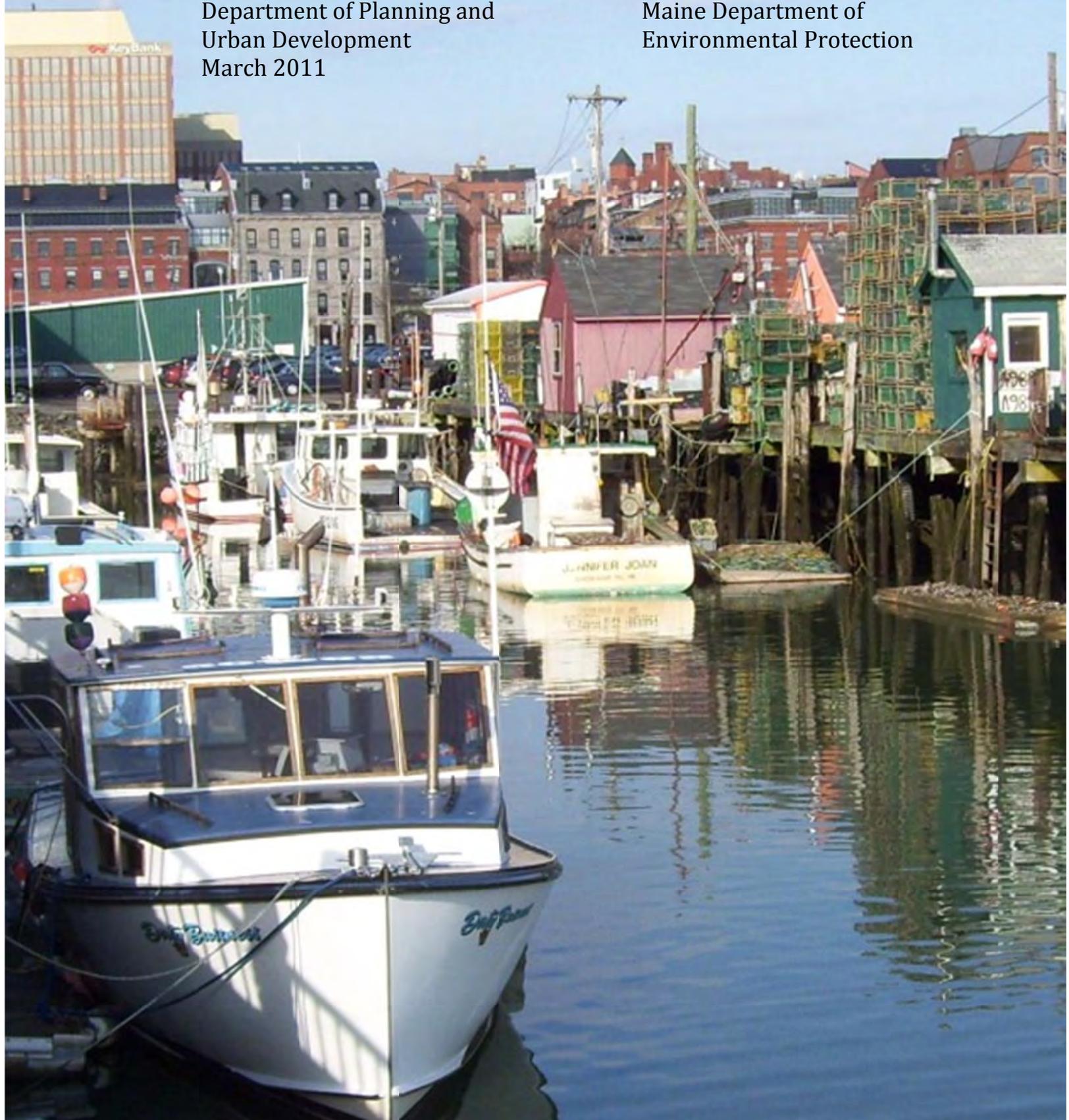


Waterfront Central Zone

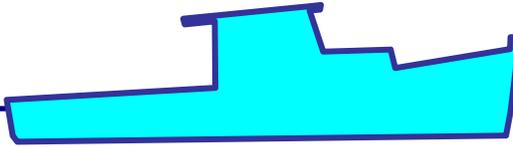
Request for Zone Amendment Approval under Shoreland Zoning

City of Portland, Maine
Department of Planning and
Urban Development
March 2011

Presented to:
Maine Department of
Environmental Protection



Waterfront Central Zone



City of Portland Shoreland Zoning Amendments

Report to the
State of Maine
Department of Environmental Protection

Darryl N. Brown,
Commissioner
Deirdre Schneider,
Shoreland Zoning Coordinator
Michael Morse,
Shoreland Zoning

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March 25, 2011



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Planning and Urban Development Department
Penny St. Louis, Director

March 25, 2011

Darryl N. Brown, Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: City of Portland Shoreland Zoning Amendments: Waterfront Central Zone

Dear Mr. Brown:

The City of Portland has recently passed zoning amendments in its Waterfront Central Zone (WCZ). Portions of the WCZ lie within the Shoreland Zone which is regulated by the State. The City hereby requests review and approval of the new zoning by the Department of Environmental Protection as required under the Mandatory Shoreland Zoning Act.

Along with certified copies of the amended zoning, we are submitting a substantial packet of supporting information documenting our re-zoning process and results. We have attempted to be as thorough as possible in providing material for your Department's review, but please contact me at any time if you need additional information.

The City would be pleased to conduct a tour of our waterfront for you or your staff should you find this useful in your review.

Thank you for your consideration of the City's WCZ zoning amendments and we look forward to your approval of the same.

Sincerely,

Penny St. Louis
Director of Planning and Urban Development

cc: Deirdre Schneider, Shoreland Zoning Coordinator – via electronic mail
Michael Morse, Shoreland Zoning – via electronic mail

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Attachments

1. Amended Waterfront Central Zone Text (Certified)
 - A. Track changes from Existing Zoning
 - B. Clean Copy (Changes Accepted)

2. Policy Statement

3. Planning Board Report to City Council with attachments
Attachments:
 - A. Pier Owners' Requested amendments – Council Order Text
 - B. Summary Presentation of WCZ Planning Process Results:
 - Site Walk
 - Building and Use inventory and the Pier Owner's Occupancy Survey results
 - C. Pier Owners' December 8, 2008 Letter
 - D. Pier Owners' Vision Statement
 - E. Waterfront Alliance 1992 Report, excerpts
 - F. March 2, 2010 Public Forum Notes
 - G. March 3, 2010 Public Forum Results
 - H. Public Comments and Letters
 - I. View Corridor Protection Plan

4. CDC Report to City Council with attachments
Attachments:
 1. Comparison Table of Text Summaries –Current, Planning Board, Pier Owners, CDC
 2. Policy Statement Comparison Table – Planning Board to CDC
 3. NMUOZ Map
 4. Pier Owners Occupancy Report, October 2009
 5. Public Comment and Letters
 6. Pier Owners' Letter offering “no displacement” text, December 7, 2010

5. State Agency Correspondence

6. Map of Waterfront Central Zone

7. DVD of City Council Public Hearing, December 20, 2010
(Waterfront Central Zone Amendments Approved)

I. Introduction

On December 20, 2010, after two years of discussion, study, and deliberation, the Portland City Council adopted new policies and zone text for its Waterfront Central Zone (“WCZ” or “Central Waterfront”). Portland Harbor and the Central Waterfront have always provided uniquely significant resources for economic development and commercial marine activity for the City, the Casco Bay region and State of Maine. The recent *Waterfront Central Zone: Policy and Zoning Process* has resulted in an updated set of comprehensive plan policies and zone amendments that will simultaneously strengthen the harbor’s historic role as an economic center and stabilize the zone’s infrastructure for continued commercial marine activity.

The City adopted the WCZ amendments following an extensive process of inventory, analysis and review of conditions and goals for the Central Waterfront.¹ City staff, the Planning Board and Portland City Council engaged the widest possible constituency in this decision making. Property owners, waterfront advocates, commercial fishermen, the design community, state agencies and local citizens contributed their accumulated knowledge to this effort and the resulting policies and zoning text. The process results have been articulated into a clear policy statement² for the zone that is implemented by new zoning text.³

The material provided herein demonstrates that the revised zoning is consistent with the intent and purpose of Shoreland Zoning. Furthermore, the material supports the City’s position that the new zoning is at least as stringent, and, in many cases more stringent, than minimum standards established by the Board of Environmental Protection and are more effective in achieving the purposes of the Act. The direct protections and functional performance standards in the zoning text articulates the City’s thoughtful assessment of how to preserve and foster a vital working waterfront within the specific local environment of Portland Harbor.

II. WCZ Planning Process Timeline

The City of Portland takes waterfront planning seriously. The new zoning text reflects a deliberate, thoughtful, and iterative process in which private property owners, elected officials, city staff, impacted businesses, the fishing community, state agencies, and the citizens of the City of Portland had access and formative input into the process and the resulting amendments.

The following timeline shows each of the twenty five public meetings where the WCZ was an item, or the only item, on an agenda for a meeting advertised on the City website calendar. Many of these meetings were additionally noticed to an extensive interested parties list and advertised in the Portland Press Herald. Public comment was taken at all

¹ Attachments 3 and 4

² Attachment 1

³ Attachment 2

meetings except the Planning Board site walk, the City Council workshops, and Council Order 1st readings.

Note: In the schedule below, the CDC abbreviates the Community Development Committee, a 3 member sub-committee of the City Council.

Waterfront Central Zone – Public Meeting Process: 25 meetings to date

December 8, 2008: **CDC Meeting:** *Pier Owners present concerns. CDC directs Planning Staff to assist with the preparation of revised zoning text for application to the Planning Board.*

Planning Staff works with Pier Owners to draft zoning amendments

October 27, 2009 **Planning Board Workshop:** *Introduction*
November 17, 2009 **Planning Board Site Walk**
November 24, 2009 **Planning Board Workshop:** *Process and Timeline*
January 12, 2009 **Planning Board Workshop:** *Physical Conditions and Building and Use Inventory Results*
February 2, 2010 **CDC Meeting:** *Staff presentation of the Planning Board process to date.*
February 23, 2010 **Planning Board Workshop:** *Public Forum Preparation*
March 2, 2010 **Public Forum:** *Marine Industry Panel Discussion*
March 3, 2010 **Public Forum:** *Public Input Workshop*
March 9, 2010 **Planning Board Workshop:** *Pier Owners' Presentation*
May 13, 2010 **Planning Board Workshop:** *Public Forum and Business and Employment Inventory Results*
May 25, 2010 **Planning Board Workshop:** *Draft Policy Statement Discussion*
June 8, 2010 **Planning Board Workshop:** *Draft Zoning Text*
June 20, 2010 **City Council 1st Reading:** *Planning Board sponsored orders #271-272-09/10*
June 23, 2010 **CDC Meeting:** *Summary of the Planning Board process results*
July 13, 2010 **Planning Board Public Hearing:** *Vote to endorse and recommend proposed policy and zone text changes*
July 14, 2010 **CDC Meeting:** *Discussion of Planning Board's recommendation*
August 9, 2010 **City Council Workshop:** *Summary of Planning Board Recommendations*
August 11, 2010 **CDC Meeting:** *Following a Council Workshop, CDC identifies key issues: Linkage, Displacement, Non- Marine Use Overlay Zone, and Public Access.*
September 15, 2010 **CDC Meeting:** *Discussion of key issues. Pier Owners indicate that their requested text amendments will be revised to address concerns expressed by lobstermen.*
October 13, 2010 **CDC Meeting:** *The Pier Owners present alternative text to the CDC addressing concerns of lobstermen.*

October 27, 2010	CDC Meeting: <i>Vote on revised zone text and corresponding changes to the underlying policies.</i>
December 6, 2010	City Council 1st Reading: <i>CDC sponsored orders #101 and 103-10/11</i>
December 13, 2010	City Council Workshop: <i>Presentation of CDC process results and recommendations</i>
December 20, 2010	City Council Public Hearing Final Action

III. Summary of Proposed Zoning Text Changes

One of the State criteria for reviewing local ordinance amendments is to find consistency with the State’s Coastal Policies 38 MRSA§1801 *COASTAL MANAGEMENT POLICIES*, “*The Legislature declares that the well-being of the citizens of this State depends on striking a carefully considered and well reasoned balance among the competing uses of the State's coastal area.*” 38 MRSA§1801 (*Emphasis added*) Portland has strived for more than two decades to understand and realize the balance required under the State’s Coastal Policies. The intent of the new zoning is to build on this extensive experience to achieve regulations that both protect marine activity and simultaneously promote investment in marine infrastructure. The changes to the WCZ are summarized below; however, readers will need to understand the entirety of the text, in full, to appreciate the interconnected nature of the ordinance. The full text is attached (Attachment 2.)

1. Amends “purpose” text articulating the basis for mixed use;
2. Eliminates the “no adverse impact on marine use” provision (moving marine use compatibility to revised performance standards);
3. Creates a 100% Non-Marine Use Overlay Zone (NMUOZ) located along Commercial Street with associated development standards. Standards require linkage between non-marine development and marine infrastructure investment (direct investment or contribution) for larger projects (see map, Attachment 3);
4. Allows 45% non-marine use of ground floors and pier space outside of the NMUOZ, with associated development standards, including requirement to offer 1st floor space to marine uses prior to filling with a non-marine use;
5. Allows upper floor non-marine use in new construction;
6. Expands permitted retail and restaurant uses throughout the zone (subject to the 45% 1st floor allowance above outside of the NMUOZ);
7. Redrafts standards for contract/conditional rezoning with fewer restrictions on use;
8. Eliminates the “Commercial Street/Old Port Overlay Zone” for contract rezoning (as replaced by the “NMUOZ” above);
9. Expands the building height allowance from 45 feet to 50 feet;
10. Creates Commercial Street *lot frontage* minimums (75 feet) and *lot width* minimums (50 feet, applied only within the NMUOZ);
11. Designates the Planning Authority as the reviewing body for certain performance standards;
12. Eliminates parking requirements and amends the standard for non-marine use parking;
13. Clarifies and strengthens performance standards protecting marine uses;

14. Creates public view protection standards applicable to all development (previously applied only to conditional uses and re-zoning;)
15. Clarifies the text with minor amendments throughout; and,
16. Reorganizes the format of the zone text.

The proposed text does not expand non-commercial vessel berthing and does not provide opportunities for residential development.

IV. DEP Role and State Review

Under the Act the Department's role is threefold:

- To determine if special conditions exist warranting deviation from the minimum standards of the Shoreland Zoning laws;
- To establish whether the proposed zoning is no less stringent (equally or more effective) than these minimum standards; and,
- To ensure that the proposed standards are consistent with the legislative purposes underlying the Mandatory Shoreland Zoning program and Coastal Management policies.

A. Special local conditions within the WCZ require a different set of standards

Portland's waterfront is unique, with a long history of development, changing economies, and innovative land use policies and zoning resulting in its particular built form. Its Central Waterfront is a mixed use district, providing real-world examples of marine/non-marine compatibility. The new zoning builds on this history, by learning from past successes and addressing issues of sustainability of the marine economy in Portland.⁴

The local conditions that distinguish the Central Waterfront from other portions of the Maine coast and warrant a deviation from the Chapter 1000 minimum standards are its:

- development form and history
- scale
- deteriorated conditions of marine infrastructure
- continuing history of mixed use

⁴ The information provided below has two primary sources. First, the City of Portland city-wide photo tax records dating from 1924. City staff reviewed the 1924 uses as the basis of the following narrative describing the origins of the *infrastructure* and illuminating the *history of mixed use* for the district. Second, the piers, lands, buildings, uses, vessels, business and employment inventories created as part of the recent re-zoning provide detailed data and information on local conditions as of 2009/2010. (The recent Central Waterfront inventories are attached in their entirety at the conclusion of this report.)⁴

1. History of the zone related to its development form

The Central Waterfront attained its current form after the filling of Commercial Street as a rail and street corridor in the 1850's. With Portland's success in attracting rail links to Boston to the south and Montreal to the north, Commercial Street joined two important population centers to an ice free harbor. During the 1850's and the boom of the Industrial Revolution, Commercial Street was a state of the art world class manufacturing and transportation center. The infrastructure that one finds still existing today reflects large scale transportation and commodities trade, along with the manufacturing, processing and distribution of a wide variety of goods at a national scale as began over 150 years ago. Piers developed from their 18th and early 19th century predecessors, mostly as freight and manufacturing facilities. These piers served deep draft vessels and rail transportation. The infrastructure that developed in support of this activity is massive as the piers were designed to house enormous industrial structures along with rail sidings and vehicle access. While fishing has always been a presence within the Central Waterfront, the piers and wharfs were never developed to support fishing as a dominant use.

As of 1924, heavy freight, commodities trade and transfer, and manufacturing uses still dominated the Central Waterfront. While this 19th century mix of uses persisted into the beginning of the 20th century, other uses - both marine and non-marine - also began to take hold.

In 1924, lumber yards, canneries, mills, coal pockets, grain elevators and warehouses dominated both the waterfront and the city skyline. These uses were supported by storage yards, cranes, gantries, trestles, and countless support buildings. The complex texture of the waterfront was further populated by vessels, trucks, cars, horse drawn wagons, retail stores, stables, junk shops, sheds, club houses, building suppliers and boat houses.

Fishing related activity (lobsters, clams and fin fish) was spread generally throughout the area, but was not a principal activity - neither in terms of space occupied nor by the number of operations. Then, as now, fishing was important, ubiquitous and character defining; but fishing did not occupy a majority of the space available. The geography was simply too large and the scale of fishing uses too modest.

Below are representative images from the City's 1924 tax photos showing the types of historic uses and infrastructure that characterized the original development of the WCZ.

a. Use and Development Examples from 1924

The AR Wright coal facility at the Boston and Maine RR wharf shows the scale of infrastructure that was developed in the WCZ following the filling of Commercial Street in the 1850's. This currently is the site of the Gulf of Maine Research Institute. In 1924, 5 piers housed coal pockets. The Boston and Maine Wharf also handled lumber and other goods.



The Randall McAllister coal facility occupied the entirety of Maine Wharf in 1924. Maine Wharf is over 600 feet long and 75 feet wide - which makes it one of the smaller piers in the Central Waterfront.



The Pocahontas Fuel coal shed was located on the site of the current Dimillo's Restaurant. In this 1924 photo, the assessors noted its 50 foot building height. Note the rail cars positioned for loading on the first floor.



In 1924, 9 piers housed lumber facilities, including storage, distribution and milling. Brown's Wharf shown here was incorporated into the Portland Fish Pier complex in the 1980's. Sheds of this scale were not uncommon.



This image from Brown's Wharf shows a milling facility for southern hard pine – one of several in the zone.



While the largest of Portland's grain elevators were located on the Eastern Waterfront, the Central Waterfront had at least 5 grain facilities on at least 3 wharfs. This impressive Commercial Wharf structure was located on what is now the Dimillo's parking lot.



Slate sinks were manufactured at this Central Wharf facility on the site where one now finds the Chandler's Wharf condominium complex.



This Union Wharf sugar warehouse was located on a pier that currently houses a vital mix of marine and non-marine uses



This sign and paint store at the current site of the "Comedy Connection" on Custom House Wharf shows how non-marine uses of all types were integrated on the piers from an early date.



Meat packing, both on Commercial Street and out on the piers, was a prevalent use occupying large scale structures.



The central portion of this photo shows a typical “fish house” or “shack” as were found distributed widely through the zone in and among larger industrial uses.



Commercial Street provided merchandizing exposure for marine uses such as this fish dealer. Note that a canvas and awning shop, Leavitt and Parris, occupied the upstairs. Leavitt and Parris then (and now through a location in a Deering industrial site) served marine and non-marine clients.



Commercial Street also was home to mixed buildings such as this marine supply store (left) and clothier (right.)



b. Uses in the zone as of the 1924 tax survey are as follows

Commercial Street Uses

- Fruit storage (138 Commercial St)
- Junk shop; Marine Supplies (144 Commercial St)
- Fish store; storage (158 Commercial St)
- Awnings, tents, flags and sails (158 Commercial St)
- Machinery Exchange (168 Commercial St)
- Store - Steamship supply; Clothing and Footwear (182-186 Commercial St)
- Grain Storage; "Vulcanization" (tires) (202 Commercial St)
- Pickle Factory (210-212 Commercial St)
- Junk Store; Tires (216-222 Commercial St)
- Meat packing; Storage (236 Commercial St)
- Meat packing (264 Commercial St)
- Garage (268 Commercial St)
- Flour, Lumber, Storage (322 Commercial St)
- Meat packing; Stables (340 Commercial St)

Randall and McAllister Wharf, now Maine Wharf (68-70 Commercial St)

Coal distribution with offices, tool shops, processing, storage, cranes, etc.

Custom House Wharf (94-98 Commercial St)

Casco Bay Lines (with freight house, waiting room, offices...) storage, machine shops, office supplies, public "auto storage" (parking,) lobster house, garages, "light house shop", ice cream manufacturing plant, sign shop, restaurant, paint store.

Portland Pier

Machine shops (marine), fish shops/houses, blacksmith, restaurants, junk shop, garage, stores, sail loft, car ferry, offices, naval reserve office, boat house, storage shed, ship supplies.

Commercial Wharf, (+/-150 Commercial St)

Ship store, storage, vacant, storage, manufacture fish nets, “pool room”, Machine shop, fish houses/shacks, “Marine Junk”, fish gear storage, clam shop, offices

Pocahontas Wharf, including Long Wharf (162-176 Commercial St)

Coal wharf with garage, shops, rail, sheds and storage, trestles and gantries, and offices.

Central Wharf (188-200 Commercial St)

Offices, industrial supply store(marine and non-marine), garage, cold storage, storage, fish houses, manufacturing (slate sinks), salt store, grain mill/storage, fish packing, machine shop.

Widgery Wharf (208-220 Commercial St)

Food and “flower” manufacturing, general storage, shops/sheds (vacant), freight storage.

Union Wharf (226-244 Commercial St)

Cold storage (vacant), various tool houses and offices, salt storage, storage (general), coal distribution and processing w/offices, cement storage, sheet metal and roofing w/ shops and storage, meat packing, grain mill w/ storage, sugar storage, warehouses/storage.

Merrill’s Wharf (252-258 Commercial St)

Garage, boat house (yacht club), canning factory w/ work shop and storage, store w/ storage, truck storage.

Richardson Wharf (272-298 Commercial St)

Grain mill w/storage and offices, cooperage, stables, lumber storage, fuel and coal office, storage (vacant)

Merchant’s Wharf (310-312 Commercial St)

Storage, lumber dealers, ice dealer with offices and storage, club house (Portland Yacht Club)

Browns Wharf, currently the Portland Fish Pier (314-330 Commercial St)

Lumber, storage/offices/freight/mill, storage, stables.

Wright’s Wharf (332-342 Commercial St)

Stable, blacksmith shop, lumber storage.

Boston and Maine RR Wharf at the site of the Gulf of Maine Research Institute (350-380 Commercial St)

Lumber distribution w/ mills and storage, fertilizer storage/sale, boat shop, stables, coal distribution w/sales/office/freight/storage, blacksmith, garage, repair (rail).

Hobson's Wharf (382-396 Commercial St)

Lumber storage (multiple w/ offices).

Berlin Mills Wharf (404 Commercial St)

Offices, storage

Holyoke Wharf (412-420 Commercial St)

Storage "Teams", "Club House" (vacant), wood working, garage, "recruiting room" and fish factory (vacant), lumber storage, boiler company storage, coal shed (vacant), ice office, tool storage, grind stone manufacture, naval patrol quarters.

Sturdivant's Wharf (422-440 Commercial St)

Retail/wholesale for windows/doors etc., roofing company with storage

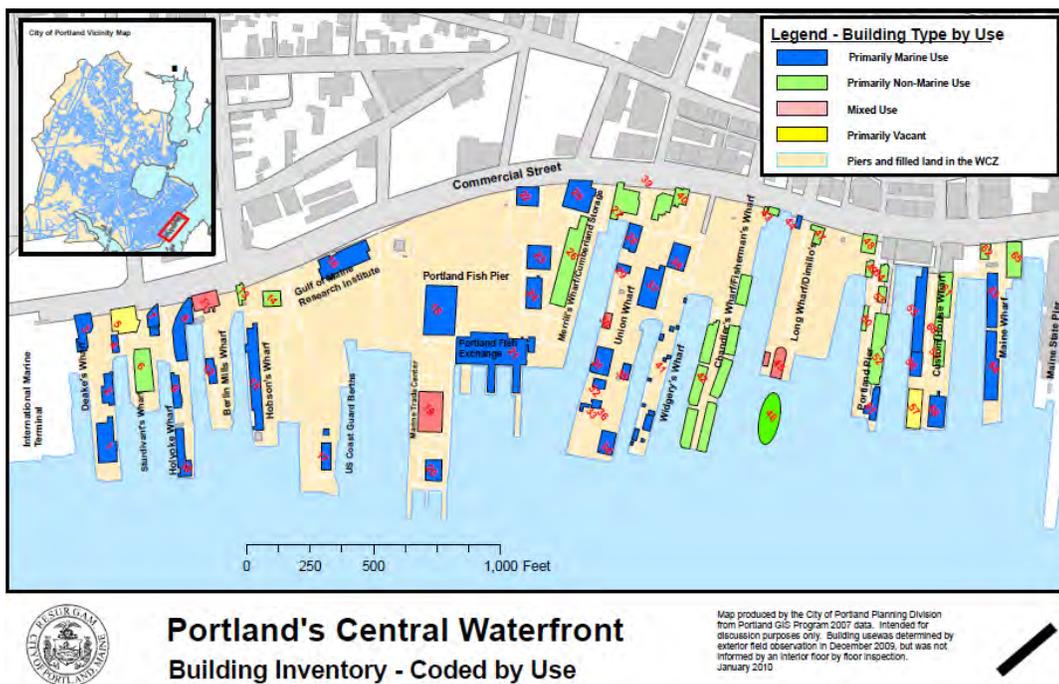
Deakes Wharf (442-450 Commercial St)

Auto/truck service garage, blacksmith shop, fish packing.

2. *The Scale of the infrastructure*

The Central Waterfront is comparable in size to significant development districts within the City and the scale of infrastructure in the WCZ is beyond the scope of any other cohesive urban marine district in the state. Furthermore, the scale of the district outsizes the market for marine uses capable of paying rents sufficient to support the infrastructure.

The map below was developed as part of the 2009/2010 inventory process and shows the land and buildings of the zone.



The following examples are excerpted from the 2009/2010 inventory findings as a summarized indication of the WCZ's extent. The WCZ contains:

- 2.2 million square feet of developed or developable area (filled land and pile supported pier)
- 15 piers
- 65+ buildings
- 16,000 linear feet of commercial berthing

3. Poor Conditions

With the departure and diminishment of rail and waterborne transportation as dominant modes after World War II, heavy industry and manufacturing abandoned Commercial Street and the piers of the Central Waterfront: the WCZ has never fully recovered. Many of the largest buildings are long since demolished; but on many piers, including Maine Wharf, Custom House Wharf, Portland Pier, Merrill's Wharf, Hobson's, Holyoke and Deake's, wharves continue to maintain early structures from the heavy industry era.

The conditions found on the piers are generally poor and investment lags behind need for basic repairs on many piers.

- Many of the piers are 19th century structures requiring constant investment.

- Vacancies for marine and non-marine uses are growing – while the current economy may be to blame for some of these vacancies, poor pier conditions make many of these properties unattractive to new tenants.
- The rents generated by marine uses do not support sufficient re-investment in pier infrastructure.⁵

The Waterfront Central Zone is a large area that is under-utilized and is at risk due to deteriorating infrastructure.

4. *History of Mixed Use Activity*

a. Adaptive Re-Use

Marine and non-marine uses have adaptively reused some of the 19th century piers in a largely unchanged form. Custom House Wharf today would be totally recognizable to early 20th century eyes. Properties, such as the Portland Fish Pier and the Gulf of Maine Research Institute site (as redeveloped in the mid-20th century by the US Navy and Coast Guard) combined piers into more modern industrial properties. Still other piers, such as Widgery Wharf and outer portions of Hobson’s Pier, have reconfigured the pile-supported portions of their properties into lighter duty piers serving fishing uses and forgoing buildings larger than shacks altogether. Without question, and unfortunately for all, the largest redevelopment strategy taken by the majority of piers under past zoning has been to remove buildings and build surface parking.

The 2010 inventory shows the large scale areas of the zone currently occupied by parking. These lots are in addition to smaller scale lots serving individual uses on each pier. Just these larger lots occupy approximately 10 acres – all of which were in more productive use in 1924.

b. Current Economic Activity

Despite poor physical conditions on many piers, the zone continues to support a significant volume and variety of commercial activity.

- 128 businesses (78 marine, 50 non-marine)
- 175 commercial vessels
- 394 non-commercial vessels
- 1200-1300 marine jobs
- 600-700 non-marine jobs

⁵ The basis for the bulleted statements above is found in the economic inventory and Pier Owner statements found in attachment 3B . While the City believes that this report and its attachment provide more than enough information to justify the DEP approving the adopted zoning, the best way to assess the condition of Portland’s waterfront is by direct observation. The City of Portland invites the DEP Commissioner and staff on a guided site visit of the WCZ to personally see and evaluate the conditions and needs of the zone.

However, as noted, the infrastructure is not being well maintained and there is a significant amount of both vacant land and vacant buildings.

c. Development Potential

- The developable area provides an opportunity for reinvestment and mixed use growth. Much of the zone is either un-built or covered by parking. When considering the new zoning, one must consider that the majority of developable potential within the zone is located away from the water and along Commercial Street. 73% of the zone is not occupied by buildings.
- Larger parking lots occupy over 400,000 square feet of space with over 1300 parking spaces– many of which serve non-marine use in other zones. These vast spaces do not represent the highest or best use of this land.

Existing marine economic activity already exists in an environment where non-marine uses are allowed and exist. Upper floor offices and Commercial Street retail/restaurant uses have been a reality in the zone for years, and as seen by the 1924 material above, this mix has always defined the area.

B. The proposed zoning is no less stringent than the States minimum guidelines.

Portland’s new zoning text is no less stringent than the minimum requirements put forth by the State. The question of stringency is key to the Department’s determination. *Chapter 1000* assists in determining whether municipal zoning meets the *no less stringent* test. *Chapter 1000* states that the municipal zoning must be “equally or more effective in achieving the purposes of the Act.” Among other policies, the purpose of the Act is to protect commercial fishing and marine industries.

The WCZ text presented extends protection to marine uses beyond State minimums through:

- Restrictions on non-commercial berthing;
- Preservation of building and pier space for marine activity and prioritization of marine uses;
- Incentives for investment in marine infrastructure; and
- Establishment of strict performance standards protecting commercial marine access and use within the zone.

Chapter 1000 suggests one method of protection for marine activity – segregation of uses. While this method has merit for many parts of the State, the recent process for the WCZ suggests that within the large, highly urban, already mixed use environment of Portland Harbor, use segregation is both contrary to the history of the zone and its economic stability. Portland asserts that allowing limited non-marine use, giving priority to marine use, and providing rigorous

performance standards to ensure non-marine use compatibility and the functional utility of the piers is equally or more effective in achieving the State's goals. Marine use alone has proved to be incapable of sustaining critical marine infrastructure including usable pier edge, docks and wharves. As a result, it is agreed that failing to approve the WCZ amendments will result in the continued degradation of the marine industry in Portland Harbor.

The four working waterfront protective measures bulleted above are addressed individually below. Readers should understand that the protections are intended to work together within a unified system of development review, administered by Portland's professional planning and zoning staff. These local standards are more effective and better suited to promoting the purposes of the Shoreland Zoning Act within Portland's WCZ.

1. Restrictions on non-commercial berthing

Under the current (DEP-approved) zoning, 50 feet of non-commercial berthing is permitted per pier. Expansion of non-commercial berthing is allowed as a conditional use.

The proposed text eliminates this expansion opportunity (deletions in *Conditional Use, Sec. 14-308(a)*). The proposed zoning is more protective of commercial berthing than the existing zoning and the State minimum standards. Commercial berthing is a fundamental resource that sustains the working waterfront.

2. Preservation of building and pier space for marine activity

The new zoning protects a majority of space in the area where the majority of marine activity is located. As stated above, there are over 2.2 million square feet of filled land and pier area contained in the zone. It is simply unreasonable to expect that marine use will be able to occupy the majority of this space. Under the proposed zoning, outside of the Non-Marine Use Overlay Zone, 55% of ground floor building space and 55% of open space (pier and land area not covered by a building or serving as a common access drive) is preserved for marine use. (*Standards for non-marine uses located outside of the NMUOZ: Sec. 14-311(a)1.and 2.*)

The new zoning also includes an innovative measure that requires all vacancies and changes of tenancy to be marketed and made available to marine uses before offering space to non-marine tenants. (*Sec. 14-311(a)3.*) The space must be marketed in targeted media and offered at comparable rates to other marine space in the zone. Space would be offered to non-marine uses only if there are no qualifying marine uses available to take the space. Essentially, if there is a market for marine uses, these uses will have priority opportunity for space every time space becomes available in the area of the zone best suited for marine activity. Pier owners, however, will not be forced to leave space empty for lack of a marine tenant. Even this, however, is

curtailed to no more than 45% of area for non-marine use per first floor outside of the “NMUOZ”.

The City Council, when approving the above measures, further required that the City annually inventory and report marine use and non-marine use occupancy within the zone as a means to enforce the above provisions and understand and monitor the long-term impacts of these amendments. These monitoring reports will be made available to the DEP upon request.

Chapter 1000, as the State minimum standard, establishes setbacks from high water as the protective mechanism to ensure access for commercial fishing and marine industrial activity. Setbacks alone cannot ensure continued access to these piers and wharfs if the infrastructure is degraded or is occupied by recreational boating activity – as could be allowed under state minimum standards.

The City contends that in the context of Portland Harbor, area preservation and continued opportunity for occupancy is a more effective means to ensure quality access for commercial marine activity than simple high water setbacks. Portland’s history with segregated uses, as followed the 1987 moratorium on non-marine use and reiterated by the 2006 and current process, suggests that permanently banning non-marine uses ultimately leads to further disinvestment in the piers and degradation of infrastructure supporting marine access. The adopted WCZ text achieves a balance between the need to preserve space for marine activity and the reasonable expectation for use of the space available.

3. *Incentives for investment in marine infrastructure*

Within the proposed Non-Marine Use Overlay Zone (NMUOZ,) which is located along Commercial Street but set back from high water by 25 feet (as would be consistent with a “General Development District,”) there is no marine use requirement proposed. While state minimum standards would not require any ties to marine use within a General Development District, the proposed zoning requires that larger developments (\$250,000 or more) construct or contribute toward marine infrastructure for the benefit of marine uses at a value of 5% of total project costs. (NMUOZ Standards: *Sec. 14-311(b)3*) This monetary linkage between non-marine development and marine infrastructure reinforces the system of marine protection and investment underlying the adopted amendments. Furthermore, in addition to the performance standards described below, non-marine uses in the NMUOZ are subject to a vessel access standard (*Sec. 14-311(b)*) to ensure access to vessel berthing. Application of these standards in the NMUOZ is further indication of how the WCZ is more stringent than the minimum standards.

4. *Strict performance standards protect commercial marine access and use within the zone.*

The performance standards contained within the proposed WCZ protect water-dependent and marine activity according to the functional needs of the piers and marine uses. They have been strengthened to protect marine uses in three significant areas:

- **Parking.** *Sec.14-311(d)8*
The proposed amendments place significant restrictions on non-marine parking. These restrictions require that adequate marine use parking is provided or preserved, and that water-dependent uses are given a priority for parking location.
- **Compatibility of non-marine uses with marine uses.** *Sec.14-311(d)15*
The compatibility standards address potential interference of non-marine uses with existing or potential marine operations – including access to berthed vessels.
- **Functional utility of piers and access to the water’s edge.** *Sec.14-311(d)16*
The functional utility standards inform site design providing for the adequate needs of marine operations. Issues addressed include building and circulation location, vehicle access to pier edges, and segregation of marine access from non-marine circulation.

C. The proposed standards are consistent with the legislative purposes described in 38 MRSA § 435, and 38 MRSA § 1801(Chapter 19) Coastal Management Policies

1. Legislative Purpose of the Shoreland Zoning Act

Portland’s new zoning text is consistent with the legislative purposes for Shoreland Zoning. 38 MRSA § 435 provides the following text:

The purposes of these controls are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas. (Emphasis added.)

The new WCZ text is consistent with all of these purposes. The material herein, however, focuses on how the new zoning protects *commercial fishing and marine industries* and controls *building sites, placement of structures and land uses* as these are the issues most applicable to the amendments recently adopted by the City.

Commercial marine activity is still the priority and purpose of the zone. The WCZ recognizes that urban marine environments require investment, and that the businesses and activities on the piers themselves are the source of the investment capital.

Unfortunately, marine industry alone cannot provide adequate revenue to warrant sufficient re-investment into marine infrastructure for a sustainable infrastructure network. The City is not asking to abandon marine use; but, it is asking for opportunity for its property owners to make a reasonable return on their private investments. Without a zoning modification, the piers in the WCZ will continue to degrade and quality access will be denied the very industries that are the focus of protection. The City's path is different from the State's minimum standards, but the intent and purpose is the same. The City asks the DEP to determine that its approach strikes the necessary balance of uses to sustain the Central Waterfront's economies and infrastructure and that the same is in accord with Shoreland Zoning regulation.

2. *Coastal Management Policies*

The policies listed below in *italics* are excerpted directly from State statute. Each is individually addressed by the narrative that follows.

- a. *Port and harbor development. "Promote the maintenance, development and revitalization of the State's ports and harbors for fishing, transportation and recreation;"*

The adopted zoning is drafted specifically to sustain Portland Harbor as a viable commercial fishing port and commercial and tourism destination. A fishing port requires infrastructure, which in turn requires investment. Recreation and tourism require access to the Harbor, which will be promoted by increased mixed use. The adopted zoning promotes the *balance* promoted by state coastal management policies.

- b. *Marine resource management. "Manage the marine environment and its related resources to preserve and improve the ecological integrity and diversity of marine communities and habitats, to expand our understanding of the productivity of the Gulf of Maine and coastal waters and to enhance the economic value of the State's renewable marine resources;"*

Portland Harbor, its piers and deep water, is the irreplaceable resource that allows private enterprise to gain value and conduct business in commercial

fishing. The adopted zoning will not endanger the habitats and ecological health of the Harbor, but will allow for the diverse business activity that fosters universally beneficial economic value.

- c. *Shoreline management and access.* “Support shoreline management that gives preference to water-dependent uses over other uses, that promotes public access to the shoreline and that considers the cumulative effects of development on coastal resources;”

Portland Harbor is the most intensively developed shoreline on the coast of Maine. The cumulative effects of development have been evolving for centuries and the adopted zoning will promote a continuation of this development. Water-dependent uses are given *preference* through the measures described above in section III. B. above. While *commercial marine access* is promoted through the protections afforded marine uses, appropriate *public access* is expanded through opportunities for expanded mixed use.

- d. *Hazard area development.* “Discourage growth and new development in coastal areas where, because of coastal storms, flooding, landslides or sea-level rise, it is hazardous to human health and safety;”

Standards for flood plain management are integral to Portland’s land use code and are not changed or relaxed through the adopted amendments.

- e. *State and local cooperative management.* “Encourage and support cooperative state and municipal management of coastal resources;”

The City of Portland has a long history of cooperation with State agencies fostering marine and non-marine commerce in the WCZ. The development of Portland Fish Pier in the 1980’s was a city-state partnership that remains a cornerstone of the ground fishing and fish processing industry for the state. It is important to note that the relaxations on non-marine use in the WCZ will not impact the core activities of the Portland Fish Pier.

In addition, Commercial Street, the primary transportation facility within the zone, has since the 1980s been reconstructed with state transportation funds and designed to reflect its dual role as both an industrial access road and a thriving business, retail, and tourism destination.

- f. *Scenic and natural areas protection.* “Protect and manage critical habitat and natural areas of state and national significance and maintain the scenic beauty and character of the coast even in areas where development occurs;”

The developed nature of Commercial Street and the Central Waterfront defines its scenic beauty and character. While not a “critical habitat,”

Portland's waterfront is a nationally significant resource. In 2008, Commercial Street was selected by the American Planning Association as a "Great Street" specifically because of its history, its architecture, and mixed-use character. During the City's recent planning process, the Portland Society of Architects lobbied successfully to include language into the adopted policy statement regarding the significance of Commercial Street and the zone's 19th century piers as irreplaceable resources for preservation and development. The adopted zoning provides a financial mechanism to maintain and improve these assets for the benefit of marine and non-marine economic activity.

- g. *Recreation and tourism. "Expand the opportunities for outdoor recreation and encourage appropriate coastal tourist activities and development;"*

The adopted zoning aids coastal tourism in four specific ways:

- i. Preservation of marine uses.
Marine use is *the* attraction for tourism and the adopted zoning protects marine uses as the priority for pier ground floors and the entirety of pier edges.
- ii. Allowing marine tourism as a permitted marine use.
Marine tourism operations, such as tour boats and captained charters, are *permitted uses* in the zone. As permitted marine uses, such tourism operations hold a place equal to commercial fishing uses and are prioritized above non-marine uses in the WCZ.
- iii. Allowing non-marine uses that expand the general public's use of the waterfront.
The expansion of limited restaurant and retail uses on the piers will provide opportunities for visitors and residents alike to access piers and strengthen their connection to the Harbor. The adopted performance standards ensure that these public uses will be compatible with existing and future marine uses and that the piers will continue to functionally support marine commerce.
- iv. Improving revenues to piers to support infrastructure upgrades.
Many of Portland's private piers exhibit conditions that detract from the waterfront's image and also make it difficult to operate viable marine related uses. During the City's recent process, a representative of the Convention and Visitor's Bureau noted pier condition as a significant barrier to promoting Portland's waterfront as a tourism destination.⁶ Expanded uses provide revenue for maintenance, and the performance standards will guide improvements to create safe

⁶ Barbara Whitten, CVB Director, at the March 2, 2010 WCZ Panel Discussion and Public Forum.

environments for visitors to patronize businesses and experience the working waterfront.

- h. Water quality. “Restore and maintain the quality of our fresh, marine and estuarine waters to allow for the broadest possible diversity of public and private uses” and,*

Site investments provide opportunities to upgrade antiquated stormwater infrastructure that will benefit water quality. Recent experience with development has demonstrated few examples of such improvements based on marine use investment alone.

- i. Air quality. “Restore and maintain coastal air quality to protect the health of citizens and visitors and to protect enjoyment of the natural beauty and maritime characteristics of the Maine coast.”*

Not applicable.

V. Other Issues Considered

Through the City’s extensive process, several arguments against the adopted zoning were presented. The City considered these arguments and discusses them below.

A. DEP and State Agency Input

Just prior to the City Council’s vote on the proposed amendments, the DEP issued a letter informing the City that additional justification would be needed for the Department’s review of the proposed changes (Mike Morse, Shoreland Zone Administrator, dated December 16, 2010.) The Department’s letter followed correspondence from the Department of Marine Resources (David Etnier, Deputy Commissioner, dated December 13, 2010,) the Department of Conservation (Dan Prichard, dated June 22, 2010,) and Department of Environmental Protection (Mike Morse, June 22, 2010.) A common theme expressed in these correspondences concerned the potential for new non-marine uses to be located on pile supported piers on the Portland waterfront.

While the Agency’s input was carefully considered and analyzed, the City concluded that pier foundation systems are not the effective and rational organizing principle for structuring zoning. The WCZ contains 19th century piers that were designed without regard for current regulations. The piers are organized around the function of the working deck edge and internal circulation – not around the foundation system under the deck. To attempt to protect portions of piers over the water is to ignore the physical configuration which promotes commercial access to the water.



By way of illustration consider the Custom House Wharf example shown here. This is a pier where the water’s edge (the yellow line) splits buildings (red blocks) down the middle. Protections tied strictly to the water’s edge would either require that the entire building be marine, which has been shown to be non-economic and detrimental to long term maintenance benefiting all users, or to divide buildings such that interior layouts would be non-functional for marine uses. Other piers show filled land extending closer to the water’s edge with little or no pile-supported pier. Strictly adhering to the “water’s edge” philosophy as a rationale to divide marine from non-marine uses, these piers would see less stringent marine requirements than adopted by the City for the WCZ.

One should note that the DMR letter also cites displacement of commercial berthing as a pivotal issue. All readers of this material need to understand that no increase in non-commercial berthing is allowed by the proposed zone text. Commercial berthing is the fundamental resource underpinning the working waterfront and Portland is not proposing *any* loss of commercial berthing to recreational vessels. In fact, the proposed zoning *restricts expansion of existing marina uses*, otherwise allowed under zoning approved by the Department in 2006 and previously in 1994 – yet another example of where the adopted zoning is more stringent than State minimum standards.

B. Compatibility is Not Accidental

The issue of *compatibility* between marine and non-marine uses has been important to the City’s approach to zoning in the Central Waterfront. The uses, protections, and relationships between uses promoted in the WCZ flow from long experience and the learning advanced through this process.

Portland’s Waterfront has a long history of tourism, recreational boating and uses of every description. Currently, permitted and legally non-conforming non-marine uses co-exist with existing marine uses on most piers. Virtually every pier either has existing non-marine uses or has the potential to house such uses under previously approved zoning. As evident from the recent economic inventory, all of these mixed

uses co-exist with 175 commercial vessels, 78 marine businesses, and 1200-1300 marine jobs.

Residential uses and recreational marinas have long been considered incompatible with the marine economy and therefore the City has not adopted zoning allowing their expansion. Interestingly, when one sees these uses as they exist (as legal non-conforming uses) in the WCZ, one sees condominiums and marinas operating alongside a wide range of marine and water-dependent uses. The fundamental incompatibility of these uses with the marine economy falls with the permanent *displacement of the marine infrastructure* that they replaced at the time of their construction. For this reason, Portland does not request expansion of these uses. By the same argument, non-marine uses that can *share compatible infrastructure* with marine uses can be managed to operate within a marine environment. Portland seeks to allow use flexibility and economic opportunity on the piers while requiring the functional infrastructure needed by marine industry.

Not all of the use relationships found in the WCZ are harmonious.⁷ Public testimony showed that there are examples of congestion, parking shortages and behaviors that negatively impact some marine uses. There were other testimonials where fishermen were less concerned with who their neighbors might be as long as access, parking and loading was available – at an affordable price. The new zoning addresses conflicts between uses with an innovative standards-based approach specifically designed to promote compatibility between marine and non-marine activities.

Zoning is but one part of a successful pier strategy. Clearly, use compatibility cannot be ensured under poor property management or where sufficient infrastructure is not provided. The adopted WCZ provides mechanisms to manage the latter, while no zoning can or should be expected to address the former.

C. Potential Loss of Marine Use

Virtually every participant in the WCZ process has expressed a good faith hope for the future of marine use in the zone and the new protections and standards are the manifest expression of the community's commitment to commercial marine activity. This activity is critical and distinguishes Portland from other, more sterile, urban waterfront locations found out of state.

Despite the value placed on marine use by the City as a whole, concern has been expressed over fear of displacement of marine use by non-marine use. Some lobstermen and the Island Institute have called for text that would limit the displacement of existing tenants by non-marine uses. The City heard this concern, but followed legal and planning practice for zoning, adopting text that addresses “uses” and not individual “tenants.”

⁷ This is true of many zones in communities state-wide.

However much some participants in the process wishes it were otherwise, *no net loss of marine activity* is not the standard: not in Portland zoning, not in the State minimum standards, not in the market place. Unfortunately, the net loss of marine activity has been an on-going concern for communities up and down the Maine coast – even where DEP approved shoreland zoning is in place. The Island Institute’s seminal report, *The Last 20 Miles: Mapping Maine’s Working Waterfront*⁸ identified 1555 points of working waterfront access state wide; but, only 29% of these sites were covered by “some type of water-dependent use zoning.” Extrapolating from these figures, the DEP has approved zoning covering 71% of current points of working waterfront access with zoning that would allow displacement of marine uses by some other use. The new WCZ would be considered as having *some type of water-dependent use zoning*, keeping the 15 impacted piers more protected than the majority of working waterfront access points throughout the state. Portland is asking for similar flexibility in approaching the Shoreland goals set out by the Legislature as granted other communities – all balanced with preservation of marine activity.

The entire focus of *The Last 20 Miles* was to inventory marine access locations to promote their preservation. The City participated in the Island Institute’s work in 2006 and supports their ground breaking efforts in support of coastal communities. The fact of Portland’s success in retaining points of working waterfront access should not be held against the City in our attempt to innovate with zoning to achieve economic viability and stable infrastructure.

D. Portland as a Model

While mixed use waterfront zoning may not be common, Portland’s innovations in zoning have been used locally, regionally and nationally as a model for achieving quality coastal communities. This is no accident as many coastal communities struggle to address aging infrastructure, diminishing fishing activity, and the need to adapt to shifts in circumstances while maintaining flexibility. Portland staff has been asked to share experiences and present lessons learned on mixed use waterfront zoning at the following conferences and forums:

- *Alabama-Mississippi Sea Grant: Community Planning Incorporating Working Waterfronts* - by webinar, November 2010.
- *Working Waterways and Waterfronts National Symposium on Access, Portland, Maine: September 2010*
- *NNECAPA and SACARPH Joint Conference, Portland, Maine: September 2008.*
- *Waterfront Charrette, City of Providence, Rhode Island: May 2008.*
- *Working Waterfront Forum, City of Providence, Rhode Island: May 2007.*
- *Maine Fisherman’s Forum, Rockland, Maine: 2004.*
- *Working Waterfront Access: A Forum on Challenges and Solutions, Darling Center, Walpole, Maine: 2003.*

⁸ Working Waterfront, Rockland, Maine, 2007

Portland Planning Staff has also been recently invited to present to a national audience at the *Waterfront Center* conference on waterfront development in New York City in October of 2011.

In addition to presentations at the above speaking engagements, the American Planning Association awarded Commercial Street as a Great American Street in 2008 as part of their “Great Places” program. The City’s APA application was largely based on the mixed use nature of the street and the importance of the innovative zoning as a means to protect working waterfronts through diversified uses and non-marine use revenues.

More recently, the National Oceanographic and Atmospheric Administration (NOAA) used Portland and the WCZ in particular, to model mixed use zoning as “Smart Growth” in their publication and website: *Smart Growth for Coastal and Waterfront Communities*, 2009.⁹

The City takes great pride and ownership of its waterfront resources. This proposed zoning promotes continued responsibility for achieving a successful and viable waterfront for years to come.

