

1. Agenda

Documents: [AGENDA 06.19.13.PDF](#)

2. Action Items

Documents: [2. A. LIBBYTOWN CIRCULATION MEMO.PDF](#), [2. A. LIBBYTOWN MAP.PDF](#), [2. A. LIBBYTOWN PRESENTATION.PDF](#), [2. B. PROPOSED TRANSPORT ORDINANCE CHANGES DRAFT.PDF](#), [2. B. TRANSPORT ORDINANCES PROPOSED CHANGES MEMO.PDF](#), [2. C. DRAFT FOAM CODE.PDF](#), [2. C. GREEN PACKAGING MEMO.PDF](#), [2. C. POLYSTYRENE MINORITY REPORT.PDF](#)

3. Committee Updates/Input Sought

Documents: [3. A. INTEGRATED WATER MEMO.PDF](#)

4. Report Of The Majority Of The Green Packaging Working Group Recommending A Ban On The Sale Of Polystyrene Foam Food Packaging In Portland

Documents: [GREENMAJORITY.PDF](#)

CITY OF PORTLAND, MAINE

Transportation, Sustainability and Energy Committee

Transportation, Sustainability and Energy Committee

DATE: 6/19/2013

TIME: 5:30 PM

LOCATION: City Council Chambers
City Hall

AGENDA

1. Approval of May 1 and May 15, 2013 Meeting Minutes
2. Action Items (Public Comment will be taken on these items)
 - A PACTS Libbytown Circulation Study- Present preferred alternative for modifications to Libbytown streets, I-295 interchange access, for direction on EDA project.
 - B Update Select Transportation Ordinances- Changes are proposed several transportation-related ordinances and one new ordinance provision related to bicycle parking is proposed.
 - C Green Packaging Working Group- Recommended ordinance to prohibit the sale of Polystyrene foam food packaging- Endorse/forward to City Council
3. Committee Updates/Input Sought (There will not be public comment for these items)
 - A Water Resources Integrated Permit- Present scope to develop Integrated Permit for various Clean Water Act initiatives/mandates
4. Adjourn

Councilor David A. Marshall, Chair
Councilor Kevin J. Donoghue, Vice Chair
Councilors John Anton and Cheryl Leeman



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MEMORANDUM

TO: David Marshall, Chair, Transportation, Sustainability and Energy Committee

FROM: Jeremiah Bartlett, Transportation Systems Engineer, Dept. of Public Services

CC: Mike Bobinsky, Kathi Earley, DPS; William Needelman, Planning

DATE: June 14, 2013

RE: **PACTS-Funded Libbytown Traffic Circulation and Streetscape Study**

Background

The City of Portland has been working closely with a consultant team lead by Lucy Gibson of Dubois & King to examine the current circulation patterns for all modes of travel in the Libbytown area, primarily from Fore River Parkway along Park Avenue and Congress Street to St. John and Valley Streets. The project has been informed by other ongoing efforts, including the EDA-funded transportation improvements associated with the Thompson's Point project. The primary goals for the project were to improve safety and accessibility for all modes of travel, while providing future opportunities for redevelopment in the long-term by reconnecting a neighborhood severed by I-295.

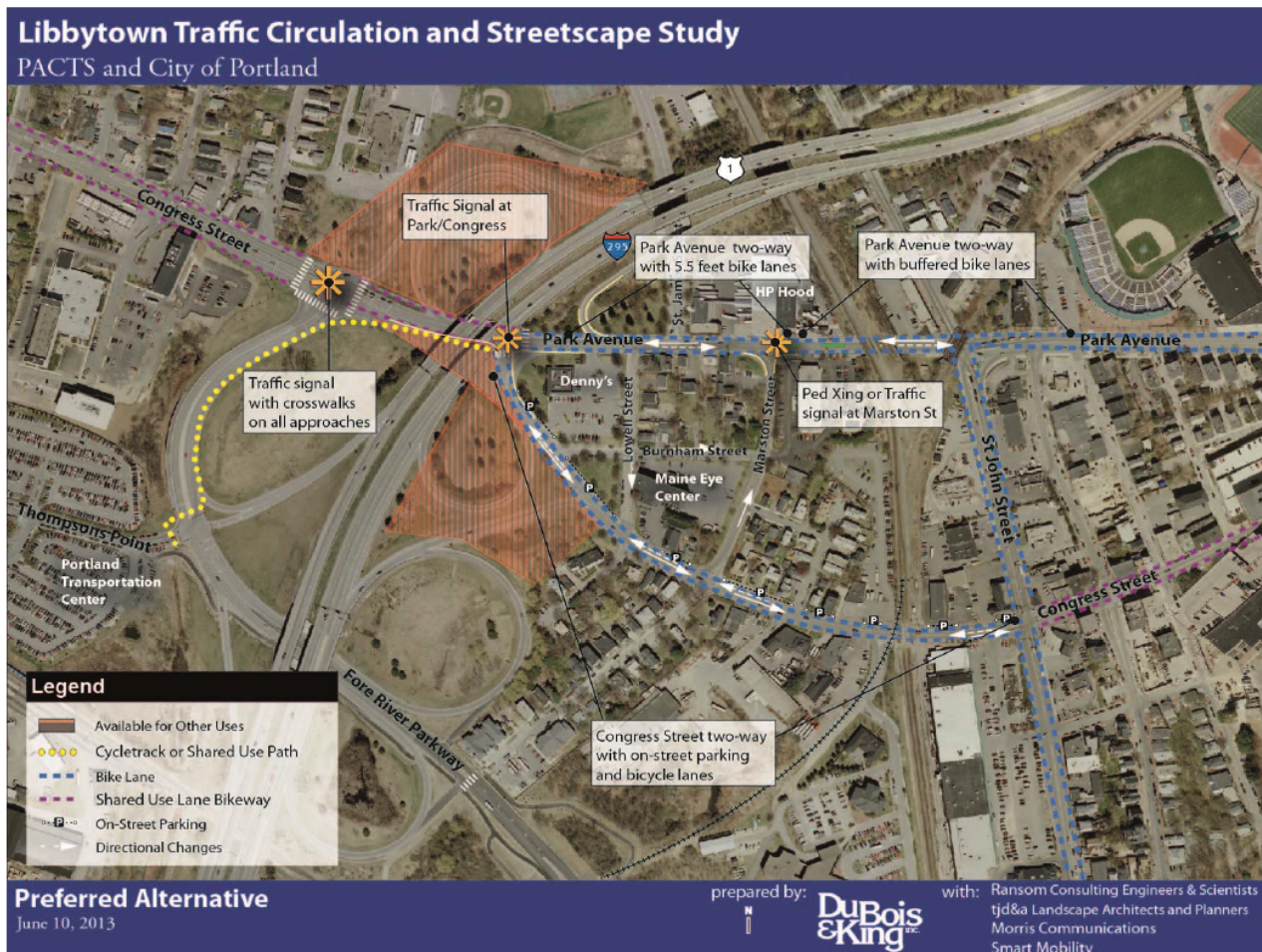
The TS&E Committee was presented with an update on this project at the May 15th meeting, which included discussion on four preliminary alternatives, which were also presented to the project's Public Advisory Committee, PACTS, Emergency Services, and MaineDOT, as well as an overall public meeting. Following feedback from the public, the PAC, and staff, a final recommended alternative has been drafted.

Recommended Alternative

Based upon the public feedback, the Recommended Alternative will consist of the following:

- Elimination of I-295 ramps A, B, C and D to and from Congress Street.
- Retention of I-295 ramp F from Park Avenue.
- Make Park Avenue a two-way roadway from St. John Street to the I-295 overpass of Congress Street; this will include bicycle lanes and limited on-street parking adjacent to Hood.
- Make Congress Street a two-way roadway from St. John Street to its intersection with Park Avenue; this will include bicycle lanes. On-street parking will be provided along the north side of the street.

- A new intersection of Congress Street and Park Avenue immediately east of the I-295 overpass.
- Improved pedestrian facilities at both ends of Marston Street crossing Congress Street and Park Avenue.
- Exploration of converting Marston Street to two-way operation.
- Improvements to Hood's street frontage to facilitate truck turning movements with a two-way Park Avenue.
- Longer term possibilities include the potential of roundabouts at a few locations along Congress Street and redevelopment of land currently associated with the ramps.



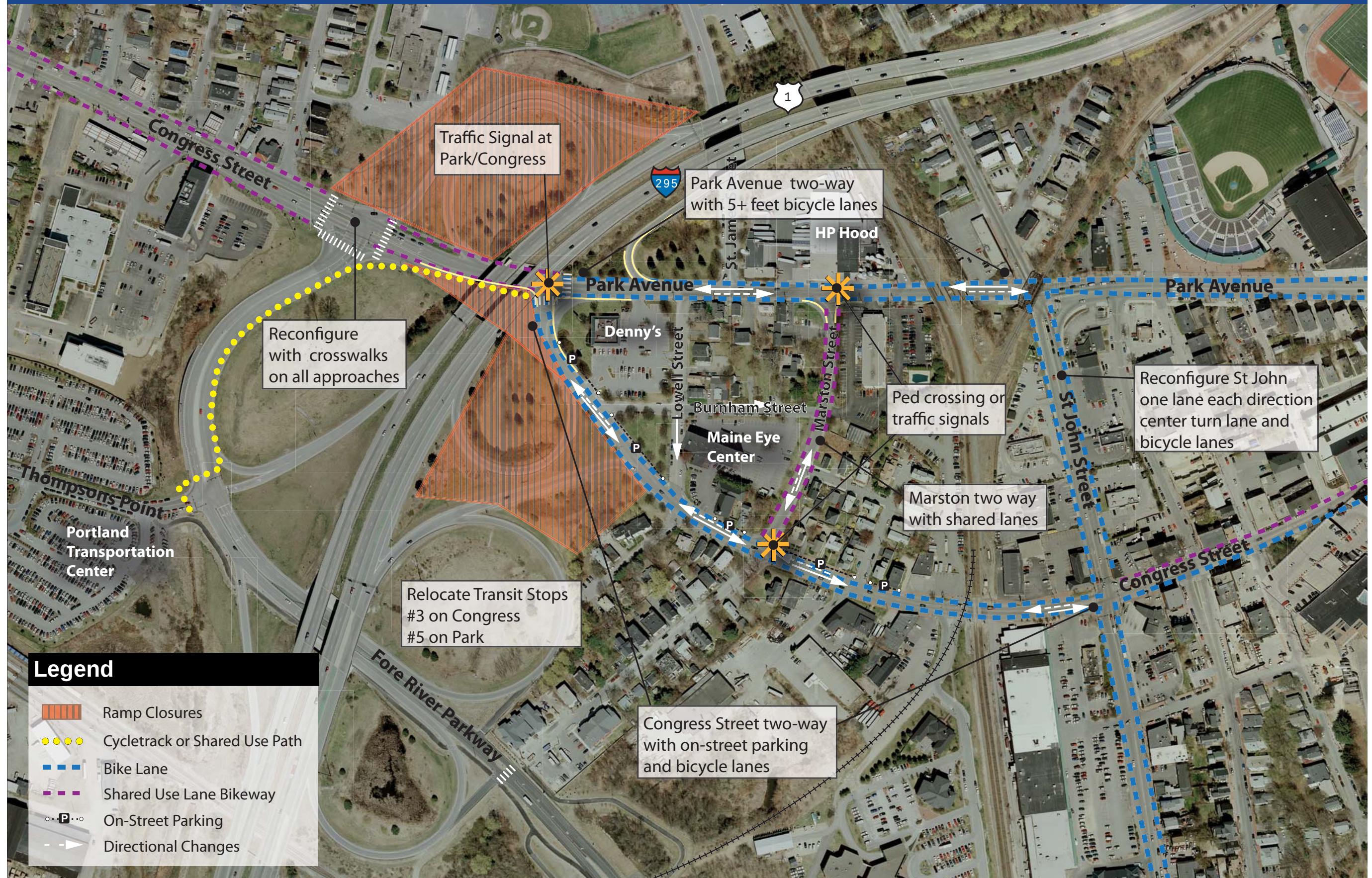
The main aspects of these recommendations will be presented in a phased manner. It should be noted that many streetscape improvements, ranging from lighting to ADA improvements to sidewalk upgrades, will be accomplished in the next 12 to 18 months as part of the EDA work, including a pathway along Fore River Parkway from Thompson's Point Road to Congress Street. A larger version of this graphic is included in this packet.

Next Steps

Later this summer, a final report will be brought to TS&E for their approval. Following approval of the plan will be continued dialogue with MaineDOT with regards to the ramps, as well as seeking funding opportunities for key aspects of the master plan.

Libbytown Traffic Circulation and Streetscape Study

PACTS and City of Portland



Recommended Alternative

June 14, 2013

prepared by:



DuBois & King inc.

with: Ransom Consulting Engineers & Scientists
tjd&a Landscape Architects and Planners
Morris Communications
Smart Mobility

Libbytown Traffic Circulation and Streetscape Study



Transportation, Sustainability and Energy Committee
June 19, 2013

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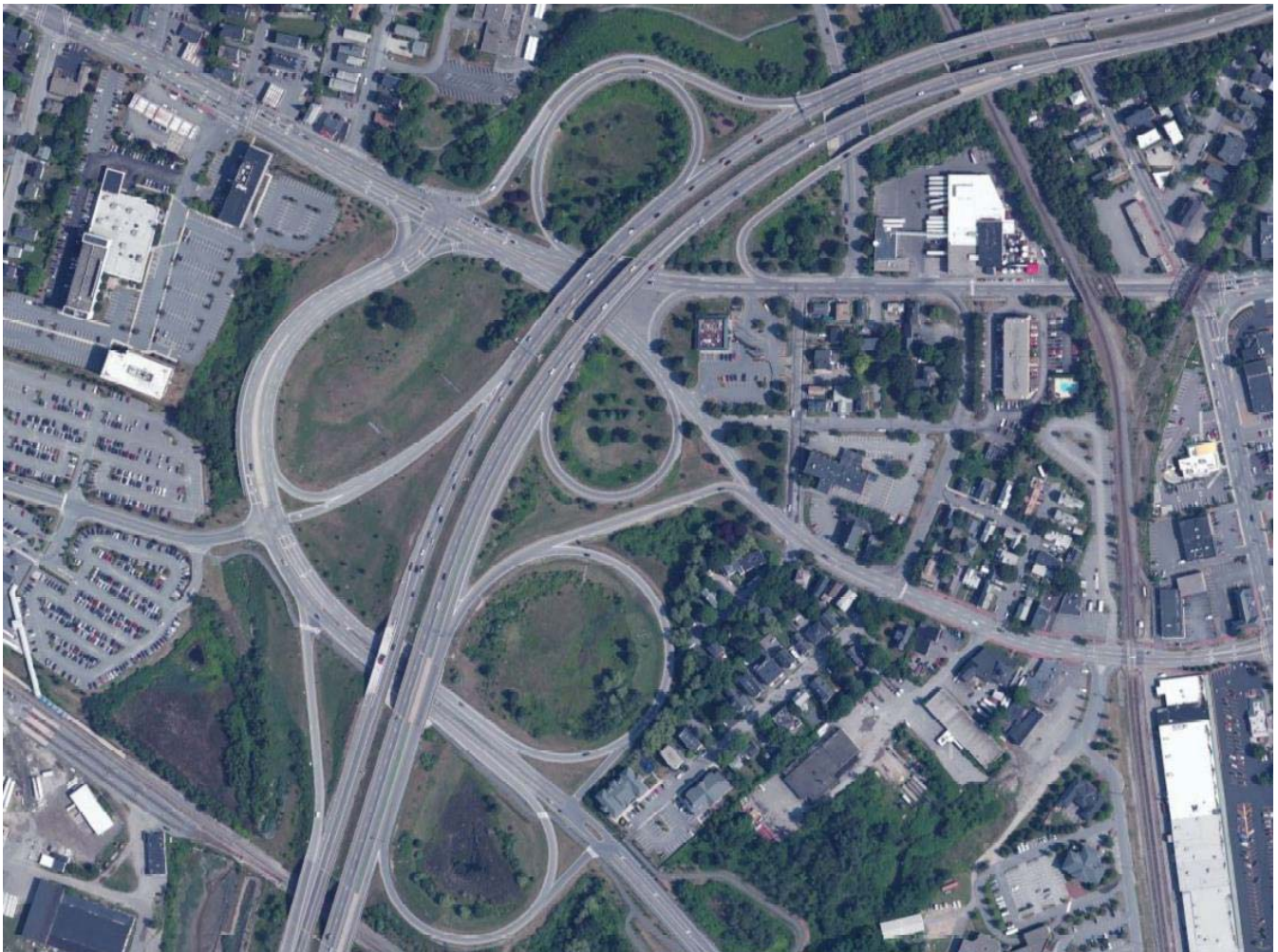
Project Goals

