



CITY OF SOUTH PORTLAND

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To: James H. Gailey, City Manager
City of South Portland Planning Board Members
From: Tex Haeuser, Planning Director 
Cc: Patricia Doucette, Assistant Director of Planning & Development
Sally J. Daggett, Esq.
Steve Puleo, Community Planner
Adin Wolfram, Planning Secretary
Date: July 18, 2013
Re: **ADDENDUM to “Proposed Waterfront Protection Ordinance and the Comprehensive Plan”**

It has come to my attention, after finishing and disseminating my previous memo, that there is a small but potentially significant discrepancy between the punctuation of the actual proposed Waterfront Protection Ordinance (WPO) petition and the version that went to the City Council. In the actual petition, a copy of which I sent you on June 7th, Section 4 reads as follows:

Section 4: Section Added to Code:

Section 27-922.5 is hereby added to the Municipal Code to read:

- (a) Notwithstanding any other provision of this Code, there shall be no enlargement or expansion of existing petroleum storage tank farms and accessory piers, pumping and distribution facilities, or facilities for the storing and handling of petroleum and/or petroleum products in the Shipyard District or within the Shoreland Area of any Commercial District(C).
- (b) No new or expanded facility shall be constructed on an existing pier located in or extending seaward of the Shipyard District.
- (c) “Expansion” as used in this section includes, but is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities; construction of any new combustion units, stacks, vapor recovery systems, equipment, structure, or machinery for transportation or storage of petroleum, including any pumping, distribution or other facility for loading tankers or other ships instead of unloading ships.
- (d) This prohibition is not subject to waiver or variance under any provision of this Code unless necessary to comply with the Americans for Disabilities Act (ADA), fire codes, or pollution control regulations imposed on existing facilities with respect to their existing use as provided in Section 27-302(e)(1).

In the Word version that was provided to the City Clerk, however, Section 4(c) is punctuated at the end of the sentence with a comma that isn’t present in the actual citizens petition (highlighted in **red**):

- (c) “Expansion” as used in this section includes, but is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities; construction of any new combustion units, stacks, vapor recovery systems, equipment, structure,

or machinery for transportation or storage of petroleum, including any pumping, distribution or other facility¹ for loading tankers or other ships instead of unloading ships.

As I indicated in the previous memo, this comma creates vagueness and some different possible interpretations. However, we know now that the actual petition does not have a comma, and so it is clear¹ that “for loading tankers or other ships instead of unloading ships” only qualifies “pumping, distribution or other facility.” This strengthens interpreting Section 4 to have a broad applicability to facilities and not just to those associated with loading petroleum products onto ships or even in some cases to facilities unrelated to petroleum storage or handling.

In conclusion, the Planning Board’s recommendation to the City Council on the consistency of the proposed Waterfront Protection Ordinance with the City’s Comprehensive Plan needs to be based on the actual citizens petition and not on the Word version submitted to the City Clerk.

¹ There still are other parts of Sec. 4 that can be read in different ways. For example, in Sec. 4(a), does “in the Shipyard District or within the Shoreland Area of any Commercial District(C)” refer to tank farms, accessory piers, and pumping/distribution facilities as well as to facilities for storing/handling petroleum products? Or does it just refer to facilities for storing/handling petroleum products? If the latter, then Sec. 4(a) can be interpreted to prohibit enlargement/expansion (as detailed in Sec. 4(c)) of tank farms, accessory piers, and pumping/distribution facilities anywhere in the City.



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Re: **Proposed Waterfront Protection Ordinance and the Comprehensive Plan**

Introduction

The Planning Board is required to assess the land use implications and Comprehensive Plan conformance of the proposed Waterfront Protection Ordinance (WPO) and to make a corresponding recommendation to the City Council. The City Council referred the proposed WPO to the Planning Board on July 1, 2013. Sec. 27-115(g) of the South Portland Zoning Ordinance provides that the “Planning Board shall review all requests for zoning amendments and related site plans and make its recommendation to the City Council regarding the land use implications of the proposal and its consistency with the City’s adopted Comprehensive Plan.”¹

It is important to point out that at the July 23rd public hearing, Planning Board members will not be voting on whether they approve of the WPO, and they are under no obligation to state their opinion on whether they feel the WPO should be adopted. As provided in Sec. 27-115(g), the Planning Board members’ role instead is limited to assessing the land use implications of the WPO and recommending to the City Council the degree to which they feel the proposed WPO conforms with the Comprehensive Plan. The City Council, and potentially the voters, will then use the Planning Board’s recommendation in deciding whether to adopt the proposed WPO. Given the lengthy effort by many stakeholders to develop policies that are the better for having been thoroughly analyzed and debated, it is hoped that the Planning Board’s determination of how well the WPO fits with the Comprehensive Plan will be an important consideration in deciding whether to support the proposed WPO—but it is not the only factor to

¹ For an analysis of State and local requirements for the Planning Board’s role in this citizen-initiated process, please see the July 3, 2013 memo by Sally J. Daggett, Esq. on the “Role of Planning Board in Review of Citizen Initiated Ordinance.”

consider, and the citizens and/or Council members are not constrained on how they vote on the proposed WPO by the Planning Board's recommendation.

