



City of South Portland

829 Sawyer Street, South Portland, Maine - 04106

Phone: 207-767-7603

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NOTICE OF VIOLATION

April 3, 2025

**ROMAN CATHOLIC BISHOP OF PORTLAND
510 OCEAN ST
PORTLAND, ME 04103**

**PORTLAND INTERNATIONAL JETPORT
947 WESTBROOK ST
PORTLAND, ME 04102**

**PORTLAND INTERNATIONAL JETPORT
C/O CITY OF PORTLAND
389 CONGRESS ST
PORTLAND, ME 04101**

**RE: 1561 BROADWAY Parcel No.: 042-0000-092-
Violation Number: 25-0008
Violation Date: January 30, 2025**

This is to inform you that a Code Enforcement Officer has inspected the above referenced property and a violation(s) of the ordinances of the City of South Portland exists. The violation(s) are as follows:

VIOLATION 1

Code Book: South Portland Code of Ordinances - **Code Title:** Ch. 27 Zoning, ARTICLE XXI. Tree Protection - **Code Section:** Sec. 27-2103.

Ordinance: Sec. 27-2103. Applicability.

(b) Tree Protection Approval Required.

The following projects shall require a Tree Protection Approval prior to conducting Tree Removal of Protected Trees:

- 1) Projects subject to Planning Board review. All projects that require Planning Board approval, other than those specifically identified in Sec. 27-2103(a) above, require Tree Protection Approval.
 - (a) If the project is a subdivision without the construction of structures, the subdivision application shall identify the proposed or future building envelopes. Any Tree Removal of Protected Trees caused by (i) the creation of the subdivision, (ii) the construction of necessary improvements for the

subdivision, such as access and utilities, or (iii) the proposed building envelopes associated with the subdivision, shall be subject to review under the separate Tree Protection Approval application.

2) Site Clearing. Projects not subject to Planning Board review, other than those specifically identified in Sec. 27-2103(a)(1)-(5) & (13) above, that result in the Tree Removal of ten (10) or more Significant Trees, three (3) or more Heritage Trees, one (1) or more Historic or Cultural Trees, or one (1) or more Program Trees, shall require Tree Protection Approval.

Conditions Found and Corrective Action Required: The property has been stripped of a significant number of trees by the Portland International Jetport Authority (the "Jetport"). The Jetport has notified the City that the tree removal was conducted under the conditions of a Site Plan approval that was granted by the South Portland Planning Board on May 8, 2019. The scope of the 2019 Site Plan approval is still under review, however the 2019 Site Plan approval, if valid, only referenced the selective removal of trees above the FAA's GQS 30:1 threshold as it applies to 1561 Broadway (See Chapter 3, Tables 3-4 and 3-5, Runway Approach Surface/Instrument Departure Surface requirements, FAA Advisory Circular 150/5300-13B - Airport Design - Change 1). Ten (10) or more Significant Trees, as defined in Sec. 27-2102(i)(1), have been removed that are below the Instrument Runway Approach Surface Ratio (30:1) thresholds and were not contemplated in the 2019 Site Plan approval (if valid). Therefore, Tree Protection Approval pursuant to Sec. 27-2104 to -2105 is required for Site Clearing and the removal of protected trees occurred without prior approval. You are hereby ordered to submit an application to the Planning Board for Tree Protection Approval in order to comply with the ordinance.

This process will involve the mitigation of trees removed, by either replanting onsite or offsite, or an in-lieu payment to the Tree Mitigation Fund. In addition to the mitigation required through the Tree Protection Approval application, pursuant to Sec. 27-133, "...Fines for violations of Article XXI (Tree Protection) shall, at a minimum, be no less than double the amount of the in-lieu payment to the Tree Mitigation Fund set forth in Sec. 27-2104(c)(2)..."

VIOLATION 2

Code Book: South Portland Code of Ordinances - Code Title: Chapter 27 Zoning, ARTICLE XIV. PLANNING BOARD REV - **Code Section:** Sec. 27-1422. Requirement; applicability. (c)

Ordinance: Sec. 27-1422. Requirement; applicability.