- **Safety** for all users
- **Reconnect** the Libbytown Neighborhood
- Improve **mobility** for **all modes** of transportation
- Improve the **economic** climate of Libbytown

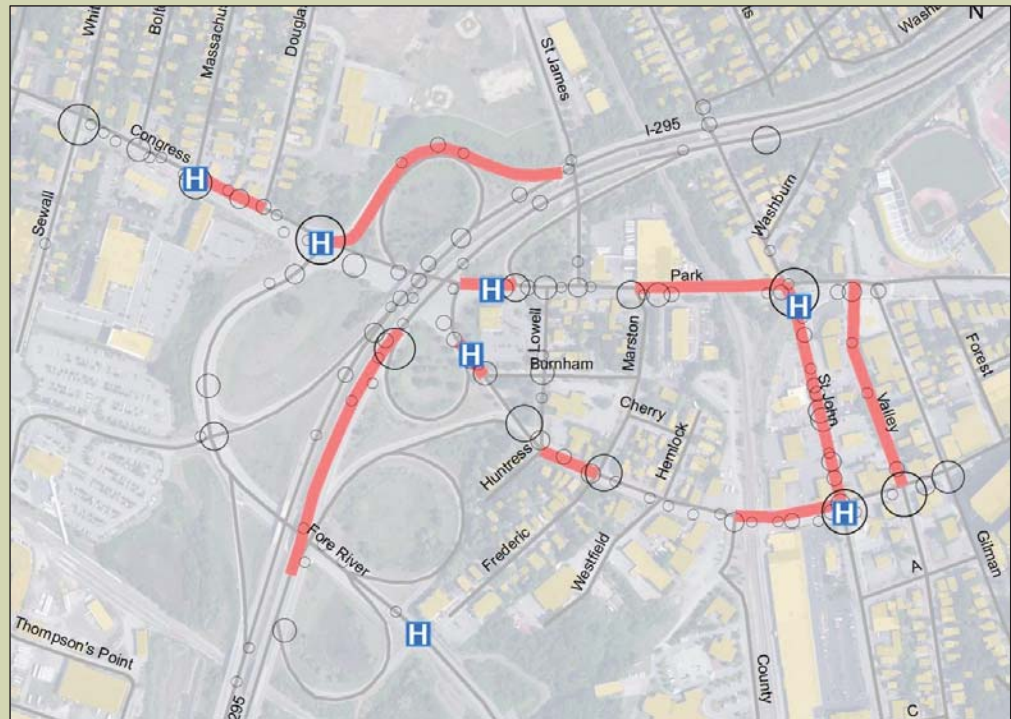
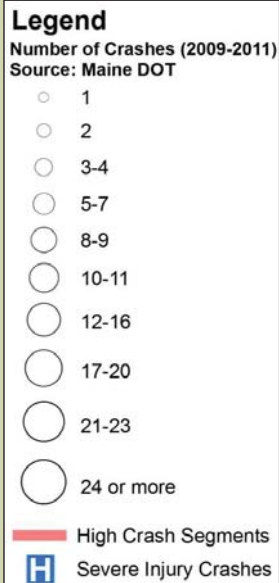
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Project Team

- City of Portland – Department of Public Services
- PACTS – Portland's Regional Planning Organization
- Consultants
 - DuBois & King
 - Ransom Consulting
 - TJD&A
 - Morris Communications
 - Smart Mobility



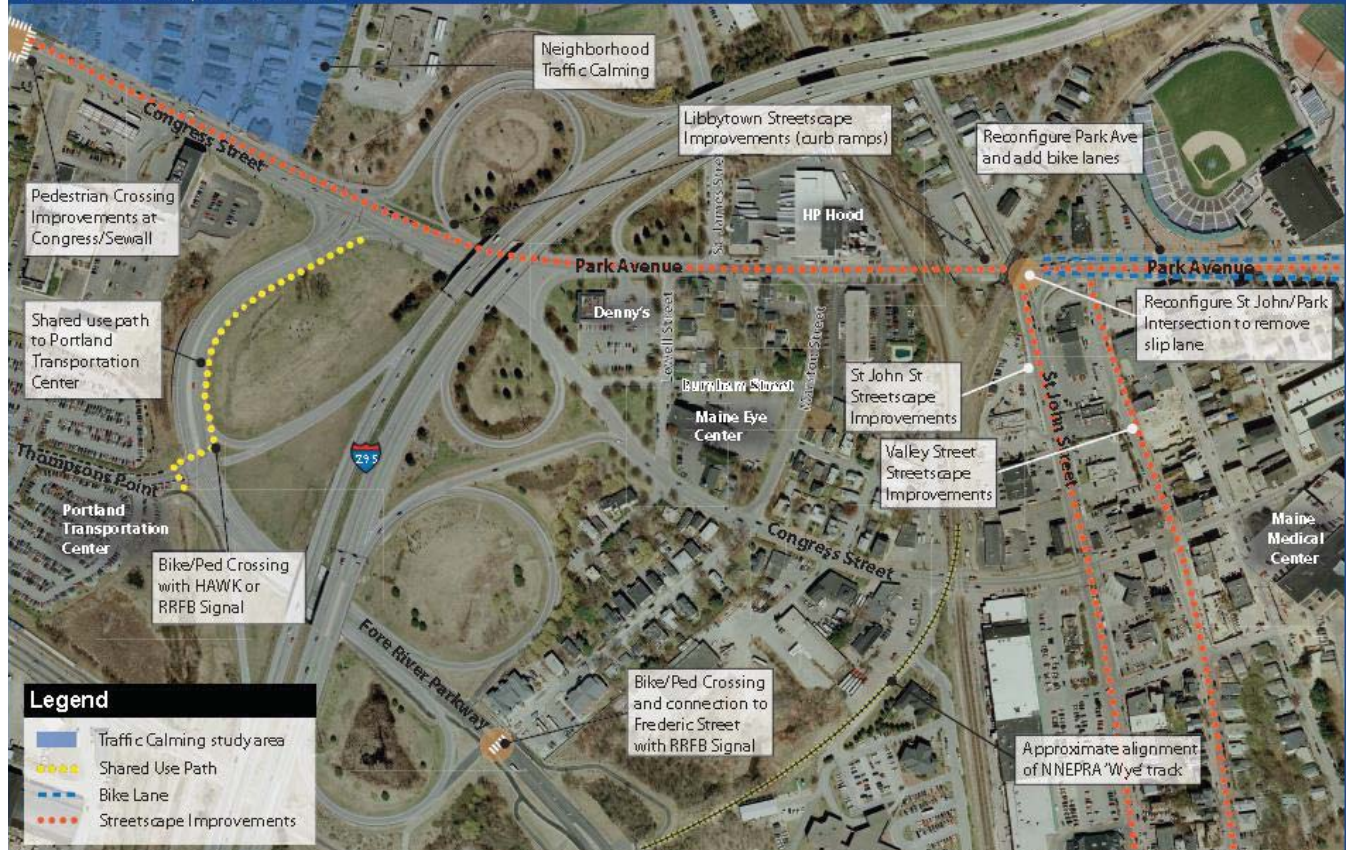
Safety First



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Libbytown Traffic Circulation and Streetscape Study

PACTS and City of Portland



Planned Projects

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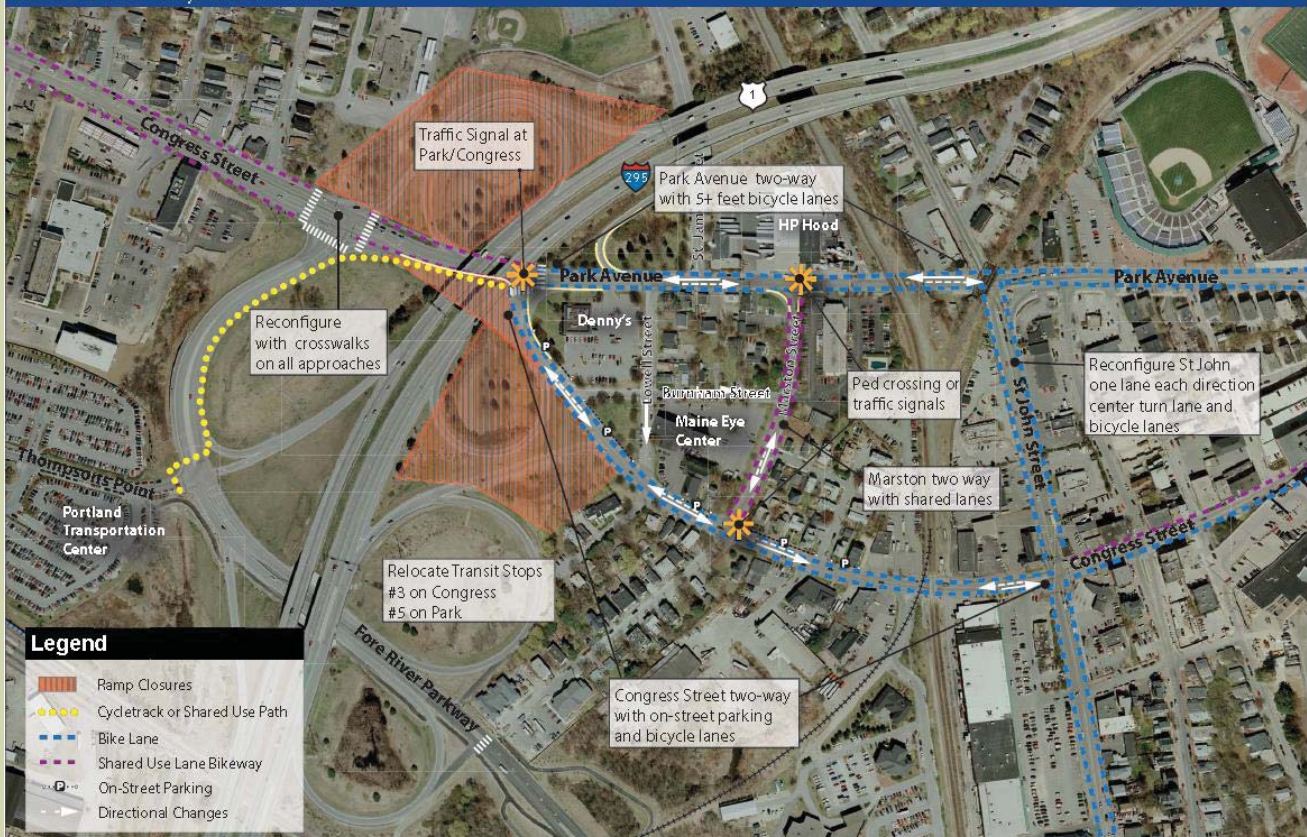
Alternatives

	Interchange Configuration	a) Park-2 way Congress 1-way	b) Park-2 way Congress 2-way
Alternative 1	- Close 5 ramps: A,B,C,D,F - Directs all interstate traffic to Fore River Parkway Interchange	- Park is major route into downtown - Congress is major bicycle route	- Both routes serve traffic - Park is major bicycle route - Congress provides on-street parking
Alternative 2	- Close 4 ramps: A,B,C,D - Eastbound access to Ramp F - Less traffic on Fore River Parkway Interchange	- Congress 2-way between Marston and St. John - Congress provides on-street parking - Park is traffic and bicycle route	- Equal emphasis for traffic, bicycles and parking on Congress and Park - Larger signal at Congress/Park/I-295 NB

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Libbytown Traffic Circulation and Streetscape Study

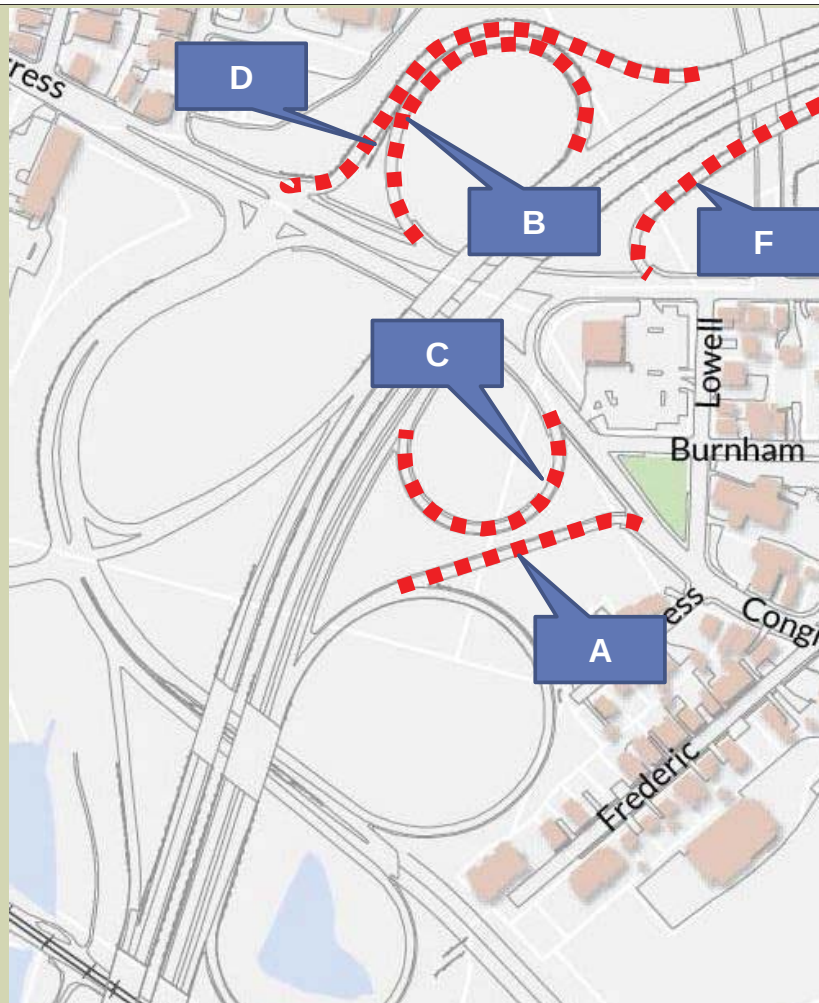
PACTS and City of Portland



Project Recommendations

- Interstate Ramps:
 - Remove four ramps A-B-C-D, Ramp F remains
- Park:
 - 2 way, Buffered bike lanes with median
- Congress:
 - 2 way, Bike lanes and parallel parking
- Marston:
 - 2 way, shared bicycle lanes

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Project Recommendations:

Rationale for Ramp Removals

- Ramps A, B, C and D have high crash rates and impede safe pedestrian and bicycle transportation
- Street network can accommodate diversions to Veterans Bridge and Park Avenue.
- Closing ramp F diverts traffic to Forest Avenue interchange which is high crash location
- Public support for keeping Ramp F

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Project Recommendations:

Rationale for Park - 2 way

- Provides access without at-grade railroad crossing
- Provides opportunity for bicycle lanes in both directions
- Improves transit routing
- Public support

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Project Recommendations:

Rationale for Congress- 2 way

- Reduces northbound volumes on St John
- Improves transit routes
- Provides bicycle lanes in each direction
- Public opinion mixed

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Project Recommendations:

Rationale for Marston - 2 way

- Improves neighborhood permeability
- Provides bicycle connection between Park and Frederic Street in both directions
- Loss of parking on Marston compensated by additional parking on Congress:
 - 24 spaces on Marston lost,
 - 27 on Congress gained.