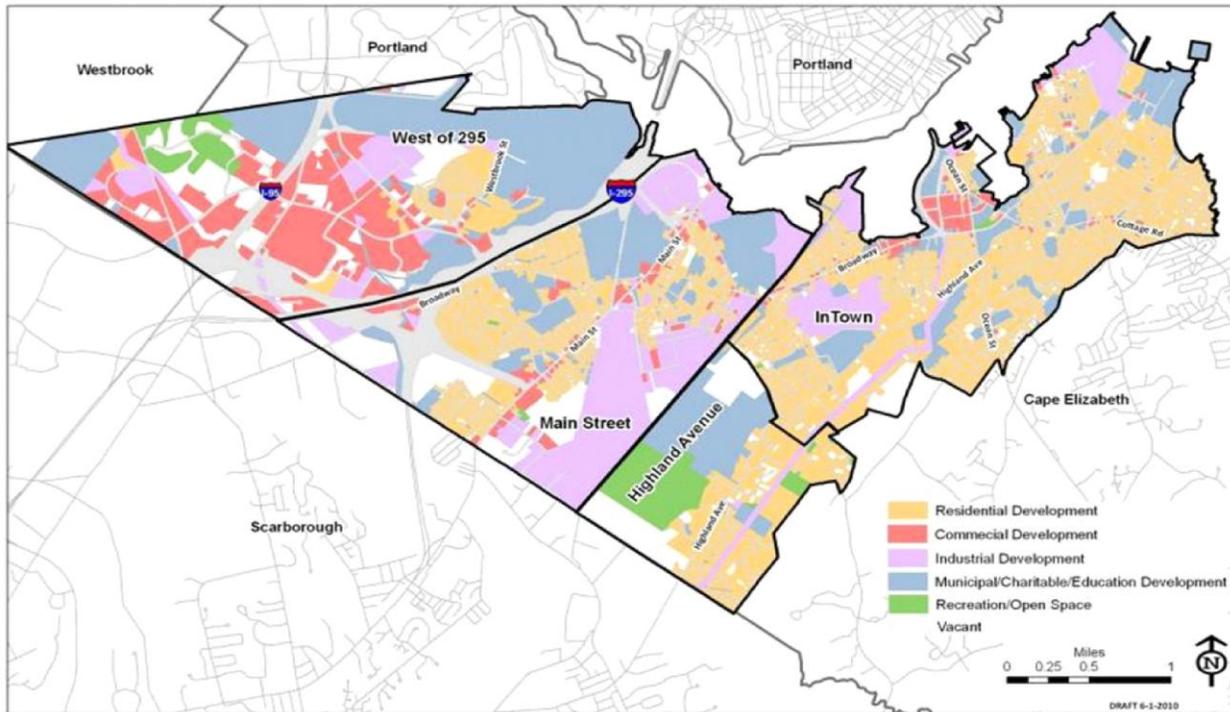


Figure 1 Existing Land Uses

The Proposed Waterfront Protection Ordinance Zoning Amendments

In assessing the land use implications and Comprehensive Plan conformance of the proposed WPO, it is first necessary to identify the “active ingredients” in the proposed WPO—the provisions that would create a change from current zoning. These are primarily contained in Sections 3 and 4 of the proposed WPO as follows:

Section 3: Amendment to Existing Section (new language is underlined):

Section 27-922(g) and (n) of Chapter 27 are hereby amended as follows:

Permitted Uses. The following uses are permitted in the Shipyard District S....

(g) Petroleum storage tank farms and accessory piers, pumping and distribution facilities for the unloading of petroleum products from ships docking in South Portland, as governed by all applicable sections of the Code....

(n) Facilities for storing and handling of petroleum and/or petroleum products that have been unloaded from ships docking in South Portland, subject to the provisions of Ord. Section 27-1517, excluding automobile filling stations.

Section 4: Section Added to Code:

Section 27-922.5 is hereby added to the Municipal Code to read:

(a) Notwithstanding any other provision of this Code, there shall be no enlargement or expansion of existing petroleum storage tank farms and accessory piers, pumping and distribution facilities,

or facilities for the storing and handling of petroleum and/or petroleum products in the Shipyard District or within the Shoreland Area of any Commercial District(C).

(b) No new or expanded facility shall be constructed on an existing pier located in or extending seaward of the Shipyard District.

(c) "Expansion" as used in this section includes, but is not limited to, construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities; construction of any new combustion units, stacks, vapor recovery systems, equipment, structure, or machinery for transportation or storage of petroleum, including any pumping, distribution or other facility, for loading tankers or other ships instead of unloading ships.

(d) This prohibition is not subject to waiver or variance under any provision of this Code unless necessary to comply with the Americans for Disabilities Act (ADA), fire codes, or pollution control regulations imposed on existing facilities with respect to their existing use as provided in Section 27-302(e)(1).

Section 3 Amendments

The proposed Section 3 provisions are amendments to the list of permitted uses in the Shipyard S zoning district. According to current ordinance, the purpose of the Shipyard zone is as follows:

The Shipyard District S is established to promote the Shipyard area in South Portland as a robust waterfront center for office complexes, commercial uses, marine uses, and light industrial activities. The Shipyard District S seeks to maintain the conforming status of existing businesses, to prevent residential development and associated land use conflicts, and to minimize the impacts of development on adjacent zoning districts. The uses allowed in the Shipyard District shall be in compliance with the performance standards of this and all other applicable ordinances of the City of South Portland.

The uses currently allowed in the Shipyard zone include:

- (a) Business and professional offices and office complexes.
- (b) Business services.
- (c) Financial services.
- (d) Hotels, motels, and inns.
- (e) Restaurants and other places for the serving of food or beverages, provided, however, such facilities may not be open between the hours of 1:00 a.m. and 6:00 a.m.
- (f) Light industrial uses.
- (g) Petroleum storage tank farms and accessory piers, pumping & distribution facilities as governed by all applicable sections of the Code.
- (h) General bottled gas distribution and bottling of non-flammable and non-toxic gases.
- (i) Marine uses.
- (j) Piers and wharves used for permitted uses of this zoning district.
- (k) Accessory buildings and uses, including child, adult or combined day care centers, and including telecommunication antennas, except that such antennas may not be placed on exempt towers, and provided that no premises shall be used for both the washing of motor vehicles and the sale or dispensing of gasoline or any flammable liquids.
- (l) Municipal parks.

- (m) Public utility buildings, including substations, pumping stations and compressor stations.
- (n) Storing and handling of petroleum and/or petroleum products subject to the provisions of Ord. Sec. 27-1517, excluding automobile filling stations.

Additional uses are allowed in the Shipyard zoning district as special exceptions (Planning Board review and approval required):

- (a) Wholesale trade.
- (b) Warehousing and distribution facilities.
- (c) Government buildings and uses other than professional offices and office complexes.
- (d) Community buildings and/or grounds for games, recreation or sports.
- (e) Membership sports or recreation clubs.
- (f) Retail businesses and service establishments, other than business and financial services as permitted above, exclusive of junkyards and salvaging operations.
- (g) Monopole telecommunication towers.
- (h) Piers and wharves used for special exception uses of this zoning district.

The proposed WPO would amend (g) and (n) of the permitted, non-special exception uses above to limit them to only be allowed in connection with the unloading of ships. In zoning, a general rule is that uses that are not listed as allowed or as special exception uses are not permitted. Therefore, by not including corresponding uses for the loading of ships, the WPO would prohibit from the Shipyard zone any new pumping and distribution facilities for the unloading of petroleum products from ships docking in South Portland. Existing such uses would become nonconforming as governed by the Zoning Ordinance's section on Nonconformance (Sec. 27-301). Similarly, new facilities in the Shipyard Zone would not be allowed for storing and handling petroleum and/or petroleum products associated with loading ships docked in South Portland.

Regarding nonconforming uses, the Maine Supreme Court has indicated the following:

The spirit of zoning ordinances is to restrict rather than to increase any nonconforming uses and to secure their gradual elimination. Accordingly, provisions of a zoning regulation for the continuation of such uses should be strictly construed and provisions limiting nonconforming uses should be liberally construed. The right to continue a nonconforming use is not a perpetual easement to make a use of one's property detrimental to his neighbors and forbidden to them, and nonconforming uses will not be permitted to multiply when they are harmful or improper.

Nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. The policy of zoning is to abolish nonconforming uses as speedily as justice will permit.²

² *Lovely v. Zoning Board of Appeals of City of Presque Isle*, 259 A.2d 666, 670 (Me. 1969).