VI. Conclusion

The City of Portland is a good steward of its waterfront. It is the longstanding policy of the City to protect and promote maritime industries on our working waterfront in general and in the Waterfront Central Zone in particular. Our experience in developing and implementing this policy predates the DEP’s establishment of similar and consistent state policies. Through that experience, and our exhaustive research and analysis, we have determined that within the Central Waterfront, a balance of marine and compatible non-marine uses is necessary to achieve sustainable protection and promotion of marine infrastructure. We have provided ample analysis and data to the Department documenting local conditions. This documentation was developed through a public process and reviewed by the Portland Planning Board and City Council.

The State minimum standards would allow for more displacement of commercial marine activity than might occur under the new WCZ. All of the zone’s berthing could convert to recreational berthing; all areas further than 25 feet from high tide could convert to non-marine use; no investment in marine infrastructure would be linked to non-marine development; and no marine infrastructure would be protected by compatibility and functional utility performance standards. It is clear that the City’s ordinance is both more stringent and more effective in achieving the purpose of the Shoreland Zoning Act in the specific environment of Portland Harbor.

⁹ <http://coastalsmartgrowth.noaa.gov/elements/mixland.html>

This is not the end of Portland's Working Waterfront. With diligent oversight, cooperation with property owners, and partnership with State agencies, the Waterfront Central Zone will be its salvation. We therefore respectfully request DEP approval of the WCZ zoning text and map amendments as passed by the Portland City Council on December 20, 2010.

A TRUE COPY
ATTEST: Katherine L. Jones
Katherine L. Jones Acting City Clerk
Portland, Maine
DATE 3-24-2011

Order 103-10/11
Given first reading on 12/6/10

Public hearing and passage as amended 7-2 (Marshall, Donoghue) 12-20-10

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
DIVISION 18. WATERFRONT CENTRAL ZONE**



**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That sections 14-305 to 14-315 of the Portland City Code
are hereby amended to read as follows:*

Sec. 14-305. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses; in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) ~~Other specified~~ Non-marine uses are encouraged ~~only if provided that they do not interfere with and are not incompatible with first and second priority uses, and if they economically enhance higher priority water-dependent and marine uses.~~ Other specified. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners / necessary for the maintenance and improvement of the marine infrastructure. ~~However, water~~

Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted ~~under certain circumstances~~ in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses ~~do not have a substantially adverse effect on~~ are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Commercial Street is recognized as an important economic center for the City and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

Sec. 14-306. 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 nonwater-dependent use is to e located on a portion of the site that is physically suited for a water-dependent use;
- (c) — The proposed use will reduce existing commercial vessel berthing space;
- (d) — 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 or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (e) — The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Sec. 14-307.

Sec. 14-306. Definitions.

For the purposes of the waterfront central zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways, and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot shall mean: any abutting property under common ownership.

Non-Marine Use Overlay Zone (NMUOZ): The Non-Marine Use Overlay Zone (NMUOZ) is a portion of the waterfront central zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the NMUOZ are defined by parcels of land and piers within the waterfront central zone located on the landward side of a line established one hundred fifty (150) feet southerly from the southerly sideline of Commercial Street and modified as follows: The seaward limit of the NMUOZ extends to a line 500 feet southerly from the southerly sideline of Commercial Street in the area between the easterly sideline of Long Wharf to the westerly sideline of Union Wharf. Additionally, all areas subject to this provision are set back landward at least twenty five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. All offset distances are measured horizontally.

All applicants for development within the NMUOZ are responsible for demonstrating their location within NMUOZ according to the findings of a site specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the NMUOZ shall be shown on all site plans and subdivision plats for proposed development within the NMUOZ. A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in

determining whether a proposed development is located within the NMUOZ.

On-Site shall mean: that portion of any lot included within or directly impacted by a proposed development.

Sec. 14-~~308~~307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-306 ~~(no adverse impact on water dependent uses)~~-311, as applicable, the following uses are permitted in the waterfront central zone:

(a) *Marine:*

1. Marine products, wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing, and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-308(b)(3) below);
11. Seafood processing;
12. Seafood packing and packaging;

13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of ~~less than~~ maximum of fifty (50) linear feet per pier. A non-commercial berth may not displace a commercial berth.

Parking for any non-commercial berthing is subject to the provisions of sections 14-308(a), 14-311(c) and 14-311(d) 8.

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;
24. ~~Parking accessory to an on-site water-dependent use; Bait sales and processing; and,~~
25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol, and Coast Guard.

~~*Editor's Note: All parking in the WCZ for non-water dependent uses is subject to conditional use provisions found in section 14-309~~

(b) ~~Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-308(e) and 14-309, the following uses shall be permitted above the ground floor level:~~

(b) Non-marine commercial and industrial uses:

Non-marine uses permitted by this section are subject to the standards listed in Section 14-311.

1. Professional, business, government, and general offices; and general offices;
2. ~~Business service establishments;~~
3. ~~Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;~~
4. ~~Intermodal transportation facilities;~~
5. ~~Cold storage facilities;~~
6. ~~Warehousing and wholesaling;~~
7. ~~Industrial uses which meet the performance standards of the I-M zone.~~

(c) ~~Public:~~ Subject to section 14-308(e) and 14-309, the following uses shall be permitted:

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

(d) ~~Commercial uses in existing buildings located along Commercial Street:~~

1. ~~Buildings meeting the following criteria may house the uses listed in (d)(2) below:~~
 - a. ~~The subject building existed or had an unexpired site plan as of January 4, 1993; and~~
 - b. ~~The subject building is located in part or in whole within thirty-five (35) feet of the southerly sideline of Commercial Street; and~~
 - c. ~~The ground floor non-marine uses allowed under this section shall not extend further than one hundred (100) feet from the southerly sideline of Commercial Street; and~~
 - d. ~~Expansions of uses permitted under this section are subject to conditional use review under 14-309, or conditional or contract rezoning under section 14-310.~~
2. ~~Provided the standards in (d)(1) above are met and subject to section 14-308(e)1. and 14-309(b){accessory parking for non-water dependent uses}, the following uses shall be permitted:~~
 - a. ~~Professional, business, government, and general offices;~~

- b2. Retail and service establishments, including craft and specialty shops. Convenience stores

with gas pumps shall not be permitted under this section;

- e3. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
- d4. Banking services; without drive-up services;
- e5. Laundry and dry cleaning services;
- f6. Cabinet and carpentry shops, studios for artists and crafts people ~~(excluding group classes and performances), and accessory retail sales of products produced on the premises;~~
- g7. Intermodal transportation facilities;
- h8. Cold storage facilities;
- i9. Museums and art galleries; and

~~*Editor's Note: Subject to drive-thru services prohibition in Section 14-313.~~

~~(e)10. Outside accessory activities~~

(c) Public:

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

(d) Other:

- 1. Accessory uses:

- a. ~~Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this code, parking for uses other than water dependent uses set forth in section 14-308(a) {permitted marine uses} shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-309(a) {for marine related, but not water dependent uses} or 14-309(b) {for non-marine uses}.~~

- b. Accessorya. Interior accessory uses customarily incidental and subordinate to

the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-~~308~~307(a)(1-), (a)(7), or (a)(22); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual use does not exceed one-thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and

eb. Interior meeting or classroom space accessory to uses permitted in section 14-~~308~~307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph 2b, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

2. Street vendors licensed pursuant to chapter 19.

Sec. 14-~~309~~-308. Conditional uses.

The uses listed herein shall be permitted as conditional

uses in the waterfront central zone, provided that, notwithstanding section 14-471~~I~~,471 and 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 further provided that in addition to the provisions of section 14-474(c)(2), ~~section 14-306 (no adverse impact on marine uses), and any other conditions specified under the particular use below,~~ they shall also meet the following conditions applicable waterfront central zone development standards in section 14-311:

(a) Conditional use standard: Commercial marine conditional uses:

1. ~~Marine compatibility:~~ The proposed use shall be compatible with existing and potential ~~marine uses in the vicinity;~~
2. ~~Access for marine use:~~ The proposed use shall not impede access to the water by existing or potential marine uses; and
3. ~~Parking and traffic circulation:~~
 - a. ~~Parking and traffic circulation plan:~~ All applications for conditional use in the WCZ 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 WCZ. (See 14-306 {no adverse impact on marine uses} and 14-315 {performance standards}, (q) {functional utility of piers and access to the water's edge}).
 - b. ~~Pier access/congestion:~~ For conditional uses that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
4. ~~Public view protection:~~ Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the planning board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement. The planning board shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial

Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. ~~Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.~~

*Editor's Note: Any use listed below that requires construction at or near the water's edge may also be subject to the State of Maine NRPA regulation.

(b) Conditional uses:

1. ~~Parking for marine uses that are not water-dependent:~~ Notwithstanding section 14-315(h), 14-331, 14-334 and article V (site plan) of this chapter, no parking shall be allowed in this zone for marine uses that are not water-dependent 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 water-dependent uses that are permitted by section 14-308(a) which are or may be located on the subject property. (See editor's note below). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.
2. ~~Parking for (a) conditional uses; (b) non-marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above ground floor level; and/or (c) uses allowed under conditional or contract rezoning:~~ Notwithstanding sections 14-315(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 14-308(a) which are or may be located on the subject property. (see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.

*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.

3. ~~Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:~~
 - a. ~~Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.~~
4. 1. Fish by-products processing, provided that:
 - a. Any fish by-products processing facility has a valid rendering facility license under

chapter 12;

- b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available 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 I-M zone; and
- c. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

§2. *Boat rack storage facilities*, provided that:

- a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-315(h)), 311(d) 8, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.
- b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.

~~6. Expansion of a non-water dependent, non-marine related use permitted under 14-308(e). Expansion of commercial uses in buildings existing or having an unexpired site plan on January 4, 1993 and located within thirty five (35) feet of the southerly edge of Commercial Street shall be allowed only as follows:~~

- ~~a. The expansion must be into contiguous and newly created building space of no more than three thousand (3,000) square feet, total for the life of the building; and~~
- ~~b. The use may occupy a ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within thirty five (35) feet of the southerly sideline of Commercial Street; and/or~~
- ~~e. The use may occupy a ground floor area of no more than fifteen hundred (1500) square feet beyond thirty five (35) feet from the southerly sideline of~~

Commercial Street and be located no more than one hundred (100) feet from the southerly sideline of Commercial Street; and

~~-----~~
~~-----~~ *Editor's Note: Expansions proposed under this section may occupy new upper floor areas that are located further than thirty-five (35) feet from Commercial Street and larger than fifteen hundred (1500) square feet, subject to other limitations of this code.
~~-----~~

~~d. ----- As of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-308(d) shall be no less than five-hundred (500) square feet; and~~

~~e. ----- The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.~~

7.(b) *Residential*: The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy space within the upper story of a building in existence on January 4, 1993 upper floor space with a residential use, provided the following conditions are met:

- a1. The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished;
- b2. The residential living space shall not exceed ~~seven-hundred-fifty (750)~~ one thousand (1,000) square feet, inclusive of all exterior porches and decks;
- e3. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
- d4. The residential use shall be limited to one unit per wharf;
- e5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and
- f6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not

be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of ~~the~~a ~~marine related business listed under section 14-307(a), permitted~~ marine uses.

- 8.(c) *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:
- a1. The facility is located more than one-hundred (100) feet from the water's edge;
 - b2. The facility occupies no more than fifty (50) square feet of structure above ground;
 - e3. 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 usable and made available for marine ~~related~~ uses, including but not limited to parking, travel ways, and/or storage; and
 - d4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.
- ~~9. Expansion of an upper floor non-water dependent, non-marine use permitted under 14-308(b), (commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than two thousand (2,000) square feet total for the life of the building, shall be allowed only as follows:~~
- ~~a. The expanded use may occupy upper floor areas;~~
 - ~~b. Newly created ground floor area in a building utilizing this section must be dedicated entirely to marine or water dependent uses, except pedestrian circulation areas (i.e., unoccupied vestibules, elevators, and/or stair landings serving upper floors) may occupy no more than three hundred (300) square feet;~~
 - ~~e. As of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-308(b) shall be no less than five hundred (500) square feet; and~~

- d. ~~The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.~~

Sec. ~~14-310. Contract or conditional rezoning.~~

General: ~~Except as authorized in section 14-308 (permitted uses), or otherwise expressly authorized, an applicant may only locate a non-marine use in a structure, or in a structure constructed after January 4, 1993 if the reviewing body finds the applicant has met the standards of section 14-306 (no adverse impact) and the applicable standards of contract/conditional rezoning contained herein:~~

~~(a) *New structures with marine uses on first floors or change of use of upper floors of structures constructed after January 4, 1993:*~~

~~The following standards apply to contract/conditional rezoning on any site within the waterfront central zone (unless an applicant applies for a contract/conditional rezoning under the Commercial Street/old port overlay zone standards in (b) below):~~

- ~~1. The upper story non-marine use is a use listed 14-308(b);~~
- ~~2. The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-308(a) excepting circulation areas, such as unoccupied vestibules, elevators, and/or stair landings serving upper floors uses) may occupy no more than three hundred (300) square feet.~~
- ~~3. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.~~
- ~~4. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~
- ~~5. 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, and visual and physical access to the waterfront for the general public.~~
- ~~6. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).~~
- ~~7. The non-marine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to planning board review under section 14-309(a)3.a. and 14-309(b)2 (conditional use, parking).~~
- ~~8. The development is consistent with conditional use standard 14-309(a)4. (public view protection).~~

9. ~~The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-308(a) and that said use is not abandoned after the project is developed.~~
- (b) ~~Commercial Street/old port overlay zone:~~ The following standards are applicable to the Commercial Street/old port overlay zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf. For a site within the old port overlay zone, the applicant may request application of these standards rather than the standards of (a) above.
1. ~~All portions of the structure are set back at least seventy-five (75) feet from the maximum spring tide line of coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the state department of environmental protection that the location and development context of the subject site adhere to the State's definition of "general development district", the coastal wetland setback may be reduced to twenty-five (25) feet.~~
 2. ~~New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-308(d) (commercial uses in buildings existing on January 4, 1993 and located within thirty-five (35) feet of Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.~~
 3. ~~Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.~~
 4. ~~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 ongoing maintenance of the marine infrastructure for commercial vessels (either on-site or off-site), and visual and physical access to the waterfront for the general public.~~
 5. ~~The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to sections 14-309(a)3.a. and 14-309(b)2 (conditional use, parking).~~
 6. ~~The proposed development is consistent with conditional use standard 14-309(a)4. (view corridor protection).~~
 7. ~~The development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution as detailed in (9) below.~~

8. ~~Maximum building setback from the southerly sideline of Commercial Street shall be no more than ten (10) feet.~~
9. ~~A developer is required to mitigate impacts of non-marine development. Mitigation may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. In determining the amount of required mitigation, the value of the contribution shall be not less than the greater of five percent (5%) of total project costs or ten dollars (\$10.00) per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. Required mitigation may occur by one or both of the following methods:~~
 - a. ~~Direct investment in marine infrastructure: Mitigation shall be for the benefit of water-dependent uses listed in 14-308(a), and shall include commitments to utilize those improvements over time for permitted water-dependent uses on site or within the same lot.~~
 - b. ~~Financial contribution: As an alternative to direct investment, the developer may choose to make a financial contribution to the city's waterfront loan and investment fund.~~

~~Sec. 14-311. Reserved.~~

~~Sec. 14-312. Reserved.~~

~~Sec. 14-313.~~ Sec. 14-309. Prohibited uses.

Uses which are not enumerated in either section ~~14-308~~307 or ~~14-309~~308 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Except as provided in section ~~14-309~~308, residential uses (not in existence on May 5, 1987);
- (b) Hotels, motels or boatels;
- (c) Auditoriums, civic centers, convention centers or other meeting facilities;
- (d) Drinking establishments;
- (e) Ground mounted telecommunication towers, antennas, and/or disks; and
- (f) Drive-up services for any use other than a permitted use listed under ~~14-308~~307(a) or 14-308(b)(1).

Sec. 14-314310. Dimensional requirements.

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

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* ~~None.~~ along Commercial Street: Seventy five (75) feet.
- (c) *Minimum lot width within the NMUOZ:* Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the NMUOZ.
- (d) *Minimum yard dimensions:*
 - 1. Front setback: None.
 - 2. Side setback: None.
 - 3. Rear setback: None.
 - 4. Setback from pier lineedge: 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 edge of any pier, wharf or bulkhead shall include any attached apron(s).
- (~~e~~) *Maximum lot coverage:* One-hundred (100) percent.
- (~~e~~) *Maximum building height:* ~~Forty-five (45) feet, except that within four hundred (400) feet of the southerly sideline of the Commercial Street right-of-way, the maximum building height is fifty~~ Fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Except as provided ~~on~~ in (g) below, a structure in the waterfront central zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or

open mechanical installations shall be allowed over the third floor.

(fg) *Minimum ground floor clearance:* Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.

(gh) *New non-marine use building exception for usable floors and minimum ground floor clearance:* Notwithstanding provisions (ef) and (fg) above, for new non-marine use buildings permitted for use by non-marine uses under 14-310(b) (contract/conditional rezoning in within the Commercial Street/old port overlay zone) NMUOZ, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-315.311. Development standards.

(a) Standards for non-marine uses located outside of the NMUOZ:

Non-marine uses listed above in Sec. 14-307(b) and 14-308(a) that are located outside of the NMUOZ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. 55% marine use required on ground floors: At least 55% of the ground floor of all of the buildings on the lot (defined in 14-306 above), when calculated using the aggregate of all such ground floors, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b) (1).
2. 55% marine use required for all open areas: After subtracting areas used for common

circulation drives (defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b)1.

3. Ground floor vacancies and change of occupant offered to water dependent/marine uses: Ground floor vacant space and areas proposed for a change of occupant outside of the NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.

a. Ground floor vacancy and change of occupant outside of the NMUOZ advertised to marine users: In any lot or portion of lot outside of the NMUOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space must be made available to new marine occupants.

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a (60) day period in targeted media and by other means reasonably calculated to reach marine users. Should one or more marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the NMUOZ.) The property owner may stop advertising sooner than the end of the 60 day period if a lease is signed with a marine user. Should no marine user apply by the end of the 60 day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use

occupancy maximum of 45% of the ground floor area or open area.

b. Uses inventoried: To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

c. Applicants for site plan review or a change of use permit outside of the NMUOZ shall provide the planning authority with proof of compliance with the requirements of this section as a condition of approval.

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d. The City Planning Authority shall compile and report inventories of ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding anything in contained

in 14-311(c) (Contract or conditional rezoning) or any other provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least five feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(b). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) NMUOZ standards:

Non-marine uses listed under 14-307(b) and 14-308(a) located within the NMUOZ, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. Vessel access: Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).
2. Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage: Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street

and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right of way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. Investment in marine infrastructure: All applicants for site plan review or a change of use permit for non-marine development in the NMUOZ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed \$250,000. The value of the investment shall be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the NMUOZ.

Required investment may occur by one or both of the following methods:

- a. Direct investment in marine infrastructure located on the same lot: Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure

investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.

- b. Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's waterfront loan and investment fund.

(c) Contract or conditional rezoning standards:

Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under Sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:

1. Conditional or contract rezoning located outside of the NMUOZ: The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of Section 14-311(a) of this code.
2. Conditional or contract rezoning located within the NMUOZ: Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b) (3) (Investment in marine infrastructure).
3. Residential dwellings are prohibited.
4. The development is consistent with the comprehensive plan and without the development the site could not otherwise

support an economically viable water-dependent use.

5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
6. 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, and visual and physical access to the waterfront for the general public.
7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
8. The non-marine portion of the proposed development will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d)(8).
9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.

(d). Performance standards:

All uses in the waterfront central zone shall comply with the following standards. Standards 8, 10, 13, 14, 15, 16, and 17 below shall be reviewed by the planning authority:

- (a)1. *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)2. *Noise:* 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 central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, 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. 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 (LEQ₁).
- (c)3. *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)4. *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)5. *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~~ services 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)6. *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g)7. *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~~ 480-A through 480-HH, 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~~ services 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)

8. ~~Off-street parking: Except as provided in section 14-309 or as required pursuant to article V (site plan), and loading: Division 20 (off-street parking is required at fifty percent (50%) of the required number) and division 21 (off-street loading) of this article shall not apply.~~

The planning authority shall review applications for non-marine use parking against the following standards:

a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.

b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").

c. Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.

d. Water-dependent use parking spaces for specified uses as otherwise provided in division 20 of this article shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.

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

(j)

9. 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 of this article.

(k)10. *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)11. *Signs:* Signs shall be permitted as set forth in division 22 of this article.

(m)12. *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 non-marine uses with marine uses:* Non-marine 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 as set forth in section 14-306. Siting of a use not set forth in section 14-308(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.~~

(o)13. *Urban design:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.

(p)14. *Pier and wharf expansions:* In addition to meeting ~~harbor commissioner~~ Harbor Commission and ~~coast guard~~ Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed

route ferry service and emergency vessel operations.

(e) 15. Compatibility of non-marine uses with marine uses: Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

16. Functional utility of piers and access to the water's edge: All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to ~~functionally~~ access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles.—, and shall demonstrate adherence to the following provisions:

a. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. ~~For example,~~ any The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the

building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.

d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.

17. Public view protection: Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

Sec. 14-312. Reserved.

~~Sec. 316. Reserved.~~ Sec. 317 14-313. Reserved

Sec. 14-314. Reserved.

Sec. 14-315. Reserved.

Sec. 14-316. Reserved.

Sec. 14-317. Reserved.

Editor's Note: The Council further ordered City staff to compile data and file a report on the current ground floor usages and the displacement of any ground floor marine related uses in the Waterfront Central Zone at the second Council meeting in April and thereafter file an annual report identifying the trend line, if any, that shows the displacement of marine related uses. The Council also required staff to include in its annual report an inventory of the building permits issued in prior year comparing the amount of investment in marine related infrastructure to the investment in non-marine related infrastructure.

Order 103-10/11
12/6/10

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYI
JOHN M. ANTON
DORY RICHARDS WAXMAN
JILL C. DUSON

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
DIVISION 18. WATERFRONT CENTRAL ZONE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That sections 14-305 to 14-315 of the Portland
City Code are hereby amended to read as follows:*

Sec. 14-305. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses. Non-marine uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure.

A TRUE COPY
ATTEST: Katherine Jones
Katherine Jones, Acting City Clerk.
Portland, Maine
DATE 3.24.2011



Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

Commercial Street is recognized as an important economic center for the City and region. Marine compatible uses are encouraged to locate and grow along Commercial Street while higher priority marine uses are protected on the waterfront.

Sec. 14-306. Definitions.

For the purposes of the waterfront central zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways, and circulation areas accessible to all on-site tenants and/or occupants of a lot within the waterfront central zone providing access from/to the public street network.

Lot: any abutting property under common ownership.

Non-Marine Use Overlay Zone (NMUOZ): The Non-Marine Use Overlay Zone (NMUOZ) is a portion of the waterfront central zone, as described below, where new and existing development may be occupied with 100% non-marine use tenants listed under 14-307(b), subject to the standards and use limitations provided in section 14-311(b).

The geographic limits of the NMUOZ are defined by parcels of land and piers within the waterfront central zone located on the landward side of a line established one hundred fifty (150) feet southerly from the southerly sideline of Commercial Street and modified as follows: The seaward limit of the NMUOZ extends to a line 500 feet southerly from the southerly sideline of Commercial Street in the area between the easterly sideline of Long Wharf to the westerly sideline of Union Wharf. Additionally, all areas subject to this provision are set back landward at least twenty five (25) feet from the average high tide line of Portland Harbor and associated coastal wetlands. All offset distances are measured horizontally.

All applicants for development within the NMUOZ are responsible for demonstrating their location within NMUOZ according to the findings of a site specific land survey conducted by a professional land surveyor licensed by the State of Maine. The limits of the NMUOZ shall be shown on all site plans and subdivision plats for proposed development within the NMUOZ. A map showing the presumed boundaries of the NMUOZ is on file with the Department of Planning and Urban Development. Said map is for illustrative purposes only and shall not be relied upon in determining whether a proposed development is located within the NMUOZ.

On-Site: that portion of any lot included within or directly impacted by a proposed development.

Sec. 14-307. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-311, as applicable, the

following uses are permitted in the waterfront central zone:

(a) *Marine:*

1. Marine products, wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing, and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-308(b)(3) below);
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;

15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of a maximum of fifty (50) linear feet per pier. A non-commercial berth may not displace a commercial berth.

Parking for any non-commercial berthing is subject to the provisions of sections 14-308(a), 14-311(c) and 14-311(d)8.

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;
24. Bait sales and processing; and,
25. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol, and Coast Guard.

(b) *Non-marine commercial and industrial uses:*

Non-marine uses permitted by this section are subject to the standards listed in Section 14-311.

1. Professional, business, government, and general offices;

2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;
4. Banking services without drive-up services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops, studios for artists and crafts people;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries; and
10. Outside accessory activities

(c) *Public:*

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

(d) *Other:*

1. Accessory uses:
 - a. Interior accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service

support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-307(a)(1), (a)(7), or (a)(22); that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual use does not exceed one-thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the provision of 14-311(a); and

- b. Interior meeting or classroom space accessory to uses permitted in section 14-307(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

2. Street vendors licensed pursuant to chapter 19.

Sec. 14-308. Conditional uses.

The uses listed herein shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471 and 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 further provided that in addition to the provisions of section 14-474(c)(2), they shall also meet the applicable waterfront central zone development standards in section 14-311:

(a) Commercial marine conditional uses:

1. *Fish by-products processing*, provided that:

- a. Any fish by-products processing facility has a valid rendering facility license under chapter 12;
- b. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available 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 I-M zone; and
- c. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

2. *Boat rack storage facilities*, provided that:

- a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-311(d)8, performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.
 - b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.
- (b) *Residential:* The primary owner of a marine business listed under section 14-307(a) located on the same site may occupy upper floor space with a residential use, provided the following conditions are met:
- 1. The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished;
 - 2. The residential living space shall not exceed one thousand (1,000) square feet, inclusive of all exterior porches and decks;
 - 3. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
 - 4. The residential use shall be limited to one unit per wharf;
 - 5. The residential use shall be year round use only, and shall not be used on a seasonal basis; and

6. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of a marine business listed under section 14-307(a), permitted marine uses.

(c) *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:

1. The facility is located more than one-hundred (100) feet from the water's edge;
2. The facility occupies no more than fifty (50) square feet of structure above ground;
3. 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 usable and made available for marine uses, including but not limited to parking, travel ways, and/or storage; and
4. The facility shall be sized, sited and screened to minimize visual impact and prominence from public ways.

. Sec. 14-309. Prohibited uses.

Uses which are not enumerated in either section 14-307 or 14-308 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Except as provided in section 14-308, residential uses (not in existence on May 5, 1987);
- (b) Hotels, motels or boatels;
- (c) Auditoriums, civic centers, convention centers or other meeting facilities;
- (d) Drinking establishments;
- (e) Ground mounted telecommunication towers, antennas, and/or disks; and
- (f) Drive-up services for any use other than a permitted use listed under 14-307(a) or 14-308(b) (1).

Sec. 14-310. Dimensional requirements.

In addition to the provisions of division 25 of this article, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage along Commercial Street:* Seventy five (75) feet.
- (c) *Minimum lot width within the NMUOZ:* Fifty (50) feet measured parallel with Commercial Street and such lot width shall be continuous for the full depth of the lot located within the NMUOZ.
- (d) *Minimum yard dimensions:*
 - 1. Front setback: None.
 - 2. Side setback: None.
 - 3. Rear setback: None.

4. Setback from pier edge: 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 edge of any pier, wharf or bulkhead shall include any attached apron(s).
- (e) *Maximum lot coverage:* One-hundred (100) percent.
- (f) *Maximum building height:* Fifty (50) feet. Except as provided in (g) below, a structure in the waterfront central zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.
- (g) *Minimum ground floor clearance:* Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.
- (h) *New non-marine use building exception for usable floors and minimum ground floor clearance:* Notwithstanding provisions (f) and (g) above, for new non-marine use buildings permitted within the NMUOZ, four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-311. Development standards.

- (a) *Standards for non-marine uses located outside of the NMUOZ:*

Non-marine uses listed above in Sec. 14-307(b) and 14-308(a) that are located outside of the NMUOZ shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. *55% marine use required on ground floors:* At least 55% of the ground floor of all of the buildings on the lot (defined in 14-306 above), when calculated using the aggregate of all such ground floors, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b)(1).
2. *55% marine use required for all open areas:* After subtracting areas used for *common circulation drives* (defined in 14-306 above), at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, shall be occupied by marine uses, as listed under 14-307(a) or 14-308(b)1.
3. *Ground floor vacancies and change of occupant offered to water dependent/marine uses:* Ground floor vacant space and areas proposed for a change of occupant outside of the NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space.
 - a. *Ground floor vacancy and change of occupant outside of the NMUOZ advertised to marine users:* In any lot or portion of lot outside of the NMUOZ, each time a ground floor occupant departs or gives notice to depart from the lot, the space must be made available to new marine occupants.

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a (60) day period in targeted media and by other means reasonably calculated to reach marine users. Should one or more

marine users apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the NMUOZ.) The property owner may stop advertising sooner than the end of the 60 day period if a lease is signed with a marine user. Should no marine user apply by the end of the 60 day period, the owner may fill the space with a non-marine user provided that the new non-marine occupant will not cause the lot to exceed the non-marine use occupancy maximum of 45% of the ground floor area or open area.

- b. *Uses inventoried:* To demonstrate adherence to the 55% marine use requirement, the applicant shall submit to the planning authority, upon request, an inventory which lists each occupant (tenant or otherwise), as well as a map which depicts the location of each occupant. The map shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.
- c. Applicants for site plan review or a change of use permit outside of the NMUOZ shall provide the planning authority with proof of compliance with the requirements of this section as a condition of approval.

DRAFT TEXT

- d. The City Planning Authority shall compile and report inventories of

ground level uses, as reported under (b) above, into an annual report of ground level uses and investment in the Central Waterfront. The report shall include an aggregated assessment of ground floor marine and non-marine use occupancy and a catalogue of marine infrastructure investment for the reporting period. The report shall be submitted to the City Council as a communication not less than once every calendar year.

4. Pier or bulkhead edge reserved for marine uses: Notwithstanding anything in contained in 14-311(c) (Contract or conditional rezoning) or any other provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least five feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(b). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.

(b) *NMUOZ standards:*

Non-marine uses listed under 14-307(b) and 14-308(a) located within the NMUOZ, as defined in 14-306, shall be subject to the performance standards listed in 14-311(d) as well as the following standards:

1. *Vessel access:* Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-311(d).

2. *Maximum setback for new development on lots with seventy-five (75) or more feet of Commercial Street frontage:* Any new non-marine development constructed subject to this provision which is located on a lot with seventy-five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty-five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its front façade and its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine development subject to this provision on lots with fewer than seventy-five (75) feet of frontage along the Commercial Street right of way, changes of use within existing buildings, and/or building additions of less than 5,000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

3. *Investment in marine infrastructure:* All applicants for site plan review or a change of use permit for non-marine development in the NMUOZ are required to invest in marine infrastructure as a condition of development, provided that the total project costs exceed \$250,000. The value of the investment shall be not less than five percent (5%) of total project costs over \$250,000 for constructing non-marine space and associated site improvements in the NMUOZ.

Required investment may occur by one or both of the following methods:

- a. Direct investment in marine infrastructure located on the same lot: Investment shall be for the benefit of marine uses listed in 14-307(a) within the same lot as the proposed non-marine development. Investment may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. Plans for the marine infrastructure investment shall be submitted to the planning authority with the application for site plan review or change of use permit and shall include details and a commitment as to how the marine infrastructure will be utilized by marine users. The marine infrastructure improvements shall be completed prior to the issuance of a certificate of occupancy for the non-marine development project.
- b. Financial contribution: If direct investment in marine infrastructure is not made, the developer shall make a financial contribution to the city's *waterfront loan and investment fund*.

(c) *Contract or conditional rezoning standards:*

Applications for proposals deviating from any dimensional requirements under section 14-310 and/or including uses not listed under Sections 14-307 and 14-308 may only be considered if the reviewing body finds the applicant has met the performance standards listed under 14-311(d) and the following standards:

1. *Conditional or contract rezoning located outside of the NMUOZ:* The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot shall be subject to and meet

the requirements of Section 14-311(a) of this code.

2. *Conditional or contract rezoning located within the NMUOZ:* Conditional or contract rezoning applications located within the NMUOZ are subject to the provisions of 14-311(b)(3) (*Investment in marine infrastructure*).
3. Residential dwellings are prohibited.
4. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.
5. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
6. 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, and visual and physical access to the waterfront for the general public.
7. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
8. The non-marine portion of the proposed development will not adversely affect the

efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to review under section 14-311(d)(8).

9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-307(a) and that said use is not abandoned after the project is developed.

(d). *Performance standards:*

All uses in the waterfront central zone shall comply with the following standards. Standards 8, 10, 13, 14, 15, 16, and 17 below shall be reviewed by the planning authority:

1. *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.
2. *Noise:* 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 central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, 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. 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 (LEQ₁).

3. *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.
4. *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.
5. *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 public services 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.
6. *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
7. *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall

be governed by 38 M.R.S.A. sections 480-A through 480-HH, 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 public services 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.

8. *Off-street parking and loading:* Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.

The planning authority shall review applications for non-marine use parking against the following standards:

- a. Applicants for non-marine parking in the waterfront central zone shall submit a parking and traffic circulation plan showing the location of all existing and proposed structures, travel ways and parking on the subject lot.
- b. Outside of the NMUOZ, non-marine use parking is subject to the limitations described in 14-311(a) ("55% rule").
- c. Non-marine use parking shall only be located on a lot where, based on the parking and traffic circulation plan and a parking analysis to be submitted for planning authority review, the marine use parking supply is reasonably sufficient to serve marine use space located on the subject lot.

- d. Water-dependent use parking spaces shall be located as close as reasonably possible to associated vessels and/or ground floor lease areas.
9. *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 of this article.
10. *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.
11. *Signs:* Signs shall be permitted as set forth in division 22 of this article.
12. *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.
13. *Urban design:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
14. *Pier and wharf expansions:* In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the

waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.

15. *Compatibility of non-marine uses with marine uses:* Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing or other access to the water by existing or potential marine uses. Siting of a use not set forth in section 14-307(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.

16. *Functional utility of piers and access to the water's edge:* All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles, and shall demonstrate adherence to the following provisions:
 - a. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

 - b. Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the

building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

- c. With the exception of non-commercial berthing allowed under section 14-307(a)(20), there is to be no other non-commercial berthing.
 - d. Except for common circulation drives as defined in 14-306, access ways, parking and loading areas designated for marine uses shall be exclusively for marine uses and shall not be shared with non-marine uses.
17. *Public view protection:* Any new development in the waterfront central zone shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the *Portland View Corridor Protection Plan* (City of Portland Comprehensive Plan, 2002) to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.

The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of existing public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.

-
- Sec. 14-312. Reserved.
 - Sec. 14-313. Reserved
 - Sec. 14-314. Reserved.
 - Sec. 14-315. Reserved.
 - Sec. 14-316. Reserved.
 - Sec. 14-317. Reserved.

Editor's Note: The Council further ordered City staff to compile data and file a report on the current ground floor usages and the displacement of any ground floor marine related uses in the Waterfront Central Zone at the second Council meeting in April and thereafter file an annual report identifying the trend line, if any, that shows the displacement of marine related uses. The Council also required staff to include in its annual report an inventory of the building permits issued in prior year comparing the amount of investment in marine related infrastructure to the investment in non-marine related infrastructure.

Order 101-10/11

Postponed on 12/6/10

Public hearing and Passage as amended 12/20/10

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

EDWARD J. SUSLOVIC (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

DORY RICHARDS WAXMAN (A/L)

JILL C. DUSON (A/L)

Order #101-10/11, passed as amended 12-20-10.

ORDER ADOPTING POLICY STATEMENT FOR THE WATERFRONT CENTRAL ZONE AND AMENDING THE CITY'S COMPREHENSIVE PLAN

ORDERED, that the Policy Statement for the Waterfront Central Zone, attached hereto as Attachment A, is hereby adopted; and

BE IT FURTHER ORDERED, that the City's Comprehensive Plan is hereby amended to include the Policy Statement for the Waterfront Central Zone.

Policy Statement for the Waterfront Central Zone

I. Introduction:

Portland's Central Waterfront was originally identified as a distinct zone in the 1992 Waterfront Alliance report. The zone is located along the south side of Commercial Street from and including Maine Wharf to the east to Deake's Wharf in the west. The Central Waterfront is characterized by privately held commercial piers running roughly perpendicular to Commercial Street into Portland Harbor and the Fore River. In addition to private commercial marine holdings, the zone is home to the Portland Fish Pier, the Gulf of Maine Research Institute, berthing for the United States Coast Guard, residential condominiums, retail and restaurant uses, two private marinas, and offices serving marine and non-marine interests.

Recognizing the findings articulated below, the City of Portland confirms that the basic policy structure established in the 1992 *Waterfront Alliance Report* remains the foundation of the City's Waterfront Land Use Policy. However, in the Central Waterfront, the current range of economic development opportunities have not resulted in development supporting preservation of waterfront infrastructure. Private investment remains the mechanism for maintaining and improving private piers and wharves and continual investment in private infrastructure is needed for preserving access to commercial vessel berthing and support activities.

To facilitate private investment in Portland's Central Waterfront, a wider range of development opportunities must be established. Likewise, to ensure continued opportunities for marine economic activity, the existing hierarchy of uses continues to provide the policy structure for the zone. The use hierarchy is summarized as: *water-dependent uses – first priority; marine-related support uses – second priority; and, marine compatible (non-marine) uses - third priority.* Zoning implementing greater non-marine opportunities within the framework of the use hierarchy will allow a broader range of uses within new and existing structures, and will provide adequate and enforceable protections for commercial marine activity.

II. Findings from the 2010 Planning Process for the Central Waterfront:

Prompted by a zoning amendment application by 12 commercial pier owners in the zone, the Planning Board conducted an extensive planning process to inform a recommendation to the City Council on policies and zoning for the Central Waterfront. Based on information developed and evaluated during their process, the Planning Board makes the following findings:

1. The foundational policy document informing waterfront zoning for the City of Portland, the *Waterfront Alliance Report*, was written in 1992 and has not since been substantially updated for the Central Waterfront.

2. The waterfront economy generally, and the ground fishing industry specifically, has undergone a significant contraction during the previous several years, as exemplified by an over 50% loss of ground fishing vessels and an over 2/3 reduction in landings at the Portland Fish Exchange since the 1990s.
3. Other than the pending redevelopment of 70,000 square feet of the Cumberland Cold Storage building into Class A office space, the Central Waterfront has seen little recent privately funded economic development.
4. Ownership of the Central Waterfront remains largely in private hands.
5. Many piers and wharves in the Central Waterfront have been and remain in deteriorated condition, in need of costly pier infrastructure investments. The ongoing repair and replacement needs for pilings, decking, bulkheads, and structures within the district likely totals tens of millions of dollars and is unsupported by marine-generated revenues. Even with expanded non-marine development, the overall level of investment needed within the zone may be greater than the capacity of the area to generate revenues needed for pier infrastructure investment through lease revenues alone.
6. The Central Waterfront contains over 16,000 feet of commercial berthing and is the single largest resource of commercial vessel berthing in Portland Harbor. The commercial berthing in the Central Waterfront is an irreplaceable resource of state-wide significance.
7. Decreasing water depth at the piers is a worsening issue due to continual natural deposition of sediments exacerbated by storm water overflows into the harbor. Maintenance dredging will be needed to ensure quality commercial berthing opportunities for public and private piers and it is unlikely that berthing revenues alone will support these costs.
8. Despite challenges to the marine economy, Central Waterfront remains an employment center for the City and region, supporting over 78 marine businesses, 175 commercial vessels, and 1200 marine jobs. Lobstering remains a strong and stable economic base for marine activity with approximately 100 lobster vessel berthing within the zone.
9. Non-marine businesses in the Central Waterfront contribute significantly to the vitality of the zone and the city with over 50 businesses, and 600 jobs. Under current zoning restrictions, there are limited opportunities for these businesses to expand.
10. The majority of land and pier area in the zone remains open to development, with less than a quarter of the zone covered by buildings, leaving significant opportunities for new structures.

11. Surface parking occupies large areas of un-built space in the zone and has a significant negative visual impact on Commercial Street; these areas provide redevelopment opportunities with no displacement of water-dependent commercial activity
12. Commercial Street is a nationally significant cultural and historic asset, as recognized by the American Planning Association with a “Best Street” award in 2009. Quality development along Commercial Street has the potential to improve the street architecturally and to contribute to the zone and City with additional revenues and economic activity. Commercial Street development and associated economic benefits can be achieved with little risk of significant marine industry displacement. The Central Waterfront’s development form and history is also of national significance as one of the few surviving intact examples of wharfs dating from the 19th Century era of schooner and clipper ship freight transportation. The extension of the street system out onto piers jutting into the harbor is part of Portland’s unique identity as well as a testament to an important characteristic of the City’s historic role as a center of international trade.
13. The public consistently requests additional visual and physical access to the water and increased non-marine development in the Central Waterfront will encourage safe and appropriate opportunities for the public to experience Portland Harbor.
14. Certain non-marine activities such as restaurant and retail uses, which are currently restricted within the Central Waterfront to existing structures along Commercial Street, represent significant opportunities to generate employment, revenue, and public access on piers throughout the zone.
15. Commercial marine activity can compatibly co-exist with a wide variety of non-marine uses if each use is designed and managed to respect the functional needs of each other. Paramount to achieving mutual compatibility between marine and non-marine uses is the vigilant maintenance and protection of access to berthing, loading and security for water-dependent uses.
16. Climate change impacts remain unknown for the district, but predictions of sea level rise and intensified storms may have their greatest effects on the piers, wharfs and low-lying portions of the waterfront. Likewise, climate driven water temperature and water chemistry changes may have significant impacts to fisheries and the fishing economy that have only recently begun to be evaluated.

III. Vision Statement for the Central Waterfront

Commercial marine use is the highest and best use of waterfront land in the Central Waterfront. Preserving the waterfront for these uses should be a top priority and guiding principle for the City.

Development in the Central Waterfront will achieve a balance where non-marine economic development benefits the piers, Commercial Street, the Waterfront and the City by sustaining marine infrastructure, protecting opportunity for commercial marine activity, and promoting appropriate access by the public to views and activities in Portland Harbor.

IV. Development Policies for the Central Waterfront:

- 1. Preserve access to berthing and adequate space for commercial marine activity.** Commercial berthing is the irreplaceable resource that ensures the Central Waterfront as a working waterfront. In order to add value to this berthing and promote marine employment, adequate pier deck, first floor building space, parking, and circulation opportunities need to be retained to sustain commercial berthing, water dependent uses and the marine-related support industries that comprise the marine economy.
- 2. Expand non-marine use opportunities.** Non-marine development opportunities exist within both existing buildings and open space within the Central waterfront. By relaxing parking requirements, it will be possible to minimize the impacts of non-marine development on marine activities by concentrating non-marine development to existing parking areas and allowing flexibility in meeting the transportation and parking needs of the new tenants and patrons of development. Office, restaurant and retail uses should be allowed greater opportunities within the zone, provided that adequate site planning is provided to protect the functional utility of berthing and marine industrial space, and that public safety is maintained. Consideration should be given to alternatives to parking on and adjacent to the piers including use of remote parking lots/structures linked to the WCZ with public transportation.
- 3. Accommodate as much non-marine use as can reasonably be absorbed within the zone without detrimental impacts to the overall volume of marine activity.** individual piers may experience dislocation and relocation of specific marine uses as a result of new investment programs allowed by expanded non-marine uses. The policies established herein promote an aggregate retention of commercial marine activity within the district. Even where individual marine uses may be displaced by non-marine uses, functional access to commercial berthing must be maintained. Each pier and property with usable berthing access should retain a reasonable amount of commercial marine potential and the total amount of aggregate commercial marine opportunities for the Central Waterfront should not be significantly diminished.

4. **Link non-marine development revenues with marine infrastructure investments.** Expanded use opportunities should result in increased economic value of properties by both market forces and non-marine investment. These policies promote linkages between new non-marine generated revenues and increased marine infrastructure investments – whether by direct investment in infrastructure by pier owners, or by allocation of public monies through tax increment financing.
5. **Expand the public’s opportunity to access the Central Waterfront.** Non-marine commercial development should be designed to enhance the public’s visual and physical access to the water. Commercial Street development should employ view corridors between new and existing structures to maintain visual connections from public rights of way to the water. Extensions of Old Port and upland street corridors across Commercial Street for use as physical access drive locations and view corridors to the water should be employed wherever possible without significantly detracting from the development potential of private property. On-pier non-marine uses will need to develop safe and attractive pedestrian access for use by tenants, visitors, and patrons of these uses. In all cases, sites will need to design for the functional use of the water’s edge by commercial marine activity.
6. **Plan for climate change resiliency.** Whether modest or severe, development within the Central Waterfront may feel the impacts of climate change greater than other areas within the region. The City and property owners should continue to obtain up to date information on climate change impacts along the waterfront.
7. **Prohibit residential development.** Notwithstanding the suggested relaxation of use restrictions suggested above, *residential dwelling* uses are still considered incompatible with higher priority marine uses in the Central Waterfront.

Waterfront Central Zone



Policy and Zoning Process **June 2010**

**Report to the City of Portland:
Planning Board
Community Development Committee
City Council**

**Prepared by the Department of Planning and Urban Development
Planning Division**

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June 16, 2010**

Waterfront Central Zone



Acknowledgements

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Waterfront Central Zone: Policy and Zoning Process
Portland Planning Board Findings and Recommendations
June 2010

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Waterfront Central Zone: Policy and Zoning Process
Portland Planning Board Findings and Recommendations
June 2010

1. Introduction

A consortium of 12 pier and wharf property owners along Portland's waterfront requests a Public Hearing with the Planning Board to discuss proposed amendments to the text of the Waterfront Central Zone (WCZ.)

Prompted by the Pier Owners' text amendment request, the Planning Board has conducted a simultaneous evaluation and review of the conditions, activity and policy for the zone. In addition to documenting the Pier Owners' zone text review, this report also contains the results and findings of the Planning Board's WCZ policy evaluation.

Background

The Pier Owners originally presented their request to the City Council in a letter dated December 2008 (Attachment C) and the issue was taken up by the Council's Community Development Committee (CDC) for consideration early this year. From that meeting, the CDC instructed the Planning staff to work with the pier owners to put their goals into zoning text for formal review.

Over the next several months, Planning staff met with representatives of the Pier Owners' group and completed a draft of proposed amendments that reflect the applicants' goals for presentation to the Planning Board. Through the drafting process, Planning staff endeavored to help the pier owners meet their goals for the text, while remaining neutral as to content. Where staff had specific policy questions or concerns, they pointed these issues out to the pier owners with the understanding that the Planning Board and Council would receive an unvarnished review and assessment of the proposals against relevant policies.

The scope of the Pier Owners' proposal has the potential to significantly change the Central Waterfront in a manner not supported by existing policies. Marine use protections are modified and in places, relaxed. Uses and developments, which under current zoning would require a contract zone, would be allowed as of right. Development types for consideration under contract or conditional rezoning are expanded. Parking requirements would be eliminated, as would view protections. To consider these amendments, the Planning Board conducted a planning process and policy evaluation of the WCZ.

Recommendations:

This report documents the Board's process including the results of the physical conditions and use inventory, public process results, and an inventory of vessels, businesses and employment in the zone. The report concludes with a proposed policy statement for inclusion in the Comprehensive Plan and recommendations on the Pier Owners' proposed text changes.

Issues to be Resolved at the Public Hearing:

As of the last workshop, there remain a number of unresolved issues that the Planning Board will need to finalize prior to concluding the Public Hearing. These issues are outlined and discussed prior to the recommendations section of this report and include: View protections, and the question of residential use.

NOTE: The information contained in Sections 2 through Section 12 (Introduction to Policy Statement) of this report are summarized in the printed presentation provided in Attachment 1 herein.

2. An Introduction to the Waterfront Central Zone

Policy Basis of the Zone:

The WCZ is a mixed use waterfront zone that allows certain non-marine uses under specific conditions. The underlying policies, which are well articulated in the WCZ purpose section, establish a hierarchy of prioritized uses. Water dependent uses are the first priority of the zone and marine uses that are not water dependent are the second priority. Specific non-marine uses that are *compatible with marine uses* are allowed under certain conditions. The stated policy is that the non-marine uses will financially support the pier infrastructure and be located and designed to avoid negative impacts on marine uses.

The WCZ was originally created as part of the comprehensive waterfront policy and rezoning process following a five-year moratorium (1987-1992) on all non-marine development on the waterfront. The resulting policy document is the 1992 Waterfront Alliance Report and portions relevant to the WCZ are provided in Attachment E. The Waterfront Alliance Report created policies for use and development on the Portland waterfront, as well as describing the specific sub regions that currently form the various waterfront zoning coverages.