(c) Site plan review shall be required for the following activities:

(1) New construction which by itself or when added to construction completed within the preceding two (2) years, exceeds a minimum floor area, as specified in the provisions of the zoning ordinance pertaining to the district in which the proposed development is located. "New construction" means (a) the construction of a new structure, (b) an addition to an existing structure, or (c) any interior construction for the purpose of converting an existing building from one use to another use if the conversion will significantly increase off-site impacts. A "use" shall be any use listed in the zoning district in which the site is located. The impacts to be considered include, but are not limited to increases in: traffic generation; parking area; utilization of City services; stormwater runoff; or noise, odors, or other annoying or dangerous emissions detectable at lot boundaries. In determining the relative degree of impact of a proposed use, the comparison shall be to either (i) the most recent lawful use of the building or (ii) any lawful use of the building within the last 2 years (but, in the latter case, only if such use was evidenced by a certificate of occupancy on file in the Code Enforcement

Officer's office), whether such use was as a permitted use, special exception use or a nonconforming use.

(2) Development activity which creates more than fifteen thousand (15,000) square feet of disturbed area within any five-year period.

(3) Any use proposed for the Shoreland Resource Protection Overlay Subdistrict SRP....

Conditions Found and Corrective Action Required: The tree removal was commissioned by the Jetport and conducted as a single tree removal effort spanning the subject property and 36 Dawson Street, also owned by the Roman Catholic Bishop of Portland. The tree removal that occurred at 1561 Broadway and 36 Dawson involved a feller/buncher with saw attachment, stump removal, and significant ground/soil disturbance. As such, the method of tree removal on both sites involved a disturbed area above the threshold of 15,000 sq. ft. in violation of Sec. 27- 1422(c)(2). Therefore, the development activity is subject to Site Plan approval. In the alternative, if the 2019 Site Plan approval is valid, the development activity required an amendment to the standing 2019 approval to modify the scope of development activity. You are hereby ordered to apply for Site Plan approval or a Site Plan Amendment for development activity exceeding 15,000 sq. ft. of disturbance at an after-the-fact rate as provided in the City's Master Fee Schedule.

Per Local Ordinance, Chapter 27, Article XIV, Sec. 27- 1422(c)(2) Site Plan approval is required for the development activity.

VIOLATION 3

Code Book: South Portland Code of Ordinances - **Code Title:** Chapter 27 Zoning, ARTICLE XV. STANDARDS - **Code Section:** Sec. 27-1526.

Ordinance: Sec. 27-1526. Performance Standards with Respect to Activities in or Adjacent to Freshwater Wetlands.

The purpose of these provisions is to maintain the functions and values of the community's freshwater wetlands and to ensure the health and safety of the residents of the City while preserving our economic vitality.

(a) General Standard. All use of land, the construction or enlargement of buildings, structures, or impervious surface, or the grading, alteration, or disturbance of the land must be carried out so that:

(1) The alteration of any freshwater wetlands on the property will be avoided to the extent feasible considering cost, existing technology and logistics based upon the overall purpose of the project;

(2) The area of freshwater wetlands that is altered will be limited to the minimum amount necessary to complete the project;

(3) A twenty-five foot wide naturally vegetated buffer strip will be maintained between the activity and any river, stream or brook (this is in addition to any requirement for an upland buffer in accordance with Sec. 27-1526(e)); and

(4) The project, including any alteration of freshwater wetlands, will not violate any state water quality law, including those governing the classification of the State's waters.

In determining whether the proposal avoids the alteration of wetlands to the extent feasible and if the

area of any alteration is the minimum necessary to complete the project, the Planning Board or the Code Enforcement Officer shall be guided by the State of Maine's Natural Resources Protection Act, Wetlands and Waterbodies Protection Rules Chapter 310 as revised December 5, 2006.

Conditions Found and Corrective Action Required: There is a wetland alteration associated with this property, as evidenced by the wetland delineation provided to the Planning Division by New Leaf, LLC in their Site Plan application on sheet "Natural Resource Map", dated January 14, 2025. You are hereby ordered to mitigate the wetland alteration.

Per Local Ordinance, Chapter 27, Article XV, Section 1526 (d) Compensation or Mitigation for Freshwater Wetland Alteration, you are responsible for the mitigation or compensation of the wetland alteration.

VIOLATION 4

Code Book: Planning Board Approval Letter - Code Title: 1561 Broadway Planning Board Findings of Fact - Code Section: Sec. 27-1426. Standards.

Ordinance: On May 8, 2019, the South Portland Planning Board approved a Site Plan application by the Portland International Jetport Authority (the "Jetport"), describing the project as follows: The City of Portland and the Portland International Jetport have requested an amended site plan to implement a number of capital improvement projects on the Jetport's property located at 777 Westbrook Street. The applicant proposes to phase the improvements relative to priorities established in the Jetport's Sustainable Airport Master Plan. The improvements relate to aircraft deicing apron expansion, taxiway, service road, tree removal, and water quality projects. There are eight related projects:

- 1) Improvements for more and long-term aircraft parking for de-icing procedures,
- 2) Runway 11, Taxiway Bypass,
- 3) tree removal for Runway 36,
- 4) air cargo taxiway,
- 5) Taxiway C realignment,
- 6) Taxiway A relocation east of Runway 18-36,
- 7) service access road relocation east of Cargo Area, and
- 8) Taxiway B construction from Runway 36 end to Runway 29 end.

