None	None	
Min. Front Yard	None	None	
Min. Rear Yard	None required unless adjacent to a residential zone; if adjacent to a residential zone, twenty-five (25) feet.	None	None
Min. Side Yard	None required unless adjacent to a residential zone; if adjacent to a residential zone, twenty-five (25) feet.	None	
Max. Setback from Street Line			10 ft., excepting parking garages, public trans. facilities, and subject to the building height envelopes of Eastern Waterfront Building Height Overlay Map.See Sec. 14-272 c.2 for exemptions.
Min. Length of Building Wall required to be located along street frontage of lot			70% of lot street frontage or 25% of building perimeter. For buildings fronting on 2+ streets, building wall on one street may be decreased so long as it is proportionally increased on others andthe building wall on the secondary street is not reduced to less than 25 ft.
Min. Setback from Pier Line	5 feet from the edge of any pier, wharf or bulkhead. The setback may be utilized for activities related to the principal uses carried on in the structure, subject to 14-313/14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).	25 feet from the edge of any pier, wharf or bulkhead. The setback may be utilized for activities related to the principal uses carried on in the structure, subject to 14-313/14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).	
Max. Structure Height	45-100 ft. (see Sec. 14-320.9.e)	45 ft, except for cranes and gantries, rooftop appurtenances (see Sec. 14-303.e for full exemptions)	65 ft. or as otherwise governed by a Building Height Overlay Map
Minimum Building Height for New Construction			3 floors of habitable space above the average adjacent grade within 25 ft. of any public street. See Sec. 14-272 c.3.g for exemptions.
Max. Lot Coverage			100%
Max. Impervious Surface		100%	

Building Height Overlay and Building Envelopes Map

The current B-6 Building Height Overlay & Building Envelopes map was adopted in 2004 as a direct outgrowth of the policy recommendations of the Height Study, and regulates heights and building areas within the current B-6 boundaries (Figure6). A simultaneously amended B-6 Building Height Overlay and B-6 zone extent is critical to

maintain Comprehensive Plan consistency. Illustration 33 of the Eastern Waterfront Building Height Study is the document that has informed the creation of the Building Height Overlay and Building Envelopes map. Illustration 33 is included as part of the Eastern Waterfront Building Height Study, pg. 29: and in Figure 7 below.

Figure 5~~6~~, Current Height Overlay and Building Envelopes

Implementing Illustration 33's policy recommendations into zoning regulations for the newly extended area of the B-6 zone required some modifications. View corridors and building- height envelopes are maintained as shown on Illustration 33.

- Interior build-to lines have been eliminated because they would not have any practical importance or benefit for the area.

- An additional building restriction was added in a height maximum along Fore Street of 35 feet. This was added to allay concerns about the extent of the view obstruction and the unpredictability of possible building heights along Fore Street. It originally was accompanied by a depth of 35 feet, so that buildings beyond 35 feet in distance from the Fore Street right of way could potentially exceed the 35 foot height cap, but this distance is now extended to 100 feet from the edge of Fore Street. The topography of the site, which includes significant grade, would make it extremely unlikely that a building could exceed 35 feet above Fore Street while complying with the height maximums of the Height Overlay map. This is a more restrictive map than the previous iteration, and gives considerably more assurance of predictable maximums in the viewshed from Fore Street.

- Illustration 33 shows an opening between the building envelopes, through the center of the Portland Co. site, and is referred to in the Height Study as the Portland Company Alignment. The location of this alignment is the service alley that presently runs between buildings on the site. The alignment as depicted on Illustration 33 is outside of the key building envelopes boundary, indicating that it should be preserved from further development. The proposed height overlay map (Attachment A and Figure 5) depicts the building envelopes touching, but with a seam between them along the centerline of the corridor, accompanied by a map note that indicates there shall be a break of buildings. This insures this corridor from being spanned by single buildings, but does not specify the distance between buildings. The reasons for this are several - close scrutiny of Illustration 33 shows the Portland Co. alignment running through a portion of an existing building; the intended dimensions of the alignment are not specified; there is an historic preservation process, both in terms of the potential designation of the site or portions of the site, which if approved would lead to the requirement for Certificate of Appropriateness review by the Historic Preservation Board when a development proposal is brought forward, that will allow for evaluation of the precise area best retained between buildings; and, the anticipated Master Development Plan requires the Planning Board to review it for consistency with City Comprehensive Plan. The break between the building envelopes in the area of this alignment is a rational implementation of zoning based on the policy recommendations of Illustration 33, and one that leaves some discretion to the tools available to both the

Historic Preservation Board and the Planning Board to determine the final dimensions and physical characterizations of this area.

Visualizing Heights

At the November workshop the applicant submitted multiple sections to illustrate the height implications of the zoning map amendment on the property. An example from that submission is included as Figure 8.

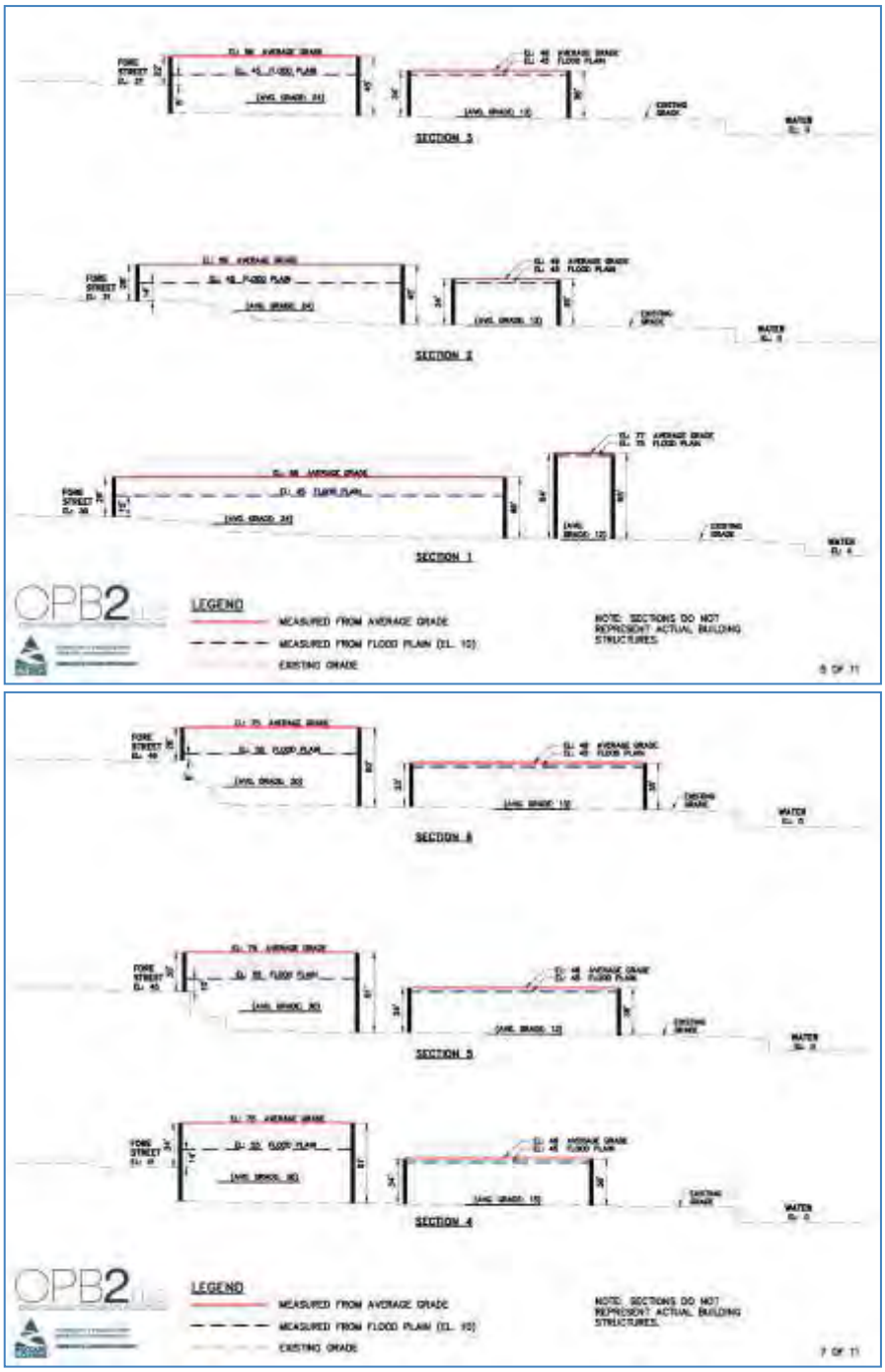


Figure 6~~8~~

The Planning Board subsequently requested additional visuals to better understand the height implications of the project both from Fore Street looking south, and from the southern portion of the property looking towards Fore Street. An excerpt of the response to that request is included in Figure 9.. The section below layers existing buildings on Fore Street (north side of street), maximum building envelopes under the B-6 Height Overlay, buildings at 58 Fore Street that are visible at Fore Street, a dashed line marking the 35 foot height maximum proposed at Fore Street, the heights and location of existing utility poles and preserved view corridors.

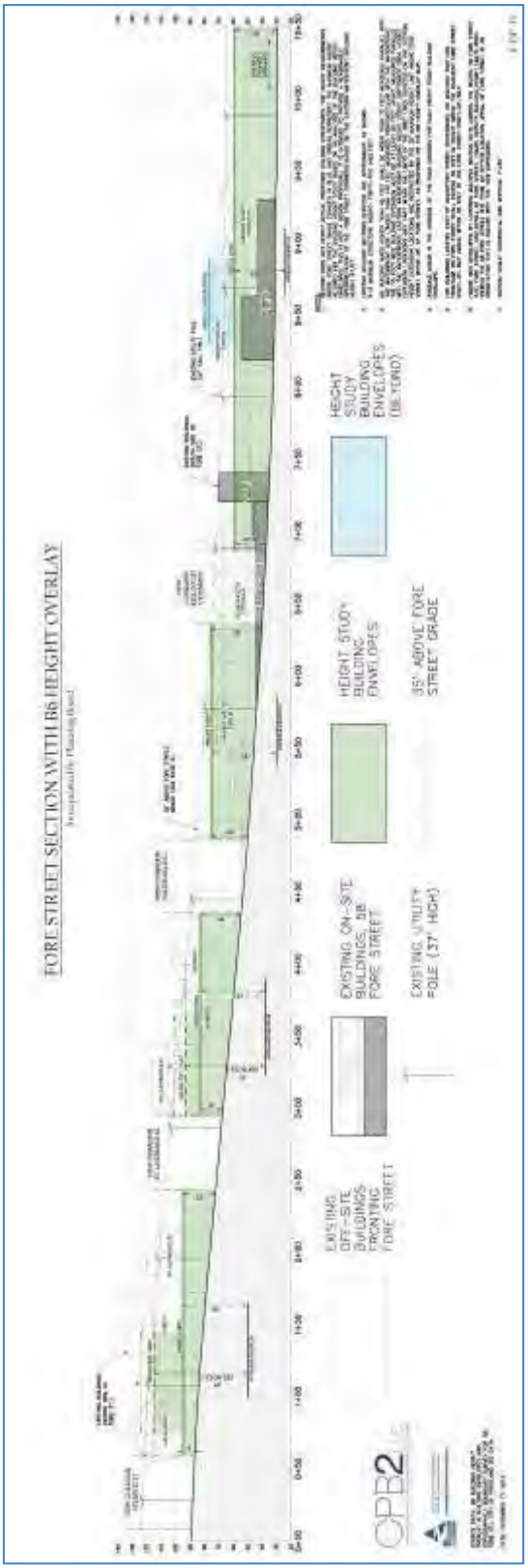

FORE STREET SECTION WITH B6 HEIGHT OVERLAY
EXISTING OFF-SITE BUILDINGS FRONTING FORE STREET
EXISTING ON-SITE BUILDINGS, B6 FORE STREET
EXISTING UTILITY POLE (37' HIGH)
HEIGHT STUDY BUILDING ENVELOPES
35' ABOVE FORE STREET GRADE
HEIGHT STUDY BUILDING ENVELOPES (B6 TOWD)
CPB2

Figure 7~~9~~

VI. COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan Volume 1 (2002/2004) gives an overview of the years of waterfront planning efforts of the City, and addresses redevelopment of Waterfront East specifically. It outlines four redevelopment principles for development in this area: 1) Character and Impact of Development; 2) Mixed-use as a component of an active, vibrant urban area; 3) maintaining Maritime Resources; and 4) Economically Responsible Development that benefits the city and the region. These four principles are restated and expanded upon in the Eastern Waterfront Masterplan (adopted 2002 and amended 2004 & 2006). The application to rezone this area (section 2.4) cites support in that document for zoning changes that foster upland mixed use development as well as water dependent and marine uses within 75 feet of the shore line. Rezoning of this eastern waterfront area, which resulted in the establishment of the B-6 zone, was anticipated, and the zone changes proposed herein reflect the overall policy guidance of the Eastern Waterfront Masterplan. Both Volume 1 of the Comprehensive Plan and the Eastern Waterfront Masterplan indicate that land within 75 feet of mean high water should be given priority to water-dependent and marine uses, which corresponds to the proposed boundary between the B-6/EWPZ zones.
The Planning Board found that the proposed rezoning from WSUZ to B6 and EWPZ is consistent with these four broad principles. Detail on each of these principles follows, as well as a summary of consistency with the Building Height Study and the Design Guidelines.

- *Character and Impact of Development.* This section calls for a variety of related outcomes, including compatibility with surrounding neighborhoods and maritime uses, historic preservation and adaptive reuse, compatible architecture, protection of view corridors, integrated street and trail networks.
  Protection of view corridors consistent with the Height Study are proposed. Review for greater connectivity and eventual review of new building designs will take place by the Planning Board when a development proposal is brought forward. The process for determining whether this property will receive an historic designation, and the extent of that designation, is about to begin, and if designated will result in subsequent Historic Preservation Board development review.

- *Mixed Use.* The Eastern Waterfront Masterplan calls for the development of vibrant and active mixed-use areas, compatible with maritime resources, that maintains access to the waterfront, maintains and enhances trail access, and includes but is not limited to residential, commercial, public, institutional, marine, park, trail and industrial uses.
  The full name of the B-6 zone includes the descriptor *Eastern Waterfront Mixed Use Zone.* It was created as a direct outgrowth of the Eastern Waterfront Masterplan recommendations as a mixed-use zone that could operate as a maritime compatible but upland zone in this area. Extension of the B-6 zone, while retaining a waterfront zone in the form of the EWPZ, is a specific fulfillment of Comprehensive Plan policies for the Eastern Waterfront.

- *Maritime Resources.* The Eastern Waterfront Masterplan calls for land within 75' of the mean high water line being reserved for waterfront dependent and associated marine-related uses.
  The new zone boundaries reserve 75 feet of land for the Eastern Waterfront Port Zone, a dedicated waterfront zone.

- *Economically Responsible Development.* This includes multiple objectives, including positive economic return to City government, strengthening water related tourism, assuring that future development benefits residents, infrastructure investments, and enhancing multi-modal transportation opportunities.
  This application for rezoning greatly enhances the potential for redevelopment and investment in this site, while retaining maritime resources, increasing the prospect for water-related tourism, and maintaining public access through the site.

- *Recommendations specific to 58 Fore Street* in The Eastern Waterfront Masterplan emphasize

better vehicular and pedestrian connections to surrounding areas, encourage sensitivity to historic nature of the site and adaptive reuse of historic structures, promotion of shared parking, retention and/or expansion of marine uses, and active public use of the water. **When a development proposal for this property is brought forward, the specifics of circulation, parking and waterfront access will be reviewed, by the Planning Board and very likely by the Historic Preservation Board. The rezoning proposal allows for all of these policy priorities to occur when a development program is ultimately submitted. In addition to the rezoning, the applicant has proposed site plan standards that ensure that future proposals provide appropriate massing, design and permeability in site layouts, standards which support improved circulation patterns and improved connections to surrounding neighborhoods.**

Two other pertinent documents adopted as into the Comprehensive Plan are the Eastern Waterfront Design Guidelines and the Eastern Waterfront Building Height Study.

The Eastern Waterfront Building Height Study. The B-6 Building Height Overlay & Building Envelopes map was adopted in 2004 as a direct outgrowth of the policy recommendations of the Height Study, and regulates heights and building areas within the current B-6 zone. The proposed revisions to this overlay map are also a result of interpretation of the policy recommendations of the Height Study, particularly the culminating recommendations embodied in "Illustration 33". This height overlay amendment establishes building envelopes, height maximums throughout, with additional limits along Fore Street, no-build areas, dimensional requirements of towers above base heights, and view corridors.

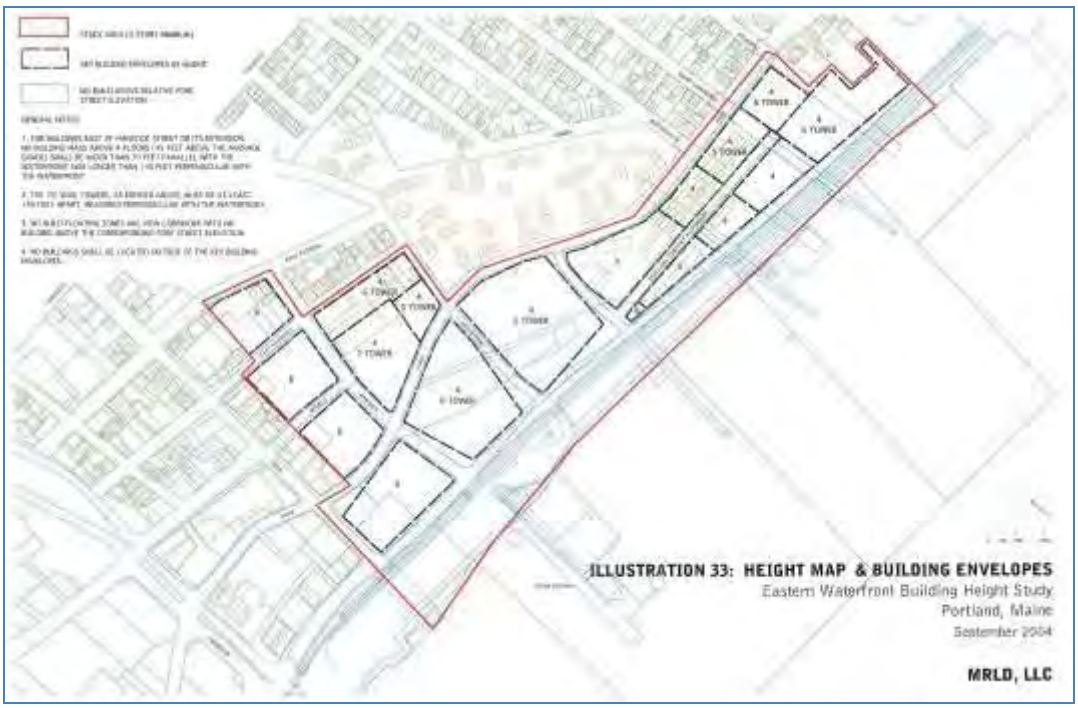


Figure 8~~7~~, Illustration 33

The B-6 Building Height Overlay & Building Envelopes map was adopted in 2004 as a direct outgrowth of the policy recommendations of the Height Study, and regulates heights and building areas within the current B-6 boundaries (Figure 6). The Height Overlay map includes a reference to buildings east of Mountfort Street

(extension), stating that building heights shall be measured from feet above flood plain, rather than the more common method of measuring from average grade. This was a decision made when implementing the Height Study for the original B-6 zone, but not a recommendation made within the Height Study itself. Earlier drafts of the Height Study indicate the use of flood plain was debated, as were a range of heights and other elements deliberated as part of the extensive planning process for the Eastern Waterfront that were not ultimately included as part of the final, adopted plan. There is no directive on how height is to be measured when implementing the Height Study in zoning, and nothing explicit on this subject except a single mention to height measurement in the form of a map note in Illustration 33 that references buildings east of Hancock Street being measured from average grade. Since the initial October workshop, there have been extensive discussions concerning the height impacts above Fore Street, including the implications of both measurement methods, and the Planning Board concluded that an amended B-6 Height Overlay that utilizes average grade as the method for determining heights is consistent with the Comprehensive Plan. The amended Overlay (Figure 5) does not specify average grade, as this is the default zoning method City-wide, and it is implied.

To assist in the review of the of the height implications of this application the applicant included various visuals, including cross sections of the implications of building measurements taken from flood plain or average grade (Figure 8).

The proposed simultaneously amended B-6 Building Height Overlay and B-6 zone boundary maintains Comprehensive Plan consistency.

Design Guidelines for Development of the Eastern Waterfront will be a pertinent policy document when a development proposal is brought forward. The applicant has brought forward preemptory language from the Design Guidelines regarding massing and permeability taken directly from the recommendations of the Guidelines, in response to Planning Board and public concerns. A future master development plan would be reviewed for consistency with the Eastern Waterfront Design Guidelines. Staff also proposes to bring forward an amendment to the City of Portland Design Manual, for Planning Board consideration and subsequent action, that incorporates the Eastern Waterfront Design Guidelines by reference and/or text amendment. The rezoning of this area does not trigger any conflict with this document.

VII. PUBLIC COMMENT

Though the issues of interest and concern to the public in regard to the rezoning of this site have been varied, the issues of building heights and resulting view impacts were a central topic of the Planning Board review. Other issues raised to date have included the preference for a contract zone for the area, methods for building height measurement, the range of uses abutting the adjacent residential neighborhood, retention of a viable waterfront zone, potential noise and traffic impacts, pedestrian access to the property and to the water, the continued presence of the rail/trail, sea level rise impacts, the desire to see a development concept for the property prior to rezoning, and the importance of historic preservation. Public comments submitted to date are included as PC1 through PC27.

VIII. PLANNING BOARD RECOMMENDATION

The Planning Board considered the proposed map amendment at a public hearing on February 24, 2015. After a carefully considered discussion about the appropriate zone boundaries, and on the basis of staff reports, public testimony, and review of applicable policies, the Planning Board voted unanimously (6-0, Boepple absent) that the proposed map amendment from the WSUZ to B-6 and EWPZ, an amendment to the B-6 Building Height Overlay & Building Envelopes map, and the proposed text amendments to the WSUZ, B-6, EWPZ and Shoreland Overlay zone are consistent with the Comprehensive Plan and recommended adoption of the proposed map amendment to the City Council.

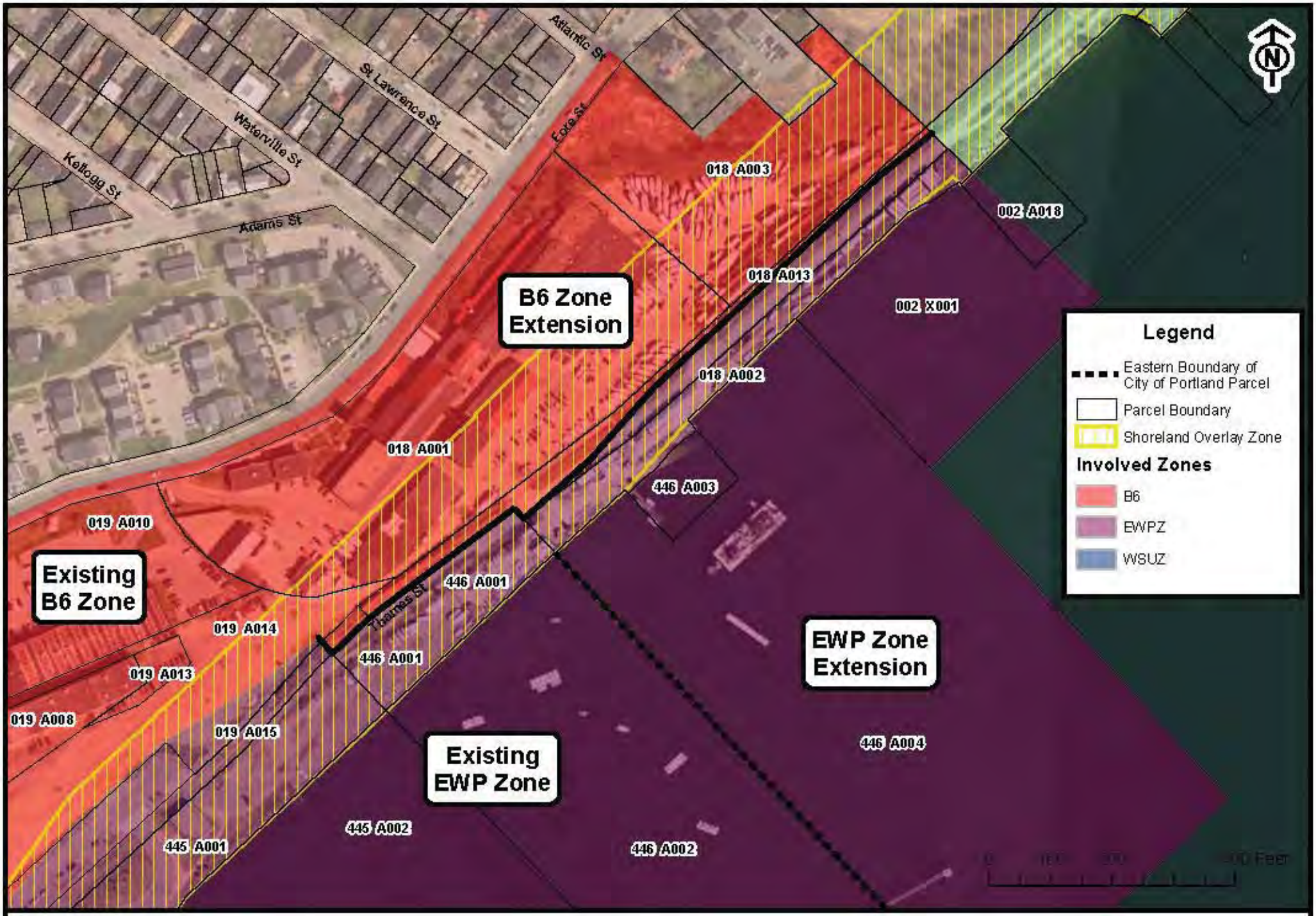
IX. ATTACHMENTS

Applicant's Submittal

A. Proposed Map and Text Amendments

Public Comment

PC 1. A. Adams
PC 2. Vestal/Soul of Portland
PC 3. Macomber
PC 4. Burwell
PC 5. Vestal
PC 6. Ingalls
PC 7. Agopian
PC 8. Snyder
PC 9. Snyder
PC 10. Greater Portland Landmarks
PC 11. Small
PC 12. Pressier
PC 13. Burwell
PC 14. Macomber
PC 15. Ansheles
PC 16. Vestel
PC 17. Stevens
PC 18. PSA
PC 19. Postcards
PC 20 GPL
PC 21 PSA
PC 22 Vestal
PC 23 Donovan
PC 24 Hebold
PC 25 Macomber
PC 26 McGee
PC 27 Whitten Pts 1 & 2



CPB2 LLC: Proposed Zoning Extension

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

. . .

~~(dd) Waterfront special use zone~~

. . .

DIVISION 15.1. B-6 EASTERN WATERFRONT MIXED ZONE

. . .

Sec. 14-269. Permitted uses.

The following uses are permitted in the B-6 zone:

(a) *Commercial:*

1. Professional, business and general offices;

2. Restaurants and other eating and drinking establishments, except that no drinking establishments as defined in section 14-47 that are located east of Waterville Street shall be permitted within fifty feet (50') of Fore Street, and provided that restaurants that are located east of Waterville Street and within fifty feet (50') of Fore Street must meet the following requirements:

   a. The hours of operation shall be limited to between 5:00 a.m. and 11:00 p.m. each day.

   b. Food service and consumption are the primary function of the restaurant;

3. Hotels and inns limited to no more than 150 rooms;

4. Craft and specialty shops, including the on-premises production of handcrafted goods;

5. Retail and retail service establishments, excluding those with gas pumps;

6. Theatres;

7. Banking services, excluding vehicular drive-up services;

Editor's Note: Drive-up banking facilities located in the interior of parking structures are allowed as a conditional use subject to the criteria outlined below in the conditional use provisions of this section.

---

8. Cabinet and carpentry shops;

9. Personal services;

10. Business services;

11. Offices of business trades people;

12. Miscellaneous repair services, excluding all types of automotive repair except for automobile repair and service establishments;

13. Telecommunication and broadcast and receiving facilities, except as prohibited in section 14-271 (prohibited uses);

    In addition, building mounted telecommunications antennas, discs, transmitting and receiving equipment and the like shall adhere to the following criteria. Such roof-mounted equipment shall be:

    a. No taller than 15 feet above the highest structural steel of the building roof; and

    b. Set back no less than 15 feet from the building perimeter; and

    c. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.

14. Brew pubs and microbreweries without associated bottling facilities; and brewpubs and microbreweries with associated bottling facilities limited to 5,000 bottles per year output, except that no brew pubs or microbreweries that are located east of Waterville Street shall be permitted within fifty feet (50') of Fore Street.

15. Electronic data storage;

16. Marine products wholesaling and retailing;

17. Harbor and marine supplies and services, chandlery and ship supply;

18. Underground marine fuel storage provided that fuel storage structures shall be used solely for the purpose of fueling vessels;

19~~8~~. Bakeries, coffee roasters, and commercial kitchens with building footprints limited to fifteen thousand (15,000) square feet of contiguous building space.

~~19~~20. Printing establishments.

(b) *Residential:*

1. Attached dwellings including row houses, two-family and multifamily dwellings;

2. Handicapped family units;

3. Combined living/working spaces, including but not limited to artist residences with studio space;

4. Mixed use residential and commercial structures.

(c) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;

2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces;

3. Pedestrian and multi-use trails;

(d) *Other:*

1. Studios for artists, photographers and craftspeople including but not limited to, painters, sculptors, dancers, graphic artists and musicians;

2. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses, except that parking

lots shall not be considered a permitted accessory use and such parking is subject to the conditional use section of the B-6 zone.

3. Health clubs, martial arts and ~~mediation~~ meditation facilities.

4. Intermodal transportation facilities.

5. Nursery schools, kindergartens, and daycare facilities or home babysitting services.

6. Private clubs or nonprofit social and recreational facilities, as defined in 14-47.

7. Educational facilities.

8. Temporary events, provided that all such events on a lot do not exceed a combined total of (60) days per year and that the total floor area utilized for such uses does not exceed seventy thousand (70,000) square feet at any one (1) time.

9. Museums and art galleries.

(e) Wind energy systems, as defined and allowed in Article X, Alternative Energy.

Sec. 14-270. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-6 zone as provided in 14-474 (conditional uses), provided that, notwithstanding section 14-474(a) or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority:

(1) *Commercial:*

a. Meeting and exhibition facilities limited to a total of 20,000 gross square feet of interior floor area.

b. Wholesaling, providing the wholesale operation is associated with an onsite retail establishment and that the wholesaling component of the facility occupies a building footprint of less

than 15,000 square feet.

c. Drive-up banking facilities located in the interior of parking structures, subject to the following criteria:

i. All drive-up features, such as automated teller machines and service windows, shall not extend nearer than twenty-five (25) feet to the street line;

ii. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicular or pedestrian circulation on adjoining streets;

iii. Drive-up vehicle circulation shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

d. Research and development and related production facilities, including but not limited to biotechnology, subject to the following conditions:

i. Associated manufacturing and warehousing uses combined are not to exceed 15,000 square feet.

ii. Biotechnology facilities must demonstrate approvals by all applicable regulatory authorities prior to commencement of operations.

(2) *Parking*

. . .

Sec. 14-273. Performance standards.

All new development in the B-6 Eastern Waterfront Business Zone shall comply with the following standards:

. . .

(b) *Noise:*

1. *Definitions:*

   a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

   b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with duration of less than one (1) second.

2. *Measurement:* Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least four (4) feet above the ground surface. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ_1).

3. *Maximum permissible sound levels:* The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as follows:

   a. Sixty (60) dBA between the hours of 7:00 a.m. and 10:00 p.m.

   b. Fifty (50) dBA between the hours of 10:00 p.m. and 7:00 a.m., as measured at or within the boundaries of any residential zone.

In addition to the sound level standards established above, all uses located within this zone shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones.

4. *Exemptions:*

a. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth in subsection (a)3 of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day shall not exceed fifty (50) dBA.

b. The following uses and activities shall also be exempt from the requirements of subsection (a)3 of this section:

i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.

ii. Traffic noise on public roads or noise created by airplanes and railroads.

iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.

iv. Emergency construction or repair work by public utilities, at any hour.

v. Noise created by any ~~recreational activities~~ temporary activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to parades, sporting events, ~~and~~ fireworks

displays, festivals, events and concerts.

DIVISION 15.1. B-6 EASTERN WATERFRONT MIXED ZONE

…

Sec. 14-272. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-6 Eastern Waterfront Business Zone shall meet the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Yard dimensions:*

1. Minimum yards in the B-6 zone:

   Front setback: None required except as provided in 3. below:

   Side setback: None required.

   Rear setback: None required.

2. Maximum building setback from street line except for parking garages, public transportation facilities and provided in 3. below: 10 feet.

   a. For lots fronting on more than one street, the setback can be increased more than ten (10) feet if all of the following conditions are met:

      i. The increased setback occurs at the intersection of the streets;

      ii. The increased setback area is the primary pedestrian entrance to the building;

      iii. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet; and

      iv. All building wall segments, which make

up the increased setback shall be included in the calculation of the total building wall length noted in subsection iii above.

In addition, for any new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two most major streets. (For purposes of this section, major street shall mean that street with the highest traffic volume or the greatest street width in comparison with the remaining streets).

3. View Corridors and Key Street Wall Development

Notwithstanding sections 1. and 2. above, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension, shall build to the key building envelopes shown on the *B6 Building Height Overlay & Building Envelopes map* ~~*Eastern Waterfront Building Height Overlay Map*~~. Buildings located in the easternmost key building envelope, shall not have a maximum front setback, and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right of way.

(d) *Minimum length of building wall required to be located along street frontage of lot* (except that buildings located in the easternmost key building envelope, as shown on the *B6 Building Height Overlay & Building Envelopes map*, shall not be subject to this requirement).

i. 70% of lot street frontage; or

ii. 25% of building perimeter,

iii. For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the

frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 feet.

(e) *Maximum lot coverage:* One hundred (100) percent.

(f) *Maximum building height*: 65 feet, or as otherwise governed by a Building Height Overlay map (for example, in the Eastern Waterfront). Building Height Overlay maps are found in the Planning and Development Department Office.

(g) Minimum building height: No new construction of any building shall have less than three (3) floors of habitable space above the average adjacent grade within twenty five (25) feet of any public street (except that buildings located in the easternmost key building envelope, as shown on the *B6 Building Height Overlay & Building Envelopes map,* shall not be subject to a minimum building height).

This provision shall not apply to:

i. Parking attendant booths,

ii. Information kiosks and ticketing booths,

iii. Parking garages,

iv. Public transportation facilities,

v. Additions to buildings existing as of December 8, 2004 provided that the cumulative additions since December 8, 2004 does not exceed 25% of the building footprint on December 8, 2004 except that such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of December 8, 2004,

vi. Buildings or building additions of less than 2,000 square feet footprint, on lots or available building sites of less than 2,000 square feet,

vii. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, and

viii. Additions to and/or relocations of designated historic structures.

DIVISION 18.7. ~~WATERFRONT SPECIAL USE ZONE*~~ RESERVED

~~***Editor's Note—**See the editor's note to division 18 of this article.~~

~~**Sec. 14-320.5. Purpose.**~~

~~The waterfront special use zone recognizes that the uses appropriate in this zone are constrained by its proximity to heavy industrial use on the western end, a high-density residential neighborhood on the north, and park and R-OS land to the east. Uses to be located in this zone must be compatible with these existing neighborhood uses.~~

~~At a minimum, parcels in this zone generally enjoy visual access to the port. It is further recognized that this area has historically been used for marine uses and that some of the parcels have the capacity to accommodate active water-dependent uses. While physical access to the water may not currently be legally available to all parcels in this zone, it is anticipated that developments in this zone may be able to negotiate easements for access. At a minimum, development in this zone should not be incompatible with marine and water-dependent uses. Uses which contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use are strongly encouraged.~~
~~(Ord. No. 168-93, § 2, 1-4-93)~~

~~**Sec. 14-320.5.5. No adverse impact on marine uses.**~~

~~No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:~~

~~(a) The proposed nonwater-dependent use will displace an existing water-dependent use;~~

~~(b) The proposed use will reduce existing commercial vessel berthing space;~~

~~(c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or~~

~~loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or~~

~~(d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.~~

~~(Ord. No. 168-93, § 2, 1-4-93)~~

~~Sec. 14-320.6. Permitted uses.~~

~~Subject to a determination that the proposed use meets the standards of section 14-320.5.5 (no adverse impact on marine uses):~~

~~(a) The following uses are permitted in the waterfront special use zone on both the north and south sides of the railroad line indicated on the City of Portland Zoning Map:~~

~~1. *Marine:*~~

~~a. Marine products, wholesaling, distribution and retailing;~~

~~b. Marine repair services and machine shops;~~

~~c. Tugboat, fireboat, pilot boat and similar services;~~

~~d. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;~~

~~e. Marine industrial welding and fabricating;~~

~~f. Shipbuilding and facilities for construction, maintenance and repair of vessels;~~

~~g. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water~~

~~taxis;~~

~~h. Cargo handling facilities, including docking, loading and related storage;~~

~~i. Boat repair yards;~~

~~j. Boat storage facilities, including rack storage facilities;~~

~~k. Seafood processing;~~

~~l. Seafood packing and packaging;~~

~~m. Seafood loading and seafood distribution;~~

~~n. Fabrication, storage and repair of fishing equipment;~~

~~o. Ice-making services;~~

~~p. Facilities for marine construction and salvage;~~

~~q. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;~~

~~r. Fabrication of marine-related goods;~~

~~s. Fishing and commercial vessel berthing;~~

~~t. Noncommercial berthing;~~

~~u. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;~~

~~v. Public landings;~~

~~w. Marinas;~~

~~x. Intermodal transportation facilities.~~

~~2. *Industrial uses:*~~

~~Industrial uses which meet the performance standards of the I-2 zone.~~

~~3. *Public:*~~

~~Pedestrian and bicycle trails.~~

~~The following uses are permitted in the waterfront special use zone only on the north side of the railroad tracks indicated on the City of Portland Zoning Map only in (a) buildings in existence on January 4, 1993, or (b) one (1) new structure per parcel (as defined in 30-A M.R.S.A. Section 4401(6)), which parcel was in existence on January 4, 1993, of up to five thousand (5,000) square feet in total floor area. No construction of a new structure of more than five thousand (5,000) square feet in total floor area or in excess of one (1) per parcel for uses other than those specified in subsections (1) through (3) above is allowed without approval of a conditional use pursuant to section 14-320.6.5 or conditional or contract rezoning pursuant to division 1.5 of this article:~~

~~4. *Commercial uses:*~~

~~a. Professional, business, and general offices;~~

~~b. Business service establishments;~~

~~c. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;~~

~~d. Cabinet and carpentry shops;~~

~~e. Cold storage facilities;~~

~~f. Museums and art galleries.~~

~~5. *Other:*~~

~~a. Accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses or temporary exhibition uses, provided that all such~~

~~exhibition uses on a lot do not exceed a combined total of sixty (60) days per year and that the total floor area utilized for such uses does not exceed seventy thousand (70,000) square feet at any one (1) time;~~

~~b. Parking: Parking shall be permitted as long as it does not impede access to water by existing or potential marine uses.~~

~~c. Institutional uses including marine research, education and laboratory facilities. Such uses shall not include any type of overnight accommodations.~~

~~d. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

~~6. *Public:*~~

~~a. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;~~

~~b. Municipal uses;~~

~~c. Landscaped pedestrian parks, plazas and similar outdoor pedestrian spaces, including without limitation pedestrian and bicycle trails.~~

~~7. *Industrial uses:*~~

~~Warehousing and wholesaling.~~

~~(Ord. No. 168-93, § 2, 1-4-93; Ord No. 187-99, 1-4-99; Ord. No. 33-11/12, 1-18-12)~~

~~Sec. 14-320.6.5. Conditional uses.~~

~~(a) The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions~~

~~of sections 14-320.5.5, 14-474 and any special provisions, standards or requirements specified below, and further provided that, notwithstanding section 14-474(a) or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:~~

~~1. Any use permitted in section 14-320.6(d)2, 4, 5 or 6, (e), (f) or (g), in one (1) new structure of more than five thousand (5,000) square feet, but not more than ten thousand (10,000) square feet in total floor area per parcel.~~

~~(b) The following use shall be permitted only upon the issuance of a conditional use permit subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:~~

~~1. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:~~

~~a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and~~

~~b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and~~

~~c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and~~

~~d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the~~

~~proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and~~

~~e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and~~

~~f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and~~

~~g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and~~

~~h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.~~

~~2. Wind energy systems, as defined and allowed in Article X, Alternative Energy.~~

~~(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 29-09/10, 8-3-09, emergency passage; Ord. No. 33-11/12, 1-18-12)~~

~~Sec. 14-320.7. Contract or conditional zoning.~~

~~An applicant may only construct a new structure of either more than five thousand (5,000) square feet in total floor area~~

~~for occupancy by uses enumerated in section 14-320.6(d)1, or ten thousand (10,000) square feet in total floor area for occupancy by uses enumerated in section 14-320.6(d)2, 4, 5 or 6, (e), (f) or (g) or in excess of one (1) per parcel for occupancy by those same uses if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-320.55 and all of the following standards:~~

~~(a) The proposed development is consistent with the comprehensive plan.~~

~~(b) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on- or off-site), and visual and physical access to the waterfront for the general public.~~

~~(c) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.~~

~~(d) The proposed development is sensitive to design opportunities and local environmental conditions, makes use of creative design solutions, does not significantly restrict air, light or water views of other structures located in the vicinity and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.~~

~~(e) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.~~

~~(f) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent~~

~~use is not abandoned after the project is developed.~~
~~(Ord. No. 168-93, § 2, 1-4-93)~~

~~Sec. 14-320.8. Prohibited uses.~~

~~Uses which are not enumerated in section 14-320.6 as permitted or in section 14-320.6.5 as conditional uses are prohibited.~~
~~(Ord. No. 168-93, § 2, 1-4-93)~~

~~Sec. 14-320.9. Dimensional requirements.~~

~~In addition to the provisions of article III, division 25 of this Code, lots in the waterfront special use zone shall be subject to the following requirements:~~

~~(a) *Minimum lot size:* None.~~

~~(b) *Minimum frontage:* None.~~

~~(c) *Minimum yard dimensions:*~~

~~Front setback: None.~~

~~Side setback: None required unless adjacent to a residential zone; if adjacent to a residential zone, twenty-five (25) feet.~~

~~Rear setback: None required unless adjacent to a residential zone; if adjacent to a residential zone, twenty-five (25) feet.~~

~~Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).~~

~~(d) *Maximum lot coverage:* One hundred (100) percent.~~

~~(e) 1. *Maximum building height:* Forty-five (45) feet, except in the area formed by the projection~~

~~of the centerline of Atlantic Street between its intersections with Wilson Street and the Eastern Promenade easterly to the easternmost boundary of the waterfront special use zone, where facilities for bulk storage of materials delivered to a site by waterborne transportation or awaiting transportation from the site by means of waterborne transportation may be erected to heights that shall not exceed sixty-five (65) feet above mean sea level. In those areas where the maximum height may not exceed forty-five (45) feet above grade, no structure may exceed sixty-five (65) feet in height above mean sea level. For purposes of this section, a projection of the centerline of a street shall consist of an extension of the centerline of the street to the water side boundary of the waterfront special use zone.~~

~~2. *Additional bulk, height and location standards for structures exceeding forty-five (45) feet in height above grade within the waterfront special use zone:*~~

~~a. The maximum horizontal diagonal measurement of portions of a structure, cluster of structures or equipment exceeding forty-five (45) feet in height above grade shall not exceed one hundred (100) feet, except that for each foot that the structure, cluster of structures, or equipment is lowered from the maximum permitted height, the maximum horizontal measurement may increase by one (1) foot.~~

~~b. In addition to any other setback requirements, portions of structures or clusters of structures exceeding forty-five (45) feet in height above grade shall be set back a minimum of one (1) foot from the exterior property line of the owner of the underlying fee interest for each foot that the structure or cluster of structures exceeds forty-five (45) feet in height above grade.~~

~~c. No structure or cluster of structures exceeding forty-five (45) feet in height above grade may be located closer than one hundred fifty (150) feet from any other such structure or cluster of structures.~~

~~d. The cumulative width of the portion of structures exceeding forty-five (45) feet in height above grade shall not exceed more than thirty (30) percent of the average width of the lot as measured by a line drawn parallel to the water.~~

~~e. No structure shall exceed forty-five (45) feet in height above grade within the view corridors established by the projection of the street right-of-way lines for Atlantic Street, Vesper Street or for O'Brion Street.~~

~~f. For purposes of this section only, moveable elements such as cranes and gantries, and connection devices such as conveyors or bridges shall not be subject to the space and bulk requirements, but shall be subject to a determination by the Federal Aviation Administration that the location of such equipment will not create a hazard to navigation. Other rooftop appurtenances shall not exceed the maximum height limits set forth in this section.~~

~~g. The applicant must provide a determination from the Federal Aviation Administration that structures and equipment will not exceed the applicable height guidelines for the runway approach and will not create a hazard to navigable airspace. Such a determination shall be accepted as conclusive evidence that the proposed development will not create a hazard.~~

~~h. Accessory uses in structures which exceed forty-five (45) feet in height above grade shall not be located higher than forty-five~~

~~(45) feet within the structure.~~

~~(Ord. No. 168-93, § 2, 1-4-93)~~

~~Sec. 14-320.10. Performance standards.~~

~~All uses in the waterfront special use zone shall comply with the following standards:~~

~~(a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.~~

~~(b) *Noise:*~~

~~1. The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront special use zone between the hours of 7:00 p.m. and 7:00 a.m. from industrial facilities or operations commenced on or after July 1, 1988, shall not exceed fifty-five (55) decibels on the A scale at or within the boundaries of any residential zone, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices.~~

~~2. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ_1).~~

~~3. In addition to the sound level standards otherwise established, facilities or operations established or built in the waterfront special~~

~~use zone on or after July 1, 1988, shall employ best practicable sound abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones. Tonal sound is defined as a sound wave usually perceived as a hum or which because its instantaneous sound pressure varies essentially as a simple sinusoidal function of time. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with a duration of less than one (1) second.~~

~~(c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.~~

~~(d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.~~

~~(e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.~~

~~(f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.~~

~~(g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear~~

~~berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.~~

~~(h) *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.~~

~~(i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.~~

~~(j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.~~

~~(k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.~~

~~(l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.~~

~~(m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.~~

~~(n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses.~~

~~(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 240-09/10, 6-21-10)~~

DIVISION 17.5. EASTERN WATERFRONT PORT ZONE*

. . .