Section 4 Amendments

Subsection (a) of Section 4 of the proposed WPO prohibits the enlargement or expansion of existing petroleum storage tank farms and accessory piers, pumping and distribution facilities, or related facilities for the storing and handling of petroleum and/or petroleum products in the Shipyard district or in the Shoreland Area of any Commercial C zoning district. (Note that inserting language inside the Shipyard zone's list of permitted uses that would govern areas of South Portland outside of the Shipyard zoning district is at best confusing. Each zoning district should have its own provisions for what is or is not allowed.) The Shoreland Area term in Section 4(a) of the proposed WPO comes from the City's Shoreland Zoning provisions which overlay and provide additional restrictions to areas within 250 feet of the highest annual tide line as well as to certain streams, floodplains, and other resources. Figure 2 shows the location of the Shipyard zoning district as well as the intersection of the City's Shoreland Area with the Commercial C zoning districts.

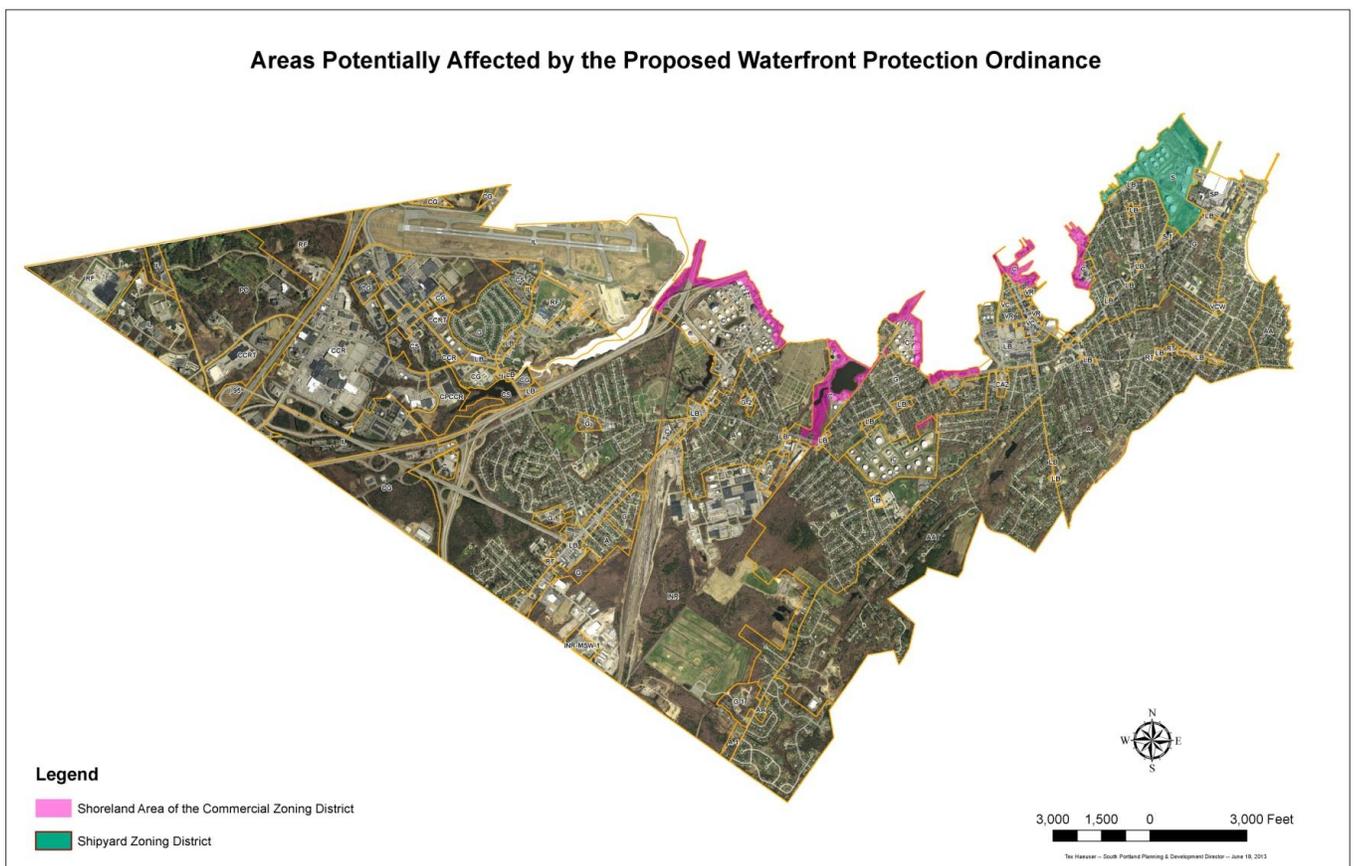


Figure 2 Areas Potentially Affected by the Proposed Waterfront Protection Ordinance

Like Section 3, Section 4(a) is a major departure from existing policy. Currently, as set out in Sec. 27-1517(A), new above ground storage tanks for petroleum based products

greater than 25,000 gallons capacity are allowed if the property involved is currently being used for such use or abuts a property in such use and is in the same ownership.

Subsection (b) of Section 4 of the proposed WPO prohibits construction of a new or expanded facility on an existing pier located in or extending seaward of the Shipyard District. (See Figure 3.) This appears to be blanket prohibition not limited to petroleum handling.

Subsection (c) of Section 4 of the proposed WPO attempts to explain what “expansion” means as used in (a), related to the Shipyard District and the Shoreland Area portions of the Commercial C district, and (b), existing piers connected to Shipyard District. It is divided into two parts separated by a semicolon. The first part says that the prohibition includes but is not limited to the construction, reconstruction or alteration of any existing facility to change the function or capacity of such facilities. As written, this is a broad prohibition and is not tied to the handling of petroleum products. The second part states that the expansion prohibition includes the construction of any new combustion units, stacks, vapor recovery systems, equipment, structure, or machinery for transportation or storage of petroleum, including any pumping, distribution or other facility, for loading tankers or other ships instead of unloading ships. Whether “for loading tankers or other ships instead of unloading ships” qualifies everything after the semicolon or just the last item—machinery for transportation or storage of petroleum—is open for interpretation.



Figure 3 Ownership of Shipyard District Piers

Summary of Comprehensive Plan Policies Relevant to the Proposed WPO

The next section of this memo contains a long list of policies from the Comprehensive Plan that I feel are relevant in determining whether the proposed Waterfront Protection Ordinance is consistent with the City’s Comprehensive Plan. Some of these policies are more relevant than others. The key factor in determining the degree of relevance is land use. Given that the proposed WPO amendments would affect what kind of uses can go on in certain areas of the City, those policies in the Comprehensive Plan that

deal most directly with the land uses in those areas are the most relevant. This is not to say that environmental, economic, fiscal, and other considerations are not important when evaluating energy strategies. But in the narrow context of the Waterfront Protection Ordinance's consistency with the City's Comprehensive Plan, what counts most are the Plan's land use policies for the areas potentially affected by the proposed WPO.