Summarized from the 1992 Waterfront Alliance Report, below are some of the policies relevant to the pier owners' proposal:

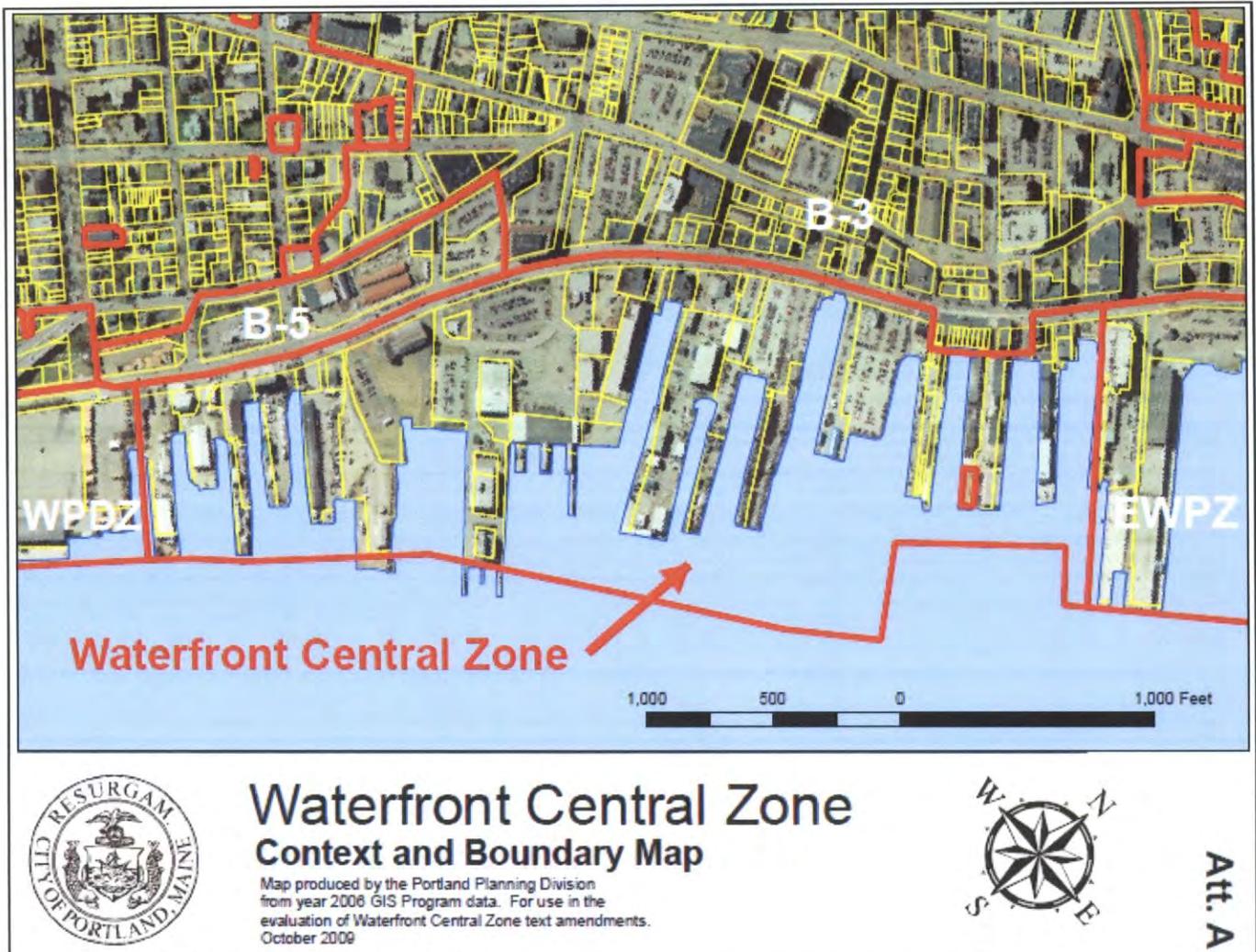
General Policies (summarized)

- Preserve the Water's Edge for berthing
- Property with direct water access is limited and should be reserved "exclusively" for marine use
- Allow "marine compatible" uses on other property that does not interfere "in any way" with water dependent uses
- Promote public access and environmentally responsible practices

WCZ Specific Policies (summarized)

- Prohibit Certain Development – Including: Residential, hotels, new large retail and office, aquariums, convention centers, non-marine institutions...
- Establish a use hierarchy – Following the general policies described above:
 - 1st Water Dependent
 - 2nd Marine support
 - 3rd Other "compatible uses"

Zoning implementing the Waterfront Alliance Report, including creation of the WCZ, was adopted in 1994.



Zoning Text Specifics and Recent Revisions

Structure of the WCZ Text

The zoning text for the WCZ implements the policies articulated above with a combination of performance standards and a complicated system of use allowances based on the “use hierarchy.” As drafted, “water dependent uses” benefit from the greatest flexibility as well as the strongest protections. Non-marine uses are allowed primarily in existing buildings rather than in new construction, and most flexibly along Commercial Street. Parking for any use but “water dependent” is subject to restrictions that ensure access to berthed vessels and adequate supply for water dependent uses.

Contract or conditional rezoning is the assumed vehicle for any significant non-marine development. The reliance on contract or conditional rezoning is an

intentional mechanism to further enforce the use hierarchy with specific standards and to ensure compatibility of non-marine uses on their specific pier or property.

A summary of the zone's outline is provided below:

- Purpose - Hierarchy of uses codified
- "No Adverse Impact" – no displacement of Water-dependent Uses, limit siting of non-marine, preserve berthing and access to berthing
- Complex use allowances – In addition to Commercial Marine uses:
 1. Existing buildings given more flexibility – upper floors, near Commercial Street.
 2. Parking for non-marine uses is a condition use subject to standards
 3. Expansion of existing buildings for non-marine use is a conditional use – limited, subject to view protections
- Contract or Conditional rezoning is subject to specific standards – uses limited – Commercial Street/Old Port Overlay allows greater flexibility
- Performance Standards

Recent Amendments

During the years following initial adoption of the WCZ, the zone text underwent a series of incremental amendments. These amendments relied on the foundational policies of the original zone and were each intended to allow specific and limited types of development – both marine and non-marine. Amendments ranged from allowing expansion of non-marine uses along Commercial Street, to greater height and accessory use flexibility for marine research facilities. After several years of incremental amendments, and expressions of dissatisfaction with the WCZ from property owners and policy makers alike, the City decided that a more comprehensive redrafting of the zone was warranted.

Early in 2005, Mayor Jill Duson formed a taskforce to study the WCZ. The charge to the taskforce was to reevaluate the zone text - continuing to utilize the 1992 policies. The resulting text, adopted in early 2006, provided allowances for increased non-marine activity concentrating on wider non-marine use of existing buildings. Specifically, all existing upper floors and all existing buildings adjacent to Commercial Street were allowed to convert to non-marine activity. Furthermore, a portion of the zone, the so-called *Commercial Street/Old Port Overlay*, was opened to allow 100% non-marine buildings through contract or conditional rezoning.

Despite the amendments described above, other than incremental development such as the expansion of Becky's Diner, there has been limited recent activity in the WCZ.

3. A summary of the Pier Owners' Requested Amendments.

In December 2008, a group of pier owners in the WCZ wrote a letter to the City Council requesting changes to the zone, relief from certain building permit requirements, and assistance with dredging for berthing areas between the piers. As noted in the

Introduction, the City Council’s Community Development Committee held a workshop on the WCZ at the Pier Owners’ request and instructed the Planning Staff to assist the Owners in putting their desires for the zone into text language.

The Owners brought their 4th draft text to the Planning Board and further amended their original request during the course of the Planning Board’s process. The following issue list summarizes the Draft 5 version of the proposed amendments, which is the basis for the Council Order in Attachment A:

Summary of Requested Amendments

1. Replace “No-Adverse Impact” with a 50% minimum marine use requirement.
2. Allow more Recreational Berthing – 100 feet of pier edge (up from 50 feet).
3. Provide new construction with “as of right” options for non-marine occupation (subject to 50% marine use requirement) with greater use options – including retail, restaurant.
4. Only apply the 50% Rule to areas further than 150 from Commercial Street. Areas within 150 feet of Commercial Street can house new construction of 100% non-marine projects.
5. Conditional Use Standards – public view protections eliminated.
6. Contract and Conditional Rezoning Standards – use restrictions eliminated, public view protections eliminated.
7. Parking Requirements – eliminated.

The full text of the Pier Owners’ proposed amendments is provided in [Attachment A](#) of this report and in the Council Order. The text is provided in a “redline” track changes format showing proposed edits from the current text.

During the course of the review, both Planning Board members and members of the CDC requested that the Pier Owners provide a description of their “vision” for the zone. Readers of the zone text, and the related policy statement, may find this document informative. The Pier Owners’ original 2008 request letter is provided in [Attachment C](#) and their Vision Statement is provided as [Attachment D](#) of this report.

4. A Timeline of the Planning Board’s Process

Since October 2009, the Planning Board held 8 workshops, a site walk, and 2 public forums on the Central Waterfront. In the course of this extensive process, the Board has generated a large volume of information to inform their evaluation of both policy and zone text.

Waterfront Central Zone – Planning Board Process To Date

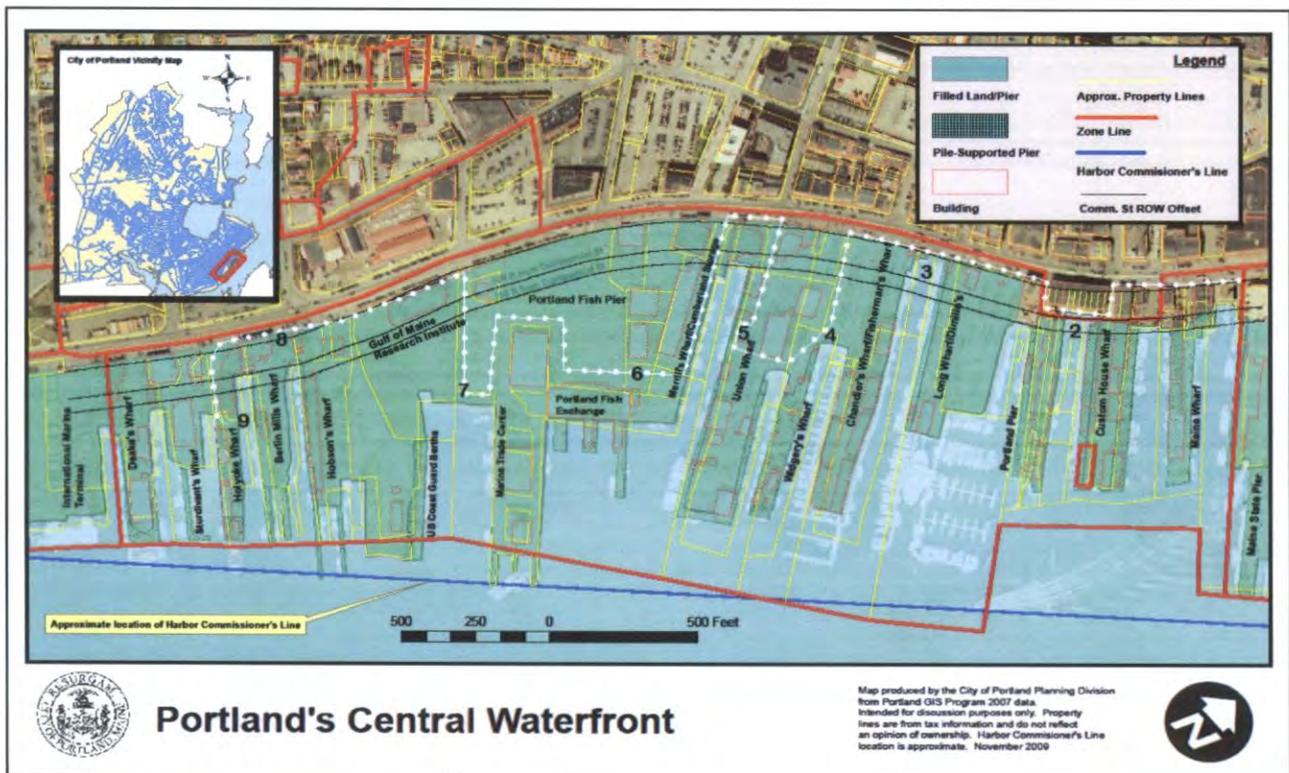
October 27, 2009	Planning Board Workshop: <i>Introduction</i>
November 17, 2009	Planning Board Site Walk
November 24, 2009	Planning Board Workshop: <i>Process and Timeline</i>
January 12, 2009	Planning Board Workshop: <i>Physical Conditions and Building and Use Inventory Results</i>

February 23, 2010	Planning Board Workshop: <i>Public Forum Preparation</i>
March 2, 2010	Public Forum: <i>Marine Industry Panel Discussion</i>
March 3, 2010	Public Forum: <i>Public Input</i>
March 9, 2010	Planning Board Workshop: <i>Pier Owners' Presentation</i>
May 13, 2010	Planning Board Workshop: <i>Public Forum and Business and Employment Inventory Results</i>
May 25, 2010	Planning Board Workshop: <i>Draft Policy Statement Discussion</i>
June 8, 2010	Planning Board Workshop: <i>Draft Zoning Text</i>
June 22, 2010 (Pending)	Planning Board Public Hearing

5. Material from the Planning Board's Site Salk

On November 17, 2009, the Planning Board and members of the public held an on-site workshop to view important physical conditions within the zone, to understand current use relationships, and to evaluate potential impacts of the Pier Owners' proposals as may develop on the ground.

Below is a map of the Board's route, starting to the east at Bell Buoy Park, following the white dotted line to the west as far as Holyoke Wharf. The significant sites and points of interest observed at each of the numbered observation points are listed after the map.



Waterfront Central Zone: Site Walk Notes November 17, 2009
Refer to numbered locations on the map of Portland's Central Waterfront provided above.

Site #1: Bell Buoy Park (between Maine State Pier and Maine Wharf)

- Easterly edge of WCZ
- Only public access point to water (public landing) in the zone
- The Flatbread Ri Ra building - example of the current 35-foot rule Maine Wharf Marine uses – Water taxi, lobster berths, lobster and seafood sales, marine supplies, boat repair (in-water with on pier shop assumed)
- Example of a pile-supported pier, housing mostly marine uses – condition issues

Site #2: Harbor Walk Trail (between Custom House Pier and Portland Pier)

- Thomas Block is in the B-3 Zone
- Custom House and Portland Piers are the most “mixed use” piers in the zone
- Harbor Walk Trail also provides commercial access for lobster trap transfer – showing the need for land/water access points
- Water depth issues evident, condition issues evident
- Jay’s Oyster s’ly end shows approximate location of the 150’ setback from Com. St.

Site #3: Long Wharf (looking west to Chandler’s Wharf)

- Dimillo’s complex with restaurant, marina, and commercial parking
- The westerly edge of Long Wharf is home to the tour boat fleet – a growing commercial marine use that supports the tourism economy
- Dimillo’s also has a commercial yacht brokerage – a permitted use
- Beginning of the “Commercial Street/Old Port Overlay” for contract zoning

Site #4: Chandler’s Wharf (looking west to Widgery’s Wharf)

- Chandler’s Wharf Residential Development from the 1980’s
- Widgery’s Wharf – owned by a cooperative of lobster boat owners (20-25 berths)
- Each commercial vessel is a small business
- Demonstrates the contrast between mixed-use and traditional marine industry
- Publicly accessible open space, but no access to the water
- Commercial parking

Site #5: Union Wharf (westerly end of the Commercial St/Old Port Overlay)

- Demonstration of current WCZ policies at work
- 1st floor marine and marine support industries – varied
 - Marine transport (pilot boats)
 - Chandlery
 - Construction (floats)
 - Lobster fisheries - berthing, pound, distribution, trap manufacture
 - Environmental protection
- 2nd floors – marine and non marine office
- Near Commercial Street – Restaurant, Retail

Site #6: Portland Fish Pier #1(walking past Cumberland Storage building)

- Net Yard – paved open space needed as a “commons” for finfish fishery
- Portland Fish Exchange – Live auction fish wholesaling and distribution

- Fish Processing: Still important -Bristol, North Atlantic, Brown Trading, Cozy Harbor
- Commercial Parking

Site #7: Portland Fish Pier #2 (looking west to the Gulf of Maine Research Inst.)

- Marine Trade Center – Largely occupied with upper floor non-marine uses
- Vessel Services – critical support (ice and fuel) to the ground fishing fleet
- Remaining Ground fishing fleet berthing
- Gulf of Maine Research Site –New building with plans for future build out. Berthing committed to Coast Guard
- Harbor Master berth
- Note Hobson’s Wharf in the distance to the west – start of 5 working piers to west

Site #8: Becky’s Diner (between Hobson’s Wharf and Berlin Mills Wharf)

- Hobson’s Wharf
 - Lobster retail, wholesale, berthing (1 company alone sells over 2 million pounds of lobster annually through Hobson’s Wharf)
 - Chandlery
 - Hag fish
 - Upper floor marine and non-marine uses
- Berlin Mills Wharf
 - Gowen’s Marine with upper floor office (marine and non-marine)
 - Critical emergency hauling service for the harbor – full service boat yard
 - Commercial berthing (mostly lobster)

Site #9: Holyoke Wharf (looking west to Sturdivant’s Wharf and Deake’s Wharf)

- Marine supply, seafood wholesale, herring (bait) and lobster
- Some upper floor potential
- Sturdivant’s Wharf has recently transitioned from mostly fabrication to lobster (Calendar Island Lobster Company) and bait. Serious water depth constraints
- Empty space near Commercial Street can transition to non-marine under current regs
- Deake’s Wharf beyond – seafood, fuel distribution, dry dock (vessels up to +/- 100’)
- Lobster berthing at all wharves

6. Building and Use inventory and the Pier Owner’s Occupancy Survey results:

During the month of December 2009, Planning Staff conducted an inventory of lands, buildings and uses for the WCZ. The purpose of the inventory was to give the Board, the public, and the City Council a baseline of current conditions within the zone. Given the range and scope of the Pier Owners’ proposal, the inventory was necessary to evaluate how changes to the zoning could impact the existing uses. Also, there has previously been no full understanding of the size of the area contemplated for change and its developable potential.

Methodology

The inventory results were compiled from a combination of GIS map analysis and direct field observation. As stated above, the inventory covers land, buildings and uses. Users of this inventory should recognize that the results are not an exact representation of current conditions, but are an *estimate* based on existing mapped data, interpretation of aerial photos, and direct observation by the Planning staff. When reading and using this information, the reader should recognize that some errors have inevitably occurred and information gaps exist.

For example, in categorizing *buildings* staff conducted an exterior inspection of each building in the zone. The approximate *foot print* of each building is known from aerial mapping as accessed by the GIS. From field observation, staff counted the floors (stories) to provide a multiplier to ascertain the *total building area*. Many, if not most, multi-story buildings in the zone contain partial floors. Staff did not conduct a floor-by-floor inspection of each building. A rough estimate of partial floors was assigned to each building where it could be observed. Interior mezzanine levels in industrial buildings were estimated where observed (from exterior windows, stair access,...) but some were inevitably missed. Where buildings had variable roof forms and heights, a rough estimate was assigned to the nearest $\frac{1}{4}$ of the building footprint. A 3-story building with a partially occupied attic would be recorded as a 3.5 story building.

Similar assumptions were needed in the assignment for *use types* (marine, non-marine, mixed-use, and vacant). Some errors were assumed, and as of the original reporting of this material in January 2010, staff invited corrections to this information from the pier and property owners. None were provided.

Of the 65 buildings listed, some have been aggregated and some kiosk or shed buildings have been omitted. Significant aggregations are represented, for example, by all of the Chandler's Wharf condominium buildings being treated as a single complex, as with the collected lobster sheds on Widgery Wharf. The footprints and building areas of aggregated complexes are included in the totals.

The value of these results is as a *best available estimate* for the purpose of having a policy discussion.

The spread sheet reporting of the inventory results were reported to the Board in their workshop memo and the results are summarized below. A map showing the location of buildings (numbered) and uses (color coded) is included below.

Land and Pier Inventory

The City's GIS maps were the primary information database for the land and pier inventory. The City has recently created a coverage for filled land and pile supported piers for the entire waterfront. The WCZ portion of this coverage was excerpted as the basis for the land and pier inventory. Land and piers, taken together are referred to below as *developable area*.

Land and Pier Results:

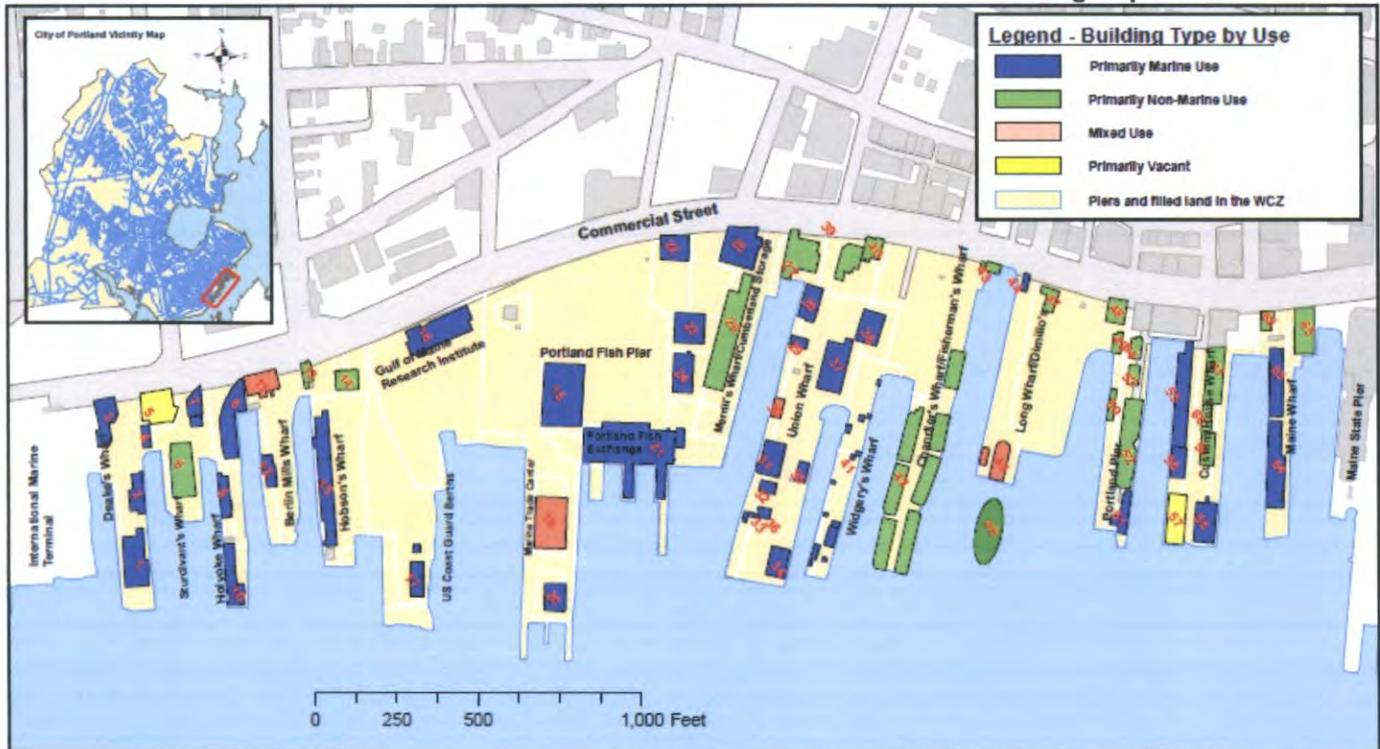
- The entire WCZ contains +/- 2.2 million sq ft of developable area – approximately 50 acres. By comparison, this is about half of the size of the Bayside redevelopment district.
- 77% of the developable area is un-built (not covered by a building)
- 25% of the land (over 500,000 square feet) is within 150 feet of Commercial Street (the area requested for 100% non-marine development by the Pier Owners)
- 13% of the developable area (+/-6.5 acres) is located over the water on a pile-supported pier.
- Within 150 feet of Commercial Street, only 2% of developable area (.6% of the total within the zone) is over the water on a pile-supported pier.

One of the primary proposals from the Pier Owners is to allow 100% non-marine development within 150 feet of Commercial Street. There are +/- 500,000 square feet of developable area within the 150 foot buffer. Currently such use is allowed within 100' of Commercial Street. If there were a built-out resulting in a 33% lot coverage (somewhat more dense than the 23% coverage found in the zone as a whole,) at 3 stories tall (as allowed by current zoning), the resulting build-out would be +/-500,000 square feet. A more aggressive 50% lot coverage would result in 750,000 square feet of total development. Taller buildings would obviously result in additional building area. For comparison, the Eastern Waterfront Master Plan contemplated 570,000 square feet of total building area (plus parking) and the Bayside Vision Plan envisions 900,000 square feet.

If the proposed text changes are adopted, the WCZ area would constitute a new redevelopment district for the City.

Building and Use Inventory

A key map to the buildings in the zone is provided below. To allow a quick scan of the inventory results, the primary use type for each building has been color coded to show the relative locations of different uses within the zone. The number shown on each building footprint is associated with the *building #* designation on the inventory results spreadsheets in the attachments. The use type categories shown are *primarily marine use* (blue), *primarily non-marine use* (green), *mixed, marine/non-marine use* (pink), and *primarily vacant* (yellow).



Portland's Central Waterfront Building Inventory - Coded by Use

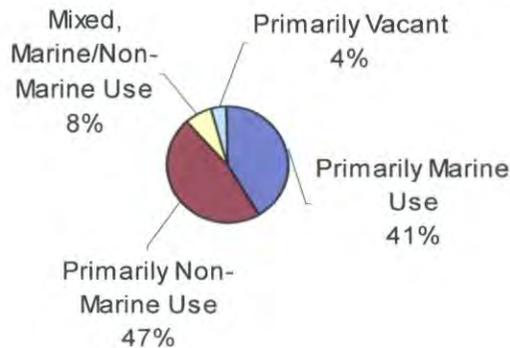
Map produced by the City of Portland Planning Division from Portland GIS Program 2007 data. Intended for discussion purposes only. Building use was determined by exterior field observation in December 2005, but was not informed by an interior floor by floor inspection. January 2010



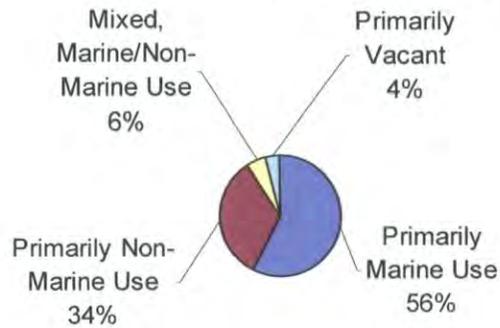
Building Inventory - Summarized Results:

- There are 65 buildings or building complexes in the zone.
- Total building footprint for the zone is over 500,000 square feet, occupying +/-23% of the developable area in the zone.
- Total building area (sum of foot print area for each building multiplied by # of stories for each building) is over 1 million square feet of interior space.
- Primarily *marine use* buildings have almost 300,000 square feet of building footprint (57% of total) and almost 440,000 square feet of space (41 % of total.)
- Primarily *non-marine use* buildings have +/-170,000 square feet of foot print (34% of total) with over 500,000 square feet of space (47% of total.) *Note that the Chandler's Wharf complex is almost 180,000 square feet alone.*
- *Mixed use* buildings comprise a relatively small percentage of the total for both footprint (6%) and total building area (8%.)
- Only 2 buildings in the zone appear to be *primarily vacant* (though there are significant vacancies in otherwise occupied buildings.)

Building Area by Use Type



Building Footprint by Use Type



Vacancy Rates

The City’s Economic Development Division has been asked to look at these results to provide an opinion as to the relative vacancy rates to comparative markets elsewhere in the region. This evaluation has just begun and results will be provided as they become available. The difficulty in providing comparisons is due to the poor conditions found within some buildings and the unique nature of some of the properties.

The Pier Owners’ pier occupancy survey identified up to 80,000 square feet of upper floor vacancy (approximately 14% of total upper floors in the zone; 22% of the total not including Chandler’s Wharf.) *Note: non-marine uses have been legally available to these spaces since the creation of the zone in 1994.*

For first floor space, the pier owners reported up to 48,000 square feet of vacancy (approximately 9-10% of the total first floors for the zone; 10-11% of the total not including Chandler’s Wharf.) These vacancies occur in buildings of all use types (marine, non-marine and mixed) and some of these buildings currently have the opportunity for non-marine use under existing zoning.

7. Usable Berthing and Public Access:

Using aerial photos and direct observation, the Planning Staff mapped and estimated the amount of commercial and recreational berthing for the zone. In summary, there are approximately 16,000 linear feet of commercial berthing in the zone in addition to marina slips for 175 (plus) recreation vessels. The commercial berthing supply is the key to previous, current, and future marine use in the zone and defines Portland Harbor as a fishing port and a working waterfront. Understanding the location and extent of commercial berthing is a primary finding of the WCZ planning process.



Portland's Central Waterfront Usable Berthing, Public Access

1,000 500 0 1,000 Feet

Map produced by the City of Portland Planning Division
from Portland GIS Program 2007 data.
Intended for discussion purposes only. Commercial berthing
extent is approximate, based on inspection of aerial photos, and
field observation. Harbor Commissioner's Line
location is approximate. January 2010



In the above map, the blue lines show the approximate location of commercial berthing in the WCZ. Some of the berthing is transient, some is compromised by low water depth, and some is occupied by non-commercial vessels. While pier or bulkhead edge with no water at low tide was not counted in this inventory, some of the berthing shown, particularly close to Commercial Street is of marginal value due to low water. Public comments made at the second public forum indicate that Holyoke Wharf berthing may actually be less than shown.

It should also be noted that while pier edge with low water may not be suitable as a quality commercial berth, all pier edge has functional value. High tide loading areas, as found at the Harbor View Trail between Custom House Wharf and Portland Pier, provide useful and necessary points of access to lobster vessels loading and unloading traps. Likewise, pier edge adjacent to flat drained harbor bottom at low tide provides locations for routine maintenance without the cost of hauling a vessel.



A ground fishing vessel using low tide pier edge for bottom maintenance at Sturdivant Wharf. While useful for vessel owners, low water pier edge probably provides little or no revenue to pier owners.

Berthing breakdown per pier

Usable Berthing by Pier		
Pier Property	Linear Feet of Commercial Berthing with Usable Depth at Low Tide	Recreational Slips
Deake's Wharf	800	
Sturdivant's Wharf	378	
Holyoke Wharf	819	
Berlin Mills Wharf	1262	
Hobson's Pier	1696	
GOMRI - Coast Guard	273	
Port. Fish Pier	3423	
Merrill's Wharf - Cumberland	356	
Union Wharf	1542	
Widgery's Wharf	1145	
Chandler's - Fishermen's	235	Approx 75 Slips
Long Wharf - Dimillos	1139	Approx 100 Slips
Portland Pier	1129	
Custom House Wharf	1345	
Maine Wharf	1263	
Total	16805	175

Existing Public Access

Also shown on the above map are the locations and extent of public access in the zone. Green lines show public sidewalk, green dashed lines show access over public lands or over public access easements, yellow dashed lines show private access by permission of the owners. The map shows that public access is limited in the WCZ, especially direct access to the water. The public park and landing at Bell Buoy Park at the easterly edge of the zone, and the Harbor Walk Trail behind the Thomas Block (100 Commercial Street) between Custom House Wharf and Portland Pier are the only physical points of public access to the water in the zone.

8. Parking Lots

One result of the Building and Use Inventory was to bring to light an obvious physical condition in the WCZ - The prevalence of surface parking as a land use. This finding is experienced by any casual observer of the zone from Commercial Street and is confirmed by the 75%+ unbuilt developable area in the zone. During the course of their review, Planning Board members asked to see the location and approximate extent of the larger parking areas. A map was generated from the City's GIS and aerial photos with a pier by pier breakdown of approximate area and parking counts. The intended use of this material is to show the larger parking areas in a general sense as an indication of developable potential. The parking counts themselves are approximate and were estimated by physical

**Waterfront Central Zone:
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count from the aerial photo or by calculation based on area and a convention of 300-330 square feet per parking space. The method of estimation for each parking area is noted on the parking results table.

Map of larger parking areas in the WCZ



Waterfront Central Zone



**Parking Areas:
Larger Scale and Commercial Lots**



Map produced by the Portland Planning Division from year 2006 GIS Program data. For use in the evaluation of Waterfront Central Zone text amendments. Parking lots shown are lots that are greater than 30,000 square feet and/or lease to off-site uses.

Lot #	Lot Location (approximate)	Area (Sq Ft)	Number of Spaces
1	Hobson's Wharf/Coast Guard	36,000	120 +/- Capacity by calc. Variable - used also for marine storage.
2	Gulf of Maine Research Inst.	33,000	83 By count
3	Coast Guard Berths (GOMRI)	22,000	73 By calc.
4	Fish Pier, Marine Trade Center Lot	33,500	99 By count
5	Fish Pier, Commercial St. Lot	56,300	156 By count
6	Merrill Wharf, Cumberland Storage	30,600	105 By count
7	Union Wharf	29,800	115 By count
8	Widgerly Wharf/Union Wharf	22,400	80 By count
9	Fisherman's Wharf (1)	51,500	175 By calc
10	Fisherman's Wharf (2)	14,000	49 By count
11	Long Wharf/Dimillo's	94,800	280 By calc
12	Totals	423,900 Sq Ft	1335 approximate count

Parking breakdown per pier

Parking Lots		
Lot Location (approximate)	Area (Sq Ft)	Number of Spaces
Hobson's Wharf/Coast Guard	36,000	120 +/- Capacity by calc. Variable - used also for marine storage.
Gulf of Maine Research Inst.	33,000	83 By count
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Long Wharf/Dimillo's	94,800	280 By calc
Totals	423,900 Sq Ft	1335 approximate count

The parking shown above is an economic resource and a challenge for the zone. Parking is a predictable and low cost revenue generator for many waterfront property owners. Parking is also a functional necessity for marine and non-marine uses. The economic value and functional necessity of parking makes it a highly resilient use and few, if any waterfront parking areas have recently been developed into other uses.

9. Public Forums: descriptions and results summary

In March of 2010, The Planning Board hosted two public forums on the future of the Central Waterfront.

March 2, 2010 Public Forum:

The first forum, *The Changing Waterfront: Economic Conditions for the Central Waterfront – Ground Fishery, Lobster Fishery and Marine Tourism*, was a panel discussion exploring the economic challenges and opportunities facing key components of the marine industries that current policies are designed to protect. This forum was taped by public access television and copies of this meeting can be provided for interested parties.

The panel consisted of the following:

Bill Hall, Planning Board Chair, Moderator

Deirdre Gilbert, Assistant to the Commissioner, Maine Department of Marine Resources.

Bert Jongerden, General Manager of the Portland Fish Exchange

Tom Martin, Captain and Owner of the “Lucky Catch,” Tour Boat Operator and Commercial Lobsterman

Don Perkins, President of the Gulf of Maine Research Institute

Charlie Poole, President of the Proprietors of Union Wharf

Barbara Whitten, Executive Director of Convention and Visitor Bureau

Panelists were asked to make brief presentations based on the following framing questions: *What is the future of your industry in Portland Harbor? How will changes in other uses impact your industry – positively or negatively?*

Notes from the March 2 Forum are provided in **Attachment F**. Important points raised by the panelists include the following:

- Ground Fishing is down dramatically - Vessels and landings.
- New regulations (Sectoral management) will likely result in further vessel reductions.
- Lobstering is Stable - Vessels and landings.
- Tourism is Maine’s #1 industry and Greater Portland is Maine’s #2 destination.
- Tourism is Stable and needs a place in the WCZ- Berthing, Access and Views.
- Marine Science has potential to grow and “Ocean Energy” may provide opportunities – especially in engineering and support.
- Marine infrastructure needs investment and improvement to be safe, functional, attractive, and “open for business.”

March 3, 2010 Public Forum:

The second forum, *Private Piers, Public Policy, and the Future of Portland's Central Waterfront*, was designed to present current policies, to outline potential changes by the Pier Owners, and seek public input on the future of the zone.

The results of the small group discussions are summarized below. The summary presentation provided in **Attachment B** additionally includes a print out of the introductory material presented at the workshop. The full results are provided in Attachment G.

Small Group Process:

Approximately 50 members of the public attended the March 3 forum and were assisted by 8 facilitators. Participants were broken into small groups to discuss a number of framing questions including: Have current policies helped or hindered economic vitality for the area? How would significant non-marine development in the Central Waterfront impact the city as a whole? What elements should be preserved and what elements can be improved for the Central Waterfront zone?

For each of the above questions:

- a. All participants invited to comment with each comment recorded.
- b. Combine comments into major themes.
- c. Group crafts a summary statement reflecting the group's discussion.

Major themes:

#1 Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?								
Major Themes	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
6 Policies inhibit Economic Development, "reasonable return on their investment"	(X)		X	X	X		X	(x)
4 Current polices support Working Waterfront (priority)	(X)		X				X	X
3 Policies have hindered investment. Pier owners need enough return (for) maintenance for the piers.					X		X	X
3 Non-marine uses subsidize marine uses (helping to maintain marine uses)	(X)	X				X		
3 "external factors" (non-zoning fisheries regulation, pier management..) are part of the problem	(X)		X			X		
2 (Current policies promote) Compatibility (and prevent) displacement (M/N-M)		X	X					
2 There is no one-size fits all solution. Different treatment is needed east to west		X			X			

#2 The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district

<i>and the City as a whole?</i>								
Major Themes	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
4 (Opportunity for) Revenues need to support piers and employment		X	X	X			X	
3 (Risk to) View Impacts		X			X	X		
3 (Risk to) Character of the district		X	X			X		
2 (Significant N-M) Would have serious negative impact on working waterfront (displacement) and won't get it back.						X		X
2 Fishing is the priority – balance with new development or uses (Allow compatible devel. in scale with waterfront)				X		X		
2 Greater mix of businesses could offer synergy. (promote mixed use)	(X)			X				
2 Can't treat 15 piers the same		X			X			

#3 <i>Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added?</i>								
Major Themes	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
7 Maintain/improve (compatible) public access, (public berthing and landing, including access onto City properties)	(X)		X	X	X	X	(X)	(X)
4 Buildings that reinforce district fabric, scale and character (Old Port/Waterfront)			X	X	X	X		
4 Maintain berthing, (commercial) marine access, and working waterfront uses	(X)	(X)					(X)	(X)
4 Maintain visual access and view corridors.		(X)	X		(X)		(X)	
3 Add new businesses (office, biotech, marine technology, restaurants, and industrial and marine industrial uses)				X	X		(X)	
3 Generate revenue for pier owners and support/retain marine uses		(X)	X			X		
2 Add City support for marine infrastructure	(X)	(X)						
2 Maintenance Dredging	(X)						(X)	

Summary Statements:

Teams followed their exploration of Major Themes by drafting summary statements answering the framing questions. Teams then were asked to confirm their statements by vote and the extent of consensus was recorded for reporting with summary statements.

The following representative Summary Statements were selected as best reflecting the Major Themes as reported above.

#1 *Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?*

Table #1

“Current policy should change, but policy should not be completely reversed; Keep marine activities as much as possible; Protect what is there now and could be there (marine uses) in the future.” (*Consensus*)

Question #2: *The Pier Owner’s proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district and the City as a whole?*

Table #7

“Non-marine development could be beneficial to the district and the City as a whole as long as property owners are required to re-invest in marine infrastructure when creating new development. Need to strike the right balance between non-marine development and ultimate goal of utilizing that non-marine development to support and foster a successful working waterfront.” (*Consensus*)

Question #3: *Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added?*

Table #3

“Maintain authenticity and historic fabric of waterfront while allowing uses that generate revenue that sustain marine infrastructure while assuring visual and physical public access.” (*General agreement*)

All of the summary statements are provided in Attachment G.

10. Business and Employment Inventory results:

The final piece of original research conducted as part of the WCZ evaluation is the *Business and Employment Inventory*. The inventory was undertaken to place measures on the amount of commercial activity located in the zone. Given that the current policies of the zone focus on protecting commercial marine activity and that the Pier Owner’s primary argument for changing the zone is a lack of tenant-generated revenue, Planning Staff conducted the inventory to provide an assessment of what is being protected and which activities comprise the tenant base for the piers.

Beginning early in 2010, Planning Staff worked with the pier owners to inventory three key components of commercial activity in the WCZ: Businesses, Vessels, and Employment.

The principle source of data was a survey form produced by the Planning Division and supplied to 17 commercial marine property owners. 100% of participants completed the

survey. Planning Staff filled in data from other commercial property owners through site inspections, business signs, and direct contact with property owners, managers, and tenants. Where no information was available on certain non-marine properties, estimates based on area calculations were utilized. This inventory represents at least a rough estimate of business and employment activity for every commercial property in the zone.

The inventory does not estimate the value of economic activity, but is an estimate of the number of businesses, vessels and employees located in the zone. The results are intended to be used in combination with the mapped *Use and Building Inventory* previously presented. Working together, the two inventories will help understand how much economic activity takes place in the zone, how much of the available space it occupies, and how development following changes to zoning could impact or accommodate existing activity.

Planning Staff would like to publicly thank the Pier Owners and marine property managers who participated in the Business and Employment inventory. Ultimately, 100% of the property owners requested provided data for the inventory and their participation is both highly useful and greatly appreciated.

A summary of the Business and Employment inventory is provided below. A more complete reporting is included in the presentation document found in Attachment B Summary of Findings:

Businesses

- 128 Businesses in the WCZ
- 78 Marine Business in the WCZ
- 50 Non-Marine Business in the WCZ

Vessels

- 394 total Vessels
- 175 Commercial Vessels – *Nearly all Commercial Vessels are also businesses*
- 141 Fishing Vessels - *71% (100) are lobster boats*
- The 34 non-fishing commercial vessels are 9% of the fleet total

Employment

- 1200-1300 Marine Jobs - *28% of Marine Jobs are seasonal*
- 600-700 Non-marine Jobs - *11% of Non-marine Jobs are seasonal*
- Of the 1200-1300 marine jobs in the WCZ, *71% are related to seafood.*

On the Water Jobs

- 358 Fishing Crew Jobs
- 111 Non-fishing Crew Jobs - *Tourism crews are almost entirely seasonal*

Land-side or Pier-side Jobs

- 484 total land based fish-related jobs - *The Ground fishing industry is the largest # of Jobs*
- 337 Jobs total non-fish processing, land based marine jobs - *Environmental and Seafood Retail are the biggest sectors*
- 600-700 Non-marine jobs - *Restaurants are the largest employers*

What did we learn?

- The WCZ is still a major employment center.
- Marine jobs are still contributing to the zone and the City.
- Ground fishing and related businesses are the largest employment sector.
- Lobstering is the 2nd largest employer and the largest number of commercial vessels.
- Of the non-marine businesses, general office comprise the most businesses and restaurants employ the most people.
- Overall, the mix and diversity of activity in the WCZ may be its greatest asset.

11. Unresolved Issues to be address at the Planning Board Public Hearing

At the conclusion of the previous workshop, Planning Board members provided comments regarding several points raised by staff as unresolved for recommendation.

Policy:

Following Board comments, the policy statement below has been edited to incorporate the essence of the Portland Society of Architects (PSA) comments. These comments are found in the Public Comments in Attachment H(2).

Zone Text:

The zone text, Attachment A, is still based on the Pier Owners' proposal. The Board provided direction confirming agreement with the majority of the text, but staff asks that specific recommendations be made regarding the following:

- Building Height (The existing text maximum is 45 feet, the PSA suggested maximum is 50 feet.)
- View Protection (The Pier Owners' text removes view protection from the Conditional Use standards, while the public process and the PSA suggest that public views are important.)
- Residential Use (The Pier Owners are not requesting residential use, but several Board members and the PSA have suggested its inclusion in the zone.)

If the Board is to recommend zone text that differs from attachment A on these points, a specific vote should be made.

These issues are further explored in the Staff Recommendation Section of this report.

12. Policy Statement for the WCZ – Planning Board Recommendation

The extensive process described above has provided a great deal of new information informing development of policies for the Central Waterfront and framing the review of proposed text amendments by the Pier Owners. The policy document (found on pages 22 to 27, below) relies on the various inventory results, public forum results, public feedback from the Planning Board Workshops, and input from the Planning Board membership. Furthermore, following the Board's direction, the policy document is generally consistent with and supportive of the Pier Owners' zoning text application.

Public Comments:

Support for the entirety of this policy change is not universal, as reflected by written comments found in Attachment H. Long-time waterfront activist and former Planning Board Chair, Barbara Vestal has provided a detail comment sheet outlining criticism of some of the results of this work and describing risks implicit to preservation of the marine economy (Attachment H(1)). At the previous workshop, membership of the Portland Society of Architects supplied a list of specific comments, many of which according to Board direction, have been incorporated into the latest text (with the exception of residential use issues, as described below.)

The Maine Lobsterman's Association was contacted prior to the Public Forums and their administrators surveyed the membership asking comparable questions to those asked at the forums. While the response to the survey was not extensive, the responses are informative. The Maine Lobsterman's Association survey results are provided in Attachment H(5).

Other public comments are provided in Attachment H, both for and against expanding non-marine uses in the zone.

Structure and Location of the Proposed Policy Statement:

The following policy statement is structured along an outline with an introduction to the Central Waterfront, findings from the recent process, and development policies.

It is intended to be inserted into the *Portland's Comprehensive Plan, City of Portland Maine, Compilation of Goals and Policies*, Updated 2005. Adding the following to Volume I, Section III, Goals and Policies, Subsection (g) Marine Resources (Coastal Management Policies), III. Waterfront Alliance – April 14, 1992, page 64.

Proposed Waterfront Central Zone Policy Statement

Background

Following direction from the Portland City Council's Community Development Committee, the Planning Division worked with property owners to evaluate policy and zoning for the Central Waterfront. The policy and zone review was conducted under the oversight of the Portland Planning Board and benefited from two public forums and eight workshops where public comment was taken. The policy statement below was also informed by an extensive map-based land and use inventory as well as an inventory of marine and non-marine use businesses, vessels and employment for every property within the zone.

Policy Statement for the Waterfront Central Zone

I. Introduction:

Portland's Central Waterfront was originally identified as a distinct zone in the 1992 Waterfront Alliance report. The zone is located along the south side of Commercial Street from and including Maine Wharf to the

east to Deake's Wharf in the west. The Central Waterfront is characterized by privately held commercial piers running roughly perpendicular to Commercial Street into Portland Harbor and the Fore River. In addition to private commercial marine holdings, the zone is home to the Portland Fish Pier, the Gulf of Maine Research Institute, berthing for the United States Coast Guard, residential condominiums, retail and restaurant uses, two private marinas, and offices serving marine and non-marine interests.

Recognizing the findings articulated below, the City of Portland confirms that the basic policy structure established in the 1992 *Waterfront Alliance Report* remains the foundation of the City's Waterfront Land Use Policy. However, in the Central Waterfront, the current range of economic development opportunities have not resulted in development supporting preservation of waterfront infrastructure. Private investment remains the mechanism for maintaining and improving private piers and wharves and continual investment in private infrastructure is needed for preserving access to commercial vessel berthing and support activities.

To encourage investment in Portland's Central Waterfront, a wider range of development opportunities must be established. Likewise, to ensure continued opportunities for marine economic activity, the existing hierarchy of uses continues to provide the policy structure for the zone. The use hierarchy is summarized as: *water-dependent uses – first priority; marine-related support uses – second priority; and, marine compatible (non-marine) uses - third priority.* Zoning implementing greater non-marine opportunities within the framework of the use hierarchy will allow a broader range of uses within new and existing structures, and will provide adequate and enforceable protections for commercial marine activity.

II. Findings from the 2010 Planning Process for the Central Waterfront:

Prompted by a zoning amendment application by 12 commercial pier owners in the zone, the Planning Board conducted an extensive planning process to inform a recommendation to the City Council on policies and zoning for the Central Waterfront. Based on information developed and evaluated during their process, the Planning Board makes the following findings:

1. The foundational policy document informing waterfront zoning for the City of Portland, the *Waterfront Alliance Report*, was written in 1992 and has not since been substantially updated for the Central Waterfront.
2. The waterfront economy generally, and the ground fishing industry specifically, has undergone a significant contraction during the

previous several years, as exemplified by an over 50% loss of ground fishing vessels and an over 2/3 reduction in landings at the Portland Fish Exchange since the 1990s.

3. The Central Waterfront has seen little recent privately funded economic development despite a significant amendment to grant additional flexibility in the WCZ in 2005/2006.
4. Ownership of the Central Waterfront remains largely in private hands.
5. Many piers and wharves in the Central Waterfront have been and remain in deteriorated condition, in need of costly pier infrastructure investments. The on-going repair and replacement needs for pilings, decking, bulkheads, and structures within the district likely totals tens of millions of dollars and is unsupported by marine-generated revenues. Even with expanded non-marine development, the overall level of investment needed within the zone may be greater than the capacity of the area to generate revenues needed for pier infrastructure investment through lease revenues alone.
6. The Central Waterfront contains over 16,000 feet of commercial berthing and is the single largest resource of commercial vessel berthing in Portland Harbor. The commercial berthing in the Central Waterfront is an irreplaceable resource of state-wide significance.
7. Decreasing water depth at the piers is a worsening issue due to continual natural deposition of sediments exacerbated by storm water overflows into the harbor. Maintenance dredging will be needed to ensure quality commercial berthing opportunities for public and private piers and it is unlikely that berthing revenues alone will support these costs.
8. Despite challenges to the marine economy, Central Waterfront remains an employment center for the City and region, supporting over 78 marine businesses, 175 commercial vessels, and 1200 marine jobs. Lobstering remains a strong and stable economic base for marine activity with approximately 100 lobster vessel berthing within the zone.
9. Non-marine businesses in the Central Waterfront contribute significantly to the vitality of the zone and the city with over 50 businesses, and 600 jobs. Under current zoning restrictions, there are limited opportunities for these businesses to expand.

10. The majority of land and pier area in the zone remains open to development, with less than a quarter of the zone covered by buildings, leaving significant opportunities for new structures.
11. Surface parking occupies large areas of un-built space in the zone and has a significant negative visual impact on Commercial Street; these areas provide redevelopment opportunities with no displacement of water-dependent commercial activity.
12. Commercial Street is a nationally significant cultural and historic asset, as recognized by the American Planning Association with a “Best Street” award in 2009. Quality development along Commercial Street has the potential to improve the street architecturally and to contribute to the zone and City with additional revenues and economic activity. Commercial Street development and associated economic benefits can be achieved with little risk of significant marine industry displacement. The Central Waterfront’s development form and history is also of national significance as one of the few surviving intact examples of wharfs dating from the 19th Century era of schooner and clipper ship freight transportation. The extension of the street system out onto piers jutting into the harbor is part of Portland’s unique identity as well as a testament to an important characteristic of the City’s historic role as a center of international trade.
13. The public consistently requests additional visual and physical access to the water and increased non-marine development in the Central Waterfront will encourage safe and appropriate opportunities for the public to experience Portland Harbor.
14. Certain non-marine activities such as restaurant and retail uses, which are currently restricted within the Central Waterfront to existing structures along Commercial Street, represent significant opportunities to generate employment, revenue, and public access on piers throughout the zone.
15. Commercial marine activity can compatibly co-exist with a wide variety of non-marine uses if each use is designed and managed to respect the functional needs of each other. Paramount to achieving mutual compatibility between marine and non-marine uses is the vigilant maintenance and protection of access to berthing, loading and security for water-dependent uses.
16. Climate change impacts remain unknown for the district, but predictions of sea level rise and intensified storms may have their greatest effects on the piers, wharfs and low-lying portions of the waterfront. Likewise, climate driven water temperature and water

chemistry changes may have significant impacts to fisheries and the fishing economy that have only recently begun to be evaluated.

III. Vision Statement for the Central Waterfront

Development in the Central Waterfront will achieve a balance where non-marine economic development benefits the piers, Commercial Street, the Waterfront and the City by sustaining marine infrastructure, protecting opportunity for commercial marine activity, and promoting appropriate access by the public to views and activities in Portland Harbor.