Sec.14-301. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-300.1. (no adverse impact on marine uses), the following uses are permitted in the Eastern Waterfront Port Zone:

(a) *Marine passenger:*

1. Intermodal marine passenger facilities;

2. Cruise ship home port and port of call berthing and support;

3. International and domestic ferries.

(b) *Marine commercial:*

1. Transient and long-term commercial berthing;

2. Marine-related warehousing;

3. Marine related construction, manufacturing, fabrication, salvage and repair;

4. Storage and repair of fishing equipment;

5. Ship and other marine vessel construction, building, servicing, and repair;

6. Boat and marine equipment storage;

7. ~~Marine fuel storage and dispensing provided that on-site fuel storage structures shall be used solely for the purpose of fueling vessels and shall be limited, cumulatively, to 20,000 gallons of storage capacity within the zone;~~Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;

8. Public, non-profit, or commercial marine

transportation and excursion services, including captained charter services, sport fishing and water taxis;

9. Ship and off-shore support services, including but not limited to tug boats, pilot boats, and chandleries;

10. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;~~.~~

11. Marinas located east of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26;

12. Marine office, including but not limited to offices of owners of marinas, wharves or their agents, and naval architects, and seafood brokers.

(c) *Commercial:*

1. Professional, business, government, and general office located in upper floors of structures existing as of September 18, 2006.

***Editor's Note—**On-site parking for non-marine commercial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (conditional uses, parking) below.

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2. Temporary events, except festivals as otherwise governed under section 14-301I3 below.

Buildings, piers and lands within the EWPZ may be used for temporary public and private events including but not limited to exhibitions, conferences, meetings, and trade shows under the following conditions:

a. Temporary events occupying more than 10,000 square feet of building or outdoor space

shall not exceed a combined total of sixty (60) days between May 1st to October 31st;

b. No temporary event may continue for more than 14 days of continuous operation;

c. Any temporary event that anticipates more than 5,000 people in attendance on any single day must provide and be subject to a parking management plan. The parking management plan must be submitted for the review and approval of the public works authority at least 60 days prior to the first day of the event.

2. Festivals subject to City license.

4. Street vendors licensed pursuant to Chapter 19 as a result of a competitive bid process conducted pursuant to Chapter 2 of the City Code.

(d) *Public:*

1. Fire, police and emergency services;

2. Governmental agency emergency operations/crisis centers; 3. Research, military and visiting attraction vessel berthing;

4. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian and/or bicycle trails.

(e) *Other:*

1. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

2. A facility for non-profit organizations whose facility may include offices, classrooms, equipment, equipment rentals, storage, and bathrooms for the public.

Sec. 14-301.1. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the Eastern Waterfront Port Zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority, and provided further that in addition to the provision of section 14-474(c)(2) such uses will not impede or preclude existing or potential water-dependent development within the zone, will allow for adequate right-of-way access to the water, are compatible with marine uses, and meet all additional standards set forth below:

1. Conditional use standard:

   a. *Marine compatibility:* The proposed use shall be compatible with existing and potential marine uses in the vicinity, as required by section 14-304(n) and (o) (compatibility of non-marine uses with marine uses and functional utility of piers and access to the water's edge); and

   b. *Parking and traffic circulation:*

      i. Parking and traffic circulation plan: All applications for conditional use in the EWPZ shall submit a parking and circulation plan for review and approval by the planning board. The parking and circulation plan shall show the location of all existing and proposed structures, travel ways and parking under the common ownership and/or control of the subject pier or property. The plan shall demonstrate that the parking and circulation of the conditional use does not interfere with the functional marine utility of the property and otherwise meets the standards and conditions of the EWPZ.

2. Conditional uses:

   a. *Marine:*

      i. Marine products, wholesaling and retailing;

ii. Ice-making services;

iii. Marine freight facilities providing service for, and/or intermodal transfer of, container and breakbulk freight;

iv. Marine educational facilities;

v. Seafood retailing, wholesaling, packaging and shipping;

vi. Seafood processing for human consumption, subject to the performance standards of the IL zone set forth in section 14-236 in addition to the performance standards of section 14-304;

vii. Commercial marinas serving commercial and recreation boats located west of the eastern boundary of the parcel of land owned by the City of Portland pursuant to a deed from the State of Maine dated February 1982 and recorded in the Cumberland County Registry of Deeds at Book 4916, Page 26, provided that such facilities are located in areas that do not conflict with the navigation and handling of deepwater dependent vessels accessing existing or potential deepwater berthing;

viii. Fish byproducts processing, provided that:

a. Any fish byproducts processing facility has a valid rendering facility license under chapter 12 of the Portland city code; and

b. Any fish byproducts facility shall employ current and appropriate odor control technology to eliminate or minimize detectable odors from such a process, and in no case shall odors exceed the odor limitation performance standards of the IM zone (section 14-

252); and

c. The processing other material wastes or byproducts shall not be deemed a lawful accessory use Permitted herein.

b. *Commercial:*

a. Structured parking available to the general public;

b. Professional, business, government and general offices uses in upper floors of structures constructed after September 18, 2006;

c. Passenger support services supporting a marine passenger use listed under 14-301(a)(marine passenger). The total ground floor area occupied by any combination of the following uses (regardless of ownership) shall not exceed 35% of the gross floor area of the principle associated marine passenger use and no more than 35,000 square feet cumulative within the EWPZ:

i. Retail;

ii. Restaurants/food service other than street vendors;

iii. Retail service;

iv. Passenger information services.

c. *Industrial:* The following industrial uses are permitted provided that such uses shall conform to the IM zone performance standards set forth in section 14-252 in addition to the performance standards of 14-304. Where redundant or contradictory performance standards exist, the more restrictive standard applies.

i. Non-marine related warehousing in structures existing as of September 18, 2006;

ii. Facilities for combined marine and general construction;

iii. Low impact industrial uses as permitted in the IL zone in structures existing as of September 18, 2006, excluding all auto repair service facilities.

d. *Public:*

i. *Utility substations:* Public utility substations, including but not limited to electrical transformers, sewage and stormwater pumps and telecommunication switching stations, are permitted under the following conditions:

a. The facility is located more than 100 feet from the water's edge;

b. The facility occupies no more than 50 square feet of structure above ground;

c. The facility provides no dedicated on-site parking and all subsurface elements of the facility are installed and operated such that land occupied by the facility is otherwise useable and made available for marine related uses, including but not limited to parking, travel ways, and/or storage; and

d. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

ii. Maritime museums, limited to 5,000 square feet of ground floor footprint.

***Editor's Note—**On-site parking for non-marine commercial and industrial uses are permitted as conditional uses subject to the provisions of section 14-301.1. (conditional uses, parking) below.

---

e. *Parking for non-marine uses:* Notwithstanding sections 14-304(h), 14-331, 14-334 (regarding off-street parking requirements) and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces needed to accommodate the demand for marine and water-dependent uses that are permitted by section 14-301 (permitted marine uses) and 14-301.1. (conditional marine uses) which are or may be located on the subject property (see editor's note below). The remainder of parking Required, if any, for such non-marine uses shall be provided off-site.

***Editor's Note—**Vacant ground floor space should be considered to have a parking demand similar to other space housing an existing water-dependent use elsewhere on the subject property or on a comparable property.

Sec. 14-303. Dimensional requirements.

….

4. Setback from pier line: Notwithstanding the above requirements, a minimum setback of twenty-five(25) feet from the edge of any pier, wharf or working edge of the hardened shoreline shall be required for any structure, provided that marine offices, as defined in Section 14-301(b)(12), may be located up to five (5) feet from the edge of any pier, wharf or working edge of the hardened shoreline. The setback area may be utilized for water-dependent uses and public uses and activities, subject to the provisions of sections 14-300.1 (no adverse impact) and 14-301.1 (conditional use provisions), and shall not be utilized for restaurant, drinking, or other non water-dependent uses or for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

DIVISION 26. SHORELAND REGULATIONS

. . .

Sec. 14-449. Land use standards.

All land uses and land use activities subject to this division shall conform to the following standards and regulations, as applicable:

(a) *Principal and accessory structures:*

1. All principal and accessory structures shall be set back at least seventy-five (75) feet horizontal distance, from the normal high water line of water bodies, the upland edge of a wetland or associated tributary streams within a shoreland zone, except that in the following zones the setback shall be as indicated below:

   a. B-3, B-5, B-5b, I-L (south and east of I-295), and I-M (south and east of I-295): Twenty-five (25) feet.

   b. W-C, W-PD, ~~W-SU,~~ I-B, EWP: No setback required. Pier edge setbacks apply in EWP (Sec. 14-303(c)(4), W-C (Sec. 14-310(d)(4), and W-PD (Sec. 320.2(c))~~, and W-SU (Sec. 320.9(c))~~.

   For the principle structures, setback measurements shall be taken from the top of a costal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant "Classification of Coastal Bluffs", and published in the most recent Coastal Bluff Map as further referenced on the Zoning Map.

   Notwithstanding this requirement, when a lot is a lot of record as defined in section 14-433 or cannot otherwise meet the setback requirement of this section due to physical limitations of the site, the Planning Board may approve a reduction of the setback requirement for a principal structure to the least amount necessary to achieve a building dimension of twenty-eight (28)

feet, provided that the setback is not reduced to less than forty (40) feet. Structures in existence on June 15, 1992, may be expanded once during the lifetime of the structure up to twenty-five (25) feet toward a freshwater wetland, stream or tributary stream, provided that the setback is not reduced to less than forty (40) feet and the floor area or volume is not increased by more than thirty (30) percent. In no event shall the setback from a coastal wetland be reduced to less than seventy-five (75) feet, except in the B-3, B-5, B-5b, EWP, W-C, W-PD, ~~W-SU,~~ I-B, I-L and I-M zones, where setbacks shall be as set forth above in this subsection.

In all cases, accessory detached structures of less than one hundred (100) square feet of floor area shall be permitted with no setback, provided that such structures shall be used only for the storage of fish, bait, and related equipment. No setback shall be required for piers, docks, retaining walls, or any other structures which require direct access to the water as an operational necessity.

. . .

(b) *Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line of a water body or within a wetland:*

. . .

6. Except in the W-C, EWP, W-PD, ~~W-SU,~~ and I-B zones, no new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity;

. . .

(c) *Clearing or removal of vegetation:*

1. In all shoreland areas in resource protection

zones, the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that zone.

2. The clearing or removal of vegetation standards of this section shall not apply to the following zones: EWP, WCZ, WPD, ~~WSU,~~ B-3, B-5, B-5b, B-6, B-7, I-L (south and east of I-295) and I-M zones (south and east of I-295).

. . .

(j) *Roads and driveways:*

1. Roads and driveways shall be setback a minimum of seventy-five (75) feet from the normal high-water or upland edge of a coastal wetland, freshwater wetland, river or tributary stream within a shoreland zone, except:

a. In the EWP, WC, WPD, ~~WSU,~~ B-3, B-5, B-5b, I-L (south and east of I-295) and I-M (south and east of I-295) roads and driveways shall be setback as established for structures in those zones; as specified in Sec. 14-449(a)1.

b. Where the planning board determines that no other reasonable alternative exists. If no other reasonable alternative exists, the planning board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or effective use of additional ditch relief culverts and turnouts place so as to avoid sedimentation of the water body, tributary stream or wetland.

. . .

(k) *Parking areas:* Parking areas shall be set back a minimum of seventy-five (75) feet from the normal high-water or upland edge of a coastal wetland, freshwater wetland, river or tributary stream within a shoreland zone except:

1. In the EWP, WC, WPD~~, WSU~~, B-3, B-5, B-5b, I-L and I-M zones, parking setbacks shall be as established for structures in those zones; as specified in Sec. 14-449(a)1.

2. Parking setbacks in the S-P (stream protection) zones are as established in Division 26.7.

3. Where the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream, the board may reduce the parking setback requirement to no less than fifty (50) feet in the R-OS, and I-B zones to the least amount necessary for construction, provided that the applicant proves by a preponderance of the evidence that appropriate techniques will be used to prevent sedimentation of the water body.

. . .

DIVISION 22. SIGNS

. . .

Sec. 14-369.5. Tables.

(a) *Table 1. Permitted sign types by zone.*
Note: The following legend applies for Table 1 below:

A. Allowed, no permit required;
B. Allowed, permit required;
C. Allowed, subject to licensing and permit required;
D. Prohibited;
E. Not Applicable

Parenthetical letters, i.e. (a), refer to the notes provided at the end of Table 1.

. . .

	I-M,I-Ma, I-Mb Industrial	*I-H,I-Hb Industrial*	*Eastern Waterfront Port Waterfront Central ~~Waterfront Special Use~~*	*Waterfront Port Development*
Freestanding	B	B	B	B
In general(b)				
ResidentialI	A	A	A	A
Residential(d)	A	A	A	A
Temporary/ Portable (b)	D/D	B/D	D	D
Building	B	B	B	B
Commercial Banner				
Building Marker(f)	A	A	A	A
Awning	B	B	B	B
Identification(e)	A	A	A	A
Incidental(d)	A	A	A	A
Marquee(g)	B	B	B	B
Projecting	B	B	B	B
Residential(b)	A	A	A	A
Roof	D	D	D	D
Roof Integral	D	D	D	D
Suspended(g)	B	B	B	B
Temporary(h)	B	B	B	B
Wall	B	B	B	B
Window(I)	A	A	A	A
Miscellaneous	A	A	A	A
Community, Cultural Banner				
Directory(j)	A	A	A	A

Flag(k)	A	A	A	A
Pennant	D	D	D	D
Portable-in City right-of-way (A-frame)	D	D	C	D

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Contents of Table 2:

2.1 Sign Regulations for R-1—R-7, IR-1—IR-3 Residential Zones

2.2 Sign Regulations for Institutional Uses in Residential Zones

2.3 Sign Regulations for RP Residence-Professional Zone

2.4 Sign Regulations for ROS/RPZ Open Space Zones & Signs in all Municipal Parks

2.5 Sign Regulations for B-1 Neighborhood Business Zone — Single Tenant Lots

2.6 Sign Regulations for B-2 Regional Business Zone — Single Tenant Lots

2.7 Sign Regulations for AB Airport Business Zone — Single Tenant Lots

2.8 Sign Regulations for B-3 Downtown Business, B-5 Urban Commercial, B-6 and B-7 Mixed Use Urban, WC Waterfront Central, ~~WSU Waterfront Special Use,~~ and EWP, Eastern Waterfront Port Zones

2.9 Sign Regulations for IB Island Business Zone — Single Tenant Lots

2.10 Sign Regulations for B-4 Commercial Corridor Zone — Single Tenant Lots

2.11 Sign Regulations for OP Office Park Zones

2.12 Sign Regulations for I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb Industrial and WPD Waterfront Port Development Zones

2.13 Sign Regulations for B-1, B-2, AB, IB, and B-4

Business Zones — Multi-Tenant Lots

2.14 Sign Regulations for Gas Stations — All Zones Where Permitted

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TABLE 2.8 SIGN REGULATIONS BY ZONE

Downtown Business (B-3), Urban Commercial (B-5), and Waterfront Central (WC)~~, and Waterfront Special Use (WSU)~~ Zones

. . .

Proposed amendments from Land Use Code regarding massing and permeability in B-6 and EWPZ

Sec. 14-524. Site plan review processes.

14-524(a)(3)(c)(iii)*Standards of Review.* A Master Development Plan shall adhere to the following general requirements and features, and shall meet the Master Development Plan Site Plan Standards of 14-526 (d) (9):

a. A designated tract of land consisting of a parcel or parcels of contiguous land or land on both sides of a public street, totaling one (1) acre or more;

b. Developed in a comprehensive, design-integrated manner, according to an overall master development plan;

c. Consistent with the objectives of this ordinance;

d. Consistent with the City's Comprehensive Plan and consistent with City Council approved master plans and facility plans for off-premise infrastructure, including but not limited to, trails, pedestrian and bicycle network, view corridors, environmental management, sewer and stormwater, streets, or other facilities (see Section 15 of the Technical Manual);

e. Developed so as to locate buildings and improvements in a manner that provides usable open space, preserves significant natural features, as defined by the site plan ordinance standards, and preserves existing trees to the maximum extent possible;

f. Developed so as to be in conformance with Portland's Historic Preservation Ordinance standards for designated landmarks or for properties within designated historic districts or designated historic landscapes, if applicable. When proposed adjacent to or within one hundred (100) feet of designated landmarks, historic districts or historic landscapes, the Master Plan shall be developed so as to be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development;

g. An efficient use of land which properly considers topography and protects significant natural features including, but not limited to, waterways, wetlands, floodplains and wildlife;

h. An efficient use of land demonstrating full coordination of its own site development and surrounding context including, but not limited to, the land uses and functions contemplated, architecture, open space and pedestrian networks, vehicular access and circulation, and all other infrastructure;

i. Linked and coordinated with surrounding land uses, infrastructure and off-site public facilities, including but not limited to the public school system, where appropriate, in a manner that is safe, efficient, non-injurious to the public, and an improvement or benefit to the public where possible;

j. Designed with sizing of street and other infrastructure systems to accommodate the overall service demand of the Master Plan;

k. Designed to create a street grid pattern that reflects average city block sizes of the neighborhood for street connectivity;

l. Designed as to create a cohesive identity through building scale, massing, and articulation; use of quality exterior materials, architectural detailing at pedestrian scale; consistency of design and materials for streetscape and pedestrian amenities; framing of outdoor open space and linkages; a clear conveyance of the function and significance of various buildings, entrances, and features; and to generally comply with design and development standards of the zone in which it is located;

m. Inclusive of provisions for the ownership and maintenance of usable open space as appropriate; and

n. For areas proposed as future development phase(s), the proposed interim conditions shall be managed and

maintained to ensure stable, safe and attractive site conditions.

Sec. 14-526. Site plan standards.

14-526(d) *Site Design Standards*

9. Zoning Related Design Standards:

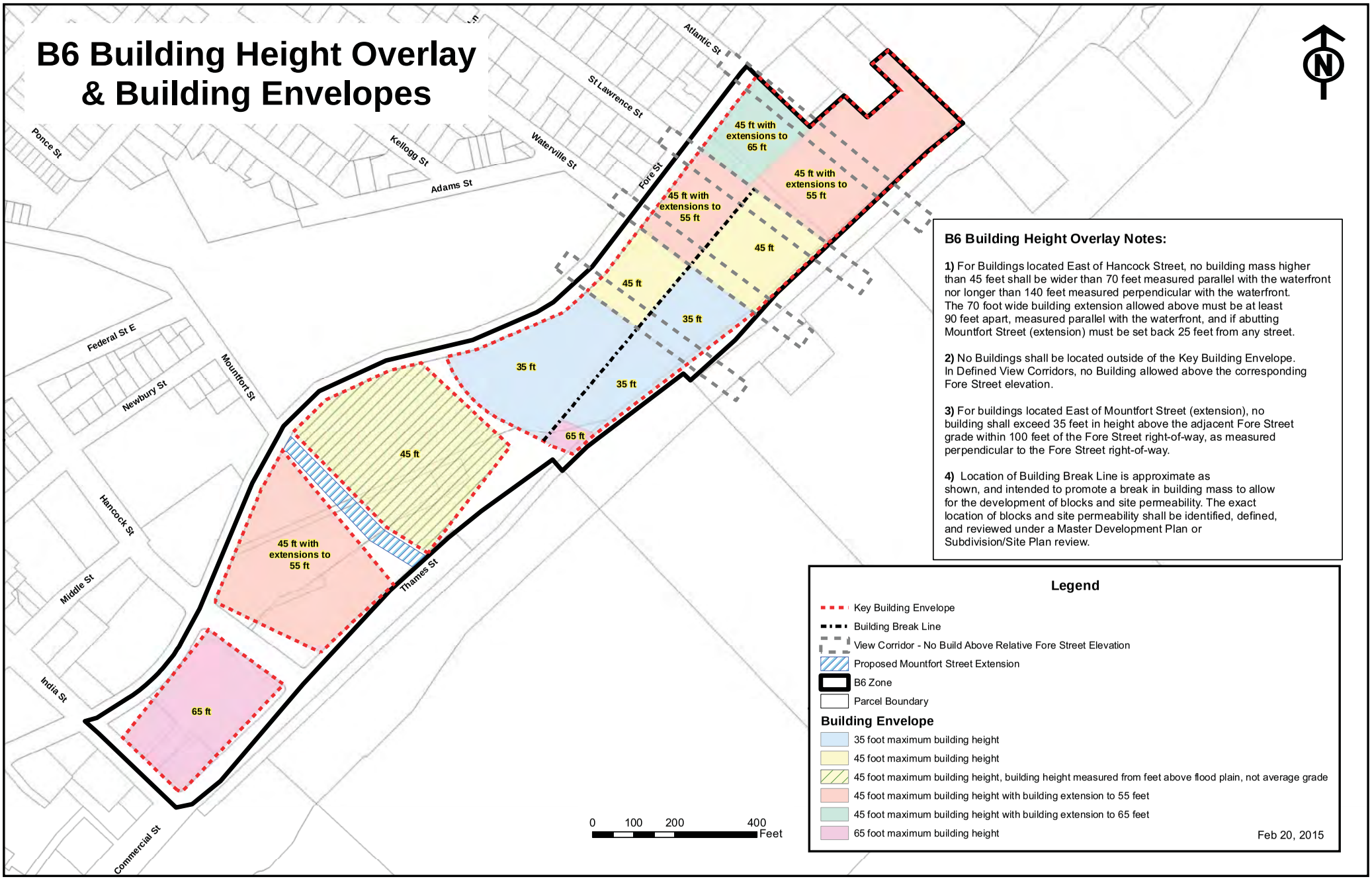
a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:

(i) B3, B5, B5-b, B7 Zones, and B6 and EWPZ Waterfront Zones: Development in the B3, B5, B5-b, B7 business zones and in the B6 and EWPZ waterfront zones 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. New development along the Eastern Waterfront should avoid large monolithic massing along all street frontages and should promote permeability through and within the development at a scale compatible with the existing street networks of the Eastern Waterfront. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that are in scale with the context to which they most closely relate.

b. *Master Development Plan Design Standards*: A Master Plan shall comply with the design and development standards

of the zone in which it is located, and shall achieve a cohesive land development consistent with the assets of the site, land uses, functional activities, and major design elements, such as buildings, roads, utilities, drainage systems and open space as well as with the Master Development Plan Standards of Review contained in Section 14-524.

B6 Building Height Overlay & Building Envelopes



B6 Building Height Overlay Notes:

1) For Buildings located East of Hancock Street, no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront. The 70 foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street.

2) No Buildings shall be located outside of the Key Building Envelope. In Defined View Corridors, no Building allowed above the corresponding Fore Street elevation.

3) For buildings located East of Mountfort Street (extension), no building shall exceed 35 feet in height above the adjacent Fore Street grade within 100 feet of the Fore Street right-of-way, as measured perpendicular to the Fore Street right-of-way.

4) Location of Building Break Line is approximate as shown, and intended to promote a break in building mass to allow for the development of blocks and site permeability. The exact location of blocks and site permeability shall be identified, defined, and reviewed under a Master Development Plan or Subdivision/Site Plan review.

Legend

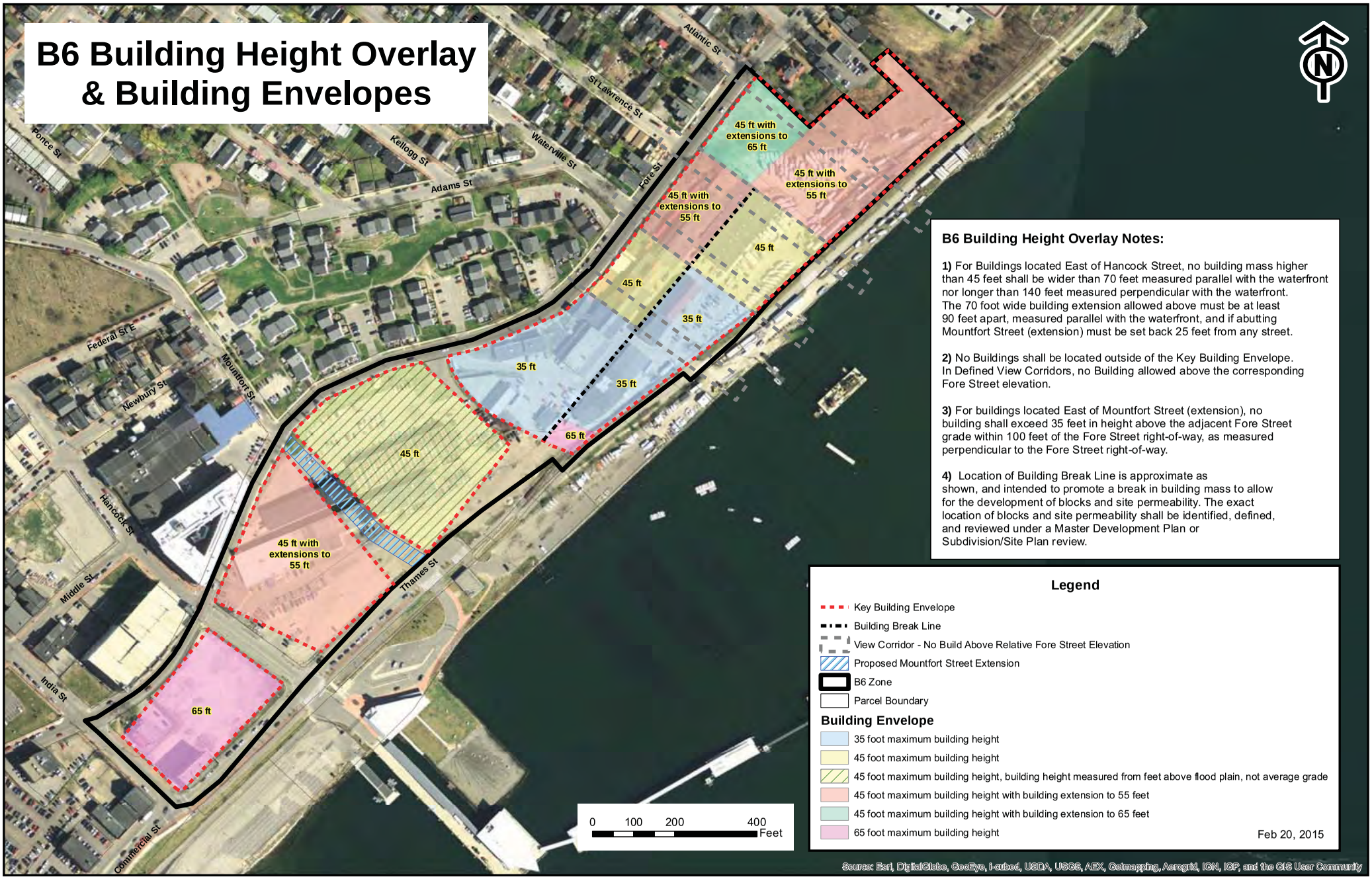
- Key Building Envelope
- Building Break Line
- View Corridor - No Build Above Relative Fore Street Elevation
- Proposed Mountfort Street Extension
- B6 Zone
- Parcel Boundary

Building Envelope

- 35 foot maximum building height
- 45 foot maximum building height
- 45 foot maximum building height, building height measured from feet above flood plain, not average grade
- 45 foot maximum building height with building extension to 55 feet
- 45 foot maximum building height with building extension to 65 feet
- 65 foot maximum building height

Feb 20, 2015

B6 Building Height Overlay & Building Envelopes



B6 Building Height Overlay Notes:

1) For Buildings located East of Hancock Street, no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront. The 70 foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street.

2) No Buildings shall be located outside of the Key Building Envelope. In Defined View Corridors, no Building allowed above the corresponding Fore Street elevation.

3) For buildings located East of Mountfort Street (extension), no building shall exceed 35 feet in height above the adjacent Fore Street grade within 100 feet of the Fore Street right-of-way, as measured perpendicular to the Fore Street right-of-way.

4) Location of Building Break Line is approximate as shown, and intended to promote a break in building mass to allow for the development of blocks and site permeability. The exact location of blocks and site permeability shall be identified, defined, and reviewed under a Master Development Plan or Subdivision/Site Plan review.

Legend

- Key Building Envelope
- Building Break Line
- View Corridor - No Build Above Relative Fore Street Elevation
- Proposed Mountfort Street Extension
- B6 Zone
- Parcel Boundary

Building Envelope

- 35 foot maximum building height
- 45 foot maximum building height
- 45 foot maximum building height, building height measured from feet above flood plain, not average grade
- 45 foot maximum building height with building extension to 55 feet
- 45 foot maximum building height with building extension to 65 feet
- 65 foot maximum building height

Feb 20, 2015

Lannie Dobson - Re: Fwd: 58 Fore Street

From: Lannie Dobson
To: Christine Grimando
Subject: Re: Fwd: 58 Fore Street

>>> Christine Grimando 2/6/2015 9:24 AM >>>
Hi Lannie,

I had sent this and one other to Jen yesterday, but I'm resending for good measure.

Christine

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

>>> Christine Grimando 2/5/2015 6:24 PM >>>
Hi Jen,

More public comment.

Christine

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

>>> Angela Adams <aaa@angelaadams.com> 2/5/2015 6:10 PM >>>
Dear Chairman O'Brien, Members of the the Planning Board and Senior Planner Ms. Grimando,

As a Portland resident, property owner and business owner I am writing to express my concerns regarding the proposed development of the 10 acre site known as The Portland Company and located at 58 Fore Street.
This parcel of land is critical to our city and the lifestyle that we all embrace as residents and business owners. It is most often the first thing you see as you fly in, the first thing you see entering the harbor by boat, ferry or cruise ship and it is the route the leaf peepers, tourists and locals use to show off the beauty of our coastal city from Fore Street. Developing this site is an exciting idea and if done thoughtfully and with the residents of the neighborhood and city in mind, Portland could have a world class waterfront that is enjoyed by all.

The Portland Company history is a critical part of the DNA of our city and a national treasure. Maine has a long history of craft and innovation and there is no better example of this than the Portland Company.
The historic importance of this site is of national significance:

- It is the only surviving pre-civil war locomotive manufacturing facility in the country
- It was critical to the development of many industries in Maine, including the textile industry, paper making and canning industries
- The company's development of Maine's railroads and the shipping industry are of significant importance
- This site is the only intact industrial complex from the 19th and early 20th century remaining in the city today
- Architecturally, the buildings which were built in the 1840's and 1850's are the only remaining industrial buildings of that era in our city.
- The Portland Company buildings as a whole, comprise the historic manufacturing process that allowed them to manufacture everything on one site (outside of the boiler construction) and was the only facility in the nation to do this on one site.
- The maritime significance is immense as our lighthouse components, lanterns and navigational buoys were manufactured there.
- Bug Light, the lighthouse at the entrance to Portland Harbor was made at the Portland Company complex.

The list goes on and on as to the historical significance of this site and I urge you to please consider preserving the existing buildings and maintaining the integrity of this important historical site.

Preserving the existing buildings is only one of my primary concerns. The other is in regard to the overall design of this project, the magnitude of it and it's importance to our city. As a designer, I am well aware of the time and consideration that must go into designs and projects in order for them to be great. We all know what a less than thoughtful development looks like and it's always unfortunate to see this, especially in our beautiful city.

My concern is that in order for the most valuable piece of our city to be designed in such a way that is worthy of it's spectacular site, it must be done in the most thoughtful process possible. It should be done incrementally and with intermittent approvals that allow the city to manage the process and development in such a way that prevents it from being a one sided project that benefits developers far more than an entire city of people that live and work here. The developers are asking for a zone change that would grant broad changes to the site that greatly benefit them and that could have a disastrous impact on the city's waterfront and surrounding neighborhood. An alternative to granting the zone change request is to instead change the zone to a Contract Zone that would allow the city to monitor the development and manage the evolution of the project in such a way that works both for the developers and the residents of the city. This property is too important for us to hand the keys over to developers that, like all developers, will have very different intentions for the site than the city does. This site cannot be developed simply for the benefit of investors.

Like everyone else I know, I live here because I love the fact that Portland is located on the waterfront. Many of us would have a much easier time running a business in other cities, but we choose Portland because it is a great place to live and because it is a beautiful city located on the ocean. We all get to enjoy the spectacular views, watching the boats and planes come and go and walking along the trails that line the waterfront.

This property is not like other properties you have been asked to vote on. This is the MOST valuable property in our city and our state. It must be treated differently and with the greatest care and consideration for the future or we will forever look longingly back on the days when it was a more integral part of our lives and city and not just a big business deal that made a lot of investors and developers very wealthy. We need to preserve the integrity of the historic site and the value of the waterfront views for greatest number of people and not simply for the wealthy that have the resources to purchase it. It's the reason we all live here and we need to be thoughtful about every aspect of it's future.

Sincerely,

Angela Adams

Angela Adams
Co-Founder, Creative Director

angela adams
273 Congress Street Portland, Maine 04101
(207) 774 3523 / ext. 203 fax (207) 874 9819

From: Barbara Vestal <vestal@chesterandvestal.com>
To: Christine Grimando <CDG@portlandmaine.gov>
Date: 2/5/2015 3:15 PM
Subject: Portland Company Complex
Attachments: 58 Fore - average grade vs. flood plain.pdf

3-D Height and Massing Study, 58 Fore Street, Portland, Maine,

Prepared for Keep the Soul of Portland in the Portland Company by Rob Whitten, Whitten Architects.

Submitted to the Portland Planning Board for the 2/10/2015 workshop by Barbara Vestal due to Rob Whitten's absence from the country. Rob Whitten is expected to be back for the February 10th workshop to briefly explain the study in person.

Background and Methodology:

At the request of Keep the Soul of Portland in the Portland Company (SOP), Whitten Architects (WA) prepared a graphic 3D representation of the Portland Company site and the surrounding Portland neighborhoods using Google Earth information and 3D modeling. They used it to show the maximum possible site coverage and maximum possible heights as currently proposed by the applicant in a much more detailed scale than the previous submissions of the applicant. The applicant's submissions represented maximum build-out heights by dividing the 10 acre site into 9 large blocks, and using the average grade within each of those large blocks as the baseline. Due to the extreme change in grade in some parts of the site, the applicant's methodology minimized the height impact in the portion of the site closest to Fore Street.

In contrast, the study prepared for SOP divided the 10 acre site into 35' by 35' squares, and calculated average mean height within each square. Then it applied the proposed allowable height to each 35' by 35' square. The resulting graphic representation shows the possibilities and limits of the proposed heights and massing as proposed by the applicant. The representation is NOT a design. It does NOT represent specific buildings. Where there are proposals for "extensions" or "towers", WA did not select where they would be located. Instead the extension is shown over the full area where it could be located. It should be noted that according to the existing proposal, these extensions would be limited to a width of 70' parallel with the water and a depth of 140' perpendicular to the water and would have to be separated by at least 90'.

In summarizing the methodology, Rob Whitten of Whitten Architects states:

We overlaid the Portland Company site with a 35' x 35' grid and used it to calculate the average mean height within each 35' square. We worked with Google height information in 5' contours. The grid is more or less parallel to Fore Street and the waterfront edge of the Portland Company site. We then took the 2004 Eastern Waterfront Planning information for Building Envelopes and Heights including view easements and established a height for each of the 35' x 35' grids. (Note: this is the same as proposed by the applicant, except that the applicant additionally proposes to limit heights immediately along Fore Street to 35 feet for a distance of 35 feet back from Fore Street. The WA study used the same 35' for 35' limit.) In the video, none of the Fore Street heights exceed 35' above Fore Street for a depth of 35'. The heights are approximate. They are only as good as the Google information.

The CPB2 submission treated each height area as a big block, which results in lower heights along Fore Street. In the video diagram we broke them into the smaller 35' x 35' units which results in more accurately representing the higher heights that would be allowed along Fore Street. It is a logical representation of the Eastern Waterfront Master Plan Height Overlay description as interpreted by the applicant.

The heights show what is possible on the Portland Company site as re-zoned to a B-6 zone. The 3D diagrams do not show buildings or any sort of design. The diagrams show the maximum possible site coverage and the maximum

possible heights in 35’ x 35’ sizes. Note that we show all possible options for height extensions in the B-6 zone. The Height Overlay extensions are limited to a variety of blocks and options relative to the waterfront. How they are placed and organized is a building and site design process.

There are two ways to interpret the Eastern Waterfront Building Height Study height overlay illustration 33 (from which the zoning is derived). The applicant asserts that maximum heights should be measured from average grade. SOP asserts that the maximum heights should be measured from *FEET ABOVE FLOOD PLAIN, NOT FROM AVERAGE GRADE*. SOP asserts that measuring heights from flood plain is consistent with the intent of the Eastern Waterfront Height Study, which emphasizes placing taller buildings in the "shadow areas" below Fore Street. Measuring from flood plain is also consistent with how the B-6 zoning was implemented in the adjacent block when it was rezoned to B-6. In that rezoning of the waterfront area from India Street up to (but not including) the 58 Fore Street property, the City adopted as part of the building height overlay: *"For buildings located east of Mountfort Street (extension) , building heights shall be measured from feet above flood plain, not from average grade."* As the 58 Fore Street is east of Mountfort Street and the same condition of steep slopes toward Fore Street applies, the same method of measuring heights should apply.

It should also be noted that the WA representation is based upon conservative assumptions in showing height and massing. It calculates grade using existing, pre-development grade. In fact, as height is traditionally calculated for mainland Portland, it is based on post-development grade. The applicant could fill portions of the site, resulting in greater finished heights. Similarly the WA representation shows flat-roofed buildings with no roof-top appurtenances. In fact, actual heights could be higher if a different roof form is used (e.g. for a peak roof parallel to Fore Street, half of the roof from the eaves to the peak could exceed the applicable height limit) and if there are HVAC units, stairway access units, satellite dishes, decks or other non-occupied elements on the roof.

Videos of the Results of the Height and Massing Study:

There are two ways to view the results of the study. One way is to go to the website of SOP at www.soulofportland.org and click on Height Study and Other Links and scroll down a few inches. Posted on that website are images from Vimeo files.

You may also go directly to Vimeo by using the following link:
http://vimeo.com/album/3202655/video/116566665

The *first video* that appears on the website (a portion of the Keep the Soul of Portland in the Portland Company 3-D Height and Massing Study prepared by Whitten Architects) shows the maximum potential massing under the zoning currently proposed by the developer* if building heights are measured from average grade*. This shows the maximum potential massing going up Fore Street toward the Eastern Prom.

Videos have been made of additional views of the developer's proposed massing as rendered in the SOP study, showing an overview (long), going along the Eastern Prom Trail heading away from India Street, going down Fore Street, and going down Atlantic, St. Lawrence and Waterville Streets toward the "view corridors" as now proposed. Each of these videos assumes heights measured from average grade, as proposed by the developer.

They may be seen at www.soulofportland.org at Height Study and Other Links, or you may go directly to Vimeo by using the following links:

http://vimeo.com/album/3202655/video/116573487 (overview)

http://vimeo.com/album/3202655/video/116565732 (Eastern Prom Trail heading away from India St.)

http://vimeo.com/album/3202655/video/116567730 (heading down Fore St. toward the Old Port)

http://vimeo.com/album/3202655/video/116568347 (Waterville Street "view corridor")

http://vimeo.com/album/3202655/video/116569060 (St. Lawrence Street "view corridor")

http://vimeo.com/album/3202655/video/116569828 (Atlantic Street "view corridor")

Images Comparing the Impact of Measuring from Average Grade or Flood Plain

The *next sets of six still shots *show a series of comparisons of the maximum potential massing under the same zoning, first showing massing if building heights are measured from average grade (as contended by the developer) and then, from the same location, *if building heights are measured by feet above flood plain (as asserted is proper by SOP)*. Only portions of the site are shown in these views. Whether height is measured from average grade or from flood plain only makes a significant difference in the massing in the vicinity of Fore Street. The captions in the bottom right identify location and method of measurement. They are attached to this e-mail as a pdf file.