The Site Plan approval Findings of Fact noted that:

...Off the Jetport, the applicant proposes to selectively cut trees in a forested freshwater wetland identified as obstructions in the approach of Runway 39 without stump grubbing. The area is found on the east side of Interstate 295 located on the Calvary Cemetery land. The applicant has provided the U.S. Army Corps of Engineers Permit No. NAE-2008-00053, in which a mitigation payment of \$236,009.80 for the compensation for filling, dredging, vegetation conversion (e. forested to shrub/scrub), and others. MeDEP has issued a Natural Resource Protection Act Permit-by-Rule for disturbance within 75-feet of coastal wetlands...

Conditions Found and Corrective Action Required: The tree removal at 1561 Broadway involved stump removal, and did not adhere to the erosion and sedimentation control (ESC) program as approved by the Planning Board (see Sheet 39: "Erosion Control Narrative", dated May 1, 2019). The following violations are noted:

- 1. Failure to conduct a pre-construction meeting prior to the commencement of work per Erosion and Sedimentation Control Narrative Note 14.10.**

2. Failure to install erosion and sedimentation control measures, notably the controls in ESC Note 14.1.1, 14.1.2, 14.7(3), 14.1.6, 14.2.1, 14.2.4(a), 14.2.5, 14.2.6, 14.3.3.,

3. Failure to avoid soil disturbance as stump removal occurred and soils were disturbed during excavator operations.

4. Failure to clearly delineate wetlands on the property. Temporary stockpiles were located within 100 feet of a wetland. Furthermore, the City is in receipt of a wetland delineation produced by Haley Ward on behalf of New Leaf, LLC as part of a Site Plan application (see sheet "Natural Resource Map", dated January 14, 2025), indicating the site contains significantly greater wetland area than disclosed by the applicant in their 2019 application materials. The wetland discrepancy is being investigated by the City, Maine DEP, and the Army Corps of Engineers.

The Contractor has sole responsibility for complying with the erosion/sediment control report and shall be responsible for any monetary penalties resulting from failure to comply with these standards.

Per Local Ordinance, Chapter 27, Article XIV, Sec. 27- 1422(c)(2) Site Plan approval is required for the development activity.

GENERAL NOTICES

It is your responsibility to arrange for the correction of the above stated violation(s) prior to the resolve by date of May 5, 2025.

The City's expectation from you, the owner or party in interest:

Your prompt attention to this matter is advised to avoid legal action. It is our sincere desire to work with you in devising an implementation schedule for the correction of these conditions. Please contact this office immediately if circumstances do not permit the timely compliance with this order and abatement of the violations or if you have any questions regarding this matter.

Possible legal action if you do not respond to or comply with this notice:

In lieu of or in addition to the issuance of citations this office may initiate a land use complaint pursuant to Rule 80-K of the Maine Rules of Civil Procedure and 30-A M.R.S.A. §4452 et Seq. as amended. A judgement from such a lawsuit in the City's favor can result in a court order that you abate any violations, that you pay a fine of up to two-thousand five-hundred dollars (\$2,500.00), per violation, per day, and that you pay the City's reasonable attorney fees, expert witness fees and costs.

Your right to appeal:

You may appeal this order and request a hearing before the City of South Portland Board of Appeals by filing a written petition for said hearing at the code enforcement office within thirty (30) days of the

date of service of this notice. The petition shall be submitted on forms provided by this office along with the appeal fee as outlined in the fee schedule. Should you fail to appeal you will be barred from any opportunity to contest or challenge the content or terms of this Notice and Order in any further legal proceedings.

If you have any questions, please contact The Code Official at: (207) 767-7603 between 7:30 A.M. and 5:00 P.M., Monday, Wednesday and Thursday or between 9:00 A.M. and 5:00 P.M. on Tuesdays. Your cooperation is expected and appreciated.

A handwritten signature in black ink, appearing to read "Nicholas Richard", written in a cursive style.

Nicholaus Richard
Code Enforcement Director

CC: Milan Nevajda; South Portland Planning Director
Scott Morelli; South Portland City Manager