IV. Development Policies for the Central Waterfront:

1. **Preserve access to berthing and adequate space for commercial marine activity.** Commercial berthing is the irreplaceable resource that ensures the Central Waterfront as a working waterfront. In order to add value to this berthing and promote marine employment, adequate pier deck, first floor building space, parking, and circulation opportunities need to be retained to sustain commercial berthing, water dependent uses and the marine-related support industries that comprise the marine economy.
2. **Expand non-marine use opportunities.** Non-marine development opportunities exist within both existing buildings and open space within the Central waterfront. By relaxing parking requirements, it will be possible to minimize the impacts of non-marine development on marine activities by concentrating non-marine development to existing parking areas and allowing flexibility in meeting the transportation and parking needs of the new tenants and patrons of development. Office, restaurant and retail uses should be allowed greater opportunities within the zone, provided that adequate site planning is provided to protect the functional utility of berthing and marine industrial space, and that public safety is maintained. Consideration should be given to alternatives to parking on and adjacent to the piers including use of remote parking lots/structures linked to the WCZ with public transportation.
3. **Accommodate as much non-marine use as can reasonably be absorbed within the zone without detrimental impacts to the overall volume of marine activity.** Individual piers may experience dislocation and relocation of specific marine uses as a result of new investment programs allowed by expanded non-marine uses. The policies established herein promote an aggregate retention of commercial marine activity within the district. Even where individual marine uses may be displaced by non-marine uses, functional access to commercial berthing must be maintained.

Each pier and property with usable berthing access should retain a reasonable amount of commercial marine potential and the total amount of aggregate commercial marine opportunities for the Central Waterfront should not be significantly diminished.

4. **Link non-marine development revenues with marine infrastructure investments.** Expanded use opportunities should result in increased economic value of properties by both market forces and non-marine investment. These policies promote linkages between new non-marine generated revenues and increased marine infrastructure investments – whether by direct investment in infrastructure by pier owners, or by allocation of public monies through tax increment financing.
5. **Expand the public’s opportunity to access the Central Waterfront.** Non-marine commercial development should be designed to enhance the public’s visual and physical access to the water. Commercial Street development should employ view corridors between new and existing structures to maintain visual connections from public rights of way to the water. Extensions of Old Port and upland street corridors across Commercial Street for use as physical access drive locations and view corridors to the water should be employed wherever possible without significantly detracting from the development potential of private property. On-pier non-marine uses will need to develop safe and attractive pedestrian access for use by tenants, visitors, and patrons of these uses. In all cases, sites will need to design for the functional use of the water’s edge by commercial marine activity.
6. **Prohibit residential development.** Notwithstanding the suggested relaxation of use restrictions suggested above, *residential dwelling* uses are still considered incompatible with higher priority marine uses in the Central Waterfront.
7. **Plan for climate change resiliency.** Whether modest or severe, development within the Central Waterfront may feel the impacts of climate change greater than other areas within the region. The City and property owners should continue to obtain up to date information on climate change impacts along the waterfront.

(End of Proposed WCZ Policy Statement)

13. Planning Board’s Zone Text Recommendation

The Pier Owners’ Proposed amendments are provided in the form of a City Council Order in Attachment A. Attachment A is essentially the same as the Draft 5 text document previously circulated. Changes to the text have been included by the City’s

Corporation Counsel for process and language clarity and formatting consistency, but the content has remained unchanged from Draft 5.

Planning Board recommendations will be provided following the June 22 Public Hearing.

14. Planning Staff Recommendation

In general, Planning staff is supportive of the policy and zoning amendments contained herein. The planning process documented in this report discovered that the existing marine uses in the zone currently occupy less land and building space that is available and that parking is the dominant use in large portions of the zone. The land adjacent to Commercial Street is already largely dedicated to non-marine activity and little of this land provides quality access to berthing or active use of the water. New development that meets the performance standards of the proposed text should be compatible with marine activity, understanding that localized displacement and relocation of existing uses is possible. The non-commercial berthing expansions proposed are modest, representing less than 10% of the total commercial berthing available. Non-marine development should increase the public's opportunity to access the zone – a desire that was clearly articulated by the public process. In short, the proposed policy and text changes are consistent with the findings of the current planning process.

With the above general comments said, there are specific issues that require resolution:

- Building Height (The existing text maximum is 45 feet, the PSA suggested maximum is 50 feet.)

Staff recommends the 50 foot maximum as a reasonable accommodation for quality development in the zone. The Gulf of Maine Research Institute facility (56 feet at the roof ridge) demonstrates how development of this scale is compatible with the area.

- View Protection (The Pier Owners' text removes view protection from the Conditional Use standards, while the public process and the PSA suggest that public views are important.)

Preservation of *public* views of the water are an important policy issue for the City. The Comprehensive Plan contains several documents showing street projection view corridors to the water, most recently in a 2001 View Corridor Protection Plan, as adopted by the City Council. View corridor protection, consistent with this plan (Attachment I) is consistent with existing policy and confirmed by the public process just completed. If public views area to be protected in the WCZ, Staff suggests that the previous Conditional Use Standard be moved to the Performance Standards section 14-315 new (r) with a reference to Attachment I as the regulating map.

- Residential Use (The Pier Owners are not requesting residential use, but several Board members and the PSA have suggested its inclusion in the zone.)

Staff does not support the introduction of residential use into the Central Waterfront. While it may be *possible* that location and design parameters could be developed to promote compatibility with marine uses and public access, in staff's opinion, it is more *likely* that conflicts will arise. Given the scope and magnitude of the proposed amendments, additionally adding the most controversial and difficult use to manage in a marine environment does not appear prudent. Furthermore, the process to date has been premised on a proposal where residential use has been specifically identified as *not proposed*. To add such a controversial use at this point in the review would warrant additional public discussion given its expressed exclusion earlier in the process.

**15. Motions for the Board to Consider
*Comprehensive Plan Amendment
WCZ Zone Text Amendments***

Suggested motions will be provided to the Board at the Public Hearing.

Attachments

A. Pier Owners' Requested amendments – Council Order Text

B. Summary Presentation of WCZ Planning Process Results:

- Site Walk
- Building and Use inventory and the Pier Owner's Occupancy Survey results:
*Vacancies by upper and lower floors;
Use mix by building foot print and gross building area;
Use distribution, mapped by individual building; and,
A summary of findings.*
- Usable berthing and public access:
Berthing breakdown per pier
- Parking lots
Parking breakdown per pier
- Public Forums: descriptions and results summary.
*March 2, 2010 Panel Discussion
March 3, 2010 Public Input*
- Business and Employment Inventory results:
*Businesses by use;
Vessels by use; and,
Employment by use.*

C. Pier Owners' December 8, 2008 Letter

D. Pier Owners' Vision Statement

E. Waterfront Alliance 1992 Report, excerpts

F. March 2, 2010 Public Forum Notes

G. March 3, 2010 Public Forum Results

H. Public Comments and Letters

1. Barbara Vestal, June 15, 2010

2. Portland Society of Architects, June 4, 2010

- 3. Anne Pringle, May 24, 2010**
- 4. Josh Broder, May 7, 2010**
- 5. Maine Lobsterman's Association Survey Results, March 3, 2010**
- 6. Mark Unsinger, November 11, 2009**

I. View Corridor Protection Plan

**Side by Side comparison of Planning Board Recommendations and Pier Owners
Proposed Text - Pending**

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLES III. ZONING
DIVISION 18. WATERFRONT CENTRAL ZONE.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That sections 14-305 to 14-315 of the Portland City Code
are hereby amended to read as follows:*

Sec. 14-305. Purpose.

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses in a setting that enforces their continued economic viability;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. Non-marine uses are encouraged ~~Other specified uses are encouraged only if provided that~~ they do not interfere with and are not incompatible with first and second priority uses. ~~, and if they economically enhance higher priority water-dependent and marine uses.~~

(d) The zone recognizes the importance of Commercial Street as an economic center for the City and region and necessity for marine compatible uses to locate and grow along Commercial Street while protecting higher priority marine uses.

~~Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water~~Water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted ~~under certain circumstances~~ in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses ~~do not have a substantially adverse effect on~~ are not detrimental to public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

~~Sec. 14-306. No adverse impact on marine uses.~~
50% Ground area marine use minimum.

(a) 50% Marine use required on first floors: Except as otherwise allowed (14-308(d) and 14-310) properties in the Waterfront Central Zone shall occupy at least 50% of the building footprint of each building on the lot (defined in 14-307 below) with ground level marine uses, as listed under 14-308(a) or 14-309 (b)3.

(b) 50% Marine use required for all open areas: After subtracting areas used for common circulation drives (defined in 14-307 below,) properties in the Waterfront Central Zone shall occupy at least 50% of

un-built area on the lot with marine uses, as listed under 14-308(a) or 14-309 (b)3.

(c) Limitation on accessory outside activities. Outside activities accessory to permitted non-marine uses shall not exceed 35% of the ground floor area of the primary non-marine use and shall otherwise meet the provisions of the Waterfront Central Zone.

(d) Marine Compatibility: All non-marine uses, as otherwise allowed by the provisions of the Waterfront Central Zone, shall be designed and operated to respect the functional and operation needs of marine uses through demonstration of adherence to the performance standards outlined in 14-315, below.

~~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 nonwater-dependent use is to be located on a portion of the site that is physically suited for a water-dependent use;~~
- ~~(c) The proposed use will reduce existing commercial vessel berthing space;~~
- ~~(d) 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 or potential water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses;~~
~~or~~
- ~~(e) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.~~

ATT. A

Sec. 14-307. Definitions.

For the purposes of the waterfront central zone only the following terms shall have the following definitions:

Common circulation drives: private driveways, roadways, and circulation areas accessible to all on-site tenants and/or occupants of a lot within the WCZ providing access from/to the public street network.

~~Lot: shall mean~~ any abutting property under common ownership.

~~On-Site: shall mean~~ that portion of any lot included within or directly impacted by a proposed development.

Sec. 14-308. Permitted uses.

Subject to a determination that the proposed use meets the standards of section 14-306 (~~no adverse impact on water dependent uses~~ "50% Rule"), the following uses are permitted in the waterfront central zone:

(a) *Marine:*

1. Marine products, wholesaling, distribution and retailing;
2. Marine repair services and machine shops;
3. Tugboat, fireboat, pilot boat and similar services;
4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;
5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing, and water taxis;

8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities; (Boat rack storage facilities are included in conditional use, section 14-309 (b)4 below)
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Non-commercial berthing of one hundred (100) less than fifty (50) linear feet or less of feet per pier edge,
 - a. Notwithstanding the above, use of pier or bulkhead edge adjacent to zero feet of water depth at mean low water is permitted for non-commercial berthing or human powered boat access.
 - b. Parking for any non-commercial berthing is subject to the provisions of sections 14-306(b) and 14-309(b) (1).

21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities;
24. Parking accessory to an on-site Marine use listed in ~~water-dependent use~~, 14-308(a) or 14-309 (b)3;
25. Bait sales and processing; and, -
26. Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol, and Coast Guard.

***Editor's Note:** Regarding the uses below, All parking in the WCZ for non-marine and non-commercial marinewater dependent uses is subject to conditional use provisions found in section 14-309

- (b) Non-marine Commercial and industrial uses—uses above the ground floor level in buildings in existence on January 4, 1993: Subject to sections 14-306, 14-308(e) and 14-309, the following uses shall be permitted ~~above the ground floor level:~~
 - a. Professional, business, government, and general offices;
 - b. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 - c. Restaurants provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal service shall be continued up until the hours of closing;

- d. Banking services;
- e. Laundry and dry cleaning services;
- f. Cabinet and carpentry shops, studios for artists and crafts people;
- g. Intermodal transportation facilities;
- h. Cold storage facilities;
- i. Museums and art galleries.
- j. Outside accessory activities subject to Section 306(c) {limited to 35% of the area of primary ground floor non-marine use.}

- ~~1. Professional, business, and general offices;~~
- ~~2. Business service establishments;~~
- ~~3. Cabinet and carpentry shops, studios for artist and crafts people (excluding group classes and performances) and accessory retail sales of only those products that are produced on the premises;~~
- ~~4. Intermodal transportation facilities;~~
- ~~5. Cold storage facilities;~~
- ~~6. Warehousing and wholesaling;~~
- ~~7. Industrial uses which meet the performance standards of the I-M zone.~~

(c) *Public:* Subject to section 14-308(e) and 14-309, the following uses shall be permitted:

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

(d) Commercial uses in ~~existing~~ buildings located along Commercial Street;

1. Standards: Buildings meeting the following criteria may house the non-marine uses listed in 14-308(d)(2) below and the first floor interior space of such buildings is not subject to the marine use requirements of the "50% rule." :

~~a.~~ ~~The subject building existed or had an unexpired site plan as of January 4, 1993; and~~

~~ab.~~ The subject building is located ~~in part or in whole entirely~~ within ~~thirty-five (35)~~ one hundred fifty (150) feet of the southerly sideline of Commercial Street; and

~~be.~~ ~~The~~ gGround floor non-marine uses allowed under this section, along with any accessory outside uses, shall not extend further than one-hundred fifty (100 (150)) feet from the southerly sideline of Commercial Street and shall be setback a minimum of 25 feet from the edge of any pier, wharf or bulkhead. Said edge shall be the seaward extent of any engineered shoreline or the working deck of any pier or wharf; and

~~cd.~~ Non-marine uses allowed under this provision shall not disrupt or block access to vessel berthing and shall otherwise adhere to the performance standards of this zone described in Sec. 14-315; and, Expansions of uses permitted under this section are subject to conditional use review under 14-309, or conditional or contract rezoning under section 14-310.

d. Maximum Set back for New development on lots with seventy five (75) or more feet of Commercial Street frontage: Any

new non-marine development constructed subject to this provision which is located on a lot with seventy five (75) or more feet of frontage along the Commercial Street right of way shall be located with its front façade no further than thirty five feet (35) from the southerly sideline of the Commercial Street right of way. Furthermore, any such development shall orient its primary pedestrian entrance toward Commercial Street and no vehicular circulation or parking may occupy the land or pier area between the front façade of the building and Commercial Street.

Non-marine Development subject to this provision on lots with fewer than seventy five (75) feet of frontage along the Commercial Street right of way, changes of use within existing buildings, and/or building additions of less than 5000 square feet of new development to existing buildings are exempt from the maximum setback provisions established herein.

2. Uses: Provided the standards in 14-308(d)(1)-(d)(1) above are met and subject to ~~section~~ Sections 14-308(e)1 and 14-309(b), the following uses shall be permitted:
 - a. Professional, business, government, and general offices;
 - b. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
 - c. Restaurants—provided that full course meal food service and consumption shall be the primary function of the restaurant, and full course meal

service shall be continued up until the hours of closing;

- d. Banking services;
- e. Laundry and dry cleaning services;
- f. Cabinet and carpentry shops, studios for artists and crafts people ~~(excluding group classes and performances), and accessory retail sales of products produced on the premises;~~
- g. Intermodal transportation facilities;
- h. Cold storage facilities;
- i. Museums and art galleries.
- j. Outside accessory activities subject to Section 306(c) {limited to 35% of the area of primary ground floor non-marine use.}

***Editor's Note:** Subject to drive-thru services prohibition in Section 14-313.

(e) *Other:*

1. Accessory uses:

- a. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this code, parking for uses other than commercial marine water-dependent uses set forth in section 14-308(a){permitted marine uses) and section 14-309(b)4 shall not be considered a permitted accessory use on-site and shall be subject to the provisions of conditional use section 14-309(a) ~~{for marine related, but not water dependent uses} or 14-309(b).~~
- b. Interior Aaccessory uses customarily incidental and subordinate to the location, function and operation of

permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-308(a)1, 7, or 22; that such uses do not exceed two-thousand (2,000) square feet in total floor area of the building, or twenty-five percent (25%) of the total floor area of the building, whichever is less, and that each individual use does not exceed one-thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele. Exterior accessory uses shall be otherwise subject to the "50% Rule" provision of 14-306(c).

- c. Interior meeting or classroom space accessory to uses permitted in section 14-308(a)(23) (marine research, education, and laboratory facilities) may be rented out for meeting use by marine-related or non-marine-related groups or organizations, or the general public, and such accessory uses shall not be subject to the limitations contained in paragraph b2, but shall only be permitted as accessory uses if the total of all accessory retail and service support uses, including interior meeting or classroom space, does not exceed three-thousand (3,000) square feet in total floor area per building, or fifteen percent (15%) of the total floor area per building, whichever is less.

2. Street vendors licensed pursuant to chapter 19.

Sec. 14-309. Conditional use.

The uses listed herein shall be permitted as

conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471I and, ~~—~~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 further provided that in addition to the provisions of section 14-474(c)(2), section 14-306, and any other conditions specified under the particular use below, they shall also meet the following conditional use standard~~conditions~~:

(a) Conditional use standards:

1. *Marine compatibility:* The proposed use shall be compatible with existing and potential marine uses in the vicinity;
2. *Access for marine use:* The proposed use shall not impede access to the water by existing or potential marine uses; and
3. *Parking and traffic circulation:*

a. *Parking and traffic circulation plan:* All applications for conditional use in the WCZ 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 ~~on under the subject lot—common ownership and/or control of the subject pier or property.~~ The plan shall demonstrate that the on-site 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 WCZ. (See ~~14-306 {no adverse impact on marine uses}~~ and 14-315 {performance standards}, (m) {Marine compatibility}, and (pq) {functional utility of piers and access to the water's edge}).

b. *Pier access/congestion:* For conditional uses and non-marine

development approved under contract or conditional rezoning that propose or require twenty (20) or more parking spaces within the WCZ, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the Site Plan standards of section 14-526(a)(1) {traffic circulation}. For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

~~4. *Public view protection:* Any new development permitted as a conditional use in the WCZ shall perform a public view impact analysis for review and approval by the planning board as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland Waterfront Public Access Design Guidelines to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement. The planning board shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian~~

~~ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.~~

***Editor's Note:** Any use listed below that requires construction at or near the water's edge may also be subject to the State of Maine NRPA regulation.

(b) Conditional uses:

1. ~~Parking for non-marine uses, or non-commercial marine uses that are not water-dependent: Notwithstanding section 14-315(h), 14-331, 14-334 and article V (site plan) of this chapter, no parking shall be allowed in this zone for non-marine uses, or non-commercial marine uses that are not water-dependent uses unless the applicant can demonstrate that the number of parking spaces on-site, when combined with any non-marine outside uses or accessory uses, such parking occupies less than 50% of un-built area on the lot, as required by section 14-306.~~

~~exceeds the number of parking spaces needed to accommodate the demand for water-dependent uses that are permitted by section 14-308(a) which are or may be located on the subject property. (See editor's note below). The remainder of parking required for such non-water dependent uses shall be provided off-site and in other zones where parking is a permitted use.~~

- ~~2. Parking for (a) conditional uses; (b) non-marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above ground floor level, and/or (c) uses allowed under conditional or contract rezoning; Notwithstanding sections 14-315(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 14-308(a) which are or may be located on the subject property. (see editor's note below). The remainder of parking required for such non-marine uses shall be provided off-site and in other zones where parking is a permitted use.~~

~~-----
***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.
 -----~~

~~23. Non-commercial vessel berthing of greater than fifty Percent(50) linear feet or greater of the linear per pier edge along the edges of piers existing on January 4, 1993, provided that:~~

a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

b. Parking for non-commercial berthing is subject to the provisions of the "50% Rule" [14-306(b)] and conditional use, parking for non-commercial marine uses, [14-309(b)1.]

34. Commercial marine conditional uses

a. *Fish by-products processing*, provided that:

ia. Any fish by-products processing facility has a valid rendering facility license under chapter 12;

iib. Any existing fish by-products facility shall employ current and appropriate odor control technology (and any new fish by-product use shall employ current, available 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 I-M zone; and

iiie. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

45. Boat rack storage facilities, provided that:

a. Parking shall be provided for one-hundred percent (100%) of the demand generated by the use (notwithstanding 14-315(h), WCZ performance standard for parking), and such parking shall be provided off-site, in another zone permitting such use.

b. Boat rack structures shall not exceed ten thousand (10,000) square feet of building footprint.

~~6. Expansion of a non-water dependent, non-marine related use permitted under 14-308(e). Expansion of commercial uses in buildings existing or having an unexpired site plan on January 4, 1993 and located~~

~~within thirty-five (35) feet of the southerly edge of Commercial Street shall be allowed only as follows:~~

- ~~a. The expansion must be into contiguous and newly created building space of no more than three thousand (3,000) square feet, total for the life of the building; and~~
- ~~b. The use may occupy a ground and/or upper floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within thirty-five (35) feet of the southerly sideline of Commercial Street; and/or~~
- ~~e. The use may occupy a ground floor area of no more than fifteen hundred (1500) square feet beyond thirty-five (35) feet from the southerly sideline of Commercial Street and be located no more than one hundred (100) feet from the southerly sideline of Commercial Street; and~~

~~***Editor's Note:** Expansions proposed under this section may occupy new upper floor areas that are located further than thirty-five (35) feet from Commercial Street and larger than fifteen hundred (1500) square feet, subject to other limitations of this code.~~

- ~~d. As of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-308(d) shall be no less than five-hundred (500) square feet; and~~
- ~~e. The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.~~

57. *Residential:* The primary owner of a marine business listed under section 14-308(a) located on the same site may occupy upper floor space with a residential use ~~in the upper story of a building in existence on January 4, 1993,~~ provided the following conditions are met:

- a. The applicant demonstrates a compelling business related need for living on-site that cannot otherwise be accomplished;
- b. The residential living space shall not exceed one thousand seven hundred fifty (1000750) square feet, inclusive of all exterior porches and decks;
- c. The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
- d. The residential use shall be limited to one unit per wharf;
- e. The residential use shall be year round use only, and shall not be used on a seasonal basis; and
- f. Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall

mean a person who legally owns fifty percent (50%) or more of athe marine related business, listed under section 14-308(a), permitted marine uses.

68. *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 one-hundred (100) feet from the water's edge;
- b. The facility occupies no more than fifty (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 usable 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.

~~9. Expansion of an upper floor non-water dependent, non marine use permitted under 14-308(b), (commercial and industrial uses in buildings existing on January 4, 1993) into contiguous and newly created building space of no more than two thousand (2,000) square feet total for the life of the building, shall be allowed only as follows:~~

~~a. The expanded use may occupy upper floor areas;~~

~~b. Newly created ground floor area in a building~~

~~utilizing this section must be dedicated entirely to marine or water-dependent uses, except pedestrian circulation areas (i.e., unoccupied vestibules, elevators, and/or stair landings serving upper floors) may occupy no more than three hundred (300) square feet;~~

~~e. As of January 4, 1993, an existing building that qualifies for a non-water dependent, non-marine use under 14-308(b) shall be no less than five-hundred (500) square feet; and~~

~~d. The expansion of the use shall be reviewed by the planning board under the site plan standards and shall otherwise meet the requirements of the waterfront central zone and this code.~~

~~(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02; Ord. No. 193-05/06, 4-19-06)~~

Sec. 14-310. Contract or conditional rezoning.

~~General: Except as authorized in section 14-308 (permitted uses), or otherwise expressly authorized, an applicant may only locate a non-marine use in a structure, or in a structure constructed after January 4, 1993~~

~~Applications for proposals deviating from any dimensional requirements under section 14-314 and/or including uses not listed under Sections 14-308 and 14-309 may only be considered if the reviewing body finds the applicant has met the standards of either (a) Section 14-306 "50% Rule" Conditional or Contract Rezoning Standards; or (b) Commercial Street/Old Port Overlay Conditional or Contract Rezoning Standards section 14-306 (no adverse impact) and the applicable standards of contract/conditional rezoning contained herein:~~

~~(a) "50% Rule" Conditional or Contract Rezoning Standards. New structures with marine uses on first floors or change of use of upper floors of structures constructed after January 4, 1993:~~

~~Each of the~~The following standards apply to contract/conditional rezoning on any site within the waterfront central zone (unless the project is appropriately located for an application an applicant applies for a contract/conditional rezoning under the Commercial Street/old port overlay zone standards in (b) below):

~~1. The upper story non-marine use is a use listed 14-308(b);~~

Standards:

~~12. The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of Section 14-306 {the 50% Rule} of this code. The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-308(a) excepting circulation areas, such as unoccupied vestibules, elevators, and/or stair landings serving upper floors uses may occupy no more than three hundred (300) square feet.~~

2. Residential dwellings are prohibited.

3. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.

4. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

5. 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, and visual and physical access to the waterfront for the general public.

6. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).
7. The non-marine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to planning board review under section 14-309(a)3-~~a~~ and 14-309(b)2 (conditional use, parking).

~~8. The development is consistent with conditional use standard 14-309(a)4. (public view protection).~~

98. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-308(a) and that said use is not abandoned after the project is developed.

- (b) *Commercial Street/old port overlay zone:* The following standards are applicable to the Commercial Street/old port overlay zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf. For a site within the old port overlay zone, the applicant may request application of

these standards rather than the standards of (a) above.

 *Editor's note: the Commercial Street/Old Port Overlay zone provides standards for rezoning of structures with no "50% Rule" requirements for on-site marine uses.

1. All portions of the structure occupied by a non-water dependent use are set back at least seventy-five (75) feet from the maximum spring~~t~~ tide line of coastal wetland, measured horizontally. If, however, an applicant can demonstrate to the satisfaction of the local reviewing body and the state department of environmental protection that the location and development context of the subject site adhere to the State's definition of "general development district", the coastal wetland setback may be reduced to twenty-five (25) feet for non-water dependent uses.
2. Residential dwellings are prohibited.
~~New space may be used for the following non-marine uses, but it may not be used for any other non-marine uses: any use permitted under section 14-308(d) (commercial uses in buildings existing on January 4, 1993 and located within thirty-five (35) feet of Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street.~~
3. Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
4. 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 ongoing maintenance of the marine infrastructure for commercial vessels (either on-site or off-site), and visual and physical access to the waterfront for the general public.

5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patterns. All parking for the non-marine portion of the proposed development shall be subject to sections 14-309(a) ~~3.a.~~ and 14-309(b) 12 (conditional use, parking).

~~6. The proposed development is consistent with conditional use standard 14-309(a)4. (view corridor protection).~~

67. The development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses

~~-----
Editor's Note: Potential conflicts with marine uses shall be evaluated against Performance Standard 14-315(m) and (p). Mitigation can be achieved as (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water dependent uses to function) by making a contribution as detailed in (89) below.
-----~~

78. Maximum building setback from the southerly sideline of Commercial Street shall be no more than ten (10) feet.

89. A developer is required to mitigate impacts of non-marine development. Mitigation may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. In determining the amount of required mitigation, the value of the contribution shall be not less than the greater of five percent (5%) of total project costs or ten dollars (\$10.00) per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. Required mitigation may occur by one or both of the following methods:

- a. Direct investment in marine infrastructure: Mitigation shall be for the benefit of water-dependent uses listed in 14-308(a), and shall include commitments to utilize those improvements over time for permitted water-dependent uses on site or within the same lot.
- b. Financial contribution: As an alternative to direct investment, the developer may choose to make a financial contribution to the city's waterfront loan and investment fund.

Sec. 14-311. Reserved.

Sec. 14-312. Reserved.

Sec. 14-313. Prohibited uses.

Uses which are not enumerated in either section 14-308 or 14-309 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- (a) Except as provided in section 14-309, residential uses (not in existence on May 5, 1987).
- (b) Hotels, motels or boatels.
- (c) Auditoriums, civic centers, convention centers or other meeting facilities.
- (d) Drinking establishments.
- (e) Ground mounted telecommunication towers, antennas, and/or disks.
- (f) Drive-up services for any use other than a permitted use listed under 14-308(a).

Sec. 14-314. Dimensional requirements.

In addition to the provisions of article III, division 25, of this code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage along Commercial Street:*
~~None.~~ Seventy five (75) feet.
- (c) *Minimum yard dimensions:*
 - 1. Front setback: None.
 - 2. Side setback: None.
 - 3. Rear setback: None.
 - 4. 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 edge of any pier, wharf or bulkhead shall include any attached apron(s).
- (d) *Maximum lot coverage:* One-hundred (100) percent.
- (e) *Maximum building height:* Forty-five (45) feet, except that within four-hundred (400) feet of the

southerly sideline of the Commercial Street right-of-way, the maximum building height is fifty (50) feet for a building whose primary purpose and use is as a marine research, education, and laboratory facility. Except as provided on (g) below a structure in the waterfront central zone shall provide no more than three habitable floors; however, typical rooftop appurtenances and/or enclosed or open mechanical installations shall be allowed over the third floor.

- (f) *Minimum ground floor clearance:* Any new building proposed to be larger than three-hundred (300) square feet, and located more than 35 feet from the southerly sideline of Commercial Street, shall provide no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. New buildings less than three-hundred (300) square feet or additions to existing multistory buildings are exempt from this provision but shall provide the maximum ground floor clearance practicable.
- (g) *New non-marine use building exception for usable floors and minimum ground floor clearance:* Notwithstanding provisions (e) and (f) above, for new buildings permitted for use by non-marine uses under 14-310(b) (contract/conditional rezoning in the Commercial Street/old port overlay zone) four (4) usable floors are allowed and ground floor clearance minimums do not apply.

Sec. 14-315. Performance standards.

All uses in the waterfront central zone shall comply with the following standards. Standards (j), (m), (n) and (p) below shall be reviewed in conjunction with site plan review:

- (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:* 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 central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, 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. 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 (LEQ₁).
- (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:* Except as provided in section 14-309 or as required pursuant to article V (site plan), off-street parking is required at fifty percent (50%) of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.~~
- ~~(i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.~~
- (h) *Off-street parking and loading:* Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply.
- (ij) *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 of this article.

- (j*) *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.
- (k±) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (lm) *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.
- (m±) *Compatibility of non-marine uses with marine uses:* Non-marine 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 as set forth in section 14-306. Siting of a use not set forth in section 14-308(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.
- (ne) *Urban design:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.
- (op) *Pier and wharf expansions:* In addition to meeting ~~H~~harbor ~~C~~ommissioner and ~~C~~oast ~~G~~uard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its

compatibility with fixed route ferry service and emergency vessel operations.

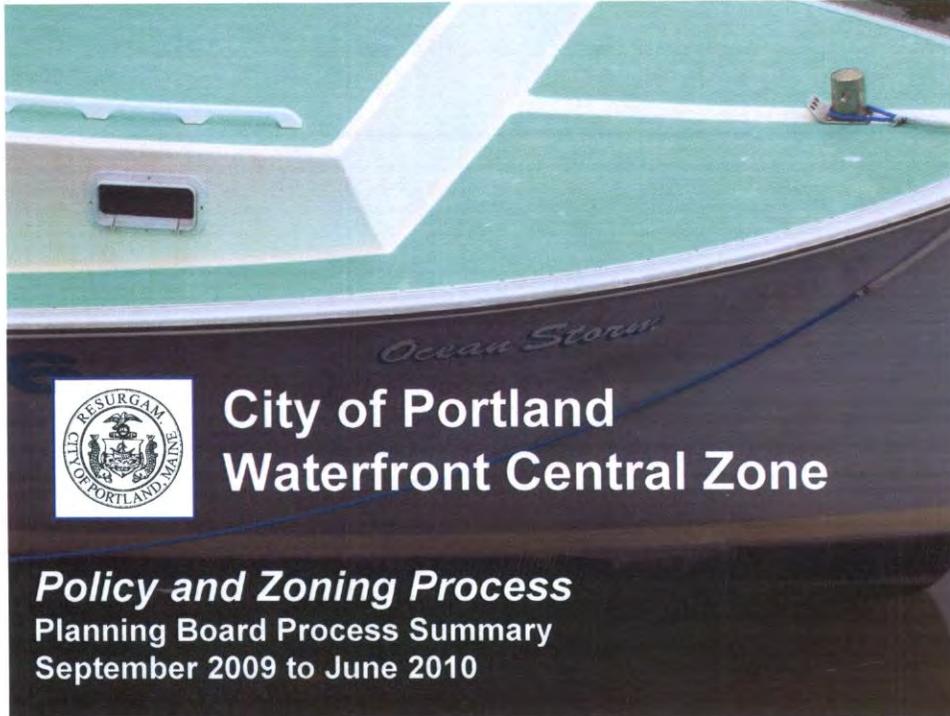
(pg) *Functional utility of piers and access to the water's edge:* All new development, whether for marine or non-marine uses, should anticipate current and future needs of water-dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.

*Editor's Note:

~~For example, any~~ Any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through or around the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.

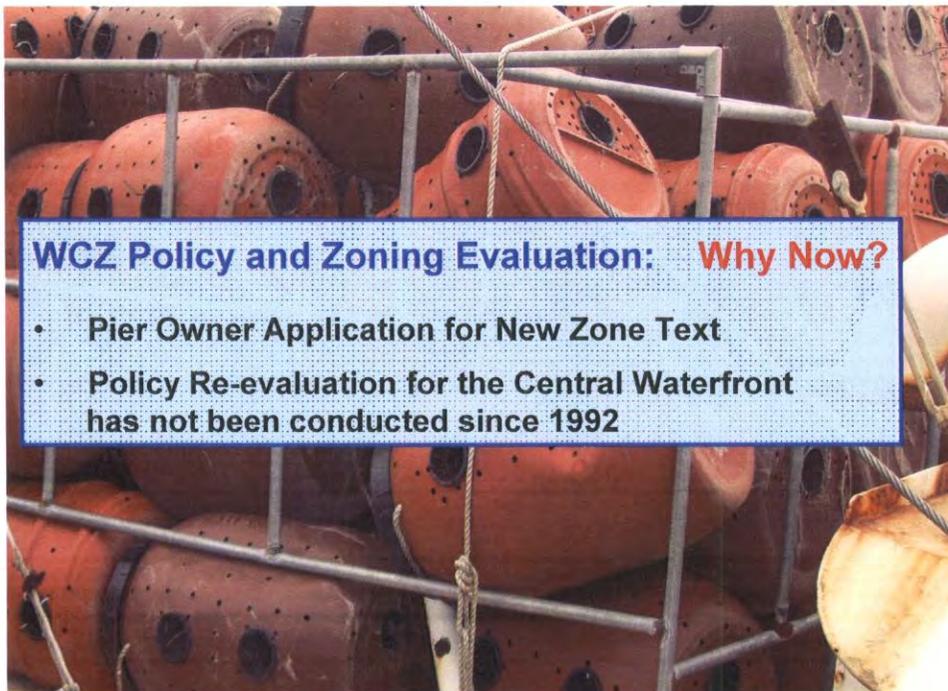
Sec. 316. Reserved.

Sec. 317. Reserved.



 **City of Portland**
Waterfront Central Zone

Policy and Zoning Process
Planning Board Process Summary
September 2009 to June 2010

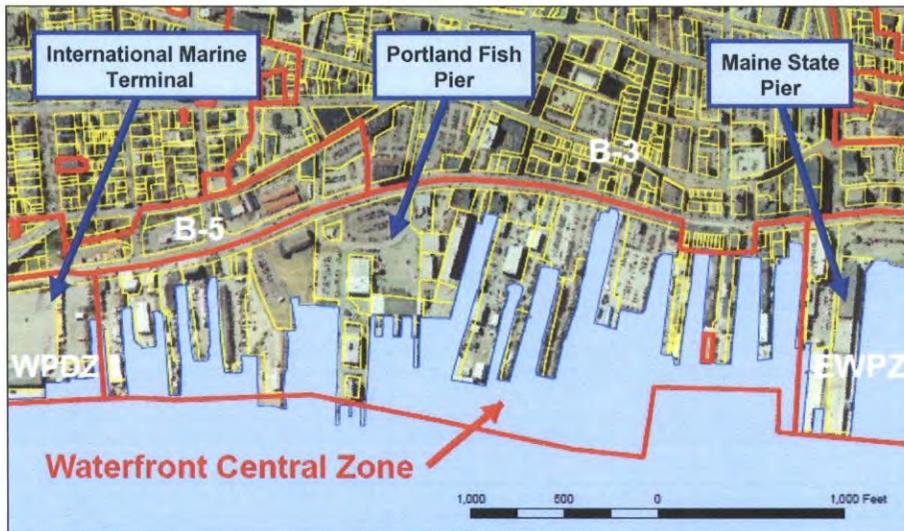


WCZ Policy and Zoning Evaluation: Why Now?

- Pier Owner Application for New Zone Text
- Policy Re-evaluation for the Central Waterfront has not been conducted since 1992



The Central Waterfront is located between the deep water piers of the Maine State Pier and the International Marine Terminal



The Central Waterfront is characterized by 14 privately held finger piers as well as the quasi-public Portland Fish Pier.

October 2009



The Central Waterfront is a Mixed Use Area:

Fishing – Ground Fishing, Fish processing, Lobstering, Lobster shipping, Herring, Urchins, Other species..... Support industries

Marine Transport – Barge, Water taxis, pilots, chandleries

Marine Construction

Marine Tourism

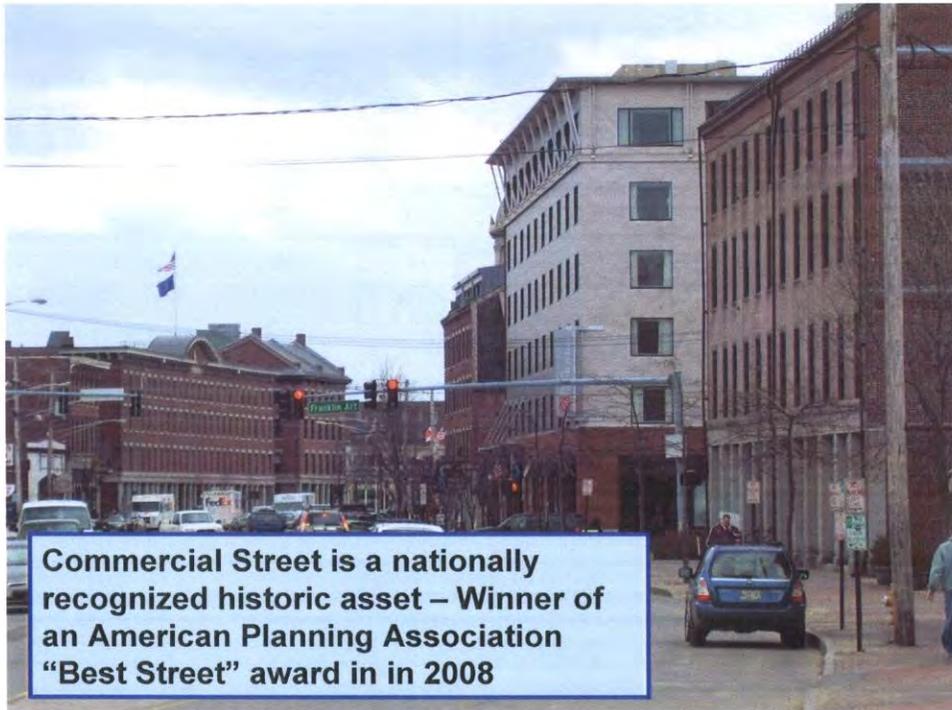
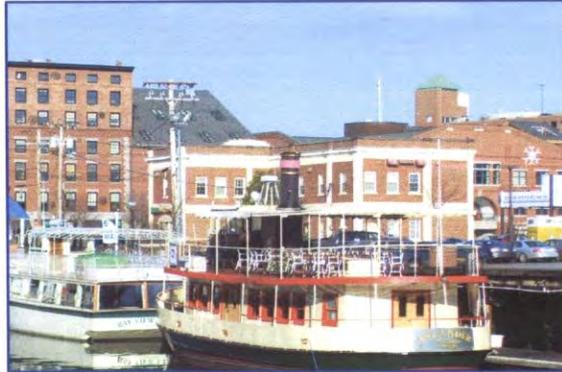
Retail

Restaurant

Offices

Research

Environmental services



Waterfront Central Zone – Current Policies

Policies from the 1992 Waterfront Alliance Report

Generally –

- Preserve the Water's Edge for berthing
- Property with direct water access is limited and should be reserved exclusively for marine use
- Allow marine compatible uses on other property that does not interfere in any way with water dependent uses
- Promote public access and environmentally responsible practices

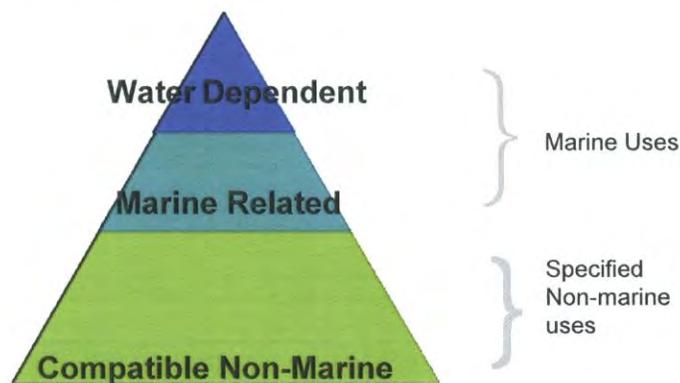
WCZ Specific Policies –

- Prohibit Certain Development – Including: Residential, hotels, new large retail and office
- Establish a use hierarchy – Following the general policies described

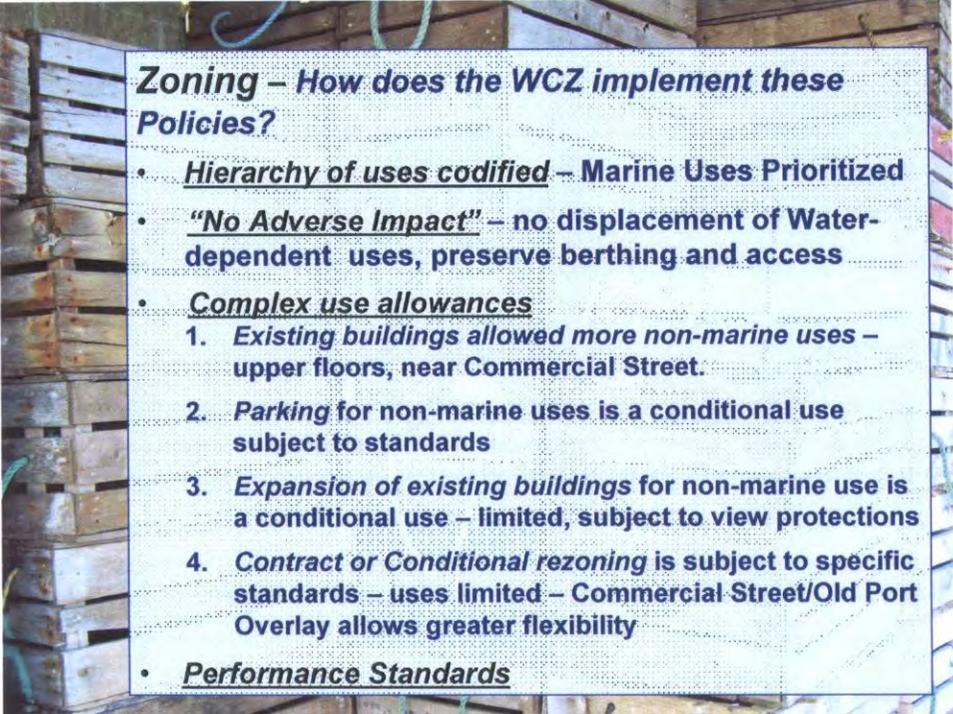
- | | |
|-----|-----------------------|
| 1st | Water Dependent |
| 2nd | Marine support |
| 3rd | Other compatible uses |

Policy Basis for Waterfront Land Use:

Priority of Uses

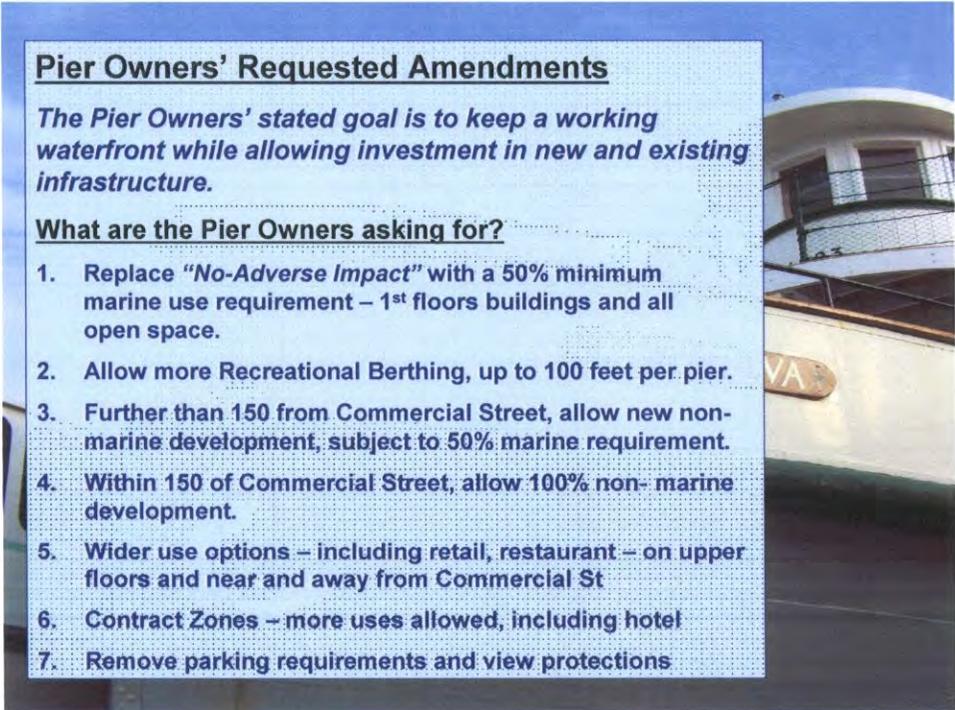


Non-Marine Uses Must respect the functional needs of higher priority uses and provide needed revenue to invest in marine infrastructure



Zoning – How does the WCZ implement these Policies?

- **Hierarchy of uses codified** – Marine Uses Prioritized
- **“No Adverse Impact”** – no displacement of Water-dependent uses, preserve berthing and access
- **Complex use allowances**
 1. ***Existing buildings allowed more non-marine uses*** – upper floors, near Commercial Street.
 2. ***Parking for non-marine uses is a conditional use*** subject to standards
 3. ***Expansion of existing buildings for non-marine use is a conditional use*** – limited, subject to view protections
 4. ***Contract or Conditional rezoning is subject to specific standards*** – uses limited – Commercial Street/Old Port Overlay allows greater flexibility
- **Performance Standards**



Pier Owners’ Requested Amendments

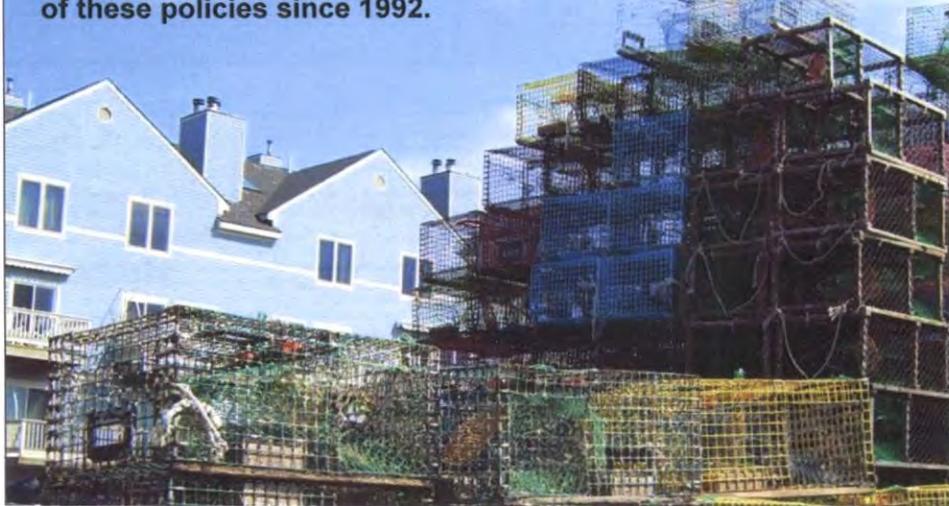
The Pier Owners’ stated goal is to keep a working waterfront while allowing investment in new and existing infrastructure.

What are the Pier Owners asking for?

1. Replace ***“No-Adverse Impact”*** with a 50% minimum marine use requirement – 1st floors buildings and all open space.
2. Allow more Recreational Berthing, up to 100 feet per pier.
3. Further than 150 from Commercial Street, allow new non-marine development, subject to 50% marine requirement.
4. Within 150 of Commercial Street, allow 100% non- marine development.
5. Wider use options – including retail, restaurant – on upper floors and near and away from Commercial St
6. Contract Zones – more uses allowed, including hotel
7. Remove parking requirements and view protections

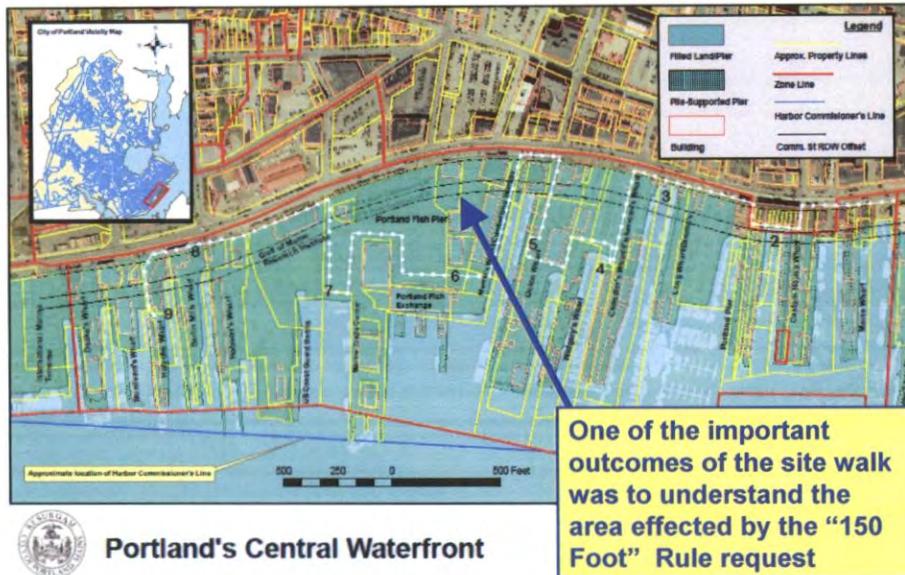
The Current WCZ policies do not allow the type or intensity of development that could result from the Pier Owners' Request:

Prompted by the Pier Owner's application, the current process is the first comprehensive evaluation of these policies since 1992.