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Transit Legibility



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Modeling

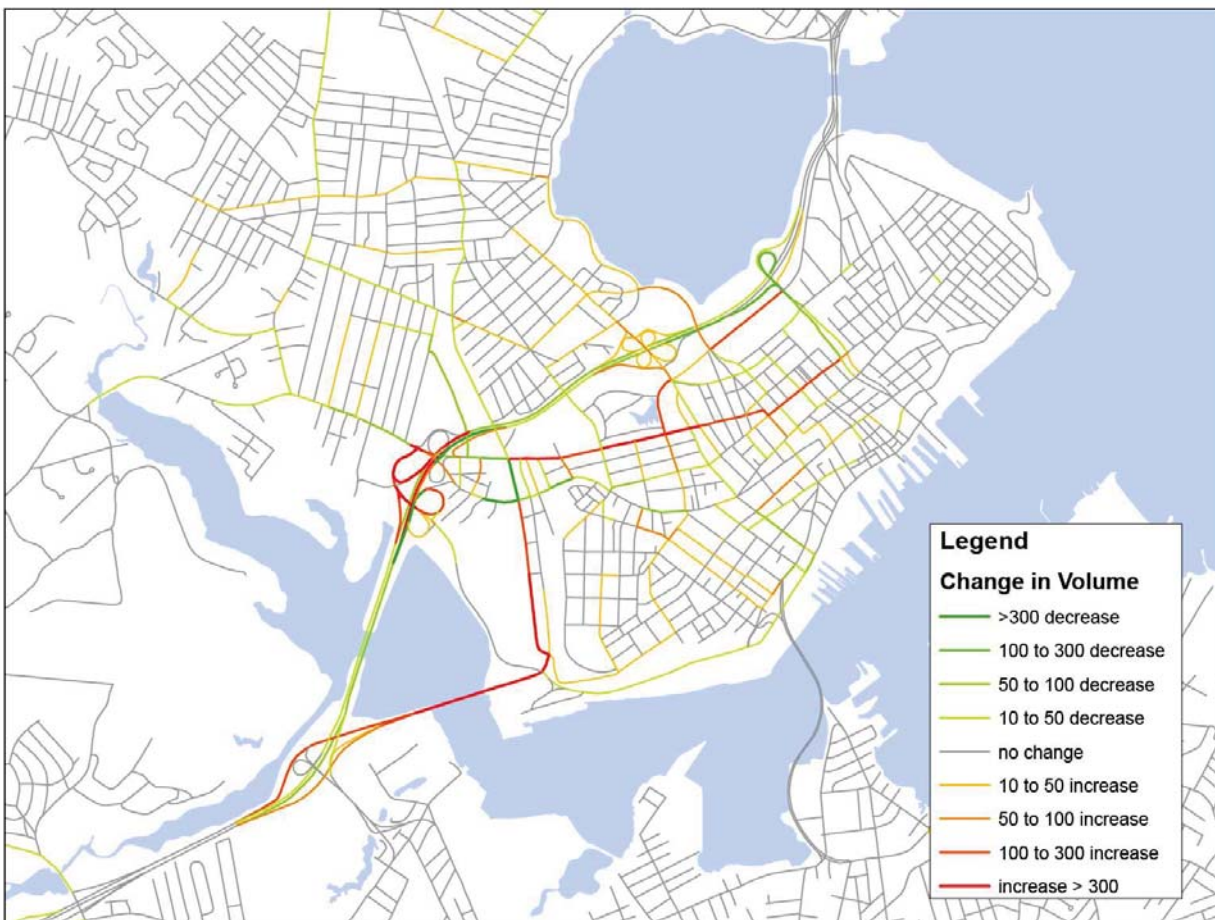
- PACTS Model was upgraded to account for current behavior and trends in walking, bicycling and transit use.
- Changes in traffic patterns resulting from Preferred alternative

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Ramp Traffic

Ramp	Direction	Diverted to FRP	Other Routes
A	NB off	29%	Diverted to St.John /Veterans bridge
B	SB on	86%	Diverted to St.John /Veterans bridge
C	NB on	39%	Diverted to Park Ave, others
D	SB off	72%	Diverted to Park Ave, others

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Park/Congress Traffic

- Overall reduction in volume on both streets in the study area
- Of Remaining Traffic:
 - 60% uses Park Ave
 - 40% uses Congress

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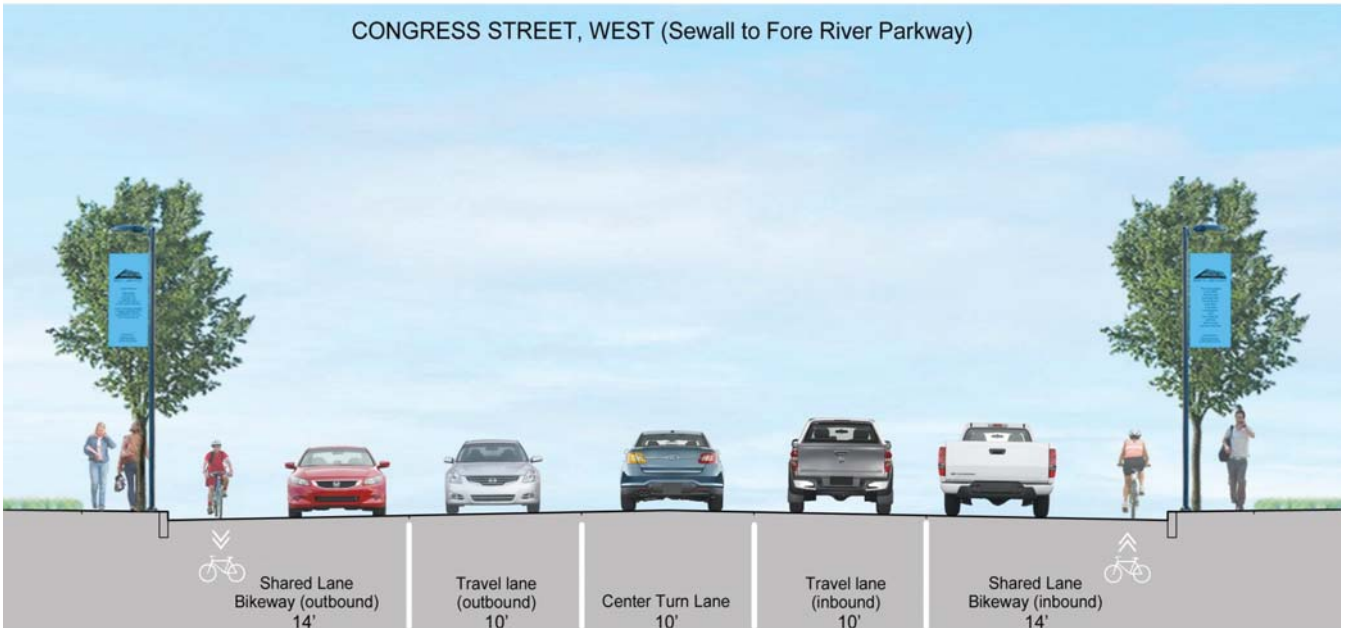
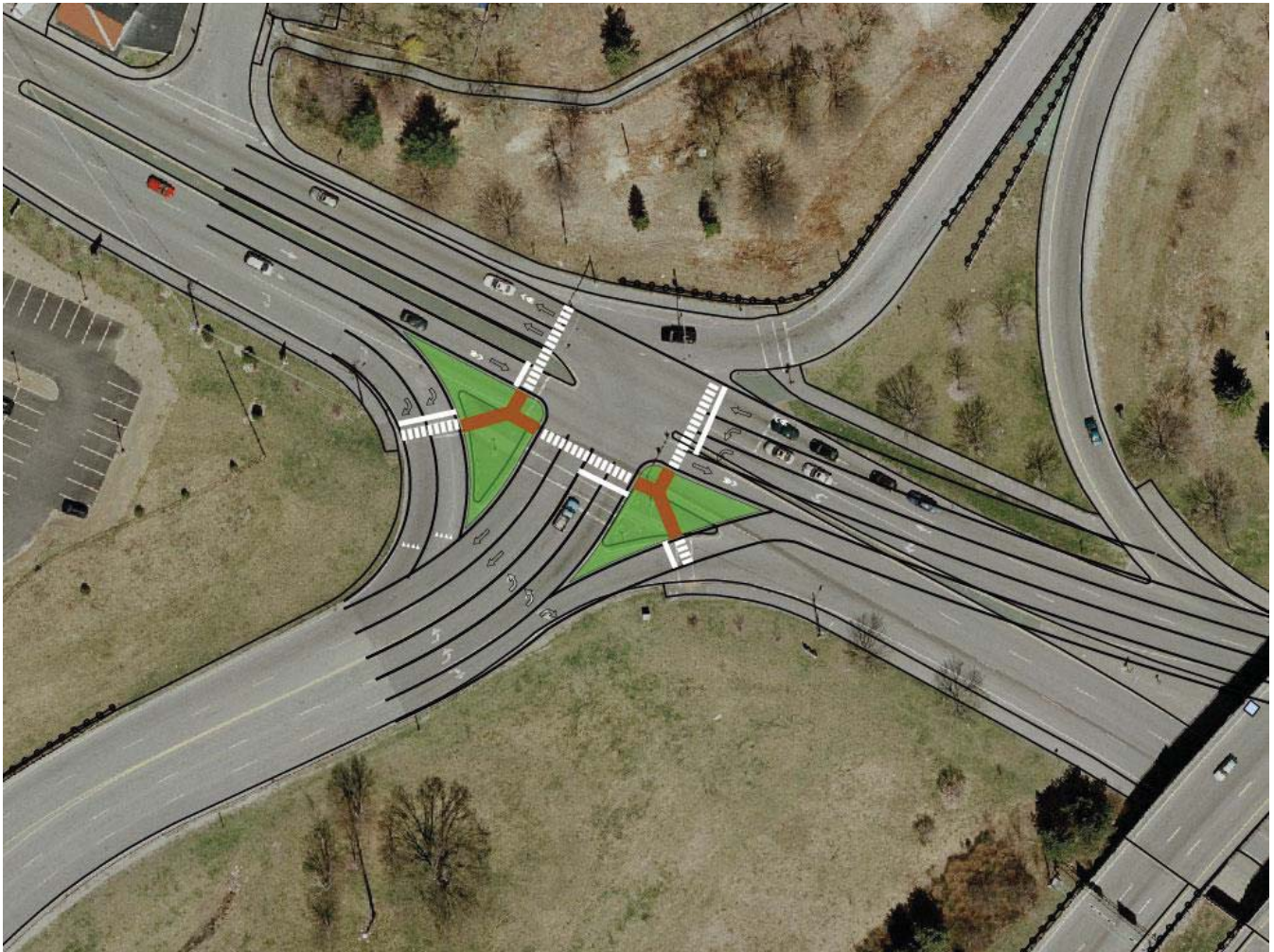