Before summarizing the most relevant policies, it perhaps is useful to mention that from a land use point of view, it makes no difference if a product is being loaded or unloaded from a vessel. In both cases the land use involved is the basic port activity of transshipment, the moving of freight from one mode of transport to another. Relative to loading or unloading, whatever the Comprehensive Plan policies are to one, they apply equally to the other.

The policies in the Comprehensive Plan that I consider to be most relevant are those contained in the Plan's Eastern Waterfront and Working Waterfront sections.

Eastern Waterfront

The Eastern Waterfront area discussed in the Comprehensive Plan includes the existing Shipyard zoning district which the WPO proposes to amend (see Figures 4 and 5). The broad vision for this area says that:

The traditional marine uses including the oil terminals, repair facilities, and marinas remain key elements of the waterfront. (p. 6-20)

The Comprehensive Plan divides the Eastern Waterfront into districts (see Figure 5). The Marine Industrial Areas include the Portland Pipe Line terminals as well as other uses. For this area the policy is that:

In the short term, the City's marine terminals and related marine industrial areas are maintained and improved while minimizing their impact on adjacent residential neighborhoods. A variety of marine and marine-related uses are allowed. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites. (pp. 6-20, 21)

Relative to the Shipyard Development District in the Eastern Waterfront area, which contains a Portland Pipe Line storage tank facility, the Plan says that:

Within this area, the City's development regulations should continue to allow existing marine and oil facilities to upgrade or expand on parcels that are already used for this purpose. (p. 6-21)

and

- All waterfront areas are either utilized for marine-related uses or provide access to and along the shoreline. (6-21)

Working Waterfront

The other most directly relevant set of policies in the Comprehensive Plan are those in the Working Waterfront section. This area in the Plan includes many of the Shoreland Areas of the Commercial zoning district proposed for zoning amendments by the proposed WPO (see Figure 6). The broad vision is that:

The City's deep-water access is a unique and very valuable asset. Those areas that are currently used for marine purposes should generally be reserved for future uses that require a waterfront location. ... In the long term, if the need for oil transport diminishes, the City will need to re-evaluate the best use of these areas. (p. 6-33)

The land use policy for the Working Waterfront areas is:

To assure the continued availability of these areas for future marine uses, the City land use regulations should designate the working waterfront areas that are currently zoned Commercial as Marine Industrial areas in which a variety of marine and marine-related uses are allowed but residential uses and nonresidential uses that do not need a waterfront location are not permitted (see Figure 6.8). This should include the Portland Pipe Line tank farm off Hill Street. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites. (p. 6-34)

Full List of Comprehensive Plan Policies that Bear on the Proposed WPO

The following is an attempt to list in a complete fashion the Comprehensive Plan goals, objectives, and policies that pertain to the proposed Waterfront Protection Ordinance. As discussed above, some of these policies are more pertinent than others when faced with the narrow question of whether the proposed Waterfront Protection Ordinance is consistent with the City's Comprehensive Plan.

Chapter 3: Overview of Updated Inventories

Page #

3-2 ***Marine Resources***

South Portland waterfront is dominated by commerce and industry, particularly oil storage/distribution and recreation marinas, as well as the US Coast Guard base. In spite of the heavy usage of the waterfront for these purposes, there are ample opportunities for public access to the water for boaters, beachgoers, and sightseers.

Chapter 4: Community Vision

- 4-1** South Portland is a GREEN CITY. Trees, parks, and open spaces bring nature into the community and make it readily accessible to all residents, including those with disabilities. It is also a community that is focused on minimizing its impact on the environment. The City actively encourages the use of green building techniques. The community collectively works to reduce its carbon footprint. It promotes the use and development of alternative energy sources as well as energy efficiency and conservation, especially for older buildings. It encourages a compact, higher-density, mixed-use pattern of development. It encourages transportation alternatives by providing facilities so that people can walk or bike safely and conveniently throughout the City as well as an efficient transit system that allows people to not have to drive everywhere.
- 4-2** South Portland remains a WATERFRONT COMMUNITY. The waterfront is the reason the City developed as it did and remains an important element of the community. While much of the shoreline remains a working waterfront, the public's access to the water expands. As older industrial and transportation uses of the waterfront become obsolete or are relocated or upgraded, the shoreline evolves as more of a mixed-use area preserving the opportunity for traditional marine uses while accommodating recreational, business and even residential uses. The City and its residents continue to be connected to the waterfront.
- 4-2** South Portland continues to be an ECONOMICALLY DIVERSE community that adjusts to evolving business opportunities and realities. In addition to being home to the largest retail shopping center in the State, the City also provides community and neighborhood shopping and services in attractive, viable commercial areas. The City's economic base continues to grow and includes a wide range of businesses, from small, locally owned sole-proprietor, "Main Street"-type businesses to major manufacturers and international office headquarters. The City strives to ensure that all businesses have access to low-cost energy or are meeting

their own energy needs. The City works to otherwise foster and support economic development and its business community.

Chapter 5: Community Goals and Policies

5-2 B. The Local Economy

Local Objectives:

- To maintain an ongoing economic development program that works to retain and grow existing South Portland businesses while attracting new businesses to locate in the City.
- To reduce the cost of energy for both existing and new businesses in the City.

5-5 C. Natural Resources

Local Objectives:

- To protect and improve the quality of the surface waters within South Portland.
- To protect significant wildlife and fisheries habitat and critical and unique areas.

Pursuant to these objectives, the City of South Portland's policies with respect to the management of its natural resources are:

- 5-7**
12. The City should develop a "sea-level rise adaption plan" that identifies actions the City should take to protect the City's infrastructure from possible damage and to manage development if sea-level rise occurs.
 13. The City should review, and revise if necessary, its development review requirements (subdivision and site plan review provisions) to assure that the impact of development on significant wildlife habitat is taken into account during the review process and that actions are included to minimize the negative impacts on these resources.

5-7 D. Marine Resources

Local Objectives:

- To assure that portions of the waterfront that have deep water access or are otherwise appropriate for marine use remain available for marine uses.
- To provide increased access to the shoreline for recreational use.

Pursuant to these marine resources objectives, the City’s policies are:

1. The City should promote the redevelopment of the “eastern waterfront” as a mixed-use area while maintaining the potential for marine use (see Chapter 6 Land Use Goals and Policies for more details).
2. In those areas of the City’s waterfront that are currently used for marine industrial purposes including the oil terminals, the City should support maintaining these areas as a working waterfront devoted primarily to marine business uses while creating opportunities for increased public access and a mix of uses (see Chapter 6 Land Use Goals and Policies for more details).
3. The City should review, and revise if necessary, its development review requirements (subdivision and site plan review provisions) to assure that the impact of development on significant marine habitats and resources is taken into account during the review process and that actions are included to minimize the negative impacts of development on these resources.

5-17 H. Recreation and Open Space

Local Objectives:

- To provide access to the City’s waterfront for recreational purposes in a manner that is compatible with marine uses of the waterfront.
- 4. The City should continue to work with developers and property owners to expand both actual and visual public access to the shorefront when development or redevelopment occurs.