Waterfront Central Zone – Planning Board Process To Date

October 27, 2009	Planning Board Workshop: <i>Introduction</i>
November 17, 2009	Planning Board Workshop: <i>Site Walk</i>
November 24, 2009	Planning Board Workshop: <i>Process and Timeline</i>
January 12, 2009	Planning Board Workshop: <i>Physical Conditions and Building and Use Inventory Results</i>
February 23, 2010	Planning Board: <i>Public Forum Preparation</i>
March 2, 2010	Public Forum: <i>Marine Industry Panel Discussion</i>
March 3, 2010	Public Forum: <i>Public Input</i>
March 9, 2010	Planning Board Workshop: <i>Pier Owners' Presentation</i>
May 13, 2010	Planning Board Workshop: <i>Public Forum and Business and Employment Inventory Results</i>
May 25, 2010	Planning Board Workshop: <i>Draft Policy Statement Discussion</i>
June 8, 2010 (tentative)	Planning Board Workshop: <i>Draft Zoning Text</i>
June 22, 2010 (tentative)	Planning Board Public Hearing



Planning Board Site Walk – November 17, 2009

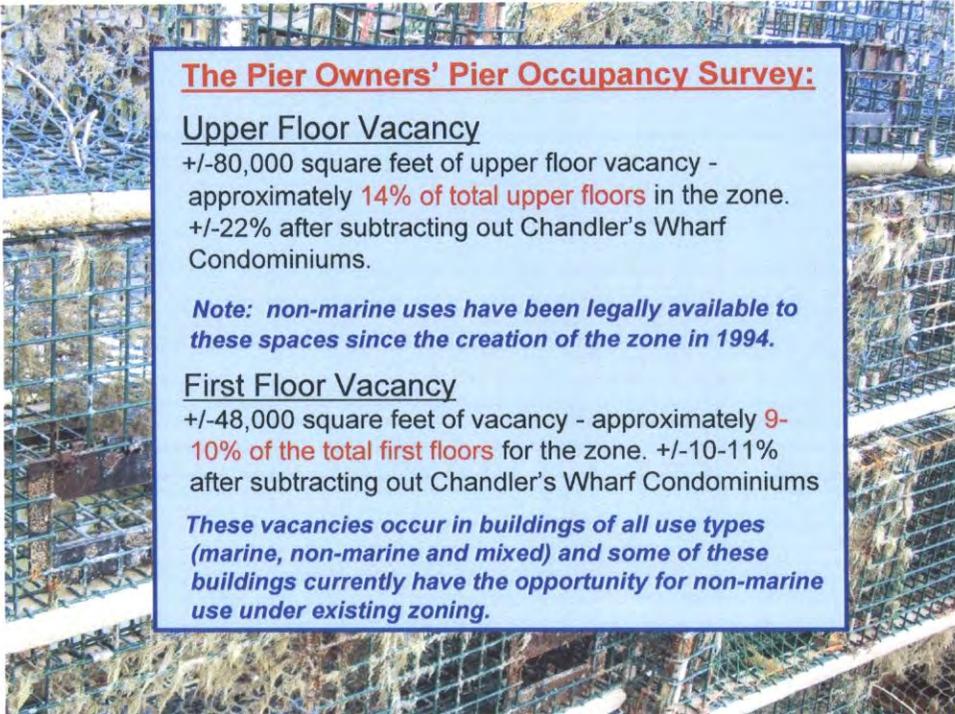
Building and Use Inventory October to January 2009

Mapped Information

- Pier area
- Building footprints
- What uses? Where?
- How much land/pier area is developable?
- Public Access
- Berthing Resource
- Parking

Occupancy rates provided by
Pier Owners: Oct. 2009





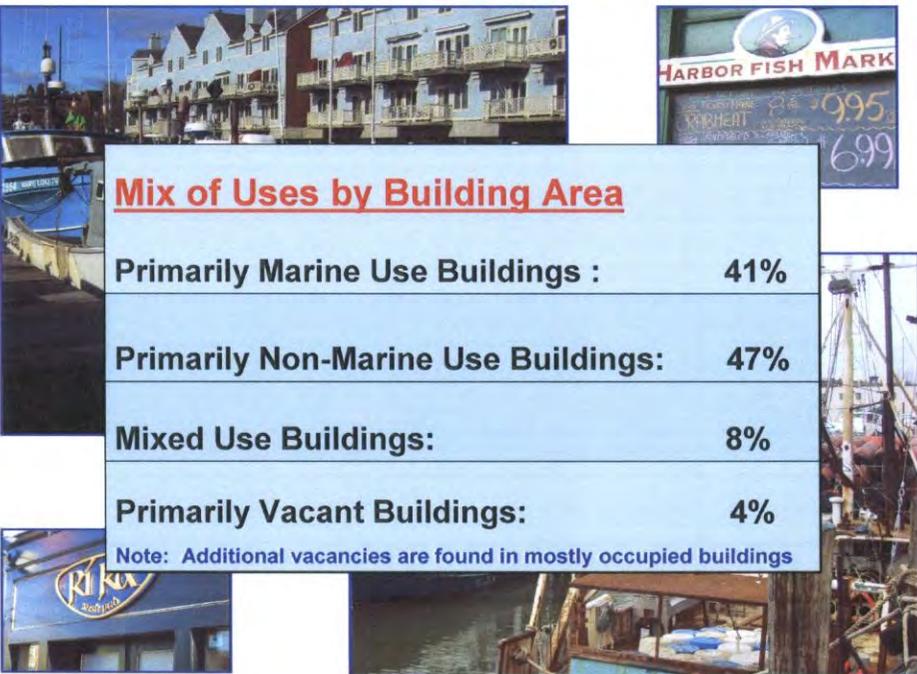
The Pier Owners' Pier Occupancy Survey:

Upper Floor Vacancy
+/-80,000 square feet of upper floor vacancy - approximately **14% of total upper floors** in the zone. +/-22% after subtracting out Chandler's Wharf Condominiums.

Note: non-marine uses have been legally available to these spaces since the creation of the zone in 1994.

First Floor Vacancy
+/-48,000 square feet of vacancy - approximately **9-10% of the total first floors** for the zone. +/-10-11% after subtracting out Chandler's Wharf Condominiums

These vacancies occur in buildings of all use types (marine, non-marine and mixed) and some of these buildings currently have the opportunity for non-marine use under existing zoning.

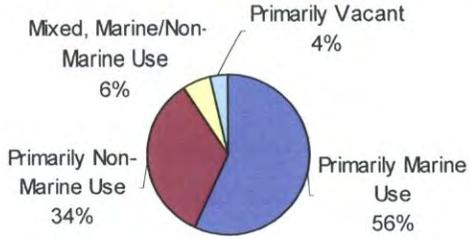


Mix of Uses by Building Area

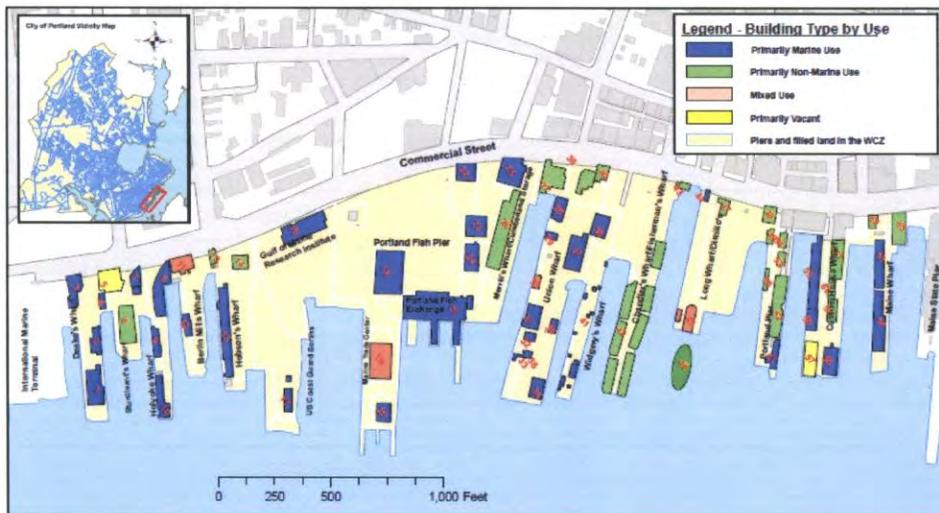
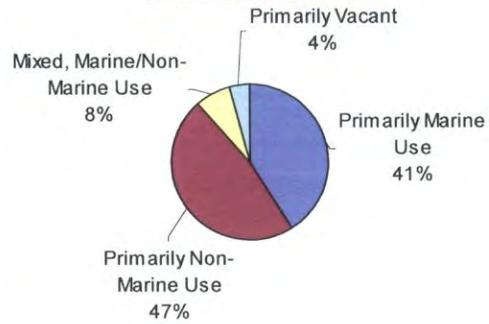
Primarily Marine Use Buildings :	41%
Primarily Non-Marine Use Buildings:	47%
Mixed Use Buildings:	8%
Primarily Vacant Buildings:	4%

Note: Additional vacancies are found in mostly occupied buildings

Building Footprint Area by Use Type



Gross Building Area by Use Type



Portland's Central Waterfront Building Inventory - Coded by Use

Map produced by the City of Portland Planning Division from Portland GIS Program 2007 data. Intended for illustrative purposes only. Building uses determined by exterior field observation in December 2008, but was not informed by an interior floor by floor inspection. January 2010



Usable Berthing by Pier		
Pier Property	Linear Feet of Commercial Berthing with Usable Depth at Low Tide	Recreational Slips
Deake's Wharf	800	
Sturdivant's Wharf	378	
Holyoke Wharf	819	
Berlin Mills Wharf	1262	
Hobson's Pier	1696	
GOMRI - Coast Guard	273	
Port. Fish Pier	3423	
Merrill's Wharf - Cumberland	356	
Union Wharf	1542	
Widger's Wharf	1145	
Chandler's - Fishermen's	235	Approx 75 Slips
Long Wharf - Dimillos	1139	Approx 100 Slips
Portland Pier	1129	
Custom House Wharf	1345	
Maine Wharf	1263	
Total	+/-16805	+/-175



Waterfront Central Zone



**Parking Areas:
Larger Scale and Commercial Lots**



Map produced by the Portland Planning Division from year 2008 GIS Program data. For use in the evaluation of Waterfront Central Zone development. Parking lots shown are lots that are greater than 30,000 square feet and/or lease to off-site lots.

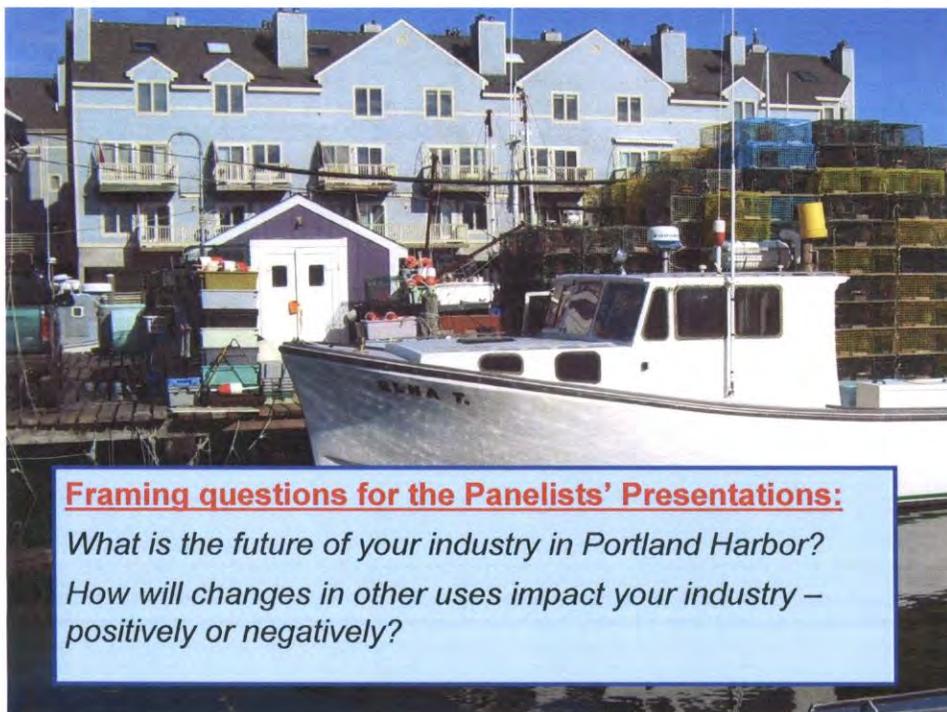
Lot #	Lot Location (approximate)	Area (sq ft)	Number of Spaces
1	Deake's Wharf/Custom House	10,000	120 +/- Capacity for info. Variable - used also for marine attach.
2	Gulf of Maine Research Inst.	11,000	60 By count
3	Custom House/Union Wharf	11,000	70 By calc.
4	Fish Pier, Marine Trade Center Lot	11,000	80 By count
5	Fish Pier, Commercial St. Lot	16,100	130 By count
6	Merrill Wharf, Cumberland Storage	16,000	100 By count
7	Union Wharf	28,000	110 By count
8	Widger's Wharf/Union Wharf	11,400	80 By count
9	Merrill's Wharf (2)	11,300	110 By calc.
10	Merrill's Wharf (1)	11,000	80 By count
11	Long Wharf/Dimillos	11,300	200 By calc.
12	Total	162,000 sq ft	1,120 approximate count

Parking Lots		
<u>Lot Location (approximate)</u>	<u>Area (Sq Ft)</u>	<u>Number of Spaces</u>
Hobson's Wharf/Coast Guard	36,000	120 +/- Capacity by calc. Variable – used also for marine storage.
Gulf of Maine Research Inst.	33,000	83 By count
Coast Guard Berths (GOMRI)	22,000	73 By calc.
Fish Pier, Marine Trade Center Lot	33,500	99 By count
Fish Pier, Commercial St. Lot	56,300	156 By count
Merrill Wharf, Cumberland Storage	30,600	105 By count
Union Wharf	29,800	115 By count
Widgery Wharf/Union Wharf	22,400	80 By count
Fisherman's Wharf (1)	51,500	175 By calc
Fisherman's Wharf (2)	14,000	49 By count
Long Wharf/Dimillo's	94,800	280 By calc
Totals	423,900 Sq Ft	1335 approximate count



March 2, 2010 Public Forum #1, Panel Discussion:
The Changing Waterfront: Economic Conditions for the Central Waterfront - Ground Fishery, Lobster Fishery, and Marine Tourism

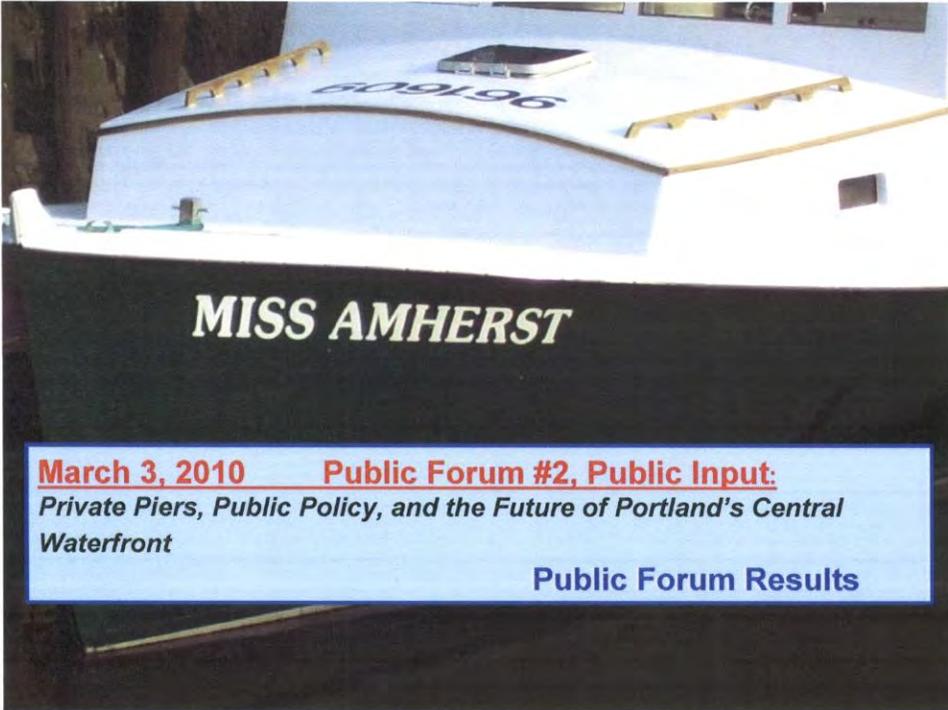
- | | |
|------------------------|--|
| <u>Bill Hall,</u> | Planning Board Chair, Moderator |
| <u>Deirdre Gilbert</u> | Assistant to the Commissioner, Maine Department of Marine Resources. |
| <u>Bert Jongerden</u> | General Manager of the Portland Fish Exchange |
| <u>Tom Martin</u> | Captain and Owner of the "Lucky Catch," Tour Boat Operator and Commercial Lobsterman |
| <u>Don Perkins</u> | President of the Gulf of Maine Research Institute |
| <u>Charlie Poole</u> | President of the Proprietors of Union Wharf |
| <u>Barbara Whitten</u> | Executive Director of Convention and Visitor Bureau |





Panel Discussion Results Highlights:

- **Ground Fishing is down** dramatically - Vessels and landings
- **New regulations (Sectoral management)** will likely result in further vessel reductions
- **Lobstering is Stable** - Vessels and landings
- **Tourism is Maine's #1 industry** and Greater Portland is Maine's #2 destination
- **Tourism is Stable** and needs a place in the WCZ - Berthing, Access and Views
- **Marine Science has potential** to grow and "Ocean Energy" may provide opportunities – especially in engineering and support
- **Marine infrastructure needs investment** and improvement to be safe, functional, attractive, and "open for business"



MISS AMHERST

March 3, 2010 **Public Forum #2, Public Input:**
Private Piers, Public Policy, and the Future of Portland's Central Waterfront

Public Forum Results

Process

Following a March 2 Panel Discussion, the March 3 forum was held to gather relevant community input on the Pier Owners' proposal and the associated policy issues.

Approximately 50 members of the public attended and were split into 8 facilitated groups and asked a series of three related questions.

Small Group Process for Each Question

- a. All participants invited to comment with each comment recorded.
- b. Combine comments into major themes.
- c. Group crafts a summary statement reflecting the group's discussion.

Framing Questions for Small Groups:

#1 *Current policy protects working waterfront uses in the Central Waterfront: Have these policies **helped or hindered** economic viability for the district and the City?*

#2 *The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront **impact the district and the City as a whole?***

#3 *Portland has a unique mix of uses and assets along the Central Waterfront: **What elements should be retained and what elements can new elements can be added?***



Public Forum Results



Major Themes

- Issues that were mentioned multiple times during the initial comments; or,
- Concepts that drew together multiple comments into broader categories.
- Major Themes do not necessarily represent consensus from the group.

The following tables show the Major Themes for each question that were reported by more than one table.

#1 Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?								
Theme	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
6 Policies inhibit Economic Development, "reasonable return on their investment"	(X)		X	X	X		X	(X)
4 Current policies support Working Waterfront (priority)	(X)		X				X	X
3 Policies have hindered investment. Pier owners need enough return (for) maintenance for the piers.					X		X	X
3 Non-marine uses subsidize marine uses (helping to maintain marine uses)	(X)	X				X		
3 "external factors" (non-zoning fisheries regulation, pier management..) are part of the problem	(X)		X			X		
2 (Current policies promote) Compatibility (and prevent) displacement (M/N-M)		X	X					
2 There is no one-size fits all solution. Different treatment is needed east to west		X			X			

ATT. B, summary Presentation

#2 The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district and the City as a whole?								
Theme	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
4 (Opportunity for) Revenues need to support piers and employment		x	x	x			x	
3 (Risk to) View Impacts		x			x	x		
3 (Risk to) Character of the district		x	x			x		
2 (Significant N-M) Would have serious negative impact on working waterfront (displacement) and won't get it back.						x		x
2 Fishing is the priority – balance with new development or uses (Allow compatible devel. in scale with waterfront)				x		x		
2 Greater mix of businesses could offer synergy, (promote mixed use)	(x)			x				
2 Can't treat 15 piers the same		x			x			

#3 Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added?								
Theme	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
7 Maintain/improve (compatible) public access, (public berthing and landing, including access onto City properties)	(x)		x	x	x	x	(x)	(x)
4 Buildings that reinforce district fabric, scale and character (Old Port/Waterfront)			x	x	x	x		
4 Maintain berthing, (commercial) marine access, and working waterfront uses	(x)	(x)					(x)	(x)
4 Maintain visual access and view corridors.		(x)	x		(x)		(x)	
3 Add new businesses (office, biotech, marine technology, restaurants, and industrial and marine industrial uses)				x	x		(x)	
3 Generate revenue for pier owners and support/retain marine uses		(x)	x			x		
2 Add City support for marine infrastructure	(x)	(x)						
2 Maintenance Dredging	(x)						(x)	

Summary Statements



- Teams followed their exploration of Major Themes by drafting summary Statements answering the framing questions.
- Teams then were asked to confirm their statements by vote.
- The extent of consensus was recorded and accompanies the reported summary statements.

The following representative Summary Statements were selected as best reflecting the Major Themes as reported above.

#1 *Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?*

Table #1

“Current policy should change, but policy should not be completely reversed; Keep marine activities as much as possible; Protect what is there now and could be there (marine uses) in the future.” (*Consensus*)

Representative Summary Statement

Question #2: *The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district and the City as a whole?*

Table #7

“Non-marine development could be beneficial to the district and the City as a whole as long as property owners are required to re-invest in marine infrastructure when creating new development. Need to strike the right balance between non-marine development and ultimate goal of utilizing that non-marine development to support and foster a successful working waterfront.” (Concensus)

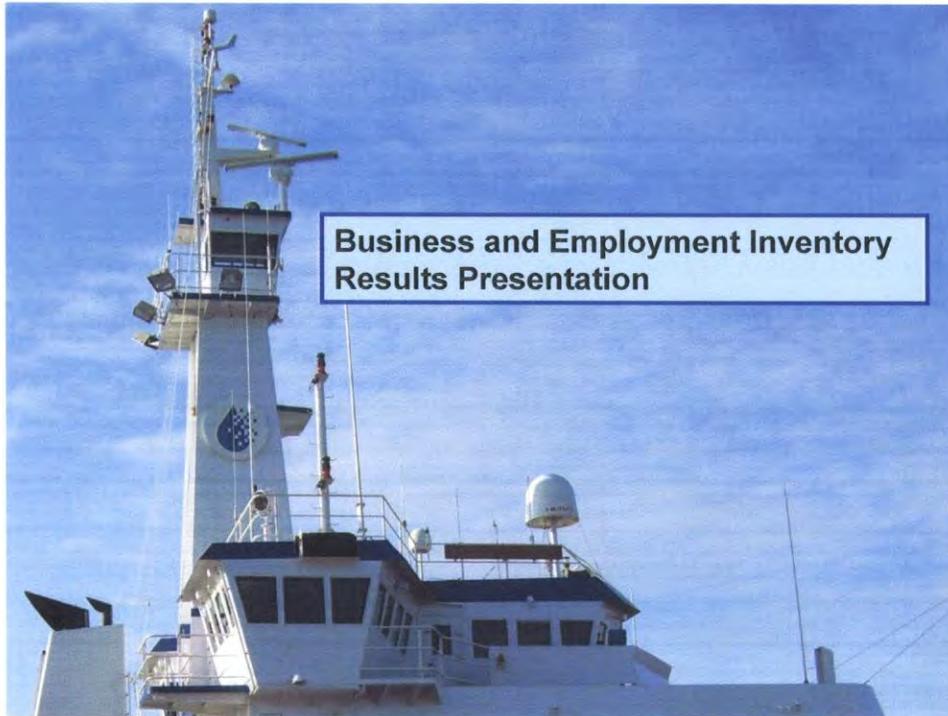
Representative Summary Statement

Question #3: *Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added?*

Table #3

“Maintain authenticity and historic fabric of waterfront while allowing uses that generate revenue that sustain marine infrastructure while assuring visual and physical public access.” (General agreement)

Representative Summary Statement



Business and Employment Inventory Purpose

- The underlying policies of the WCZ focus on protecting opportunities for commercial marine activity.
- Furthermore, the Pier Owners' arguments for zone amendments are largely economic, citing a lack of revenue from existing tenants.
- The following *Business and Employment Inventory* is intended to work with the previous *WCZ Land, Buildings and Use Inventory* to inform policy makers on the extent of and make up of existing industries in the WCZ to aid in evaluating potential changes to the zone.

Process

- Beginning early in 2010, Planning Staff worked with the pier owners to inventory three key components of commercial activity in the WCZ:

Businesses, Vessels, and Employment.

- The principle source of data was a survey form produced by the Planning Division and supplied to 17 commercial marine property owners.

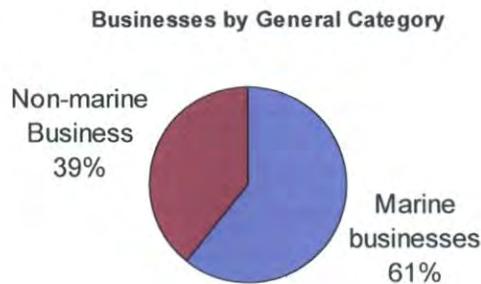
100% of participants completed the survey.

- Planning Staff filled in data from other commercial property owners through site inspections, business signs, and direct contact with property owners, managers, and tenants. Where no information was available on certain non-marine properties, estimates based on area calculations were utilized.

This inventory represents at least a rough estimate of business and employment activity for every commercial property in the zone.

How Many Businesses are in the Zone?

<i>Summary Totals</i>	
Marine businesses	78
Non-marine Business	50



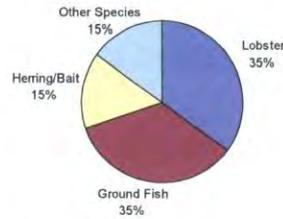
128 Businesses in the WCZ

Marine Businesses

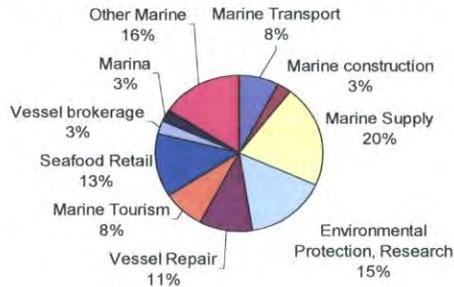
<i>Fishing Businesses</i>	
Lobster	14
Ground Fish	14
Herring/Bait	6
Other Species	6
Totals	40

<i>Non-Fishing Marine Businesses</i>	
Marine Transport	3
Marine construction	1
Marine Supply	8
Environmental Protection, Research	6
Vessel Repair	4
Marine Tourism	3
Seafood Retail	5
Vessel brokerage	1
Marina	1
Other Marine	6
Totals	38

Fishing Businesses by Type



Non-Fishing Marine Businesses by Type

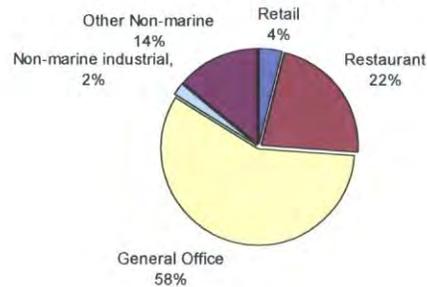


78 Marine Business in the WCZ

Non-Marine Businesses

<i>Non-Marine Businesses</i>	
Retail	2
Restaurant	11
General Office	29
Non-marine industrial,	1
Other Non-marine	7
Totals	50

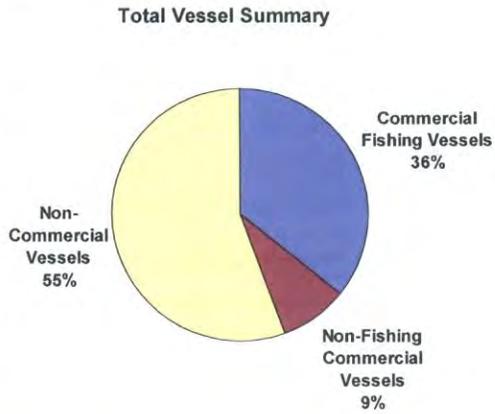
Non-Marine businesses by Type



50 Non-Marine Business in the WCZ

How many vessels are there in the WCZ?

<u>Total Vessel Summary</u>	
Commercial Fishing Vessels	141
Non-Fishing Commercial Vessels	34
Non-Commercial Vessels	219
Total Vessels in WCZ	394

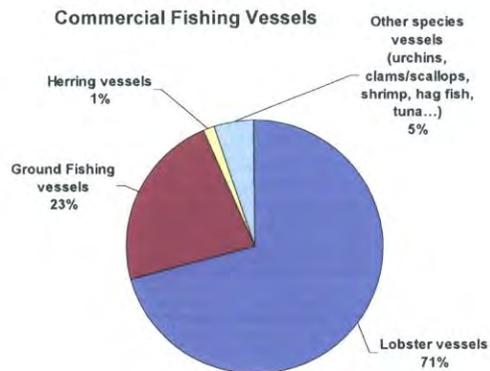


394 total Vessels

175 Commercial Vessels – Nearly all Commercial Vessels are also businesses

How many fishing vessel are in the WCZ?

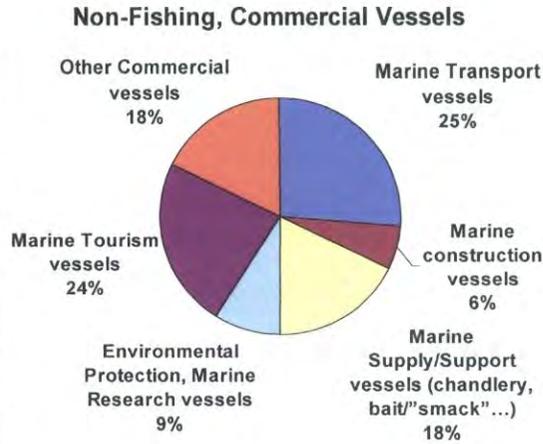
<u>Commercial Fishing Vessel Totals</u>	
Lobster vessels	100
Ground Fishing vessels	32
Herring vessels	2
Other species vessels (urchins, clams/scallops, shrimp, hag fish, tuna...)	7



141 Fishing Vessels
71% are lobster boats

How many non-fishing commercial vessels are in the WCZ?

<i>Non-Fish Harvesting Commercial Vessels</i>	
Marine Transport vessels	9
Marine construction vessels	2
Marine Supply/Support vessels (chandlery, bait/"smack"...)	6
Environmental Protection, Marine Research vessels	3
Marine Tourism vessels	8
Other Commercial vessels	6
Total Non-Fish Vessels	34

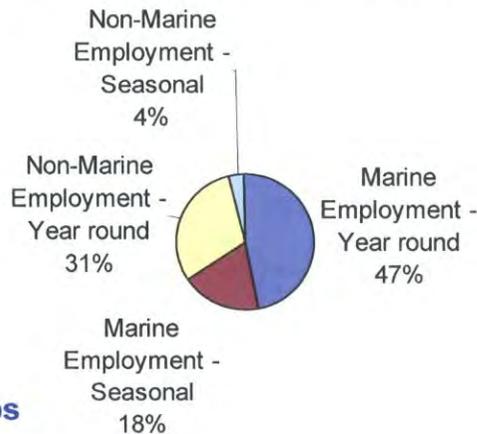


The 34 non-fishing commercial vessels are 9% of the fleet total

How many jobs are there in the WCZ?

<i>All Employment</i>	
Marine Employment - Year round	925
Marine Employment - Seasonal	363
Non-Marine Employment - Year round	600
Non-Marine Employment - Seasonal	78

All Employment by General Category

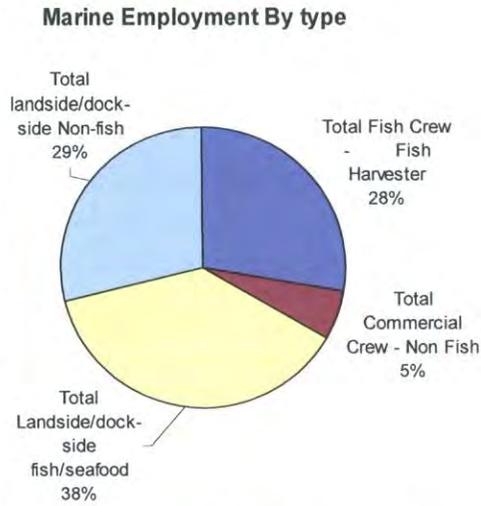


1200-1300 Marine Jobs
600-700 Non-marine Jobs

28% of Marine Jobs are seasonal
11% of Non-marine Jobs are seasonal

How many marine jobs are in the WCZ?

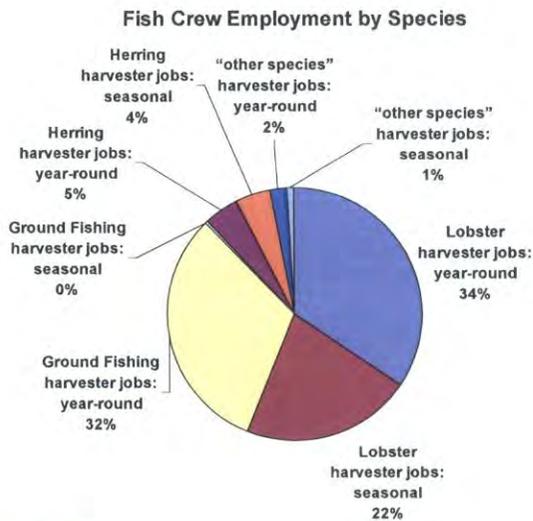
<u>Marine Employment by General Category</u>			
Summary Totals	Jobs, Year-round	Jobs, seasonal	Job Totals
Total Fish Crew - Fish Harvester	258	95	353
Total Commercial Crew - Non Fish	50	61	111
Total Landside/dock-side fish/seafood	349	135	484
Total landside/dock-side Non-fish	268	72	340
Totals, All Marine Employment (Jobs)			1288



Of the 1200-1300 marine jobs in the WCZ, 71% are related to seafood.

How Many Fishing Crew Jobs are in the WCZ?

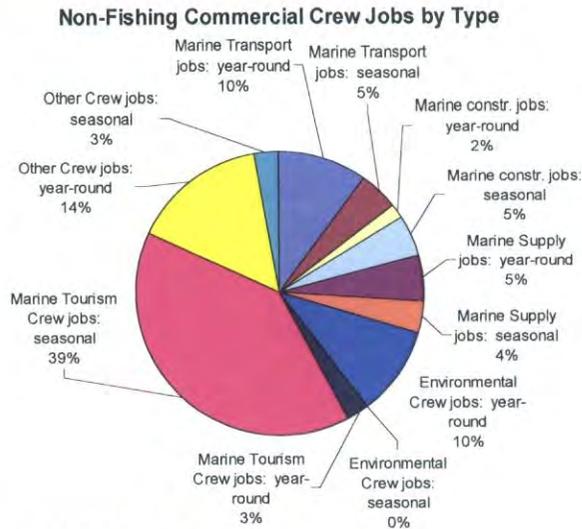
<u>Commercial Fishing Crew Jobs</u>	
Lobster jobs: year-round	122
Lobster jobs: seasonal	76
Ground Fishing jobs: year-round	112
Ground Fishing Jobs seasonal	1
Herring jobs: year-round	16
Herring jobs: seasonal	15
"other species" jobs: year-round	8
"other species" jobs: seasonal	3



358 Fishing Crew Jobs

How many non-fishing crew jobs are in the WCZ?

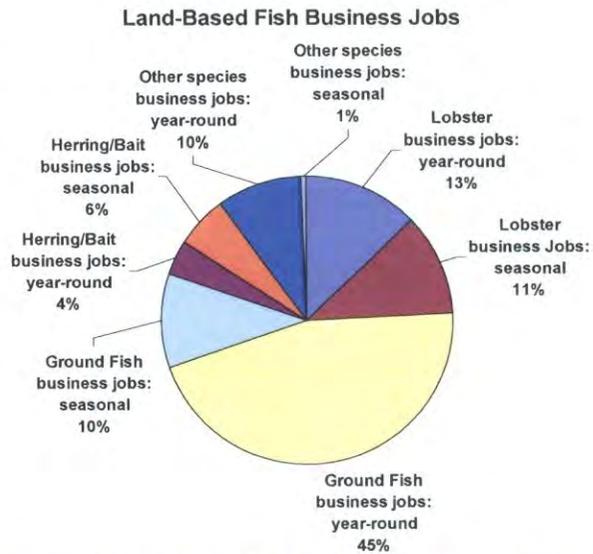
<i>Non-Fish Harvesting Commercial Crew Jobs</i>	
Marine Transport jobs: year-round	11
Marine Transport jobs: seasonal	5
Marine constr. jobs: year-round	2
Marine constr. jobs: seasonal	5
Marine Supply jobs: year-round	6
Marine Supply jobs: seasonal	4
Environmental Crew jobs: year-round	11
Environmental Crew jobs: seasonal	0
Marine Tourism Crew jobs: year-round	3
Marine Tourism Crew jobs: seasonal	44
Other Crew jobs: year-round	17
Other Crew jobs: seasonal	3
Total Crew Jobs	111



111 Non-fishing Crew Jobs
 Tourism crews are almost entirely seasonal

How many land-based fish related jobs in the WCZ?

<i>Land-Based Fish Business Jobs</i>	
Lobster business jobs: year-round	62
Lobster business Jobs: seasonal	55
Ground Fish business jobs: year-round	221
Ground Fish business jobs: seasonal	50
Herring/Bait business jobs: year-round	20
Herring/ Bait business jobs: seasonal	27
Other species business jobs: year-round	46
Other species business jobs: seasonal	3
Totals	484

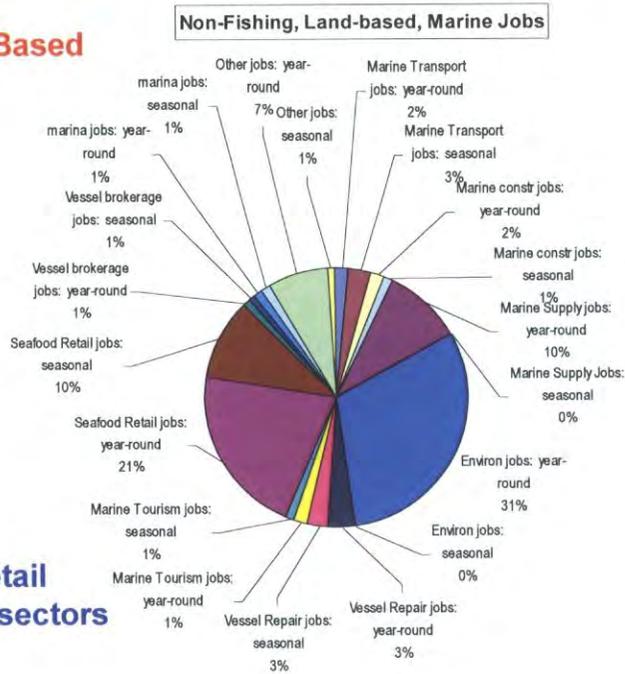


484 Jobs: The Ground fishing industry is the largest # of Jobs

Non-Fish, Land-Based Jobs?

337 Jobs

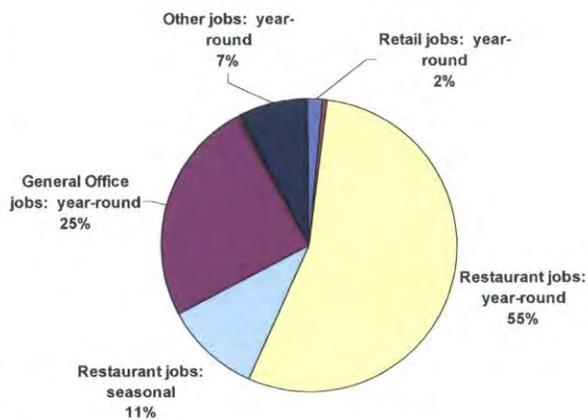
Environmental and Seafood Retail are the biggest sectors



How many non-marine jobs are in the WCZ?

Non-Marine Business Employment	
Retail jobs: year-round	12
Retail jobs: seasonal	3
Restaurant jobs: year-round	369
Restaurant jobs: seasonal	72
General Office jobs: year-round	168
General Office jobs: seasonal	2
Non-marine industrial jobs: year-round	1
Non-marine industrial jobs: seasonal	1
Other jobs: year-round	50
Other jobs: seasonal	0
Totals	678

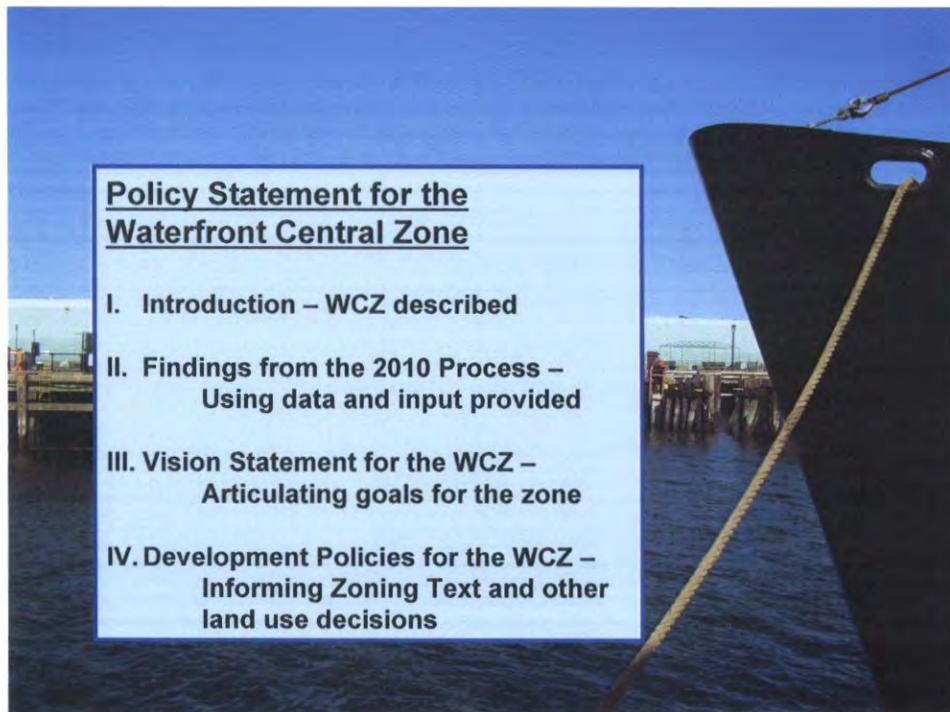
Non-marine Business Employment

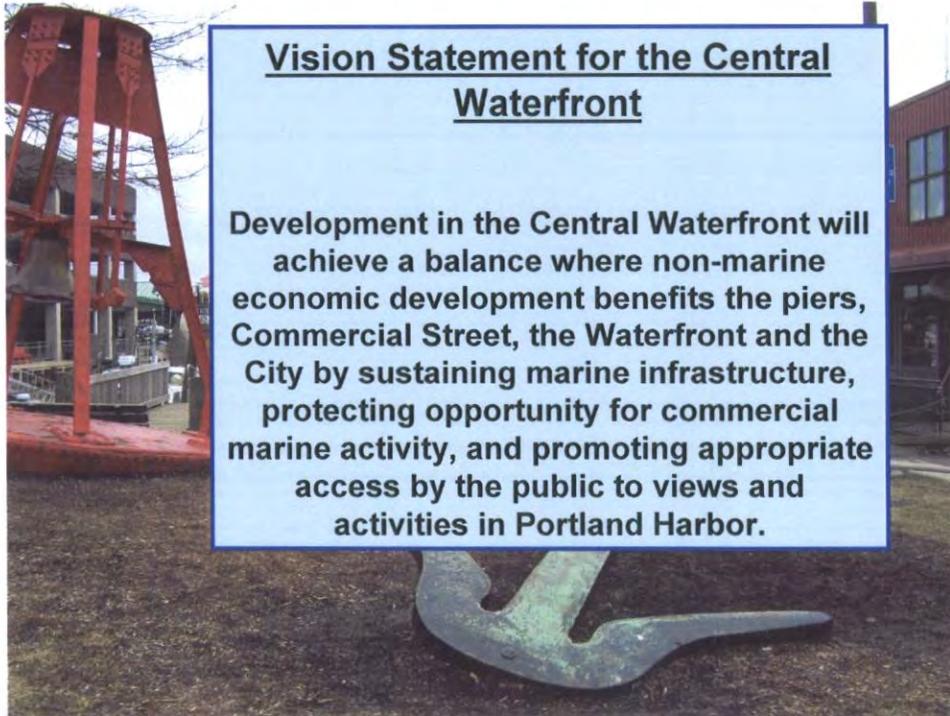


600-700 Non-marine jobs: Restaurants are the largest employers

What did we learn?

- The WCZ is still a major employment center.
- Marine jobs are still contributing to the zone and the City.
- Ground fishing and related businesses are the largest employment sector.
- Lobstering is the 2nd largest employer and the largest number of commercial vessels.
- Of the non-marine businesses, general office comprise the most businesses and restaurants employ the most people.
- Overall, the mix and diversity of activity in the WCZ may be its greatest asset.

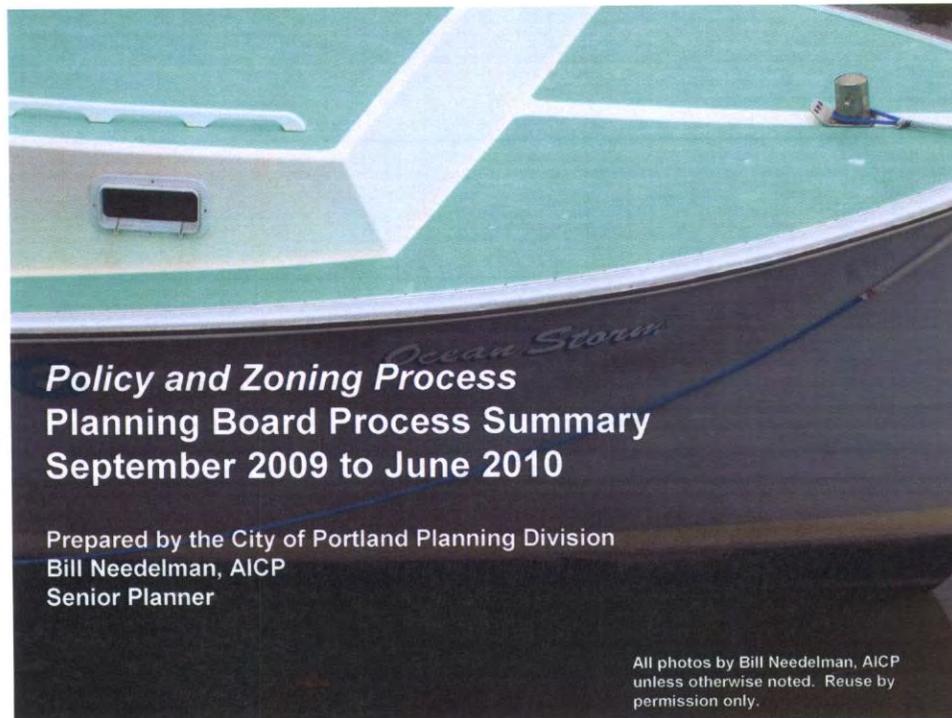




Vision Statement for the Central Waterfront

Development in the Central Waterfront will achieve a balance where non-marine economic development benefits the piers, Commercial Street, the Waterfront and the City by sustaining marine infrastructure, protecting opportunity for commercial marine activity, and promoting appropriate access by the public to views and activities in Portland Harbor.

Planning Board Recommendations - Pending



Ocean Storm
**Policy and Zoning Process
Planning Board Process Summary
September 2009 to June 2010**

Prepared by the City of Portland Planning Division
Bill Needelman, AICP
Senior Planner

All photos by Bill Needelman, AICP
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A.H. C

Waterfront Central Zone Property Owners
36 Union Wharf
Portland, ME 04101

December 1, 2008

Mayor Jill Duson and
Members of the City Council
City Hall
Congress Street
Portland, ME 04102

Dear Mayor Duson:
and members of the City Council.

We the undersigned property owners of the Waterfront Central Zone petition the Portland City Council to take immediate action to bring zoning relief and provide other incentives to the properties in the Waterfront Central Zone. The changes to the zone allowed in the spring of 2006 were welcomed until we found that parking and other strict regulations drafted with in those changes obviated any possible relief to the owners. The City of Portland itself has realized that it must allow mixed use on the State Pier to provide the economic viability to revitalize the Pier. It is only fair to grant the WCZ the same zone changes.

The ordinance is extremely complicated and when taken in its complete effect on economic reality, prevents the owners of the properties from developing and maintaining the wharves and structures. We have identified the major obstructions to economic reality as follows:

1. The absolute requirements of "No Adverse Use Sections" (must be marine and commercial use) along with the definitions of permitted uses of the zone which demand marine related use of all the pier faces and ground floors is non realistic with the continuing and permanent loss of fishing industry and ancillary use occupancy.
2. The parking restrictions of the WCZ will not allow any meaningful leasing on the piers or along the south side of Commercial Street even if the specific uses are permitted. Parking needs to be eliminated as a zoning requirement. Uptown regulations depend on parking garages.
3. The return of the allowance to the property owners to replace the failing elements of their piers below the surface of the decks of piers without lengthy permitting, engineering or costs of permitting to maintain their structure. However and whoever oversees this element of water front maintenance, it should not be a lengthy and expensive ordeal. The City has the talent and personnel to keep these expensive and time consuming efforts under control.
4. The city needs to support the effort of the Central Zone as well as other waterfront zones to break the regulatory snarl which has absolutely prevented the private property owners of the whole port, including the city of Portland, in dredging their properties. While the U. S. Army Corps of Engineers will dredge the federal channel circa in 2011 at no local cost, there is no chance that the private property owners will find the aid in neither permitting nor the funding to implement it without the assistance of local and state government.