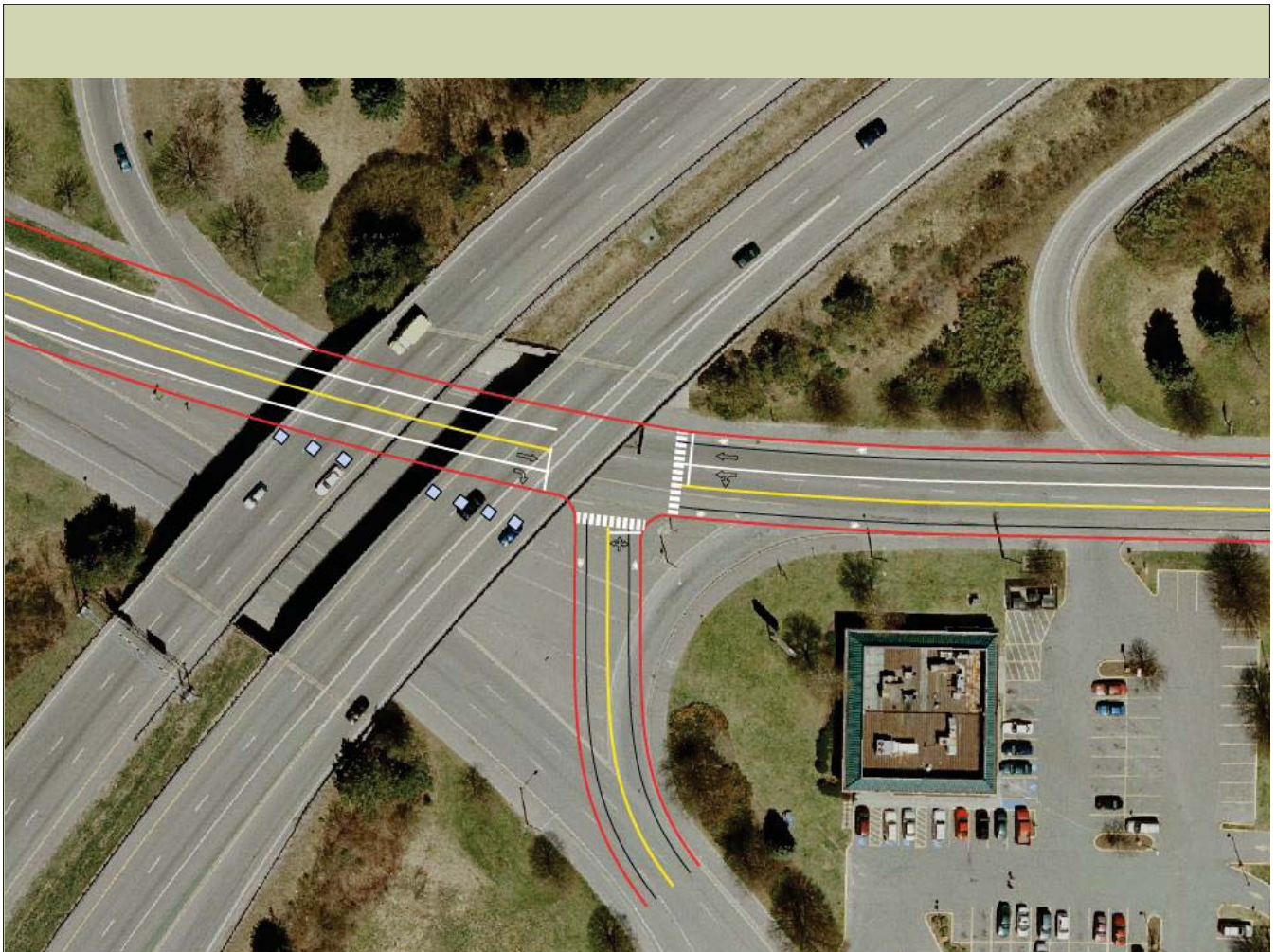
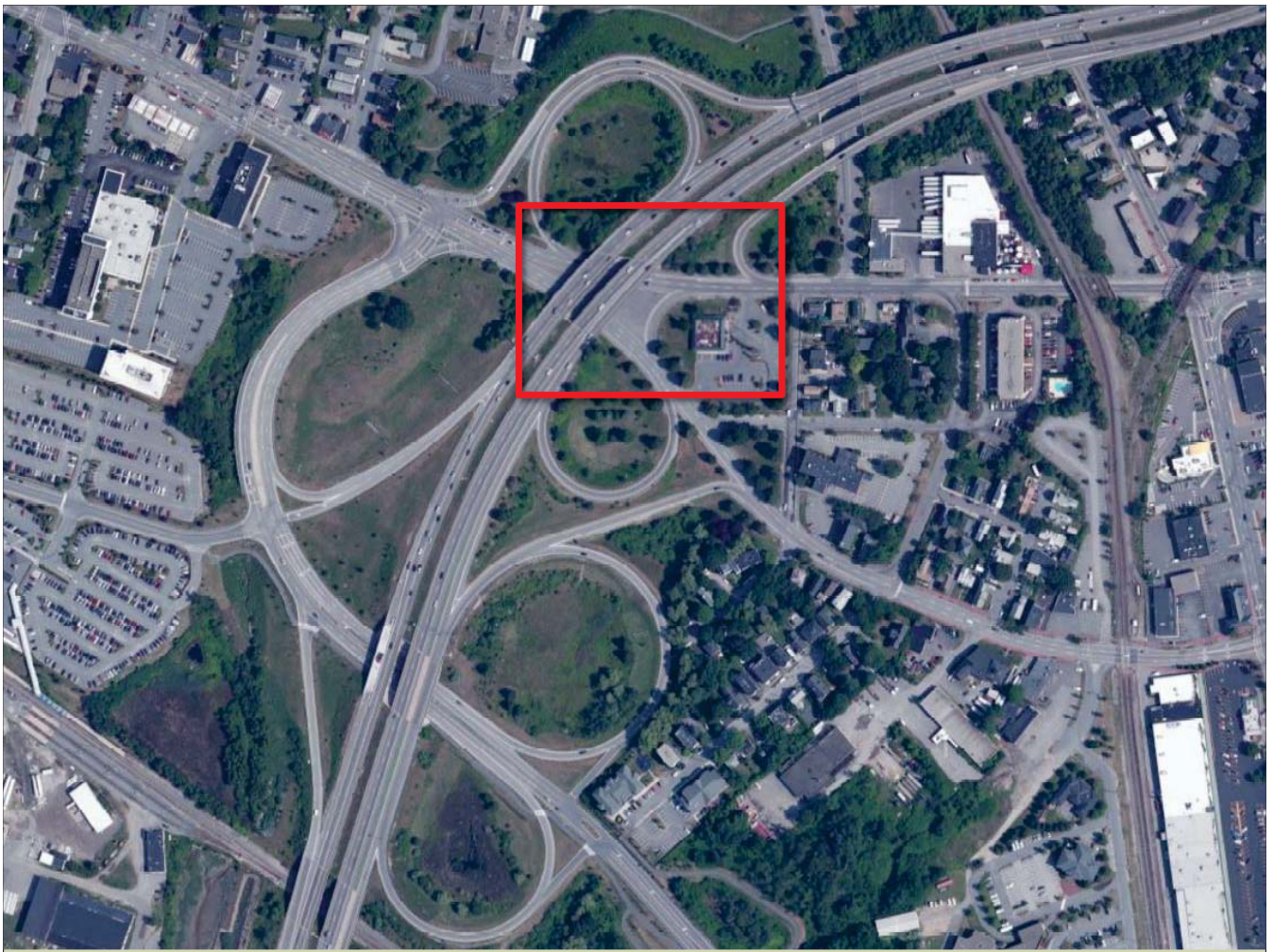
Design