5-20 K. Energy and Environmental Considerations

Local Objectives:

- To improve the efficiency of energy use by South Portland residents, businesses, and government entities.
- To reduce the amount of Green House Gas (GHG) emissions from City facilities and activities by 17% of 2007 levels by 2017.

Pursuant to these objectives, the policies of the City of South Portland are:

- 5-20
4. In the longer term, the City should work with the business community to develop and implement Phase 2 of the Climate Action Plan focusing on energy efficiency and voluntary reductions in energy use and GHG emissions by the City’s commercial and industrial uses.

Chapter 6: Land Use Goals and Policies

A. Land Use Objectives:

- 6-2
4. **Promote the redevelopment of the “eastern waterfront” as a mixed-use area while maintaining the potential for marine use** – The portion of the City’s waterfront running from the yacht club in Ferry Village around Spring Point to Southern Maine Community College represents a significant opportunity to enhance the City’s image as a desirable community that is a destination for both residents and visitors while at the same time expanding the City’s tax base. The redevelopment of vacant and underutilized areas in a way that expands public access and the diversity of uses while maintaining marine activities is a fundamental land use objective.
 6. **Maintain the working waterfront while creating limited opportunities for increased public access and a mix of uses** – South Portland plays a major role as an oil port because of its all-season deep-water access. While the City should provide opportunities for additional mixed-use development, including expanded public access, in selected areas of the waterfront, the ability of marine-related businesses and activities to be located on the waterfront must be maintained.

B. Key Land Use Policy Areas:

Section A, Land Use Objectives identifies nine broad objectives to guide the City’s policies with respect to future growth and development/redevelopment in the City. This section starts to lay out the

land use policies and programs that will be needed to achieve those objectives. In the following discussions, the Plan looks at eight key geographic areas of the City. These eight areas do not encompass the entire City – rather they focus on those areas where there are key policies issues. For each area, the Plan establishes a broad vision for the future of the area, discusses the overall land use direction for the area, and identifies the related actions that the City will need to take with respect to that area over the next ten to fifteen years when and if resources are available. The discussion of the land use policies for each area takes a broad brush approach. The details of the land use proposals are included in Section D, the Future Land Use Plan (FLUP).

6-19

4. The Eastern Waterfront

The waterfront area at the east end of the City starting at the yacht club in Ferry Village and running around Spring Point to Southern Maine Community College is something of a conundrum as the City thinks about the future. It currently has a wide range of uses ranging from marine facilities and oil terminals to high-rise condominiums and a growing educational institution. Some existing uses in the area are or are becoming economically obsolete while there continues to be investment in other uses. While some of the most intense development in the City is in this area, other parcels are vacant or underutilized.

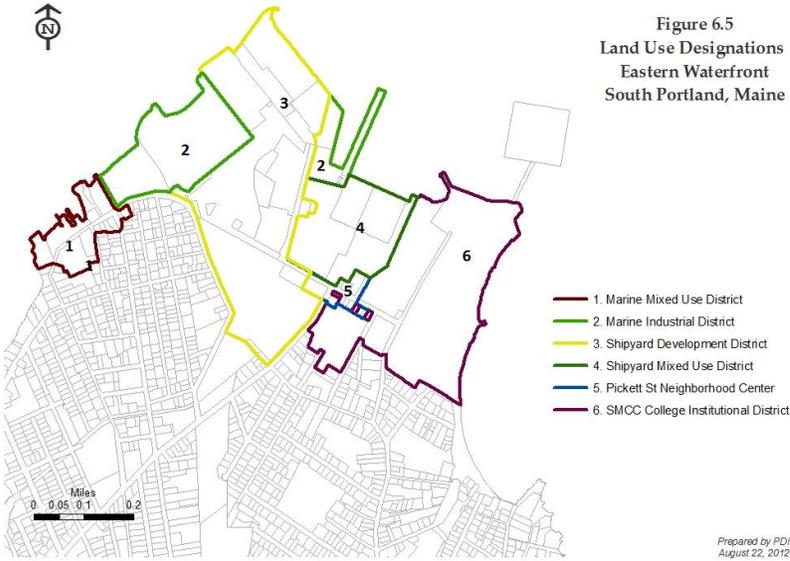


Figure 4 Eastern Waterfront Land Use Designations (Comp Plan)

On one hand, the Eastern Waterfront presents tremendous opportunities for growth and development. Deep-water access is available along much of the coastline, the area is served by public water and sewerage, and there is land that is potentially suitable for redevelopment. On the other hand, redevelopment is constrained. The waterfront area is adjacent to established residential neighborhoods, there are a number of parcels where the use is committed for the foreseeable future, some areas may be at increasing risk of flooding, and, most importantly, vehicle access into and out of the area is constrained. Broadway is the primary link between the Eastern Waterfront and the rest of the City. This street bisects established residential neighborhoods and carries heavy volumes of traffic, making its ability to accommodate more traffic problematic.

6-20

A. Broad Vision

The Eastern Waterfront continues to evolve to become a marine, mixed-use area that capitalizes on the access to the waterfront and spectacular views of the harbor and inner Casco Bay. Southern Maine Community College continues to improve its campus primarily within its existing borders. The traditional marine uses including the oil terminals, repair facilities, and marinas remain key elements of the waterfront. At the same time, the area along Front Street in Ferry Village and the underutilized former industrial properties are redeveloped into mixed-use areas that attract people to live and work in the area and to enjoy the waterfront.

Relationship of the Existing Shipyard Zone to the Comprehensive Plan's Eastern Waterfront Land Use Designations



Figure 5 Shipyard Zone and the Eastern Waterfront

B. Land Use

The Eastern Waterfront consists of a number of subareas (see Figure 6.5) that need to be treated differently from a land use perspective. These include:

Ferry Village Marine Mixed-Use Area – This area includes the Front Street waterfront in Ferry Village. The area evolves into a water-related mixed use area that both serves the Ferry Village neighborhood and attracts visitors to this portion of the waterfront. The waterfront continues to be used primarily for low/moderate intensity marine related and water-enhanced uses that are reasonably small in scale. Non-marine uses are allowed to develop over time as part of mixed-use redevelopment or reuse especially in areas away from the waterfront. Moderately high-density residential uses (up to 12-18 units per acre) are allowed on the upper floors of mixed use buildings except along the immediate waterfront. Development/redevelopment maintains or provides both visual and actual access to the shoreline.

Marine Industrial Areas – This includes the Gulf-Cumberland terminal and Portland Pipe Line terminals 1 and 2 including the developed tanks. In the short term, the City's marine terminals and related marine industrial areas are maintained and improved while minimizing their impact on adjacent residential neighborhoods. A variety of marine and marine-related uses are allowed. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites (see additional discussion in the Working Waterfront section).