We the Owners do not advocate for the return of residential/condominium development but the above uses are critical for the ability to continue to provide the City with well over a million dollars in real estate taxes of all properties in the zone and continued growth in jobs and income for the people of the City of Portland

The Owners:

<i>Roy P. Hall</i> GEN MARINE CONST	<i>Steve DiMillo</i> Long Wharf
<i>Charlie A. Poole</i> Union Wharf	<i>Ray Stettin</i> Waterfront Maine
<i>D. M. J. Stevens</i> Stevens Wharf	<i>Kentt Whelan</i> Custom House Wharf
<i>Peter W. Kelly</i> W. G. G. RY WHARF	<i>Michael J. Allen</i> HARBOUR FISH Mkt. INC.
<i>James M. Calverley</i> Beckin MILLS WHARF	<i>John East</i> Hobson's Pier, INC.
<i>John C. Mahoney</i> Portland Pier	
<i>Richard L. Spinks</i> FACILITATOR	

Sincerely,
Property Owners,
Charlie Poole
Charlie Poole,
Chairman

A Vision for the Waterfront Central Zone

Our Vision for the Waterfront Central Zone has two fundamental principals: 1 – all of the waterfront infrastructure must be improved, maintained and replaced as needed to remain viable and 2 – the waterfront as an area/zone must be allowed to work and be clear that it is open for business. If the Waterfront Central Zone Property owner's policy changes are adopted in whole or in part, which are designed to "Keep the Port in Portland", then we believe the WCZ area will have a solid chance at economic success and maybe some prosperity. The basic core of the Vision is one that allows property owners to earn sufficient income from their properties and to allow ocean harvesting and other marine based tenants rental rates they can afford.

Benefits of the recommended policy changes:

1. Marine, water dependant and other related and compatible businesses are locating on the piers because there is space available.
2. Vacant buildings are able to find tenants marine and non-marine and be leased up at a fair economic rate of return.
3. buildings updated and repaired, new buildings planned and built as allowed only by the use of contract zoning
4. Trucks and other equipment are able to come and go safely from all piers.
5. Boats and other vessels are able to land alongside to load and unload at the piers edge safely and with proper depth.
6. People can find employment because businesses are locating on the waterfront which can lead to steady incomes for the working waterfront
7. A place where people conduct any and all other business of the working waterfront.
8. properties, piers, foundations, decks and structures are well maintained because they have been able to be leased and there is a return on the investment
9. a wider market place to lease to that will ensure the funds are around to be certain the waterfront is maintained
10. Higher property values brought to the waterfront and the City of Portland
11. Similar types of uses the City deemed necessary for survival on its own State Pier are key to the survival of the WCZ

In order to achieve any of the above, there must be repeated investment by the various owners (public and private) in the existing pier infrastructure and other waterfront properties and structures. In this vision of the WCZ, we are maintaining the infrastructure, pier, pier depth, platforms, buildings and structures we have so we have something to offer any and all businesses that have interest in the Portland Waterfront. We are also keeping the option of building new when the opportunity is appropriate (does it enhance and help the waterfront), is it viable economically and does it fit.

Pier Owners Vision Statement ATT. D.2

This is not a “build it and they will come” vision, but a “if we maintain it and have something to offer at a fair rate, they might come and do business in Portland and on our waterfront.”

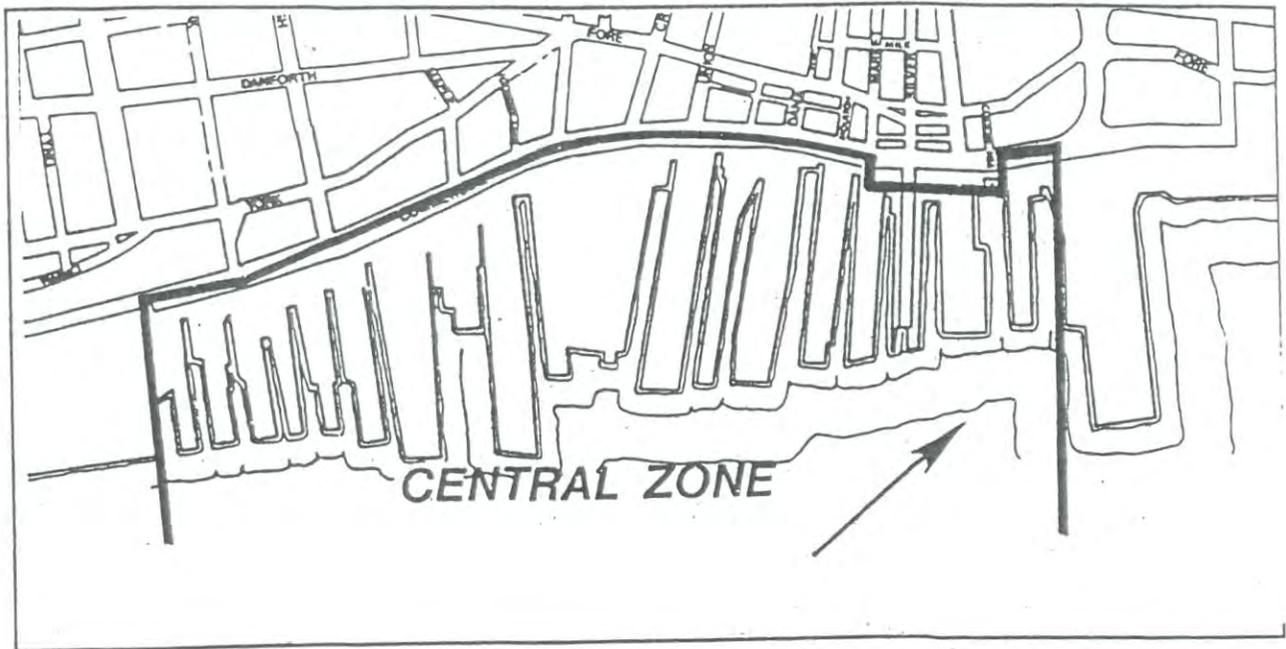
As stated above, the WCZ Property Owner’s Vision strongly supports the concept of a working waterfront. In the end they want all that are on our waterfront or thinking about locating on our waterfront, to know this waterfront is open for business.

Charlie Poole, Dick Ingalls and Steve DiMillo

Dated – 2/9/2010

THE CENTRAL ZONE

THE CENTRAL ZONE GEOGRAPHIC DESCRIPTION: The geography of the central zone is generally described as the area from the east side of the State Street Wharf to the Centerline between the Maine Wharf and the Casco Bay Island Terminal. The zone also includes the areas to the north of Commercial Street currently zoned as W1-W2 on City zoning maps.



USES NOT ALLOWED IN CENTRAL ZONE:

- New residential
- Hotels
- New large Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Non-marine Institutional

Generally, no large projects that create unreasonable demands on the zone's infrastructure and that interfere now or in the future with marine only and marine compatible support.

CENTRAL ZONE USES RECOMMENDED:

Generally any use not excluded that does not interfere now or in the future with marine dependent and marine dependent support business.

- Uses on the first floors of buildings with direct water access (berthing) and those within 100 feet of the direct water access must be marine only.
- Uses on floors other than the first floor may have water dependent, marine related, or marine compatible activities.
- After a mechanism for allowing such uses is developed, buildings beyond 100 feet of the direct water access may have water dependent, marine related or marine compatible uses on all floors (after a case by case review).
- Water Dependent - those uses requiring direct waterside or water access for berthing and space - are priority one.
- Marine Related Support Uses - those in support of but not interfering with water dependent - are priority two.
- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM hours of business and so forth.

It is our feeling that the balance of the work needed to reach written zoning ordinance will be best accomplished by the Planning Department and City Council. It is the intent of the Alliance to be available to serve as requested by the City to complete this task. We request that the new ordinances be developed and enacted as soon as possible upon completion.

Waterfront Central Zone Planning Process: Meeting Notes

March 2, 2010 **Public Forum #1: *The Changing Waterfront: Economic Conditions for the Central Waterfront - Ground Fishery, Lobster Fishery, and Marine Tourism***

Panelists:

Bill Hall, Planning Board Chair, Moderator

Deirdre Gilbert, Assistant to the Commissioner, Maine Department of Marine Resources.

Speaking to the state-wide lobster and fisheries landings, licensing, and land-side needs supporting these industries.

Bert Jongerden, General Manager of the Portland Fish Exchange since 2007.

Representing the ground fish industry and marine operations at the Portland Fish Pier

Tom Martin, Captain and Owner of the "Lucky Catch," Tour Boat Operator and Commercial Lobsterman

Representing marine business from both the tourism and lobstering perspective.

Don Perkins, President of the Gulf of Maine Research Institute,

Reporting on fisheries science, regulation, and marine research as an industry.

Charlie Poole, President of the Proprietors of Union Wharf

Representing the association of Pier Owners requesting zone text changes for the Central Waterfront.

Barbara Whitten, Executive Director of Convention and Visitor Bureau

Representing the tourism as a city-wide and regional economic generator.

Agenda:

1. Planning Board Chair Introduction, Bill Hall

2. Introduction to the Central Waterfront, Bill Needelman

3. Presentations - Panelist were asked to respond to the following questions:

What is the future of your industry in Portland Harbor?

How will changes in other uses impact your industry – positively or negatively?

Deirdre Gilbert

Ms. Gilbert provided some statistics: Last year there were \$362 million in landed value of fish in Maine – 68% lobster.

Cumberland County had \$51 million in landings and 1423 harvesters.

2009 lobster landings were up but value was down. There is a Governor's Taskforce to address loss of value.

Lobstering In Portland, 2009, \$6.5 million, 2.2 million pounds. 2008, \$8 million. 2.2 million pounds.

Licensing: Entry to industry is limited but not closed. License attrition has plateaued. 54 Portland licenses by address (more use the harbor.)

Bert Jongerden

Mr. Jongerden introduced himself by relating that he has been at the Portland Fish Exchange since 2007, but has been active in fisheries since 1989.

In Portland, there are 6 types of fish: ground fish, winter shrimp, lobster, hag fish, herring, and aqua culture (shell fish).

Ground fishing: Since 1990s there was a buildup of the fleet resulting in overfishing, resulting in regulation.

When the Fish Exchange opened, landings were 7 million lbs, growing to 17, then topping off to 30 million. At a peak, there were 350 groundfishing vessels in Maine.

In 2006 "days at sea" regulations kicked in and permits were "stacked" on boats to allow enough days to be economic.

In 2009, 6.4 million lbs at Exchange from 64 vessels. There is a big permit pool in Gloucester Ma, and most boats went there.

New regulations are coming on board – "catch share" allocation based on fishing catch history by "sector". This involves a collaboration by vessels and could result in a further reduction of vessels by up to 50%. The Fish Pier has 28 vessels now, down from 65.

There are probably 75 lobster vessels plus 3 "smack" boats. The Exchange also serves +/-10 transient vessels with more fish trucked from elsewhere. *(Editor's note: The Portland Planning Authority has inventoried +/-100 lobster vessels in the WCZ alone. WBN)*

Support service business are also down – gear, electronics.

Processors are hauling frozen fish from away, farmed fish, all trucked in to keep them working.

After May 1, there will probably be fewer vessels even though fish #s are rebuilding.

Tom Martin

Speaking for lobstering and marine tourism. Even with the 800 trap limit, catch #s are up and there hasn't been a reduction in boats. The economy hurts, but it is expected that it will improve. Shore-side industries are reduced, but should come back.

Lobster industry needs a place – and the pier owners need help.

Tourism businesses – are just a small section of the WCZ and the zone can support them. There is an increase in sailing charters – more tourism will result.

Both tourism and lobstering are steady and will hopefully need increased capacity.

Don Perkins

Mr. Perkins described Gulf of Maine Research Inst. activities, including marine science, high tech, ocean energy, all taking place in a new lab on the Waterfront – this is a world class research team. They have found that Portland is very attractive to “cold water” research work. The GOMRI building has 80 employees, with opportunities for more. Growth has been slow.

Question: is Portland a “Marine Science City?” Fisheries and oceanographic research. GOMRI looked at outside interests. For Portland, great quality of life and only 2 hours from Boston – opportunities will be gradual.

“High Tech”, bio-tech industries – how to apply marine biology to pharmaceuticals? We have hurdles to overcome with other communities with more economic development money.

Ocean Energy – will either be huge or a “distraction” depending on “ISO”, Canadian Maritimes, and subsidies. U Maine has become a leader in ocean energy research. Test sites have been identified, permitting “rationalized”. Sears Island has the space to build and will probably be the construction port. However, Portland has potential to benefit from engineering and “control”, and maintenance support. The real opportunities for Portland are in the engineering.

Regarding fisheries, Mr. Perkins supported Mr. Jongerden’s assertion that there will be a further loss of ground fishing vessels. Stocks are coming back and there could be attraction back to Portland when fisheries are profitable.

Charlie Poole

Speaking as a pier owner and manager. Union Wharf was founded in 1793 and it has always been a working pier. There are some economics to consider:

1. All waterfront infrastructure must improve
2. The Portland Waterfront must be “open for business”
3. The working waterfront must address issues periodically

Piers need to make money to support the working waterfront. To do this, piers need other uses. Mr. Poole listed a number of comments relating to the space available, the repairs needed and other issues.

The highest priority is to get investment to conduct maintenance. The waterfront needs help. We can support the “working waterfront”, but it “needs to work.”

Barbara Whitten

Tourism is Maine's #1 industry. 32 million visitors. Greater Portland is the 2nd largest destination with 8 million visitors. The CVB represents 40 businesses in the WCZ alone. Businesses need tourism. Lobster and seafood are what we market.

There are problems – the tourists don't know where the waterfront is. The waterfront must have public access.

What is good? Dimillos example cited – a tourism cluster.

The big issues: Accessibility - make it attractive, safe, authentic.

4. Planning Board Questions

Mr. Hall (BH) then moderated a conversation between the Panelists and the Planning Board.

Carroll Morrisette (CM): Thanked the panel. Noted that she didn't realize how much the fishing industry had shrunk. "How much space do we still need?" (lobster)

Bert Jongerden (BJ): Lobstering is vibrant. 7 dealers, bait operations, 75-80 boats at berths (*Editor's note, 100 lobster vessels indentified berthed in the WCZ*) plus islanders. Ground fishing has reduced.

CM: Thinking about the 150 foot proposal from the Pier Owners, what impact on the fleet?

BJ: Not much.

Don Perkins (DP) added that berthing was generally further out on the piers (beyond 150 feet from Commercial Street). Trucking, processing, dealers need space. Lobstering needs berthing.

David Silk (DS): With the context of the existing comprehensive plan, prioritized use prohibits certain uses – is it still viable? Seeing what's going on is good information. However, curious about aspirational goals: What uses should we allow? What would create change in a positive way? Negative?

Charlie Poole (CP) noted as a pier owner and operator of marine business, need to be protective of core industries. He won't lease to incompatible uses. If the zoning changes, still need to be compatible.

DP: An economically healthy waterfront with good infrastructure will help recruitment of marine industry. Economic diversity is healthy.

Tom Martin (TM): Berthing – 15-20 years ago there were an excess of commercial boats – trending downward. The Pier Owners are asking for 50% recreational berthing – can there be priority for commercial boats – right of first refusal? Allow recreational boats to fill space in the mean time.

CP: The Pier Owners are not asking for recreational boats.

(Editor's note: The original Pier Owners' proposal did ask for 50% "non-commercial berthing" at the time of the Forum. The Owners later amended their request to 100 feet of non-commercial berthing per pier. 50 feet is allowed under the current zoning.)

Michael Patterson (MP): To Bert J. The reduction in landings– to whom does the Portland Fish Exchange (PFX) rent with the reduction?

BJ: The PFX received \$500,000 from the state to renovate. Cozy Harbor Seafood, a ground fish buyer, has moved in and made some good efficiencies.

Janice Tevanian (JT): Expressed the opinion – the priority is for preserving the waterfront for water dependent uses. Is it mostly about berthing? What is the appropriate balance?

BJ: Serving on the Harbor Commission. We have a diverse port. Lobstering is stable – actually a lack of berthing. Tugs are all at the Maine State Pier and need to relocate with every cruise ship – 700 foot transient (berthing) opportunities that we can't meet.

Joe Lewis (JL): To Charlie Poole, Describe the business opportunities that you have missed.

CP: Before 1993, missed lots. With allowance for non-marine upper floors (in existing buildings) allows restaurants, and allows marine opportunities. It's hard to find marine tenants without a berth – noted the Cumberland Storage building example (Merrill's Wharf.)

JL to Barbara Whitten (BW): Balancing tourism with servicing tourism – harmony or conflict? Is there an attraction for a convention center?

BW: Before finding a site for a convention center, we need to find the money to pay for it. It doesn't need to be on the waterfront, just Downtown.

JL: What is the nightmare scenario for the waterfront?

BW: Buildings staying the same – unsightly, unsafe. They need money. That would be the best thing to come from this process. Also, public access/public views. There should be a mix of uses with attraction. Not looking for "Newport." Keep the authenticity – See the fish.

BH to CP: The WCZ text change in 2006, was that not far enough?

CP: In 2006 the City allowed more upper floor non-marine use, more uses along Commercial Street (100'). That was good. There were other issues that could have been addressed.

BH: Looking at waterfronts, there are other models – Baltimore, Alexandria Va, but these are either residential or are not "authentic." Complicated issues.

BH to Deirdre Gilbert (DG): What is the Department of Marine Resources (DMR) perspective?

DG: Ms. Gilbert related the DMR experience with the "working waterfront access program" as administered by CEI. Applicants submit proposals to convey development rights through

deed covenants to preserve waterfront access on commercial marine properties. Interestingly, ½ of the applications have some mixed use components. DMR has recognized the need for mixed use to preserve access to working waterfronts.

5. Community Questions and Comments

Mr. Hall then opened the floor to questions from the public.

Phil Lee: Fisheries regulation should result in some successes. Won't the number of vessels rebound with the fish? On a side note, the number of tugs will be reducing..

BJ: Fishing is a large question mark. Mass. has incentives that Maine doesn't and boats need to make as much as possible/vessel. Assuming fish come back, there could be as many as 300 million lbs of fish coming out of the Gulf of Maine in the future.

DP: Fisheries recovery issues. Haddock, cod...are they healthy? Certainly better. Some species are still relatively scarce. It's difficult to assess. The regulations are determined by a number of ...species. Harvesting capacity issues (come into play) with new technologies, we don't need as many vessels (to catch the same number of fish..)

CP: We can't reserve the waterfront waiting for a fisheries rebound.

Gene Story: Regarding access (public?) to the Waterfront: is it assumed to be through private piers?

CP: Right. We need a financial reason to bring the public (onto private piers) through new uses.

BJ: The Fish Pier is quasi-public. There are numerous tours. We encourage viewing the auction.

BW: To wall off the waterfront would be a problem. Views are important.

Tony Armstrong: Businessman – Regarding parking – what do you do? Parking lots drive the engine (examples noted.) Parking garage on Fore Street ½ full and we are paying for spaces we don't use. For the WCZ, we need to address parking.

CP: Parking is a necessary evil. It helps to pay the bills. Much of the parking goes to the tenants. Mr. Poole explained the Pier Owners' parking zone text request...

DP: GOMRI has excess capacity now, but not for the future...need to let the parking find its space on the other side of Commercial Street. The City needs to do something.

JL: Parking constantly.....*missed comment*

Robert Haines: Once there are residences and pleasure boats, you'll never get it back. The East End Beach could be better used. If we are losing boats from the Fish Pier, what is Mass. doing for incentives?

BJ: It's sensitive. When Portland had 30 million lbs, there was a good buyer base – meaning better prices.. In Mass, there is no sales tax on diesel, price for ice has gone up, therefore, lower margins. There are by-catch limitations meaning that you can't land lobster in Portland.

Mark Dawson: Work in waterfronts all over the country. You need flexibility for industry. You need to find the right balance.. Good to see the components (here). Mass. resident.

Lorretta McKenna: These are dire straights for fishermen and it's a hard time to change. We need to support primary industries. Sympathize with the Pier Owners. Affordable deepwater berthing will require protection. If pleasure boating increases – with resurgence in fishing, pleasure boats should go.

Tony Donovan: Portlander and Islander: Public access – I want it. We want to be there. Look at Custom House Wharf, Maine Wharf, Portland Pier. Treatment...different for commercial uses.

Dick Ingalls: (*Pier Owners' representative*) Need to look at the whole issue – parking being one. Since we have empty land at both ends of the waterfront, there could be a shuttle bus. The Pier Owners are looking for 5 specific issues. 50% (*non-marine use on ground floor*) is a "norm". We need more income. Look to at the text as drafted.

Tom Chitick: The present conversation should look at the history relative to diverse uses and industries in the harbor. The history is port-dependent but not fisheries related (molasses example noted.) Think about "port-related."

6. Summation, Second Forum Introduced, Bill Hall

Waterfront Central Zone Public Forum #2, March 3, 2010
Compilation of Results – “Major Themes”

DRAFT,5-3-10

#1 Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?

	Theme	Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
6	Policies inhibit Economic Development, “reasonable return on their investment”	(X)		X	X	X		X	(x)
4	Current polices support Working Waterfront (priority)	(X)		X				X	X
3	Policies have hindered investment. Pier owners need enough return (for) maintenance for the piers.					X		X	X
3	Non-marine uses subsidize marine uses (helping to maintain marine uses)	(X)	X				X		
3	“external factors” (non-zoning fisheries regulation, pier management..) are part of the problem	(X)		X			X		
2	(Current policies promote) Compatibility (and prevent) displacement (M/N-M)		X	X					
2	There is no one-size fits all solution. Different treatment is needed east to west		X			X			
1	Allow market to function		X						
1	Don’t subdivide the piers		X						
1	Create new economic value to benefit pier industries			X					
1	A healthy mix of uses is ok			X					
1	Need a new definition of “working waterfront				X				
1	Public Access must be improved				X				
1	Impacts on City tax base and tourism					X			
1	Protection of marine uses help economic viability with the City.							X	
1	Lack of long-term and economic planning (master) has made it difficult to develop marine related business.								X
1	Piers are confined in terms of space needs		X						

#2 The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district and the City as a whole?									
Theme		Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
4	(Opportunity for) Revenues need to support piers and employment		X	X	X			X	
3	(Risk to) View Impacts		X			X	X		
3	(Risk to) Character of the district		X	X			X		
2	(Significant N-M) Would have serious negative impact on working waterfront (displacement) and won't get it back.						X		X
2	Fishing is the priority – balance (compatibility) with new development or uses (in scale.)				X		X		
2	Greater mix of businesses could offer synergy, (promote mixed use)	(X)			X				
2	Can't treat 15 piers the same		X			X			
1	When front (of pier) is cut off, impacts the remainder of the pier		X						
1	Short term impact would be beneficial. Long term impact and flexibility (unknown)							X	
1	Significant development could hurt the district but help the City		X						
1	Development within 150 feet of Commercial Street should not impact fishing					X			
1	Design for compatibility between M/N-M					X			
1	Without knowing berthing vacancy rates or 1 st floor vacancy – hard to know impact.								X
1	(Promote appropriate scale for non-marine uses)	(X)							

#3 Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added?

Theme		Table #1	Table #2	Table #3	Table #4	Table #5	Table #6	Table #7	Table #8
7	Maintain/improve (compatible) public access, (public berthing and landing, including access onto City properties)	(X)		X	X	X	X	(X)	(X)
4	Buildings that reinforce district fabric, scale and character (Old Port/Waterfront)			X	X	X	X		
4	Maintain berthing, (commercial) marine access, and working waterfront uses	(X)	(X)					(X)	(X)
4	Maintain visual access and view corridors.		(X)	X		(X)		(X)	
3	Add new businesses (office, biotech, marine technology, restaurants, and industrial and marine industrial uses)				X	X		(X)	
3	Generate revenue for pier owners and support/retain marine uses		(X)	X			X		
2	Add City support fro marine infrastructure	(X)	(X)						
2	Maintenance Dredging	(X)						(X)	
1	Maintain continuity of streets going into wharves.			X					
1	Add an education resource to make the waterfront more visible					X			
1	(Add an attraction, JFK, aquarium..)	(X)							
1	(Limited) new quality buildings close to Commercial Street						X		
1	Note signs from City that the waterfront is unimportant , ie elimination of the Waterfront Dept.								(X)

Editor's Note: The "theme" text reported has been edited from the original report notes to allow combination of similar comments into single categories. Additionally, where teams did not report "themes", Planning Staff used the results of the "Initial Comments" portion of the group process to glean recurring issues for reporting as "themes" in this summary. Listing as a "theme" does not signify consensus or general agreement from the team, but does reflect significant conversation and/or multiple references in the table notes. Editorial summation and or extraction of results from the "Initial Comments" section are shown in (parentheses). The complete unedited results are provided as a separate document to this summary.

Waterfront Central Zone: Public Forum #2
March 3, 2010

Compilation of Summary Statements

Question #1: *Current policy protects working waterfront uses in the Central Waterfront: Have these policies helped or hindered economic viability for the district and the City?*

Table #1

"Current policy should change, but policy should not be completely reversed; Keep marine activities as much as possible; Protect what is there now and could be there (marine uses) in the future." (*Consensus*)

Table #2

"*One zone for 15 piers has hindered the waterfront because piers have different limitations and characteristics.

*The success of City's waterfront policies is dependent on what timeframe you are talking about.

*A City policy to restrict subdividing the piers would be a positive policy."
(*Consensus*)

Table #3

"The original zoning ordinance change has assured protection of the waterfront, but the port has been adversely affected by the loss of fishing and the number of uses hasn't been enough to fill available spaces. The authenticity of the waterfront is integral to the City at large." (*Consensus*)

Table #4

"Going forward with the existing policies will only continue to hinder the economic viability of the district and the City." (*Consensus*)

Table #5

"There is an economic need to rethink the waterfront policies

- Micro level: Impacts on pier owners
- Macro level: Impacts on City tax base and tourism

The policies have hindered development on the waterside of Commercial Street and hindered investment and maintenance for the piers." (*Consensus*)

Table #6

"Current policies have been effective. Piers are in disrepair, (which) may be the result of poor management." (*General agreement*)

Table #7

"Current policy protects marine uses, which is helpful to the economic viability of the City as a whole. However, the limitations in the policies hinder the economic viability of

the properties located within the zone and the City ability to compete as a successful port in the long term." *(Consensus)*

Table #8

"The current balance between working waterfront and flexibility of economic viability of uses has protected the waterfront but made economic sustainability difficult."
(Consensus)

Question #2: *The Pier Owner's proposal would allow new development options in the Central Waterfront: How would significant non-marine development in the Waterfront impact the district and the City as a whole?*

Table #1

"The waterfront should have some more mixed use, the pier owners need more economic value, we need to keep the working waterfront, and to accomplish this we need creative thinking on policy, not just reactive policy to the proposal on the table." *(Consensus)*

Table #2

"If you do significant development you will change the character of the district and the City which would affect the City and Island residents." *(Consensus)*

Table #3

"Significant development could be (+) for both the area and the City. If it respects the historic fabric and scale, significant development should contribute to the economic viability of waterfront infrastructure. Significant development could also be negative if incompatible with fabric and marine uses of the district." *(General agreement)*

Table #4

"The new proposal could have significant impact on the physical condition of the piers, offering fishermen and recreational vessels better facilities and provide the pier owners with reasonable returns on investment, while contributing to the city economically and culturally." *(General agreement)*

Table #5

"Development needs balance to preserve visual and physical access to the waterfront."
(Consensus)

Table #6

"Significant non-marine development would have serious negative impact. A moderate level of new non-marine uses could be okay if access for marine uses is maintained. Once marine uses are lost, they are gone." *(No agreement)*

Table #7

"Non-marine development could be beneficial to the district and the City as a whole as long as property owners are required to re-invest in marine infrastructure when creating new development. Need to strike the right balance between non-marine development and ultimate goal of utilizing that non-marine development to support and foster a successful working waterfront." *(Consensus)*

Table #8

"New development options would have positive impact so long as they did not displace current or future marine development." *(No reporting of agreement or disagreement)*

Question #3: *Portland has a unique mix of uses and assets along the Central Waterfront: What elements should be retained and what elements can new elements can be added*

Table #1

Table #1 did not provide a summary statement for question #3. The "initial comments" provided contain a variety of development suggestions (with no consensus) and full consensus on the need to provide better facilities for walking, boating, and public access to the water.

Table #2

Table #2 did not provide a summary statement for question #3. The "initial comments" provided contain a variety of comments that suggest a balance between non-marine development and working waterfront preservation. "View protection" is mentioned as is the need for "adequate parking."

Table #3

"Maintain authenticity and historic fabric of waterfront while allowing uses that generate revenue that sustain marine infrastructure while assuring visual and physical public access." *(General agreement)*

Table #4

"Reasonable public access balanced with business needs for safety and security."
(Consensus) Table 4 voted that they were the best table.

Table #5

- "Add Education resource to the waterfront to make the working activities of the waterfront more visible to the public.
- Preserve the variety, uniqueness, working waterfront, water access for fishing industry and historic structures.
- Add uses such as office, biotech, marine technology, restaurants, and industrial and marine industrial uses.
- Add opportunities for public infrastructure for water access, such as a public dock."

(Consensus)

Table #6

"Retain current uses. Add better maintained and managed wharves, and some new well designed compatible buildings for marine-related uses. New buildings should contribute to the existing sense of place." (*Consensus*) *Public access was another recurring theme from Table 6, though not noted in their summary statements.*

Table #7

Table #7 did not provide a summary statement for question #3. The "initial comments" provided list the following:

Elements to Retain: Jay's Oyster Bar, Existing infrastructure, View sheds, Berthing/deep water berthing, Collaboration/public/private partnership, Working waterfront/commercial fishing uses.

Elements to Add: Public access, Maintenance dredging plan, Uses that invite public on piers.

Table #8

Table #8 did not have time to fully address question #3. The following items were listed at the end of the table notes and appear to address question #3:

- * Maintain diversity/flexibility.
- * Maintain public access to pier edge/end.
- * Maintain water access for marine.
- * Maintain related uses.
- * City should improve public access onto its own properties.
- * Note signs from City that waterfront is (not) important i.e. elimination of waterfront dept.

AH. H(1) 1

CHESTER & VESTAL

A PROFESSIONAL ASSOCIATION
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June 15, 2010

Chair Hall and Members of the Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Pier Owners' Proposed Amendments to Waterfront Central Zone

Dear Chair Hall and Planning Board Members:

I am concerned that the newest pier-owner proposed amendments to the Waterfront Central Zone delete important protections for functionally water-dependent uses. They essentially strip out the zoning mechanisms which effectuate a linkage between non-marine and marine development. The purpose of those mechanisms, which they would have you eliminate, is to ensure that marine uses would benefit if more non-marine uses were allowed into this critical area.

I do not doubt that the proponents of these amendments wish to keep the waterfront working by creating opportunities for non-marine uses to contribute to the maintenance of the marine infrastructure. However, I do question the means they have selected as incomplete and not up to the task of meeting their stated goals.

I also question whether the City shouldn't be more proactive in determining the policy which should apply in this critical area of the waterfront. Simply stated, Portland needs to protect its traditional marine uses because they cannot relocate to upland sites. They could easily be displaced if they are forced to compete for space with uses which may be more lucrative for private pier owners, at least in the short term.

But it goes beyond just protecting individual uses. It is also very much in the City's own economic self-interest to protect a visible, viable marine presence. That historic connection to the sea is an essential character-defining feature of Portland. It distinguishes us from other cities. Along with Portland's historic structures, our central waterfront contributes to Portland's priceless authenticity of place, and is a draw to tourists and residents alike.

In my opinion, the pier owners' proposed approach swings too far in the direction of opening the zone up for new uses without balancing the new opportunities with reasonable regulations. It dismantles most mechanisms which were designed to make sure that at least a portion of the new revenues get reinvested in the marine infrastructure. It removes the provisions designed to ensure that new non-marine development preserve public visual access to the waterfront. It also removes

AH.H(1)2

Chair Hall and Planning Board Members
June 15, 2010
Page Two

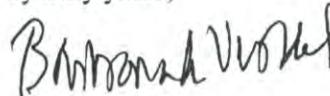
provisions designed to ensure that space that is set aside for marine use is not intentionally left vacant.

The proposal would open the zone up to a much broader range of uses *as of right* while slashing the amount of space reserved for marine uses to 50% or less of ground floor structure and non-building areas. It eliminates the distinction between existing buildings and new construction, and sets the entire area up for a major build-out. But, importantly, at the same time it takes away the City's main tool to regulate that new development's impact on marine uses and on the public. These amendments, if adopted, would allow Old Port-like development to overtake significant portions of the central waterfront piers without any requirement that the new development make any contribution to the marine infrastructure or provide any visual or physical public access to the waterfront.

In other areas where the City has anticipated major new development nodes, it has engaged in a much more involved planning process, studying build-out scenarios, height impacts, view sheds, transportation impacts, infrastructure needs, and design guidelines. Surprisingly, despite a finding that approximately 70% of the land in the zone is not built upon and a proposed zone which would allow 100% lot coverage to 45' of height with no setbacks, none of that planning has been undertaken for the central waterfront. It is troubling that the City would consider opening up the entire central waterfront area for a host of new uses – hotel, restaurant, retail, and possibly even residential – in addition to current office and marine uses, in very dense development pattern without first undertaking the type of analysis it engaged in for the Eastern Waterfront and Bayside development areas.

I have been involved with waterfront zoning in Portland since 1982, first as a member of the Planning Board and later serving on a variety of committees and task forces. I have attached my own analysis of the major proposed changes which I see as problematic. I urge you to evaluate the pier owners' proposal very carefully because once waterfront space is converted away from functionally water-dependent uses, it is unlikely to regain that capacity.

Very truly yours,



Barbara A. Vestal

BAV/om

cc: Penny St. Louis Littell, Director
Alex Jaegerman, Division Director
William Needleman
Charlie Poole

Barbara Vestal's Comments to Planning Board, 6/15/10
 Response to Pier Owners' 5/10 Draft #5, WCZ

THE PIER OWNERS' PROPOSAL IS PROBLEMATIC BECAUSE IT:

1. **WEAKENS THE PRIORITY FOR WATER-DEPENDENT USES.** 14-306 Although it would retain the purpose statement discussion of the priority to be given to water-dependent uses (WDUs), it proposes to delete the no adverse impact on marine uses provision, which is the provision which operationalizes the priority for functionally water-dependent uses among all other non-WD marine-related and among non-marine uses. The purpose statement, without more, cannot carry the weight. By deleting the "no adverse impact" performance standard, it effectively deletes the hierarchy throughout the zone and deletes specific protections for WDUs -- which are the only uses that truly need to be there.

2. **REJECTS THE REQUIREMENT OF 100% GROUND FLOOR MARINE (with up to 100% non-marine on upper floors) TO REQUIRE ONLY 50% MARINE ON GROUND FLOOR AND IN "OPEN AREAS".** 14-306 The proposed amendment is positive in that it clarifies that in addition to a percent of ground floor space, a percent of non-common circulation "open areas" is also to be reserved for marine uses. **HOWEVER**, it changes the percent from 100% to 50%, further reducing the space reserved for marine uses.

3. **ELIMINATES THE DISTINCTION BETWEEN WHAT IS ALLOWED IN BUILDINGS EXISTING IN 1993 AND WHAT IS ALLOWED IN NEW CONSTRUCTION, MARGINALIZING THE CONTRACT ZONE PROCESS.** 14-308
 b. The current zoning has, through a series of amendments, relaxed uses for upper stories in existing buildings to give relief to owners of buildings that were in existence when the zoning was first enacted in 1993. In contrast, the current zoning requires those proposing new construction to go through the contract zone process. The pier owners' proposal eliminates this distinction, allowing applicants for new construction to avoid the mechanisms integrated into the contract zone process to make sure new non-marine development would benefit the marine infrastructure and provide a public benefit. Since a host of non-marine uses would be permitted as of right, it is likely only proposals for a hotel, aquarium, drinking establishment or other prohibited uses, and/or a proposal seeking to exceed the dimensional requirements would go through the contract zone review process, allowing most non-marine development proposals to avoid the public interest review process.

4. **EXPANDS PERMITTED NON-MARINE USES (which would be allowed on 50% of ground floor and "open space," and 100% of upper stories) TO ALSO ALLOW RETAIL, RESTAURANTS, BANKS, LAUNDRY AND DRY CLEANING, MUSEUMS, ART GALLERIES and OUTSIDE ACCESSORY ACTIVITIES.** 14-

308(b) Retail, restaurant, etc. would be added the already permitted offices, business service establishments, artists studios, etc. In the current zoning, high impact, high traffic uses such as retail shop and restaurants are specifically excluded to reduce conflicts with water-dependent uses. The reasoning was that casual, very occasional visitors such as shoppers and restaurant patrons are more likely to endanger themselves, seek parking where none is provided, and interfere with efficient operations by marine uses.

5. **EXPANDS THE EXCEPTION WHICH ALREADY ALLOWS 100% GROUND FLOOR NON-MARINE FOR EXISTING BUILDINGS ORIENTED TO COMMERCIAL STREET.** 14-308 d. As proposed, the pier owners would allow 100% ground floor non-marine in not just existing buildings but also in **NEW CONSTRUCTION**. They would also expand the area to which this applies to include structures within 150 feet of Commercial Street (rather than the current 100 feet). The 100 foot standard for existing buildings was the result of detailed analysis in 2006 and negotiations with Maine's DEP. This change seems to encourage the full build-out of the water side of Commercial Street for restaurants, retail, etc. to a depth of 150 feet, generating more traffic, congestion and interference with the operational requirements of water dependent uses, rather than just providing relief for owners of existing buildings.

6. **DELETES THE ZONING-ENFORCED LINKAGE BETWEEN NEW DEVELOPMENT AND SUPPORT FOR WATER-DEPENDENT USES.** 14-310 By virtue of contract zone standards, the existing zoning prohibits new construction of non-marine uses unless the applicant proves "without the development the site could not otherwise support an economically viable water-dependent use" and the contribution to the marine infrastructure for commercial vessels outweighs the potential negative impacts. The existing zoning requires provisions to ensure that the commercial marine use which is to be enhanced by the non-marine development is not abandoned after the project is developed. The pier owners' proposed zoning, which allows almost all new non-marine development as of right, eliminates the need to prove that it will somehow make a WDU's more viable, will contribute to the marine infrastructure, or will retain a particular marine use over the long term.

7. **ELIMINATES PROVISIONS TO PREVENT CARVING THE PIERS INTO SMALLER PARCELS UNDER DIFFERENT OWNERSHIP, LEAVING EXPENSIVE MARINE INFRASTRUCTURE WITHOUT SUPPORT FROM PORTIONS OF THE PIER WHICH CAN ACCOMMODATE NON-MARINE DEVELOPMENT.** For over 25 years, the policy justification for allowing any non-marine development on the waterside of Commercial Street has been to support the economic viability of water-dependent uses. The current zoning requires non-marine development proposed for new structures to go through a contract zone process to prove the non-marine development will contribute to the viability of one or more water-dependent uses. Similarly the current contract zone requires the applicant to show that there will be no adverse impact on water dependent uses and that nothing has been done since 1/4/1993 to preclude

or impede functional access from the site to the waters' edge. These provisions are all designed to require that non-marine development will provide some benefit to water-dependent uses, and to ensure that ownership of property at, for example, the head of the pier is not separated from ownership of the rest of the pier. In contrast, in the pier owners' proposal, as the permitted uses are greatly expanded, there is nothing to prevent a pier owner from selling off multiple parcels for non-marine development and opting not to reinvest any of the proceeds into water dependent uses or the marine infrastructure. City staff has proposed an important amendment which would require each lot to have at least 75' of frontage on Commercial Street. This would be only a partial fix; for example, if a pier has 150' of frontage on Commercial Street, at least one of the two lots could not be separated from the ownership of the remainder of the pier. However, the retained lot might contain a common accessway to the rest of the pier while the lot which is sold is might be a parcel suitable for Old Port-type development; proceeds from that sale would not have to be reinvested in marine infrastructure. The minimum lot frontage requirement would be improved by the addition of a minimum lot width requirement as measured at multiple places along the pier.

8. DELETES THE REQUIREMENT THAT NEW NON-MARINE DEVELOPMENT BE CONSISTENT WITH PUBLIC VIEW PROTECTION STANDARDS

14-309 A 4; 14-310 a and b. The current zoning has provisions in both the conditional use standards and contract zone provisions requiring new non-marine development to comply with Portland Waterfront Public Access Design Guidelines to the extent practicable, and to the extent not practicable, to provide alternate public visual access opportunities. As written, these public access requirements do not apply to marine uses in either existing or proposed zoning. The proposal would eliminate the requirement that non-marine development retain some kind of visual access to the shore.

9. FAILS TO STRENGTHEN THE PERFORMANCE STANDARDS TO COMPENSATE FOR THE DELETION OF THE NO ADVERSE IMPACT STANDARD

The existing zoning has a no adverse impact on marine uses (specifically WDUs) requirement as the overarching touchstone for the zone. The proposed zoning eliminates it, and relies upon the existing performance standards, with one weak addition, to carry the weight. They are unequal to the task. The added language ("The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.") is unrealistic, lacks enforceable standards, and seems to assume that all future WDUs will involve the transfer of people, vehicles and freight to/from berthed vessels.

From the Portland Society of Architects, provided by email, June 4, 2010 (WBN)

PSA COMMENTS AT THE MAY 25TH PLANNING BOARD WORKSHOP ON THE
CENTRAL WATERFRONT ZONE

PSA suggests the following text changes:

II. Findings....

6. **ADD:** *recognition of the Central Waterfront's national significance as one of the few surviving intact examples of wharfs dating from the 19th Century era of schooner and clipper ship freight transportation. The extension of the street system out onto piers jutting into the harbor is part of Portland's unique identity as well as a testament to an important characteristic of the City's historic role as a center of international trade.*
11. "Surface parking occupies large areas of un-built space in the zone ... **ADD:** *and has a significant negative visual impact on Commercial Street; these areas provide ...* redevelopment opportunities with no displacement of water-dependent commercial activity."

III Vision Statement for....

"... benefits the piers, ..." **ADD:** *Commercial Street, the Waterfront and the City ...*

"... and promoting appropriate access by the public to views, ..." **ADD:** *new non-marine development*

IV Development Policies...

2. "... parking needs of tenants and patrons of development. " **ADD:** *Consideration should be given to alternatives to parking on and adjacent to the piers including use of remote parking lots/structures linked to the WCZ with public transportation. "*
4. "Link non-marine development revenues with marine infrastructure investments..."

Comment:

The rationale for changing the CWZ zoning (which represents a significant change in waterfront policy) is the necessity for pier improvements and the inadequacy of berthing income to cover the required repairs and dredging costs. A realistic mechanism must be identified for linking non-marine development project funds (**not revenues**) to identified infrastructure improvements before this zoning change is adopted. This change should not be adopted on the assumption that a mechanism will be developed in the future – or that projects will realize revenues. Infrastructure improvements should be built into the initial project development costs in much the same way that site improvements are required in projects elsewhere in the city. Since relaxation of use restrictions apply to a degree to the entire length of the piers, any development projects which contain non-

marine uses on the piers should be tied to improvements. It is understood that these investments may not accomplish all the improvements that the piers require.

6. **OMIT:** "Prohibit residential development. ... in the Central Waterfront."

Comment:

The prohibition on residential development is a reaction to poor decisions made by decision makers in the past and should not prevent today's decision makers from making good decisions. There is no reason to assume that housing by its very nature needs to displace active marine uses or prevent visual and physical access to the waterfront. No non-marine use, including housing, can be permitted to displace active maritime use or block access by the public or marine users to the water's edge.

Residential development will diversify activity in the area; increase demand for a variety of retail and commercial offerings there; provide 24-hour presence and security; and increase the development and tax revenue potential of the waterfront. Prohibiting this use will tend to undermine efforts to develop and improve office space elsewhere in the City.

13. "The public consistently requests additional visual and physical access...."

Comment: View Corridors (typically the views obtained down north/south streets) should be specifically referenced and identified in the WCZ zone. These corridors should be protected where they already exist and the opportunity for opening up currently obscured corridor views should be encouraged in future development. Allowing projects to obstruct view corridors if view protection will "...significantly detract(ing) from the development potential of private property" is not a high enough bar for advancing projects that will obstruct unique historic and cultural attributes of Portland. Such view protection should not be extended to views from private property which may be obscured by pier development.

DIVISION 18 of the Zoning Code – Dimensional issues

- The requirement that non-marine commercial buildings on Commercial St. have a **75-foot** minimum frontage on the street is not in keeping with the historic pattern on that side of the street. It will tend to encourage the type of large-scale development that often has a detrimental effect on pedestrian amenity. It might be appropriate to establish a minimum that reflects the minimum already on the street.
- The **45-foot** height limitation on new construction discourages construction of buildings of more than 2 stories; in general a 16-foot floor-to-floor height accommodates ventilation and fire safety equipment installation and servicing in an efficient manner. A 50-foot maximum building height would permit 3 story buildings and still be shorter than other buildings on that side of Commercial St.
- A **35-foot** maximum setback is proposed for new buildings facing Commercial St. In the Old Port Overlay Zone (part of which is within the CWZ) a 10-foot

maximum applies to buildings approved under conditional zoning. Inconsistency and arbitrariness undermines the zoning code and invites waiver requests and violations. A maximum setback should be established for the entire zone. In general PSA supports development that is close to the sidewalk in the most urban parts of the Peninsula.

AH.H(3)

ANNE B. PRINGLE

44 Neal Street Portland, ME 04102-3527 207/774-0437
oldmayor@maine.rr.com

May 24, 2010

Portland Planning Board
389 Congress Street
Portland, ME 04101

Dear Chair Hall and Members of the Board:

As you know, I have been following the property owners' proposal with interest and have not yet taken a position, as I am absorbing the information developed by staff and the public forums, as are you.

That said, as you now embark on looking at the underlying policy, I think two issues must be raised and addressed:

1) First, it has been represented that the fishing industry is all but dead and that the community must recognize that "things have changed" and that now zoning must change. We must ask if the premise is accurate. Is ground-fishing in Maine dead? Do we want to declare it so and move on? Or do we want to be thoughtful in making changes that will affect the industry when it rebounds at some point? Does allowing non-marine uses on the bottom floors set us down a path that will eventually transform our "authentic working waterfront" into something else? Is that what we want to do? As someone recently observed to me, "Union Station was torn down because they said trains would never come back – and trains have come back". I believe that fish, too, will come back and the economic value of the industry is well-documented...

2) It is a huge advance in this debate that we finally have facts to guide policy decisions and I applaud the property owners for coming forth with occupancy information, assisted by staff. It is of particular interest that, as I understand it, pier vacancy rates (with the exception of three piers) are similar to commercial vacancies in the rest of the city. This appears to mean that perhaps the most recent zoning changes have worked and that most pier owners do have a reliable revenue stream.

That is not true of three piers with substantial vacancies: Maine Wharf, Custom House Wharf, and Sturtevant's Wharf. Each has its own "story" as to why vacancies are so high. Historic uses, high acquisition cost, high redevelopment cost, existing condition, substantial deferred maintenance are all interrelated factors contributing to the plight of these wharves. My gut tells me that the changes proposed will not meet the revenue needs of these wharves and they will continue to be vacant and deteriorate. So where will that lead us in five years? Another request to relax the zoning to allow uses not now proposed?

The Old Port Overlay Zone, which allows for substantial new development on the large parking lot areas, was intended to create a pool of additional revenue to be reinvested in the infrastructure of working piers. This should not be overlooked in your deliberations.

As you continue your work on this proposal, please keep in mind that the interest of the public in the working waterfront is long-established. While you have property owners in front of you at every meeting, as you consider these weighty policy issues before you, please continue to keep the larger planning and public interests in mind, too.

Very truly yours.

Att. H (4)

From: Josh Broder <jbroder@tilsontech.com>
To: "wbn@portlandmaine.gov" <wbn@portlandmaine.gov>
Date: 5/7/2010 7:30 AM
Subject: Comments on WCZ plan

Mr. Needelman,

I'm writing in response to a notice sent to me by the city on the WCZ plan being presented by 12 pier and waterfront property owners. I am unable to attend so I am sending in written comment.

I'm a resident of Portland and property owner at 11 South St. near the waterfront, and 801 Brighton Ave. I also own a business on Commercial Street that leases ~4,000 Sq. ft. at 245 Commercial Street.

I'm strongly in favor of making the WCZ more permissive to stimulate new development on the waterfront. The working waterfront has changed, and the fishing industry is not coming back. We need to be working hard to help those property owners attract and retain good tenants that support the expenses of maintaining waterfront property and boosting the tax bases of the city. I would like to see more people living and working on the peninsula, and restrictive rules that keep good tenants off the water front, either residential or commercial, is bad for our city!

Thanks,
Josh

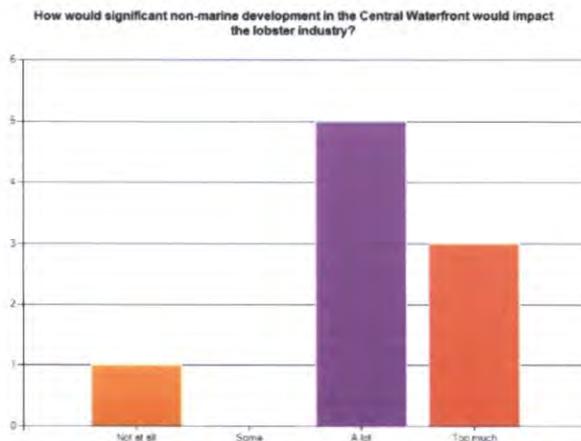
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Maine Lobstermen's Association Survey Results

Submitted by Email, March 3, 2010

1. Do you use a pier in Portland?
 - a. 9 answered question
 - b. 5 yes, 4 no
 - c. Comments
 - i. our lobster dealer & bait supplier are located on a Portland waterfront wharf
 - ii. not presently, but might in future
 - iii. 30 + years
2. If yes, which one?
 - a. Hobson's
 - b. Merrill
 - c. Union Wharf
 - d. Custom House Wharf
 - e. Union
3. How would significant non-marine development in the Central Waterfront impact the lobster industry? 1 not at all; 5 a lot; 3 too much



Comments

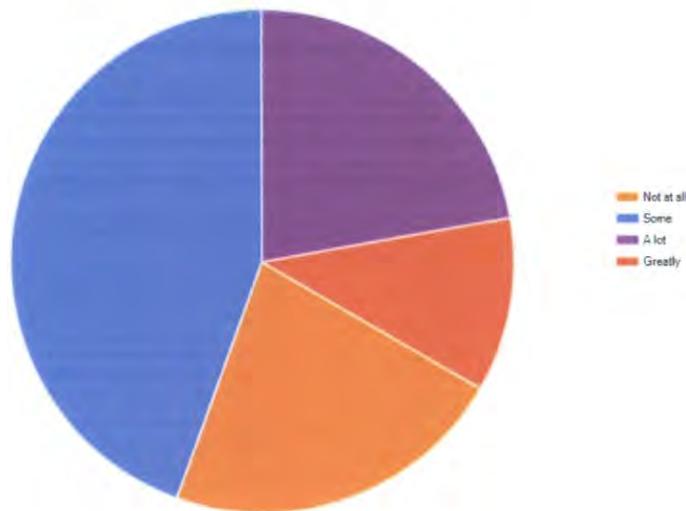
- Pier owners are businessmen. If they can make more money with non marine the lobsterman will de displaced.
 - Rent
 - The street acces is narrow and congested as is; berthing is at a premium for working boats already; the smells and early time of day for working waterfront activities don't work well for many non-commercial entities
 - if its non-marine, then it doesn't need water access and should not be located on the waterfront. Marine related industries NEED the waterfront to exist
 - could eliminate wharf space for commercial boats
4. How would significant non-marine development in the Central Waterfront impact the city of Portland as a whole?