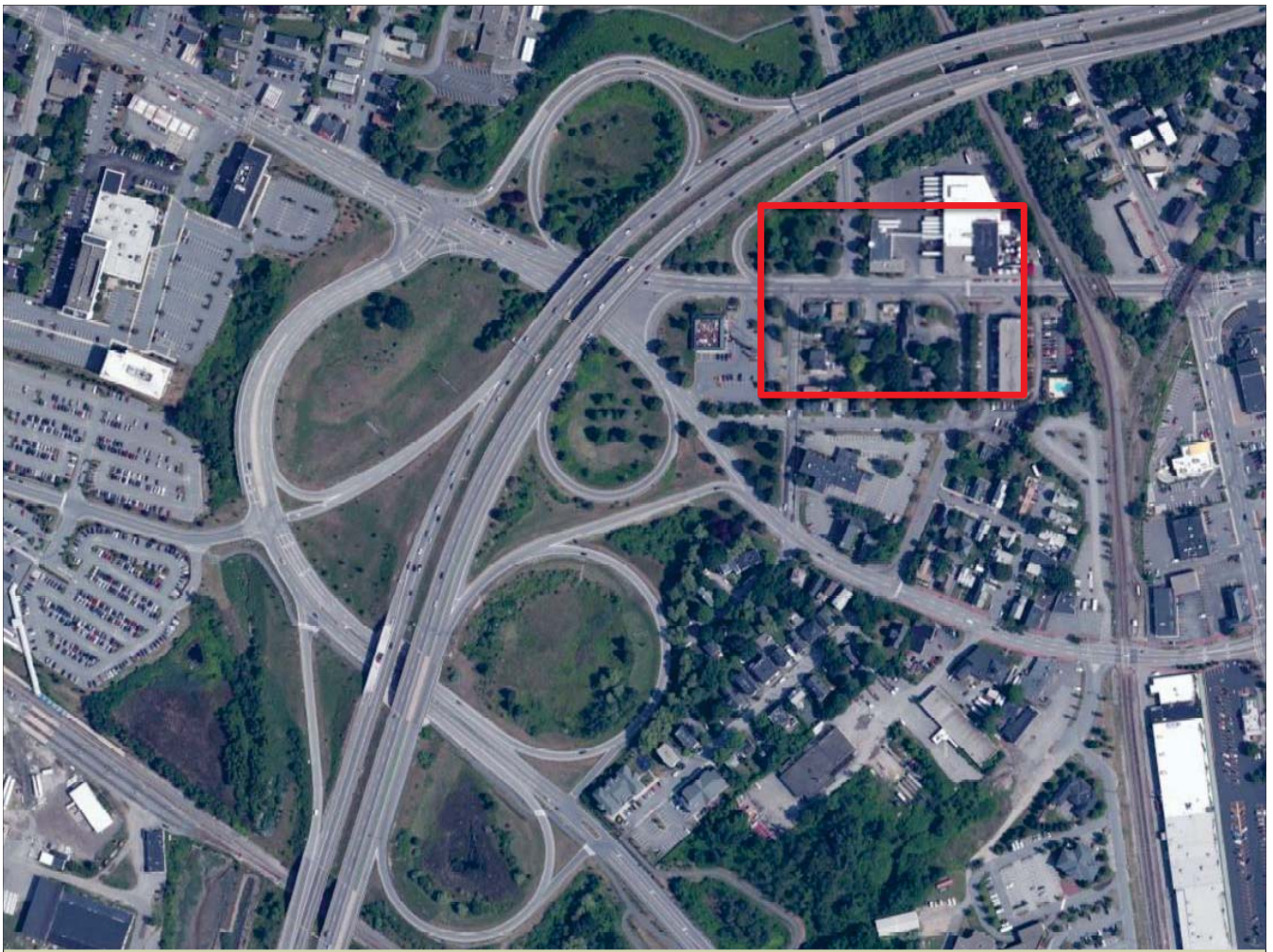
DESIGN RECOMMENDATIONS

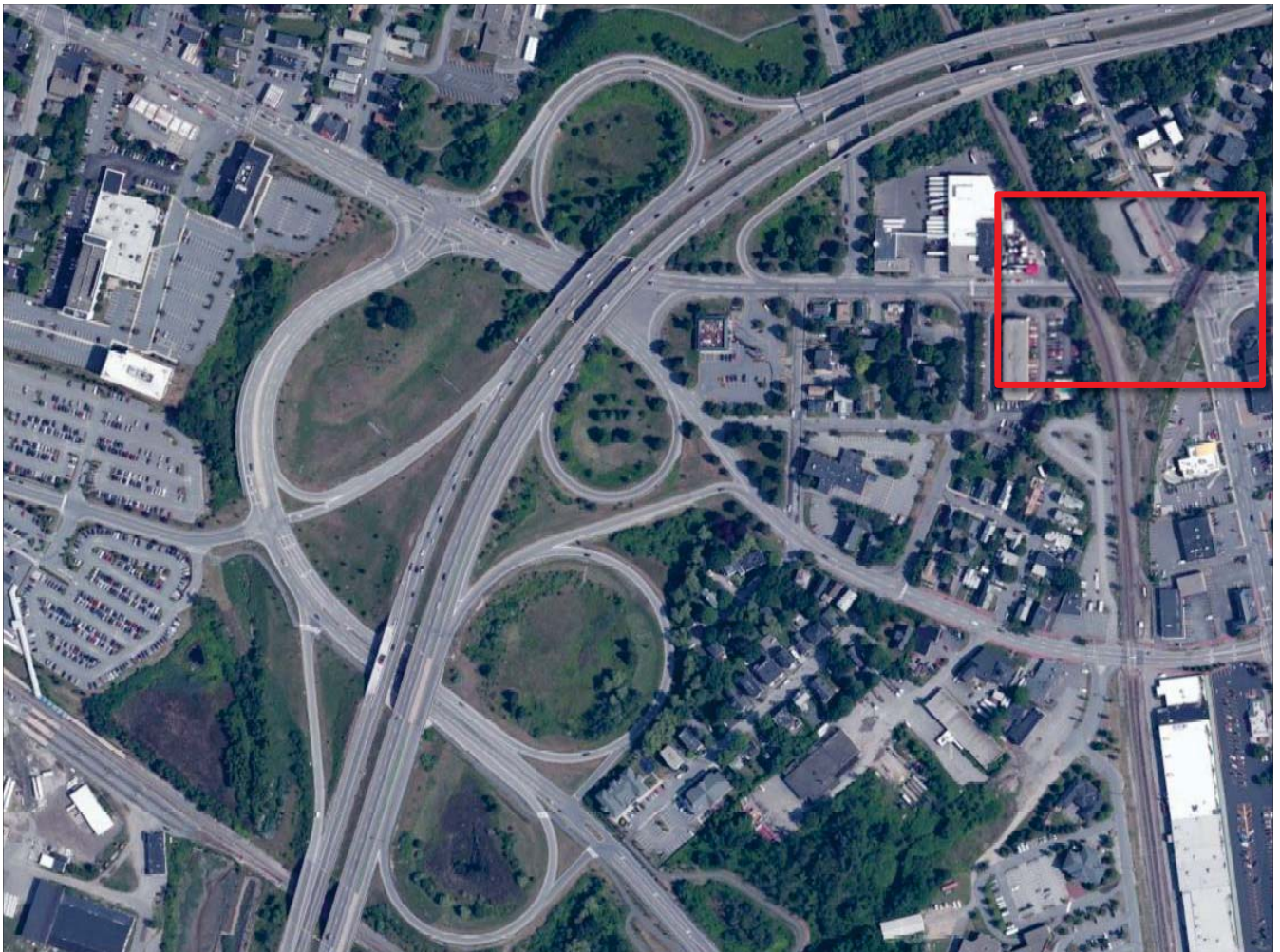
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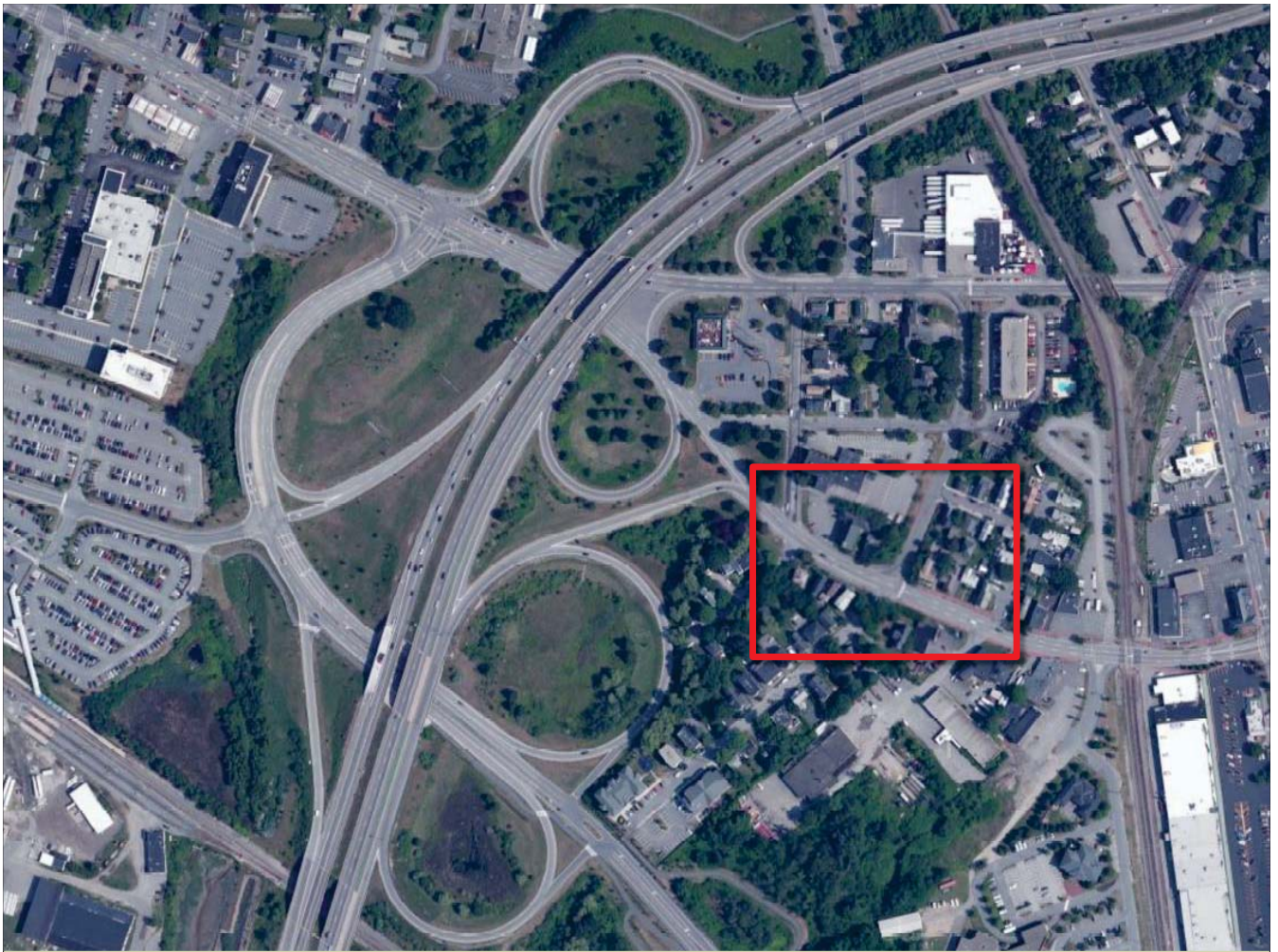
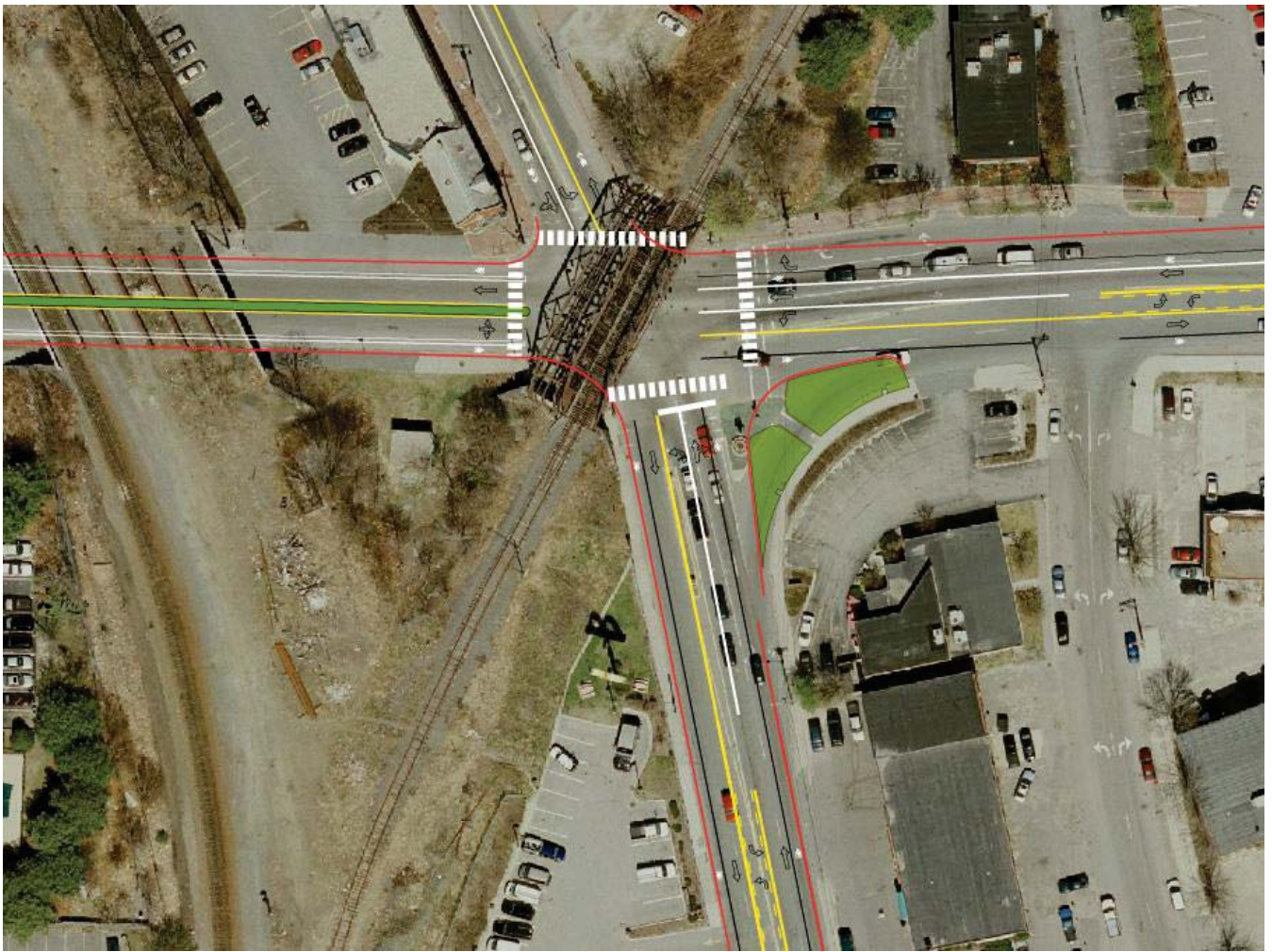


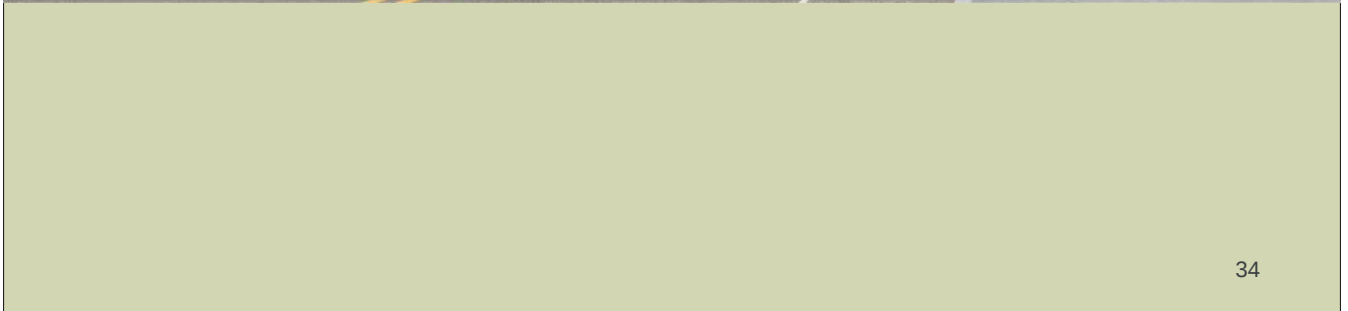
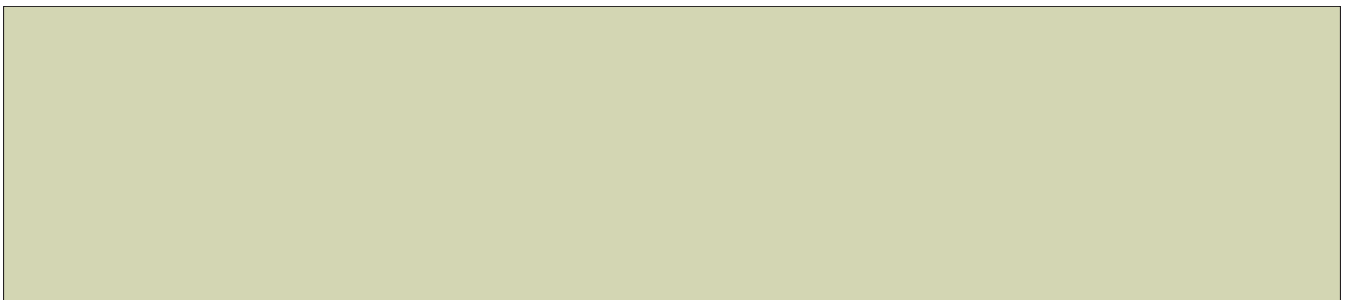


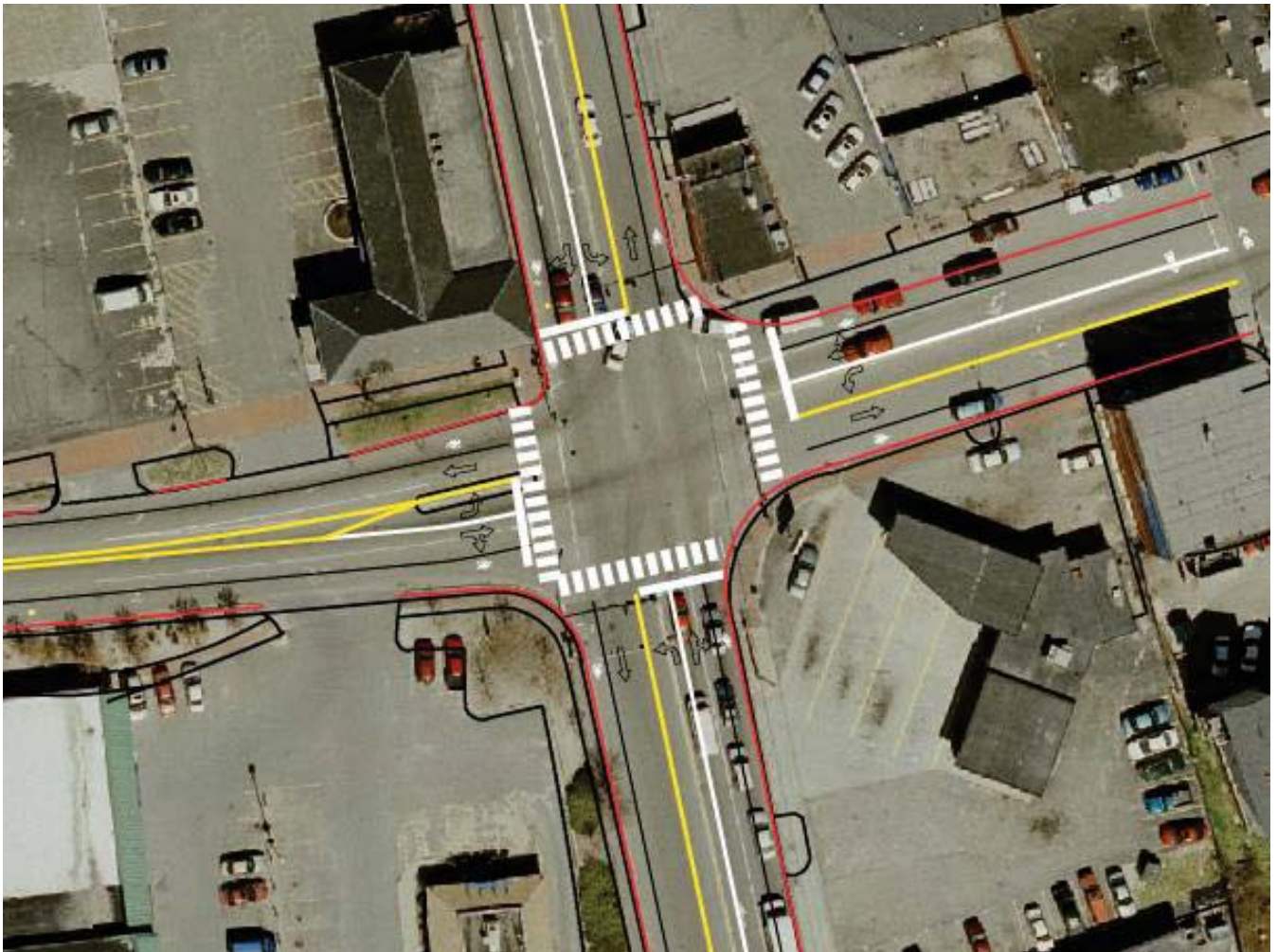
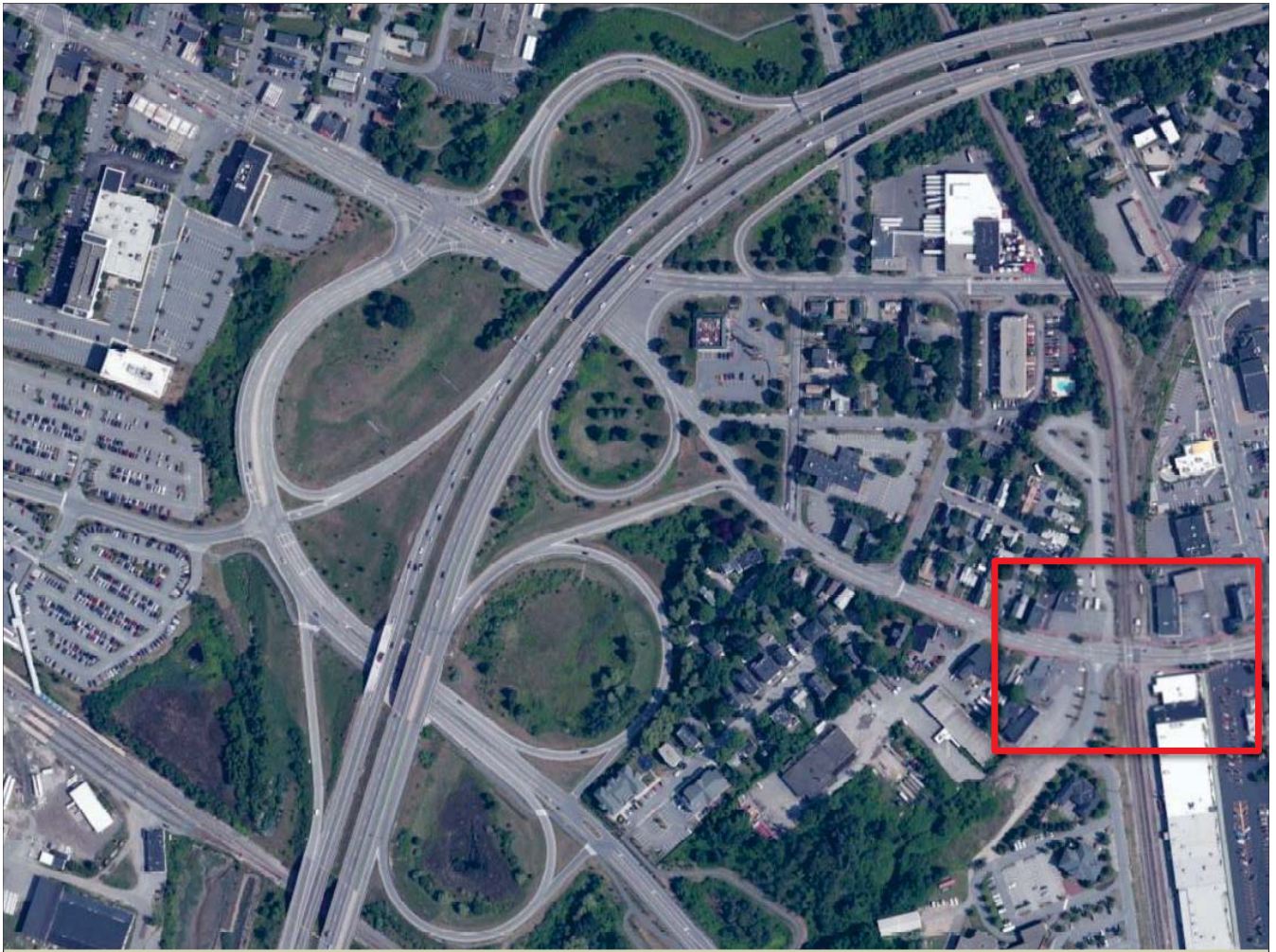