6-21

Shipyard Development District – This area includes the large vacant or underutilized properties on or near the waterfront including the Cacoulidis property and the vacant portion of the Portland Pipe Line property at the corner of Broadway and Pickett Street as well as the other lots on the west/north side of Madison Avenue. This area of the City has significant potential to expand the City's tax base and create broad economic benefits for the community at large. The City's basic policy is to encourage good quality development in this area. To accomplish this objective, the City should actively work with property owners and/or potential developers to explore the possible development/redevelopment of these parcels. If necessary, the City should be a partner in any development to assure that

the basic infrastructure needed to support a good quality development proposal is available. The City's broad vision is that this area is developed/redeveloped in a way that expands the City's property tax base and creates economic benefits for the entire community while being compatible with the surrounding neighborhood. Within this area, the City's development regulations should continue to allow existing marine and oil facilities to upgrade or expand on parcels that are already used for this purpose. The regulations also should encourage creative development/redevelopment of the vacant or underutilized land within this district by establishing flexible, performance-based standards that allow a wide range of potential uses. Any development that is well designed and meets that following criteria could be allowed in this development district:

- All waterfront areas are either utilized for marine-related uses or provide access to and along the shoreline.
- Development is designed to be compatible with projected sea-level rise and to protect property from storm induced damage.
- The overall development is integrated in the traditional development pattern of the adjoining Ferry Village and Willard Beach neighborhoods.
- While the intensity of development is dense, the height and scale of buildings transition at the fringes of the area to be compatible with the adjacent neighborhoods.
- New buildings are located and/or designed in such a way as to maximize the potential for water views from and/or across the site.
- Any development provides for an interconnected street network that connects to the adjacent streets in a manner that allows traffic to flow through the development site without encouraging additional traffic on nearby residential streets.
- The uses and/or provisions for access to a development do not significantly increase the amount of peak hour traffic on Broadway or introduce large volumes of trucks into the area unless appropriate traffic improvements are made. Provisions for enhanced public transportation and/or water-based access are part of the development proposal if significant peak hour travel demand will be generated.
- Any development includes a pedestrian and bicycle network serving the development and linking the project to the adjoining neighborhoods and the City's Greenbelt.

- Any development includes a network of green space designed to serve the development and to extend the existing pattern of neighborhood open spaces into and through the development.
- If residential uses are included as part of the development, they should be located and designed to provide a transition to the surrounding neighborhoods while not introducing impediments to the continued operation of nearby marine uses.

6-22 ***Shipyard Mixed-Use Area*** – This area includes the Breakwater project and the adjacent marina and related facilities off Pickett Street at the east end of Broadway that are part of the existing Spring Point SP Zone. The Shipyard Mixed-Use area will continue to be a vibrant residential and marine community that offers a range of water-enhanced residential and recreational opportunities. Within this area, a range of residential, marine, and small-scale marine and service uses are allowed.

6-33 **6. The Working Waterfront**

South Portland developed around its waterfront and that waterfront continues to be a major feature in the City both from an economic perspective and a scenic/recreational perspective. The waterfront is home to a number of activities that are truly “water dependent” – uses that require a location on the water as an operational necessity. These include the Portland Pipe Line facilities on the waterfront and the other oil terminals, the Portland Street pier that provides access for local fishermen, the City’s boat launch, boat repair facilities, and a number of marinas. In addition, it includes the Portland Pipe Line tank farm off Hill Street even though it is not located directly on the waterfront. At the same time, there is market-driven pressure for other “non-water-dependent” uses to locate on the waterfront including restaurants and residential uses.

A. Broad Vision

The City’s deep-water access is a unique and very valuable asset. Those areas that are currently used for marine purposes should generally be reserved for future uses that require a waterfront location. The exceptions to this broad vision are along Front Street in Ferry Village where limited mixed-use development may be appropriate as long as the waterfront continues to be used primarily for low/moderate-intensity, marine-related and water-enhanced uses that are reasonably small in scale, and the redevelopment of the so-called Cacoulidis property in the shipyard area

(see discussion under the Eastern Waterfront section above). In the long term, if the need for oil transport diminishes, the City will need to re-evaluate the best use of these areas.

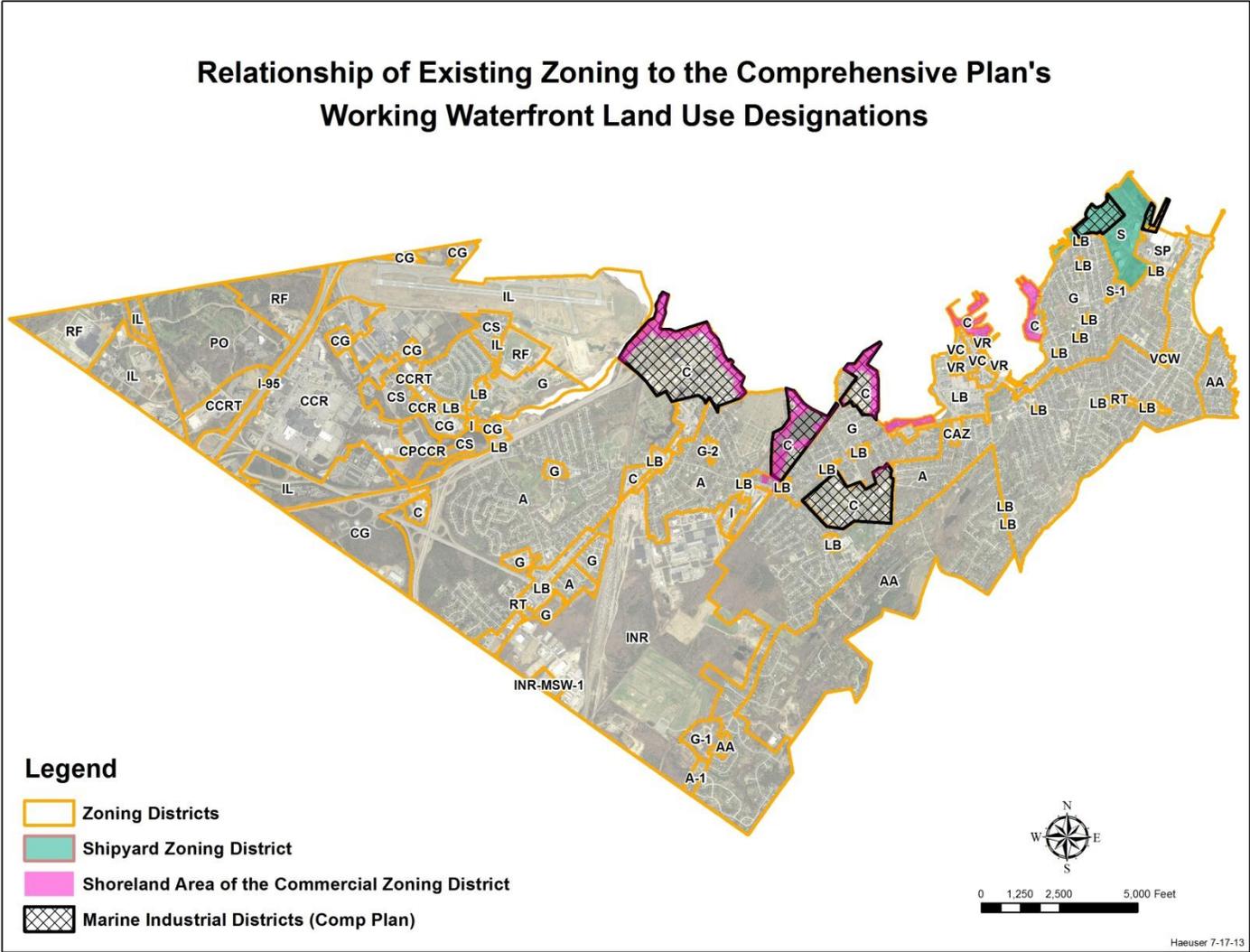


Figure 6 Working Waterfront (Comp Plan)