- a. 8 answered "in a negative way" and 1 said "in a positive way"
- b. Comments
 - i. The working waterfront is the draw here, not outlet stores & yachts.
 - ii. Rent
 - iii. tourists coming to Portland want to see a working waterfront, not condos & hotels on the docks. It erodes that which makes the "Maine attraction" draw to the Portland waterfront

5. How have current Portland waterfront policies helped the economic vitality of the area?

- a. 2 said Not at all
- b. 4 said Some
- c. 2 said A lot
- d. 1 said Greatly
- e. Comments
 - i. Kept the surviving fisheries going with a place to conduct business.
 - ii. for who
 - iii. City seems against heavy industry and bent on gentrification of the waterfront.
 - iv. The recession, again, has saved our working waterfront. Case in point: the Ready boys taking over the wharf where a hotel was planned and then scrapped (thankfully)

How have current Portland waterfront policies helped the economic vitality of the area?



6. What elements should be preserved and what elements can be improved for the Central Waterfront zone?

- a. Commercial fishing piers and supporting buisness. The lobster industry is thriving as far as the volume now we must resole the price and marketing issue. I do believe that the ground fish ad scallopes will also come back and we have had a couple real good years on shrimp. These all need a physical place to work from and a infrastructure to support it. No matter what they put in there that is no commercial or non fishing eventually no matter what is said they will object to the noise the smell the early or late commings of boat and workers and will either want them out or to put restrictions on activities. So I do not want to see any change this buisness is hard enough to make a go of it now.
- b. more cruise ships and the tourist

- c. How about help & tax breaks from the city to maintain & improve the piers & buildings used by the working waterfront.
 - d. we need birthing, we all have taken a 60 to 80 percent pay cut!
 - e. prohibit non-marine use from being on the water front; except perhaps upper floors of buildings. Our waterfront is basic infrastructure and needs to be preserved
 - f. tax incentives for working waterfront dock owners who make improvements to their properties (vital infrastructure)
 - g. protect commercial berthing and existing ground floor storage areas.
 - h. Continue to maintain the commercial fishing boat tie-up space and regulation
 - i. The majority of the berthing should remain for the commercial fishing industry. The groundfish industry has moved south so the only truly viable fishery remaining is lobstering. I would encourage tax incentives to the pier owners to keep Portland a working waterfront. Baltimore's inner harbor is beautiful but at the expense of the fishing industry.
7. Any other comments?
- a. we need more trinket shops selling knick nacks... screw the fishing and the merchant seamen that have kept that waterfront going over 200 years!
 - b. Yachts & Yuppies don't mix with Lobsterboats & bait.
 - c. provide dockside 'parking meters' for short term boat tie-ups. Ticket long term boat tie up people. The float near Casco Bay Lines and the Whale wall is abused by long term tie up people especially contractors who work on the islands. This needs better policing so the space can be shared
 - d. Bring back the Scotia Prince. That feery worked because it was attractive to commercial truckers bringing freight to/from maritime Canada. Shame on Jeff Monroe and his cronies that destroyed a system that was working for both the tourist trade and the commercial sector at the same time.
 - e. city wanted me state pier rezoned pier owners say why not them.
 - f. Keep Waterfront access
 - g. What is the vacancy rate of the 1st floor buildings?

Att. H(6)

From: "A.L. Griffin" <info@algriffin.com>
To: "William Needelman" <WBN@portlandmaine.gov>
Date: 11/16/2009 1:19:50 PM
Subject: Re: Waterfront changes

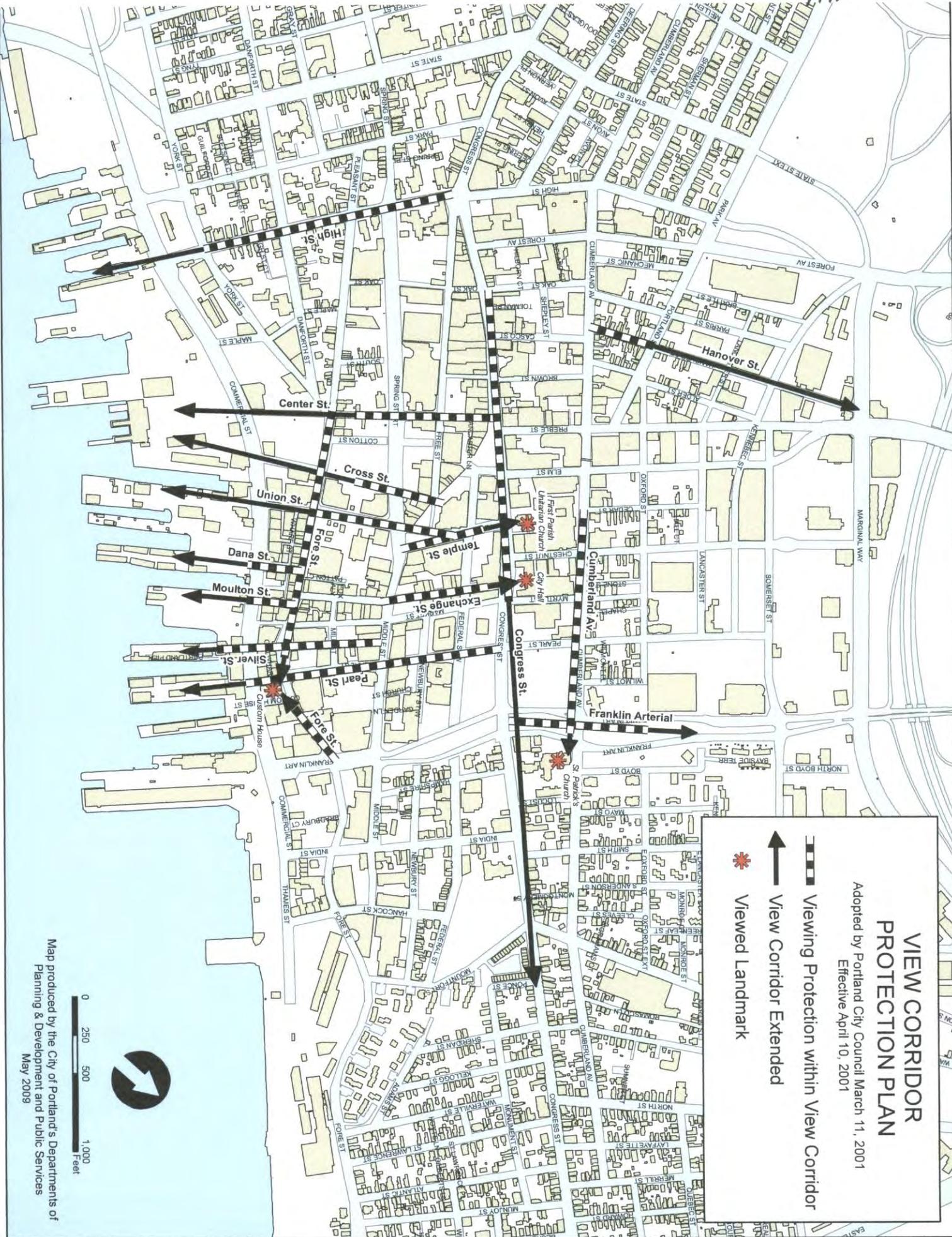
Bill,

The absence of a financial litmus test for those wharf owners complaining is what scares me the most. Wharf owner Charlie Poole has admitted to one reporter I know that he has no vacancies, yet wants these changes. Does this mean that he will "create" vacancies if he can rent to folks who are willing to pay higher rents? My landlord currently has no vacancies. Others who complain that they are having problems finding tenants have no signs up indicating vacancies, or are not actively marketing their vacant spaces, or are such poor managers of their spaces that people don't want to rent from them. How then are they still complaining? Still others involved in this effort are not wharf owners in Portland, nor are they Portland residents, nor do they rent space on Portland wharves, yet they are some of the most vocal supporters of these changes. Am I the only one confused by this? Some of these folks are simply straw men for developers, real estate agents, etc. to front their demands, providing the cover of "concerned citizens" to the process. I hope that the Planning Board will see through these smokescreens!

Best regards,
Mark Usinger

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390 Commercial St.
Portland, ME 04101



VIEW CORRIDOR PROTECTION PLAN

Adopted by Portland City Council March 11, 2001
 Effective April 10, 2001

-  Viewed Landmark
-  Viewing Protection within View Corridor
-  View Corridor Extended

Map produced by the City of Portland's Departments of Planning & Development and Public Services
 May 2009

Waterfront Central Zone



Community Development Committee Recommendation on WCZ Policy and Zoning

Report to the City of Portland, Maine City Council



From the
Community Development Committee:
Councilor Cheryl Leeman, *Chair*
Councilor John Anton
Councilor Dory Waxman

Report Prepared by the
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Process Supported by
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Economic Development Division Director
Lori Paulette
Economic Division Administrator
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Associate Corporation Counsel

December 8, 2010

Waterfront Central Zone: Policy and Zoning Process
Community Development Committee Recommendation
December 2010

The following report builds upon the work of the Portland Planning Board, as reported to the City Council by report dated June 16, 2010 in support of Council Order #271 and #272-09/10.

The Community Development Committee's recommendations are reflected in competing Council Orders #101 and #103-10/11.

Acknowledgements:

The Community Development Committee and City Staff acknowledge and thank the many citizens, Planning Board members, fishermen, design professionals, State agencies, pier owners, and business owners who have dedicated countless hours to the Waterfront Central Zone planning process. While the documents forwarded to the City Council may not represent a consensus agreement between all parties on all issues, the resulting policies and land use ordinance texts have materially benefited from all voices. Throughout the process, all parties have agreed that Portland's Waterfront is an irreplaceable resource with enormous opportunity and is worthy of protection.

I. Introduction

The Community Development Committee (CDC) has completed a review of policies and zoning for Portland's Central Waterfront and submits this report for the City Council's consideration. The WCZ policy and zoning evaluation establishes a framework for expanded non-marine uses in the Central Waterfront, while retaining protections for marine and water dependent uses.

The CDC's recommendations build upon the work of the Portland Planning Board, as reported to the City Council by report dated June 16, 2010 in support of Council Order #271 and #272-09/10. The Community Development Committee's recommendations are reflected in competing Council Orders #101 and #103-10/11.

Background:

The Waterfront Central Zone (WCZ) Policy and Zoning Process began with a December 2008 request to the CDC from a group of commercial pier owners to relax zoning in the Central Waterfront. The current WCZ zoning is highly protective of marine uses and largely restricts new non-marine development to certain existing structures. Reflecting on the Pier Owners' statements that the marine economy had retracted and piers need continual maintenance investment, CDC directed city staff to assist the Pier Owners in drafting revised zoning text with more non-marine opportunities for the Planning Board and Council to review.

Completed in September 2009, the Pier Owners' initial application for zone text amendments included expanded non-marine uses beyond the scope of current Comprehensive Plan policies. The Planning Board found that the Pier Owners' request, if it were to be properly considered, required a re-evaluation of current waterfront land use policies, which had not been revised since their creation in 1992. The Planning Board, therefore, embarked on a policy and zoning evaluation to understand the marine economy in the Central Waterfront, as it stands now, and craft policies and zoning that reflect current conditions and goals for the zone. The process was comprehensive and included an extensive inventory of the land, piers, buildings, vessels, businesses, and employment in the zone. The Board also held a site visit, conducted public forums, and held multiple meetings to discuss the policy and zoning for the Central Waterfront.

The Board's work resulted in Comprehensive Plan and zoning text amendments for the City Council's consideration. As presented to the Council in June of 2010, the Board's recommendations were largely reflective of the Pier Owners' application and supported by the findings of their process. The Planning Board's policy and zoning recommendations, along with an extensive report of their process, are provided under separate cover and form the foundation of the CDC's work.

Prior to acting on the Planning Board's recommendations, the Council postponed the Orders to allow the Community Development Committee, as the originator of the process, opportunity to review, revise and make recommendations on the proposed amendments. From July to October of 2010, the Committee met 5 times to reviewed WCZ material and prepared revised text and recommendations for the Council. The results of the CDC's work are documented in this report for presentation at the December 13, 2010 City Council Workshop and provided as support for the December 20, 2010 Public Hearing.

II. CDC Process

Beginning with the Pier Owners' initial request for relaxed zoning, through the Planning Board process, and following the Planning Board's recommendation, the

CDC has been a consistent presence in the WCZ process. A summary of the CDC's participation in the process is provided below:

- December 8, 2008: CDC hears Pier Owner concerns and directs Planning Staff to assist with the preparation of revised zoning text for application to the Planning Board.
- February 2, 2010: Planning Staff presents to the CDC a process update of the Planning Board process to date.
- June 23, 2010: Planning Staff presents a summary of the Planning Board process results in advance of the City Council review.
- July 14, 2010: Planning Staff presents to the CDC a report of the Planning Board's recommendation to the City Council.
- August 11, 2010: Following a Council Workshop, CDC held a meeting with a detailed discussion on issues including: Linkage between new non-marine development and marine infrastructure investment; Displacement of marine uses; Combining the "150 foot Commercial Street Buffer" with the "Old Port Overlay Zone" to create a by-right non-marine use area; and, Public Access. The committee also discusses proposed changes to the WCZ Policy Statement.
- September 15, 2010: CDC continues discussion of the above issues, along with others details. Pier Owners indicate that their requested text amendments will be revised to address concerns expressed by lobstermen.
- October 13, 2010: The Pier Owners present alternative text to the CDC addressing concerns of lobstermen.
- October 27, 2010: The CDC discusses and votes on revised zone text and corresponding changes to the underlying policies. The CDC's zone text is based on the following:
- The Pier Owners' original application for rezoning,
 - The Planning Board's July 13, 010 recommendations,
 - The Pier Owners' later requested amendments through:
 - A September 13 letter from the Pier Owners;
 - October 13 edits through Attorney Barbara Vestal (working with lobstermen representatives); and,
 - Further October 18 edits by Attorney Joe Stevens (which removed or modified some of the provisions attached to the October 13 draft)
 - CDC recommended edits to combine the "Old Port Overlay Zone with the proposed "150 foot Rule"
 - Staff clarifications and clerical edits
 - A new outline suggested by Councilor Anton.

A description of the CDC's recommendation is provided below in Section V.

III. Material for Review : Council Order #101-10/11 (Policy) and Council Order #103-10/11 (Zone Text)

The CDC's work is fundamentally based on the Pier Owners' original request and the Planning Board's recommendation. The text has, however, evolved since submitted to the Council in Orders #271-09/10 and #272-09/10. The CDC's draft zoning text incorporates and responds to amended requests by the Pier Owners that came forward during the CDC's review. The Pier Owners' later amendment requests were largely a response to concerns by commercial fishermen and, accordingly, the CDC's draft is a more conservative document than produced by the Planning Board.

Other issues, such as required "linkage" between non-marine development and marine infrastructure investment, were recommendations of the Planning Board that have been incorporated into the CDC's draft.

Differences between the CDC's Orders and the Original Orders

- Edits recommended by the Planning Board at their July 13, 2010 Public Hearing.
- Pier Owners' requests reacting to lobstermen concerns over displacement, parking and access.
- CDC generated amendments – mostly suggested by Councilor Anton – including:
 - Creating a Non-Marine Use Overlay Zone – NMUOZ – by combining the Pier Owners' suggestion for a non-marine use 150-foot strip of land adjacent to Commercial Street with the existing "Old Port Overlay Zone" for contract or conditional rezoning.
 - Adding a "linkage" provision to the NMUOZ
 - Adding a "lot width" requirement associated with the NMUOZ
 - Amending the non-marine parking standards – moved from Conditional Use to the Performance Standards
 - Re-structuring the zone text outline – creating significantly different looking document.
 - Other clarifying edits.
- Planning and Legal Staff edits including
 - Clarification of review authority for the performance standards.
 - Deletion of text in rezoning standards: "air, light...shadowing.."
 - Other clarifying edits.

Attached to this report, are two side by side documents that summarize the evolution of the two orders from the Planning Board recommendation to the CDC drafts. These documents were also included with the agenda item request for Orders #101 and 103-10/11.

Attachment 1 is a four column table summarizing: (1) the current WCZ text; (2) the Pier Owners' original request – as recommended by the Planning Board; (3) the Pier Owners' revised requests that came to the CDC; and (3) the CDC recommended text. While long and somewhat dense, the document is useful as a tracking guide for individual issues and a record summary for the zone text amendment process.

Attachment 2 is a two column summary of the WCZ Policy Statement drafts, with the CDC's draft compared to the Planning Board draft.

Zone Text – Summary of CDC Zoning Draft: Council Order #103-10/11

The red-lined amendments to chapter 14 in the CDC's order show both substantive amendments, as well as the relocation of much of the text into a new outline. A "clean" version of the CDC's recommended draft, without the tracked edits, is also provided in your back-up materials provided by Corporation Counsel. The clean version appears as the text would read if adopted and is a more approachable document than the "redline" order.

Specific areas of change (compared to the original text) are listed below. To compare the CDC's recommendations to the Planning Board's recommendation, please refer to Attachment 1.

CDC Recommended amendments, incorporating the Pier Owners' requests and the Planning Board recommendations:

1. Amended "purpose" text strengthening the basis for expanded non-marine use;
2. Elimination of the "no adverse impact on marine use" provision;
3. Creation of a 100% non-marine use overlay zone (NMUOZ) located along Commercial Street with associated development standards (map provided in Attachment 3);
4. Allowance of 45% non-marine use of ground floors and pier space outside of the NMUOZ, with associated development standards, including requirement to offer 1st floor space to marine uses prior to filling with a non-marine use;
5. Expansion of retail and restaurant uses throughout the zone (subject to the 45% allowance noted above, outside of the NMUOZ);
6. Redrafted standards for contract/conditional rezoning with fewer restrictions on use;
7. Elimination of the "Commercial Street/Old Port Overlay Zone" for contract rezoning (as redundant to the "NMUOZ" above);
8. Expanding the building height allowance from 45 feet to 50 feet;
9. Creation of Commercial Street *lot frontage* minimums (75 feet) and *lot width* minimums (50 feet, applied within the NMUOZ);

10. Designation of the Planning Authority as the reviewing body for certain performance standards;
11. Deletion of text in rezoning standards: “air, light...shadowing..”
12. Elimination of parking requirements and changes to standards for non-marine use parking;
13. Clarified and strengthened performance standards protecting marine uses;
14. Creation of public view protection standards applicable to all development (previously applied only to conditional uses and re-zoning;)
15. Clarifying minor amendments through out the text and,
16. Comprehensive reorganization of the outline of the zone text.

The proposed text does not expand non-commercial berthing and does not expand opportunities for residential development.

Policy Statement - Summary of CDC Recommendations: Council Order #101-10/11

The policy statement is new material suggested for the Comprehensive Plan as a basis for the rezoning. The differences between the City Council Order # 271-09/10 and the CDC’s recommendation (Order # 101-10/11) are not as extensive as the zone text changes described above:

1. The CDC suggests clarifying text in the *introduction* and *findings* section of the document;
2. The CDC’s draft policy statement “accepts” amendments that the Planning Board recommended to the *Vision Statement*; and,
3. The original text of Order #271-09/10 promoted a *prohibition on residential use* in the zone, while the Planning Board was *open to exploring residential use* within the WCZ. The CDC draft is *silent* on the topic.

IV. SIGNIFICANT ISSUES WITH STAFF ANALYSIS

The following issues were subject to significant Committee discussion and public testimony during the CDC’s process and are highlighted for the benefit of the full City Council.

Marine Use Displacement:

The issue of marine uses being displaced by non-marine uses is addressed in the new text in Section 14-311 (a) *Standards for non-marine uses located outside of the NMUOZ*. This section is sometimes referred to as the “55% rule” referring to the requirement that away from Commercial Street, 55% of 1st floors and open space must be reserved for marine use. This section additionally requires that for vacant space or changes of occupants, the pier owner must market and make space available to marine users for a period of 60 days prior to filling space with a

non-marine user. The intent of this provision is that marine tenants looking to locate or relocate within the zone will have first opportunity for space prior to occupancy by new non-marine users. Likewise, pier owners will not be required to leave spaces vacant for lack of a marine tenant if permissible non-marine tenants are available.

The lobster fishing community (with approximately 100 vessels located within the WCZ) has identified *displacement* as a pivotal issue. During the CDC process, Pier Owners and representatives of lobstering community negotiated compromise concepts to address displacement and other issues as was reported to the CDC in a September 13 letter. A zone text draft based on the agreement was produced on the Pier Owners' behalf with the assistance of Attorney Barbara Vestal that included language that would require that "*(t)here shall be no displacement of any marine use occupying space in the zone at the time of enactment of this provision.*" This draft additionally included parameters for regulating terminations of tenant occupancy and changes of terms of private leases.

The Pier Owners' attorney, Joe Stevens, City Corporation Counsel and Planning Staff recommended against the "no displacement text" as drafted and this text is not included in Order #103-10/11. The provisions applied to individual *tenants*, not generalized *uses*, as is typical of zoning text. As *zoning*, the text was also problematic in that it only applied to tenants in occupancy *as of enactment*, and therefore its applicability would be subject to private lease dates and would not protect future marine tenants beyond the 60-day marketing period. The City would also need to track individual lease arrangements pier by pier over time. Inevitably, the City would be in the position of arbitrating between tenants and landlords over lease issues that are more appropriately addressed through private negotiations.

NOTE: As of the writing of this report, the Pier Owners are again proposing adding "not displacement" text into the zoning. The proposed text was circulated by letter to the City Council dated December 7, 2010 and is included with this report as Attachment #6. Legal staff has reviewed the proposal and provided comments to the Council under separate cover. City staff will be available to answer questions on the proposed text at the December 13th workshop.

One should note that the Pier Owners are no longer asking for any additional non-commercial *berthing*, meaning that displacement of *vessels* is not anticipated. Some lobstermen expressed concerns to the CDC that pier owners may keep berthing vacant to ensure compatibility for higher paying non-marine uses who may not want to be next to the odors, noise and activity of fishing vessels. Given that commercial berthing is a significant revenue source for pier owners, one would not expect intentional vacancies to be a widespread problem.

The lobstermen's concerns over displacement are not unfounded for space currently being leased at below market rates, as may be found on some piers. Interior shop space and storage, exterior gear storage, and parking, are all uses associated with marine uses. Pier owners have, throughout the WCZ process, testified that low rents generated by such uses are insufficient to maintain the piers. Likewise, the vacancy rate of first floor uses is well below the maximum 45% non-marine uses potentially allowed on each property. Taken together, there is a foreseeable, if not intentional outcome to either: raise rents on lower paying marine uses, or replace these uses with higher paying non-marine uses.

Casual observation of many WCZ piers shows buildings and open space in need of significant repair for both occupied and vacant space. The Pier Owners reported in October of 2009 that first floor marine rental rates in the WCZ were in the \$2.90-\$12.00 per square foot range with many at \$5.00 per square foot or lower (Attachment 4.) One would expect such a wide variation in rates to be influenced by the condition of the spaces offered and that lease rates are correlated to condition, services and amenities offered.

The Pier Owners' assertions are that higher rents will justify re-investment in the space, and that the status quo will result in continued degradation of infrastructure. Lobstermen are concerned that higher rents and/or less space available for marine use will result in a loss of access to affordable berthing, loading, storage and support services (such as bait) and ultimately to less marine activity. Both arguments are compelling.

Non-Marine Use Overlay Zone – Linkage

Both current and proposed policies allow more non-marine development along Commercial Street than elsewhere in the WCZ. Within the current zone text, existing buildings near Commercial Street have no marine use requirement. Additionally, there are conditional/contract re-zoning standards for a portion of the zone located between and including Long Wharf (Dimillos) and Union Wharf. This so-called *Commercial Street/Old Port Overlay Zone* allows applications for rezoning to include 100% non-marine development. The Pier Owners' amendments include a request for by-right 100% non-marine development within 150 feet of Commercial Street along the entire zone. Both of the above are included in the Planning Board's recommendation.

The CDC's draft, through an amendment offered by Councilor Anton, creates a single *Non Marine Use Overlay Zone*, which combines the Old Port Overlay with the 150-foot non-marine use strip. The CDC's text defines the NMUOZ in Section 14-306, provides development standards in Section 14-311(b), and removes the Old Port Overlay Zone. The application map for the NMUOZ is provided in Attachment 3.

Related to the NMUOZ is the issue of "linkage." Following a recommendation by the Planning Board, the NMUOZ standards include requirements that non-marine

uses within the overlay invest 5% of project costs over \$250,000 in marine infrastructure – either through physical improvements to their own pier or by contributions to a City loan fund. The Economic Development Division has confirmed the existence of the *Portland Waterfront Loan Program*. If the *linkage* provision passes, Economic Development Division will work with the Downtown Portland Corporation to develop rules for collecting and managing “linkage funds” as they may accumulate from WCZ non-marine development.

Public Access:

During the entire WCZ process, the public has expressed a strong desire for increased public access to the water. At the March 3rd Public Forum, increased public access was the single issue discovered over which there was near consensus from all participants. The Pier Owners recognized this issue as important, and with the assistance of a volunteer architect, Buell Heminway, produced a concept public access plan for the CDC to consider. The Pier Owners went so far as to suggest that non-marine development could be tied to public access by means of development standards requiring access licenses, which could be amended if needed. While these efforts were laudable, Corporation Counsel recommended against tying public access to zoning due to potential “takings” claims.

While zoning may not be the appropriate vehicle to further the public’s access to the water, City Staff thanks the Pier Owners and Mr. Heminway for their efforts and encourages further discussions on achieving the goal.

Retail and Restaurant Uses

Restaurant and retail uses by their nature generate significant pedestrian activity. The Pier Owners’ application, recommended by both the Planning Board and the CDC, would expand restaurant and retail use “out on the piers” (subject to the 45% limits described above and the WCZ performance standards.) The Committee received testimony expressing concerns over introducing “wandering” pedestrians in an industrial environment – both for the marine uses on the pier and the safety of the pedestrians.

The performance standards of the zone address these compatibility and functional issues and describe how non-marine uses will need to be designed and managed to compatibly exist with higher priority marine uses. The performance standards, as they exist in current language and as strengthened by the Planning Board and the CDC, provide tools and guidance to design, manage, and regulate the desired compatibility.

Staff is confident that the standards are sufficient to protect the function of the piers, provided that they are rigorously enforced. New non-marine use applications will need to show lighting, pathways, and segregated use areas that

keep the piers working and protect the patrons of all uses. In applying the performance standards, staff will be looking for new non-marine uses to show where pedestrian circulation will occur and to demonstrate how such uses will safely and functionally coexist with higher priority marine uses.

Certain piers will more easily accommodate pedestrian oriented activity than others. Portions of piers that are too narrow to provide safe passage of pedestrians without constraining truck access to berthing will likely be found to incapable of housing pedestrian activity. Such applications will predictably be denied under the performance standards.

V. CDC RECOMMENDATION

Toward the conclusion of the CDC's extensive WCZ process, many important issues were resolved, while others remained difficult.

It was generally accepted that increased non-marine development opportunities were warranted in the zone. Moreover, Commercial Street, with its history of mixed use and its growing prominence as a tourism and business center, emerged as the best location for the most intensive non-marine development. The NMUOZ, endorsed by the entire Committee, supports this recognition and has received little objection from the public. Likewise, non-marine use of upper floors in new development beyond Commercial Street has generated little opposition.

Where legitimate differences of opinion emerged, as articulated by lobstermen, the Pier Owners, and members of the Committee, centered on the extent and nature of first floor non-marine use away from Commercial Street.

During the Committee's final meeting, Mr. Anton had offered amendments that would restrict restaurant and retail use and continue to require 100% marine use on first floors out side of the NMUOZ. These amendments failed 1-2 (Councilors Leeman and Waxman against.)

In making their recommendation on Orders # 101 and #103-10/11, the Committee split 2 to 1 (Councilors Leeman and Waxman for, Anton against). Committee members in the majority expressed confidence that the standards language of the new zoning (including the marketing provision and improved performance standards) would adequately protect marine uses, while allowing greater opportunities for the pier owners to invest in their properties. In voting against the policy and zone text, Councilor Anton expressed support for expanded non-marine use along Commercial Street; but, his concern over compatibility of pedestrian-oriented uses and potential displacement of marine uses outside of the NMUOZ outweighed the potential advantages of expanded first floor non-marine development opportunities.

Attachments:

1. Comparison Table of Zone Text Summaries –Current, Planning Board, Pier Owners, CDC
2. Policy Statement Comparison Table – Planning Board to CDC
3. NMUOZ Map
4. Pier Owners Occupancy Report, October 2009
5. Public Comment and Letters
6. Pier Owners’ Letter offering “no displacement” text, December 7, 2010

Council Orders: **Provided under separate cover**

1. Policy Statement for the Waterfront Central Zone, #101-10/11
2. Waterfront Central Zone Text amendments, #103-10/11

Related Material:

Waterfront Central Zone Policy and Zoning Process Report, June 16, 2010 with July 20, 2010 Planning Board Recommendations to the Portland City Council Addendum.

CDC Meeting Minutes – available from the Economic Development Division upon request

WCZ Text Summary – Current Text Compared to Planning Board Recommendation, Pier Owner Revisions dated 10/18/10, CDC recommendations from the 10/27/10 meeting
November 18, 2010

<p>Current Text Summary</p> <p>Highlighted text shows selected language that has been suggested for edits by either the Pier Owners or the Planning Board and is still under discussion.</p>	<p>Council Order #272-09/10 Pier Owners' Text, as recommended by the Planning Board (additional Planning Board text highlighted in Yellow.</p> <p>(Yellow text will need to be amendments to the Council Order.)</p>	<p>Pier Owners' Revisions - concepts based on October 18 submissions to the CDC.</p>	<p>Council Order #103-10/11 CDC Recommended Text incorporates Pier Owner 10/18/10 requests and Planning Board recommendations organized on a new outline. Note: The amendments are presented in the order of the current outline to allow comparison.</p>
<p>Sec. 14-305. Purpose. "The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose".</p> <p>Hierarchy of uses outlined (water-dependent, marine related, non-marine) and the role of non-marine use described.</p>	<p>Sec. 14-305. Purpose. Comparable text retained. Role of Non-marine use clarified, and more strongly encouraged. "Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. Non-marine uses are encouraged provided that they do not interfere with and are not incompatible with first and second priority uses"</p> <p>The role of Commercial Street as an economic center highlighted.</p>	<p>No change</p>	<p>Included in the CDC draft</p>
<p>Sec. 14-306. No adverse impact on marine uses.</p> <p>Performance standard that prohibits the displacement of water-dependent uses by nonwater-dependent uses and limits their location.</p>	<p>Sec. 14-306. 50% Ground area marine use minimum.</p> <p>All reference to "adverse impact" removed from the WCZ text by Pier Owners' request.</p> <p>Replaced with <u>marine use minimum</u> (applied 150' away from Commercial Street.)</p> <p>(a) 50% Marine use required on first floors (measured building by building);</p> <p>(b) 50% Marine use required for all open areas: After subtracting areas used for common circulation drives</p> <p>(c) Limitation on accessory outside activities. 35% of the ground floor area of the primary non-marine use</p> <p>(d) Marine Compatibility</p>	<p>(a) 55% marine use required on first floors (measuring the pier in aggregate)</p> <p>(b) 55% Marine use required for all open areas: After subtracting areas used for common circulation drives</p>	<p>Included in the CDC draft – subject to development standards.</p>
<p>Sec. 14-307. Definitions. Lot shall mean any abutting property under common ownership.</p> <p>On-Site shall mean that portion of any lot included within or directly impacted by a proposed development.</p>	<p>Sec. 14-307. Definitions.</p> <p>Add: <i>Common circulation drives:</i> private driveways, roadways, and circulation areas accessible to all on-site tenants and/or occupants of a lot within the WCZ providing access from/to the public street network.</p>	<p>No change</p>	<p>Add definition of the "Non-Marine Use Overlay Zone" The NMUOZ creates a sub-area within the WCZ for 100% non-marine use – subject to development standards and a "linkage" provision</p>
<p>Sec. 14-308. Permitted uses.</p> <p>Subject to a determination that the proposed use meets the standards of section 14-306 (no adverse impact on water-dependent uses), the following uses are permitted in the waterfront central zone:</p> <p>(a) Marine: Wide range of marine uses, both water-dependent and nonwater-dependent. Non-Commercial berthing limited to 50' per pier.</p> <p>(b) Commercial and industrial uses above the ground floor level in buildings in existence on January 4, 1993: General office and industrial uses</p> <p>(c) Public: parks...</p> <p>(d) Commercial uses in existing buildings located along Commercial Street: (for buildings starting within 35' of Comm. St., use can extend no further than 100' from Comm. St.) General office, retail, and restaurant...</p> <p>(e) Other: Accessory uses: (nonwater-dependent parking not an accessory use), Street vendors.</p>	<p>Sec. 14-308. Permitted uses.</p> <p>Subject to a determination that the proposed use meets the standards of section 14-306 ("50% Rule"), the following uses are permitted in the waterfront central zone:</p> <p>(a) Marine: Non-commercial berthing expanded to 100' per pier; Use added - Harbor security and emergency response services including but not limited to Harbor Master, Marine Patrol, and Coast Guard.</p> <p>(b) Non-marine Commercial and industrial uses: Upper and lower floor uses in existing and new buildings. Use list includes general office, retail, restaurant, studios, industrial uses...</p> <p>(c) Public: parks...</p> <p>(d) Commercial uses in buildings located along Commercial Street: Within 150 of Commercial St, new or existing devel., not subject to the marine use requirements of the "50% rule." Subject to siting standards – 25' set back from pier edge, max 35' set back from Commercial St (on lots with < 75 feet of street frontage)</p> <p>(e) Other: Accessory uses (minor edits: non-commercial marine parking not an accessory use), Street vendors.</p>	<p>Non-commercial berthing: additional non-commercial berthing no-longer requested. New "displacement" text added.: A "non-marine berth (non-commercial assumed) may not displace a marine berth at any other dockside space."</p> <p>Still requested</p> <p>Reference to "55%" amended</p> <p>"Linkage" text added here -only applied to Commercial uses in buildings located along Commercial Street. The value of marine infrastructure investment is 5% of the value of non-marine construction over \$250,000.</p>	<p>Included on the CDC draft – no change to the current text. No increase in non-commercial berthing</p> <p>Supported by CDC through inclusion in the NMUOZ</p> <p>Included in development standards for the NMUOZ</p>
<p>Sec. 14-309. Conditional use standards.</p> <p>(a) Conditional use standards: <i>Marine compatibility: Access for marine use: Parking and traffic circulation (plan required:.) Pier access/congestion, Public view protection</i></p>	<p>Sec. 14-309. Conditional use standards.</p> <p>(a) Conditional use standards: <i>Marine compatibility: Access for marine use (Minor edits): Parking and traffic circulation (plan required:.) Pier access/congestion, Public view protection (Standard Eliminated)</i></p>	<p>No change</p> <p>No change</p>	<p>Conditional use standards for parking eliminated with many of the concepts moved to the performance standards for parking</p> <p>Public view protection standard moved to the performance standards – applicable to all development</p>
<p>(b) Conditional uses: (each subject to specific standards)</p> <p>1. Parking for marine uses that are not water-dependent.</p> <p>2. Parking for (a) conditional uses; (b) non-marine uses either allowed in buildings located within 35 feet of Commercial Street or uses permitted only above ground floor level, and/or (c) uses allowed under conditional or contract rezoning:</p>	<p>(b) Conditional uses:</p> <p>1. Parking for non-marine uses (parking for marine use that are nonwater-dependent are permitted accessory uses).</p>	<p>No change</p>	<p>Eliminated. All parking governed by new performance standards</p>

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<p>(b) Conditional uses: Continued</p> <p>3. <i>Noncommercial vessel berthing of fifty (50) linear feet or greater per pier</i></p> <p>4. <i>Fish by-products processing,</i></p> <p>5. <i>Boat rack storage facilities,</i></p> <p>6. <i>Expansion of a non-marine use permitted located within 35 feet of Commercial Street – limited to 3000 sq ft.</i></p> <p>7. <i>Residential: for a primary owner of a marine business – 1/pier, 750 sq ft / unit</i></p> <p>8. <i>Utility substations: limited</i></p> <p>9. <i>Expansion of an upper floor non-marine use – limited to 2000 sq ft.</i></p>	<p>(b) Conditional uses: Continued</p> <p>2. <i>Non-commercial vessel berthing of greater than fifty Percent of the linear pier edge (should read "greater than 100' of ...pier edge.) drafting error.</i></p> <p>3. <i>Fish by-products processing</i></p> <p>4. <i>Boat rack storage facilities (parking clarified)</i></p> <p><i>No longer needed (allowed as permitted)</i></p> <p>5. <i>Residential: for a primary owner of a marine business – 1/pier, 1000 sq ft / unit.</i></p> <p><i>Utility substations: limited</i></p> <p><i>No longer needed (allowed as permitted)</i></p>	<p>Non-commercial vessel berthing expansion Eliminated -</p>	<p>Non-commercial vessel berthing expansion Eliminated -</p>
<p>Sec. 14-310. Contract or conditional rezoning Contract or conditional rezoning subject to section 14-306 (no adverse impact) and the applicable standards of contract/conditional rezoning contained herein:</p> <p>(a) New structures with marine uses on first floors or change of use of upper floors of structures constructed after January 4, 1993:</p> <p>1. The upper story non-marine use is a use listed 14-308(b);</p> <p>2. The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-308(a) excepting circulation areas, such as unoccupied vestibules, elevators, and/or stair landings serving upper floors uses) may occupy no more than three-hundred (300) square feet.</p> <p>3. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.</p> <p>4. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.</p> <p>5. 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, and visual and physical access to the waterfront for the general public.</p> <p>6. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).</p> <p>7. The non-marine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to planning board review under section 14-309(a)3.a. and 14-309(b)2 (conditional use, parking).</p> <p>8. The development is consistent with conditional use standard 14-309(a)4. (public view protection).</p> <p>9. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-308(a) and that said use is not abandoned after the project is developed.</p>	<p>Sec. 14-310. Contract or conditional rezoning Contract or conditional rezoning subject to Section 14-306 "50% Rule" Conditional or Contract Rezoning Standards; or (b) Commercial Street/Old Port Overlay Conditional or Contract Rezoning Standards</p> <p>(a) "50% Rule" Conditional or Contract Rezoning Standards;</p> <p>1. The ground level floor area of any building, existing or proposed, on the subject lot and the un-built area of the subject lot shall be subject to and meet the requirements of Section 14-306 {the 50% Rule} of this code.</p> <p>2. Residential dwellings are prohibited. <i>The conditional rezoning standards are otherwise silent on "use", allowing a greater range of applications for rezoning.</i></p> <p>3. The development is consistent with the comprehensive plan and without the development the site could not otherwise support an economically viable water-dependent use.</p> <p>4. Any physical or legal impediments which preclude or impede functional access from the site of the development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.</p> <p>5. 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, and visual and physical access to the waterfront for the general public.</p> <p>6. The development responds to any unique physical conditions and development opportunities along the shoreline in a manner that is consistent with section 14-305 (purpose).</p> <p>7. The non-marine portion of the proposed development will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing; and will not adversely affect the efficient operation of marine uses, such as producing less efficient traffic, parking or circulation patterns. Parking for the non-marine portion of the proposed development shall be subject to planning board review under section 14-309(a)3 and 14-309(b) (conditional use, parking).</p> <p><i>Eliminated</i></p> <p>8. The rezoning contains adequate provisions and/or conditions to ensure that any associated water-dependent infrastructure remains occupied by any commercial marine use as listed in 14-308(a) and that said use is not abandoned after the project is developed.</p>	<p>Reference to "55%" amended</p> <p>Reference to "55%" amended</p> <p>Retained</p> <p>No change</p>	<p>Standards Moved to the "development standards" section and amended to be consistent with the NMUOZ and 55% Development standards. Otherwise consistent with Pier Owner requests.</p> <p>Eliminated the text below from standard 7. <i>"will not significantly restrict air or light for marine uses located in the immediate vicinity; will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing"</i></p> <p>Public View protections moved into the performance standards.</p>
<p>(b) Commercial Street/old port overlay zone: Standards applicable to the Commercial Street/old port overlay zone, which extends from the easterly property line of Long Wharf to the westerly property line of</p>	<p>(b) Commercial Street/old port overlay zone: Standards applicable to the Commercial Street/old port overlay zone, which extends from the easterly property line of Long Wharf to the westerly property line of Union Wharf. For a</p>	<p>No change</p>	<p>Eliminated as redundant with the creation of the NMUOZ</p>

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<p>Union Wharf. For a site within the old port overlay zone, the applicant may request application of these standards rather than the standards of (a) above.</p> <p><i>Re-zone standards for rezoning of structures with no marine uses.</i></p> <ol style="list-style-type: none"> 1. 75' set back spring tide line (or 25' set back if approved by DEP) 2. Uses limited to those permitted under section 14-308(d) (commercial uses in buildings existing on January 4, 1993 and located within thirty-five (35) feet of Commercial Street), except that in the case of restaurant, retail, or service establishments, the main entrance to the use shall be within ten (10) feet of Commercial Street. 3. Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993. 4. 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 ongoing maintenance of the marine infrastructure for commercial vessels (either on-site or off-site), and visual and physical access to the waterfront for the general public. 5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patters. All parking for the non-marine portion of the proposed development shall be subject to sections 14-309(a)3.a. and 14-309(b)2 (conditional use, parking). 6. The proposed development is consistent with conditional use standard 14-309(a)4. (view corridor protection). 7. The development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses (e.g. taking up space that could be used by water-dependent uses for support functions, and contributing to traffic congestion and circulation patterns which will make it more difficult for water-dependent uses to function) by making a contribution as detailed in (9) below. 8. Maximum building setback from the southerly sideline of Commercial Street shall be no more than ten (10) feet. 9. A developer is required to mitigate impacts of non-marine development. Mitigation may include dredging, pile replacement, new or replaced structural decking (but not resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, or any combination of similar improvements. In determining the amount of required mitigation, the value of the contribution shall be not less than the greater of five percent (5%) of total project costs or ten dollars (\$10.00) per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. Required mitigation may occur by one or both of the following methods: <ol style="list-style-type: none"> a. Direct investment in marine infrastructure: Mitigation shall be for the benefit of water-dependent uses listed in 14-308(a), and shall include commitments to utilize those improvements over time for permitted water-dependent uses on site or within the same lot. b. Financial contribution: As an alternative to direct investment, the developer may choose to make a financial contribution to the city's waterfront loan and investment fund. 	<p>site within the old port overlay zone, the applicant may request application of these standards rather than the standards of (a) above.</p> <p><i>Re-zone standards for rezoning of structures with no marine uses.</i></p> <ol style="list-style-type: none"> 1. 75' set back spring tide line (or 25' set back if approved by DEP) 2. Residential dwellings are prohibited. <i>The conditional rezoning standards are otherwise silent on "use", allowing a greater range of applications for rezoning.</i> 3. Any physical or legal impediments which preclude or impede functional access from the site of the proposed development to any portion of the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993. 4. 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 ongoing maintenance of the marine infrastructure for commercial vessels (either on-site or off-site), and visual and physical access to the waterfront for the general public. 5. The non-marine portion of the development will not significantly restrict air or light for marine uses located in the immediate vicinity, and will not create significant adverse local climatic effects on marine uses such as increased winds or shadowing, and will not adversely affect the efficient operation of marine uses, such as by producing less efficient traffic, parking or circulation patters. All parking for the non-marine portion of the proposed development shall be subject to sections 14-309(a) and 14-309(b)1 (conditional use, parking). <p><i>Eliminated</i></p> <ol style="list-style-type: none"> 6. The development is consistent with the comprehensive plan, and even though it may not contain a marine use, it: (1) does not unreasonably conflict with marine uses, and (2) it adequately mitigates its adverse impacts on water-dependent uses <p>----- <i>Editor's Note: Potential conflicts with marine uses shall be evaluated against Performance Standard 14-315(m) and (p). Mitigation can be achieved as detailed in (8) below.</i> -----</p> <ol style="list-style-type: none"> 7. Maximum building setback from the southerly sideline of Commercial Street shall be no more than ten (10) feet. 8. A developer is required to mitigate impacts of non-marine development. Mitigation may include dredging, pile replacement, new or replaced structural decking (but not pavement resurfacing), new or replaced fendering systems, new or replaced floats, pier expansions, permanent conversions of recreational berthing to commercial berthing, bulkhead or seawall repair or improvements, or any combination of similar improvements. In determining the amount of required mitigation, the value of the contribution shall be not less than the greater of five percent (5%) of total project costs or ten dollars (\$10.00) per square foot of non-marine space (adjusted for inflation to be equivalent to 2006 dollars), but may be more if necessary for adequate mitigation. Required mitigation may occur by one or both of the following methods: <ol style="list-style-type: none"> a. Direct investment in marine infrastructure: Mitigation shall be for the benefit of water-dependent uses listed in 14-308(a), and shall include commitments to utilize those improvements over time for permitted water-dependent uses on site or within the same lot. b. Financial contribution: As an alternative to direct investment, the developer may choose to make a financial contribution to the city's waterfront loan and investment fund. 	<p>No change</p> <p>See new "linkage" performance standard for consideration below</p>	<p>"Linkage" addressed in the NMOUZ standards</p>
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<p>Sec. 14-313. Prohibited uses.</p> <p>(a) Except as provided in section 14-309, residential uses (b) Hotels, motels or boatels. (c) Auditoriums, civic centers, convention centers or other meeting facilities. (d) Drinking establishments. (e) Ground mounted telecommunication (f) Drive-up services for any use other than marine use.</p>	<p>Sec. 14-313. Prohibited uses.</p> <p>(a) Except as provided in section 14-309, residential uses (b) Hotels, motels or boatels. (c) Auditoriums, civic centers, convention centers or other meeting facilities. (d) Drinking establishments. (e) Ground mounted telecommunication towers (f) Drive-up services for any use other than a marine use.</p>	<p>No change</p>	<p>No change</p>
<p>Sec. 14-314. Dimensional requirements.</p> <p>(a) <i>Minimum lot size:</i> None. (b) <i>Minimum frontage:</i> None. (c) <i>Minimum yard dimensions:</i> 1. Front setback: None. 2. Side setback: None. 3. Rear setback: None 4. 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 edge of any pier, wharf or bulkhead shall include any attached apron(s). (d) <i>Maximum lot coverage:</i> One-hundred (100) percent. (e) <i>Maximum building height:</i> Forty-five (45) feet, (marine lab exception to 50 feet) Except for (g) below, no more than three habitable floors; (f) <i>Minimum ground floor clearance:</i> no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. (g) <i>Exception for usable floors and minimum ground floor clearance for Old Port Overlay Contract rezoning</i></p>	<p>Sec. 14-314. Dimensional requirements.</p> <p>(a) <i>Minimum lot size:</i> None. (b) <i>Minimum frontage along Commercial Street:</i> Seventy five (75) feet. (c) <i>Minimum yard dimensions:</i> 1. Front setback: None. 2. Side setback: None. 3. Rear setback: None. 4. 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 edge of any pier, wharf or bulkhead shall include any attached apron(s). (d) <i>Maximum lot coverage:</i> One-hundred (100) percent. (e) <i>Maximum building height:</i> fifty (50) feet, Except for (g) below, no more than three habitable floors; (f) <i>Minimum ground floor clearance:</i> no less than fifteen (15) feet of first floor to ceiling vertical clearance to promote marine industrial use potential. (g) <i>Exception for usable floors and minimum ground floor clearance for Old Port Overlay Contract rezoning</i></p>	<p>No change</p> <p>50 foot height incorporated</p>	<p>Included in the CDC draft</p> <p>Included in the CDC draft</p> <p>New Dimensional Requirement: Minimum "lot width" of 50 feet added for the NMUOZ</p>
<p>Sec. 14-315. Performance standards.</p> <p>All uses in the waterfront central zone shall comply with the following standards:</p> <p>(a) <i>Outdoor storage of materials:</i> ...normal conduct of business, ... (b) <i>Noise:</i> ...shall not exceed seventy-five (75) decibels... (c) <i>Vibration:</i> (d) <i>Federal and state environmental regulations:</i> (e) <i>Discharges into harbor areas:</i> (f) <i>Storage of vehicles:</i> (g) <i>Landfill of docking and berthing areas:</i> (h) <i>Off-street parking:</i> Except as provided in section 14-309 or as required pursuant to article V (site plan), off-street parking is required at fifty percent (50%) of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article. (i) <i>Off-street loading:</i> Off-street loading is required as provided in division 21 of this article. (j) <i>Shoreland and flood plain management regulations:</i> (k) <i>Lighting:</i> All lighting on the site shall be shielded... (l) <i>Signs:</i> (m) <i>Storage of pollutants and oily wastes:</i> (n) <i>Compatibility of non-marine uses with marine uses:</i> Non-marine 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 as set forth in section 14-306. Siting of a use not set forth in section 14-308(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.</p>	<p>Sec. 14-315. Performance standards.</p> <p>All uses in the waterfront central zone shall comply with the following standards. Standards (j),(m),(n), (o),(p), and (q) below shall be reviewed in conjunction with site plan review: clerical clarifications</p> <p>(a) <i>Outdoor storage of materials:</i> ...normal conduct of business, ... (b) <i>Noise:</i> ...shall not exceed seventy-five (75) decibels... (c) <i>Vibration:</i> (d) <i>Federal and state environmental regulations:</i> (e) <i>Discharges into harbor areas:</i> (f) <i>Storage of vehicles:</i> (g) <i>Landfill of docking and berthing areas:</i> (h) <i>Off-street parking and loading:</i> Division 20 (off-street parking) and division 21 (off-street loading) of this article shall not apply. (i) <i>Shoreland and flood plain management regulations:</i> (j) <i>Lighting:</i> All lighting on the site shall be shielded... (k) <i>Signs:</i> (l) <i>Storage of pollutants and oily wastes:</i> (m) <i>Compatibility of non-marine uses with marine uses:</i> Non-marine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither adversely interfere with the existence or operation of marine uses nor adversely impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-306. Siting of a use not set forth in section 14-308(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.</p>	<p>No comment</p> <p>Parking requirement eliminated. New text added to the performance standard (h): "Within the marine related user spaces marine users are the priority are the and the property owner will arrange those parking spaces as close to the associated vessel as possible. There are to be no non-marine related parking spaces within the marine related zone.."</p> <p>Strike the adverbs. "shall neither interfere with the existence or operation of marine uses nor impede access to vessel berthing.."</p>	<p><u>Standards for Parking, Lighting, Urban Design, Pier Expansions, Compatibility of Non-marine Uses, Functional Utility of Piers, and Public View Protection shall be reviewed by the Planning Authority.</u></p> <p>Parking requirement eliminated – <u>performance standards for parking location and function, and marine use protection strengthened</u> – comparable to the Conditional Use standards that are suggested to be eliminated. Incorporates Pier Owner text regarding priority of marine use spaces. Documentation requirements. Non-marine parking subject to the restrictions of the 55% standards.</p> <p>Included in the CDC draft</p>

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Sec. 14-315. Performance standards. Continued	Sec. 14-315. Performance standards. Continued		
<p>(o) <i>Urban design</i>: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.</p> <p>(p) <i>Pier and wharf expansions</i>: In addition to meeting harbor commissioner and coast guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.</p> <p>(q) <i>Functional utility of piers and access to the water's edge</i>: All new development, whether for marine or non-marine uses, should anticipate current and future needs of water-dependent pier tenants to functionally access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. For example, any development that proposes to site a building within ten (10) feet of a pier edge (thus precluding vehicle use of the pier edge) should provide openings and circulation through the building to allow the transfer of goods and materials to trucks and circulation routes within the interior of the pier.</p>	<p>(n) <i>Urban design</i>: Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street between Maine Wharf and the easterly property line of the city fish pier shall conform to the guidelines set forth in the downtown urban design guidelines, unless such structures are also located within one-hundred (100) feet of the water. Such structures that are also located within one-hundred (100) feet of the water shall conform to the extent practicable to the downtown urban design guidelines.</p> <p>(o) <i>Pier and wharf expansions</i>: In addition to meeting Harbor Commission and Coast Guard requirements for navigation, any expansion or extension of a pier and or wharf in the waterfront central zone shall demonstrate its compatibility with fixed route ferry service and emergency vessel operations.</p> <p>(p) <i>Functional utility of piers and access to the water's edge</i>: All new development, whether for marine or non-marine uses, should anticipate current and future functional and operational needs of water-dependent pier tenants to access the water's edge for the transfer of goods and materials between berthed vessels and land bound vehicles. Provisions for the storage and movement of goods and materials must be designed into all waterside development and internal circulation routes must be maintained or otherwise provided as an element of any development. The siting, design, and circulation of non-marine uses, particularly those allowed on first floors, shall adjust if needed to accommodate reasonable access for pedestrians, vehicles, and freight transfer to and from berthed vessels.</p>	<p>Reference added to 50' "non-marine along side dockage"</p>	<p>Included in the CDC draft</p>
	<p>q. <i>Public view protection</i>: Any new development in the WCZ shall perform a public view impact analysis for review and approval by the planning board or planning authority as a condition of site plan approval. The analysis shall: (a) demonstrate the project's adherence to the Portland View Corridor Protection Plan to the extent practicable; and (b) promote the public's visual access to the water through sensitive building placement.</p> <p>The planning board or planning authority shall find at a minimum that the proposed development (a) retains street corridor views as extended across Commercial Street from the Portland peninsula; (b) retains panoramic views of the water from Commercial Street to the extent practicable; and (c) where loss of public views to the water is shown to be necessary for the reasonable development of the site, the developer provides alternative public views to the water through newly established view corridors or publicly accessible pedestrian ways. Such pedestrian ways shall not interfere with existing or potential water-dependent uses, nor shall they endanger the public through uncontrolled proximity to industrial activity.</p>	<p>Reference added to Pier Owners' "Commercial Street Walking Path Plan" with city license.</p> <p>Linkage Performance Standard offered: For non-marine projects located within 150 of Commercial Street over \$250K, 5% total cost of development provide for marine infrastructure on site, or to a dredge and maintenance fund.</p>	<p>Planning Board text included in the CDC draft No public access text included</p> <p>Linkage provision included in the NMUOZ standards.</p>

**WCZ Policy Statement
Planning Board Compared to CDC Text Recommended on October 27, 2010**

Council Order #271-09/10

**Waterfront Central Zone Policy Statement, 7-13-10
As recommended by Planning Board.**

Red-line amendments are changes approved at the 7-13-2010 Public Hearing that constitute amendments to the City Council Order

Background

Following direction from the Portland City Council's Community Development Committee, the Planning Division worked with property owners to evaluate policy and zoning for the Central Waterfront. The policy and zone review was conducted under the oversight of the Portland Planning Board and benefited from two public forums and eight workshops where public comment was taken. The policy statement below was also informed by an extensive map-based land and use inventory as well as an inventory of marine and non-marine use businesses, vessels and employment for every property within the zone.