--
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EDWIN P. CHESTER
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February 5, 2015

Chair O'Brien and Members of the Planning Board
c/o Christine Grimando
Planning Department
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Portland Company Complex

Dear Chair O'Brien and Members of the Planning Board,

The Portland Company Complex, a very visible 10 acre gateway site, is critical to the identity of Portland. As the applicant needs a zone change of some variety in order to proceed with uses that are not currently allowed, the Board has the opportunity to craft zoning that is fully reflective of the best use of that site. It is important for the City to get its zoning right. I firmly believe that the B-6 zone is <u>not</u> the answer for the reasons outlined below.

1. THE B-6 ZONE WAS NOT DRAFTED TO APPLY TO THE PORTLAND COMPANY SITE.

During the course of the Eastern Waterfront master planning process, an "**Ultimate Build-out Scheme**" scenario was developed by the Planning Office in the spring of 2002. It included City-owned land, the parcel referred to as the Farley-Marino property and some land belonging to Shipyard Brewing. **It did <u>not</u> include the Portland Company Complex** because its owner was not interested in redeveloping his property at that time. That illustration is attached as Exhibit A.

The Eastern Waterfront Master Plan generally recommended mixed use development for upland areas of the Eastern Waterfront, including the Portland Company Complex. But it did <u>not</u> recommend that the Portland Company Complex be rezoned from WSUZ to B-6. Mixed use development on the Portland Company Complex can be accommodated within the existing WSUZ regulation.

Between the spring of 2002 and its adoption in December 2004, the Planning Board developed and forwarded to the City Council the proposed B-6 Eastern Waterfront Mixed Use Zone. It applied only to the properties east of India Street, north of Commercial Street and it extension, west of the Portland Company complex, and south of Fore Street. It did not include the Portland

Company Complex (See Exhibit B). This area was denoted the "Central Redevelopment District." In some documents the Shipyard Property, which was eventually developed as the Gateway Parking Garage and the Residence Inn, was included in the discussion as well. However, the B-6 zoning which was enacted in December 2004 applies only to the "Central Redevelopment Area," without the Shipyard properties.

2. THE B-6 ZONE MANDATES A VERY SPECIFIC FORM OF DEVELOPMENT WHICH IS A POOR FIT FOR THE PORTLAND COMPANY SITE

The B-6 zone is a variation of a form-based code. The attached Ultimate Build-out Scheme (Exhibit A) set the stage for a form of urban development that is woven throughout the zoning language. It is very specific to the three blocks that were rezoned to B-6.

The Ultimate Build-out is premised upon a re-connected grid of public streets and public sidewalks (Hancock St., Mountfort St. and an unnamed/unbuilt street adjacent to 58 Fore St.) The parking is directed to the interior of each block (light blue), with structures accommodating mixed uses wrapped around the parking (dark blue). There are virtually no provisions for the consideration of existing buildings, because the area of the Ultimate Build-out is composed of vacant land, surface parking lots, and metal industrial structures which will be razed in the event of development. The B-6 ordinance incorporates unique dimensional requirements to produce this Ultimate Build-out -- e.g., "built to lines," 10 foot maximum setbacks from "build to lines," minimum street wall lengths, and minimum heights -- and requires for ground floor retail space to create new, very dense urban space.

Poor Fit: Already Existing Structures: In contrast to the 3 blocks of B-6, the Portland Company Complex is already significantly occupied by historic buildings. The majority of these buildings are of the character which should be adaptively reused, as stated in the Master Plan and the Design Guidelines. Contrary to assuming a virtually blank slate, as the B-6 does, the Design Guidelines state:

> Historically and architecturally significant structures and sites should be inventoried and protected from demolition and carefully rehabilitated in a way that is consistent with their original architectural intent. The challenge and opportunity is to adaptively reuse significant structures while retaining their historic character (Design Guidelines, p.7).

The form-based code approach of the B-6 zone is inconsistent with the goals for the important buildings already occupying a portion of this site.

Poor Fit: No Street Grid: There is no street grid proposed for 58 Fore which will produce the basic building blocks of the B-6 zone – blocks surrounded on four sides by pubic streets. The only streets proposed are the existing Fore Street (which is well above the grade of most of the

existing buildings and the "Portland Company Alignment" where no buildings will be allowed. Presumably the no build area will serve as a street, but it is not clear whether it will be public. The B-6 zone relies upon public streets and public sidewalks on both sides of the streets to make the land publicly accessible, thus securing a benefit for the general public. There is no such similar street grid proposed on the Portland Company site.

The rest of the circulation pattern on the Portland Company site has yet to be determined, and may consist of private lanes. This is the opposite of the B-6 zone which relies upon a grid of public streets and sidewalks to assure public access.

Poor Fit: Build-to Lines Nonsensical: In the existing B-6 zone, the dashed lines are "key building envelopes." The B-6 zone states:

> New structures located in the blocks located south of Fore Street and north of Commercial Street and its extension, shall build to the key building envelops [sic] shown on the *Eastern Waterfront Building Height Overlay Map*. (14-272(c)(3))

These build-to lines are tied to the building envelopes, not to streets. The Overlay Map which the applicant proposed to apply to 58 Fore Street has 9 building envelopes. There are eight "built to" lines that do not abut streets or the edge of the parcel. It is unclear what the zoning intends to accomplish by requiring build-to lines in the eight locations where build-to lines are in the middle of a parcel, not bounded by a street. Similarly the impact of overlaying this grid of build-to lines on top of historic structures is unclear.

Poor Fit: High-Density Urban Pattern of Development: The type of development that would be produced by the B-6 standards is similar to the Ocean Gateway Garage and the Residence Inn. Even beyond the question of whether the provisions are effective to generate ground floor active uses (given that the "retail space" in the Gateway Garage has been vacant since it was constructed), it is important to ask whether this is, in fact, the type of development desired at 58 Fore St. It may make more sense to first settle the issue of whether the 58 Fore Street site, or some portion of it, is going to be designated a local historic district before casting the form of new development in stone as do the very detailed standards in the B-6 zone.

Poor Fit: Brew Pubs, Restaurants, etc. Incompatable with Immediately Adjacent Residential Neighborhood: The B-6 zone was designed to abut other commercial uses. Extending that zone to 58 Fore Street gives no consideration to the established residential neighborhood which, for over 100 years, has overlooked, but not interacted with, the 58 Fore Street property except at its single entrance. The substantial change in grade has acted as a buffer between the industrial use and the residences. The proposed extension of the B-6 to 58 Fore St. completely disregards this traditional buffer.

Except for the Portland Company site itself, both sides of Fore Street in the vicinity of 58 Fore St. are occupied by residential uses, mostly in small scale 1-3 family structures, with the exception of the Portland House. There are no existing non-residential uses except for one small insurance office, which may be a home occupation. The Munjoy Hill neighborhood moving north from Fore Street is of a similar, entirely residential, character.

In contrast, if the entire 58 Fore St. site is rezoned to B-6 as proposed, it would allow a developer to build, as of right, on the south side of Fore Street hotels, retail space, offices, restaurants, brew pubs and any number of other uses facing the residential neighborhood. It would require at least 75% of the street wall of whatever use to be built out to within 10 feet of Fore Street. And, in a provision that is inconsistent with how the maximum height limits should be applied to this site, it would require that uses facing Fore Street not have less than three (3) floors of habitable space above the average adjacent grade. This scale and range of permitted uses is completely out of character and incompatible with the existing, long-standing residential uses.

While these non-residential uses might belong in the area where the existing B-6 is located and on the filled land portion of 58 Fore Street, they are completely inappropriate on the upper portion of Fore Street. A rezoning to allow the incursion of this type of commercial use into a residential area that has no such similar uses would be unprecedented.

3. THE EXISTING B-6 ZONE REFLECTS CAREFUL PLANNING OF PUBLIC VISTAS WHICH HAS NOT YET BEEN UNDERTAKEN IN RELATION TO THE PORTLAND COMPANY SITE.

The B-6 Building Height Overlay & Building Envelopes evidences a level of planning to preserve public views and vistas from public streets that has not yet taken place on the 58 Fore Street site. In the overlay, the building envelopes are pulled back from street lines and the street space is splayed out to enhance public views. If serious consideration is being given to a B-6 rezoning for 58 Fore Street, that same level of detailed vista analysis needs to be done for that site. The Height Study just assumes that the existing buildings will remain on the site, and that the vistas over the existing buildings will remain. The study did not look at the impacts of new construction on the vistas.

4. THE CIRCULATION PATTERN WITHIN THE PORTLAND COMPANY COMPLEX, PARTICULARLY FOR WATER-DEPENDENT USES, NEEDS TO BE CONSIDERED PRIOR TO ADOPTION OF THE HEIGHT OVERLAY.

The B-6 dimensional requirements appear to allow limited space for driveways between buildings which are arranged around the build-to lines. But it is unclear whether these will be private or public within the 58 Fore Street site. It is also unclear whether they will be sufficient to provide the circulation patterns to allow continued existence of marine uses under the WSUZ.

The preface to the Eastern Waterfront Master Plan states: "the water's edge is the most precious resource we have" (p. 2). Similarly, the Design Guidelines note that the challenge is to preserve the value and marine utility of the water's edge while stimulating appropriate upland development for the benefit of the general population (p. 14). The Community Development Committee of the City Council, prior to recommending approval, added a section to the Master Plan noting the challenges of implementing the Master Plan. It reemphasized the importance of the working waterfront and full utilization of deep-water berthing resources, stating:

> The challenge will be to maximize the benefits of mixed-use non-marine development, while retaining the function and future flexibility of the Eastern Waterfront as a pivotal intermodal hub in Maine's transportation system. Transportation utility of the Eastern Waterfront will require constant and vigilant protection (Master Plan, p. 21).

The circulation pattern within the 58 Fore Street site is critical to maintaining the functionality of the water's edge. The current circulation pattern does not allow for any obvious vehicular access to the water's edge. The building envelopes do not suggest any circulation pattern. As protection of the utility of the water's edge has been identified as a primary goal, it should be addressed as part of any rezoning.

5. THE "PORTLAND COMPANY ALIGNMENT" NEEDS TO BE CONSISTENT WITH THE ORIGINAL HEIGHT STUDY RECOMMENDATION

Illustration 33 of the Height Study (Exhibit C) shows a "Portland Company Alignment" (a no-build area) that was carefully located to preserve views from the B-6 area into the Portland Company Complex and line up to avoid the existing historic buildings. Building envelopes in the B-6 zone were pulled back to preserve the view into the heart of the historic buildings. However, in the applicant's proposed overlay map (Exhibit D), the no-build area has been moved so that views from the B-6 zone are not preserved. It also cuts across existing buildings.

It is unclear whether shifting this alignment is intentional or an oversight. If it is intentional, the applicant should make it clear that it is asking for an amendment to the height overlay and explain the basis for the change in the alignment. However, as it was carefully located as part of the Height Study design process, it would seem that there is good reason for keeping the original alignment.

6. THE APPLICANT'S POSITION THAT HEIGHTS AT 58 FORE SHOULD BE MEASURED FROM AVERAGE GRADE IS INCORRECT, AND WOULD RESULT IN A DEVELOPMENT WHICH IS OUT OF SCALE WITH THE RESIDENTIAL NEIGHBORHOOD

One of the primary goals of the Eastern Waterfront Height Study was to balance the needs of the study area against the surrounding "impact areas", including the Munjoy Hill residential

neighborhood. As part of that balancing, it identified three "shadow areas" where development could be located that would not negatively impact the adjacent areas. The upper Fore Street shadow area was identified to justify a height of 65 feet, due to the large change in grade.

Obviously, the large change in grade would not be cited as a reason to allow that extra height if it was anticipated that the extra height would be located at the top of the slope, as is contended should be allowed by the applicant. As is clear in the Building Height Study, it was intended that the resulting extra-tall structure would be located on the filled land portion of the site.

The November 2004 graphic, prepared by the height consultant after the adoption of the Building Height Study as part of the Master Plan (Exhibit E), includes as General Note 2:

> The height of buildings and tower masses east of Mountfort Street or its extension shall be measured from 2' above the flood plain elevation for the site based on the National Geodetic Vertical Datum. Where allowed, building mass above 4 floors shall not be wider than 70 feet parallel with the waterfront nor longer than 140 feet perpendicular with the waterfront. [Emphasis added]

This graphic applies to the entire study area, including the Portland Company site.

This method of calculating height was carried over one month later into the December 2004 Council-adopted B-6 Building Height Overlay & Building Envelopes, which states in Note 4:

> For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade (Exhibit B). [Emphasis added]

Thus, not only does it make sense for heights for the entire area east of Mountfort Street extension to be measured from flood plain based upon the substance of the height study, but it is also consistent with what the City actually enacted in the B-6 zone.

CONCLUSION: EXTENSIVE MODIFICATIONS TO B-6 OR OTHER ALTERNATIVES

The B-6 zone is not an appropriate zone to import to the heart of residential Munjoy Hill unless it is very significantly modified to keep the impact and uses down on the filled land. Moreover, the urban form the B-6 tries to create is incompatible with the existing historic structures and protection of the water's edge for the working waterfront.

If the City is still considering importing the B-6 zone to 58 Fore Street, the zoning text for the B-6 would require multiple modifications, including, but not limited to:

(1) there should be a very substantial mandatory minimum setback from Fore Street (greater than 150 feet) for all new construction which would override the otherwise required build-to line and keep commercial uses from being developed on the southern side of Fore Street;

(2) the building height overlay should specify, as it does for the block of B-6 adjacent to 58 Fore Street, that "the heights shall be measured from feet above flood plain, not from average grade";

(3) the minimum height requirement of 3 stories should be deleted for this portion of the B-6 zone as being inconsistent with the historic buildings; and

(4) the circulation pattern established as part of the height overlay and the dimensional requirements in the B-6 text, particularly the built-to lines, should be re-examined and modified as necessary to respond to the Master Plan goals of adaptive reuse of historic structures, protection of the utility of the water's edge for water-dependent uses, and preservation of public visual access to the water.

Much additional study is required to determine what pattern of development is appropriate for this site and how successfully the form-based code developed for the three blocks in the "Ultimate Build-Out Scenario" translates to an entirely different location.

In lieu of essentially rewriting the B-6 zone text to make numerous exceptions for 58 Fore Street, it would be better to leave the B-6 text alone and not expand its scope. That would leave the applicant with two options: applying for some form of contract zone under the existing WSUZ, or proposing text amendments to the WSUZ.

The WSUZ as written anticipates that any new mixed use development over 5,000 square feet will be reviewed as a contract zone, using the standards contained in the existing WSUZ text. In the past, the City has required very detailed plans to accompany any conditional rezoning. However, there is nothing in the enabling legislation or in the City's own ordinance pertaining to contract zones that requires that level of detail.

The applicant has made it clear that it does not want to invest in developing plans to the level of detail previously required by the City in order to pursue a contract zone. If the City finds that reasoning compelling, the applicant and the City should explore whether there is a more conceptual way to approve a conditional rezoning that clarifies, in general terms, what each will get in exchange for agreeing to a conditional rezoning, without requiring a site plan level of detail. Perhaps conditions more in the nature of performance standards would provide a way for the City to give the applicant the certainty it says it needs to proceed while still enacting a conditional rezoning that will run with the land to any new owner.

In the alternative, now that the Farley-Marino site has been rezoned to B-6, 58 Fore Street is the only property remaining in the WSUZ. That fact offers the opportunity for carefully crafted amendments to the text of the WSUZ which are designed to allow a thoughtful version of the proposed development. It would obviate the need to comply with the precedent set by the City for conditional rezonings.

The applicant would have to reveal enough of its concepts and plans to allow discussion of text amendments. The amendments would likely identify sub-areas of the site for different treatment, such as permitting a certain range of uses only on the filled land. Similarly it could allow for new construction in locations and meeting dimensional requirements that are not incompatible with the existing historic structures. It could be in the nature of form based code, but designed for this particular location.

There is no reason to make tortured amendments to the B-6 or have portions of the B-6 apply only to the 58 Fore Street site when, due to the geographic scope of the existing WSUZ, the City can amend that zoning text directly to allow the development it wants to permit.

The applicant bought the property with the WSUZ in place. The burden is on the applicant to show that it will be in the best interest of the City to modify the zoning requirements. The Master Plan does lend support for upland mixed uses, provided they are balanced with protecting the water's edge for marine uses. But moving the B-6 zone over to encompass 58 Fore Street is like trying to jam a square peg in a round hole. As there are at least two viable better alternatives, I urge you to recommend that request for rezoning to B-6 not be approved.

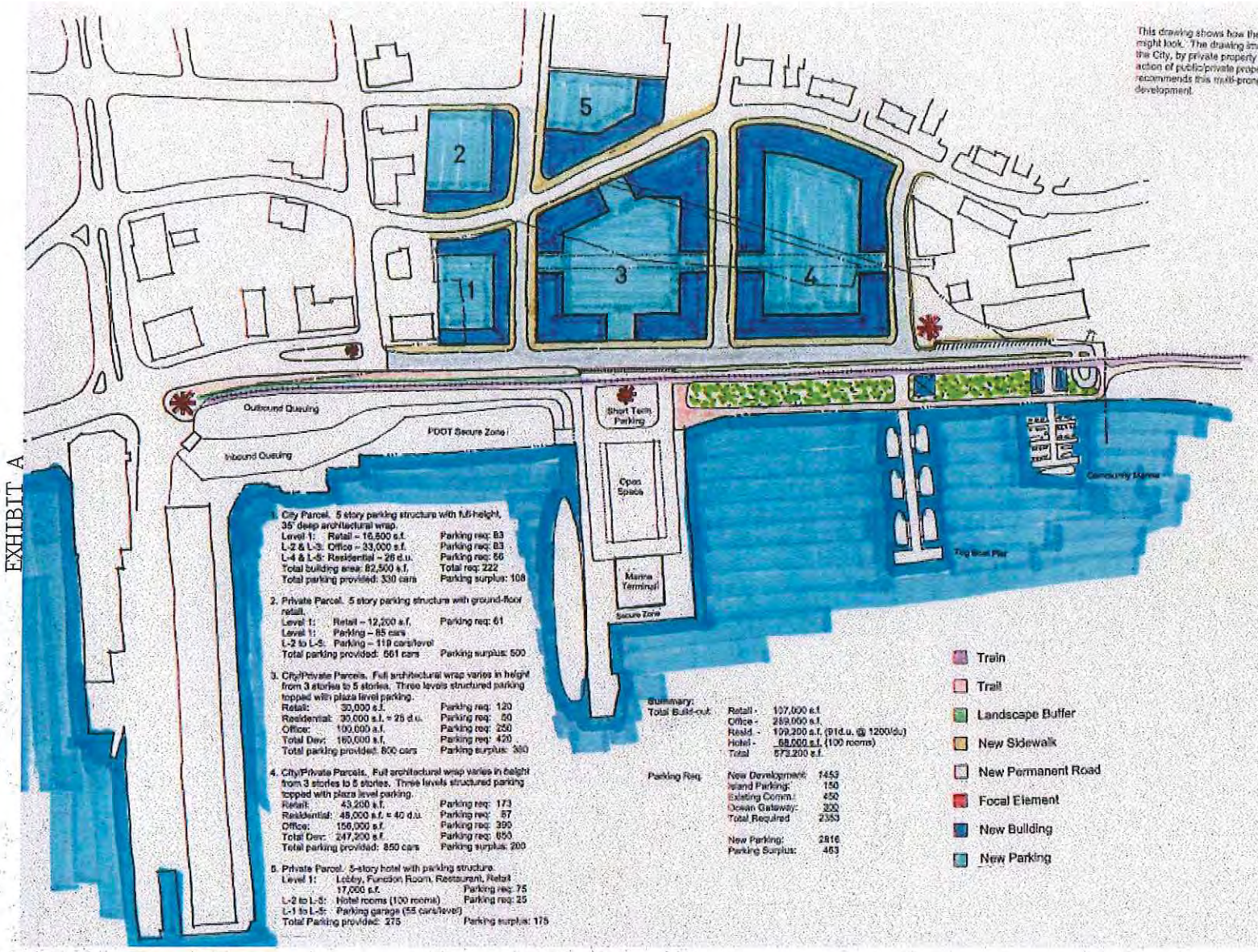
Very truly yours,

Barbara A. Vestal

BAV/om
Enclosures
cc: Christine Grimando

EXHIBIT A

This drawing shows how the ultimate build-out of the district might look. The drawing imagines development initiated by the City, by private property owners, and by cooperative action of public/private property owners. The Committee recommends this multi-pronged and integrated approach to development.



1. City Parcel. 5 story parking structure with full height, 35' deep architectural wrap.
   Level 1: Retail – 16,500 s.f. Parking req: 83
   L-2 & L-3: Office – 33,000 s.f. Parking req: 83
   L-4 & L-5: Residential – 26 d.u. Parking req: 56
   Total building area: 82,500 s.f. Total req: 222
   Total parking provided: 330 cars Parking surplus: 108

2. Private Parcel. 5 story parking structure with ground-floor retail.
   Level 1: Retail – 12,200 s.f. Parking req: 61
   Level 1: Parking – 85 cars
   L-2 to L-5: Parking – 119 cars/level
   Total parking provided: 561 cars Parking surplus: 500

3. City/Private Parcels. Full architectural wrap varies in height from 3 stories to 5 stories. Three levels structured parking topped with plaza level parking.
   Retail: 30,000 s.f. Parking req: 120
   Residential: 30,000 s.f. = 25 d.u. Parking req: 50
   Office: 100,000 s.f. Parking req: 250
   Total Dev: 160,000 s.f. Parking req: 420
   Total parking provided: 800 cars Parking surplus: 380

4. City/Private Parcels. Full architectural wrap varies in height from 3 stories to 5 stories. Three levels structured parking topped with plaza level parking.
   Retail: 43,200 s.f. Parking req: 173
   Residential: 48,000 s.f. = 40 d.u. Parking req: 87
   Office: 156,000 s.f. Parking req: 390
   Total Dev: 247,200 s.f. Parking req: 650
   Total parking provided: 850 cars Parking surplus: 200

5. Private Parcel. 5-story hotel with parking structure.
   Level 1: Lobby, Function Room, Restaurant, Retail 17,000 s.f. Parking req: 75
   L-2 to L-5: Hotel rooms (100 rooms) Parking req: 25
   L-1 to L-5: Parking garage (55 cars/level)
   Total Parking provided: 275 Parking surplus: 175

Summary:
Total Build-out:
Retail - 107,000 s.f.
Office - 289,000 s.f.
Resid. - 109,200 s.f. (91d.u. @ 1200/du)
Hotel - 68,000 s.f. (100 rooms)
Total 573,200 s.f.

Parking Req.
New Development: 1453
Island Parking: 150
Existing Comm.: 450
Ocean Gateway: 300
Total Required 2353

New Parking: 2816
Parking Surplus: 463

- Train
- Trail
- Landscape Buffer
- New Sidewalk
- New Permanent Road
- Focal Element
- New Building
- New Parking

Portland Planning Office
Spring 2002

Ultimate Build-out Scheme
Joint Development of City/Private Parcels

Waterfront Development and Master Planning Committee

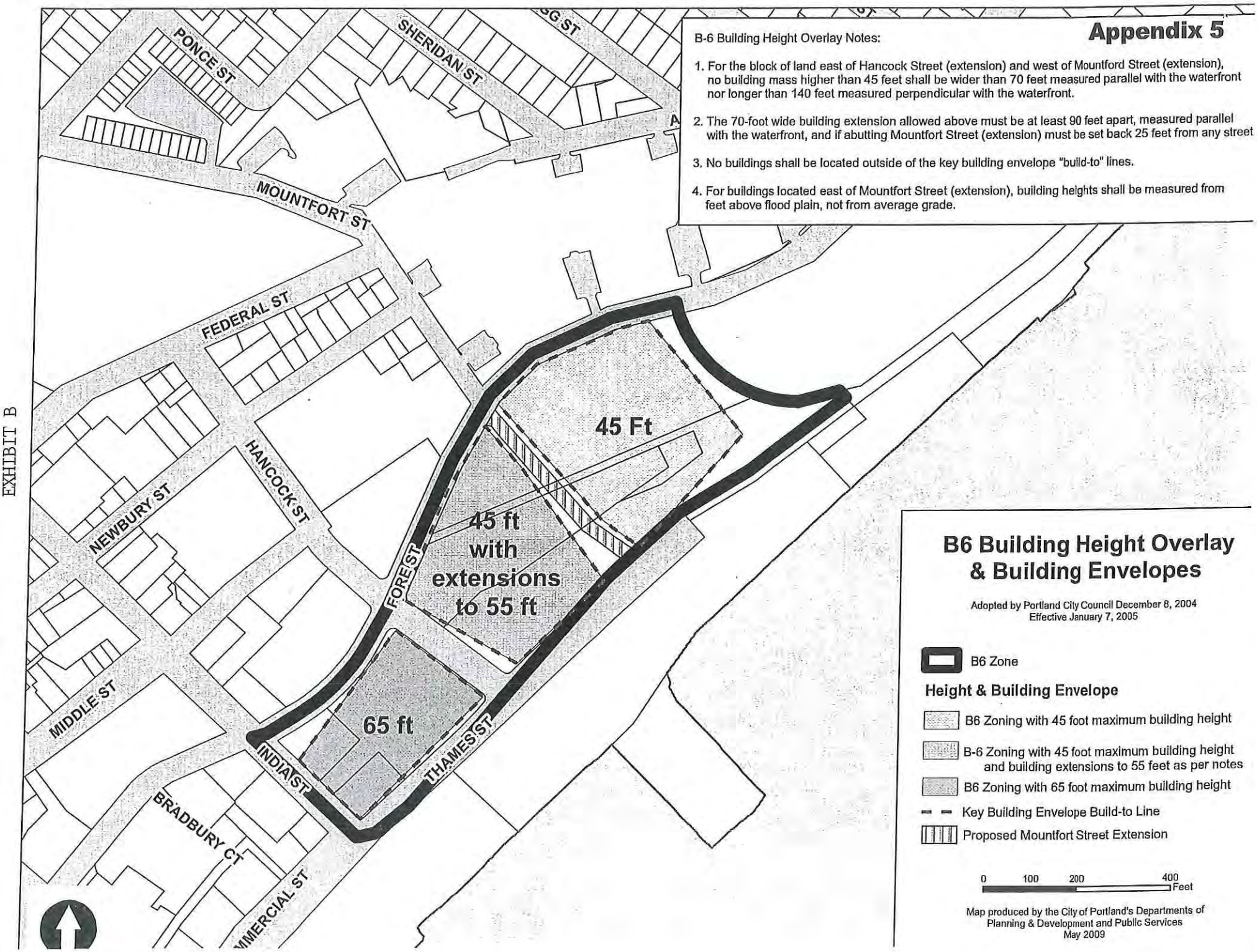
3

EXHIBIT B

Appendix 5

B-6 Building Height Overlay Notes:

1. For the block of land east of Hancock Street (extension) and west of Mountford Street (extension), no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront.
2. The 70-foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street
3. No buildings shall be located outside of the key building envelope "build-to" lines.
4. For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade.



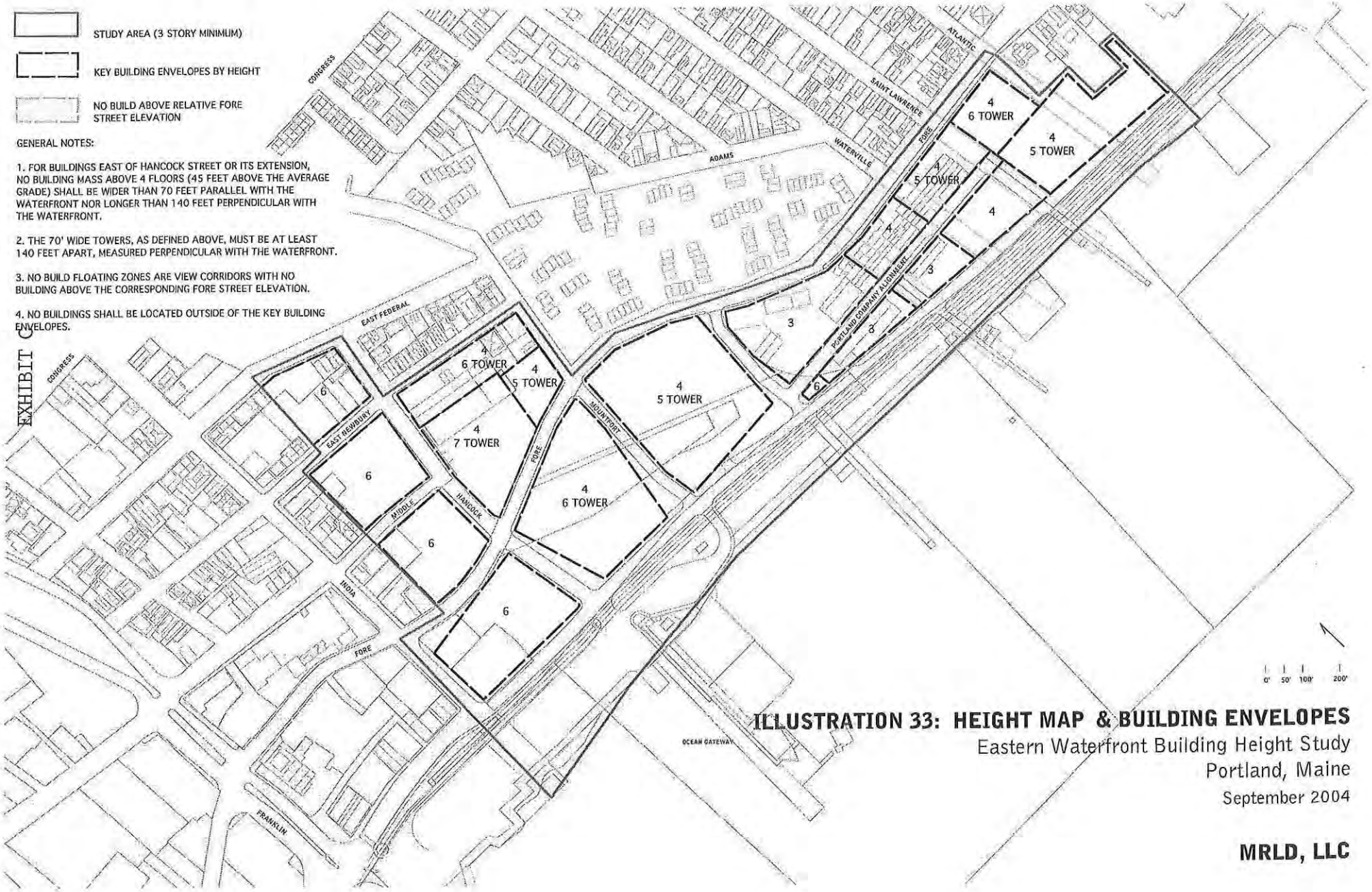


ILLUSTRATION 33: HEIGHT MAP & BUILDING ENVELOPES

Eastern Waterfront Building Height Study

Portland, Maine

September 2004

MRLD, LLC

EXHIBIT D

1

- Maximum Building Height Above Average Grade: **35'**
- Average Fore Street Elevation: **33'**
- Approximate Average Grade of Building Envelope: **24'**
- Average Height above Fore Street: **26'**
- Max Height above Fore Street: **29'**

2

- Maximum Building Height Above Average Grade: **45'**
- Average Fore Street Elevation: **45'**
- Approximate Average Grade of Building Envelope: **30'**
- Average Height above Fore Street: **30'**
- Max Height above Fore Street: **34'**

3

- Maximum Building Height Above Average Grade: **45' - 55'**
- Average Fore Street Elevation: **61'**
- Approximate Average Grade of Building Envelope: **38'**
- Average Height above Fore Street: **27'**
- Max Height above Fore Street: **35'**

4

- Maximum Building Height Above Average Grade: **45' - 65'**
- Average Fore Street Elevation: **80'**
- Approximate Average Grade of Building Envelope: **50'**
- Average Height above Fore Street: **25'**
- Max Height above Fore Street: **35'**

Please Note:

Average Grade was approximated for each location by averaging the 4 corners of each B6 Building Height Overlay building envelope. City Planning process will require a detailed calculation of average grade based on future proposed building footprints

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. FOR BUILDINGS EAST OF HANCOCK STREET OR ITS EXTENSION, BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE HEIGHT OF BUILDINGS AND TOWER MASSES EAST OF MOUNTFORT STREET OR ITS EXTENSION SHALL BE MEASURED FROM 2' ABOVE THE FLOOD PLAIN ELEVATION FOR THE SITE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM. WHERE ALLOWED, BUILDING MASS ABOVE 4 FLOORS SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

3. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.

4. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.

5. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

EXHIBIT E

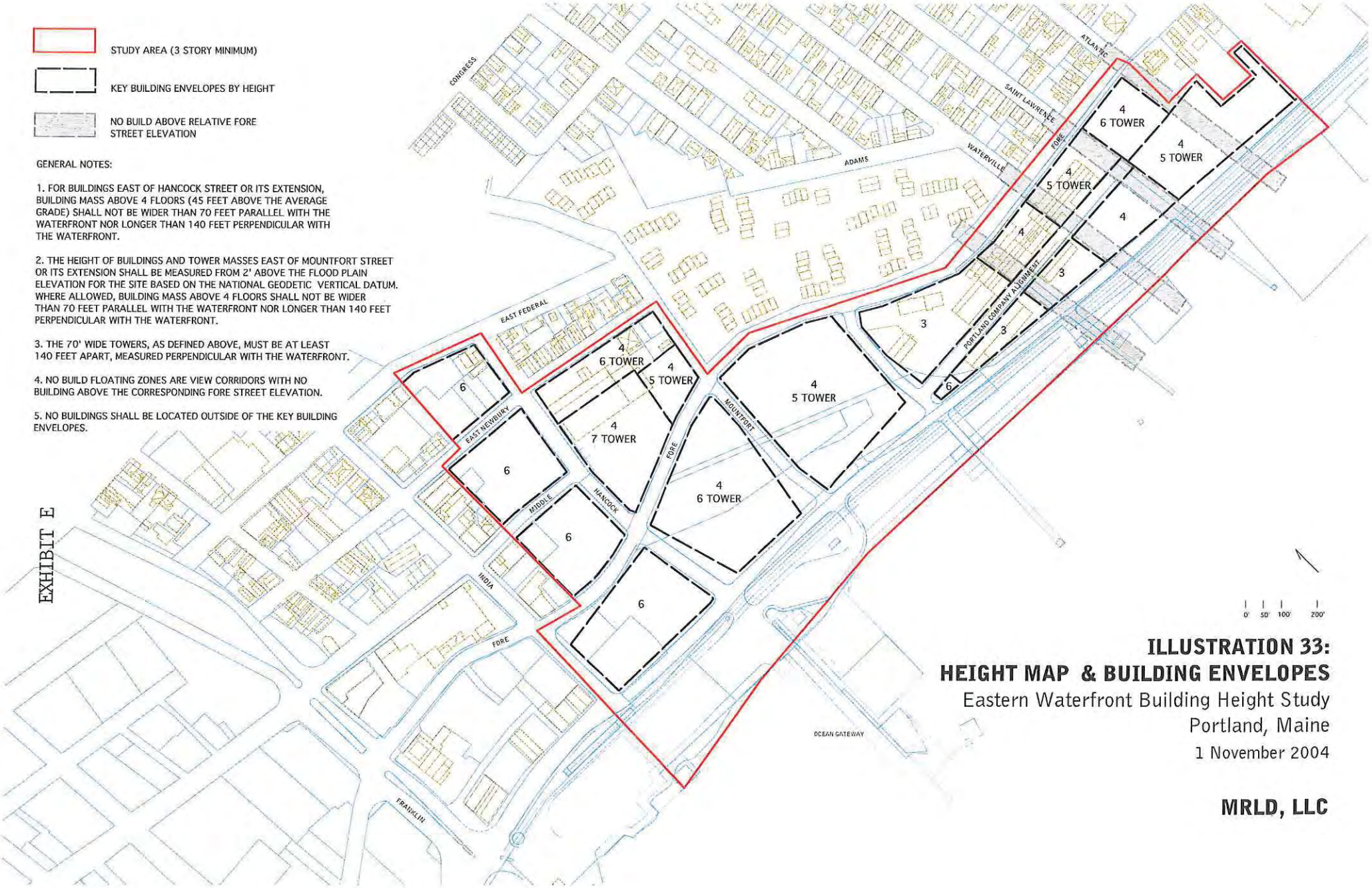


ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES
Eastern Waterfront Building Height Study
Portland, Maine
1 November 2004

MRLD, LLC

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

FORE STREET & MUNJOY SOUTH
HEIGHTS ABOVE AVERAGE GRADE

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

FORE STREET & MUNJOY SOUTH
EIGHTS ABOVE FLOOD PLAIN

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

58 FORE STREET
HEIGHTS ABOVE AVERAGE GRADE

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

58 FORE STREET
HEIGHTS ABOVE FLOOD PLAIN

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

FORE STREET & WATERVILLE STREET
HEIGHTS ABOVE AVERAGE GRADE

SOUL OF PORTLAND
SOULOFPORTLAND.ORG

FORE STREET & WATERVILLE STREET
HEIGHTS ABOVE FLOOD PLAIN

February 6, 2015

Chair O'Brien and Members of the Planning Board
% Christine Grimando
Planning Department
City of Portland
389 Congress Street
Portland, Maine 04101

Dear Chair O'Brien and Members of the Planning Board,

My name is Peter Macomber and I live on St Lawrence Street. I'd like to call the Board's attention to a study completed in 1983 by Terrien Architects and Mitchell-Dewan Associates titled "Portland Waterfront: Public Access Design Project". This study is referenced in Volume 2 of the Comprehensive Plan (page N-16) and is thereby incorporated into the Comprehensive Plan.

Among other things, the study identifies significant viewpoints and panoramas in the City. The panoramas from Fore Street above and overlooking the Portland Company complex and into the working harbor are labelled as **major panoramas** (Exhibits A-1 and A-2). The larger the arrow on the map, the more significant the panorama. These major panoramas are classified in the study as having an 'A' view, showing not only background views of the harbor and beyond, but also foreground waterfront activities as well.

The study acknowledges that progress is inevitable: "*conditions and circumstances of private interest and concern will continue to change, as will the scope and application of public policy*". But it also cautions that "*the City must nurture its connection to the sea to bring full advantage to the many public and private users, present and future, that take their livelihood and enjoyment from the waterfront.*"

I mention this study not only because it's part of the City's Comprehensive Plan and helps inform policy decisions, but also because it speaks to us, from 37 years ago, about just how valuable the street-level views of the water have been and continue to be. And it calls upon the City to preserve these views as much as possible in the face of change.

When I walk along Fore Street between Atlantic and Waterville streets, I also take "*enjoyment from the waterfront*." I see daily the panoramas that are highlighted in that study. I find the harbor vista to be as compelling and significant as the authors of that study did 37 years ago. And I think the majority of Munjoy Hill residents and City residents would strongly agree with that. As such, I am very focussed on the building height issues related to the Portland Company development especially if any buildings protrude above Fore Street and degrade the street-level panorama. How building height maximums are calculated will determine whether these panoramas will survive.

But how the height maximums are determined is, at best, bewildering. I find the height calculations as brought forward at Planning Board workshops with regard to the site topology to be vague, confusing and contradictory. And it's not just me. It appears that differing

interpretations of this issue extend to the city staff as well: in a memo to the Board dated October 8, 2014, staff referenced the Eastern Waterfront Building Height Study and wrote *"Given the topography of the site, a measurement from average adjoining grade could result in substantially higher building forms than were predicated for this area, as we read the plan.*" But one month later this policy position is turned on its head. In a memo dated November 12, 2014, staff wrote "*Planning staff does not believe that the floodplain measurement would produce the intended development patterns outlined in the Eastern Waterfront Building Height Study*." This is a breathtaking reversal of position.

It seems to boil down to this: should you measure building heights in this particular site from the floodplain or from average grade? Average grade calculations seem to be used fairly consistently in Portland, although I've found only one reference to average grade in the the Land Use Code: "*Pre-development grade is defined as average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.*" It seems logical, though, and seems like it works quite well, even for a relatively steep site that has a consistent slope.

But does this methodology still work when 5% of a site is at at one elevation and 80% at a much lower elevation with an extremely steep slope comprising about 15% between? Take a close look at the applicant's submittal "height measurement package" of November 7, 2014, page 9, Sections 7-9 (Exhibit B) to see how steeply the slope drops. These sections are between Waterville and St Lawrence streets. Is "average grade" still an appropriate methodology for determining building heights in such extreme topological conditions?

Maybe the best way to see how surprising an outcome can result from such extreme conditions is to look at it from the opposite direction.

Let's take "Section 8" of the applicant's submittal and flip the elevations (Exhibit C). Let's suppose that the site conditions were reversed and 80% of the site is now at an elevation of 61 feet and 5% is now at 14 feet. And let's say that an imaginary developer wanted to have a zone-permitted 45 foot building over that entire block of land.

The "average grade" of this imaginary site is exactly the same as the actual one - 38 feet - that the applicant has calculated. But even though the elevation of 95% of the imaginary site supports a 45' building, the "average grade" formula would prohibit it. Only a 22 foot building would be permitted, or two full stories less than the desired 45 feet. Hmmm. I have a feeling that our imaginary developer would strongly advocate alternative measurement methods for determining building height maximums.

You may find this scenario a little silly and ludicrous, but then the converse must also be silly and ludicrous. And in truth, if 95% of a building envelope supports a given building height, it really should be permitted. Conversely, if 95% of a building envelope does not support a given building height, it should not be permitted.

