

Memorandum

To: Draft Ordinance Committee
CC: Jeff Edelstein, Facilitator
From: Natalie West, Attorney at Law
Date: 6/11/2014
Re: Comments on draft Committee recommendation 1(a)

The following comments address some of the findings in the draft recommendation. They are organized in the order that the findings appear in the document, not in order of importance. Thank you for the opportunity to comment on this important matter.

(1.) Shouldn't there be close quotations at the end of each of the paragraphs on pp. 2-3? There is an opening quotation mark at the beginning of each paragraph.

(2.) p.4,1.3. Suggest changing "in order to **prohibit** development" to "in order to *restrict* development"

(3.) Suggest adding another finding before the finding on p. 4, ll.14-18.

The Comprehensive Plan has a fundamental land use objective of expanding public access and diversity of uses in the eastern waterfront while maintaining marine activities, and recognizes that mixed use and diversified development and redevelopment of the eastern waterfront 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," and *(This all new language and is fundamental policy No. 4, expressed at p. 6-2 of Comp Plan. I suggest referencing this again later in the findings, see below.)*

(4.) p. 4 ll.14-18. Whereas, the Plan ~~seeks to maintain~~**recognizes that in the short term, the** existing operations at the marine terminals **are maintained** with the stipulation that "**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;” and *(Comment: The Plan is not seeking to maintain, it is stating the situation and what may evolve. More closely follows wording on p. 6-20 of Comp Plan.)*

(5.) p. 6:24-7:1-8

. Whereas, although other federal or state laws may regulate certain environmental risks or impacts of crude oil transport, processing, and bulk loading operations onto marine tank vessels, or operations based on the nonethless, the reversal of the South Portland-Montreal pipeline to bring crude oil south for bulk loading onto marine tank vessels, even under normal operations, would still result in significant adverse impacts to local air quality, to scenic ocean views, and to the City’s land-use planning for future development consistent with the City’s Vision **and with its fundamental land use objectives**; these local adverse impacts which are not addressed by such other federal or state laws, and can only be addressed under the City’s exercise of its broad home rule authority and general police powers; and

(6.) p.8:3-6

3 Whereas, there is no publicly available information on the extent of, or potential public
4 health impacts associated with HAPs or volatile organic compound fugitive emissions from
5 the Hill Street terminal facility **both now and** if it were to be retrofitted in order to be able to support
6 loading crude oil onto marine vessels; and
(Comment: current wording could be read to imply that there IS such info available for the current operations at the Hill St. terminal facility. Also, is the Hill Street terminal facility defined anywhere

and is the term used consistently? Later findings refer to “PPLC’s storage tank facility on Hill Street.” Suggest saying “PPLC’s storage tank facility on Hill Street (Hill Street storage facility)” in this paragraph or whenever it is first used, and using “Hill Street storage facility” or “Hill Street tank facility” elsewhere.)

(7.) Final 3 Findings:

p.12:3-5 through end of findings. These final 3 findings are very important. I suggest the following revisions. Immediately following this note, you can see the proposed revisions in red line, and then a clean version that is easier to read:

~~3 Whereas, the Plan seeks a diversity of uses of the city’s waterfront including the provision
4 of “increased access to the shoreline for recreational use” which represents a vital
5 economic driver; and (Eliminate this one and include concepts below.)~~

Whereas, new and expanded land use and facilities for the bulk loading of crude oil onto
8 marine tank vessels; **will-would** adversely impact the balance of mixed-uses on the waterfront – a
9 current balance including uses arising from four marinas, a yacht club, other recreational
10 marine uses, other commercial fishing or light industrial uses, other adjacent expanding
11 residential or mixed-use districts, and the recreational and scenic use of the publicly-
12 accessible beaches, parks, and open spaces that are currently a part of the City’s waterfront
13 community; and

(this finding talks about current land use, so put it first and add another about future development)

**Whereas, developing facilities for bulk loading of crude oil onto marine tank vessels would be
inconsistent with the City’s Comprehensive Plan, including the fundamental objective for the
eastern waterfront and the City’s community vision, which provisions are a vital part of the**

City's policies and goals for future economic development; and *(I think it is important to have a specific finding of inconsistency with the Comprehensive Plan.)*

Whereas, development of facilities for the bulk loading of crude oil onto marine tank

16 vessels ~~would increase emissions of hazardous air pollutants, and~~ would include the

17 construction or installation of new structures **and/or** equipment **and increase emissions of hazardous air pollutants, with affiliated impacts** on

~~18~~ waterfront scenic values, **the potential for increased public access to the shoreline, and** ~~and on~~ the balance of mixed uses and recreational activities along

19 the waterfront, **and further**

~~such development would~~ adversely affect South Portland residents and

20 visitors for generations to come., ~~and would thus be and is incompatible with the City's~~

~~21 Vision for future growth and development~~ *(structures come before air pollution, and (I think it is accurate and moving to end the findings with reference to the generations to come.)*

Clean Version of final three findings:

Whereas, new and expanded land use and facilities for the bulk loading of crude oil onto marine tank vessels would adversely impact the balance of mixed-uses on the waterfront – a current balance including uses arising from four marinas, a yacht club, other recreational marine uses, other commercial fishing or light industrial uses, other adjacent expanding residential or mixed-use districts, and the recreational and scenic use of the publicly-accessible beaches, parks, and open spaces that are currently a part of the City's waterfront community; and

Whereas, developing facilities for bulk loading of crude oil onto marine tank vessels would be inconsistent with the City's Comprehensive Plan, including the fundamental objective for the eastern waterfront and the City's community vision, which provisions are a vital part of the City's goals for future economic development; and

Whereas, development of facilities for the bulk loading of crude oil onto marine tank vessels would include the construction or installation of new structures and/or equipment and increase emissions of hazardous air pollutants, impacting waterfront scenic values, the potential for increased public access to the shoreline, and the balance of mixed uses and recreational activities along the waterfront, and further adversely affect South Portland residents and visitors for generations to come.