Implementation Strategy:

Short Term: Parallel Tracks

- 1) Incorporate plan into ongoing streetscape enhancements
- 2) Ramp Closures: Work with MDOT to define process and additional study required
- 3) 2 Way Conversion of Park (does not require ramp closures or new signal at Congress)
- 4) 2 Way Conversion of Congress (requires ramp closures and signal with Park)

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Implementation Strategy:

Long Term

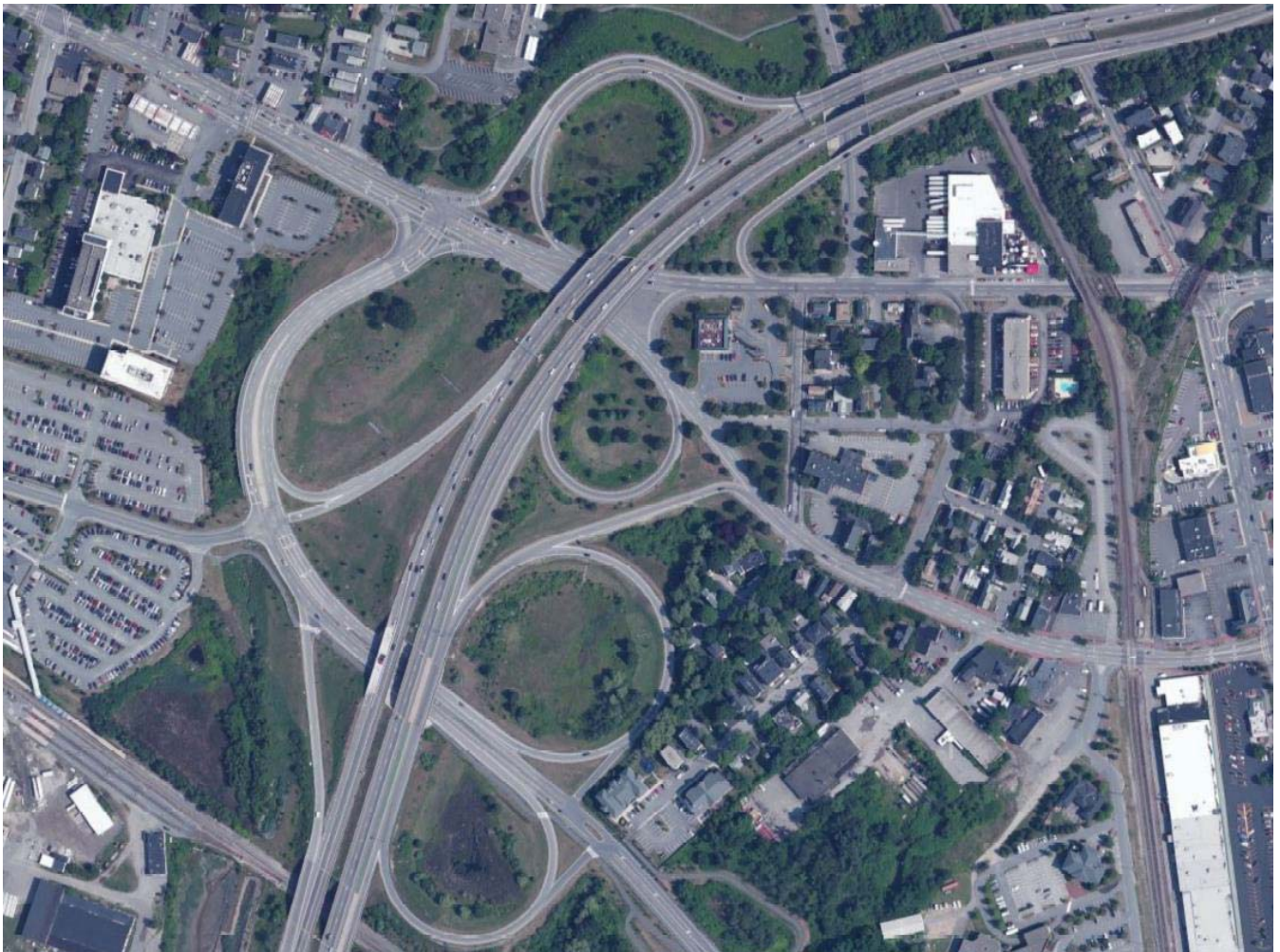
- 5) Additional Streetscape Amenities
 - Trees
 - Lighting
 - Curb extensions
- 6) Consider other uses of interchange lands
- 7) Consider roundabouts at major intersections

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Thank You

Discussion

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ARTICLE I. IN GENERAL

Sec. 28-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them below. When a term is used in this chapter but not defined below, the definitions in 29-A M.R.S.A. § 101 and any amendments thereto shall be used.

~~Bicycle shall mean a device upon which a person may ride that is propelled by human power and that has two (2) tandem wheels, either of which is more than twenty (20) inches in diameter, and includes a motorized bicycle or a motorized tricycle. "Toy vehicle" includes but is not limited to, skateboards, rollerskates, wagons, sleds and coasters.~~

Bicycle shall mean: a device that is designed to be operated on the ground on 2 or more wheels, has a seat or a saddle for use of the rider, and is propelled exclusively by human power through a belt, chain, or gears.

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Cross walk shall mean:

- (a) That portion of a roadway ordinarily included within the prolongation or continuation of the lateral lines of sidewalks at intersections. ~~Where two (2) or more streets intersect and only some of the crosswalks at such intersection are marked for pedestrian traffic, the word crosswalk as used in this article shall include only such marked crosswalks at any such intersection.~~
- (b) A "Marked Crosswalk" shall be comprised of Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.
- (c) An "Unmarked Crosswalk" shall mean a crosswalk, as defined in subsection (a) above, that is not distinctly indicated for pedestrian crossing by lines or other markings on the surface.

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(d) Where two (2) or more streets intersect and only some of the crosswalks at such intersection are marked for pedestrian traffic, the word crosswalk as used in this article shall include only such marked crosswalks at any such intersection.

Driver shall mean every person who drives or is in actual physical control of a motor vehicle.

. . . .
Intersection shall mean the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two (2) streets which join one another.

Motor vehicle shall mean any self-propelled vehicle not operated exclusively on tracks but does not include:

- (a) A snowmobile as defined herein;
- (b) An all-terrain vehicle as defined in article V; or
- (c) A motorized wheelchair.

Operate shall mean to operate, drive, or use a vehicle or other conveyance in any manner, whether or not the vehicle is moving.

. . . .
Traffic shall mean pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any street for purposes of travel.

. . . .
Vehicle shall include all kinds of conveyances on ways for persons and for property, including special equipment, except those propelled or drawn by human power or used exclusively on tracks or snowmobiles or motorized wheelchairs.

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DIVISION 6. BICYCLES, SKATEBOARDS AND ROLLERSKATING

Subdivision 1. Generally

Sec. 28-216. ~~Definitions; traffic~~Traffic laws apply.

~~(b)~~ Every person riding a bicycle or skateboard, or rollerskating upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle by the laws of this state declaring rules of the road applicable to motor vehicles or by the traffic ordinances of this city applicable to the driver of a vehicle, except as to those provisions of laws and ordinances which by their nature can have no application, and except as to special regulations in this article.

(Ord. No. 183-97, 1-22-97)

Sec. 28-217. Obedience to traffic-control devices.

(a) Any person operating a bicycle or skateboard, or rollerskating shall obey the instructions of official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs indicate that no right or left or U-turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

(Ord. No. 183-97, 1-22-97)

Sec. 28-218. Manner of riding.

(a) A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(Ord. No. 183-97, 1-22-97)

Sec. 28-219. Riding on roadways and bicycle paths.

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(a) Riding to the right. A person operating a bicycle, skateboard, or rollerskates upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time and place shall operate on the right portion of the way as far as practicable except when it is unsafe to do so as determined by the bicyclist, skateboarder, or rollerskater or:

(1) When overtaking and passing another bicycle, skateboard, rollerskater or other vehicle proceeding in the same direction;

(2) When preparing for or making a left turn at an intersection or into a private road or driveway;

(3) When proceeding straight in a place where right turns are permitted; and

(4) When necessary to avoid hazardous conditions, including, but not limited to, fixed or moving objects, vehicles, bicycles, roller skiers, pedestrians, animals, broken pavement, glass, sand, puddles, ice, surface hazards or opening doors from parallel-parked vehicles, or a lane of substandard width that makes it unsafe to continue along the right portion of the way. For purposes of this paragraph, "lane of substandard width" means a lane that is too narrow for a bicycle, skateboarder, or rollerskater and a vehicle to travel safely side by side in the lane.]

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~~Every person operating a bicycle or skateboard, or rollerskating upon a roadway, shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.~~

(b) Persons riding bicycles or skateboards, or rollerskating upon a roadway, shall not ride more than two (2) abreast, except on paths or parts of roadways set aside for the exclusive use of bicycles or skateboards or rollerskating.

~~(c) Whenever a usable path for bicycles or skateboards or rollerskates has been provided adjacent to a roadway, bicycle or skateboard riders or rollerskaters shall use such path and shall not use the roadway.~~

(Ord. No. 183-97, 1-22-97)

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Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

(a) *Transportation Standards*

1. Impact on Surrounding Street Systems:

The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the ~~1985~~most recent edition of the Highway Capacity Manual published by the ~~Transportation Research Board of the National Research Council~~National Academies of Science, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D";

. . .

4. Parking:

a. Location and Required Number of Vehicle Parking Spaces:

. . .

b. Location and Required Number of Bicycle Parking Spaces:

- (i) The site plan shall provide secure bicycle parking in conformance with Section 1 of the Technical Manual and

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shall meet the following requirements:

- (a) *Residential structures.* Two (2) bicycle parking spaces for every five (5) dwelling units shall be required.
- (b) *Non-residential structures.* Two (2) bicycle parking spaces for every ten (10) vehicle parking spaces for the first one hundred (100) required vehicle parking spaces, plus one (1) bicycle parking space for every twenty (20) required motor vehicle parking space over one hundred (100) required vehicle parking spaces.
- (c) Development with zero (0) to ten (10) required vehicle parking spaces shall provide at least two (2) bicycle parking spaces.

. . . .

- (ii) *Waiver:* The reviewing authority may reduce or eliminate the required number of on-site bicycle parking spaces if it is determined, based on evidence submitted by the applicant, that the proposed development is expected to generate reduced demand for on-site bicycle parking due to characteristics or uses such as elderly or disabled persons housing or industrial uses located in outlying areas.

When the required number of on-site bicycle parking spaces is reduced or eliminated by the reviewing authority pursuant to this section, the applicant shall contribute to the City of Portland Bicycle Parking Fund an amount proportionate to the cost of providing the on-site bicycle parking spaces required by sections (a) through (c) above, which contribution will be applied to the City's efforts to increase the number of bicycle parking spaces throughout the City.

Memo

To: District 2 Councilor David Marshall, Chair, Transportation, Sustainability, & Energy Committee
District 1 Councilor Kevin Donoghue, Vice-Chair, Transportation, Sustainability, & Energy Committee
District 4 Councilor Cheryl Leeman, Transportation, Sustainability, & Energy Committee
At-Large Councilor John Anton, Transportation, Sustainability, & Energy Committee

From: Bruce Hyman, Bicycle-Pedestrian Program Coordinator & Project Manager

CC: Michael Bobinsky, Director of Public Services
Kathi Earley, Engineering Services Manager
Alex Jaegerman, FAICP, Planning Division Manager

Date: June 14, 2013

Re: Proposed Changes to Select Transportation-related Ordinances

Changes to select transportation-related ordinances are proposed. The proposed changes include updates or clarifications to ordinance language and repeal of an outdated ordinance provision. It also includes a new proposed ordinance provision related to bicycle parking.

The proposed changes include:

- Sec 28-1. Updated/clarified definitions
 - o Bicycle
 - o Marked and Unmarked crosswalks – terms used later in the ordinance to define who has rights-of-way when crossing streets.
- Sec 28-219. Riding on roadways and bicycle paths
 - o (a) Riding to the right – provides more clarification to the ordinance than the previous “as near to the right as practicable” to describe situations where cyclists, skateboarders and rollerskaters legally may not be operating in the right-most portion of the roadway.
 - o (c) So-called ‘Mandatory Sidepath law – repeal of this ordinance which conflicts with the newly adopted Complete Streets policy and use of existing city bikeway infrastructure including locations of bike lanes and shared use pathways in proximity to each other.
- Sec 14-526. Site plan standards
 - o (a) Transportation Standards
 - 1. Impact on Surrounding Street Systems – updates the reference for Level of Service calculations to be based upon the latest Highway Capacity Manual.
 - 4. Parking (ii) waiver – proposes a new fund, modeled after the very successful Tree Fund, to provide developer contributions for required bicycle parking not provided on-site.

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AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE V. POLYSTYRENE
SECTIONS 12-210 THROUGH 12-215

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

*That Chapter 12, Sections 12-210 thru 12-215 of the Portland
City Code is hereby enacted as follows:*

12-210. Findings; purposes.

The city council hereby finds as follows:

- (1) Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.
- (2) The City of Portland desires to protect the natural environment.
- (3) There is no economically feasible means of recycling expanded polystyrene locally.
- (4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs.
- (5) Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.
- (6) The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.
- (7) Such alternatives are readily available.

12-211. Definitions.

As used in this Ordinance the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food

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service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

- (b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."
- (c) "Food packager" means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.
- (e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (f) "Recycling Program" means a process whereby used materials are separated from the solid waste stream

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and utilized as a raw material in the manufacture of a new product or for new economic use.