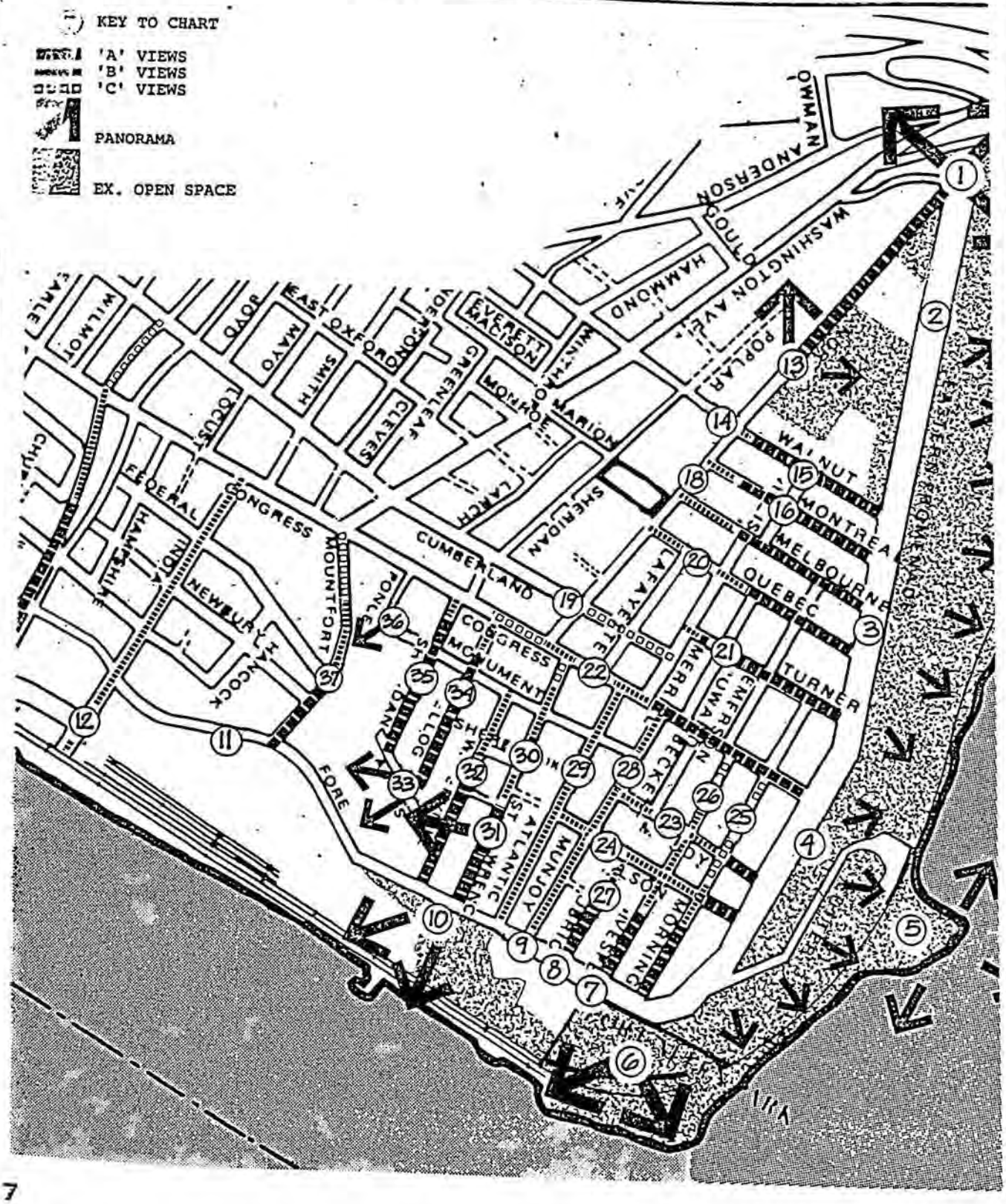
This is a valid observation with respect to the matter before you. **If the preponderance of the elevation of the Portland Company site does not support a given building height, you must look at another way of calculating that building height.**

I urge the Board to consider the elevation of the bulk of the Portland Company site as a basis for calculating heights. That would be the “floodplain” methodology that has been interpreted or advocated by, among others, the Soul of Portland group, by Planning Staff in the memo to the Board dated October 8, 2014, the more recent version of Illustration 33 of the Eastern Waterfront Building Height Study(Exhibit D, Note 2) and even by the City’s own B-6 Building Height Overlay Map (Exhibit E). This approach would bring consistency and clarity to the applicant and to the citizens of Portland as well as helping preserve the treasured street-level panoramas that were celebrated 37 years ago.

Sincerely,

Peter Macomber

VISUAL CORRIDORS
Eastern Prom



Within each of the four subsections the view corridors have been classified as follows, based upon field observations at street level:

'A' VIEWS. Foreground or midground views of Portland's waterfront or the water's edge, plus background views of Casco Bay or South Portland.

'B' VIEWS. Midground or background views of Casco Bay or the Fore River and the opposite shore, with the Portland Waterfront obstructed by grade changes or buildings.

'C' VIEWS. Water is not visible, but the observer has a sense of being near the water.

The map(s) of each section graphically show the extent of each type of view corridor. In addition the location of panorama viewpoints are noted: the larger the arrow the greater the significance of the panorama in terms of angle of view, position of observor, and degree of obstructions. A panorama is generally assumed to be a point or area offering the street level observer the opportunity to view water and waterfront activities in a cone of vision greater than 45°. The visual corridors map also indicates major open spaces that exist along the waterfront.

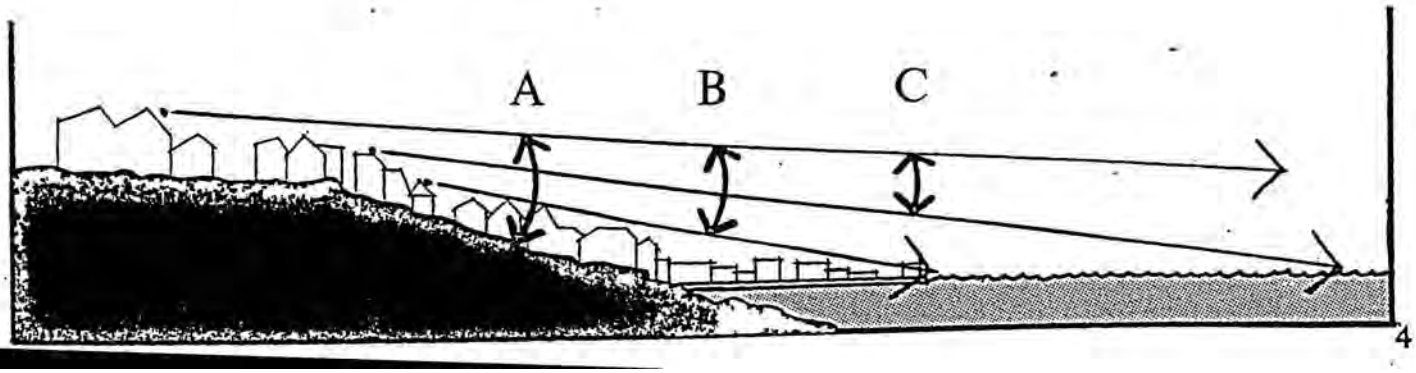
Opposite the visual corridors map is a chart describing characteristics of the visual corridors and viewpoints. In some instances the number on the chart refers to a single point, in others, a street - usually running perpendicular to the waterfront, and in others it represents an entire area Location.

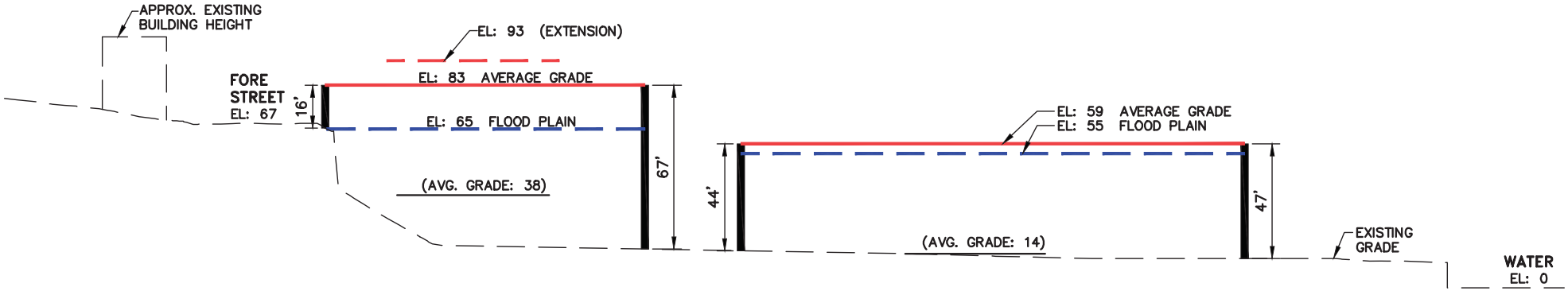
The Position column refers to the observor's position relative to the waterfront (WF): well above it, at the waterfront roofline, or at the water's edge.

Neighborhood land use and Condition observations are the result of site visits by consultant team members and are included for use as a benchmark for continuing assessments.

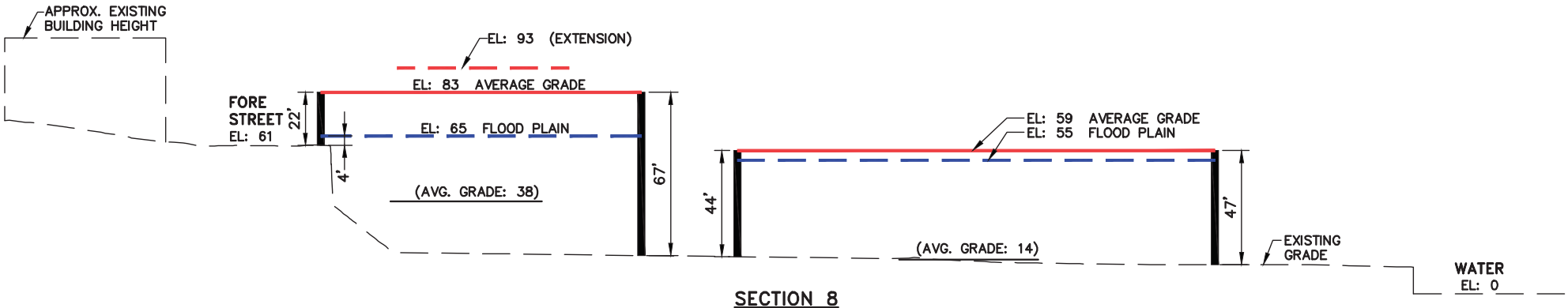
The View Types indicate whether the view at the designated position is a major panorama (solid block), minor panorama (cross-hatched block), a corridor terminus, or a minor interest point (occupying a relatively small percentage of the cone of vision at ground level).

Where 'A' VIEWS are found, the 'A' View Foreground (waterfront activity) is noted. Similarly, the 'B' View Background records waterfront activities or land uses on the opposite shore.

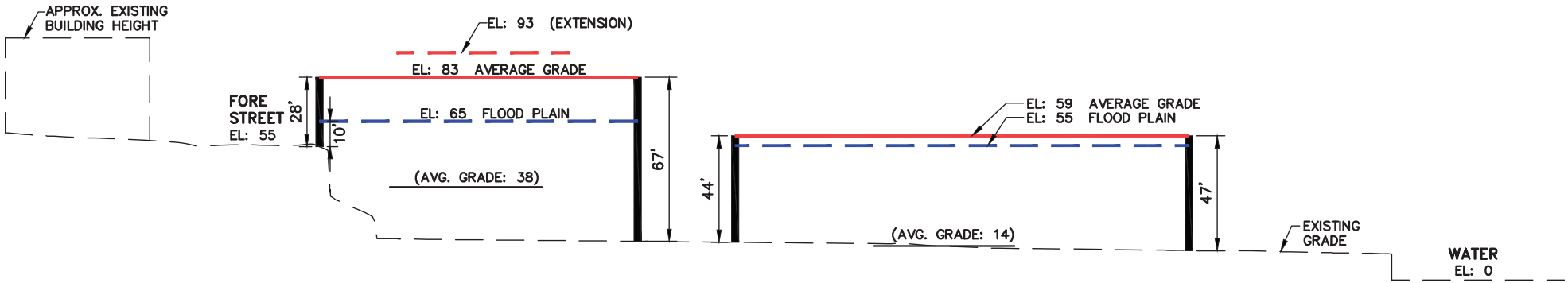




SECTION 9



SECTION 8



SECTION 7

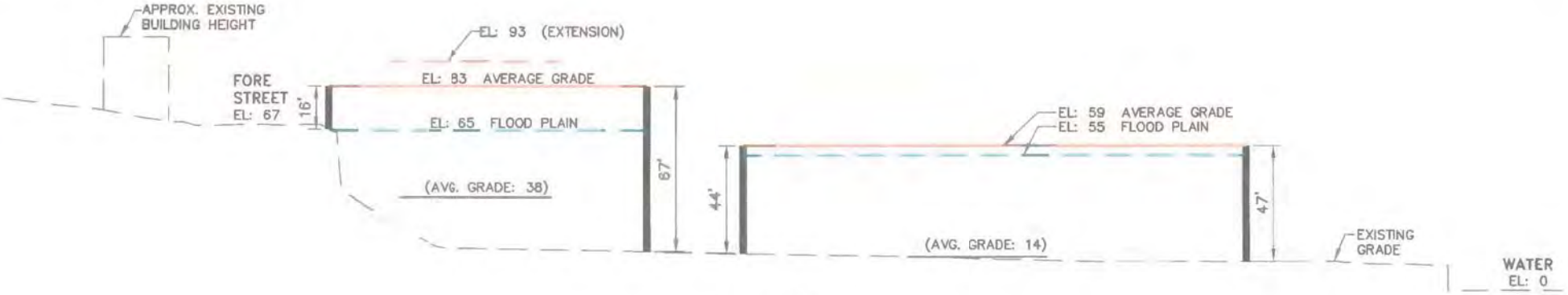
OPB2 LLC
EASTERN WATERFRONT DEVELOPMENT PORTLAND, MAINE

WOODARD & CURRAN
41 Hutchins Drive | Portland, Maine 04102
800.426.4262 | www.woodardcurran.com
COMMITMENT & INTEGRITY DRIVE RESULTS

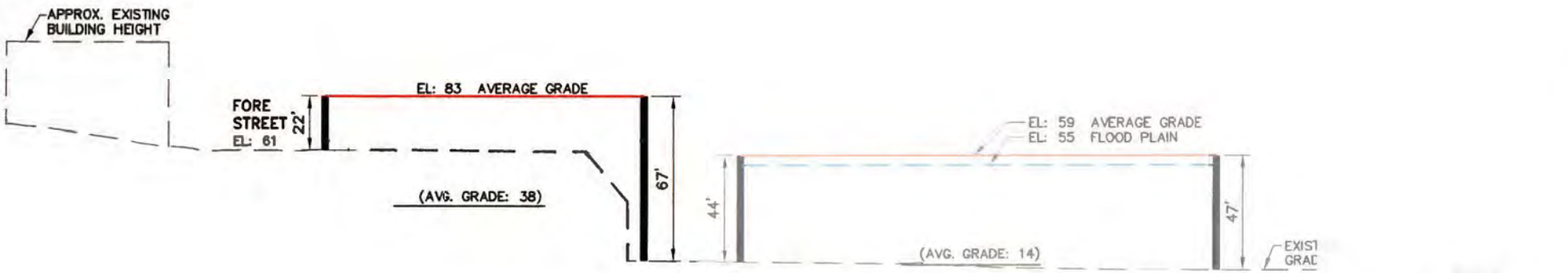
LEGEND

- MEASURED FROM AVERAGE GRADE
- MEASURED FROM FLOOD PLAIN (EL. 10)
- EXISTING GRADE

NOTE: SECTIONS DO NOT REPRESENT ACTUAL BUILDING STRUCTURES.



SECTION 9



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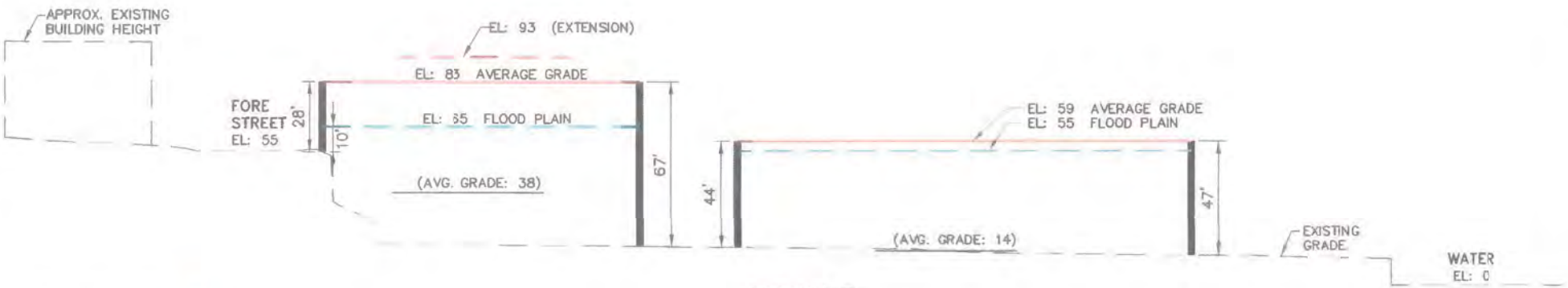

SECTION 7

CPB2

WOODARD & CURRAN

LEGEND

MEASURED FROM AVERAGE GRADE

MEASURED FROM FLOOD PLAIN (EL. 10)

EXISTING GRADE

NOTE: SECTIONS DO NOT REPRESENT ACTUAL BUILDING STRUCTURES.

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

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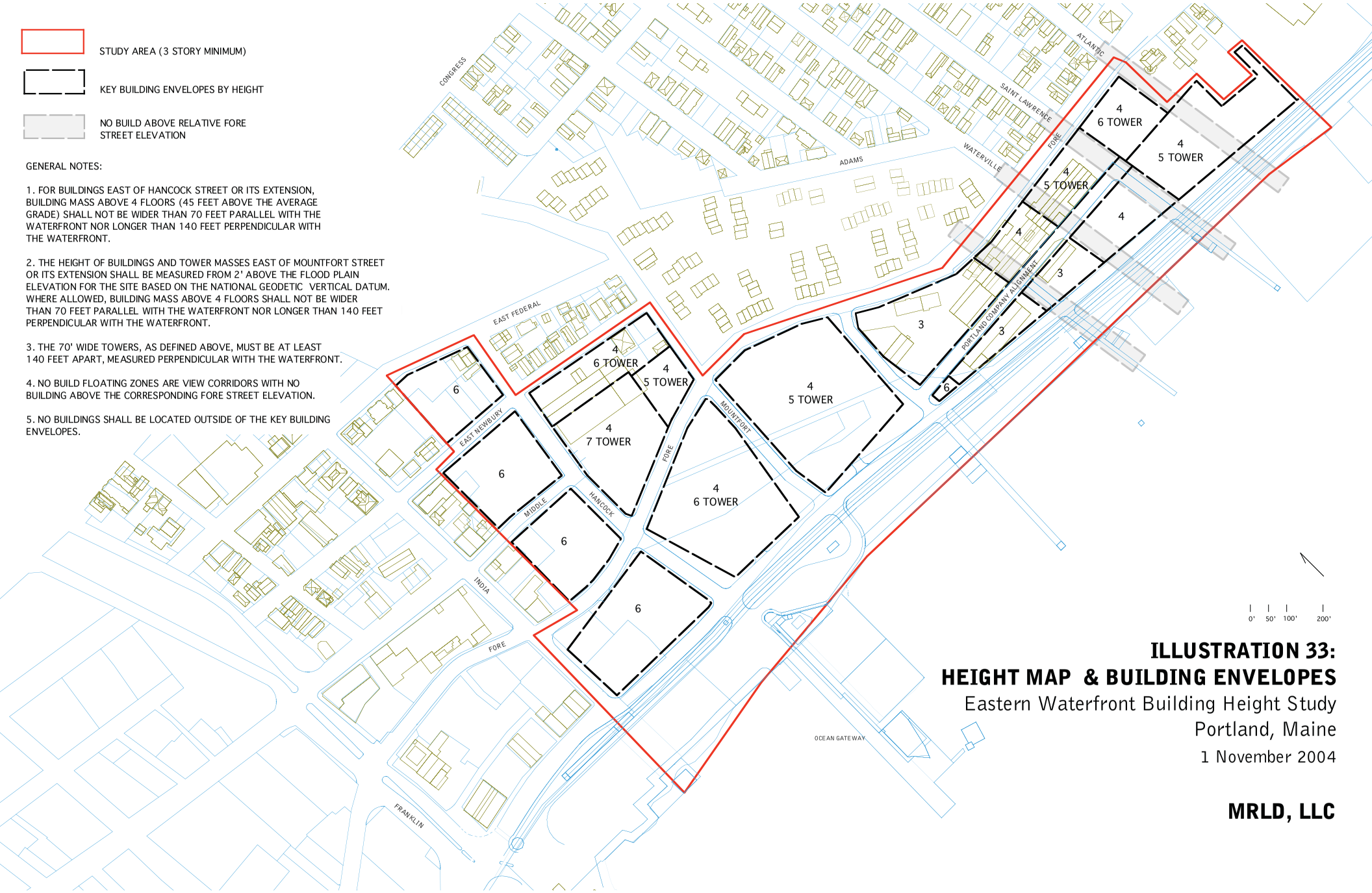


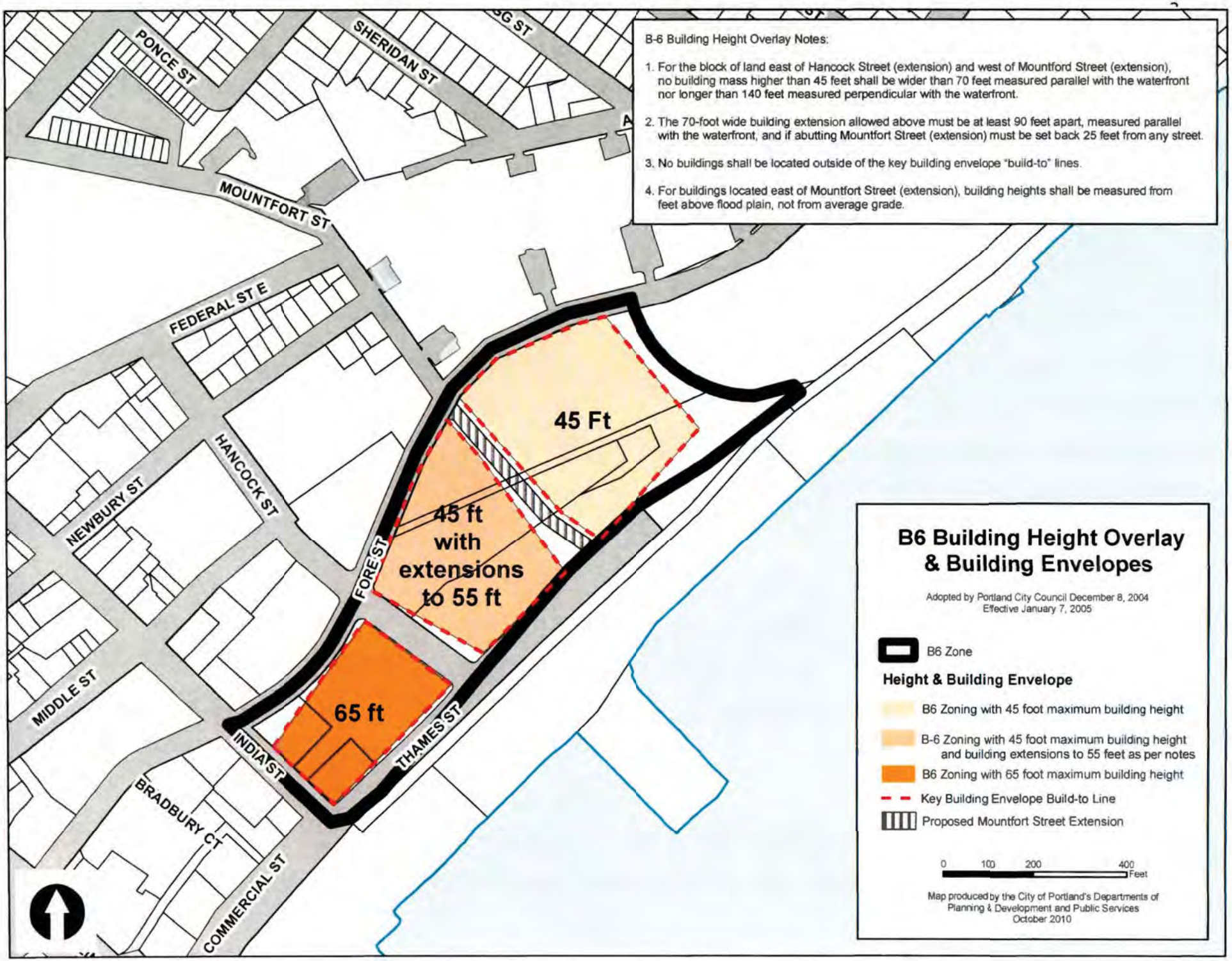
ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES

Eastern Waterfront Building Height Study

Portland, Maine

1 November 2004

MRLD, LLC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PONCE ST
SHERIDAN ST
MOUNTFORT ST
FEDERAL ST E
HANCOCK ST
NEWBURY ST
MIDDLE ST
FORE ST
INDIA ST
THAMES ST
BRADBURY CT
COMMERCIAL ST
45 Ft
45 ft with extensions to 55 ft
65 ft
B6 Building Height Overlay & Building Envelopes
Adopted by Portland City Council December 8, 2004
Effective January 7, 2005
B6 Zone
Height & Building Envelope
B6 Zoning with 45 foot maximum building height
B-6 Zoning with 45 foot maximum building height and building extensions to 55 feet as per notes
B6 Zoning with 65 foot maximum building height
Key Building Envelope Build-to Line
Proposed Mountfort Street Extension
0 100 200 400 Feet
Map produced by the City of Portland's Departments of Planning & Development and Public Services
October 2010

Lannie Dobson - Re: Fwd: The Comprehensive Plan on public views of the harbor and building heights

From: Lannie Dobson
To: Christine Grimando
Subject: Re: Fwd: The Comprehensive Plan on public views of the harbor and building heights

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608
>>> Brian Burwell <burwell@maine.edu> 2/6/2015 9:50 AM >>>
Dear Chair O'Brien and Planning Board Members,

Re: Development of the Portland Company property

The City's Comprehensive Plan is a rigorous document incorporating professional expertise and resident inputs. And it is an asset belonging to all of its citizens.

Community forums held in 2001 were asked "What makes Portland distinctive?" Portland's natural setting was the number one response. (Comprehensive Plan, Vol 2, Natural Environment Inventory and Analysis, N-1). Recognizing the vital contributions of the ocean to its unique history and current character, the City has focused much planning effort on optimizing its relationship to the waterfront.

THE PUBLIC ACCESS DESIGN PROJECT
In 1983 the City engaged Terrien Architects and Mitchell-Dewan Assoc. to provide guidelines for "public access" to the waterfront for the entire peninsula. The Public Access Design Project identified "major viewing corridors and viewing points, (and) suggested measures to preserve and enhance these resources.." On Munjoy Hill, as well as other high points in the City, public access is defined in terms of water and/or harbor views obtained at street level. The Public Access Design Project classifies a major panorama "to be a point or area offering the street level observer the opportunity to view water and waterfront activities in a cone of vision greater than 45 degrees."

--" Panorama viewpoints are noted with an arrow, the larger the arrow, the
greater the significance of the panorama in terms of angle of view, position of observer,
and degree of obstructions. "

Comprehensive Plan, Volume 2, N-16.

As seen above, in addition to the Ft. Allen Park area, the only "major panoramic views" of the ocean and/or harbor are along Fore Street in the Waterville and Saint Lawrence Street blocks, and along Waterville Street; with lesser panoramas along Adams Street and at the corner of Ponce and Monument Streets. The streets sloping down to Adams and Fore are replete with "view corridors". This study assessed these panoramic and corridor views as "increasingly important .... for the well being of the entire City...", and having a goal "to protect and enhance them." (The entire study relating to the East End is available at dropbox: https://www.dropbox.com/s/c9bx3a1usc053k0/Portland%20Waterfront%20Public%20Access%20Design%20Project.pdf?dl=0)

THE EASTERN WATERFRONT BUILDING HEIGHT STUDY

The Building Height Study was adopted into the Comprehensive Plan in December of 2004 after four years of work. It anticipated development of the Portland Company property emphasizing how the unusual typography of the site, with Fore Street rising to 80 feet over sea level, allows for the preservation of harbor views for pedestrians on Fore Street while enabling four to six story buildings nestled into the hillside. Guiding principles for the Building Height Study include:

* " Protect, enhance and create views from various vantage points surrounding the study area and within the study area"; and
* "Place taller and larger buildings in the "shadow" of existing grade changes ....."

The report was finalized after a lively meeting at Adams School attended by over 100 neighborhood residents who in large majority criticized the draft building heights as too aggressive. The study author notes that the "final illustrations provided herein, including section drawings .....reflect public input generated at the neighborhood meeting." (Appendix D-5) Section E (attached below) shows existing and proposed building heights relative to Fore Street for the Portland Company property. Public views along Fore Street are minimally affected, while five and six story buildings (including the towers) are largely within the shadow of existing grade changes.

THESE PANORAMIC HARBOR VIEWS CONTRIBUTE TO THE PEDESTRIAN EXPERIENCE OF LARGE NUMBERS OF THE PUBLIC

Panoramic views of the harbor enhance the experience of living on the Hill and help foster a balance in the Hill's natural and increasingly dense built environment.

Neighborhood residents, whose numbers are increasing from new infill developments and building enlargements, walk the area and to and from downtown.
Hundreds of downtown workers on lunch breaks, cruise line passengers and other visitors stroll the Fore Street sidewalks during good weather in order to experience the harbor views unique to Portland.
According to the Maine Department of Transportation 4,573 vehicles traveled on upper Fore Street on October 21, 2013.
Austin, Seattle and other cities protect unique natural views and respect typography to maintain and enhance distinctive character

B-6 REQUIREMENTS FOR A BUILT STREETSCAPE ON THE SOUTH SIDE OF FORE STREET ARE ANTITHETICAL TO "WHAT MAKES PORTLAND DISTINCTIVE".
B-6 is designed to apply to a commercial setting, with no setbacks in order to create a built streetscape. Application of B-6 standards to this setting would disrespect the unique, wonderful panoramas currently enjoyed by Portland's residents and visitors. It would be a be a major, non-reversable mistake.

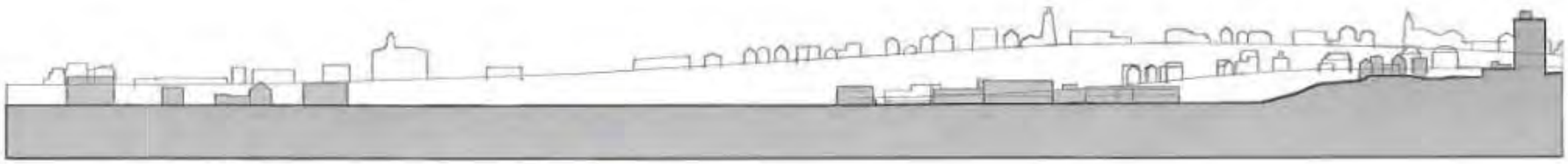
Question: If we ignore the wisdom and clear intent of these Comprehensive Plan documents, why would the City and its residents bother with the strenuous efforts to develop such plans?

Sincerely,

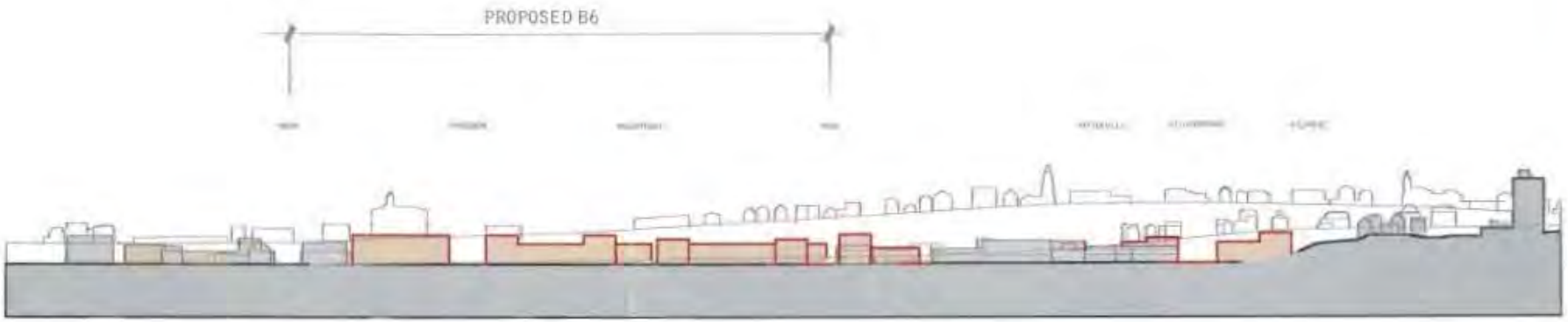
Brian Burwell
31 Fore Street

portlandmaine.gov

www.portlandmaine.gov/DocumentCenter/Home/View/3378



SECTION E EXISTING - EAST / WEST (with Congress Street and Fore Street Elevations)



SECTION E PROPOSED - EAST / WEST (with Congress Street and Fore Street Elevations)

EASTERN WATERFRONT HEIGHT STUDY

CHESTER & VESTAL

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107 Congress Street, Portland, Maine 04101
Telephone (207) 772-7426 Fax (207) 761-5822

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February 5, 2015

Chair O'Brien and Members of the Planning Board
c/o Christine Grimando
Planning Department
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Portland Company Complex

Dear Chair O'Brien and Members of the Planning Board,

The Portland Company Complex, a very visible 10 acre gateway site, is critical to the identity of Portland. As the applicant needs a zone change of some variety in order to proceed with uses that are not currently allowed, the Board has the opportunity to craft zoning that is fully reflective of the best use of that site. It is important for the City to get its zoning right. I firmly believe that the B-6 zone is <u>not</u> the answer for the reasons outlined below.

1. THE B-6 ZONE WAS NOT DRAFTED TO APPLY TO THE PORTLAND COMPANY SITE.

During the course of the Eastern Waterfront master planning process, an "**Ultimate Build-out Scheme**" scenario was developed by the Planning Office in the spring of 2002. It included City-owned land, the parcel referred to as the Farley-Marino property and some land belonging to Shipyard Brewing. **It did <u>not</u> include the Portland Company Complex** because its owner was not interested in redeveloping his property at that time. That illustration is attached as Exhibit A.

The Eastern Waterfront Master Plan generally recommended mixed use development for upland areas of the Eastern Waterfront, including the Portland Company Complex. But it did <u>not</u> recommend that the Portland Company Complex be rezoned from WSUZ to B-6. Mixed use development on the Portland Company Complex can be accommodated within the existing WSUZ regulation.

Between the spring of 2002 and its adoption in December 2004, the Planning Board developed and forwarded to the City Council the proposed B-6 Eastern Waterfront Mixed Use Zone. It applied only to the properties east of India Street, north of Commercial Street and it extension, west of the Portland Company complex, and south of Fore Street. It did not include the Portland

Company Complex (See Exhibit B). This area was denoted the "Central Redevelopment District." In some documents the Shipyard Property, which was eventually developed as the Gateway Parking Garage and the Residence Inn, was included in the discussion as well. However, the B-6 zoning which was enacted in December 2004 applies only to the "Central Redevelopment Area," without the Shipyard properties.

2. THE B-6 ZONE MANDATES A VERY SPECIFIC FORM OF DEVELOPMENT WHICH IS A POOR FIT FOR THE PORTLAND COMPANY SITE

The B-6 zone is a variation of a form-based code. The attached Ultimate Build-out Scheme (Exhibit A) set the stage for a form of urban development that is woven throughout the zoning language. It is very specific to the three blocks that were rezoned to B-6.

The Ultimate Build-out is premised upon a re-connected grid of public streets and public sidewalks (Hancock St., Mountfort St. and an unnamed/unbuilt street adjacent to 58 Fore St.) The parking is directed to the interior of each block (light blue), with structures accommodating mixed uses wrapped around the parking (dark blue). There are virtually no provisions for the consideration of existing buildings, because the area of the Ultimate Build-out is composed of vacant land, surface parking lots, and metal industrial structures which will be razed in the event of development. The B-6 ordinance incorporates unique dimensional requirements to produce this Ultimate Build-out -- e.g., "built to lines," 10 foot maximum setbacks from "build to lines," minimum street wall lengths, and minimum heights -- and requires for ground floor retail space to create new, very dense urban space.

Poor Fit: Already Existing Structures: In contrast to the 3 blocks of B-6, the Portland Company Complex is already significantly occupied by historic buildings. The majority of these buildings are of the character which should be adaptively reused, as stated in the Master Plan and the Design Guidelines. Contrary to assuming a virtually blank slate, as the B-6 does, the Design Guidelines state:

> Historically and architecturally significant structures and sites should be inventoried and protected from demolition and carefully rehabilitated in a way that is consistent with their original architectural intent. The challenge and opportunity is to adaptively reuse significant structures while retaining their historic character (Design Guidelines, p.7).

The form-based code approach of the B-6 zone is inconsistent with the goals for the important buildings already occupying a portion of this site.

Poor Fit: No Street Grid: There is no street grid proposed for 58 Fore which will produce the basic building blocks of the B-6 zone – blocks surrounded on four sides by pubic streets. The only streets proposed are the existing Fore Street (which is well above the grade of most of the

existing buildings and the "Portland Company Alignment" where no buildings will be allowed. Presumably the no build area will serve as a street, but it is not clear whether it will be public. The B-6 zone relies upon public streets and public sidewalks on both sides of the streets to make the land publicly accessible, thus securing a benefit for the general public. There is no such similar street grid proposed on the Portland Company site.

The rest of the circulation pattern on the Portland Company site has yet to be determined, and may consist of private lanes. This is the opposite of the B-6 zone which relies upon a grid of public streets and sidewalks to assure public access.

Poor Fit: Build-to Lines Nonsensical: In the existing B-6 zone, the dashed lines are "key building envelopes." The B-6 zone states:

> New structures located in the blocks located south of Fore Street and north of Commercial Street and its extension, shall build to the key building envelops [sic] shown on the *Eastern Waterfront Building Height Overlay Map*. (14-272(c)(3))

These build-to lines are tied to the building envelopes, not to streets. The Overlay Map which the applicant proposed to apply to 58 Fore Street has 9 building envelopes. There are eight "built to" lines that do not abut streets or the edge of the parcel. It is unclear what the zoning intends to accomplish by requiring build-to lines in the eight locations where build-to lines are in the middle of a parcel, not bounded by a street. Similarly the impact of overlaying this grid of build-to lines on top of historic structures is unclear.

Poor Fit: High-Density Urban Pattern of Development: The type of development that would be produced by the B-6 standards is similar to the Ocean Gateway Garage and the Residence Inn. Even beyond the question of whether the provisions are effective to generate ground floor active uses (given that the "retail space" in the Gateway Garage has been vacant since it was constructed), it is important to ask whether this is, in fact, the type of development desired at 58 Fore St. It may make more sense to first settle the issue of whether the 58 Fore Street site, or some portion of it, is going to be designated a local historic district before casting the form of new development in stone as do the very detailed standards in the B-6 zone.

Poor Fit: Brew Pubs, Restaurants, etc. Incompatable with Immediately Adjacent Residential Neighborhood: The B-6 zone was designed to abut other commercial uses. Extending that zone to 58 Fore Street gives no consideration to the established residential neighborhood which, for over 100 years, has overlooked, but not interacted with, the 58 Fore Street property except at its single entrance. The substantial change in grade has acted as a buffer between the industrial use and the residences. The proposed extension of the B-6 to 58 Fore St. completely disregards this traditional buffer.

Except for the Portland Company site itself, both sides of Fore Street in the vicinity of 58 Fore St. are occupied by residential uses, mostly in small scale 1-3 family structures, with the exception of the Portland House. There are no existing non-residential uses except for one small insurance office, which may be a home occupation. The Munjoy Hill neighborhood moving north from Fore Street is of a similar, entirely residential, character.

In contrast, if the entire 58 Fore St. site is rezoned to B-6 as proposed, it would allow a developer to build, as of right, on the south side of Fore Street hotels, retail space, offices, restaurants, brew pubs and any number of other uses facing the residential neighborhood. It would require at least 75% of the street wall of whatever use to be built out to within 10 feet of Fore Street. And, in a provision that is inconsistent with how the maximum height limits should be applied to this site, it would require that uses facing Fore Street not have less than three (3) floors of habitable space above the average adjacent grade. This scale and range of permitted uses is completely out of character and incompatible with the existing, long-standing residential uses.

While these non-residential uses might belong in the area where the existing B-6 is located and on the filled land portion of 58 Fore Street, they are completely inappropriate on the upper portion of Fore Street. A rezoning to allow the incursion of this type of commercial use into a residential area that has no such similar uses would be unprecedented.

3. THE EXISTING B-6 ZONE REFLECTS CAREFUL PLANNING OF PUBLIC VISTAS WHICH HAS NOT YET BEEN UNDERTAKEN IN RELATION TO THE PORTLAND COMPANY SITE.

The B-6 Building Height Overlay & Building Envelopes evidences a level of planning to preserve public views and vistas from public streets that has not yet taken place on the 58 Fore Street site. In the overlay, the building envelopes are pulled back from street lines and the street space is splayed out to enhance public views. If serious consideration is being given to a B-6 rezoning for 58 Fore Street, that same level of detailed vista analysis needs to be done for that site. The Height Study just assumes that the existing buildings will remain on the site, and that the vistas over the existing buildings will remain. The study did not look at the impacts of new construction on the vistas.

4. THE CIRCULATION PATTERN WITHIN THE PORTLAND COMPANY COMPLEX, PARTICULARLY FOR WATER-DEPENDENT USES, NEEDS TO BE CONSIDERED PRIOR TO ADOPTION OF THE HEIGHT OVERLAY.

The B-6 dimensional requirements appear to allow limited space for driveways between buildings which are arranged around the build-to lines. But it is unclear whether these will be private or public within the 58 Fore Street site. It is also unclear whether they will be sufficient to provide the circulation patterns to allow continued existence of marine uses under the WSUZ.

The preface to the Eastern Waterfront Master Plan states: "the water's edge is the most precious resource we have" (p. 2). Similarly, the Design Guidelines note that the challenge is to preserve the value and marine utility of the water's edge while stimulating appropriate upland development for the benefit of the general population (p. 14). The Community Development Committee of the City Council, prior to recommending approval, added a section to the Master Plan noting the challenges of implementing the Master Plan. It reemphasized the importance of the working waterfront and full utilization of deep-water berthing resources, stating:

> The challenge will be to maximize the benefits of mixed-use non-marine development, while retaining the function and future flexibility of the Eastern Waterfront as a pivotal intermodal hub in Maine's transportation system. Transportation utility of the Eastern Waterfront will require constant and vigilant protection (Master Plan, p. 21).

The circulation pattern within the 58 Fore Street site is critical to maintaining the functionality of the water's edge. The current circulation pattern does not allow for any obvious vehicular access to the water's edge. The building envelopes do not suggest any circulation pattern. As protection of the utility of the water's edge has been identified as a primary goal, it should be addressed as part of any rezoning.

5. THE "PORTLAND COMPANY ALIGNMENT" NEEDS TO BE CONSISTENT WITH THE ORIGINAL HEIGHT STUDY RECOMMENDATION

Illustration 33 of the Height Study (Exhibit C) shows a "Portland Company Alignment" (a no-build area) that was carefully located to preserve views from the B-6 area into the Portland Company Complex and line up to avoid the existing historic buildings. Building envelopes in the B-6 zone were pulled back to preserve the view into the heart of the historic buildings. However, in the applicant's proposed overlay map (Exhibit D), the no-build area has been moved so that views from the B-6 zone are not preserved. It also cuts across existing buildings.

It is unclear whether shifting this alignment is intentional or an oversight. If it is intentional, the applicant should make it clear that it is asking for an amendment to the height overlay and explain the basis for the change in the alignment. However, as it was carefully located as part of the Height Study design process, it would seem that there is good reason for keeping the original alignment.