6-34 B. Land Use

Many of the areas of the waterfront currently used for marine purposes are zoned Commercial except for the “Eastern Waterfront” which is included in the Shipyard District. The Commercial (C) District allows a wide range of nonresidential uses including many that do not require a waterfront location including retail and service businesses, offices, entertainment and recreational facilities, restaurants, and hotels as well as residential units on the upper floors. The Shipyard (S) District allows a similar range of nonresidential uses but precludes residential uses.

To assure the continued availability of these areas for future marine uses, the City land use regulations should designate the working waterfront areas that are currently zoned Commercial as Marine Industrial areas in which a variety of marine and marine-related uses are allowed but residential uses and nonresidential uses that do not need a waterfront location are not permitted (see Figure 6.8). This should include the Portland Pipe Line tank farm off Hill Street. In the longer term, if demand for these facilities declines or the type of activity needs to change and the owners of these facilities desire to explore other uses for these facilities, the City, in conjunction with the owners, should reevaluate the best use of these waterfront sites.

Front Street in Ferry Village and the large, vacant parcels in the shipyard area should be designated as the Ferry Village Marine Mixed-Use Area and Shipyard Development District, respectively, as discussed in the Eastern Waterfront section above.

6-36

C. City Policies and Programs

In addition to revisions to its zoning and land use regulations and the actions discussed above with respect to the Eastern Waterfront, the City will need to undertake a number of other actions to achieve its objectives for these waterfront areas including:

- Support periodic dredging of the Fore River channel to assure access to the existing terminals.
- Improve the management of the tanker truck traffic serving the terminals to minimize the impact on the community including the reconfiguration of Exit 4 of I-295.
- Work with the operators of the existing terminals to minimize the impacts on adjacent residential neighborhoods.
- Consider the use of Tax Increment Financing or other financing approaches to enable terminal operators to modernize and improve these facilities as well as to mitigate environmental concerns.

6-49

D. Future Land Use Plan

The Future Land Use Plan shows graphically how the City's land use policies apply to the land area of the City of South Portland and where and how growth should be accommodated over the next decade. The Future Land Use Plan is not a zoning map. It is intended to show, in a general

sense, the desired pattern of future land use and development. The intention is that this Future Land Use Plan will guide revisions to the City's zoning ordinance and maps to assure that the land use regulations are consistent with the policies set forth in this Comprehensive Plan. The boundaries shown on the Future Land Use Plan are general. The boundaries of each land use designation should serve as guidelines as the zoning ordinance and map are reviewed and revised.

6-50 1. Concept of Growth Areas, Limited Growth Areas, and Restricted or Non-Growth Areas

The Future Land Use Plan embodies the concept that the City should identify and designate "growth areas" or areas in which most of the anticipated non-residential and residential growth will be accommodated, "limited growth areas" or areas in which intensive development will be discouraged but modest infill development and redevelopment will be accommodated, and "restricted or non-growth areas" where development will be discouraged or prohibited. These areas are defined as follows:

- Growth Areas – These are areas where the City wants growth and development to occur. The anticipation is that most residential and non-residential development over the next ten years will occur in these growth areas. Growth Areas include the limited areas with undeveloped land that are appropriate for development as well as developed areas where redevelopment or significant intensification of use is desired. For example, this includes the shipyard area and areas of the Main Street corridor where more intensive use is desired.
- Limited Growth Areas – These are areas that are either essentially fully developed and, therefore, have limited development potential or that have vacant or under-utilized land where the City's desires a limited amount of growth and development over the next ten years. Limited Growth Areas would include established neighborhoods where the City's objective is to maintain the current development pattern while allowing limited infill or redevelopment that is in character with the neighborhood. For example, this designation includes existing neighborhoods such as Meeting House Hill.
- Restricted or Non-Growth Areas – These are areas that are either unsuitable for development or in which the City desires to see little or no growth and development over the next ten years. This includes the areas that are currently zoned Resource Protection.

6-50

2. Land Use Designations

The Future Land Use Plan takes the parts of the City that are within these three broad categories and divides them into “land use designations”. These land use designations cover the entire City and incorporate the concepts set forth for the key land use policy areas discussed in section C above. As noted in the introduction to this section, the land use designations are not intended to be “zoning districts” per se. Rather they form the broad basis that must be reflected in the City’s zoning ordinance including the zoning map. In the preparation of the revised zoning provisions, some of the designations may be combined or re-arranged or divided to create a workable number of zoning districts.

6-51

Growth Areas

A. Residential Land Use Designations

- Knightville Residential Neighborhood (See Figure 6.1 and related discussion)
- Mill Creek Residential Fringe (See Figure 6.1 and related discussion)
- Suburban Residential Development Areas
- Redbank/Brickhill Area (See Figure 6.9 and related discussion)

B. Mixed-Use Land Use Designations

- Knightville Ocean Avenue-Cottage Road Corridor (See Figure 6.1 and related discussion)
- Mill Creek Park Area (See Figure 6.1 and related discussion)
- Mill Creek Commercial Center (See Figure 6.1 and related discussion)
- Community Commercial Centers (Meeting House Hill, Pleasantdale-Buttonwood, Main Street) (See Figures 6.2, 6.4, & 6.7 and related discussions)
- Mixed-Use Corridors (East End of Broadway, Broadway-Sawyer Neighborhood Center to Mussey Neighborhood Center, Broadway-Mussey Neighborhood Center to Cottage, Broadway-Pleasantdale) (See Figures 6.3 & 6.4)
- Marine Mixed-Use Area (Front Street–Ferry Village) (See Figure 6.5 and related discussion)
- Shipyard Development District (See Figure 6.5 and related discussion)
- Shipyard Mixed-Use Area (See Figure 6.5 and related discussion)
- SMCC College Institutional Area (See Figure 6.5 and related discussion)

- Main Street Office-Service Areas (See Figures 6.6 & 6.7 and related discussions)
- Main Street Planned Commercial Mixed-Use Areas (See Figures 6.6 & 6.7 and related discussions)
- Sable Oaks Area (See Figure 6.9 and related discussion)
- Maine Mall Mixed Use Area (See Figure 6.9 and related discussion)