- (g) "Restaurant" means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.
- (h) "Retail Food Vendor, Vendor" means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.

12-212. Prohibitions.

1. On and after July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

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6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

12-213. Exemptions.

A. Prepackaged food is exempt from the provisions of this chapter.

B. Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

C. Food vendors, City departments, City facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

D. This Ordinance shall be null and void if and as long as there is developed and maintained an effective city-wide Recycling Program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

E. The provisions of this ordinance shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

12-214. Violations and Enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred.

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Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

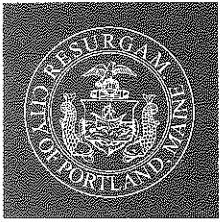
Violations of this Ordinance shall be punishable by fines as follows:

i. A fine not exceeding \$250 for the first violation in a one-year period;

ii. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

12-215. Severability.

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.



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Public Services Department

Michael J. Bobinsky, Director

To: Chair Marshall and members of the Transportation, Sustainability and Energy Committee

From: Troy Moon, Environmental Programs and Open Space Manager

Re: Proposed polystyrene foam packaging ban

Date: 6/13/2013

During the Green Packaging Working Group Meeting held on May 6, 2013 members voted 9 – 6 to recommend passage of an ordinance to prohibit the sale of polystyrene foam packaging for food products in Portland. I am pleased to provide you with a report discussing the reasons for this recommendation as well as a minority report from members of the group who did not support passage.

The Green Packaging Working Group members look forward to discussing this proposed ordinance with you on June 19 and to answering any questions you may have.

Minority Report in Opposition to Polystyrene Product Ban Proposed by the Green Packaging Working Group Task Force

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force. The following minority report outlines the basis for this opposition.

I. Executive Summary

The members of the Green Packaging Working Group Task Force who represent Maine businesses are strongly opposed to the proposed ordinance to ban polystyrene foam products developed by the Green Packaging Working Group Task Force for the following reasons:

- The Task Force did not properly account for the financial impact to businesses and consumers that would result from this proposed product ban;
- This proposed product ban will not address what appeared to be the primary concern of the majority of the Task Force – reducing litter;
- The process employed by the Task Force to develop this proposed product ban was flawed, resulting in an indefensible proposal to ban polystyrene products; and
- The Task Force and this draft ordinance misapprehend the nature of polystyrene foam and its impacts.

II. The Task Force Did Not Properly Account for the Financial Impacts of This Proposed Product Ban

Despite repeated requests by members of the Task Force who represent Maine businesses that the Task Force undertake an adequate analysis of the financial impacts of this proposed product ban, these requests were never heeded. The “economic analysis” employed by the Task Force involved telephone conversations with 24 managers at Portland restaurants and stores. There was also heavy reliance on the fact that the Town of Freeport passed a polystyrene product ban and “no business went out of business as a result of that ban.” This is hardly the level of analysis that is needed for a proposed product ban that will have and economic impact on a large number of Portland businesses.

Because the Task Force refused to conduct the proper economic analysis, there is no concrete sense of the number of Portland businesses that would be affected by this proposed product ban. Moreover, there is no understanding of how these businesses would be affected and how these impacts would ultimately be felt by Portland consumers. Further, because the Task Force made very little effort to work with Portland’s business community, business leaders did not have a sufficient avenue for their input into the Task Force process.

In the absence of adequate information, the City of Portland simply cannot act to ban polystyrene foam products and the business minority of the Task Force cannot support this proposed product ban.

III. The Proposed Product Ban Would Not Reduce Litter

Litter is a people problem, not a materials problem.

People litter. Those who would heedlessly toss a polystyrene cup on the ground would be just as likely to do the same with a plastic cup or a paper cup. Changing the form or composition of the container is not likely to change how people dispose of it.

As a result, eliminating polystyrene foodservice products (or any other product or material) would do little more than change the composition of waste that is generated and the litter that is found on our streets and waterways. Banning polystyrene food containers would not reduce the quantity of litter caused by the careless disposal of food containers generally.

In short, there is no environmentally acceptable form of litter. And focusing on one specific packaging type falls short of a comprehensive policy that is needed to address litter.

Unfortunately, too many initiatives to ban or severely limit the use of polystyrene foodservice products represent misguided attempts to deal with solid waste and litter issues, attempts that are usually destined to fail. Bans on specific products simply do not reduce solid waste or litter, for the key to reducing litter is changing human behavior, not changing the color or chemical composition of, say, a coffee cup.

Consider the history of this issue in California:

- In San Francisco, a litter study (subsequently audited) concluded that eliminating all food-related polystyrene would not reduce litter but would simply change the type of litter found. It showed, for example, that paper-cup litter of all kinds (hot, cold and other) increased from 1.82 percent of total litter in 2007 to 2.41 percent in 2008, while polystyrene cups decreased from 1.13 percent to 0.78 percent during the same period.
- The Santa Barbara City Council directed city staff to evaluate the merits of banning polystyrene foodservice products. Staff found that a ban on polystyrene would only be effective and have a net benefit to the environment if the foodservice ware was made from compostable material, and that any benefits could only be realized with a citywide organics collection and composting program – which the city does not have.
- In Carmel, a June 3, 2008 staff report found that since the inception of a 1989 ordinance banning polystyrene foodservice products, “the problem of food packaging waste litter has not improved.”

One noted environmentalist, Jean-Michel Cousteau, the founder of the California-based Oceans Future Society and the son of famed ocean explorer, Jacques Cousteau, wrote in 2005 that:

*California's beaches are a natural treasure and we need the public's help to protect them. But history teaches an important lesson: **bans don't work** [emphasis added.] If a community bans Styrofoam and plastic carry-out containers, coffee cups, picnic ware and similar items, we know what will happen: individuals and businesses will switch to other disposable products, such as glass, aluminum, and wax-covered cardboard. The amount of litter will not change, only its composition. That's why bans are overly simplistic and don't get to the real cause of the problem . . .*

Public education and stricter enforcement of existing litter laws, with appropriate penalties, would help remind both our fellow Californians and the thousands of visitors who come here each year that it is their personal responsibility and civic duty to keep California clean. Unfortunately, there will always be litterbugs among us. Bans have no effect at all on such people. Irresponsible human behavior cannot be addressed by eliminating products in society.

IV. The Process Employed by the Task Force Was Flawed

In July 2012, when the City Council was presented with a proposal to ban the use of polystyrene in food packaging applications, the Council's Transportation, Sustainability & Energy Committee created the Green Packaging Working Group Task Force and charged it with considering the merits of this proposal. At that committee meeting, there was extensive discussion regarding the composition of the Task Force as well as the Task Force's charge.

For months thereafter, the Task Force took no action on this issue; in fact, it did not meet for the first time until March 11, 2013. As soon as the Task Force commenced its work, the result – a polystyrene product ban – was inevitable and the Task Force raced to this result.

The process followed by this Task Force was flawed on numerous counts:

1. **The charge to the Task Force was flawed.** The purpose for creating a Task Force was to weigh evidence and determine whether municipal action was appropriate on this issue. At its first meeting, however, this body was instead charged with drafting an ordinance banning the use of polystyrene foam products, on the flawed assumption that circumstances warranted only this course of action.
2. **No process was created for weighing evidence regarding a proposed polystyrene ban.** The Task Force was so intent on crafting an ordinance to ban polystyrene products that it established no coherent process for discussing and weighing the merits of the proposal itself.
3. **The Task Force never defined its objectives.** In its haste, the Task Force drafted a proposed ordinance without first considering or stating what problem or problems it was attempting to solve. It is prudent to insist that this body first articulate what issue it is trying to address before imposing a solution.

4. **The Task Force did not consider the economic impacts of a product ban on the people and businesses of Portland.** As outlined above, in its rush to push through a polystyrene product ban, the Task Force did not conduct an analysis of the impact that such a ban would have on Portland businesses that use, ship or handle polystyrene products to determine the impacts of any limitations on the use of these products. It also did not hear testimony regarding the costs of such a policy to the many people of Portland who patronize these businesses.
5. **The Task Force Placed Unjustified Reliance on the Town of Freeport's Polystyrene Ban.** Throughout the Task Force's meetings, members repeatedly referenced the Town of Freeport's polystyrene product ban. The Task Force, however, refused to acknowledge that this ban was instituted years ago due to concerns regarding chlorofluorocarbons in polystyrene, an issue that is no longer of concern and irrelevant to the proceedings of the Task Force.

In short, the Green Packaging Working Group Task Force was a vehicle designed to get to one predetermined destination. This was not a deliberative body that examined and weighed all the relevant evidence associated with this issue. Rather, this was a hollow proceeding designed to arrive at an intended result.

V. The Task Force and This Draft Ordinance Misapprehend the Nature of Polystyrene and its Impacts

A. Polystyrene helps reduce food waste

A common misconception is that polystyrene products pose a major problem in municipal landfills. Rather, polystyrene helps solve a major problem in municipal landfills. According to the U.S. EPA and other credible sources, all polystyrene foodservice (foam and non-foam) cups and containers account for less than **1 percent** by weight and volume of the municipal solid waste stream. By contrast, the largest single contributor to total municipal waste is "organics" – i.e., food scraps and yard trimmings – which constitute **20 percent** of the solid waste stream.

Polystyrene food service products have been used safely for more than a half of a century in food contact applications. The reason they have proven so popular for so long **is because they work**. Polystyrene is more effective at preventing food spoilage and contamination than other materials that have been used for this purpose. Another reason to prefer polystyrene over other materials for transporting food and drinks is that, unlike other substances, it does not impart foreign odors or tastes to the food it holds.

In short, polystyrene does not break, does not spill, and does not make food taste funny. In all these ways, it helps limit the amount of food that Americans waste or throw away, thus helping reduce the amount of organic wastes that are currently clogging our landfills.

While some may argue that organic waste breaks down in the environment faster than polystyrene, it is important to note that modern municipal landfills are not composting facilities. In fact, the trend in landfills today, enforced by strict state and federal regulations, is to foster anaerobic environments where nothing breaks down readily, so as to reduce odors, runoff and excessive methane emissions.

B. Polystyrene itself is “greener” than most people realize

Besides helping to reduce food waste, polystyrene has another important advantage over other food-packaging alternatives: it scores well in terms of its environmental footprint as measured over the total life span of the product.

To evaluate sustainability of a foodservice product, the total environmental impact of this product over its entire life span must be analyzed, through a process called Life Cycle Inventory (LCI). LCI measures all the various environmental impacts a product creates, both directly and indirectly, across all phases of the product's life cycle. In this way LCI provides a cradle-to-grave picture of a product's environmental attributes, from raw material extraction and manufacturing to post-use recovery or disposal.

In a peer-reviewed February 2011 study, Franklin Associates, one of the most highly regarded LCI practitioners in North America, found that commonly used cups, plates and sandwich containers made of polystyrene foam use significantly less energy and water than comparable paper-based or corn-based (polylactic: PLA) alternatives, primarily due to polystyrene foam's much lower weight.

That 2011 study compared average-weight polystyrene foam, paperboard and PLA cups used for hot (16 ounce) and cold (32 ounce) drinks, 9-inch dinner plates and "clamshell" sandwich containers. Researchers modeled energy consumption, water use, solid waste (by weight and volume) and greenhouse gas emissions for each product resulting from production, transportation and disposal. Some key findings include:

- Energy use: the manufacturing of polystyrene foam products consumes significantly less energy than the alternatives—half as much as wax-coated paperboard cups and one-third as much as PLA clamshells.
- Water use: the manufacturing of polystyrene foam products likewise uses significantly less water than the alternatives—up to four times less than PLA clamshells.
- Solid waste: Polystyrene foam products create significantly less solid waste by weight than the alternatives—up to five times less than paperboard and PLA products. Comparisons by volume vary widely:
 - Polystyrene foam cups for hot drinks create less waste by volume than the alternatives – significantly less than paperboard cups with corrugated sleeves used for insulation.

- Polystyrene foam cups for cold drinks create similar waste by volume as plastic coated paperboard cups and significantly less than wax coated paperboard and PLA cups.
- Heavy duty polystyrene foam plates produce more solid waste by volume than the alternatives, while lighter duty polystyrene foam plates create similar waste by volume as the paperboard counterparts.
- Polystyrene foam clamshells create slightly more waste by volume than paperboard clamshells and half the waste by volume of PLA clamshells.
- Greenhouse gases: Comparisons of greenhouse gas emissions vary widely depending on assumptions made about the degradation of paperboard products. Specifically, if paperboard products are prevented from degrading after disposal, they store carbon and generate *fewer* greenhouse gas emissions than polystyrene foam products; however, if paperboard products are allowed to degrade to the maximum extent, they instead would generate *more* greenhouse gas emissions than polystyrene foam products.

In general, the study's authors found that lower-weight products with similar functionality—such as polystyrene foam products composed of more than 90% air—generally produce smaller environmental burdens than heavier-weight alternatives. Because paperboard foodservice packaging products are generally heavier than foam products, in most cases they have environmental burdens that are higher than or comparable to corresponding polystyrene foam products.

For example, an average weight 16 oz. hot-beverage cup made of plastic-coated paper weighs almost three times as much as a comparable 16 oz. polystyrene foam cup. (Air comprises approximately 90 -95% of a foam cup or container, while paper comprises 89-95% of a typical plastic-lined paper cup.) Because of this high air content, polystyrene foam also affords exceptional insulation. This, combined with the fact that polystyrene foam cups are stronger than paper cups, discourages other wasteful practices such as “double-cupping” paper cups or requiring insulating cup sleeves.

Finally, it is sometimes argued that polystyrene is not recyclable – **that is not true**. As a thermoplastic, polystyrene can be completely recycled, and both foam and non-foam polystyrene products are technically very easy to recycle, if collected as apart of an integrated solid waste management strategy. Polystyrene manufacturers have cooperated with hundreds of communities in the U.S. and Canada to collect and recycle polystyrene, through curbside as well as drop-off recycling programs.

What limits polystyrene recycling today are the same factors that curtails food packaging recycling generally: contamination and transportation costs. To be effectively recycled, food containers should first be thoroughly cleaned, a responsibility that many municipalities are not yet ready to adopt. Also, the light weight of polystyrene products, especially foam, can make it uneconomical to ship polystyrene long distances for recycling.

As recycling technology advances, and as polystyrene recycling becomes more widespread, these issues will tend to become less daunting. In the meantime, the fact that most alternatives to polystyrene are made from multiple materials – paper cups, for example, are typically coated with polyethylene plastic or wax – often makes them harder to recycle than polystyrene alternatives.

C. Polystyrene is not toxic

A wave of confusion about the safety of polystyrene foam foodservice products has swept over the U.S., following the recent release of the “12th Report on Carcinogens” by the National Toxicology Program’s (NTP), a division of the U.S. Department of Health and Human Services (HHS).

In that report, dated June 10, 2011, styrene was listed for the first time as “reasonably anticipated to be a human carcinogen.” (Note the use here of the word “anticipated,” rather than “proven.”) No other government agency outside the United States has endorsed this supposition. In fact, agencies from the European Union, Canada, Japan and Hong Kong have all conducted similar studies on styrene and completely disagree with the NTP’s conclusion. Even the NTP itself cautions that the fact that substances are listed in its own report “does not establish that such substances present a risk to persons in their daily lives.”