6. THE APPLICANT'S POSITION THAT HEIGHTS AT 58 FORE SHOULD BE MEASURED FROM AVERAGE GRADE IS INCORRECT, AND WOULD RESULT IN A DEVELOPMENT WHICH IS OUT OF SCALE WITH THE RESIDENTIAL NEIGHBORHOOD

One of the primary goals of the Eastern Waterfront Height Study was to balance the needs of the study area against the surrounding "impact areas", including the Munjoy Hill residential

neighborhood. As part of that balancing, it identified three "shadow areas" where development could be located that would not negatively impact the adjacent areas. The upper Fore Street shadow area was identified to justify a height of 65 feet, due to the large change in grade.

Obviously, the large change in grade would not be cited as a reason to allow that extra height if it was anticipated that the extra height would be located at the top of the slope, as is contended should be allowed by the applicant. As is clear in the Building Height Study, it was intended that the resulting extra-tall structure would be located on the filled land portion of the site.

The November 2004 graphic, prepared by the height consultant after the adoption of the Building Height Study as part of the Master Plan (Exhibit E), includes as General Note 2:

> The height of buildings and tower masses east of Mountfort Street or its extension shall be measured from 2' above the flood plain elevation for the site based on the National Geodetic Vertical Datum. Where allowed, building mass above 4 floors shall not be wider than 70 feet parallel with the waterfront nor longer than 140 feet perpendicular with the waterfront. [Emphasis added]

This graphic applies to the entire study area, including the Portland Company site.

This method of calculating height was carried over one month later into the December 2004 Council-adopted B-6 Building Height Overlay & Building Envelopes, which states in Note 4:

> For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade (Exhibit B). [Emphasis added]

Thus, not only does it make sense for heights for the entire area east of Mountfort Street extension to be measured from flood plain based upon the substance of the height study, but it is also consistent with what the City actually enacted in the B-6 zone.

CONCLUSION: EXTENSIVE MODIFICATIONS TO B-6 OR OTHER ALTERNATIVES

The B-6 zone is not an appropriate zone to import to the heart of residential Munjoy Hill unless it is very significantly modified to keep the impact and uses down on the filled land. Moreover, the urban form the B-6 tries to create is incompatible with the existing historic structures and protection of the water's edge for the working waterfront.

If the City is still considering importing the B-6 zone to 58 Fore Street, the zoning text for the B-6 would require multiple modifications, including, but not limited to:

(1) there should be a very substantial mandatory minimum setback from Fore Street (greater than 150 feet) for all new construction which would override the otherwise required build-to line and keep commercial uses from being developed on the southern side of Fore Street;

(2) the building height overlay should specify, as it does for the block of B-6 adjacent to 58 Fore Street, that "the heights shall be measured from feet above flood plain, not from average grade";

(3) the minimum height requirement of 3 stories should be deleted for this portion of the B-6 zone as being inconsistent with the historic buildings; and

(4) the circulation pattern established as part of the height overlay and the dimensional requirements in the B-6 text, particularly the built-to lines, should be re-examined and modified as necessary to respond to the Master Plan goals of adaptive reuse of historic structures, protection of the utility of the water's edge for water-dependent uses, and preservation of public visual access to the water.

Much additional study is required to determine what pattern of development is appropriate for this site and how successfully the form-based code developed for the three blocks in the "Ultimate Build-Out Scenario" translates to an entirely different location.

In lieu of essentially rewriting the B-6 zone text to make numerous exceptions for 58 Fore Street, it would be better to leave the B-6 text alone and not expand its scope. That would leave the applicant with two options: applying for some form of contract zone under the existing WSUZ, or proposing text amendments to the WSUZ.

The WSUZ as written anticipates that any new mixed use development over 5,000 square feet will be reviewed as a contract zone, using the standards contained in the existing WSUZ text. In the past, the City has required very detailed plans to accompany any conditional rezoning. However, there is nothing in the enabling legislation or in the City's own ordinance pertaining to contract zones that requires that level of detail.

The applicant has made it clear that it does not want to invest in developing plans to the level of detail previously required by the City in order to pursue a contract zone. If the City finds that reasoning compelling, the applicant and the City should explore whether there is a more conceptual way to approve a conditional rezoning that clarifies, in general terms, what each will get in exchange for agreeing to a conditional rezoning, without requiring a site plan level of detail. Perhaps conditions more in the nature of performance standards would provide a way for the City to give the applicant the certainty it says it needs to proceed while still enacting a conditional rezoning that will run with the land to any new owner.

In the alternative, now that the Farley-Marino site has been rezoned to B-6, 58 Fore Street is the only property remaining in the WSUZ. That fact offers the opportunity for carefully crafted amendments to the text of the WSUZ which are designed to allow a thoughtful version of the proposed development. It would obviate the need to comply with the precedent set by the City for conditional rezonings.

The applicant would have to reveal enough of its concepts and plans to allow discussion of text amendments. The amendments would likely identify sub-areas of the site for different treatment, such as permitting a certain range of uses only on the filled land. Similarly it could allow for new construction in locations and meeting dimensional requirements that are not incompatible with the existing historic structures. It could be in the nature of form based code, but designed for this particular location.

There is no reason to make tortured amendments to the B-6 or have portions of the B-6 apply only to the 58 Fore Street site when, due to the geographic scope of the existing WSUZ, the City can amend that zoning text directly to allow the development it wants to permit.

The applicant bought the property with the WSUZ in place. The burden is on the applicant to show that it will be in the best interest of the City to modify the zoning requirements. The Master Plan does lend support for upland mixed uses, provided they are balanced with protecting the water's edge for marine uses. But moving the B-6 zone over to encompass 58 Fore Street is like trying to jam a square peg in a round hole. As there are at least two viable better alternatives, I urge you to recommend that request for rezoning to B-6 not be approved.

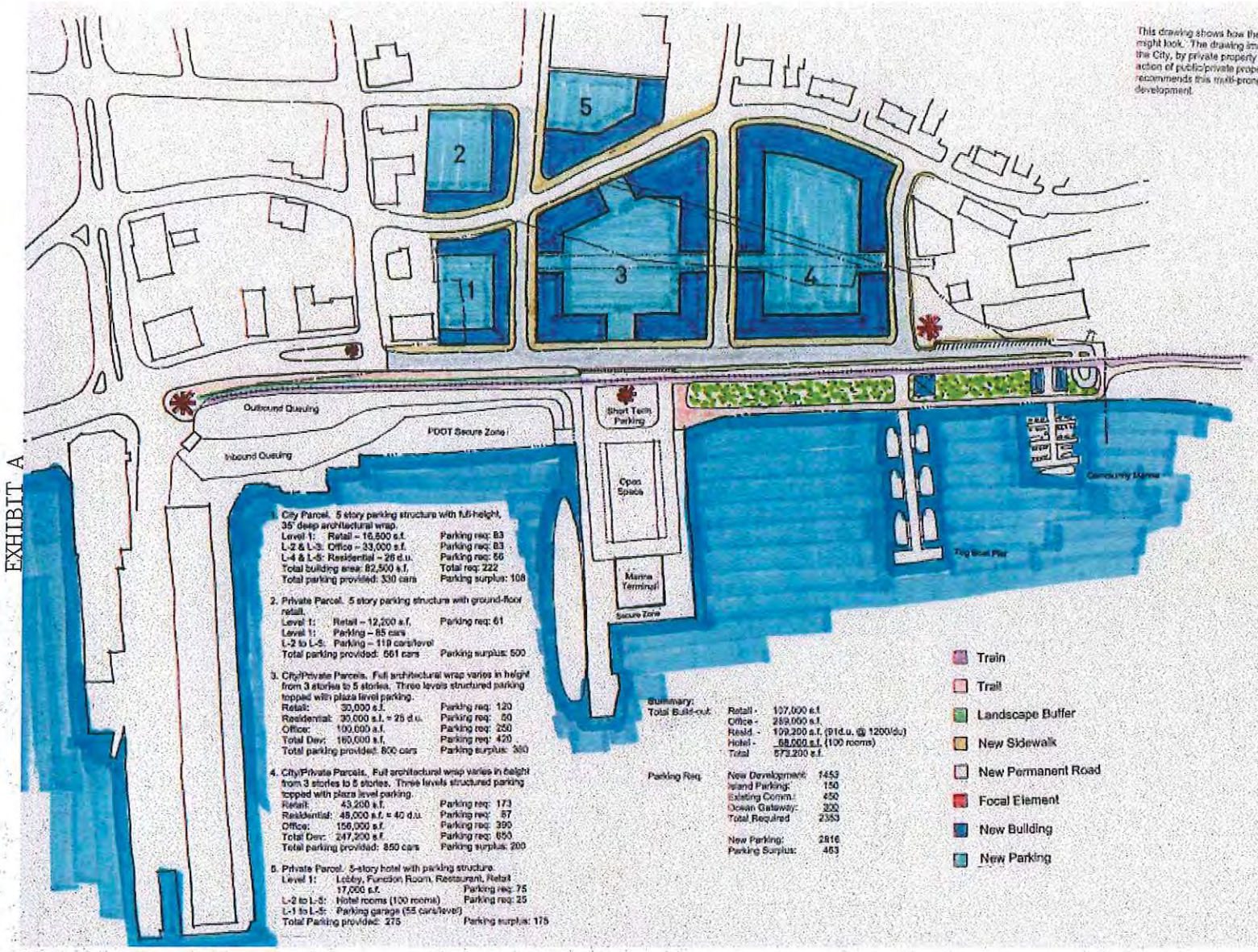
Very truly yours,

Barbara A. Vestal

BAV/om
Enclosures
cc: Christine Grimando

EXHIBIT A

This drawing shows how the ultimate build-out of the district might look. The drawing imagines development initiated by the City, by private property owners, and by cooperative action of public/private property owners. The Committee recommends this multi-pronged and integrated approach to development.



1. City Parcel. 5 story parking structure with full height, 35' deep architectural wrap.
   Level 1: Retail – 16,500 s.f. Parking req: 83
   L-2 & L-3: Office – 33,000 s.f. Parking req: 83
   L-4 & L-5: Residential – 26 d.u. Parking req: 56
   Total building area: 82,500 s.f. Total req: 222
   Total parking provided: 330 cars Parking surplus: 108

2. Private Parcel. 5 story parking structure with ground-floor retail.
   Level 1: Retail – 12,200 s.f. Parking req: 61
   Level 1: Parking – 85 cars
   L-2 to L-5: Parking – 119 cars/level
   Total parking provided: 561 cars Parking surplus: 500

3. City/Private Parcels. Full architectural wrap varies in height from 3 stories to 5 stories. Three levels structured parking topped with plaza level parking.
   Retail: 30,000 s.f. Parking req: 120
   Residential: 30,000 s.f. = 25 d.u. Parking req: 50
   Office: 100,000 s.f. Parking req: 250
   Total Dev: 160,000 s.f. Parking req: 420
   Total parking provided: 800 cars Parking surplus: 380

4. City/Private Parcels. Full architectural wrap varies in height from 3 stories to 5 stories. Three levels structured parking topped with plaza level parking.
   Retail: 43,200 s.f. Parking req: 173
   Residential: 48,000 s.f. = 40 d.u. Parking req: 87
   Office: 156,000 s.f. Parking req: 390
   Total Dev: 247,200 s.f. Parking req: 650
   Total parking provided: 850 cars Parking surplus: 200

5. Private Parcel. 5-story hotel with parking structure.
   Level 1: Lobby, Function Room, Restaurant, Retail 17,000 s.f. Parking req: 75
   L-2 to L-5: Hotel rooms (100 rooms) Parking req: 25
   L-1 to L-5: Parking garage (55 cars/level)
   Total Parking provided: 275 Parking surplus: 175

Summary:
Total Build-out:
Retail - 107,000 s.f.
Office - 289,000 s.f.
Resid. - 109,200 s.f. (91d.u. @ 1200/du)
Hotel - 68,000 s.f. (100 rooms)
Total 573,200 s.f.

Parking Req.
New Development: 1453
Island Parking: 150
Existing Comm.: 450
Ocean Gateway: 300
Total Required 2353

New Parking: 2816
Parking Surplus: 463

- Train
- Trail
- Landscape Buffer
- New Sidewalk
- New Permanent Road
- Focal Element
- New Building
- New Parking

Portland Planning Office
Spring 2002

Ultimate Build-out Scheme
Joint Development of City/Private Parcels

Waterfront Development and Master Planning Committee

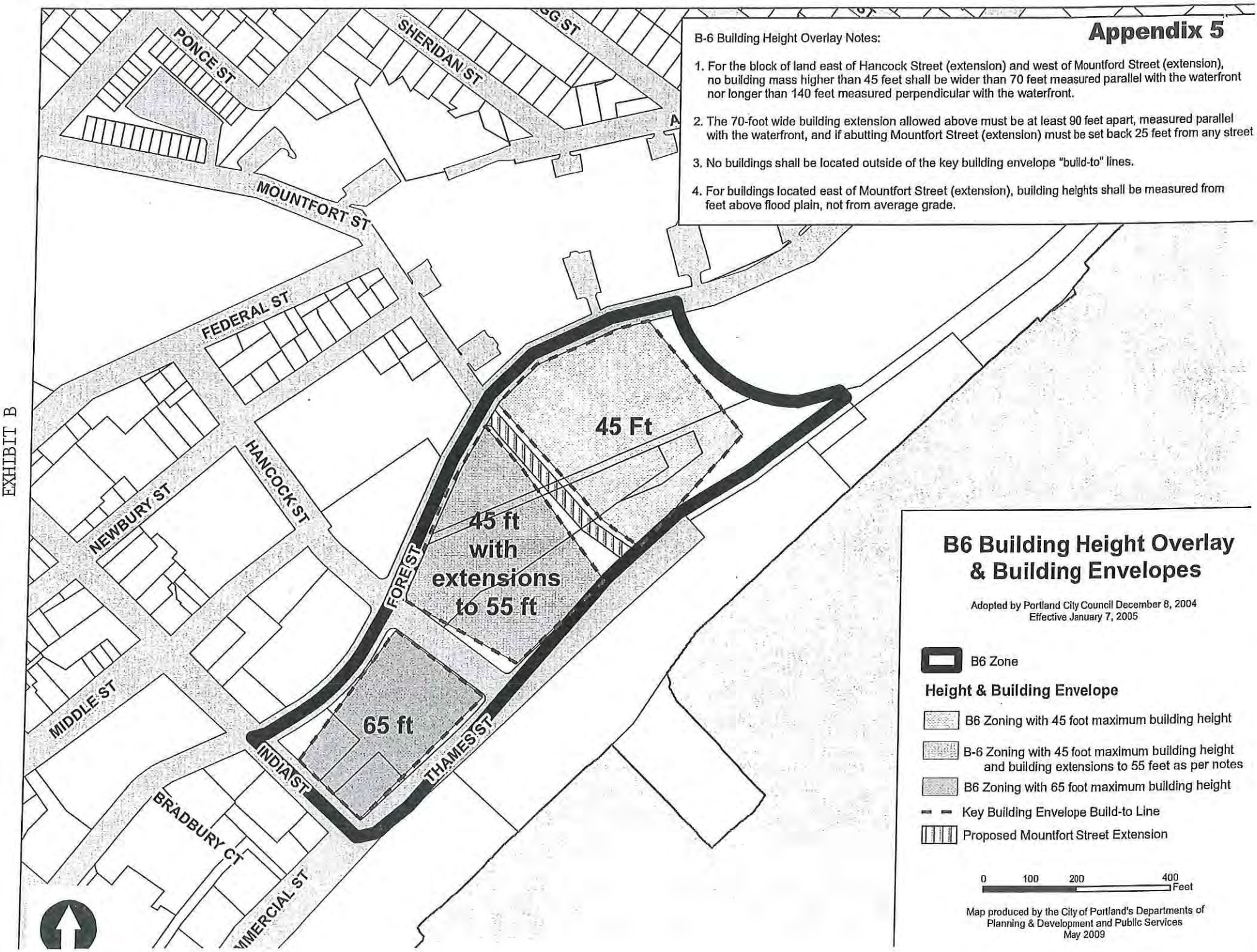
3

EXHIBIT B

Appendix 5

B-6 Building Height Overlay Notes:

1. For the block of land east of Hancock Street (extension) and west of Mountford Street (extension), no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront.
2. The 70-foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street
3. No buildings shall be located outside of the key building envelope "build-to" lines.
4. For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade.



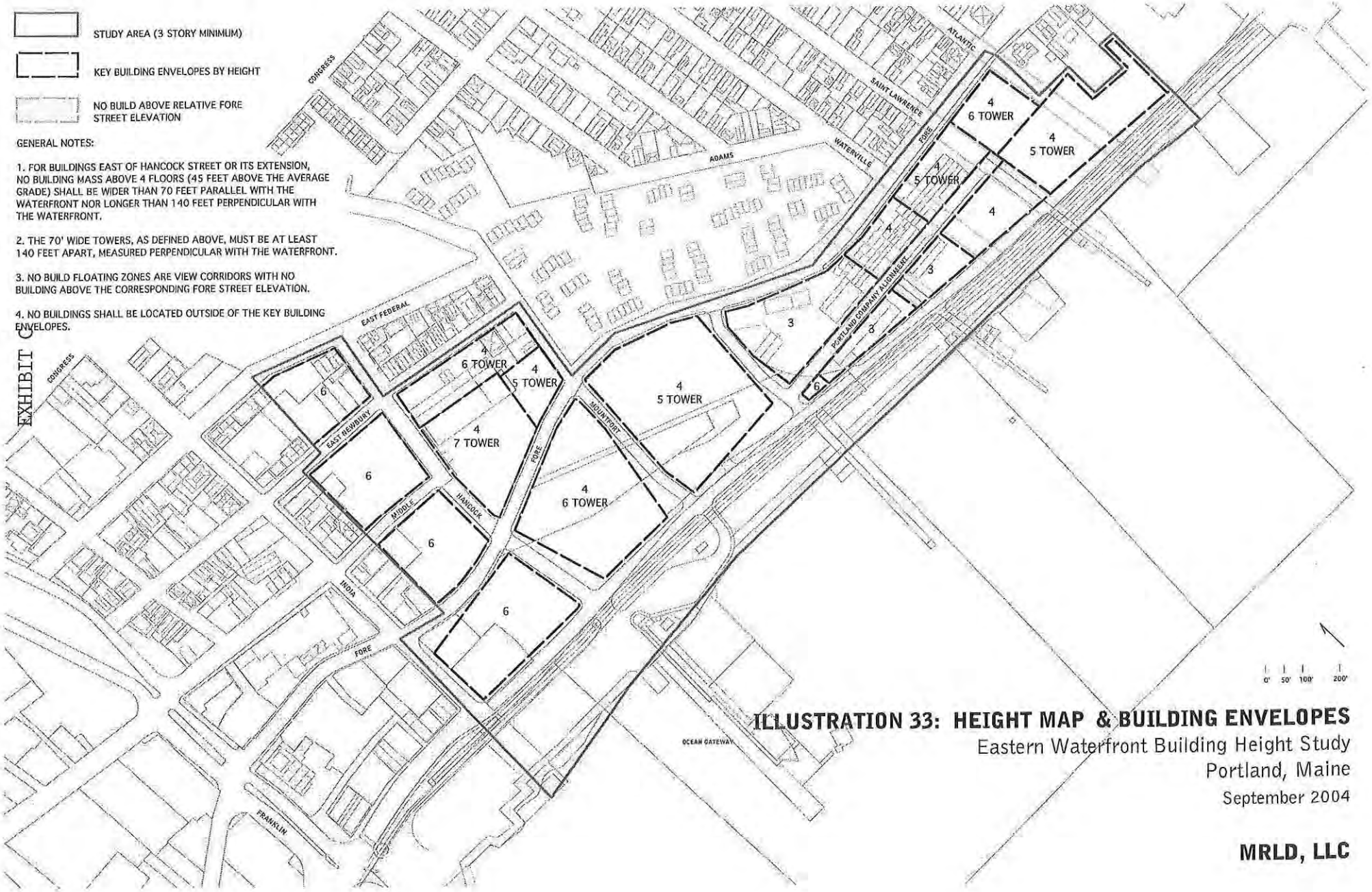


ILLUSTRATION 33: HEIGHT MAP & BUILDING ENVELOPES

Eastern Waterfront Building Height Study

Portland, Maine

September 2004

MRLD, LLC

EXHIBIT D

1

- Maximum Building Height Above Average Grade: **35'**
- Average Fore Street Elevation: **33'**
- Approximate Average Grade of Building Envelope: **24'**
- Average Height above Fore Street: **26'**
- Max Height above Fore Street: **29'**

2

- Maximum Building Height Above Average Grade: **45'**
- Average Fore Street Elevation: **45'**
- Approximate Average Grade of Building Envelope: **30'**
- Average Height above Fore Street: **30'**
- Max Height above Fore Street: **34'**

3

- Maximum Building Height Above Average Grade: **45' - 55'**
- Average Fore Street Elevation: **61'**
- Approximate Average Grade of Building Envelope: **38'**
- Average Height above Fore Street: **27'**
- Max Height above Fore Street: **35'**

4

- Maximum Building Height Above Average Grade: **45' - 65'**
- Average Fore Street Elevation: **80'**
- Approximate Average Grade of Building Envelope: **50'**
- Average Height above Fore Street: **25'**
- Max Height above Fore Street: **35'**

Please Note:

Average Grade was approximated for each location by averaging the 4 corners of each B6 Building Height Overlay building envelope. City Planning process will require a detailed calculation of average grade based on future proposed building footprints

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. FOR BUILDINGS EAST OF HANCOCK STREET OR ITS EXTENSION, BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE HEIGHT OF BUILDINGS AND TOWER MASSES EAST OF MOUNTFORT STREET OR ITS EXTENSION SHALL BE MEASURED FROM 2' ABOVE THE FLOOD PLAIN ELEVATION FOR THE SITE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM. WHERE ALLOWED, BUILDING MASS ABOVE 4 FLOORS SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

3. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.

4. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.

5. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

EXHIBIT E

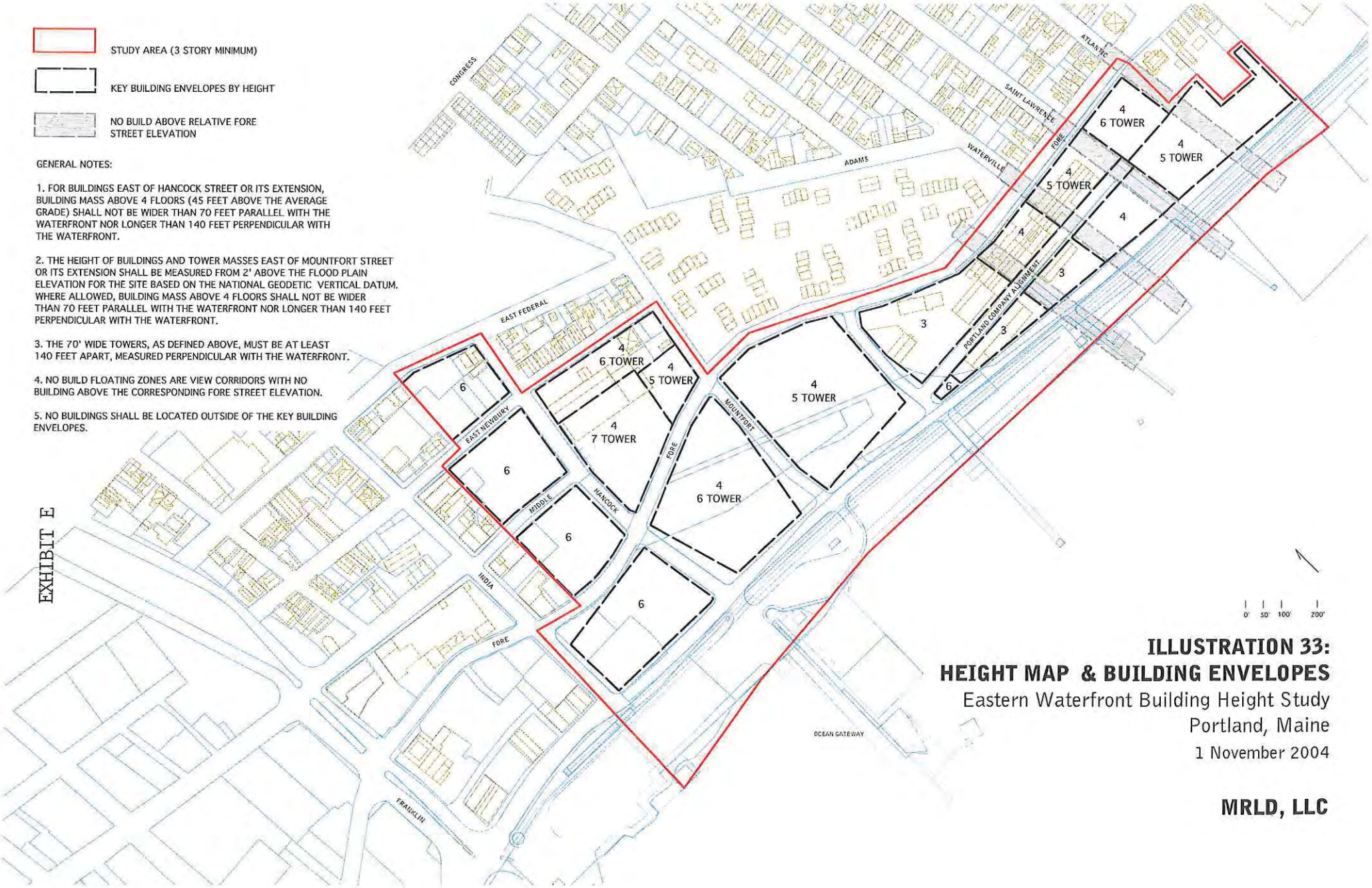


ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES
Eastern Waterfront Building Height Study
Portland, Maine
1 November 2004

MRLD, LLC

SOUL OF PORTLAND
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FORE STREET & MUNJOY SOUTH
HEIGHTS ABOVE AVERAGE GRADE

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FORE STREET & MUNJOY SOUTH
EIGHTS ABOVE FLOOD PLAIN

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58 FORE STREET
HEIGHTS ABOVE AVERAGE GRADE

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58 FORE STREET
HEIGHTS ABOVE FLOOD PLAIN

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FORE STREET & WATERVILLE STREET
HEIGHTS ABOVE AVERAGE GRADE

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FORE STREET & WATERVILLE STREET
HEIGHTS ABOVE FLOOD PLAIN

P.O. Box 7602
Portland ME 04112
October 2, 2014

Deb Andrews, Historic Preservation Mgr.
Planning Division
City Hall, 4th flr.
389 Congress St.
Portland ME 04101

Ms. Andrews:

We are writing in support of Greater Portland Landmarks request to designate the Portland Company site at 58 Fore St. an historic district.

The Portland Company buildings have had a strong impact on marine and industrial work and they have impacted industry nationwide.

This is an opportunity to preserve the last of historical businesses in Portland. We have learned from the demolition of Union Station how deeply that loss has been felt and regretted in this town.

Lets not do it again.

Sincerely,
Everett and Susan Ingalls

October 8, 2014

Paula Guillemette Agopian
98 Monument St
Portland, Me 04101

Deb Andrews, Historic Preservation Program Mgr.
City of Portland
389 Congress St
Portland, Me 04101

Dear Deb,

I was in attendance September 25th for the presentation of Sutherland Conservation Consultant's report on the historic significance of The Portland Co. property at 58 Fore St. I found it informational and thought provoking. It conjured up thoughts of Union Station, The Portland Co. is the East End's Union Station. I was aware that the property was of historic significance but was unaware of the far reaching implications on so many levels. I would like to see a presentation of this caliber done for our neighborhood, and will present that to The Munjoy Hill Neighborhood Organization's next Board Meeting on the 13th. This study could prove pivotal and key to the redevelopment of this site. I would hope at all levels of approval that the powers that be let this report weigh heavily in the decision making process. It deserves great consideration. The presenter's words "building removal will have an adverse impact on this site" are still ringing in my ears.

P.S. If there is a tour of the site I would love to participate before it is disturbed!

Sincerely, Paula Guillemette Agopian

Paula Guillemette Agopian

Cc. Historic Preservation Chair, Rick Romano and Board Members
City of Portland Planning Board Chair, Stuart G. O'Brien and Board Members
City of Portland Planning Dept. Alex Jaegerman
Greater Portland Landmarks Hillary Bassett, Director
MHNO Board
CPB2 LLC, Jim Brady

Deb Andrews - 58 Fore Historical Significance Concerns

From: Karen Snyder <karsny@yahoo.com>
To: "dga@portlandmaine.gov" <dga@portlandmaine.gov>
Date: 10/12/2014 6:47 AM
Subject: 58 Fore Historical Significance Concerns
Attachments: 58ForeStreetHistoricBuilidings.JPG; 58ForeStreetSeaWall.JPG

Dear Ms. Andrews,

I am voicing my concern as many others regarding the 58 Fore street proposed development.

There is a large amount of historical significance to this site, and there are concerns that the developer will destroy the original sea wall of Portland or buildings that are late 1900's that are over the sea wall.

I have attached historical buildings and the original sea wall photos.

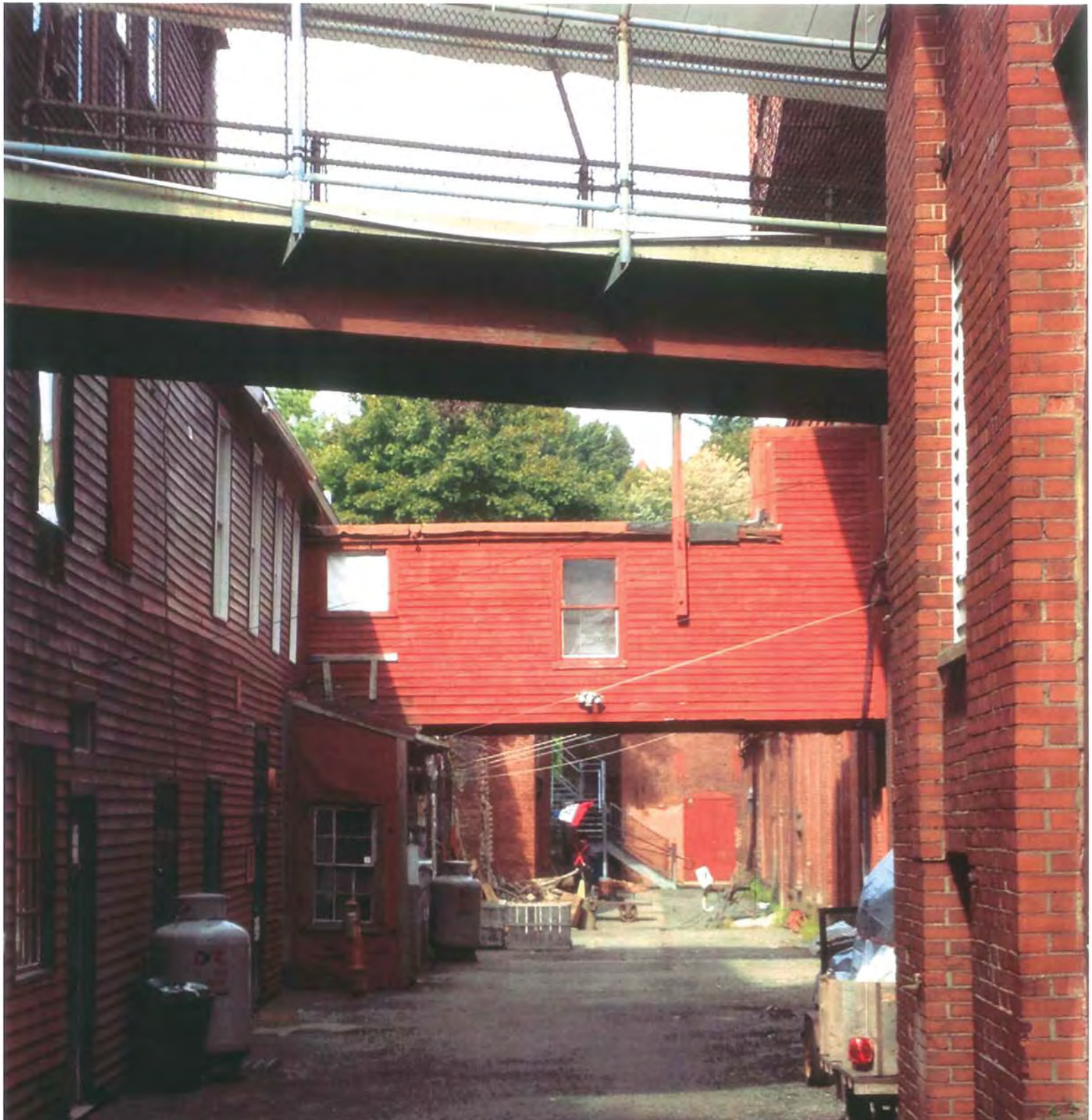
There is additional concern by the proposal to change zone ordinances in order for this developer to build an inappropriate height for this area besides blocking the water views of all the residents of Waterville Street.

The Historical Preservation board was specifically created as a direct result of the travesty of allowing Union Station to be destroyed to allow a developer to put up a seedy strip mall.

It is up to the Historical Preservation board to PROTECT historical significant structures against the scourge of developers.

Please keep this in mind.

Regards,
K.Snyder
Munjoy Hill Resident



From: Karen Snyder <karsny@yahoo.com>
To: "cdg@portlandmaine.gov" <cdg@portlandmaine.gov>
Date: 10/12/2014 6:57 AM
Subject: Fw: Legal Ads for 10-14 and 10-21
Attachments: PB Lgl Ad 10-14-14.pdf; PB Lgl Ad 10-21-14.pdf

Dear Christine,

I am writing to voice my concerns with the 58 Fore Street zone amendment proposal.

There is concern by many Munjoy Hill residents in regards to this developer destroying the historical significance of the buildings as well as building height concerns for this area in regards to blocking the current water views of all the residents on Waterville Street.

When will the planning board finally respect and listen to the opposition of the local residents regarding all these developers that are trying (with success) in changing ordinances so their profit margins are large at the cost and inconvenience of local residents and the quality of life for the residences?

Regards,
K. Snyder
Munjoy Hill Resident

On Sunday, October 12, 2014 6:50 AM, Karen Snyder <karsny@yahoo.com> wrote:

Hi Helen,

What is the content of the B1 and B2 zoning amendments? Is this specific to 89 Anderson?

The attachment is quite generic.

Thanks.

K. Snyder
Munjoy Hill Resident

On Friday, October 10, 2014 8:44 AM, Jennifer Munson <JMY@portlandmaine.gov> wrote:

Good Moring,

Please see the attached.

Jennifer Munson, Office Manager
Planning and Urban Development
City of Portland
389 Congress St., 4th Floor
Portland ME 04101
jmy@portlandmaine.gov
(207)874-8719
(207)756-8258 (fax)

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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Greater Portland Landmarks
Planning Board – comments re: Portland Company Complex, 58 Fore Street
10/21/2014

Greater Portland Landmarks is especially interested in the proposed plans to redevelop the Portland Company Complex at 58 Fore Street. Recent research conducted by Sutherland Consulting has clearly established the local, state and national historic significance of the Complex as the only intact historic locomotive manufacturing complex remaining in the country. The City is now proceeding with a peer review of the developer's engineering study regarding structural integrity of the historic buildings. These materials are essential to a future consideration of the potential for historic designation of the complex.

Landmarks has several questions we would like to ask.

a) We understand that what is being proposed is to adopt the zoning and related recommendations from the Eastern Waterfront Master Plan. As part of the documentation in the Mitchell Rasor Landscape Design map of 2004 there was inclusion on the map which shows the "Portland Company alignment" that recognizes the "alleyway typology" "like Wharf Street" between the major buildings of the Complex. We believe that the alleyway is an essential character defining element because it reflects the relationship of the Complex to the rail lines and to the manufacturing process associated with the Portland Company. The alignment shown on more recent maps appears to be different than the earlier maps? Has it been changed and if so why has it been changed?
b) We would like to be sure that any zoning change or presentation of a potential plan for the site will not prejudice or limit historic preservation board consideration of the potential for historic designation. For this reason we urged the Historic Preservation Board to move more quickly to request designation. At the request of staff, the Preservation Board is moving more cautiously. What assurances will the city and the developers provide to support the historic preservation board's requests outlined in their memo of Oct. 15, 2014 that zoning changes not prejudice the review and findings of the Historic Preservation Board as it considers the potential for historic designation of the property?
c) Building heights are important to us, especially with respect to views of the Complex from the water and views of the harbor from the Portland Observatory. How will the height overlay map apply, and from what level with building heights be measured?

The Guiding Principles of the Eastern Waterfront Master plan specifically call for development to be "Compatible with the surrounding areas, neighborhoods, natural environment and maritime uses, with objectives to "Encourage historic preservation and adaptive reuse of historic structures", "Encourage compatible architecture," and "Preserve significant public view corridors to and from the water and along the waterfront."

Thank you for your consideration.

Hilary Bassett
Executive Director
Greater Portland Landmarks

Lannie Dobson - Fwd: Planning Board Workshop on Portland Co.

From: Christine Grimando
To: Dobson, Lannie
Date: 2/20/2015 1:30 PM
Subject: Fwd: Planning Board Workshop on Portland Co.

One more, which came in on the 10th, but that I hadn't gotten into the folder.

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

>>> <bristolchrismal@aol.com> 2/10/2015 9:47 AM >>>

Dear Christine,

I was planning to attend this meeting, but it now looks very unlikely that I can. So I would be very grateful if you would put this question for the Board's attention.

I was going to say something about the extraordinary value of the Portland Company complex, including its entire extant layout, in terms of industrial history, and indeed the history of the resurgence of Portland as a port city in the 19th century. But the report commissioned by the City from Sutherland Conservation and Consulting says all that needs to be said. Just reading the Executive Summary alone, especially the Findings, is enough to elevate the importance of the site to a national level in one's awareness.

I presume the Board members are all familiar with the Report. Two quotes from the Findings are worth restating here:

"All of the buildings constructed over 50 years ago contribute to the historic significance and integrity of the Portland Company complex;" and ...

"The removal of any of the historic buildings ... will diminish the ability of the complex to demonstrate the historic manufacturing process of the Portland Company."

So I am asking the Board for reassurance that they will be guided by this report and its findings in making decisions on this current planning application, or any revision of it.

Thank you,
Chris Small,
Freeport, Maine,
(Volunteer 1996-2010, and one-time Board member, at the Maine Narrow Gauge Railroad)

From: <dpreisse@maine.rr.com>
To: <cdg@portlandmaine.gov>
Date: 11/11/2014 11:43 AM
Subject: 58 Fore Street
Attachments: photo-19 copy.JPG; photo-19.JPG; SO2.JPG; Cruise ship.JPG

Dear Christine,
I am emailing you to share my thoughts in regards to the 58 Fore Street zoning change and in particular the site plan that has not yet been seen. I have attended the open forum with the developer as well as the city hall meeting for public comment. It is hard for me to support a zoning change without seeing the site plan that demonstrates the building heights above Fore Street. I can not attend the site walk or the public comment meeting on the 18th so wanted to share my thoughts with you to share with Council and Developers.

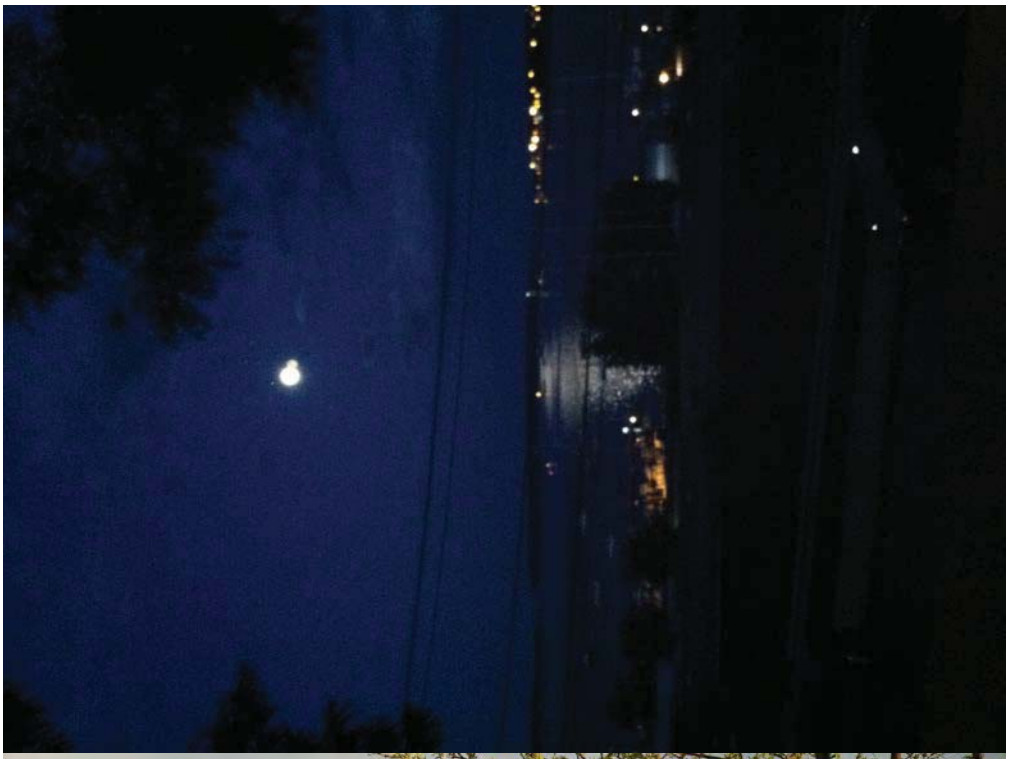
I do live on Munjoy Hill and each day I am in awe of the panoramic active harbor view that is seen now freely from the overlook driving/walking/biking on Fore Street between Waterville and St. Lawrence. I have observed hundreds of people and the tour/trolly buses as they stop for a short glance traveling this street. I know there are many who appreciate the unique beauty yet do not take part in civic action to save what could be lost.