Policy Statement for the Waterfront Central Zone

I. Introduction:

Portland's Central Waterfront was originally identified as a distinct zone in the 1992 Waterfront Alliance report. The zone is located along the south side of Commercial Street from and including Maine Wharf to the east to Deake's Wharf in the west. The Central Waterfront is characterized by privately held commercial piers running roughly perpendicular to Commercial Street into Portland Harbor and the Fore River. In addition to private commercial marine holdings, the zone is home to the Portland Fish Pier, the Gulf of Maine Research Institute, berthing for the United States Coast Guard, residential condominiums, retail and restaurant uses, two private marinas, and offices serving marine and non-marine interests.

Recognizing the findings articulated below, the City of Portland confirms that the basic policy structure established in the 1992 *Waterfront Alliance Report* remains the foundation of the City's Waterfront Land Use Policy. However, in the Central Waterfront, the current range of economic development opportunities have not resulted in development supporting preservation of waterfront infrastructure. Private investment remains the mechanism for maintaining and improving private piers and wharves and continual investment in private infrastructure is needed for preserving access to commercial vessel berthing and support activities.

To encourage investment in Portland's Central Waterfront, a wider range of development opportunities must be established. Likewise, to ensure continued opportunities for marine economic activity, the existing hierarchy of uses continues to provide the policy structure for the zone. The use hierarchy is summarized as: *water-dependent uses - first priority; marine-related support uses - second priority; and, marine compatible (non-marine) uses - third priority.* Zoning implementing greater non-marine opportunities within the framework of the use hierarchy will allow a broader range of uses within new and existing structures, and will provide adequate and enforceable protections for commercial marine activity.

II. Findings from the 2010 Planning Process for the Central Waterfront:

Prompted by a zoning amendment application by 12 commercial pier owners in the zone, the Planning Board conducted an extensive planning process to inform a recommendation to the City Council on policies and zoning for the Central Waterfront. Based on information developed and evaluated during their process, the Planning Board makes the following findings:

1. The foundational policy document informing waterfront zoning for the City of Portland, the *Waterfront Alliance Report*, was written in 1992 and has not since been substantially updated for the Central Waterfront.
2. The waterfront economy generally, and the ground fishing industry specifically, has undergone a significant contraction during the previous several years, as exemplified by an over 50% loss of ground fishing vessels and an over 2/3 reduction in landings at the Portland Fish Exchange since the 1990s.

Council Order #101-10/11

**Waterfront Central Zone Policy Statement, as
recommended by Planning Board (with edits)
Recommended by the CDC at the 9-27-10 Meeting**

Background

Following direction from the Portland City Council's Community Development Committee, the Planning Division worked with property owners to evaluate policy and zoning for the Central Waterfront. The policy and zone review was conducted under the oversight of the Portland Planning Board and benefited from two public forums and eight workshops where public comment was taken. The policy statement below was also informed by an extensive map-based land and use inventory as well as an inventory of marine and non-marine use businesses, vessels and employment for every property within the zone.

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To **facilitate** private investment in Portland's Central Waterfront, a wider range of development opportunities must be established. Likewise, to ensure continued opportunities for marine economic activity, the existing hierarchy of uses continues to provide the policy structure for the zone. The use hierarchy is summarized as: *water-dependent uses - first priority; marine-related support uses - second priority; and, marine compatible (non-marine) uses - third priority.* Zoning implementing greater non-marine opportunities within the framework of the use hierarchy will allow a broader range of uses within new and existing structures, and will provide adequate and enforceable protections for commercial marine activity.

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ATT 2.

<ol style="list-style-type: none"> 3. The Central Waterfront has seen little recent privately funded economic development despite a significant amendment to grant additional flexibility in the WCZ in 2005/2006. 4. Ownership of the Central Waterfront remains largely in private hands. 5. Many piers and wharves in the Central Waterfront have been and remain in deteriorated condition, in need of costly pier infrastructure investments. The on-going repair and replacement needs for pilings, decking, bulkheads, and structures within the district likely totals tens of millions of dollars and is unsupported by marine-generated revenues. Even with expanded non-marine development, the overall level of investment needed within the zone may be greater than the capacity of the area to generate revenues needed for pier infrastructure investment through lease revenues alone. 6. The Central Waterfront contains over 16,000 feet of commercial berthing and is the single largest resource of commercial vessel berthing in Portland Harbor. The commercial berthing in the Central Waterfront is an irreplaceable resource of state-wide significance. 7. Decreasing water depth at the piers is a worsening issue due to continual natural deposition of sediments exacerbated by storm water overflows into the harbor. Maintenance dredging will be needed to ensure quality commercial berthing opportunities for public and private piers and it is unlikely that berthing revenues alone will support these costs. 8. Despite challenges to the marine economy, Central Waterfront remains an employment center for the City and region, supporting over 78 marine businesses, 175 commercial vessels, and 1200 marine jobs. Lobstering remains a strong and stable economic base for marine activity with approximately 100 lobster vessel berthing within the zone. 9. Non-marine businesses in the Central Waterfront contribute significantly to the vitality of the zone and the city with over 50 businesses, and 600 jobs. Under current zoning restrictions, there are limited opportunities for these businesses to expand. 10. The majority of land and pier area in the zone remains open to development, with less than a quarter of the zone covered by buildings, leaving significant opportunities for new structures. 11. Surface parking occupies large areas of un-built space in the zone and has a significant negative visual impact on Commercial Street; these areas provide redevelopment opportunities with no displacement of water-dependent commercial activity. 12. Commercial Street is a nationally significant cultural and historic asset, as recognized by the American Planning Association with a "Best Street" award in 2009. Quality development along Commercial Street has the potential to improve the street architecturally and to contribute to the zone and City with additional revenues and economic activity. Commercial Street development and associated economic benefits can be achieved with little risk of significant marine industry displacement. The Central Waterfront's development form and history is also of national significance as one of the few surviving intact examples of wharfs dating from the 19th Century era of schooner and clipper ship freight transportation. The extension of the street system out onto piers jutting into the harbor is part of Portland's unique identity as well as a testament to an important characteristic of the City's historic role as a center of international trade. 13. The public consistently requests additional visual and physical access to the water and increased non-marine development in the Central Waterfront will encourage safe and appropriate opportunities for the public to experience Portland Harbor. 14. Certain non-marine activities such as restaurant and retail uses, which are currently restricted within the Central Waterfront to existing structures along Commercial Street, represent significant opportunities to generate employment, revenue, and public access 	<ol style="list-style-type: none"> 3. Other than the pending redevelopment of 70,000 square feet of the Cumberland Cold Storage building into Class A office space, the Central Waterfront has seen little recent privately funded economic development. 4. Ownership of the Central Waterfront remains largely in private hands. 5. Many piers and wharves in the Central Waterfront have been and remain in deteriorated condition, in need of costly pier infrastructure investments. 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ATT 2.

on piers throughout the zone.

- 15. Commercial marine activity can compatibly co-exist with a wide variety of non-marine uses if each use is designed and managed to respect the functional needs of each other. Paramount to achieving mutual compatibility between marine and non-marine uses is the vigilant maintenance and protection of access to berthing, loading and security for water-dependent uses.
- 16. Climate change impacts remain unknown for the district, but predictions of sea level rise and intensified storms may have their greatest effects on the piers, wharfs and low-lying portions of the waterfront. Likewise, climate driven water temperature and water chemistry changes may have significant impacts to fisheries and the fishing economy that have only recently begun to be evaluated.

III. Vision Statement for the Central Waterfront

Commercial marine use is the highest and best use of waterfront land in the Central Waterfront. Preserving the waterfront for these uses should be a top priority and guiding principle for the City

Development in the Central Waterfront will achieve a balance where non-marine economic development benefits the piers, Commercial Street, the Waterfront and the City by sustaining marine infrastructure, protecting opportunity for commercial marine activity, and promoting appropriate access by the public to views and activities in Portland Harbor.

IV. Development Policies for the Central Waterfront:

- 1. **Preserve access to berthing and adequate space for commercial marine activity.** Commercial berthing is the irreplaceable resource that ensures the Central Waterfront as a working waterfront. In order to add value to this berthing and promote marine employment, adequate pier deck, first floor building space, parking, and circulation opportunities need to be retained to sustain commercial berthing, water dependent uses and the marine-related support industries that comprise the marine economy.
- 2. **Expand non-marine use opportunities.** Non-marine development opportunities exist within both existing buildings and open space within the Central waterfront. By relaxing parking requirements, it will be possible to minimize the impacts of non-marine development on marine activities by concentrating non-marine development to existing parking areas and allowing flexibility in meeting the transportation and parking needs of the new tenants and patrons of development. Office, restaurant and retail uses should be allowed greater opportunities within the zone, provided that adequate site planning is provided to protect the functional utility of berthing and marine industrial space, and that public safety is maintained. Consideration should be given to alternatives to parking on and adjacent to the piers including use of remote parking lots/structures linked to the WCZ with public transportation.
- 3. **Accommodate as much non-marine use as can reasonably be absorbed within the zone without detrimental impacts to the overall volume of marine activity.** Individual piers may experience dislocation and relocation of specific marine uses as a result of new investment programs allowed by expanded non-marine uses. The policies established herein promote an aggregate retention of commercial marine activity within the district. Even where individual marine uses may be displaced by non-marine uses, functional access to commercial berthing must be maintained. Each pier and property with usable berthing access should retain a reasonable amount of commercial marine potential and the total amount of aggregate commercial marine opportunities for the Central Waterfront should not be significantly diminished.
- 4. **Link non-marine development revenues with marine infrastructure investments.** Expanded use opportunities should result in increased economic value of properties by both market forces and non-marine investment. These policies promote linkages between new non-marine generated revenues and increased marine infrastructure investments – whether by direct investment in infrastructure by pier owners, or by allocation of public monies through tax increment financing.

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5. **Expand the public's opportunity to access the Central Waterfront.** Non-marine commercial development should be designed to enhance the public's visual and physical access to the water. Commercial Street development should employ view corridors between new and existing structures to maintain visual connections from public rights of way to the water. Extensions of Old Port and upland street corridors across Commercial Street for use as physical access drive locations and view corridors to the water should be employed wherever possible without significantly detracting from the development potential of private property. On-pier non-marine uses will need to develop safe and attractive pedestrian access for use by tenants, visitors, and patrons of these uses. In all cases, sites will need to design for the functional use of the water's edge by commercial marine activity.
6. **Prohibit/Reconsider residential development.** ~~Notwithstanding the suggested relaxation of use restrictions suggested above, Residential dwelling uses are not necessarily still considered~~ incompatible with higher priority marine uses in all cases in the Central Waterfront, especially close to Commercial Street.
7. **Plan for climate change resiliency.** Whether modest or severe, development within the Central Waterfront may feel the impacts of climate change greater than other areas within the region. The City and property owners should continue to obtain up to date information on climate change impacts along the waterfront.

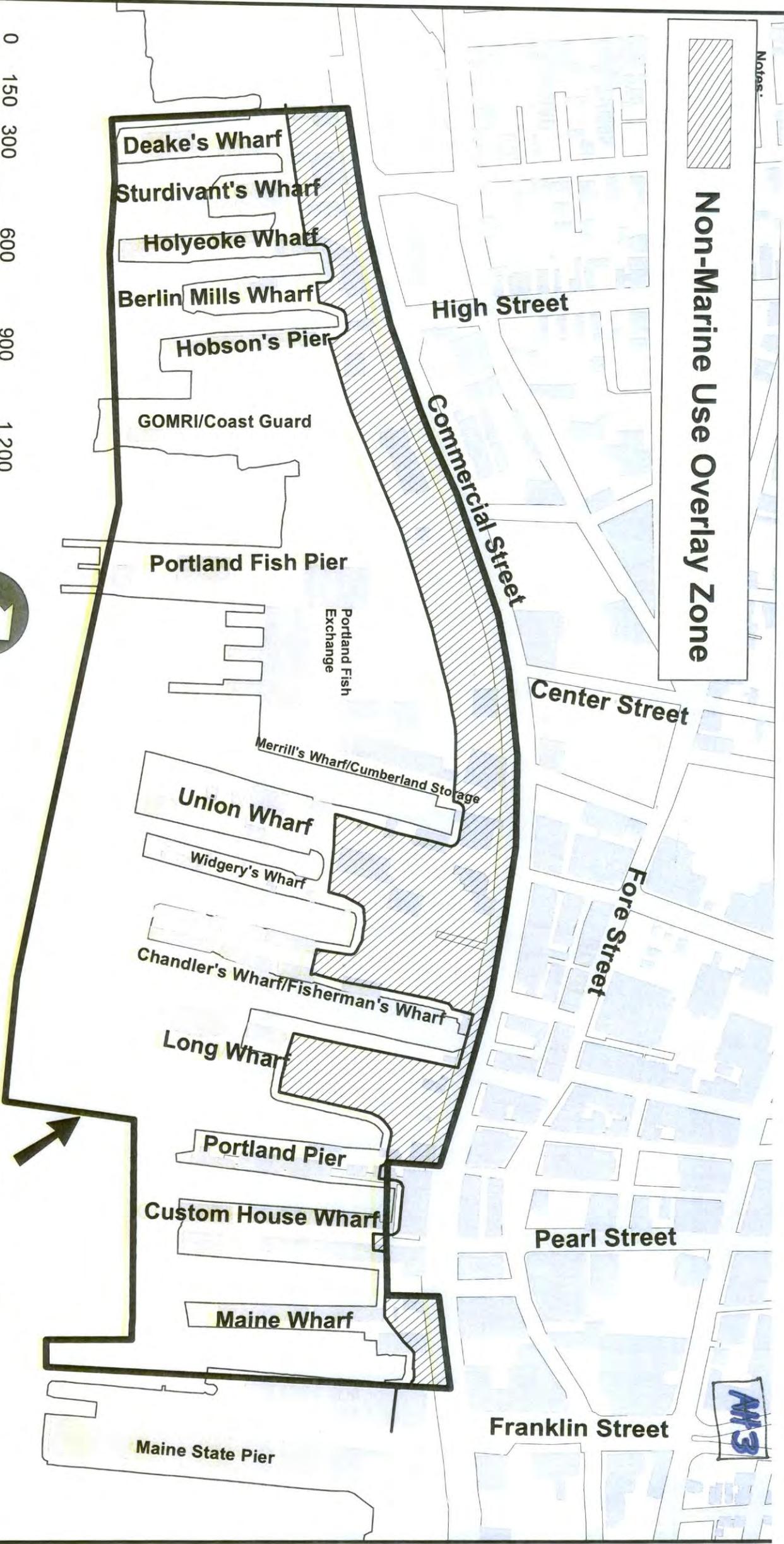
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Waterfront Central Zone With Non-Marine Use Overlay Boundary



Waterfront Central Zone Boundary



Notes:
Non-Marine Use Overlay Zone

Map produced by the City of Portland
Planning Division from Portland GIS Program
2007 data. Locations are approximate.
November 2010

Waterfront Central Zone Property Owners
 36 Union Wharf
 Portland, ME 04101

October 19, 2009

Mr. David Silk, Chair
 And Members of the Planning and Urban Development Board
 Portland City Hall
 389 Congress St., 4th floor
 Portland, Maine 04101

Dear Chairman Silk and Board Members:

The Waterfront Central Zone Property Owners have recently completed an inventory of pier perimeter uses and building uses (upper floors and first floors) for the WCZ as supporting information to the proposed WCZ Text Amendments that will be coming before the Planning Board next week. The following properties (moving from west to east) completed the survey:

- | | |
|------------------------------------|--------------------------------|
| 1. Deakes Wharf | 8. Merrill's Wharf |
| 2. Sturdivant Wharf | 9. Union Wharf |
| 3. Holyoke Wharf | 10. Widgery Wharf |
| 4. Harbor Fish-Holyoke | 11. Fisherman's Wharf |
| 5. Berlin Mills Wharf | 12. Long Wharf |
| 6. Hobsons Wharf | 13. New Meadows Lob(Port Pier) |
| 7. Marine Trade Center (Fish Pier) | 14. Custom House Wharf |

The only piers not participating in the inventory survey were Chandlers Wharf and Maine Wharf. Chandlers Wharf is dedicated to condo/residential uses and the Maine Wharf owners have been pursuing other options for the pier.

A copy of the blank inventory survey is attached.

Summary of pier inventory in the WCZ:

After reviewing the surveys, several key facts about the WCZ piers became clear. 10 of the 14 owners reported some vacancy on the upper floors ranging from 24,600 sf @ Custom House Wharf to 1,500 sf on Hobsons Wharf. Other notables were Merrill's @ 20,000 sf, Holyoke- Harbor Fish @ 7,000 sf, Sturdivants @ 10,000 sf, The Marine Trade Center @ 5,100sf and Deakes @ 5,500 sf.. On the upper floors there is over 80,000 sf of rentable space sitting vacant in the WCZ. Where there is more flexibility with regard to what uses may occupy the upper floors, this indicates that there is not much of a market place for new tenants to occupy some of the available space.

On the first floors, where there are fewer piers reporting vacancy, some of the piers have some large spaces to fill. For example, Sturdivants Wharf has 22,000 available to lease, 1,000 is leased and 21,000 is vacant. On top of that, adjacent to the 1st floor space is 800 lf of berthing that is unusable until dredged. Merrill's Wharf has 12,500 sf of vacant space. The Marine Trade Center has 60% (7,500 sf) of the 1st floor for rent and at a sharply reduced rate, 65% of the 2nd floor rate and it has been sitting idle for years. The owner commented, "there is insufficient marine industry capable of paying even a sharply reduced rent for first floor marine access space". On top of the building space not being leased, of the 198' of berthing adjacent to the Marine Trade Center building, over 50% of that is sitting idle and has been for many years too. The reason, lack of potential marine tenants to occupy the berth. Holyoke - Harbor Fish had 4,000 sf vacant, Custom House Wharf had another 3,800 sf vacant.

In addition to vacancies, the rates charged for 1st floor space ranged from \$2.90/sf to \$12/sf., with many in the \$5/sf or lower range. Even if the space is leased, the economics make it hard to generate enough revenue to do the necessary maintenance and hopefully pay the city taxes.

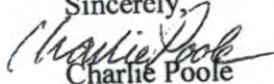
Berthing and Pier Perimeter

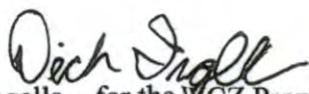
Most of the piers reported vacant berthing (some did not comment). Much of the usable berthing vacancy was due to a lack of tenants looking for berthing, 700 lf and another 1,167 lf of berthing that was not usable due to lack of water depth at low tide. This leads to the dredging issue which is a whole other topic, but must be noted, a very critical one for all of the pier owners, public and private in Portland Harbor.

The monthly rate for berthing ranged from \$7.50/lf to \$10/lf.. Once again when you look at the economics of pier operations and management, these rates leave the property owner trying to decide how to maintain the pier using other sources of revenue, namely from building rental income if they can find the tenants to occupy the space.

Owning and operating a working commercial pier in Portland Harbor is an expensive undertaking. Most of the piers are old and need constant maintenance, which requires money and most times, large amounts of it. We hope this summary points out some of the areas on the piers that are in need of some help if they are to continue to operate. The list of potential marine tenants is shrinking all of the time and now is the time to acknowledge this and see what changes can be made to ensure the WCZ remains a working waterfront.

Please feel free to contact us if you need more information or have any questions.

Sincerely,

 Charlie Poole
 Union Wharf



 Steve DiMillo and Dick Ingalls - for the WCZ Property Owners
 Long Wharf

Waterfront Central Zone Property Owners
36 Union Wharf
Portland Maine, 04101

Inventory of Dock Perimeter Uses
And Building Uses In WCZ

Date _____

Name of Pier/Dock/Landscape: _____

BUILDING USES:

Second and third floors:

Total square footage: _____

Square feet leased to Marine related use: _____

Square footage leased to other uses: _____

Vacant Square footage: _____

First floor:

Total Square footage: _____

Square footage of Marine Related Use: _____

Square footage of Other Uses: _____

Average Square footage lease amount received for first floor Marine Related Use: _____

Vacant: _____

Comments: _____

PIER PERIMETER

Total length of Pier/Dock Perimeter - Less perimeter rendered nonuseable due to water depth of less than 2' at low water: _____

Total length of perimeter leased to Marine Related Uses: _____

Total length of perimeter lease to other uses: _____

Vacant: _____

Average lease amount per lineal/ft. use of Marine Related dockage: _____

Comments: _____

Signed Dock/Pier/Land Space
Representative Representative _____

ANNE B. PRINGLE

44 Neal Street Portland, ME 04102-3527 207/774-0437
oldmayor@maine.rr.com

October 7, 2010

Community Development Committee
City of Portland
389 Congress street
Portland, ME 04101

Dear Cheryl, Dory, and John:

As you continue your debate of the property owners' proposed changes to the WCZ, I think it's important to understand that allowing 50% non-marine on the first floor of buildings is not going to make a dent in solving the longstanding maintenance issues of some of the piers in the worst condition. And the 50% non-marine may have unintended negative consequences for fisherman, who are dependent on water access and apron space for parking, storage, etc.

So, it seems to me that a fundamental question to be answered in this planning exercise is: "What is the Council going to do, in terms of policy changes, that will actually generate the kind of revenue stream that will produce pier improvements? It seems to me that staff could do some pro-formas on what the property owner's proposed linkage scheme would produce and how far it would go in making pier improvement (e.g. fund X number of piling replacements, X square footage of new decking, etc.).

I also suggest that a pro-forma be done of what kind of TIF revenue might be produced by a build-out of the Old Port Overlay Zone, which could I think produce significant linked revenue for infrastructure improvement.

To me, this linkage must be at the heart of the discussion, otherwise we are "tinkering at the edges", with perhaps serious negative effects on water-dependent uses which have nowhere else to go and whose economic impact on the city and state is significant. I hope the Committee will take the time, working with all affected and interested parties, to "get it right" because there is much at stake.

Very truly yours,

October 22, 2010

To the Citizens and Councilors of the
City of Portland, Maine

We, the seventy lobster fishermen who signed the petition and use Portland's wharves to make our living have accepted the Portland Pier owners proposals of relaxing the zoning ordinance to allow 45% of the total square footage of a wharf to be allowed for non marine uses. This we do with certain safeguards which we believe may protect us from non marine development. These safeguards have been added to the latest amendments to the zoning division 18, Waterfront Central Zone, dated Oct. 15, 2010.

No one knows what the effects of relaxed zoning will have on the working waterfront, so these safeguards must be in the zoning ordinances if the wharf owners proposals become regulation.

We do know that at 30% nonmarine

uses on the ground floor, Custom House Wharf does reach gridlock during the summer months making it impossible to conduct business for up to 15 or 20 minutes on some days.

We do know that in 2009 with a depressed economy that total value of Portland's fisheries at direct wholesale sales was 32 million dollars. The brain people tell us that for every dollar a fisherman makes 5 or 6 new dollars are generated for the ancillary businesses that depend on the fishery. Because of this value of 150 to 180 million dollars we feel it is of the utmost importance the fishery be protected from non marine development.

The safeguards we ask for:

- ① Defining what and where non marine development will be allowed and rent/vacancy stipulation to allow marine use first refusal for space on a wharf and no displacement of water dependent users.
- ② Dedicated parking and continued historical access to the wharf edge and tidal areas for water dependant users and marine tenants.

(3) Good protected berthing from the weather and pleasure boats

(4) And wording that will protect the marine users from encroachment from non marine development.

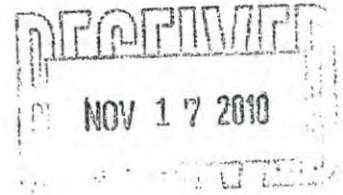
These proposed safeguards must be worded clearly and cannot be watered down or removed or there can be no agreement.

Sincerely,

William M. Spear

Fishermen's Representative

November 8, 2010



Portland City Council
Honorable Nick M. Mavodones Mayor

Dear Mayor and Members of the Portland City Council;

The agreement, dated September 13, 2010, between Portland fishermen and the wharf owners regarding the relaxation of zoning ordinances in the W.C.Z., with certain stipulations protecting marine users, was broken by the wharf owners' withdrawal of one of those stipulations, the no displacement clause. The withdrawal of that clause took place on October 18, 2010 when attorney Joe Stevens submitted a set of additional amendments on behalf of the wharf owners prior to the October 27, 2010 C.D.C. meeting.

The no displacement clause protected existing marine and water dependent users, in good standing, from being forced to move by pier owners. This clause or stipulation was one of the four key proposals by the fishermen if the working waterfront was to survive a change to permit 45% of first floors and open spaces of existing piers in the W.C.Z. to be occupied by non-marine users.

If the proposed relaxed ordinances are passed by the City Council, a non-marine business could now displace a marine or water dependent user. This is exactly what happened to Central Wharf and its 15 fishing boats. Those boats held a letter from the Liberty Group promising no displacement, but all were displaced when the wharf developed into Chandlers Wharf.

Because of the value of Portland's fishing heritage, drawing thousands of tourists a year and fishing's economic viability — 30 million dollars in over the wharf direct wholesale sales — in a depressed 2009 economic year, The relaxing of the zoning ordinances without a no-displacement clause is a bad deal for the commercial marine businesses and the people of Portland.

Sincerely

William M. Spang

William Doane

Keith James

Att. 5.7



386 MAIN STREET
POST OFFICE BOX 648
ROCKLAND, MAINE 04841-00648
TEL 207-594-9209 FAX 207-594-9314
EMAIL: inquiry@islandinstitute.org
www.islandinstitute.org

November 12, 2010

Mayor Nicholas Mavodones, Jr.
City of Portland
389 Congress Street
Portland, ME 04101

RE: Amendment to Portland City Code Chapter 14 – Waterfront Central Zone

Dear Mayor Mavodones:

I am writing to express concern on behalf of the Island Institute and our constituents regarding recent changes to the proposed amendment to Portland City Code regarding the Waterfront Central Zone.

While the initial draft represented a compromise between commercial fishermen/lobstermen and wharf owners as to the shared use of Portland waterfront, the removal of the non-displacement clause in the current draft of the amendment deviates substantially from these discussions. As the amendment currently stands, it no longer reflects the compromise that was reached, but rather imbalanced concessions by the wharves' marine users.

Following on the heels of last week's near-60% passing of bond funding for working waterfront preservation, it is clear that the public sees great value in maintaining marine use access to our shoreline. It is disconcerting that the revisions to this amendment leave fishermen and lobstermen more vulnerable to reduced access as the composition of the Portland waterfront changes. I strongly encourage you to reincorporate the non-displacement clause before finalizing this document. If you are unable to reincorporate the non-displacement clause, please restore the 100% marine use restriction on the decks and ground floors in the zone.

Thank you for considering these comments. If you have further questions please feel free to contact me.

Sincerely,

Jennifer Litteral
Policy Director
Island Institute
386 Main St.
Rockland, ME 04841
(207) 594-9209
jlitteral@islandinstitute.org

CC: Portland City Council

Waterfront Property Owners
36 Union Wharf
Portland, ME 04r202

December 7, 2010

Mayor and City Council
Portland, Maine
389 Congress Street
Portland, Maine 04101

Re. Waterfront Central Zone

Dear Mayor and Council:

The WCZ Property Owners would like to thank you, as well as the Planning Board and Staff for all the time and effort spent on this important matter, and in the preparation of the proposed amendments to the Waterfront Central Zoning (WCZ) district that are currently before you. The WCZ Property Owners are generally in support of the WCZ amendments as forwarded by the Community Development Committee (CDC). We believe that the amendments represent a reasonable first step in providing flexibility in uses in the WCZ thereby providing a means for badly needed investment in infrastructure along the piers.

With that said, you are all well aware that the fishermen are significant stakeholders in what happens in the WCZ district. The fishermen are important tenants to us as pier owners, and we work very hard to be able to retain them at our piers at very low rents. We began meeting with the fishermen several months ago and in our negotiations we agreed that, generally speaking, no existing tenant would be displaced upon the enactment of the proposed WCZ provisions. We initially included non-displacement language, provided by the fishermen's attorney, in a working draft of the amendments. We later removed part of the initial non-displacement language due to concerns that it infringed too much on our rights as landlords to manage our properties. The Staff removed the remainder of the non-displacement language in the final draft recommended by the CDC. Staff advised the CDC that, as a zoning ordinance its intent is to retain marine uses in general and not any particular marine tenant.

We continue to be committed to providing reasonable assurances to the fisherman that tenants existing on the date of enactment will not be displaced. The WCZ Property Owners are, therefore, proposing some additional language to the pending legislation which is intended to further address this issue and limit displacement. (See attached revisions to WCZ 14-311(a)3.) We respectfully request that you consider including the proposed language as part of the amendment to the WCZ.

Very early on in the process of drafting amendment to the WCZ district there was discussion about the amount of ground floor occupancy. A great deal of data was presented concerning occupancy rates, type of marine users, etc. during the Planning Board workshops. With the information provided by the WCZ Property Owners, the Planning Staff, and obtained at the workshops, the Planning Board recommended

Mayor and City Council
 December 7, 2010
 Page 2

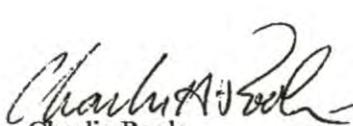
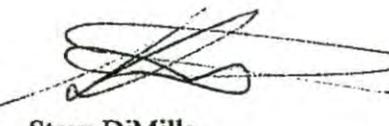
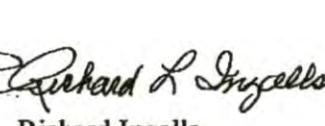
changes to the WCZ which are very similar to those currently before you, accepting revisions by the CDC.

Most recently the WCZ Property Owners have once again surveyed vacancy rates for the first floor outside of the NMUOZ which are approximately 31% vacant. These vacancy rates are in a constant state of change. Furthermore, much of the space that is rented on the ground floors are at extremely low rates simply to fill the space and generate minimal income which pays for basic services and minimal repairs. The income generated from simply filling space is far less than needed to re-invest in the depleting marine infrastructure.

We have all watched the decline of the fishing industry in Portland over the past twenty years. The decline in the industry has left vacant and underutilized piers. The result of the lack of viable economic activity along the waterfront is the continual deterioration of marine related infrastructure. For over two years the WCZ Property Owners have worked extensively with the Staff, Planning Board, CDC and the fishermen to develop a set of amendments to the WCZ district that allows vacant ground floor space to be rented to a limited number of non-marine uses on no more than 45% of the first floor. Non-marine first floor space only becomes available if there is no marine user that wants the space at "terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the NMUOZ)." There will be no displacement of marine "uses" resulting from the proposed amendment.¹

It is widely recognized that the proposed amendments are necessary to increase the level of economic activity so that reinvestment can be made in marine infrastructure necessary to serve the viable marine industries that remains in Portland. We respectfully request that you support this extensive effort and act favorably on the pending amendments (with the changes attached to this letter).

Sincerely,

		
Charlie Poole Union Wharf	Steve DiMillo Long Wharf	Richard Ingalls WCZ Property Owners

cc. William Needleman

¹ And if the Council accepts the proposed revisions concerning tenancy, there can be no displacement of existing marine tenants.

Sec. 14-311. Development Standards for the Waterfront Central Zone

Sec. 14-311 (a) 55% Ground area marine use minimum; marine use priority.

[Note: Non-marine use development within the NMUOZ is subject to 14-311(b) below]

Non-marine uses listed above in Sec. 14-307(b) and 14-308(a) shall be subject to the performance standards listed in 14-311(e) as well as the following requirements:

1. *55% Marine use required on first floors:* Except as otherwise allowed in the NMUOZ, properties in the Waterfront Central Zone shall occupy at least 55% of the building footprint of all of the buildings on the lot (defined in 14-306 above), when calculated using the aggregate of all such footprints, with ground level marine uses, as listed under 14-307(a) or 14-308(b)1.
2. *55% Marine use required for all open areas:* After subtracting areas used for common circulation drives (defined in 14-306 above,) properties in the Waterfront Central Zone shall occupy at least 55% of un-built area (meaning area not occupied by a building) on the lot, when calculated using the aggregate of all such un-built areas, with marine uses, as listed under 14-307(a) or 14-308(b)1.
3. *Vacancies, non-displacement and change of tenancy offered to water dependent/marine uses:* Vacant space and areas proposed for changes of use outside of the NMUOZ shall not be filled with any non-marine use without adequate opportunity for marine uses to occupy the space. Furthermore, there shall be no displacement of any marine use existing on the date of enactment of this provision so long as the tenant does not become in arrears of its rent, does not damage the leased space or is not otherwise in material breach of any lease or reasonable regulation of the property owner.

To demonstrate adherence to this provision, any application for site plan or change of use permit for non-marine use shall conform to the following:

- i. *Vacancy and change of tenancy outside of the NMUOZ advertised to marine uses:* In any lot or portion of lot outside of the NMUOZ, each time an occupant departs or gives notice to depart from the lot, the space must be made available to new marine occupants.

NOTE: Edits below are derived from the Pier Owners' October 18

Prior to renting to a non-marine user the property owner shall advertise for a new marine occupant for not less than a (60) day period in targeted media and by other means reasonably calculated to reach marine uses, to the satisfaction of the Planning Authority. The property owner shall show proper advertising for a marine use. Should one or more marine uses apply, the property owner shall make the space available to a marine occupant, in accordance with terms and rates generally consistent with comparable space in the 55% marine use portion of the zone (outside of the NMUOZ.) The property owner may stop advertising sooner than the end of the 60 day period if a lease is signed with a marine use. Should no marine use apply, at the end of the 60 day period, upon receipt of a change of use permit, the owner may fill that space with a non-marine use only if that new non-marine occupant will not cause buildings on the lot to exceed the maximums of 45% of the ground floor area or 45% of the open area occupied by non-marine uses.

- ii. *Uses Inventoried:* To demonstrate adherence to the 55% marine use requirement, and the non-displacement provisions the applicant shall submit to the Planning Authority an inventory and map listing and mapping each

occupant (tenant or otherwise) as of the date of enactment of this provision as well as any future date of application for site plan or change of use. The inventory shall show all ground level space, including buildings, parking, open areas and submerged lands associated with the subject lot. For each occupant, the property owner must indicate the square footage of area occupied and whether the occupant is a marine use as defined herein. For vacant space, the last previous occupant shall be listed, along with the date of departure.

4. Pier or Bulkhead Edge Reserved for Marine Uses: Notwithstanding anything in contained in 14-311(c) (Contract or conditional rezoning) or any other provision of this ordinance to the contrary, excepting only the portion of any pier which might be used for non-commercial berthing pursuant to 14-307(a)(20), all berthing and/or dockage space and associated floats plus the entire linear edge of that portion of every pier or bulkhead which is adjacent to greater than zero feet of water depth at mean low water, to a minimum setback line of at least five feet from the edge of the pier, bulkhead, or engineered shoreline may only be used or occupied by one or more marine uses as defined in 14-307(a) or 14-308(b). Said edge shall be the seaward extent of any engineered shoreline or working deck of any pier or wharf.



STATE OF MAINE
 DEPARTMENT OF CONSERVATION
 22 STATE STREET
 AUGUSTA, MAINE
 04333-0022

JOHN ELIAS BALDACCI
 GOVERNOR

ELIZA TOWNSEND
 COMMISSIONER

June 22, 2010

Bill Needelman
 Portland Planning Division
 City Hall, 4th Floor
 389 Congress Street
 Portland, Maine 04101

RE: Waterfront Central Zone Amendments

Dear Bill:

I am writing to comment on proposed changes to the Waterfront Central Zone (WCZ) provisions of Portland's City Code. As we have discussed, the Bureau of Parks and Lands (Bureau) manages the public submerged lands and may lease those lands for uses that support public access, water-dependent uses, and marine-related commerce. Under the Bureau's leasing rules, upland uses and filling are not permitted unless they are for "an essential but subsidiary part of a commercial fishing use, water-dependent use, shoreland stabilization, cable, or pipeline and the applicant has demonstrated that there is no other reasonable alternative site available." These rules are consistent with the primary purposes of the Waterfront Central Zone to protect and nurture water-dependent uses and to encourage other marine-related uses, but appear to conflict with provisions of the City ordinance that potentially allow up to 50 percent non-marine related uses on the ground level of piers and 100 percent non-marine usage on upper floors up to three stories.

In reviewing the detailed use and structure inventory prepared by the planning staff, I note that most of the WCZ is historically filled land including most of the wharves on the waterfront. The remaining pile-supported piers represent only 6.5 acres of the 50 acres within the zone. Nearly 80% of this area (about 5 acres) is within 25 feet of the pier edge and serves the primary purpose of providing access to and space for vessel berthing, loading and offloading. The remaining area is devoted to marine-related equipment storage, commercial fishing facilities and other marine-related businesses. With one or two exceptions, all of the structures over the pile-supported piers appear to be one or two story buildings. In contrast, nearly all of the non-marine uses and larger buildings in the zone, as well as lands available for future development are located on the historically filled upland.

Given the limited amount of pile-supported pier space, as well as the state and municipal policy goals of preserving water access for water-dependent and marine related uses, the Bureau encourages the City amend the ordinance to direct new non-marine uses off the water to the upland portion of the WCZ and the area adjacent to Commercial Street.

www.maine.gov/doc
 PHONE: (207) 287-3821
 FAX: (207) 287-6170
 FAX: (207) 287-8111
 TTY: (207) 287-2213

BUREAU OF PARKS AND LANDS
 WILLARD R. HARRIS, JR. DIRECTOR



Thank you for the opportunity to provide comments. If you have any questions, please contact me at (207) 287-4919 or via email at dan.prichard@maine.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Prichard".

Dan Prichard
Submerged Lands Program
Bureau of Parks and Lands

CC: Planning Board, City of Portland
Eliza Townsend, Commissioner
Mike Morse, DEP



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

June 21, 2010

Penny Littell, Director
Planning and Urban Development
City of Portland
389 Congress Street
Portland, ME 04101-3503

RE: Waterfront Central Zone Proposed Amendments

Dear Ms. Littell,

I am following up with you regarding our conversation on June 16, 2010.

The Department received a copy of the proposed revisions to the City of Portland's Waterfront Central Zone (WCZ). The draft proposed a number of changes to the existing ordinance that the Department approved in 2006.

In 2006, The City adopted numerous amendments to the WCZ that deviated from the State's minimum requirements of the Mandatory Shoreland Zoning Act (38 M.R.S.A. Sec. 435-449) and Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances. The Department approved those amendments because the City provided sufficient information to justify a departure from the minimum standards.

In order for the Department to determine whether the "current" proposed revisions present special local conditions that substantiate a departure from the minimum standards, we need the City to provide the Department additional information and analysis using the criteria in section 438-A (2) and (3). In doing so it is important to demonstrate protection of commercial fisheries and maritime industry.

We look forward to receiving any follow-up information the City can provide if it decides to seek the Department's approval of an enacted ordinance.

I am happy to provide additional guidance as the City works through its process.

Sincerely

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality

Cc: Dan Prichard, DOC Submerged Lands Lease Program

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RAY BLDG., HOSPITAL ST.

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1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF
MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

JOHN ELIAS BALDACCI
GOVERNOR

GEORGE D. LAPOINTE
COMMISSIONER

December 13, 2010

Maine Department of Environmental Protection
Attention: Mike Morse
312 Canco Road,
Portland, Maine 04103

Dear Mike,

On behalf of the Department of Marine Resources (DMR), and in this agency's role as a reviewer and commenter on decisions your agency may make regarding the Mandatory Shoreland Zoning Act, I am offering to your our thoughts based on our review of the City of Portland's Community Development Committee (CDC) proposed amendments (CDC Draft 2, 10-22-10) to the city's Waterfront Central Zone (WCZ).

The Department feels it is premature to effect such a significant and far-reaching change to Portland's Waterfront Central Zone so soon on the heels of the other significant changes that were made effective as recently as 2006. At that time Mayor Garrity graciously included this agency as well as Maine Department of Environmental Protection (DEP) on a task force that carefully considered all aspects of the current zoning from the perspective of both the pier owners and the water dependant users. We felt at that time that those amendments were substantial and reflected an earnest attempt to address both groups' important needs. At present we are concerned that given both the short amount of time since their integration into Portland's waterfront *and* the fact that this integration occurred during a profound downturn in the nation and State's economy, it is not appropriate to consider further significant amendments at this time. Especially amendments that, based on our review of the language, will seriously jeopardize over time the viability of commercial fishing related water dependant uses and commercial fishing vessel berthing along Portland's extremely important waterfront.

DMR views the commercial fishing industry within Portland harbor as healthy and with great potential. Although, similar to the rest Maine's coast, it does not possess as much diversity as it once did. While it is true that several of Maine's groundfish fleet have moved at least temporarily to ports in Massachusetts for a variety of reasons, several still remain loyal to Maine and utilize Portland as their homeport for all or part of each year. One action you should be aware of is that the Portland Fish Pier Authority and the Board of the Fish Exchange have been working collaboratively to diversify fishery activity on the Pier and help move that important asset toward a position of long term sustainability.



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OFFICES AT STEVENS SCHOPF COMPLEX, HALLOWELL

PHONE: (207) 624-6550

TTY: (207) 287-4474

<http://www.maine.gov/dmr>

FAX: (207) 624-6024

On the federal level there are major changes underway in groundfish management. Newly created "sectors" and "permit banks" are just beginning to get their legs under them. Many in the industry are hopeful that these changes will be positive moves for Maine and Portland's groundfish fleet as fish stocks rebuild and vessels are able to fish more frequently and productively. You may not be aware that in 2010 Maine received 3.3 million dollars from the federal government for the purposes of implementing sectors and also setting up the State's own Permit Bank. All with a goal of providing increased opportunity for Maine groundfishermen in the future. We fully expect the Portland waterfront to benefit from these initiatives.

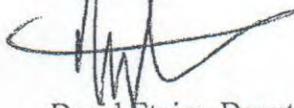
In addition, Portland has always been home to dozens of lobster vessels ranging from eighteen to fifty feet in length. That fishery within Maine and Casco Bay has seen increased landings in recent years and is widely considered healthy and well-managed and a secure source of fisheries income into the future. Also known to routinely require berthing and services within Portland harbor are the large vessels in the herring and menhaden fleet as well as vessels engaged in the hagfish and scallop fisheries.

In summary, DMR is very concerned about both the timing and the substance of the changes being considered within Portland's critically important WCZ. We can not help but believe that an allowance of 45% for non-marine uses on the first floors outside the "NMUOZ" will negatively impact the ability of truly water-dependant uses to locate on the remaining 55% and, even more important from our perspective, result in the loss of critical commercial fishing vessel berthing along the piers and bulkheads. For the most part, when that dislocation occurs, these vessels will *not* have an ability to re-locate elsewhere within Portland harbor or even within Casco Bay.

As you are aware, what is being discussed here, as it functionally relates to Maine's Mandatory Shoreline Zoning Act, boils down to approximately thirteen percent of the WCZ's developable area. In essence: the six and a half acres that is located on pilings over the water of Portland harbor. We believe that the needs of area fishermen now and into the future would be seriously compromised by what is being proposed in the current CDC draft and that the major changes that were implemented in 2006 should be allowed additional time to achieve their intended goals.

I appreciate the opportunity you have provided us to give you input during this important decision making process that is playing out in the City of Portland.

Sincerely,

A handwritten signature in black ink, appearing to read "David Etnier", with a large, sweeping flourish extending to the left.

David Etnier, Deputy Commissioner



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

December 15, 2010

Nicholas Mavodones, Mayor
And the Portland City Council
City of Portland
389 Congress Street
Portland, Maine 04101-3503

RE: Proposed amendments to the Waterfront Central Zone

Dear Mayor Mavodones,

We are writing to provide comment on the proposed amendments to the City's Zoning Code affecting the Waterfront Central Zone (CDC Draft 2, 10-22-10). First, however, it is important to note the basis for our comments. A portion of the Waterfront Central Zone (WCZ) lies within the 250-foot shoreland zone, as established by the Mandatory Shoreland Zoning Act, 38 MRS Sections 435-449 (Act). In order for municipal amendments affecting the shoreland zone to become legally effective, such amendments must first be approved by the Department. Therefore, the City's proposed WCZ amendments must be approved by the Department if adopted by the Council.

In order for the Department to approve a municipal ordinance amendment that is less stringent than the State's minimum requirements the Department must consider the legislative purposes of the Act, the minimum requirements of the *State of Maine Guidelines for Municipal Shoreland Zoning Ordinances*, and any special local conditions which, in the judgment of the Department, justify a departure from these minimum requirements not inconsistent with the legislative purposes. Department staff had the pleasure of working very closely with the City in 2005 & 2006 to help develop prior ordinance amendments to the WCZ that did depart from the shoreland zoning minimum requirements. The Department approved the amendments in 2006. The 2006 amendments served as the limit of departure from the State's minimum requirements while still serving the purposes of the Act.

The current proposed amendments to the WCZ seek to further depart from the minimum requirements and the statutory purposes beyond the limits approved by the Department in 2006, and in a manner that is inconsistent with the purposes of the Act. While the City has recently provided the Department a substantial amount of data, it has not provided us adequate information demonstrating to us that a further departure from the State's minimum requirements is justified if the proposed amendments are in fact adopted by the Council.

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(207) 764-0477 FAX: (207) 760-3143

Thank you for considering our comments. Should you have any questions, please don't hesitate to contact me. You may reach me by telephone at 822-6328.

Thank you,

A handwritten signature in black ink, appearing to read 'Mike Morse', with a long horizontal line extending to the right.

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality

cc: Deirdre Schneider, MDEP SLZ
David Etnier, DMR
Dan Prichard, DOC
file



Downtown

Old Port

Legend

- Filled Land/Pier
- Pile-Supported Pier
- Building
- Zone Line

Western Waterfront

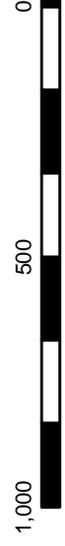
Waterfront Central Zone



Portland's Central Waterfront



Map produced by the City of Portland Planning Division
 from Portland GIS Program 2007 data.
 Intended for orientation purposes only.
 March 2011



1,000 Feet