C. Non-Residential Land Use Designations

- Marine-Industrial Areas (See Figure 6.8 and related discussion)
- Highway Commercial Services Area (See Figure 6.7 and related discussion)
- Business/Office Parks/Jetport (See Figure 6.9 and related discussion)
- Industrial Areas

6-51 Limited Growth Areas

A. Residential Land Use Designations

- Cottage Road-Meeting House Hill (See Figure 6.2 and related discussion)
- Betsy Ross House (See Figure 6.3 and related discussion)
- Broadway-Lincoln to Cash Corner (See Figure 6.4 and related discussion)
- Established Single-Family Neighborhoods
- Established Multi-Family Neighborhoods

B. Mixed-Use Land Use Designations

- Outer End of Cottage Road (See Figure 6.2 and related discussion)
- Neighborhood Centers (Pickett, Sawyer, Mussey, Ferry Village, Pleasantdale, Evans, Ocean/Sawyer, Cottage/Highland) (See Figures 6.3 & 6.4 and related discussions)
- Broadway-Evans to Lincoln (See Figure 6.4 and related discussion)
- Main Street Limited Office Service Area (See Figure 6.6 and related discussion)
- Office-Residential Transition Areas (See Figure 6.7 and related discussion)

6-52 Restricted or Non-Growth Areas

A. Resource Protection Land Use Designations

- Areas zoned Resource Protection as of 9/1/12 (Not shown - see current Zoning Map)

Figure 6.10 Future Land Use Plan

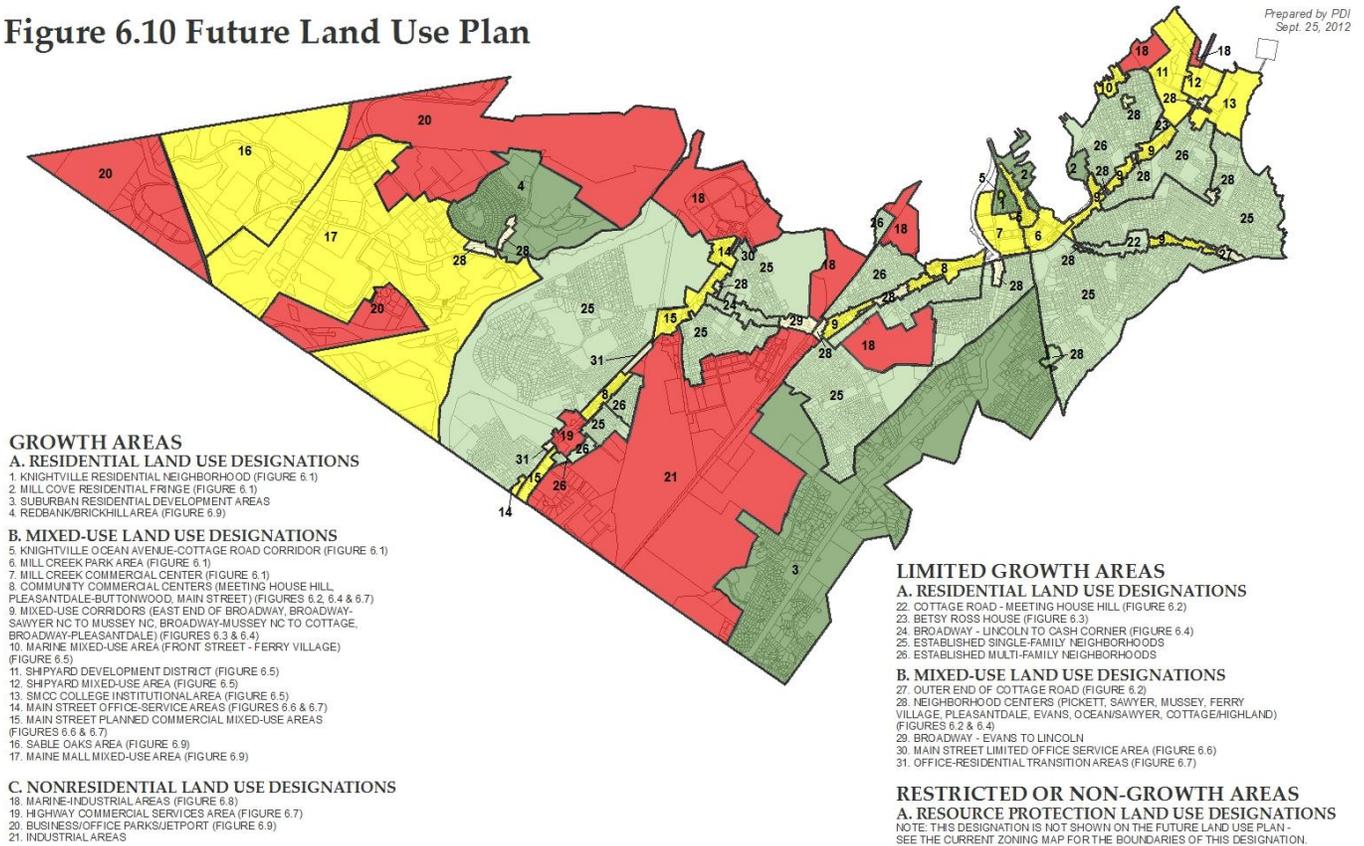


Figure 7 Future Land Use Plan (Comp Plan)

Chapter Eight: Implementation Strategy

Ongoing Activities

- 8-5** Expand actual and visual access to the waterfront
- 8-6** Revise zoning in the “eastern waterfront”
Revise zoning for the marine industrial areas

Appendix D: Marine Resources

D-7 Issues and Implications

- South Portland’s waterfront is dominated by commerce and industry, particularly oil storage/distribution and recreational marinas, as well as a US Coast Guard base. In spite of the heavy usage of the waterfront for these purposes, there are ample opportunities for public access to the water for boaters, beachgoers, and sightseers.

Appendix L: Land Use

General Pattern of Development

- L-1 South Portland has a diverse development pattern that includes a compact urban core, unique residential neighborhoods, and a regional retail and business district. In addition, the community has a strong industrial waterfront heritage and is a major regional oil transportation hub.

Appendix P: Economic Development Plan

P-1 Overarching Goals–

2. Identification of land suitable for new development, primarily along obsolete portions of the waterfront, will be critical for creating new development opportunities.
8. Provide for growth in the offshore energy production sector by evaluating and preserving waterfront space for component maintenance and assembly.

P-2 Broadest Level Implementation Strategies (“30,000 foot level”) –

6. With funding from the Greater Portland Public Development Commission, fund waterfront development projects that can transform the City’s waterfront, while maintaining its working characteristics.
7. Encouraging and supporting offshore wind turbine business development, particularly evaluating at least three waterfront areas suitable for this purpose.