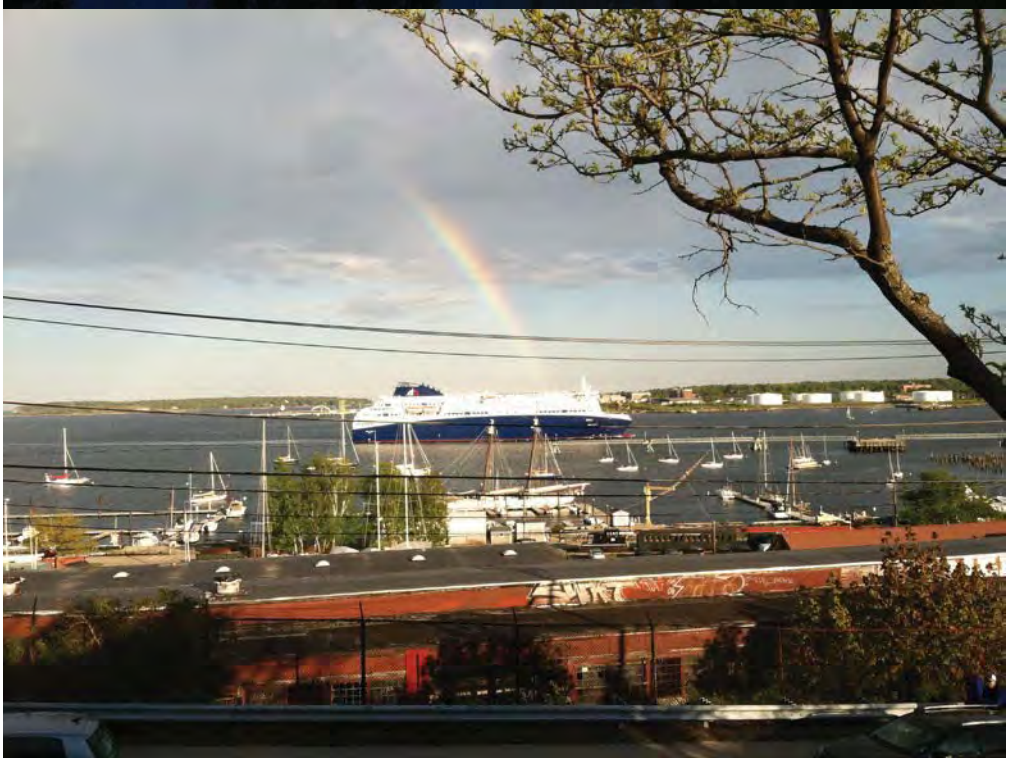
Development of the property and all the ideas generally presented by the developers sound interesting to me and others I have spoken to. I am very concerned with the zoning approval of the height and the height overlay plans. It is so confusing to me even after all the dialogue. I believe at one time I heard in a presentation by the developer that the buildings could be 14-22 feet ABOVE Fore Street. That scares me to death and I can vision another mass half the height of the Portland House blocking the suns warmth and birds eye views so breathtakingly wonderful now. I am well aware of snake oil sales pitches and asking for zoning changes and getting something that was not wanted or expected but is allowed with these changes. I strongly support saving all the historical buildings (the Flower Show building was not marked in the developers presentation to save) and promoting this site as a historical district with the guidance and expertise of Portland Landmarks and the Historical Society.

The scaffolding view from the water to the residential area to the Observatory are just as vital as those looking down the hill to the vitality on the water. I have included a couple of pictures to express this greatness that occurs in Casco Bay that some may not have seen. Preserving this one last bit of scenic overview is vital and not to be lost for myself, my neighbors, Portlanders, tourists or for future generations. Please keep this point in mind as you make recommendations to the City Council.

I would encourage the City Council to not only walk the actual site but also take a stroll up the hill on Fore Street to experience this feeling of being on top of the world, a stop to catch one's breath, and savor the breathtaking beauty of the working/recreational waters of Casco Bay.

Best,
Denise Preisser





From: Brian Burwell <burwell@maine.edu>
To: <cdg@portlandmaine.gov>
Date: 11/14/2014 8:56 AM
Subject: Planning Board, 58 Fore Street, Protecting Pedestrian Views

Dear Planning Board members,

I am writing to defend existing pedestrian "key views of the harbor....a community resource to be preserved and protected...." ("Design Guidelines for the Eastern Waterfront", p.12, Adopted by Comprehensive Plan, 2002) I appreciate the wonderful views along Adams and elsewhere, but am most familiar with the two blocks of Fore Street sidewalks between Waterville and Atlantic Streets.

While working on a three family residence at the corner of Waterville and Fore, I observe large numbers of neighborhood people walking these sidewalks to and from downtown and "around the block". In nice weather multiple small groups of downtown office workers walk up and down the Fore Street sidewalks during their lunch breaks. Many visiting tourist often stop in wonder and take pictures of the sailing schooners, ferries etc. and of themselves in front of the wire fence.

The existing four story Portland Company buildings situated along these two blocks do not interfere with sidewalk views because of the high elevation of Fore Street relative to the level land below. The cover and last page illustration (Section E Existing and Proposed East/West with Congress Street and Fore Street Elevations) of the "Eastern Waterfront Building Height Study" (adopted by the Comprehensive Plan in 2004) show how existing and anticipated four story structures preserve those sidewalk views.

The "Eastern Waterfront Building Height Study" allows for 70 foot wide towers separated by 140 feet. Such a tower in front of the Waterville to St. Lawrence Street block would interfere with the existing wonderful view of harbor activities. During the decade since this detailed height study was adopted, significant changes have occurred and continue to trend which strongly argue for preservation of unobstructed views and therefore against towers which would depreciate these views:

* Increasing resident population in the neighborhood as a result of "infill" development and additions.
* People walking and jogging more for healthy exercise.
* Increasing numbers of tourists.
* Increasing recognition of the value of pedestrian views of important natural elements. Many cities including Seattle, San Diego, Austin and Portland, Oregon incorporate preservation of such views into their development design criteria.
* Blockage of pedestrian views by new construction to the west of Mountfort St.

To what extent these views, unique to Portland, are to be forever lost by a large public to be replaced by private structures (residences?) for a relatively few, is before you. I request that you consider the developers' opportunities for substantial development on these ten acres with little or no obstruction of current views.

Lastly, resident evaluations of developer plans for the site could provide valuable inputs to Planning Board and City Council members tasked with melding CPBE's rights and citizen interests. Award of B-6 zoning would provide substantial value to CPBE and could follow, not precede, resident vetting. Lack of a site plan for the "Neighborhood Meeting" of September left residents frustrated and distrustful. Without a site plan, residents are left jousting windmills like Don Quixote. I request that the Planning Board require a site plan from CPBE and obtain public input, both positive and negative, before deciding whether or not to recommend a zoning change from Waterfront Special Use Zone to B-6.

Thank you.

Brian Burwell
Owner, 31 Fore Street

burwell@maine.edu

From: Barbara Barhydt
To: Grimando, Christine; Jaegerman, Alex; Munson, Jennifer
Date: 11/14/2014 7:58 AM
Subject: Fwd: 58 Fore Street site visit and workshop

public comment

>>> Peter Macomber <pbm@macomber.com> Friday, November 14, 2014 7:16 AM >>>

Dear Chair O'Brien, Planning Board members, Planning Director Jaegerman and staff:

My name is Peter Macomber and my wife, Pam, and I live on Munjoy Hill. We have been residents of Portland since 1979, the last two on the Hill. I will be out of town next week during the scheduled site visit and the hearing, so I am sending this lieu of attending and commenting.

The purpose of your site visit and workshop is to review the building height overlay as it applies to the proposed zoning change. Because it also relates to building heights, it is also very important that you take into consideration the breathtaking pedestrian viewshed of Portland harbor from Fore Street between Atlantic and Waterville streets. This is to my knowledge the only publicly-accessible elevated viewpoint in the entire city that encompasses such a magnificent panorama of the inner working harbor, including the Gateway terminal and visiting cruise ships, the South Portland waterfront and the never-ending ship traffic.

This viewpoint has always been there throughout the history of the city, never blocked by any buildings and always freely accessible to all who walk by.

As a property owner in this area, I can attest to the surprising number of people who abruptly stop as they walk up or down Fore Street and are mesmerized by the view, sometimes for minutes at a time. Or to the cars that suddenly pull over to the side of the street, people piling out and excitedly taking pictures of the panorama or of the cruise ships.

And when the sun is low and illuminates the entire harbor with a quality of light that's unique to Maine, the scene is nothing short of magical.

This awesome landscape and seascape is part of the soul of Munjoy Hill and truly belongs to all of Portland. It must be preserved by ensuring that any development does not impinge on that entire view. Keeping the maximum building height of any development at or below the grade of Fore Street would do it.

(A thought about the so-called "view corridors" that are part of the Eastern Waterfront Height Study: they're a ridiculous sop to the public and are tantamount to telling people to look through the wrong end of a telescope with blinders on; those corridors only compartmentalize and minimize the view and conceal more than they reveal. The only real "view corridor" is the one that fully encompasses the entire viewshed, not tiny slivers of it!)

–

The B-6 zone as it currently exists requires that the minimum new building height within 25 feet of a street is 3 stories. This requirement is quite appropriate in the current B-6 zone, but obviously not appropriate in the proposed development. The developer's refrain is that they merely want to "drag over the existing B-6 zone" to the Portland Company property, but to "drag over" all requirements of that zone without closely examining how they'd impact the unique conditions of the property would be inappropriate.

But there's at least one aspect that would be appropriate: at the last public meeting, some questions were asked about the current B-6 Height Overlay map and the phrase "feet above the flood plain, not from average grade" as it applied to building heights on one particular lot of land. But it actually makes a lot of sense if you think about it. Fore Street begins to climb steeply as it passes to the east of Mounfort Street, so calculating the building heights from the flood plain instead of the average grade takes that steep climb into consideration. Because otherwise an envisioned 45-foot maximum building height could translate into 55 or even 65 feet if the average grade was used instead.

It is very important to follow the same reasoning as you consider building heights in the proposed development. Fore Street climbs even more steeply beyond Waterville Street while the Portland Company property is primarily on that same flood plain. Average grade calculations could result in buildings that ludicrously not only tower over Fore Street, but are the equivalent of 80-90 feet

above the flood plain. Using average grade calculations on what is basically a cliff edge is highly inappropriate, and would be a flawed methodology for this zoning. And since about 85-90% of the Portland Company land is at the flood plain level, using that as a basis for building heights makes far more sense.

I humbly suggest that during the site visit next week you include a short walk up Fore Street between Waterville and Atlantic streets so you can see for yourselves what I'm writing about. Enjoy that view!

–

The Planning Board's work will be very difficult in the weeks ahead. I thank you for your time and energy as you consider this zoning change. Please know that Pam and I are both very much in favor of a vibrant, yet thoughtful development of the property. But surely there is a way to keep this very special public viewshed forever open as well as provide the developers an opportunity to maximize their returns. I ask that you keep in mind these comments as you preserve this precious asset for the future of the city and its inhabitants and visitors.

Respectfully,
Peter & Pam Macomber
Saint Lawrence St.

From: Jeff Levine
To: Caitlin Cameron; Christine Grimando; Tammy Munson
Date: 11/19/2014 3:09 PM
Subject: Fwd: outdoor seating and height restrictions

On outdoor seating and 58 Fore Street.

Jeff

Jeff Levine, AICP
Director
Planning & Urban Development Department
389 Congress Street 4th Floor
Portland, Maine 04101
Phone (207)874-8720
Fax (207)756-8258
http://www.portlandmaine.gov/planning
@portlandplan
(http://www.portlandmaine.gov/)
>>> Nancy <nkacatalyst@msn.com> 11/19/2014 2:35 PM >>>

Hi Jeff- I saw your name from a recent PPH article. As a Portland resident (15 years on Little Diamond Island) and almost 8 years on Craigie Street) I would like to share my opinion on two recent issues.

1. As someone who LOVES to eat and cherishes the warm weather when we can eat outside in Portland, I do enjoy the outdoor cafes and seating areas at many of Portland's restaurants. My concern though is when the dining tables and robe dividers stretch onto the sidewalks pushing people to the road. It seems antithetical to the idea of a side "walk". All summer and fall we walk down Commercial street from our Parking spot on Widgery Wharf to the Casco Bay Lines. This year, I particularly noted (not just at Cruise ship times) that it was very difficult to walk down the sidewalks. It was the sidewalk cafes, food and craft vendors. and even the lines for the Trolley and day-time boats that cause multiple bottlenecks. While I support the tourist industry and want Portland small businesses to thrive, I just worry about how many times, we and others have to walk in the street because the sidewalks are too crowded. I also noticed people in wheelchairs and the elderly having a difficult time getting by. I am an able-bodied person, but pulling our luggage down the sidewalk has been very difficult because the sidewalk space is so limited. So I hope you will consider the safety of "walkers" as well as the diners when determining the line on the sidewalks for outdoor dining.

2. In today's paper there is discussion about increasing the height of new building at the bottom of Munjoy Hill/Fore Street. While I don't live in that part of town, I do appreciate the view not just from the mainland but looking at the city from the water as well. I know "view" might be less motivating than "business revenue" and potential tax, but I travel enough to other towns/cities to recognize that this is one of the unique features of Portland. I hope you and Portland will think long and hard about extending the heights and variances, as once it's gone, it's gone. I do believe one of the reasons Portland has been featured in so many articles and magazines polls lately is because of its unique character and balanced growth. Hope we can keep it that way.

Thank you very much for reading my email and considering my opinion when you make your decisions.

Nancy

Nancy Ansheles
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Portland, ME 04102
207-774-3634
207-272-5009 (Cell)
nkacatalyst@msn.com

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EDWIN P. CHESTER
BARBARA A. VESTAL
MICHAEL P. DIXON

chester@chesterandvestal.com
vestal@chesterandvestal.com
dixon@chesterandvestal.com

February 19, 2015

Chair O'Brien and Members of the Planning Board
c/o Christine Grimando
Planning Department
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Portland Company Complex

Dear Chair O'Brien and Members of the Planning Board:

At the February 10th Planning Board workshop, some members of the Board seemed to indicate that the abutting neighborhood's concerns would be addressed during the master planning process by reference to the publication "Design Guidelines for the Eastern Waterfront." That document was adopted in October 2004 as Appendix C of the Master Plan for Redevelopment of the Eastern Waterfront.

I want to make sure that those Guidelines really will apply if the Portland Company site is rezoned to B-6. And I also want to make sure that what is contained in those Guidelines will make sense when applied to the site.

I am concerned that these Design Guidelines will not apply unless proper text amendments are adopted as part of the zone change. This should be taken care of by the Planning Board before it goes to the City Council.

14-526(d) Site Design Standards (9) Zoning Related Design Standards (a) states that certain development "as specified below" is subject to design standards in addition to the regular site plan standards. Subsection (i) includes B6 in the heading but omits B6 in the text. The applicant has proposed to put it in. (See attachment with applicant's proposed amendment.) That text amendment is necessary but does not go far enough.

That provision goes on to say that the development "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 [City of Portland] Design Manual** (emphasis added)."

The Design Guidelines for the Eastern Waterfront are <u>not</u> included in the City of Portland Design Manual. Other design standards are quoted in full in the text or are incorporated by reference to a numbered appendix and then attached in full in multiple numbered appendices. For example, appendices include the Downtown Urban Design Guidelines (48 pages), the USM Design Principles and Standards (7 pages) and B-7 Design Guidelines (23 pages).

In contrast, the entire treatment of the EWPZ and B6 is as follows:

"(1) **STANDARD**. Eastern Waterfront design standards: All major and minor development reviewed under the provisions of the eastern waterfront zones shall be designed to support the development of this urban neighborhood as a dense, mixed use, pedestrian friendly neighborhood."

It does not incorporate the 23 pages of the Design Guideline document in any way. It does not say that development should be consistent with the Design Guidelines for the Eastern Waterfront. That document is not included in an appendix to the Design Manual. The only appendix that appears to be related is Appendix 5, the one-page B-6 Building Height Overlay & Building Envelopes map.

This could be easily fixed in multiple ways, one of which would be to add in the site plan ordinance after "Design Manual" the language "or contained in Design Guidelines for the Eastern Waterfront."

<u>I am also concerned that these Design Guidelines for the Eastern Waterfront will not make sense when the Board tries to apply them to the Portland Company site because they are premised upon a PUBLIC street and sidewalk grid</u>. The applicant has yet to propose any circulation pattern within the site. It has said that it is not its intent to create a gated community. I believe many members of the public would be against a gated community as well.

However, it is my understanding from the applicant that the City staff has told the applicant that, for a variety of reasons, it does not want the internal circulation grid to consist of public streets. It is my understanding that the applicant and City staff are envisioning that this might be developed using private roads, perhaps subject to an easement for use by the general public. I think it is important to provide for this possibility as part of the zone change.

If these are to be private roads rather than public streets, it would be problematic for the Board to apply a statement such as the following in a master plan context if there are, in fact, no "streets":

> Sidewalks are key to defining streets as civic places. Sidewalks should be provided along both sides of all streets and should be wide enough to accommodate visiting and residential pedestrians comfortably and safely. (p. 3)

There are numerous references throughout the design guidelines to street corridors, street hierarchies, treatment of street frontages, etc. The determination of public streets vs. public easements may be a question for a later day. But if the Design Guidelines are to be successfully applied as intended, this possibility needs to be anticipated. Site Plan Design Standards 14-526(d)(9)(a)(i) should be amended to further add after "or Design Guidelines for the Eastern Waterfront" (as proposed above) **"and further, in the B6 and EWPZ, if the Planning Board votes to accept private roads with public easements in lieu of public streets, the Design Guidelines shall be applied and interpreted as if the private roads were public streets."**

Finally, the applicant has proposed an amendment to this same site design standard to address permeability. It is responsive to neighborhood concerns to address that. However, the applicant's proposed amendment would "promote permeability through and within the development at a scale compatible with the existing street network of the Eastern Waterfront." Instead of using the massive-block, street network of the current Eastern Waterfront. I believe it is much more in keeping with the Design Guidelines for the Eastern Waterfront to promote a scale compatible with the central waterfront and the Munjoy Hill neighborhood.

Very truly yours,

Barbara A. Vestal

BAV/om
Enclosure
cc: Christine Grimando

maintained to ensure stable, safe and attractive site conditions.

Sec. 14-526. Site plan standards.
14-526(d) *Site Design Standards*

9. *Zoning Related Design Standards:*

a. Development of certain types and/or proposed in certain zones, as specified below, are subject to design standards in addition to the provisions of Section 14-526 (a) in order to ensure designs that contribute to and enhance the goals and policies for specific districts of the City. The City of Portland Design Standards is listed in the City of Portland Design Manual, which is included by reference. If the development is located in a historic district or associated with a historic landmark, City of Portland Historic Preservation standards shall supersede:

(i) B3, B5, B5-b, B7 Zones, and B6 and EWPZ Waterfront Zones: Development in the B3, B5, B5-b, B7 business zones and in the B6 and EWPZ waterfront zones 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**. New development along the Eastern Waterfront should avoid large monolithic massing along all street frontages and should promote permeability through and within the development at a scale compatible with the existing street networks of the Eastern Waterfront. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that are in scale with the context to which they most closely relate.

VESTAL AMENDMENT BELOW

b. *Master Development Plan Design Standards*: A Master Plan shall comply with the design and development standards of the zone in which it is located, and shall achieve a

** or contained in Design Guidelines for the Eastern Waterfront, and further, in the B6 and EWPZ, if the Planning Board votes to accept private roads with a public easement in lieu of public streets, the Design Guidelines shall be applied and interpreted as if the private roads were public streets.

February 19, 2015

To: Portland Planning Board
Re: Portland Company Re-zoning
From: Paul Stevens
21 Thomas St
Portland

In May of 2012, my architect great grandfather, John Calvin Stevens, wrote in an op-ed to the Evening Express: “Portland has by nature been granted exceptional opportunities. These opportunities have been in many cases sadly neglected by her citizens. They have sat quietly by and seen the finest chances for beautiful development ignored and spoiled”. I too have sadly and often observed this in my nearly 50 years as an architect and Portland resident.

The re-zoning of the Portland Company is the “exceptional opportunity”. Many citizens spent years developing a thoughtful plan for the Eastern Waterfront. That plan was partially implemented with new B-6 zoning and the Eastern Waterfront Design Guidelines. The Portland Company site was exempted at the time although it was fully intended to be included. It is now time to follow through and pave the way for what can be a significant development at our front door on the Atlantic. It is significant for its promise of adaptive reuse of the historic structures, opportunity for new construction and contribution to our property tax base. The owners of the property have signaled their intent to embrace the planning and vision for this property established by our citizens. They will have to opportunity to demonstrate this in the master planning process that will follow the re-zoning.

It is way past time for Portland to say “yes” to such an opportunity. To say “no” will relegate the Portland Company site to inappropriate under use and eventual loss of its historic structures.

Portland Company Re-zoning; The PSA statement of support.

The PSA supports the re-zoning of the Portland Company for mixed use. The development of this, the most important site in Portland, will be of significant benefit to our citizens both economically and environmentally. The applicant has embraced the vision set forth by the Eastern Waterfront Master Planning Committee and memorialized in the existing B-6 zoning ordinance and the Eastern Waterfront Design Guidelines. The re-zoning will create the opportunity for adaptive re-use of the historic buildings, exciting new architecture and increased public access to a renewed landscape on the harbor's edge. We urge the Planning Board to support this important initiative.

Portland Society for Architecture
PO BOX 5321
Portland, Maine 04101
www.portlandarchitects.org

Save the valued view.

Please share your thoughts about building height and site plan views with the City Council members and developers of 58 Fore Street.

I frequently walk on the bike/pedestrian path along the waterfront between the Old Port and the Eastern Prom. The sight of the Observatory on the crest of Munjoy Hill, and the historic architecture on the slopes are a very important part of the character of the East End. Any additional height will block that view including the Observatory. Do not let that happen!! Sincerely,

Maggy Wolff
Saint Lawrence St. 04101

Card design by portlanddenise@gmail.com

Christine Grimando
To: Senior Planner
Planning Division
City Hall
4th Floor
~~389 Congress Street~~
Portland, Maine 04101

Save the valued view.

Please share your thoughts about building height and site plan views with the City Council members and developers of 58 Fore Street.

While our views will not be blocked substantially, The Pedestrian views/ "Feel" of Fore Street will be severely damaged if they build on Fore Street. This is a waterfr

USA | Building a Nation

Christine Grimando
To: Senior Planner
Planning Division
City Hall
4th Floor
~~389 Congress Street~~
Portland, Maine 04101

Card design by portlanddenise@gmail.com

September 1, 2014

Good day.

In Portland, there is talk that the city officials are considering rezoning for the owners of the Portland Company, who have purchased 10 acres on the ocean at 58 Fore Street in Portland, Maine. They want to add thirteen acres of "submerged" land, enabling them to turn their ten acres into twenty-three acres,

If this is acceptable, then I, as an owner of two acres on the ocean, should be able to use "submerged" land to add another 2.6 acres to my land.

They are increasing their land by 130%, and I should be able to do the same.

Why not?!!

A very concerned citizen

SEP - 3 2014

Dept. of Building Inspections
City of Portland Maine

Save the valued view.

Please share your thoughts about building height and site plan views with the City Council members and developers of 58 Fore Street.

AS PORTLAND RESIDENTS WE ARE CONCERNED ABOUT LOSING A UNIQUE VIEW, WHICH IS A REASONS FOR ATTRACTING TOURISTS.

Steve Schuh
Lisa Schiffman

To: Christine Grimando
Senior Planner
Planning Division
City Hall
4th Floor
~~389 Congress Street~~
Portland, Maine 04101

Card design by portlanddenise@gmail.com

Save the valued view.

Please share your thoughts about building height and site plan views with the City Council members and developers of 58 Fore Street.

1/12/15
Please, please, please don't let a zoning change happen that benefits a few and that will ruin the feel of an entire neighborhood of Portland and block a connection with the water.
Thank you for your consideration

Sincerely,
Serena Winterstein
9 Waterville St #4C

To: Christine Grimando
Senior Planner
Planning Division
City Hall
4th Floor
~~389 Congress Street~~
Portland, Maine 04101

Card design by portlanddenise@gmail.com

Save the valued view.

Please share your thoughts about building height and site plan views with the City Council members and developers of 58 Fore Street.

Honestly? I feel that the city is prostituting itself for the almighty dollar and a claim to fame - tall fame. This will all be realized when it is too late. How sad. Where is preservation of that that is good? Soon we'll look like any other city. Linda Tyler

Card design by portlanddenise@gmail.com

3c USA

To: Christine Grimando
Senior Planner
Planning Division
City Hall
4th Floor
~~389 Congress Street~~
Portland, Maine 04101

Greater Portland Landmarks Comment for Planning Board public hearing Feb. 24, 2015
As the board considers the zoning recommendation, Greater Portland Landmarks continues to believe that the City would be better served by completing the historic review and designation of the complex in tandem with the zoning. Any zoning change or presentation of a potential plan for the site should not prejudice or limit historic preservation board consideration of the potential for historic designation.

For this reason, we suggest that if the Planning Board endorses the zoning change, that it add a condition that calls for a process to work out any potential differences between the zoning and the historic preservation board recommendations regarding a historic district. This process should occur prior to City Council consideration of both zoning and a potential district.

The City's historic preservation ordinance requires very strict time frames for consideration of potential historic designation, which we believe will not unduly delay matters. The Planning Board itself could then deliberate on any changes needed and whatever goes to the Council would have the full vetting of both the Historic Preservation Board and the Planning Board.

We see advantages in the parallel consideration of zoning and historic preservation: to avoid any zoning language that prejudices the historic preservation review, to work out any differences in parallel and in advance of council deliberation, and to provide clear direction to the developers.

Regarding heights, the overall scale of development on the site should be respectful of the existing views from the harbor of the complex and of the 19th century Munjoy Hill neighborhood as well as views of and from the National Historic Landmark Portland Observatory. There should be site permeability that fosters the connection with nearby historic districts and neighborhoods and the waterfront.

We would like to make it clear that Greater Portland Landmarks is not opposed to development of this site. In fact we are optimistic about the potential for redevelopment and adaptive reuse of the Portland Company site as a signature project which will bring new vitality to the eastern waterfront. The 10 acre site has room for for both the historic complex and new architecture that is compatible with and enhances one of the most distinctive contexts in our city. We believe that the best outcome would be to design the site in a manner that retains the integrity and character of the industrial complex while bringing new and creative uses to these historic buildings. This approach would brand the development as one truly unique to Portland and to Maine by making the history of the Portland Company live into the future as a significant part of a contemporary reuse of this waterfront site.

Hilary Bassett, Executive Director, Greater Portland Landmarks

24 February 2015

To: Members of the Portland Planning Board
RE: India Street Sustainable Neighborhood Plan:
Critical Action 8: Adopt a Form-based Code

Dear Members of the Board:

The PSA is cognizant of the great effort by staff and others in this production ------ but the PSA is strongly opposed to the current proposal before the Board. We plan to respond in more detail later, but have some initial comments. The specifications of the proposed FBC for the India Street District goes way beyond a simple set of common guidelines to prescribe a very high level of specificity and visual appearance; it represents a virtual 'taking' of the building facades from their owners. Instead of the natural evolution of this urban neighborhood that is represented by diversity, vitality, and authenticity, we will be forcing a 'cookie-cutter' approach upon its property owners and residents that is stuck in time, neither honoring our existing historic structures, nor looking to the future, and above all turning its back to Portland's proud architectural heritage.

The PSA is one-hundred percent behind the idea of creating a pedestrian friendly mixed use urban neighborhood and believes that a simple set of common sense guidelines can do that. This proposal is neither simple nor commonsensical.

Respectfully,
The Portland Society for Architecture

CHESTER & VESTAL

A PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

107 Congress Street, Portland, Maine 04101

Telephone (207) 772-7426 Fax (207) 761-5822

EDWIN P. CHESTER
BARBARA A. VESTAL
MICHAEL P. DIXON

chester@chesterandvestal.com
vestal@chesterandvestal.com
dixon@chesterandvestal.com

February 24, 2015

HAND DELIVERED

Chair O'Brien and Members of the Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Portland Company Complex

Dear Chair O'Brien and Members of the Planning Board:

It is true that we have spoken with the applicant since the last workshop. But we did not resolve the matter. I was not heartened by the modest accommodations offered. And at the outset of the conversation, I stated that I reserved the right to advocate for heights to be measured from flood plain. Because if that happens, the issues of bars and setbacks and vistas and site permeability all go away.

So this morning I spent two hours going through old Planning Board files to resolve whether height is to be measured from flood plain or from average grade. I found unquestionable evidence that height on the Portland Company site is to be measured from flood plain. This is a clear, quantitative standard in the Eastern Waterfront Building Height Study, which is part of the Waterfront Master Plan.

That means that how to measure height on the Portland Company site is not a policy question. It is not a judgment call for the Planning Board. It is a quantitative standard in the master plan which the City Council cannot lawfully ignore. Your recommendation to the City Council should be consistent with that standard.

So what did I find?

Exhibit 1: Draft Report, August 25, 2004. Red buildings. Page 5 - Findings. Height: Upper Fore shadow: 8 floors. It says those heights are mapped on Illustration 32. Turn to it. See written in on the draft: "Max. 8 floors above floodplain." Also written in by hand 5 "from flood plain" on two other areas east of Mountfort Street.

Exhibit 2: The next event was a neighborhood meeting on September 7, 2004 on Munjoy Hill. This is an excerpt from a 9/28/04 City Council report. It notes that a clear and large majority of the citizens were concerned with the scale of development. As a result, staff revisited the conclusions of the Height Study and reduced maximum heights to reflect public concern. It

refers to Attachment 7 where heights have been reduced. Now on the Portland Company site, it shows the shadow area reduced from 8 stories to 5-6, and similar reductions on other parts. Note printed in 3 places on the Portland Company site "from flood plain."

Exhibit 3: Not dated, but prepared by the consultant, illustrates a reduced buildout, showing 8 stories reduced to 6 stories.

Exhibit 4: Illustration 33: Height Map & Building Envelopes. Dated November 1, 2004. See note #2: "The height of building and tower masses east of Mountfort Street or its extension shall be measured from 2' above the flood plain elevation for the site based on the national geodetic vertical datum." This includes the Portland Company site.

Exhibit 5: Memo from Bill Needelman to City Council dated November 19, 2004, with 4 attachments. I have only copied 2.

> Attachment 1 is the existing and proposed sections, showing the Portland Company buildings barely breaking the plain of Fore Street. This is described as an illustration of the Planning Board recommendation.
>
> Attachment 4 is a working document. It is described as showing the amended building heights forwarded by Councilor Gorham at the previous Council meeting. The area is getting narrowed down to smaller B-6. See a similar note: "#4: For buildings located east of Mountfort Street, building heights shall be measured from 2 feet above flood plane, not from average grade."

Exhibit 6: This is a copy of what was actually adopted as the B-6 zone on December 8, 2004. The wording of note 4 changed only slightly. It states: "For buildings located east of Mountfort Street (extension) building heights shall be measured from feet above flood plain, not from average grade."

From the August 25th draft through to the December 8, 2004 adoption, it was clear and unchanged. Heights east of Mountfort Street extension are to be measured from flood plain. While B-6 only includes one building envelope east of Mountfort, that standard clearly applies across the entire study area, including the Portland Company site.

It is also worth noting, in the Findings section on Heights of the 8/25/2004 draft report (Exhibit 1), it states: "Areas of 1-2 stories are possible along the stretch of Fore Street frontage between Atlantic and Waterville, except for four view corridor openings where no building can front Fore Street or break the relative elevation at Fore Street."

Compare that the same section in the December 2004 final report (**Exhibit 7**). Most of the findings only have minor tweaks – like substituting 5 to 6 for 8 in the upper Fore shadow. But, significantly, the entire statement about the possibility of 1-2 story buildings with frontage on

Fore Street has been deleted from the report. With the reduced height, measured from flood plain, those buildings facing on Fore Street are no longer possible.

The proposed height overlay map must be amended so that it provides that all heights east of Mountfort Street or its extension shall be measured from flood plain, including the Portland Company site. The City Council cannot lawfully do otherwise and still be consistent with a quantitative standard in the master plan.

Very truly yours,

Barbara Vestal

Barbara A. Vestal

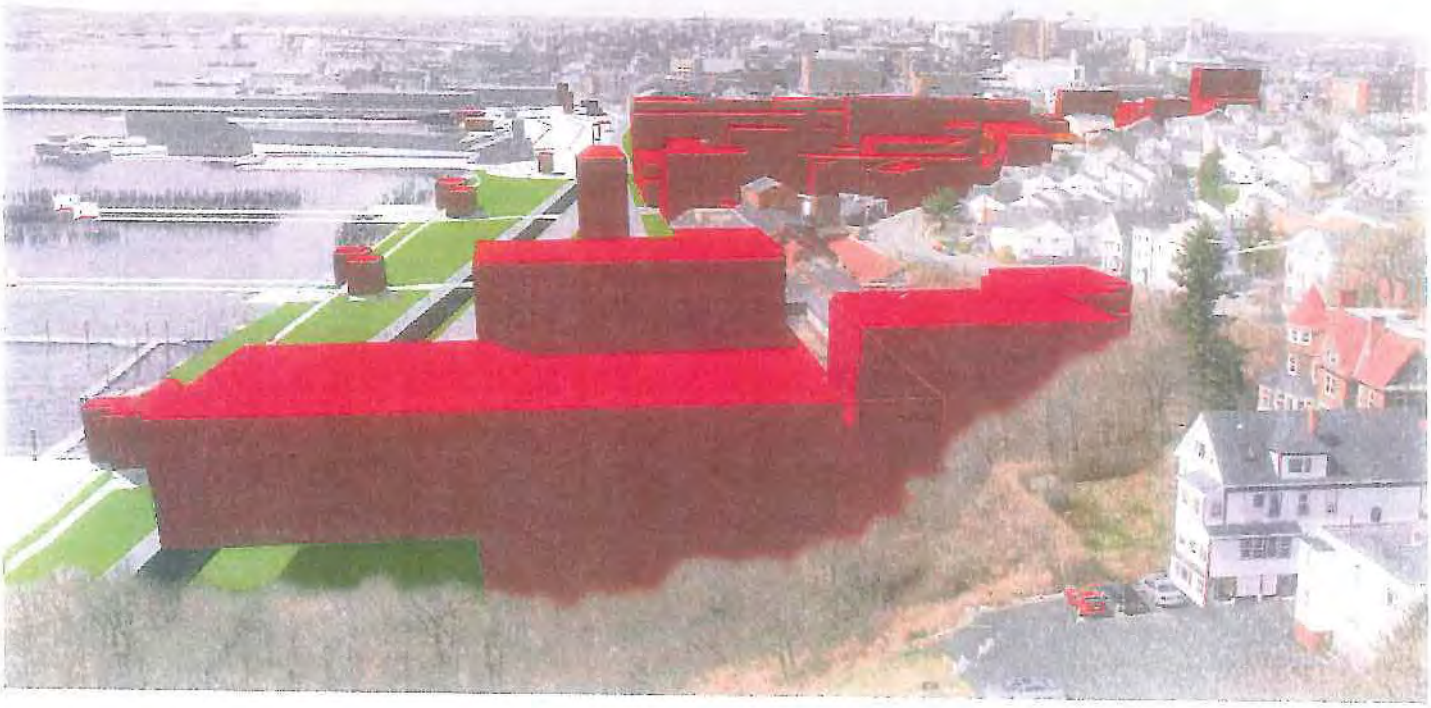
BAV/om
Attachments: Exhibits 1 - 7

EXHIBIT 1

Draft Report

Eastern Waterfront Building Height Study

Portland, Maine



25 August 2004

prepared by:

City of Portland Planning Office
MRLD, LLC

This concept build out is just one of hundreds of possible iterations meeting the guiding principles for the project. It was important to develop a build out scheme to visualize the area as redeveloped.

Illustrations 18-31 are all critical for visualizing the concept build out from different vantage points and contexts, but Illustrations 30 and 31, photo simulations are most telling and helpful for understanding how the redeveloped Eastern Waterfront will become a new and vibrant area while respecting the character and needs of adjacent neighborhoods.

FINDINGS

Height

Heights are defined in the study area using the following parameters (one floor or story is considered 11'):

- The overall fabric is three to five stories.

- The maximum heights for the three massing / height shadow zones noted in Illustration 9 and mapped on Illustration 32 are:

Middle / East Federal shadow:	7 – 8 floors
Shipyard shadow:	7 floors
Upper Fore shadow:	8 floors

- Areas of 1-2 stories are possible along the stretch of Fore Street frontage between Atlantic and Waterville, except for four view corridor openings where no building can front Fore Street or break the relative elevation at Fore Street. These three breaks in the possible 1-2 story Fore Street elevation are noted on the Illustration 32, Height Map.

- Any building mass or "tower" above the 5 story limit, where allowed, has a maximum 70' width parallel with the shore and a maximum 140' length perpendicular to the shore. 70' wide towers must be separated by 140'.

STUDY AREA (3 - 5 STORYS)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. NO BUILDING ABOVE 5 FLOORS SHALL BE WIDER THAN 70' PARALLEL WITH THE WATERFRONT AND LONGER THAN 140' PERPENDICULAR WITH THE WATERFRONT.

2. 70' WIDE TOWER/BUILDING AREAS ARE A MINIMUM OF 140' APART, MEASURED PARALLEL WITH THE WATERFRONT

3. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION

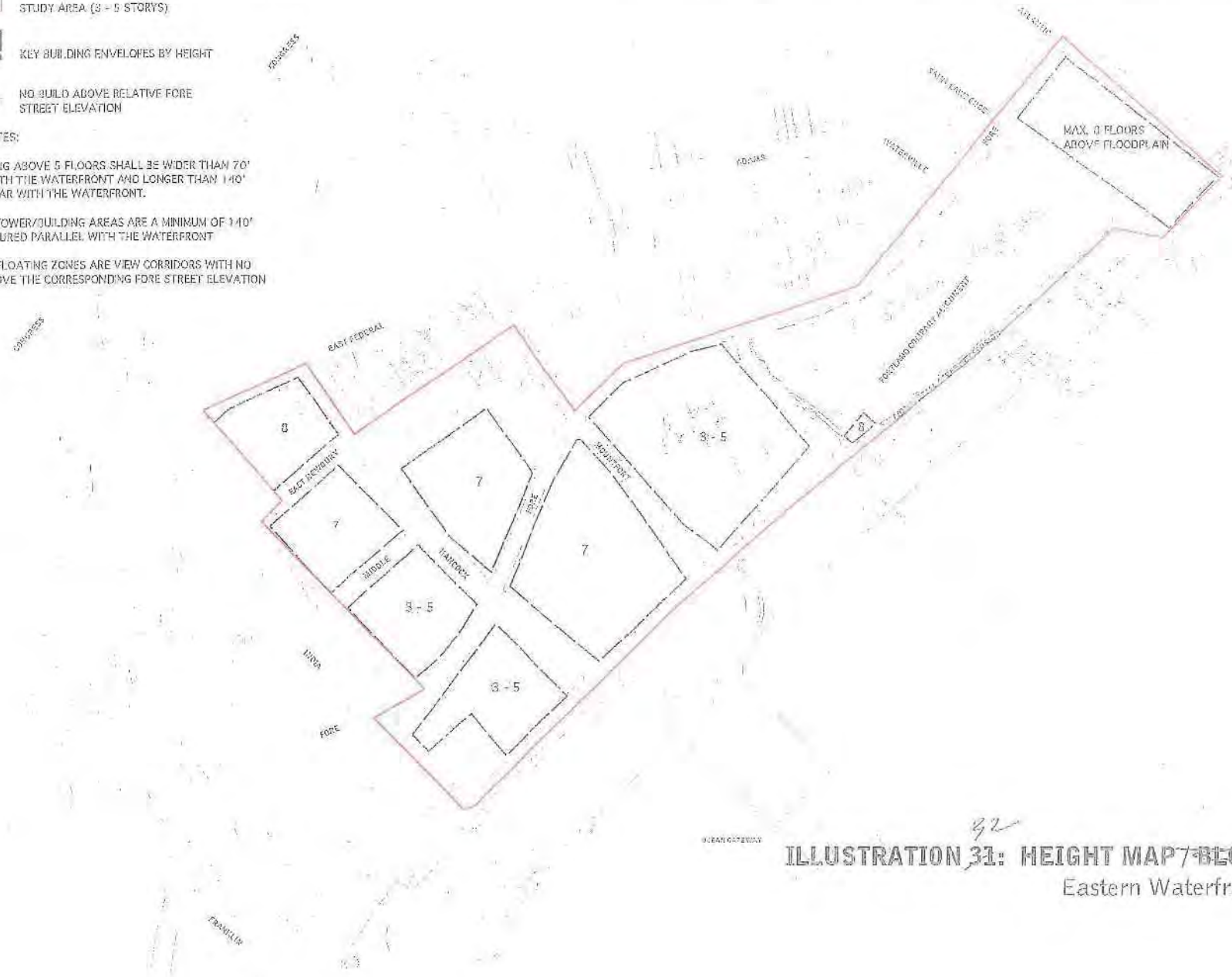


ILLUSTRATION 31: HEIGHT MAP/BLOCK CONFIGURATION

Eastern Waterfront Building Height Stu

Portland, Mai

MRLP, LL

EXHIBIT 2

Waterfront II

The Final Report of the Mayor's Waterfront Task Force on Economic Development: *Investing in our Working Waterfront*, October 2000, picked up where Waterfront I left off. The "Waterfront II" report included four economic related recommendations: (1) Encourage private and public waterfront investment, (2) Create a Waterfront-Centered economic development outreach program, (3) Support current use taxation, and (4) Support clean, working harbors.

The first recommendation included a specific provision that "recommends the development of waterfront parking garages not located on the water-side (with appropriate streetscape for retail or office uses) to supplement or replace the surface parking which serves the area. The intent is to free up precious waterfront land for productive use while relieving the parking problems for waterfront commerce.."

The Waterfront II final report was adopted by the City Council as part of the Comprehensive Plan.

6. Neighborhood Meeting:

On September 7, 2004, the Planning Staff hosted a Neighborhood Meeting on Munjoy Hill to present the B-6 zone proposal and the Building Height Study. Please refer to the Neighborhood Meeting Material included in Appendix 2 of the Master Plan to understand the public's reaction to Building Height Study as presented at the neighborhood meeting.

In summary, very little discussion was generated by the uses proposed in the B-6 zone itself; but there was a clear and large majority of people concerned with the scale of development and the potential to impact public and private views. Given that compatible architecture is one of the signature principles of the Eastern Waterfront Master Plan, Staff took this criticism seriously and revisited the conclusions of the Height Study. The amended Master Plan document, including Appendix D – the Building Height Study, and the B-6 Building Height Overlay Map, Attachment 7, have been reduced to reflect public concern over view impacts.

7. Planning Board Recommendation:

As stated above, the CDC and Planning Board both recommended adoption of the Master Plan in 2002. With the Building Height study complete, the Planning Board recommends the formal adoption of the Master Plan into the

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

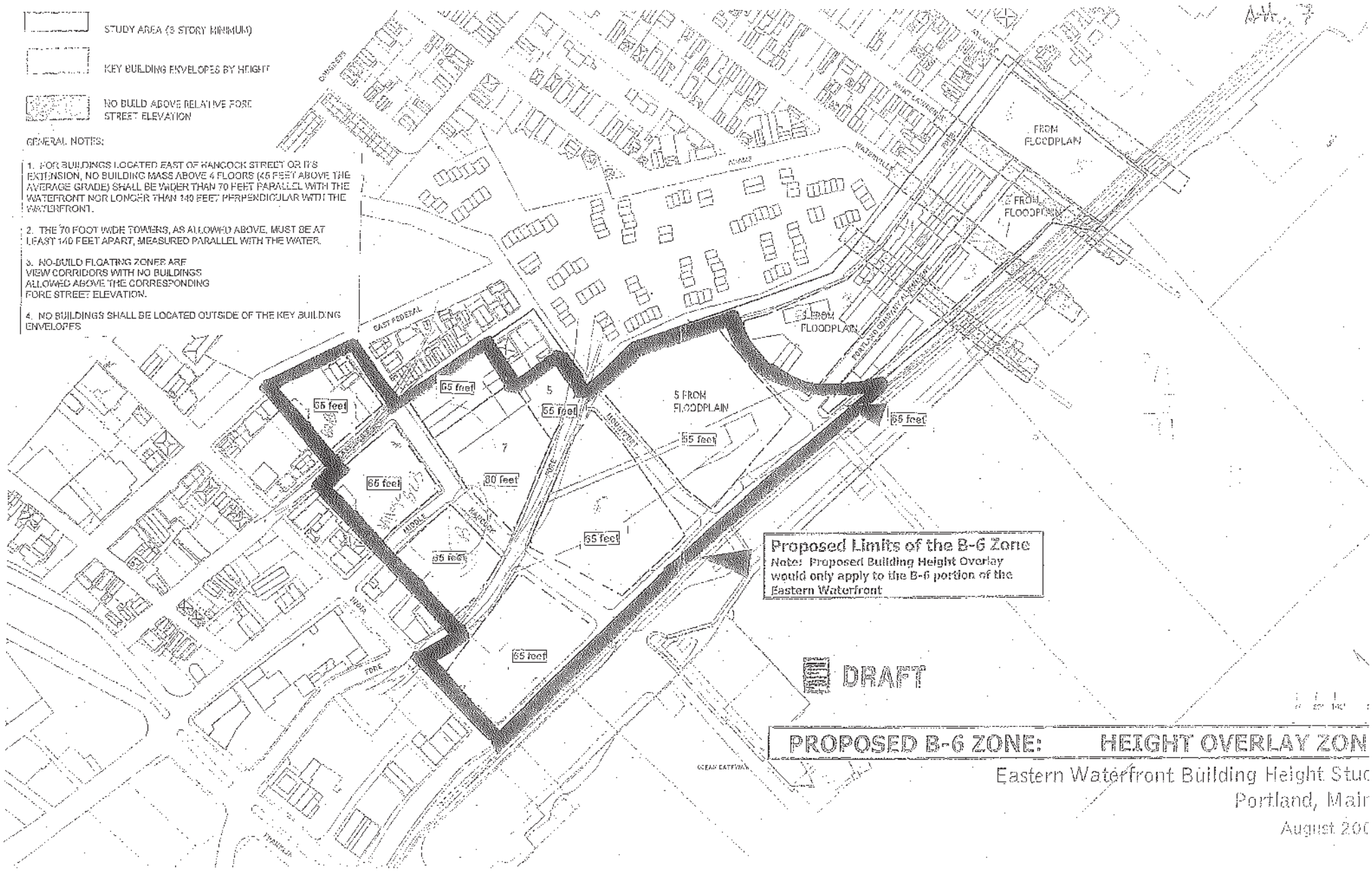
GENERAL NOTES:

1. FOR BUILDINGS LOCATED EAST OF HANCOCK STREET OR ITS EXTENSION, NO BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE 70 FOOT WIDE TOWERS, AS ALLOWED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PARALLEL WITH THE WATER.

3. NO-BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDINGS ALLOWED ABOVE THE CORRESPONDING FORE STREET ELEVATION.

4. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES



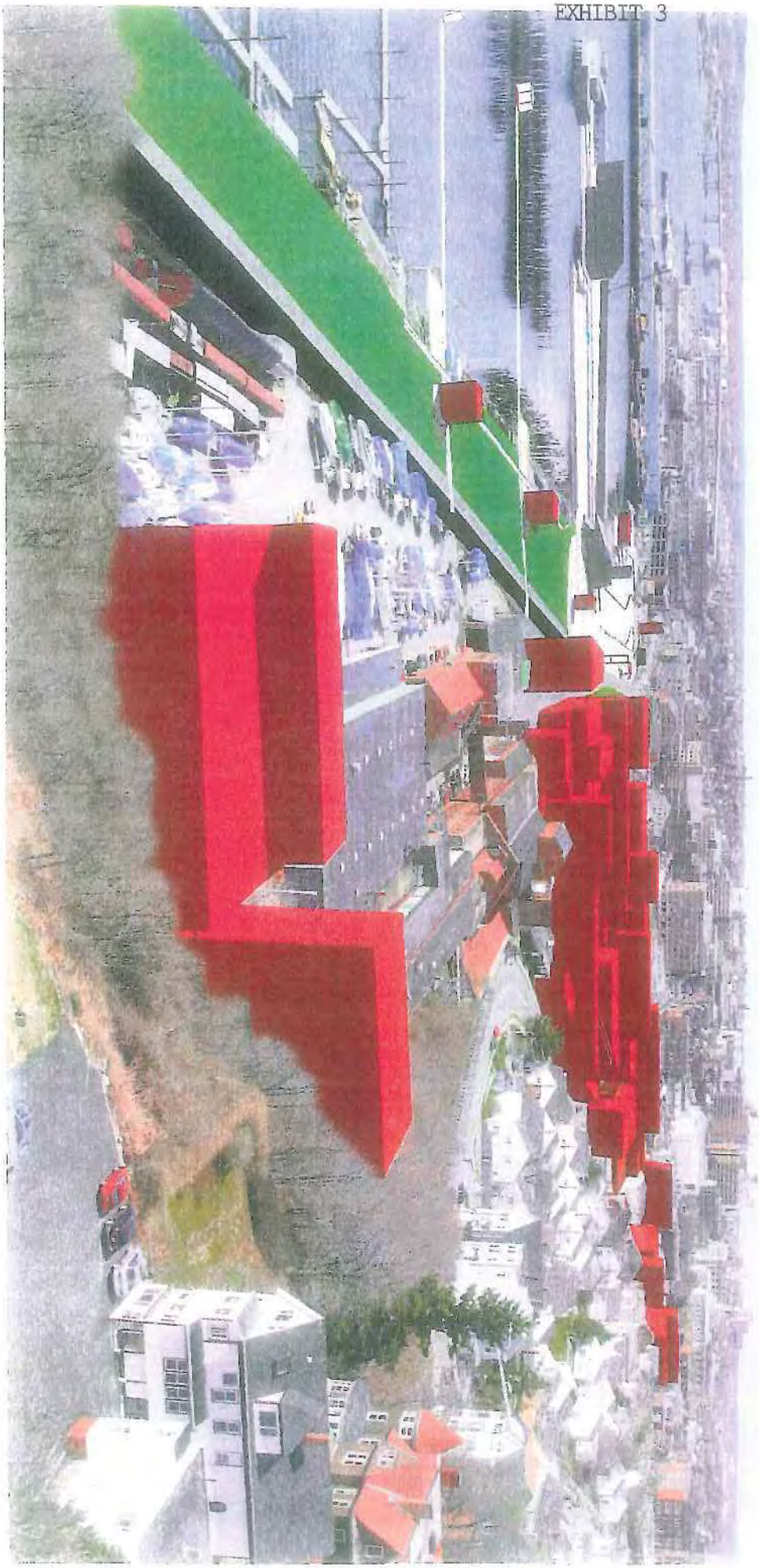
PROPOSED B-6 ZONE: HEIGHT OVERLAY ZON

Eastern Waterfront Building Height Stud

Portland, Mair

August 20(

EXHIBIT 3



STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. FOR BUILDINGS EAST OF HANCOCK STREET OR ITS EXTENSION, BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE HEIGHT OF BUILDINGS AND TOWER MASSES EAST OF MOUNTFORT STREET OR ITS EXTENSION SHALL BE MEASURED FROM 2' ABOVE THE FLOOD PLAIN ELEVATION FOR THE SITE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM. WHERE ALLOWED, BUILDING MASS ABOVE 4 FLOORS SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

3. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.

4. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.

5. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

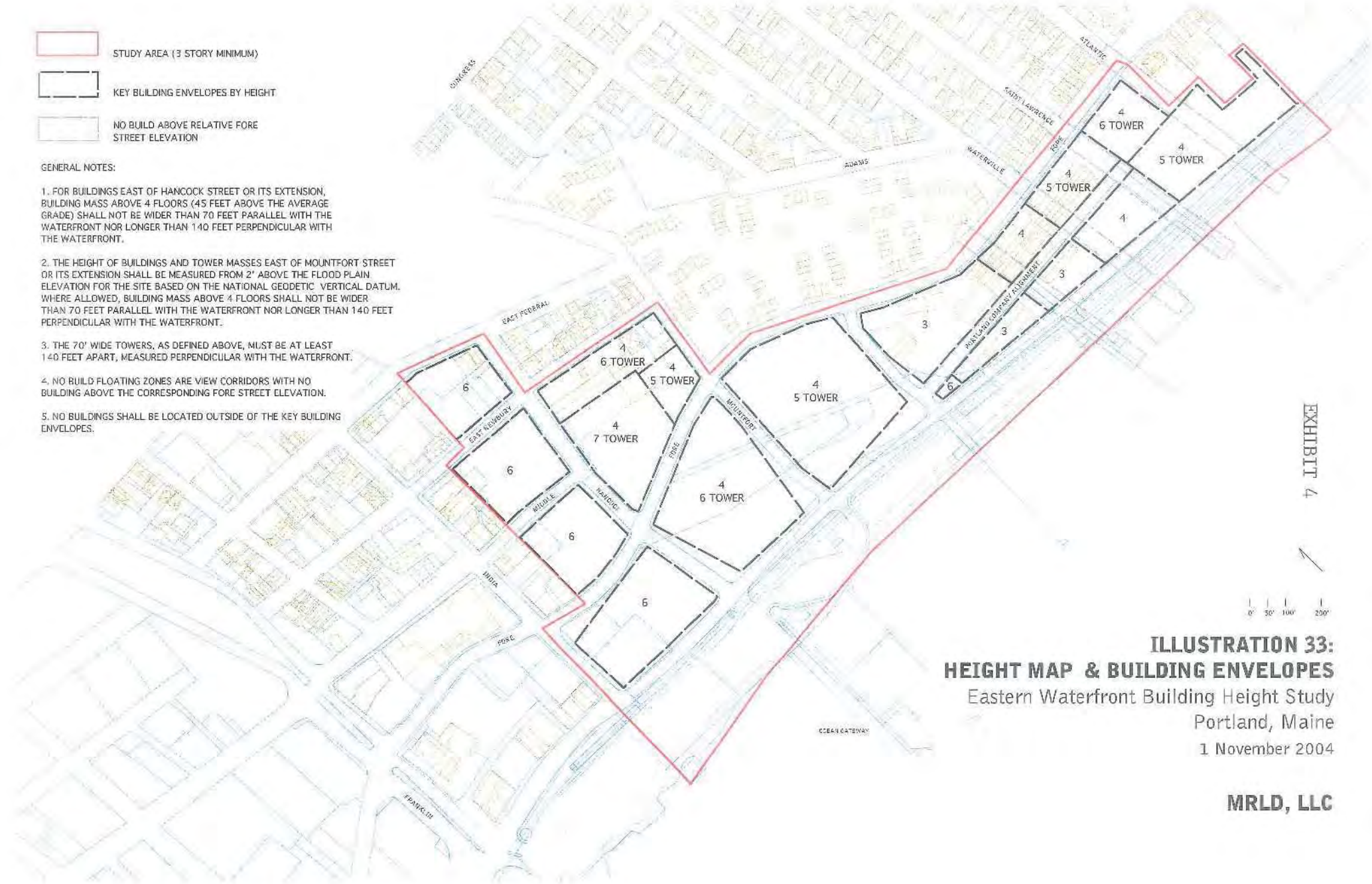


EXHIBIT 4

ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES

Eastern Waterfront Building Height Study
Portland, Maine
1 November 2004

MRLD, LLC

EXHIBIT 5

Memorandum
Department of Planning and Development
Planning Division

To: Mayor Smith and the Portland City Council

From: Bill Needelman, Senior Planner

Date: November 19, 2004

Re: Additional Material for the Eastern Waterfront Rezoning Workshop

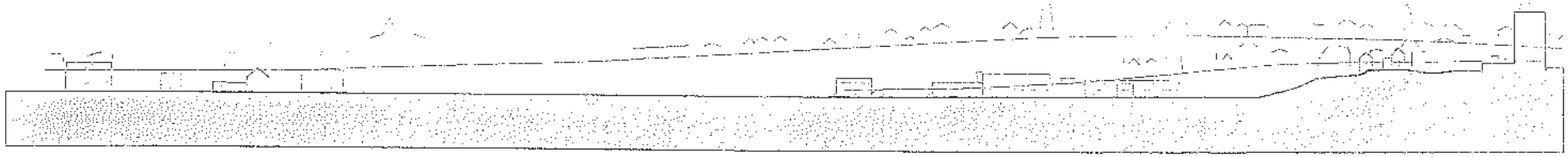
As support for the November 22 workshop on Eastern Waterfront rezoning, Planning staff is providing the following additional material. This material will be helpful during both the on-site building height demonstration and the following workshop. Please find with the previously circulated material the following material:

1. East / West Section: This drawing is taken from the Building Height Study and reflects the Planning Board's recommendation.

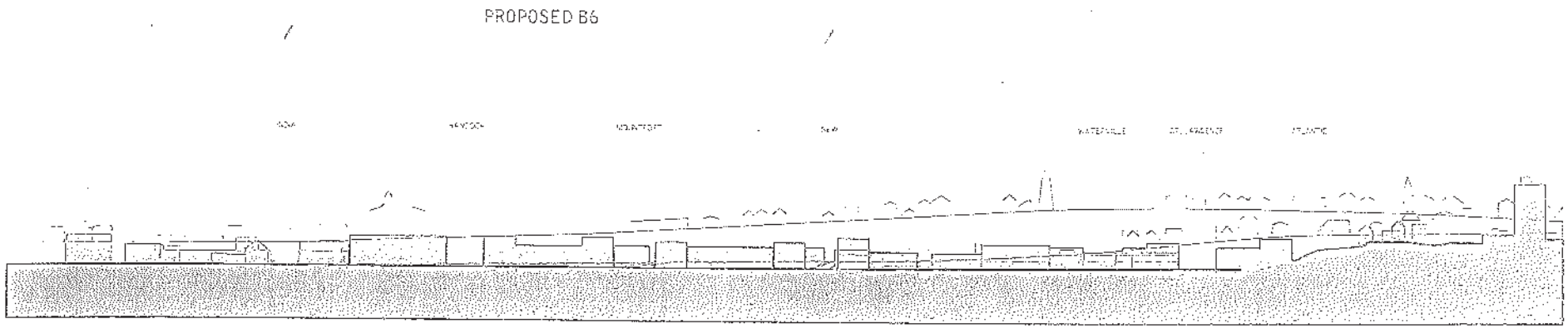
2. Potential Building Extensions: As suggested at the previous Council meeting, drawing 2 shows a maximum number of building extensions on those block where they are allowed. The higher number represents the highest point of the building. Again, these numbers reflect the current recommendation.

3. Aerial Photo: The attached aerial photo shows the approximate locations and heights of the City "lift trucks" that will be in place prior to the workshop on November 22. The trucks will be in position from 3:00 to 4:30pm.

4. Councilor Gorham Amendment: Drawing 4 shows the amended building heights forwarded by Councilor Gorham at the previous Council meeting.



SECTION E EXISTING - EAST / WEST (with Congress Street and Fore Street Elevations)



SECTION E PROPOSED - EAST / WEST (with Congress Street and Fore Street Elevations)

EASTERN WATERFRONT HEIGHT STUDY

Portland, Maine

13 September 2004

MRLB, LLC

0' 100' 500'

(1) Block Alternative

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

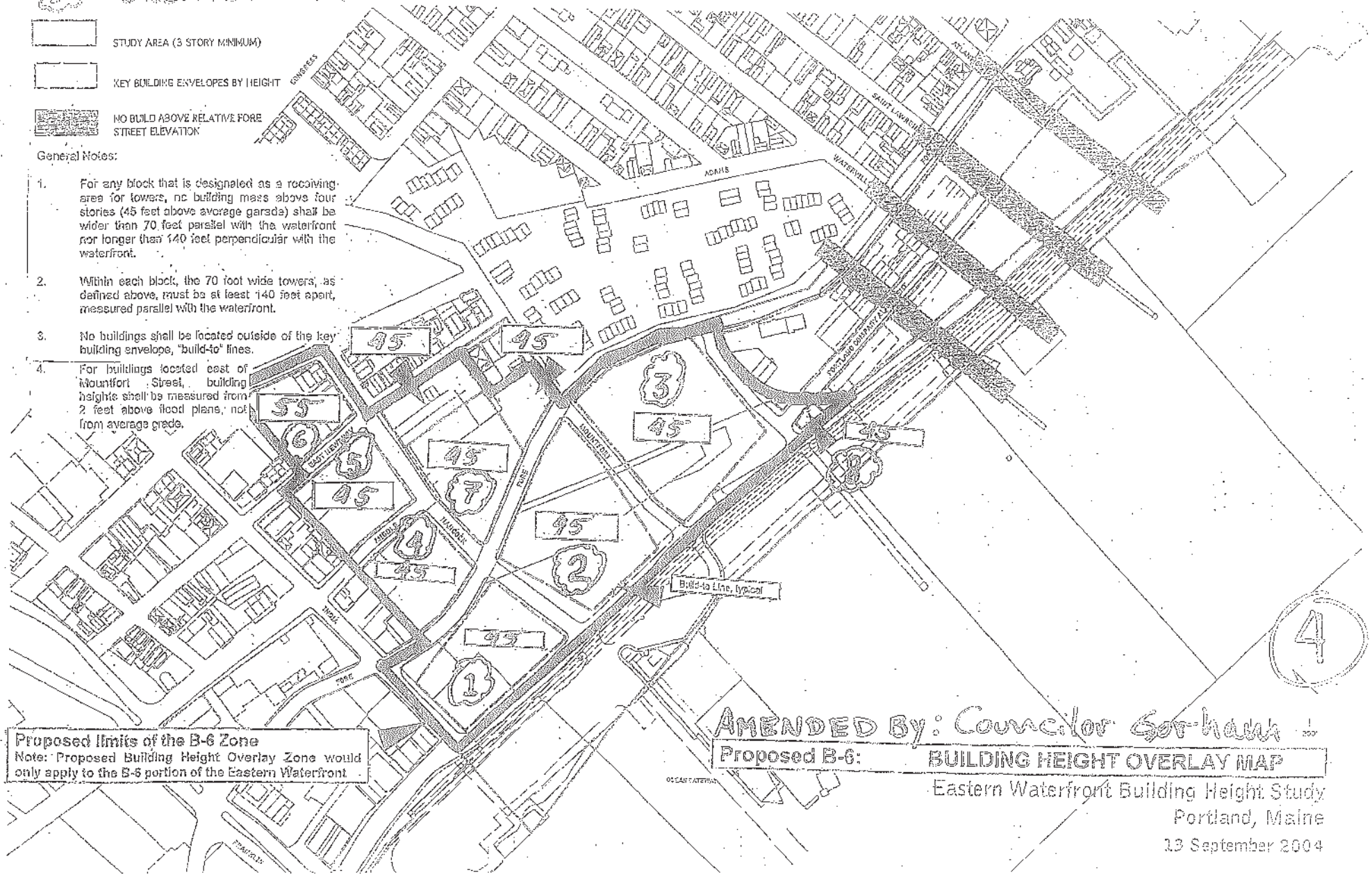
General Notes:

1. For any block that is designated as a receiving area for towers, no building mass above four stories (45 feet above average garade) shall be wider than 70 feet parallel with the waterfront nor longer than 140 feet perpendicular with the waterfront.

2. Within each block, the 70 foot wide towers, as defined above, must be at least 140 feet apart, measured parallel with the waterfront.

3. No buildings shall be located outside of the key building envelope, "build-to" lines.

4. For buildings located east of Mountfort Street, building heights shall be measured from 2 feet above flood plane, not from average grade.



(4)

AMENDED By: Councilor Gorham

Proposed limits of the B-6 Zone
Note: Proposed Building Height Overlay Zone would only apply to the B-6 portion of the Eastern Waterfront

Proposed B-6: BUILDING HEIGHT OVERLAY MAP

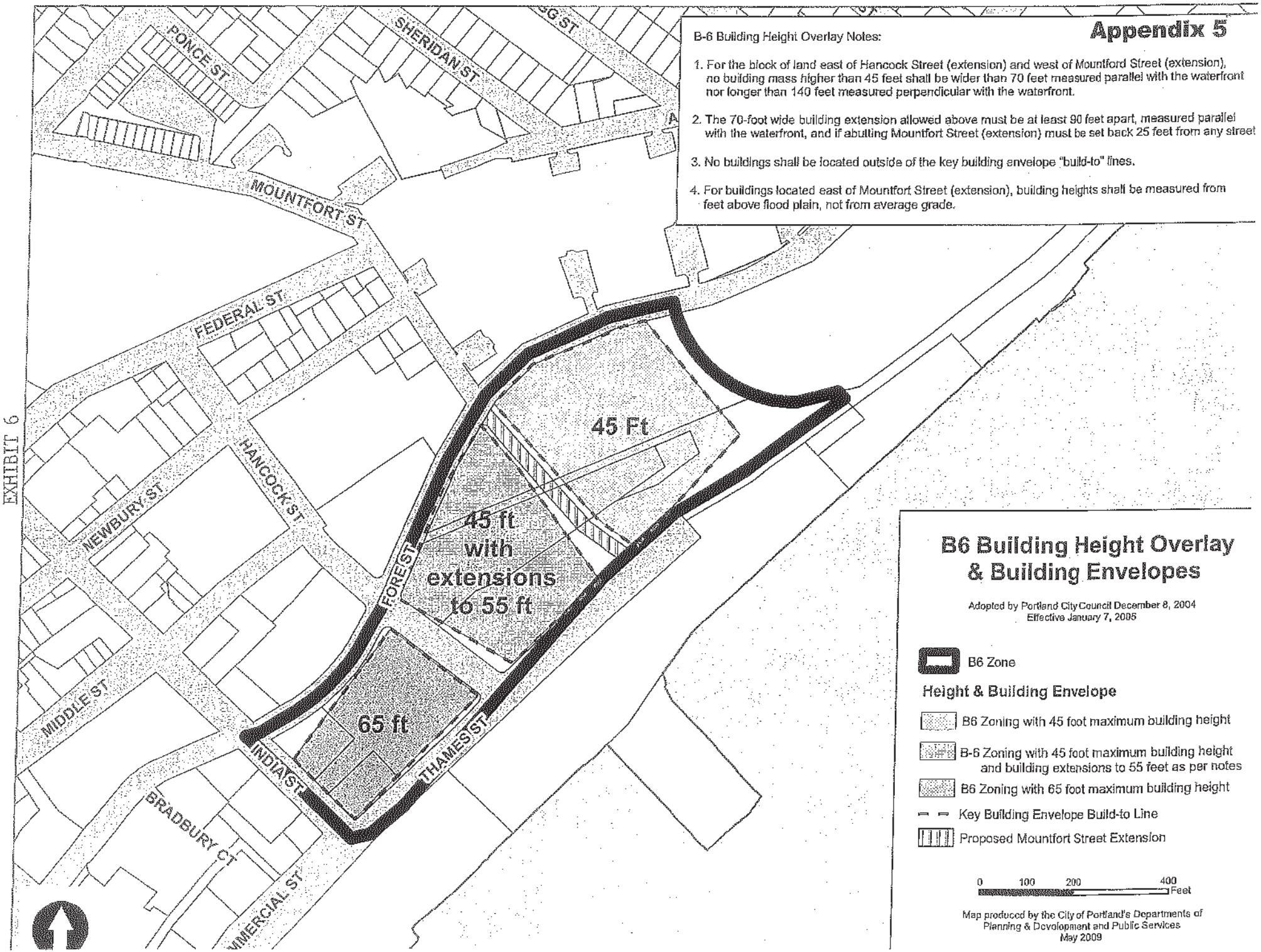
Eastern Waterfront Building Height Study
Portland, Maine
13 September 2004

EXHIBIT 6

Appendix 5

B-6 Building Height Overlay Notes:

1. For the block of land east of Hancock Street (extension) and west of Mountford Street (extension), no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront.
2. The 70-foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street
3. No buildings shall be located outside of the key building envelope "build-to" lines.
4. For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade.



The concept build out was a test of the conclusions drawn from earlier analysis. The analysis documents are just one of hundreds of possible iterations meeting the guiding principles for the project. It was important to develop a build out scheme to visualize the area as redeveloped.

When the draft build out images were shown to the public at a neighborhood meeting, the clear consensus from the participants was that the concept build out was too aggressive. Working with the City Planning Division staff, the Height Map and section drawing were reduced on a block-by-block basis to reflect public concern, while retaining consistency with the principles of this analysis and the broader principles of the Eastern Waterfront Master Plan.

The final illustrations provided herein, including section drawings, the height and building envelope map and photomontage images, reflect public input generated at the neighborhood meeting. These images are critical for visualizing the concept build out from different vantage points and contexts. The multiple perspectives are helpful for understanding how the redeveloped Eastern Waterfront will become a new and vibrant area while respecting the character and needs of adjacent neighborhoods. The final *Illustration 33, Height Map and Building Envelopes,* will furthermore become the foundation of a regulatory map use in the future rezoning of portions of the Eastern Waterfront

The previous draft analysis documents that show higher buildings, including plans, sections, computer models and photo simulations, will be provided in the final report appendix to illustrate the full process of the study.

FINDINGS

Height

Heights are defined in the study area using the following parameters (one floor or story is considered 11'):

- The overall fabric is from of 3 to 4 floors. Areas allowing taller buildings are noted on Illustration 33.

- The maximum heights for the three massing / height shadow zones noted in Illustration 9 and mapped on Illustration 33 are:

Middle / East Federal shadow:	6 floors
Shipyard shadow:	7 floors
Upper Fore shadow:	5 to 6 floors

- No buildings can break the relative elevation at Fore Street at the four "floating zones" noted on Illustration 33. These floating zones are extensions of Munjoy Hill Street corridors and protect connectivity between public streets and the harbor as viewed over the Portland Company properties.

- Any building mass or "tower" above the 4 story limit, where allowed, has a maximum 70' width parallel with the shore and a maximum 140' length perpendicular to the shore. 70' wide towers must be separated by 140'. Please note that west of Hancock Street, the tower provision has not been applied.

View Corridors, Building Envelopes and Street Wall Development

Assuming certain street layouts, Illustration 32, Alignments / Open Space Map creates and protects views and establishes a range of streetscapes due to the interplay between the building walls and street alignments.

For this scenario to work, the engineering of the road alignments is critical for establishing the setbacks, which in turn allow for varying sidewalk widths and the preservation of views. As stated above, in translating Illustration 32 in to the regulatory Height Map and Building Envelopes map, the "splays" have been simplified to reflect current development proposals.

Recommendations Beyond Building Heights

Alleys

In addition to building heights and alignments, this report recommends a system of alleys modeled after Wharf Street and the area between the Portland Company complex and the "Map Room" tower. These alleyways are proposed as a secondary level of pedestrian and vehicular circulation. The conditions can range from an open alley with sky bridges to arcades with minimum height of two stories. One alley may vary, beginning with a covered arcade and three stories of building for a depth of 35 or 70 feet and then an open alley with skywalks.

Step backs

Step backs have not been specifically addressed as the maximum building height is seven stories and the "aerial splays" studied in the three dimensional model, specifically on Hancock Street may be too specific/restrictive for planning and market implementation. The varied street level experience is not impacted by the loss of step backs. The majority of view creation and preservation is maintained using building heights and setbacks/alignments. It is more important in the Eastern Waterfront to create defined and energized streets than focus on step back formulas.

Maine Rail Transit Coalition
84 Middle St
Portland, Maine 04102
Telephone: 207-329-6732
Mailto: info@mainerailtransit.org
WWW.MaineRailTransit.Org

To: City of Portland Department of Planning & Development
From: Anthony **J. Donovan, Maine Rail Transit Coalition (MRTC)**
Date: February 24, 2015
Re: 58 Fore St. Zoning Map/Text Amendment Application Public meeting Comments

Sir/Madam:

The MRTC is a state-wide coalition of professionals with offices in Portland established for the purpose of expanding passenger rail service in the region. Our work is in public policy and planning initiatives to attract private investment that contribute to the walkability of community and reduce the reliance on automobiles for the economy and environmental benefits.

The background to our interest in the 58 Fore Street waterfront development, in addition to our residency and business interests here, was a 2013 study for expanding passenger rail on the railway corridor between Portland at the OceanGate cruise ship terminal and downtown Lewiston, Maine. We continue to advocate for that service and hope this development will not interfere with use of the State-owned railway abutting the site.

First and foremost we express our support for the development of this underutilized property referred to as the Portland Company. The proposed zoning map/text change to allow for the highest and best valued use of the property in accordance with the City Comprehensive Plan for an economically responsible development appears to be in the best interest of the City and waterfront.

Please consider;

1. The City of Portland Eastern Waterfront Master Plan (EWMP) was done through the committed efforts of a broad and diverse group of citizen volunteers, expert consultants and city staff. The Portland Company property should have been zoned to B-6 at the time of the adoption of the EWMP. The EWMP was adopted by the City Council and now the City should approve the rezoning that was established in that plan.

2. The 58 Fore Street plan, if allowed to proceed with this rezoning, consistent with the EWMP, will allow for a redevelopment that will contribute to Portland as a livable, walkable community destination, for the enjoyment and benefit of the entire city.

3. The proposed extension of the B-6 height overlay, as well as the Design Guidelines for the Eastern Waterfront, is appropriate to development on Fore Street. The Portland Company development will give more people access to the waterfront as residents and visitors. It will provide the public with better views and vistas of the waterfront than is currently provided by the limited views along Fore Street sidewalks and for those who have the good fortune to have been able to afford homes on the opposite side of Fore Street.

Opponents to this application for a zone change, in addition to seeking to protect their views, claim it will lead to noise from bars and restaurants, festivals and fireworks, at the same time as they raise issues about protecting a working waterfront. I suggest the working waterfront, with its welding and banging and 24 hour industrial activity has long gone from this section of the city.

More issues remain, but will be discussed in different forums, such as the controversial topic of inclusionary housing, the appropriateness of any historic district designation and the restoration of a passenger rail service to alleviate congestion and pollution in the City.

The process for assuring a good development is in place and can best be achieved by allowing the appropriate zoning to B-6 and moving forward with the developers as they establish a master plan appropriate to this unique waterfront site. In conclusion, we ask that the Planning Board allow this zone change so that we can get down to the real good work of this project.

Sincerely,

Anthony J. Donovan

Anthony J. Donovan, Founding Member
Maine Rail Transit Coalition

Cc. Portland City Council

Lannie Dobson - Re: Fwd: support for 58 Fore Street rezoning application

From: Lannie Dobson
To: Grimando, Christine
Subject: Re: Fwd: support for 58 Fore Street rezoning application

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

>>> "Daren Hebold, CCIM" <dhebold@luxrealty.com> 2/23/2015 11:43 AM >>>

Good afternoon Jeff, Tuck and Beth:

While I cannot attend the planning board public hearing tomorrow evening (Tues 24th), I wanted to write in with my endorsement for CPB2's zoning change application. Would you please distribute this message with Planning Staff and Council as you deem appropriate?

BACKGROUND
I attended an informative on-site presentation at the Portland Company earlier this week. CPB2 principals Casey and Kevin led us through a discussion of their very methodical and thoughtful approach to planning this important large waterfront parcel consistent with the established EWMP. Having been a commercial real estate broker in Portland since 2004 and Portland-business owner, I have seen countless proposed projects throughout Southern Maine. I have a keen sense of a quality, well-planned project and know one when I see it.

MY ENDORSEMENT
Accordingly, it is my perception that CPB2's request to replace 58 Fore Street's current antiquated zoning designation with a combination of B-6 and EWPZ is both appropriate and desirable. This request balances the developer's interest of producing a vibrant mixed-use, economically viable project, while still preserving the City's usual planning controls for this landmark site. Moreover I believe that having an approx 35' height variance along Fore Street is acceptable, given that the developer will be going to great lengths to preserve the existing view corridors and pedestrian access from the various East End tributary streets spilling down to this oceanfront parcel.

Thank you for hearing my opinion regarding this development.

With best regards, Daren Hebold

Daren Hebold, CCIM, President
LUX Realty Group | Maine to New York
Investment and Lodging Real Estate
75 Market Street

Portland, ME 04101

(207) 329-5092 direct

LODGING | INVESTMENT | PRIVATE EQUITY

February 23, 2015
Chair O'Brien and Members of the Planning Board
c/o Christine Grimando
Planning Department
City of Portland
389 Congress Street
Portland, Maine 04101

Dear Chair O'Brien and Members of the Planning Board,

I cannot attend the Planning Board public meeting on February 24th as I am out of town. In lieu of making a public comment, I am sending these comments for your consideration.

–

Mentioned often at the planning board meetings regarding this zoning change application are two unwritten and unofficial, but commonly used ways in Portland to measure building height limits: the average grade of the four corners of a site, and the average of regular intervals around the perimeter of a building.

But there's a third way and, unlike the other two, it's one that is actually enshrined in the B-6 land use code: measurement above the floodplain.

1. Since the B-6 zone was envisioned to eventually cover the Portland Company site, the B-6 Building Height Overlay map mandates must also apply to the site.

It has been declared at the planning board meetings by the applicant and Planning Staff that the B-6 zone, when it was enacted, was intended to eventually apply to the Portland Company site. If so, then the B6 Building Height Overlay & Building Envelopes map (Exhibit 1) must have been created with that intention in mind. That map *explicitly and unambiguously* states that "For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade".

It is plain to see that the floodplain measurement is called for here because of the topography of the area and how it changes along Fore Street. And this topographical change becomes even more pronounced further east. So if that measurement is appropriate for the current B-6 zone, it is even more appropriate for the Portland Company site

The B-6 Overlay map was adopted by the City Council concurrent with the Eastern Waterfront Master Plan and the Building Height Study in 2004. It is specifically referred to in the City Land Use Code. *It cannot be clearer or more explicit, and it cannot be ignored.* The Portland Company site is located east of Mountfort Street and *must* follow the same regulations as the rest of the B-6 zone.

2. A revised and more current version of Illustration 33 from the Building Height Study specifically states, yet again, that building heights east of Mountfort Street, including the Portland Company site, shall be based on the flood plain.

The revised and updated version of Illustration 33 (Exhibit 2) is dated two months later than the version that is included in the Eastern Waterfront Building Height Study, It is also dated one month earlier than the Study was adopted by the city, indicating some clarifications to the Study had been discussed and anticipated.

This document also unambiguously states that building heights east of Mountfort Street shall be based on a measurement above the floodplain. While not included with the Study (which for

some reason is titled “Draft Final Report”), it clearly shows intent to align measurement policies with the B6 Building Height Overlay map and produce a floodplain base for determining building heights over the entire area east of Mountfort Street, including the Portland Company site.

3. **The Eastern Waterfront Building Height Study not only implies a floodplain measurement, but depicts it as well.**

When the eastern waterfront plan was being developed, a heavily-attended public meeting on September 7, 2004 on Munjoy Hill generated a great deal of negative comment concerning planned building heights along Fore Street. This is mentioned in both the Eastern Waterfront Master Plan and the Building Height Study. The city’s consultant and author of the Study, Mitchell Rasor, writes that he and the City staff went back to the drawing board to reflect this public concern. The final report envisions reduced building heights:

> “The final Illustrations provided herein, **including section drawings**, the height and building envelope map and photomontage images, reflect public input generated at the public meeting.” (emphasis added)

I spoke with Mr. Rasor recently, who told me that “Section E” as depicted in his report was a section through Fore Street. This “Section E” drawing (Exhibit 3), presented on the last page of the Study, shows both current and proposed build-outs, and clearly depicts potential building masses at the eastern end of Fore Street that are much lower and less aggressive than the applicant’s submissions that use an average grade measurement. Curiously, it strongly resembles both the applicant’s drawings and the study done by Whitten Architects of what floodplain measurements would produce in building heights. Buildings could still break the grade at Fore Street, but would not be as aggressively tall as the applicant desires.

Mr. Rasor also told me that, since the Study was done more than ten years ago, he could not recall if any one particular measurement methodology was used but it is apparent from the above that a *floodplain measurement was anticipated for this area by the Building Height Study.*

In its final paragraph, the Building Height Study recommends “moderately scaled development, with taller buildings taking advantage of topography and existing view shadows”. It encourages utilizing the extreme grade changes of the site to nestle the buildings into the “shadows” of the site, producing maximum-height buildings while still respecting the scale of the neighborhood. *This will only be achieved by utilizing a floodplain measurement versus an average grade measurement.*

4. This is a unique site and demands a more thoughtful approach than a one-size-fits-all average grade measurement.

With regard to topography, this site is very different than any other in Portland. It has the bulk of its footprint roughly at the floodplain. And it has extreme grade changes in very short distances. To use the average grade methodologies for building heights here is inappropriate and does not follow the B-6 height overlay rules.

The Building Height Study concludes that “while building height maximums are needed, maximums by themselves could result in overly monolithic forms that are out of character with Portland’s varied and diverse development history.”

It’s important to note that using floodplain measurement along with building height maximums will still result in buildings that will break the grade above Fore Street. This is desirable because it will help integrate the development into the community. But it will also help prevent the unforeseen consequence of building masses that are out of scale for the neighborhood and out of character for Portland.

—

There is a effort by the applicant, city staff and others to discount these precedents and arguments for floodplain measurement. Their efforts to produce tall, maximum-height buildings using average grade measurements could result in structures that not only overshadow Fore Street, but may also result in unfortunate massing along the street.

The effort to produce taller, more massive structures may be as much ego and principle-driven as it is dollar-driven, instead of a desire to produce an appropriate and context-sensitive development.

But why? Creative engineering, architecture and thoughtful planning along with the ability to build 65 foot tall buildings on the site based on floodplain can result in a truly impressive, striking and forward-thinking development that will produce great value to the City, its residents and the developers; a development that everyone can be proud of and that will have the strong backing and support of the community.

Reading through the various documents and studies that apply to the Eastern Waterfront, it is apparent that a floodplain measurement for determining building heights in the B-6 area has been anticipated and is *appropriate, reasonable and follows city policies and recommendations.* Please take this into consideration as you discuss this zoning change.

Sincerely,

Peter Macomber
St Lawrence Street

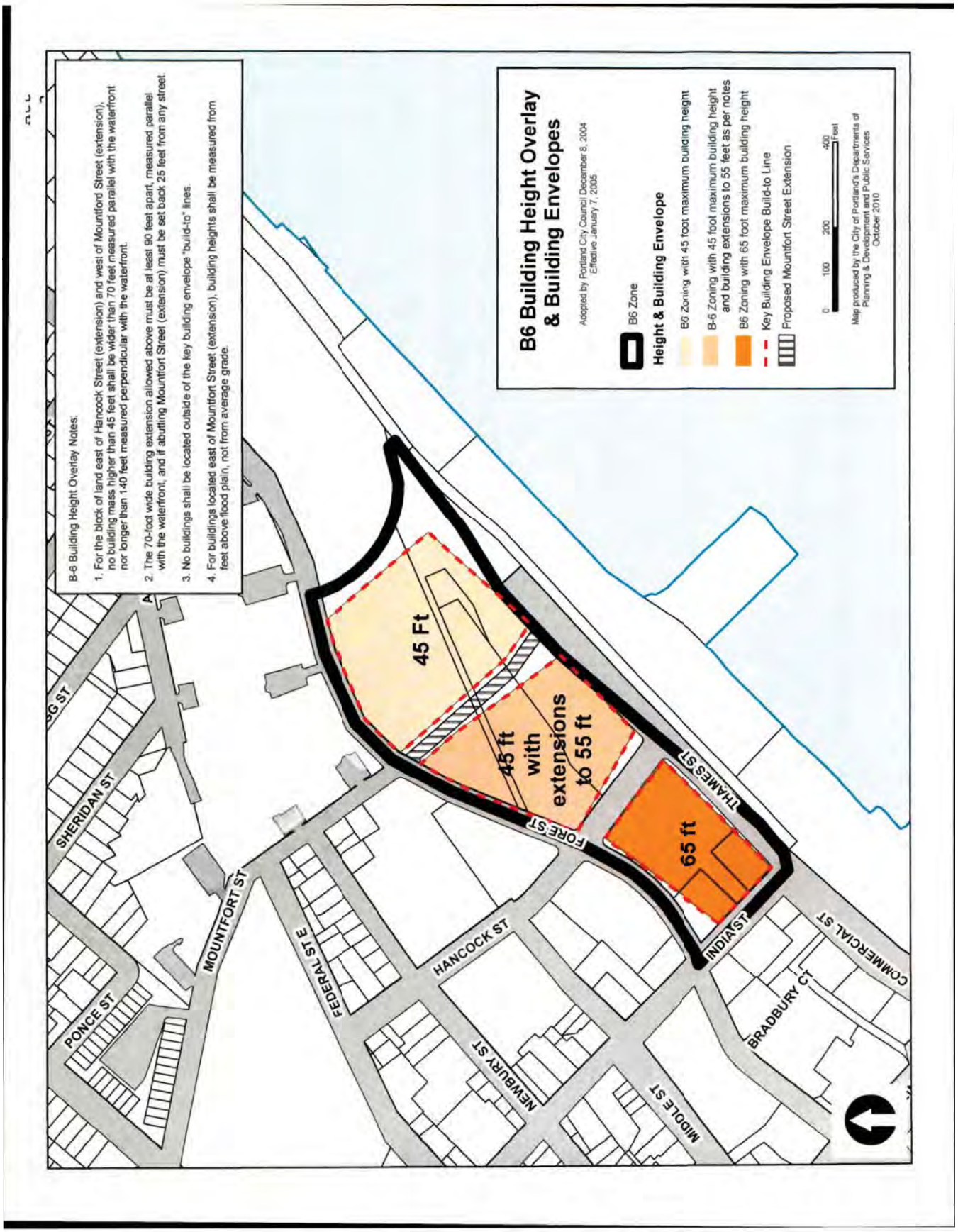

B6 Building Height Overlay & Building Envelopes
Adopted by Portland City Council December 8, 2004
Effective January 7, 2005
B6 Zone
Height & Building Envelope
B6 Zoning with 45 foot maximum building height
B-6 Zoning with 45 foot maximum building height and building extensions to 55 feet as per notes
B6 Zoning with 65 foot maximum building height
Key Building Envelope Build-to Line
Proposed Mountfort Street Extension
0 100 200 400 Feet
Map produced by the City of Portland's Departments of Planning & Development and Public Services
October 2010
B-6 Building Height Overlay Notes:
1. For the block of land east of Hancock Street (extension) and west of Mountford Street (extension), no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront.
2. The 70-foot wide building extension allowed above must be at least 90 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street.
3. No buildings shall be located outside of the key building envelope "build-to" lines.
4. For buildings located east of Mountfort Street (extension), building heights shall be measured from feet above flood plain, not from average grade.
45 Ft
45 ft with extensions to 55 ft
65 ft
SHERIDAN ST
MOUNTFORT ST
PONCE ST
FEDERAL ST E
HANCOCK ST
NEWBURY ST
MIDDLE ST
FORE ST
THAMES ST
INDIA ST
BRADBURY CT
COMMERCIAL ST

EXHIBIT 1

EXHIBIT 2

STUDY AREA (3 STORY MINIMUM)

KEY BUILDING ENVELOPES BY HEIGHT

NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. FOR BUILDINGS EAST OF HANCOCK STREET OR ITS EXTENSION, BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE HEIGHT OF BUILDINGS AND TOWER MASSES EAST OF MOUNTFORT STREET OR ITS EXTENSION SHALL BE MEASURED FROM 2' ABOVE THE FLOOD PLAIN ELEVATION FOR THE SITE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM. WHERE ALLOWED, BUILDING MASS ABOVE 4 FLOORS SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

3. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.

4. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.

5. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

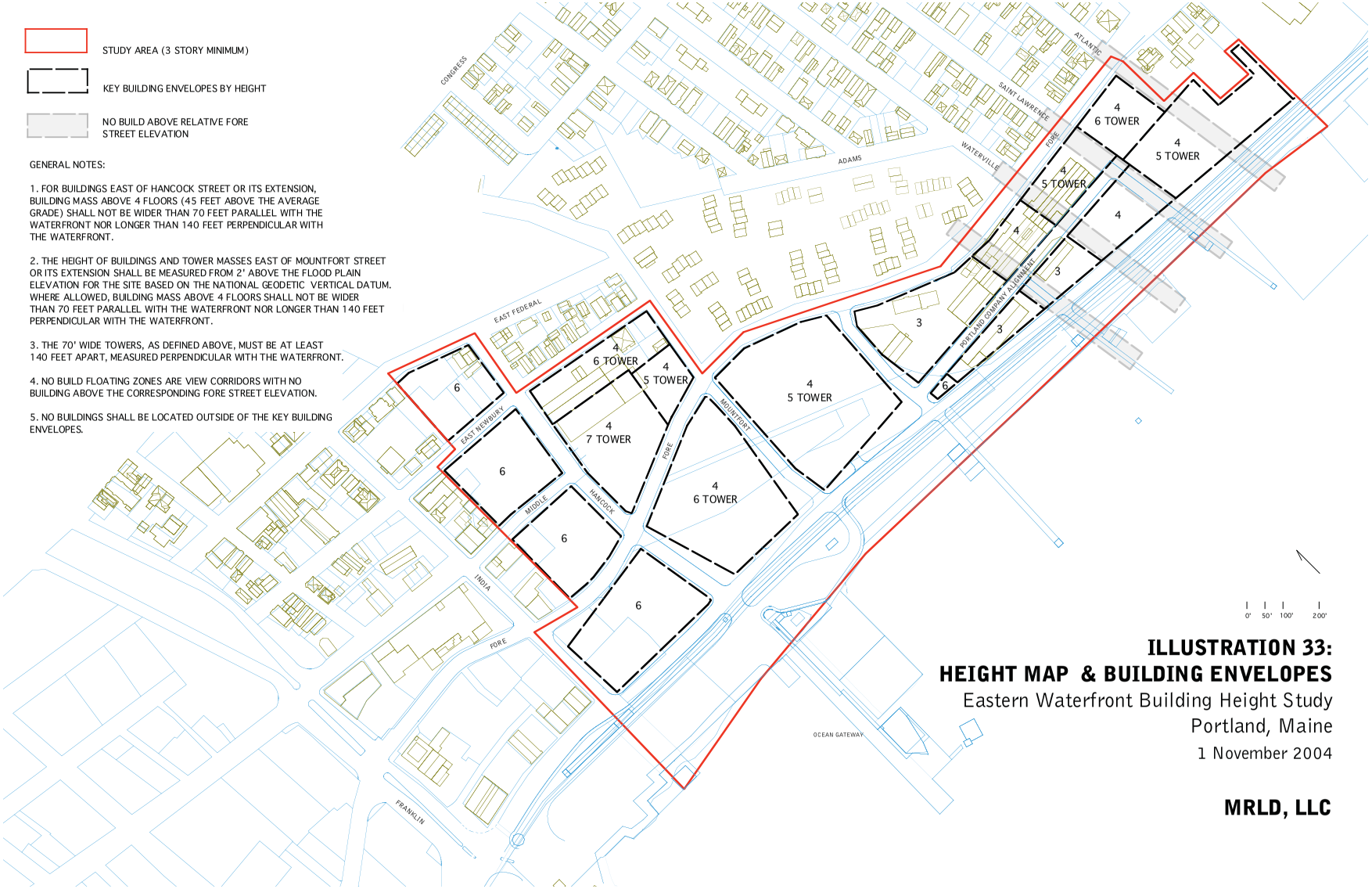
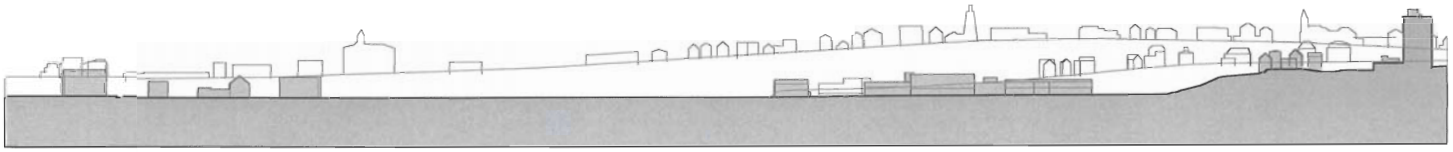


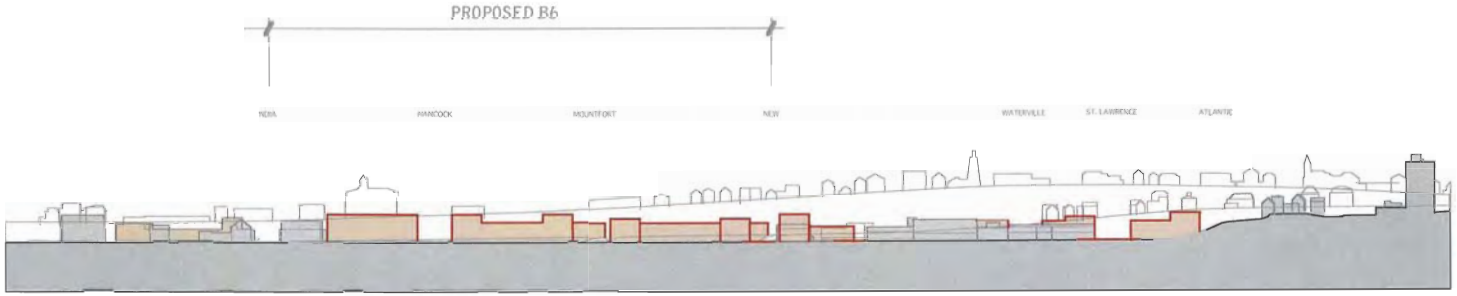
ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES
Eastern Waterfront Building Height Study
Portland, Maine
1 November 2004

MRLD, LLC

EXHIBIT 3



SECTION E EXISTING - EAST / WEST (with Congress Street and Fore Street Elevations)



SECTION E PROPOSED - EAST / WEST (with Congress Street and Fore Street Elevations)

EASTERN WATERFRONT HEIGHT STUDY

Portland, Maine

September 2004

MRLD, LLC

0' 100' 500'

Lannie Dobson - Re: Fwd: Portland Company complex rezoning concerns

From: Lannie Dobson
To: Grimando, Christine
Subject: Re: Fwd: Portland Company complex rezoning concerns

Christine Grimando, AICP
Senior Planner
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101
cdg@portlandmaine.gov
Ph: (207) 874-8608

>>> Steven McGee <stevemcgee@rcn.com> 2/22/2015 5:30 PM >>>

Hello Christine,

We are writing with comments and concerns for the City of Portland Planning Board to consider at the Tuesday, February 24th meeting regarding the zoning map amendment related to the Portland Company complex.

First we want to state that, as Fore Street residents, we are very much in favor of development of the Portland Company Complex, but that development must be responsible and considerate of the surrounding neighborhood and impacts to residents and visitors.

It is our understanding that plans for the new complex include restaurants, bars and brew pubs in addition to residential units, retail and exhibition space. We have concerns with all proposed uses having entrances directly on Fore Street rather than through the main entrance to the complex. This would create additional parking issues on Fore Street as well as safety issues for both vehicular and pedestrian traffic. Fore Street is heavily used by pedestrians, residents and many tourists making their way to and from the Eastern Prom. Parking is already at a premium for the many residents and guests on Fore Street. The increase in vehicular and pedestrian traffic would add more pressure to an already difficult situation.

Not only is the increase in traffic a concern but the noise and light pollution from these proposed establishments would degrade the existing neighborhood. There needs to be a balance between the proposed uses of the Portland Company Complex and the immediate and surrounding Munjoy Hill community. Other dining and drinking establishments on Munjoy Hill must stop serving at 10:00 PM. Although the B6 zoning proposed for the Portland Company Complex allows service until 11:00 we would like to see serving hours restricted to 10:00 PM to be consistent with the rest Munjoy Hill and to preserve the character of the neighborhood.

Thank you,

Steve & Michelle McGee
25 Fore Street #1
Portland, ME 04101

From: Rob Whitten <rob@whittenarchitects.com>
To: Christine Grimando <CDG@portlandmaine.gov>
CC: Ned Chester & Barbara Vestal <vestal@chesterandvestal.com>
Date: 3/4/2015 2:06 PM
Subject: Re: Planning Board Presentation
Attachments: Mail Attachment.png; SOP-150304-PPB150224.pdf

Hi Christine,

Attached please find a pdf text of the oral, 3 minute presentation made to the City of Portland Planning Board on 02/24/2015.

Please include it with the pdf visuals that were provided to the Planning Board members and members of the Planning Department.

It explains the images and their sequence; and it will help the City Council members visualize the impact of the proposed B-6 zone on the Portland Company site at 58 Fore Street.

Thank you.

My best, Rob.

Rob Whitten, AIA

Whitten Architects
37 Silver Street
Portland, Maine 04101
P: 207.774.0111 x101 <tel:207-774-0111>
www.whittenarchitects.com <http://www.whittenarchitects.com/>

> On Mar 4, 2015, at 8:52 AM, Christine Grimando <CDG@portlandmaine.gov> wrote:
>
> Hi Rob,
>
> If you'd like to send a written statement, please feel free to forward it along. Please bring any copies you would like to distribute to the Council.
>
> Christine
>
>
>
>
> Christine Grimando, AICP
> Senior Planner
> Planning & Urban Development Department
> 389 Congress Street
> Portland, Maine 04101
> cdg@portlandmaine.gov <mailto:cdg@portlandmaine.gov>
> Ph: (207) 874-8608
> >>> Rob Whitten <rob@whittenarchitects.com> 3/3/2015 5:01 PM >>>
> Hi Christine,
>
> Thank you for your note.
>
> I would like the materials regarding the proposed zoning change to 58 Fore Street that were handed out and distributed to the City of Portland Planning Board and members of the Planning Committee included in the digital record that goes to the City Council.
>
> Please find two attachments as distributed on 02/24/2015:
>
> Attachement #1: Primary package for 3 minute presentation as a Portland resident in the public portion of the Planning Board meeting.
>
> Attachment #2: Supplemental package that supports and expands on the 3 minute presentation.
>
> I'd like to prepare a written statement of the 3 minute presentation that references to the images. Do let me know if this is appropriate.
>
> Sincerely, Rob.
>
>
> Rob Whitten, AIA

>
> Whitten Architects
> 37 Silver Street
> Portland, Maine 04101
> P: 207.774.0111 x101 <tel:207-774-0111>
> www.whittenarchitects.com <http://www.whittenarchitects.com/>
>
>
>
>
>
>> On Mar 3, 2015, at 3:55 PM, Christine Grimando <CDG@portlandmaine.gov <mailto:CDG@portlandmaine.gov>> wrote:
>>
>> Rob,
>>
>> Do you wish the large color packet you passed out at the February 24th Planning Board Public Hearing to be included in the digital record that gets forwarded to the Council? If so, could you please send a digital copy of the submission, and I'll make sure it gets included going forward.
>>
>> Best,
>>
>> Christine
>>
>>
>>
>>
>>
>>
>> Christine Grimando, AICP
>> Senior Planner
>> Planning & Urban Development Department
>> 389 Congress Street
>> Portland, Maine 04101
>> cdg@portlandmaine.gov <mailto:cdg@portlandmaine.gov>
>> Ph: (207) 874-8608
>>
>> Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested. --
>

Presentation of 3D Images to the Portland Planning Board
02/24/2015
Written version of 3 minute comments by resident Rob Whitten

Mr. Chairman and Members of the Portland Planning Board, good evening.

My name is Rob Whitten; my wife and I have lived at 23 St. Lawrence Street on Munjoy Hill since 1976.

I'm an architect and I'm assisting the Soul of Portland with the creation of a 3D graphic diagram that helps explain the possible build-out and development of the Portland Company site at 58 Fore Street as a result of the proposed B-6 zoning request by CPB2.

Our 3D presentation was initially based on Google Earth contour information. Tonight we've provided you with print packages of revised and updated information based on contours from the ALTA survey provided by the developer and based on recent modifications to height and use put forward by CPB2. All information is based on the Eastern Waterfront Height Proposals prepared by the City in October 2004.

Given a three minute time limit, I'll just address the graphic information shown in the first packet of images.

1. The first image shows the 2004 Master Plan Heights as evaluated on a 35' x 35' grid that runs parallel to Fore Street and across the entire 10 acre site. The grid works within a residential scale and is consistent with the scale of the surrounding Munjoy Hill residential neighborhood where a typical lot is 50' x 100'.

2. The second image is a 3D aerial view of the site from the West showing the maximum limits of height and 100% lot coverage as permitted in the proposed B-6 zone.

3. The third image is the cross-section cut of Fore Street looking toward the Portland harbor from Fore Street:
   -bold red line is the grade of Fore Street.
   -the colors represent the maximum building heights –not to exceed 35' above Fore Street.
   -the openings are View Corridors as described in the 2004 Height Proposal.
   -the dark bold lines below the Fore Street red line indicate the median or average grade of the 35' grid for the calculations of the building heights.
   -the blue line is the Flood Plain elevation height of the Portland Company site. The current WSU zoning of the site measures <u>all</u> heights from the Flood Plain.

How does the proposed B-6 zoning change affect Portland as seen from Fore Street?

4. The fourth image is a street level, pedestrian point of view where Waterville Street meets Fore Street. It shows the maximum possible build out height with 100% lot coverage of the proposed B-6 zone as measured from the proposed average, median grade on a 35' x 35' grid.

5. The fifth image shows the same location, where Waterville meets Fore Street, with B-6 zoning as measured from the Flood Plain.

6. The sixth image shows possible building forms using the 35' x 35' grid, the B-6 zoning, measuring from average, median grade.

How does the proposed B-6 zoning change affect Portland as seen from the waterfront?

7. The seventh image shows the beginning of the Portland Company from Thames Street from a pedestrian point of view looking towards the Eastern Prom Trail. You are seeing the maximum height and 100% lot coverage of the proposed B-6 zoning.

8. The eighth image is processing down the Eastern Prom Trail showing the maximum height and 100% lot coverage of the proposed B-6 zoning. Please note that there is no appreciable difference if you measure from average, median grade of the Flood Plain.

9. The ninth image shows further along the Eastern Prom Trail with the proposed B-6 zoning height of 45' with the allowed additional 10' height extension.

The additional images in the second packet show aerial views of the Portland Company from the north, east, and south as well as street-scapes from other pedestrian level points of view.

Thank you for your time and your consideration.

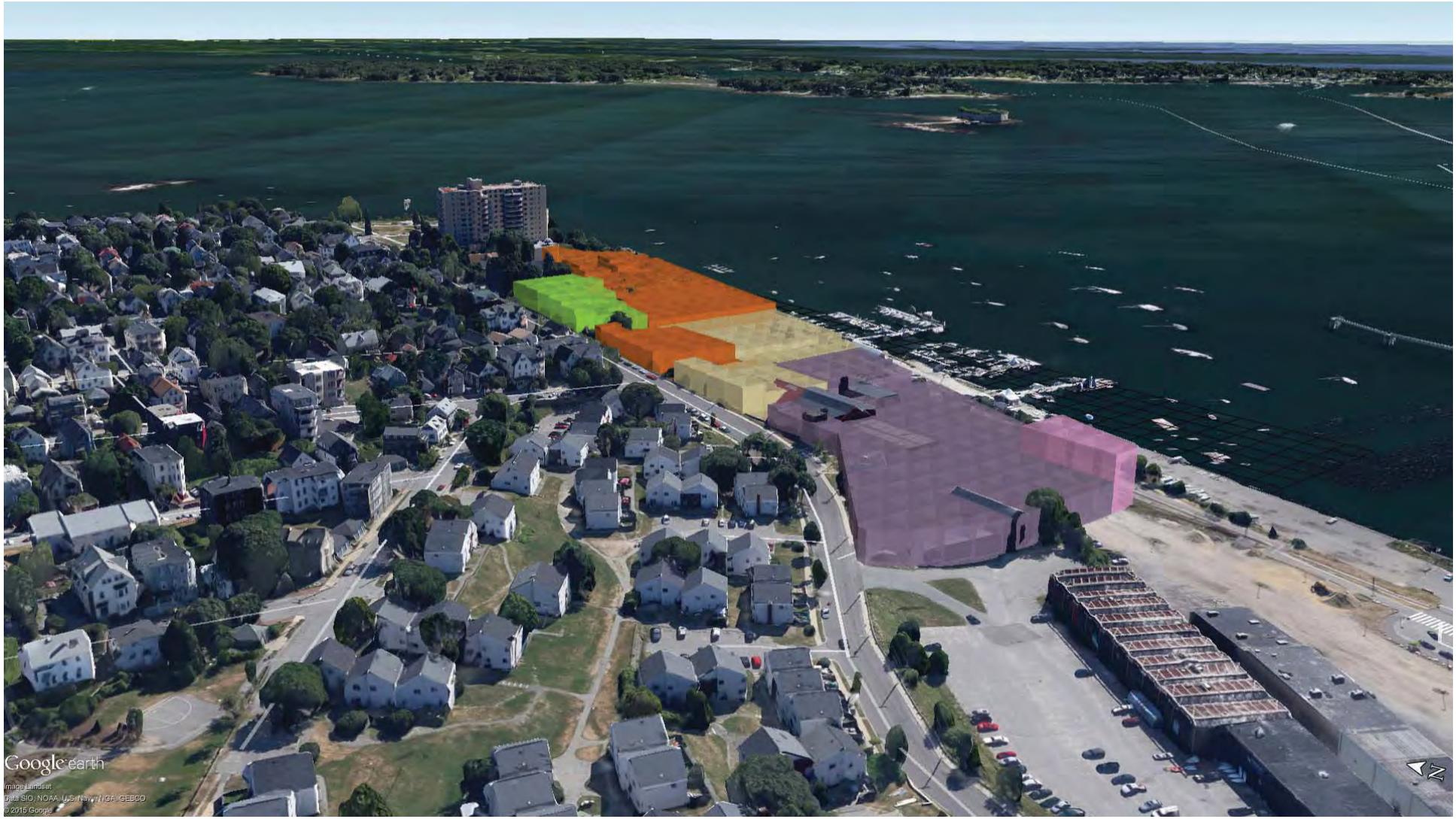
SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

AERIAL PLAN OF PORTLAND COMPANY SITE

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

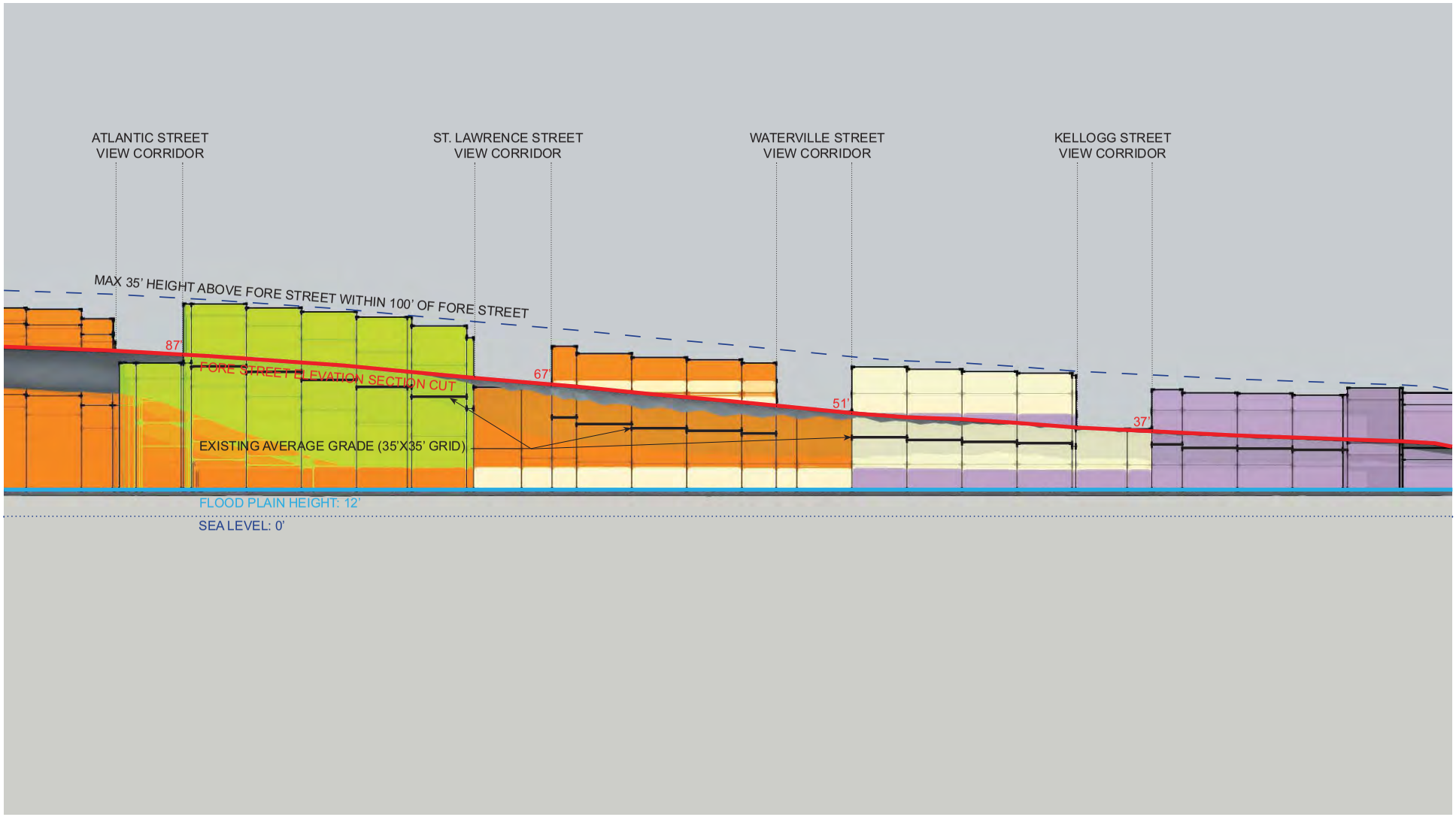


SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

VIEW OF PORTLAND COMPANY SITE FROM WEST

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

PARTIAL SECTION THROUGH FORE STREET LOOKING EAST

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

FORE STREET & WATERVILLE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

FORE STREET & WATERVILLE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM FLOOD PLAIN

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

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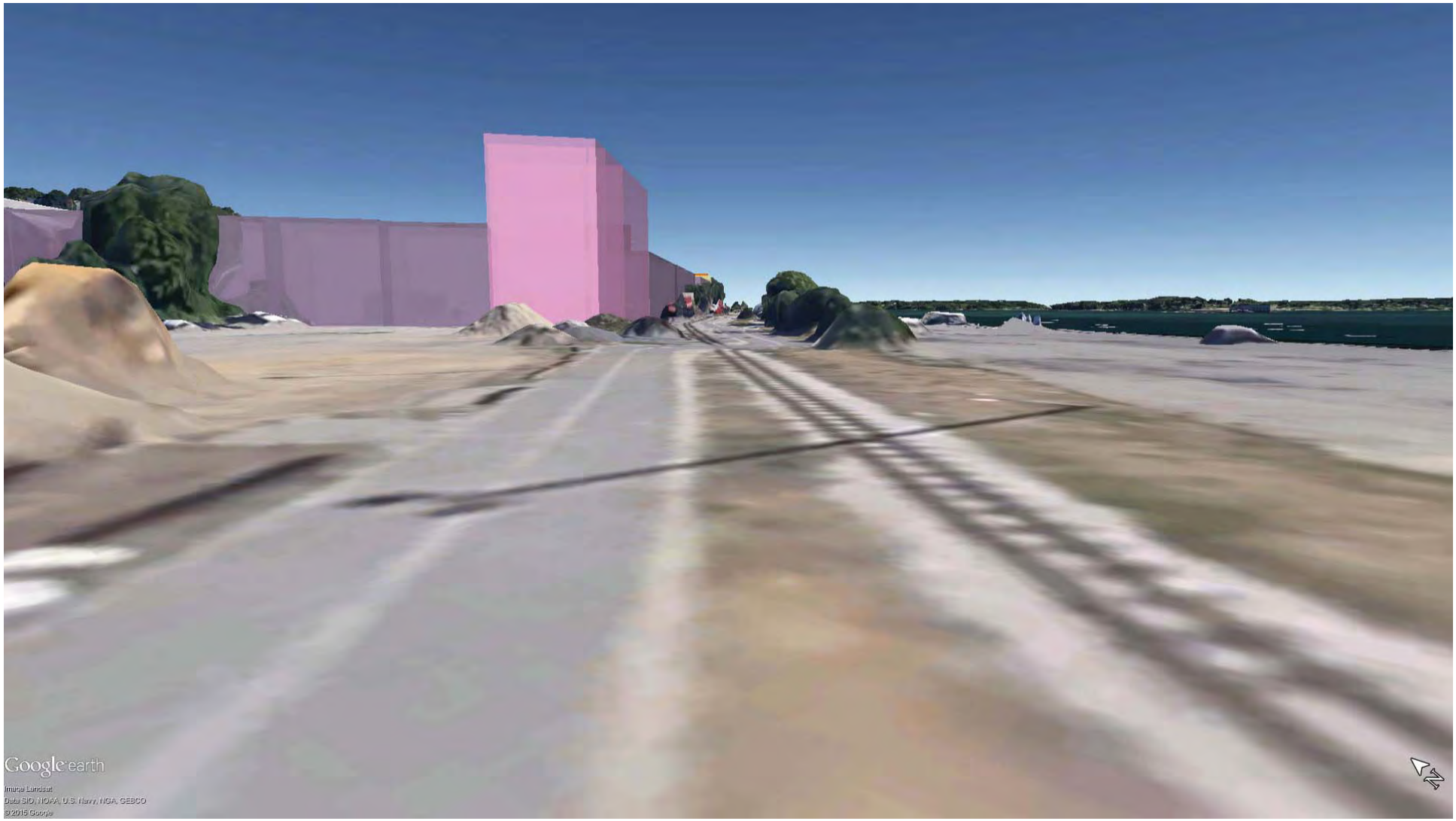
FORE STREET & WATERVILLE STREET

POSSIBLE BUILDOUT UNDER PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



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THAMES STREET & EASTERM PROMENADE TRAIL

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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EASTERN PROMENADE TRAIL #1

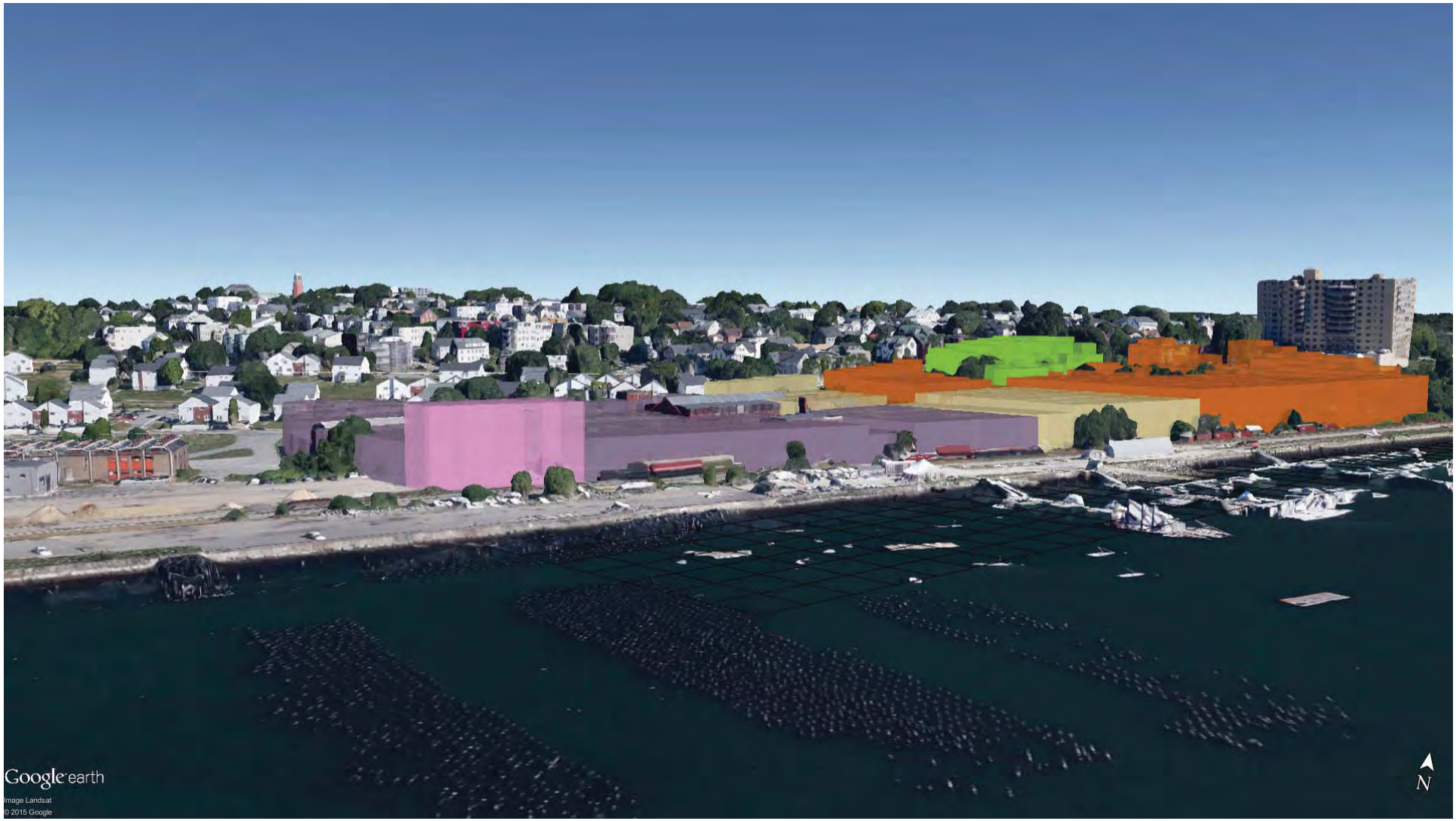
LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

SOULOFPORTLAND.ORG

EASTERN PROMENADE TRAIL #4

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



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VIEW OF PORTLAND COMPANY SITE FROM SOUTH

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

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VIEW OF PORTLAND COMPANY SITE FROM EAST

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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VIEW OF PORTLAND COMPANY SITE FROM NORTH

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

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FORE STREET & MUNJOY SOUTH

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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FORE STREET & MUNJOY SOUTH

LIMITS OF PROPOSED B6 RE-ZONING FROM FLOOD PLAIN

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

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FORE STREET & MUNJOY SOUTH

POSSIBLE BUILDOUT UNDER PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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58 FORE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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58 FORE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM FLOOD PLAIN
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

SOUL OF PORTLAND : 02/24/2015

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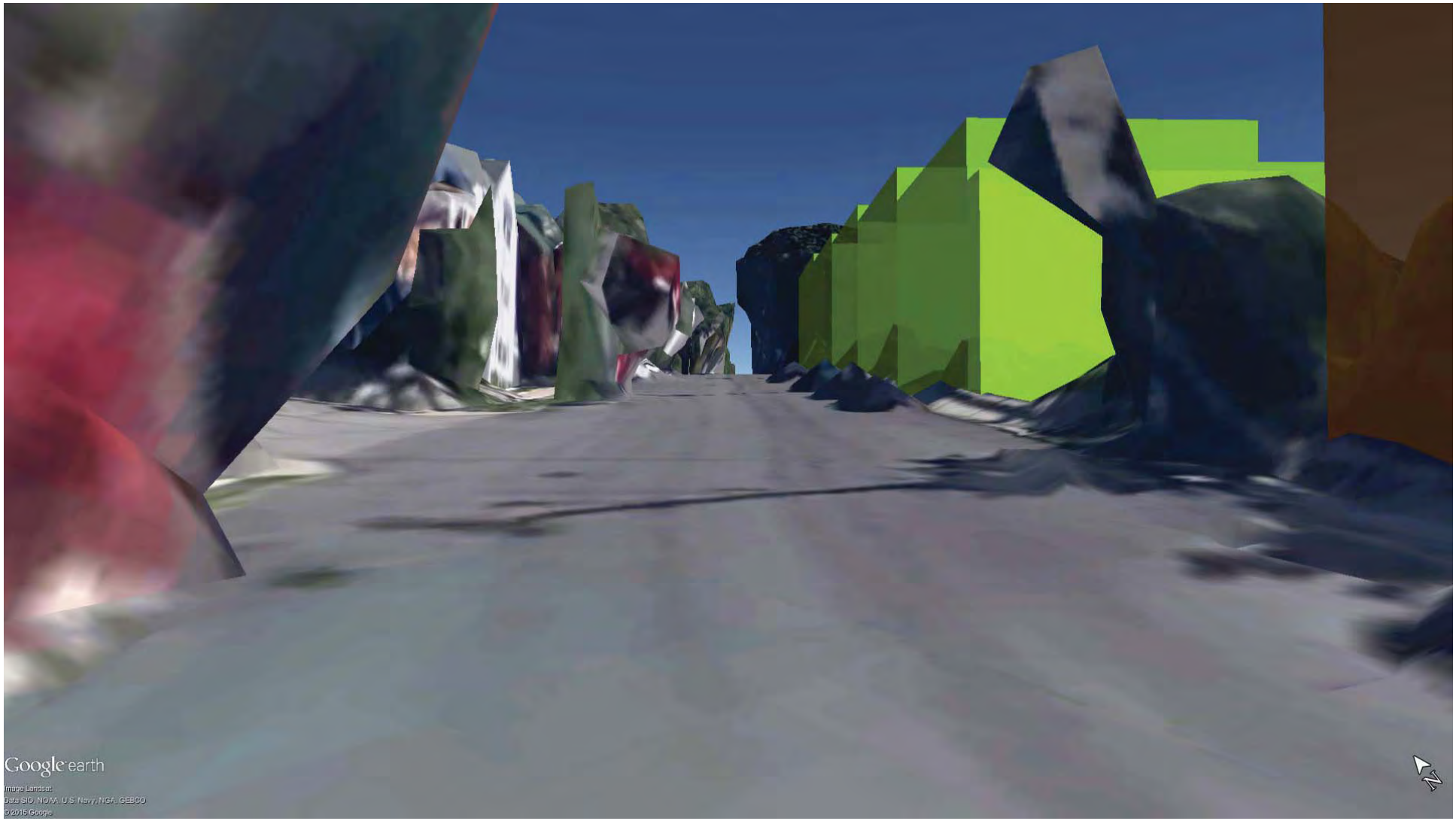
58 FORE STREET

POSSIBLE BUILDOUT UNDER PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



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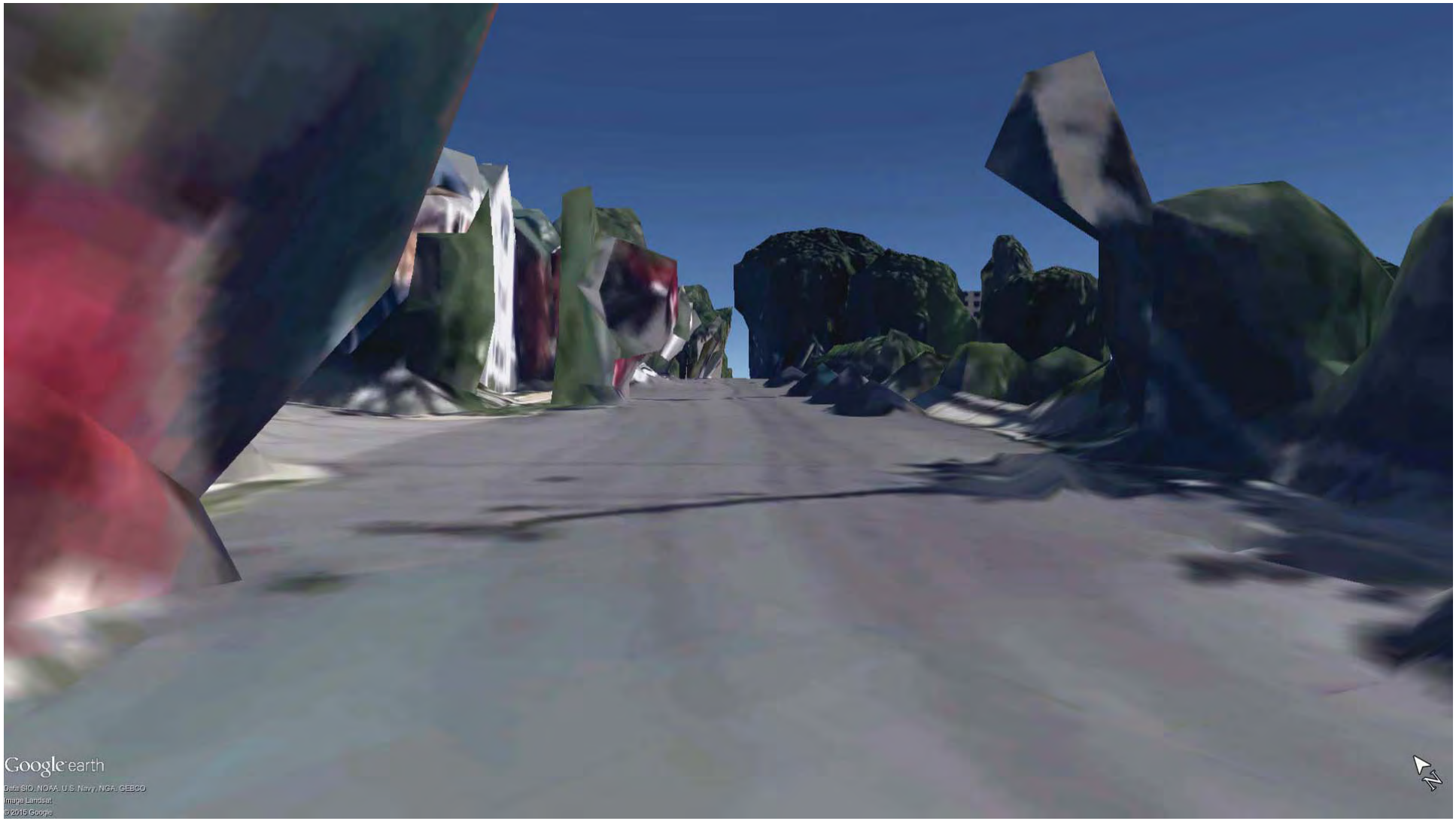
FORE STREET & ST. LAWRENCE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



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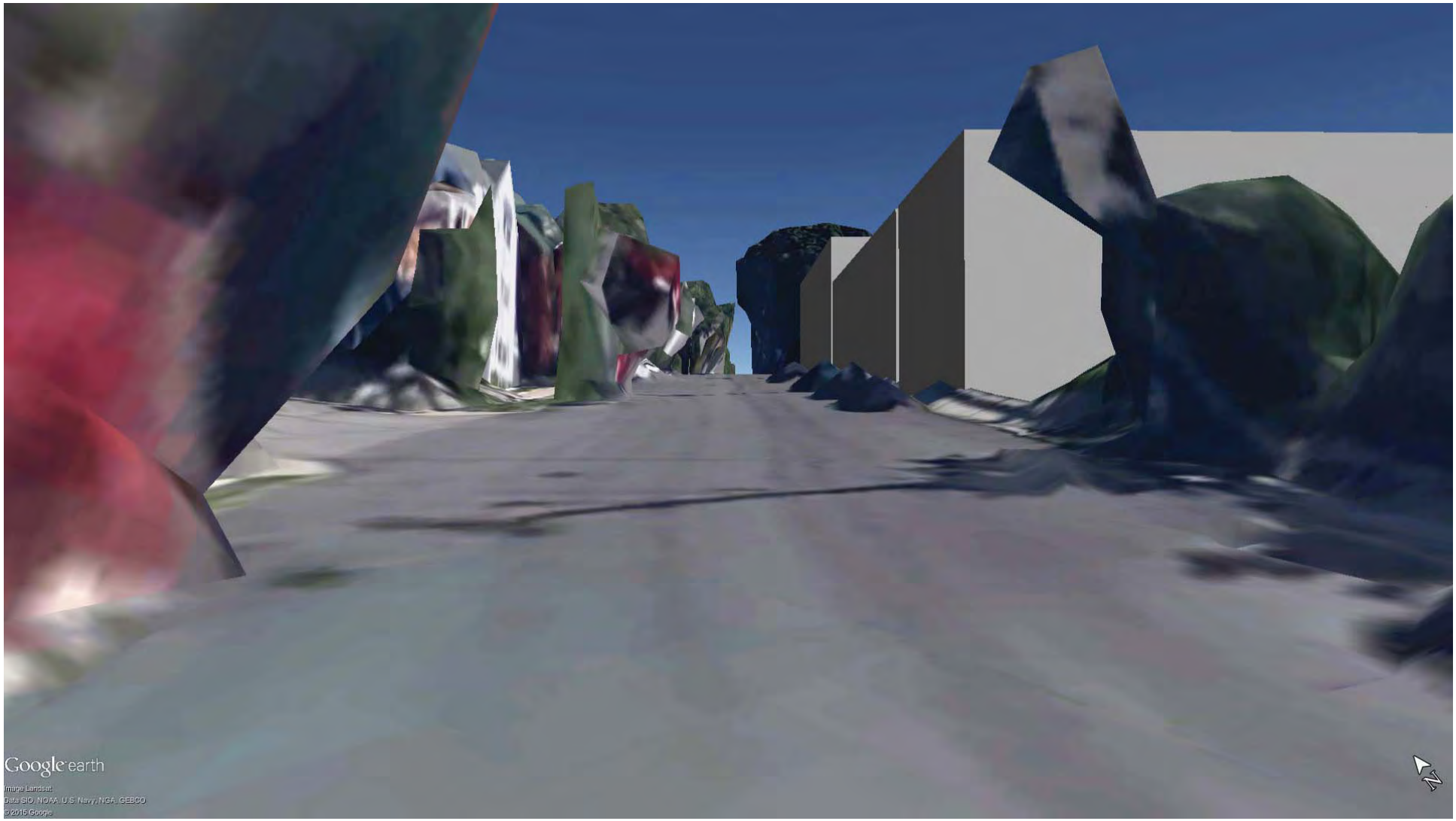
FORE STREET & ST. LAWRENCE STREET

LIMITS OF PROPOSED B6 RE-ZONING FROM FLOOD PLAIN

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013



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FORE STREET & ST. LAWRENCE STREET

POSSIBLE BUILDOUT UNDER PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)

BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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EASTERN PROMENADE TRAIL #2

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013

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EASTERN PROMENADE TRAIL #3

LIMITS OF PROPOSED B6 RE-ZONING FROM AVERAGE GRADE (35'X35' GRID)
BASED ON ALTA/ACSM LAND TITLE SURVEY DATED MAY 22, 2013