But more importantly, polystyrene is not styrene (or vice versa).

Styrene is a clear, colorless **liquid** that occurs naturally in foods such as cinnamon, beer, steak, coffee beans, peanuts, strawberries, and wheat. Polystyrene is a **solid plastic** created through a chemical process in which styrene is polymerized. As the NTP itself explains, “Although styrene, a liquid, is used to make polystyrene, ... we do not believe that people are at risk from using polystyrene products.”

Since the release of the NTP study, news reports have made much of the fact that trace amounts of liquid styrene can in some circumstances leach into food contained in rigid polystyrene food containers or foam polystyrene cups. (*All* containers, by the way, have ingredients that leach into food.) One study showed that a foam cup, for example, could release 5 to 10 *parts per billion* of styrene into the food contained therein. But compare this amount with the styrene to be found in various foods themselves:

Food (with no packaging contact)	Range of styrene exposure (ppb)
Beef	5.3 – 6.4
Beer	10 - 200
Cinnamon	170 – 39,000
Coffee beans	1.6 – 6.4
Peanuts	1.2 - 2
Strawberry (one)	.37 – 3.1
Wheat	.4 - 2

In other words, if you ate 15 strawberries out of a polystyrene cup, you could ingest 5 to 10 times as much styrene from the strawberries themselves as from the cup. If you drink beer from the same cup, you could consume **up to 40 times** as much styrene from the beer itself as from the polystyrene cup holding it.

Even so, most of the styrene we ingest on a daily basis comes not from our food, but from the air we breathe. Studies indicate that between 90 and 99 percent of the styrene we take into our bodies comes from breathing polluted air, while only 1 to 10 percent comes from the food we eat.

Finally, to put these trace amounts of styrene into perspective, keep in mind that the U.S. Occupational Safety & Health Administration (OSHA) sets standards for the amount of chemical exposure it deems to be safe in the workplace. In the case of styrene (not polystyrene), OSHA recommends limiting styrene exposure to 50,000 parts per billion in an eight-hour period – the equivalent of eating approximately 30,000 strawberries or drinking 500 beers.

D. There is no emergency that justifies this hastily proposed product ban

The U.S. chemical industry is one of the nation's most pervasively regulated industries. If chemicals are not managed safely, they can have health and environmental consequences. But polystyrene and other plastics have been used safely for more than 50 years in food contact applications with no validated scientific evidence that they pose any human health concerns.

Polystyrene foodservice disposables meet stringent U.S. FDA standards for use in food-contact packaging. The U.S. FDA, which regulates plastics used in food contact applications, and the National Academy of Sciences and other federal authorities rely not on opinions but on the weight of validated scientific evidence when evaluating safety and efficacy. That evidence overwhelmingly supports the safe use of polystyrene in food contact applications.

Polystyrene is safe. Polystyrene is “green.” If there were any scientific evidence to suggest that polystyrene was causing harm to Portland residents, we would support efforts to find a replacement. But there is no need, and no reason, for the City and its residents to suffer the costs and consequences of banning a substance that has no harmful effects.

And there is certainly no need, or cause, to rush this matter through the City Council.

VI. Conclusion

For the foregoing reasons, the members of the Green Packaging Working Group Task Force representing Maine business interests cannot support this ill-conceived polystyrene foam product ban.



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To: Members of the Transportation, Energy and Sustainability Committee
From: Eric Labelle, P.E., Deputy Director of Public Services
Date: June 14, 2013
Subject: Water Resources Integrated Permit

Integrated Planning is a Clean Water Act compliance framework advocated for by the Environmental Protection Agency. The premise to the approach is that our Water Quality permits and initiatives would be more closely coordinated. It holds promise for a more comprehensive approach which could identify the most beneficial water quality and cost effective projects. The City of Portland currently has four (4) major water quality programs which some are licensed and mandated, and all are interdependent.

CMOM – Capacity, Management, Operations, and Maintenance- This program focuses on the capacity of the existing wastewater system. The program’s objective is to maximize capture and delivery of waste to and through the Wastewater Treatment Facility through the operation of our collection and pumping systems.

SSO – Sanitary Sewer Overflows - Minimize the risk of dry weather sewer overflows. This program focuses on the maintenance and condition of the existing infrastructure.

CSO – Combined Sewer Overflow - The City entered into a three party consent agreement with the Maine Department of Environmental Protection and the Portland Water District in 1997. The objective of the plan to is to eliminate 33 of 39 CSOs and reduce CSO volumes by 88 percent or 87 million gallons per year. The City has just begun its third implementation program, known as Tier III. This program is valued at \$170M and will take up to 15 years to complete.

MS4 – Municipal Separate Storm Sewer Systems – Regional population centers or “Urbanized Areas”, as defined by the Census, are required to develop means to control pollutants discharging into municipal stormwater systems. The program involves six (6) minimum measures which are Public Education and Outreach, Public participation/Involvement, Illicit Discharge Detection and Elimination, Construction Site Runoff Control, Post-Construction Runoff Control, and Pollution Prevention/Good Housekeeping. Parameters of the measures are agreed to in 5-year increments; the City’s second 5-year plan concludes June 30, 2013.



Our current approach of pursuing all Clean Water Act obligations does not appear to be financially sustainable. Integrated Planning provides some promise for prioritizing water quality projects and programs which will also be sustainable into the future. We must, however, be mindful of the risks associated with entering into more consent agreements and compliance timelines.

**Report of the Majority of the Green Packaging Working
Group Recommending a Ban on the Sale of Polystyrene
Foam Food Packaging in Portland**



June 10, 2013

Green Packaging Task Force Membership

Ron Adams – Portland Public Schools

Danny Bouzianis – Dunkin' Donuts

Michele Brooks – Portland Resident

Avery Day / Steven Rosario – American Chemistry Council

Shelley Doak – Maine Grocers Association

Matthew Faulkner – Surfrider Maine

Alexandra Fields – Environment Maine

Martin Fisher – Dart Manufacturing

Richard Grotton – Maine Restaurant Association

Tyler Kidder – University of Southern Maine

Ted Koffman – Maine Audubon Society

John Morin -- ecomaine

Richard Petrone (invited) -- Hutamaki

Curtis Picard – Retail Association of Maine

Cathy Ramsdell – Friends of Casco Bay

Phil Rozenski (invited) – Hylex Poly

Sally Trice – Portland Citizen

Councilor Ed Suslovic, Chair

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AMENDMENT TO PORTLAND CITY CODE
CHAPTER 12 GARBAGE, WASTES AND JUNK
ARTICLE V. POLYSTYRENE
SECTIONS 12-210 THROUGH 12-215

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

*That Chapter 12, Sections 12-210 thru 12-215 of the Portland
City Code is hereby enacted as follows:*

12-210. Findings; purposes.

The city council hereby finds as follows:

- (1) Expanded Polystyrene is a petroleum-based, lightweight plastic material sometimes used as food service ware by retail food vendors operating in the City of Portland.
- (2) The City of Portland desires to protect the natural environment.
- (3) There is no economically feasible means of recycling expanded polystyrene locally.
- (4) Disposable food service ware made from polystyrene foam constitutes a portion of the litter in Portland's streets, parks and public places that increases City maintenance costs.
- (5) Expanded polystyrene is a common pollutant that fragments into smaller, non-biodegradable pieces that are ingested by marine life and other wildlife thus harming or killing them.
- (6) The City's goal is to replace expanded polystyrene food service ware with reusable, recyclable or compostable alternatives.
- (7) Such alternatives are readily available.

12-211. Definitions.

As used in this Ordinance the following terms have the following meanings:

- (a) "Disposable food service ware" means single-use disposable products used in the restaurant and food

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service industry for serving or transporting prepared, ready-to-consume food or beverages. This includes but is not limited to plates, cups, bowls, trays and hinged or lidded containers, also known as clamshells. This does not include straws, utensils or cup lids nor does it include disposable packaging for prepackaged foods.

- (b) "Expanded polystyrene" means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons. For the purposes of this chapter, the term "polystyrene" shall not include clear polystyrene known as "oriented polystyrene."
- (c) "Food packager" means any person or entity located within the City of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.
- (d) "Prepackaged food" means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source outside the City of Portland.
- (e) "Prepared food" means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared for consumption on the food vendor's premises or within the city. Prepared food may be eaten either on or off the premises, also known as "takeout food." Prepared food does not include eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration.
- (f) "Recycling Program" means a process whereby used materials are separated from the solid waste stream

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and utilized as a raw material in the manufacture of a new product or for new economic use.

- (g) "Restaurant" means any establishment located within the City of Portland selling prepared food to be eaten by customers. Restaurant includes a sidewalk or other outdoor food vendor.
- (h) "Retail Food Vendor, Vendor" means any establishment located in the City of Portland, or any establishment which provides prepared foods or beverages within the City for public consumption on or off its premises and includes, but is not limited to, any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, mobile food preparation truck or vehicle, roadside stand, or any other person who provides prepared food; and any individual, group, or organization that regularly provides food as part of its services.

12-212. Prohibitions.

1. On and after July 1, 2015, no retail food vendor shall serve or sell prepared food in expanded polystyrene disposable food service ware.

2. On and after July 1, 2015, no food packager who offers for retail sale meat, eggs, bakery products or other food shall package that meat, eggs, bakery products or other food in packaging material made of expanded Polystyrene.

3. On and after July 1, 2015, no vendor in the City of Portland who sells tangible personal property at retail shall sell disposable food service ware made from expanded polystyrene.

4. All city facilities, city-sponsored events, and city permitted events are prohibited from using disposable food service ware made from expanded polystyrene. All city departments and agencies shall not purchase or acquire disposable food service ware made from expanded polystyrene for use at city facilities.

5. City franchises, contractors and vendors doing business with the city shall be prohibited from using food service ware made from expanded polystyrene in city facilities or on city projects within the city.

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6. Organizations using city offices or property shall comply with this chapter (e.g., street closure permits, events at city facilities, etc.) and while on city premises, shall not willfully possess, give, receive, lend, offer or expose for sale, use, deliver, furnish, transfer or dispose of any disposable food service ware made from expanded polystyrene.

12-213. Exemptions.

A. Prepackaged food is exempt from the provisions of this chapter.

B. Food vendors that are currently existing or are established in the City by the effective date of the ordinance will be exempted from the provisions of this Article prohibiting the use of polystyrene foam food service ware for a period of time to be determined by the Public Services Manager or his/her designee on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

C. Food vendors, City departments, City facilities and contractors shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public peace, health or safety.

D. This Ordinance shall be null and void if and as long as there is developed and maintained an effective city-wide Recycling Program approved by the City's Director of Public Services for polystyrene foam food and beverage containers.

E. The provisions of this ordinance shall be null and void on the day that statewide legislation or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent Maine or federal administrative agency issues and promulgates regulations, preempting such action.

12-214. Violations and Enforcement.

The Director of Public Services and the Director of Health and Human Services or designees shall have the primary responsibility for enforcement of this ordinance. If the Public Services Director or the Director of Health and Human Services or designees determine that a violation of this Article has occurred, he/she shall issue a written warning notice to the food vendor that a violation has occurred.

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Subsequent violations of the Ordinance shall be subject to the penalties set forth below.

Violations of this Ordinance shall be punishable by fines as follows:

i. A fine not exceeding \$250 for the first violation in a one-year period;

ii. A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.

12-215. Severability.

If any part or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable.

Summary

In June, 2012 the City Council ordered the Transportation, Sustainability and Energy (TS&E) Committee to consider an order to ban the sale of polystyrene foam containers and take whatever further action the committee deemed appropriate. Based on that order, TS&E asked Councilor Suslovic to chair a committee including representatives of industry, businesses, local environmental organizations and Portland citizens to discuss proposed ordinance language. Following the Council order, the committee would first take up a proposed polystyrene ordinance. After completing that work the committee would begin studying ways to reduce the amount of plastic bags used in Portland's retail environment.

This committee, known as the Green Packaging Working Group, held three meetings to discuss ordinance language banning the use of polystyrene foam food packaging. The Town of Freeport's ordinance, which went into effect in 1990, served as the foundation for the group's discussion. Members heard testimony from a Freeport official regarding the efficacy of the ordinance during the last 20 years. Staff also provided examples of ordinances from other communities that have adopted polystyrene bans in order to provide further examples to the group.

The Green Packaging Working Group heard testimony from members that alternatives to polystyrene foam packaging are readily available. A representative from the Portland Schools described how the schools were able to switch from polystyrene foam trays to trays made of paper that could be composted or recycling as part of the local waste management program. A local franchisee shared that Dunkin' Donuts provides customers with paper cups instead of foam cups if they request one, despite company preference for foam. The group also learned from a survey of local establishments conducted by City staff that more than half of the businesses surveyed have already moved away from foam packaging in favor of alternatives.

The Working Group explored the recyclability of various types of packaging. A representative from ecomaine explained that most forms of packaging regularly used in Portland may be recycled in their program. (Portland is a member/owner of ecomaine and participates in the ecomaine recycling program.) This includes paper products including coffee cups, cardboard, pressed paper, metal and foil and most plastic containers. Polystyrene foam is the major exception as it cannot be recycled in Portland. Representatives from the plastics industry explained that there is technology available to recycle polystyrene foam. At this time, however, ecomaine reports that including this material in its offerings is not economically or operationally practical.

Members of the group discussed costs involved with moving away from polystyrene foam containers. The representatives from the Portland Schools and from local business agreed that foam packaging is generally less expensive than packaging made from other materials. Other members noted that many establishments in Portland have already discontinued use of foam packaging based for environmental reasons as well as economic reasons. Portland Schools reported that the use of foam trays was a significant source of complaints from parents and students. Moving to paper trays satisfied these customers and removed the trays from the waste stream, which reduced costs. The group further noted that discussions of unit costs for packaging disregard larger, external costs related to cleaning up litter,

damage to the water quality of Casco Bay and our urban streams and impact to wildlife that inadvertently ingest foam litter.

At the conclusion of the Green Packaging Working Group's third meeting, members endorsed ordinance language to prohibit sale of polystyrene foam food packaging in Portland. The group also endorsed amendments that would suspend the ordinance if the State of Maine enacts a ban on this product or if the City adopts a comprehensive and effective recycling program for polystyrene foam packaging. The vote was not unanimous and Chair Suslovic invited those opposed to submit a minority report to further explain their position.

Report

In June, 2012, Superintendent James Morse announced that Portland Public Schools would no longer use polystyrene foam trays when serving meals. He argued that using single use trays that could not be recycled went against City and School Department goals to reduce waste and adopt more environmentally sustainable practices. Following this announcement, food service staff began issuing lunches on paper trays that are manufactured in Maine and can be recycled or composted at facilities located in Portland. This change has pleased students, teachers and community members who had long championed a move away from foam trays. Student activists concerned about waste reduction and environmental issues had regularly focused their attention on the trays. In 2008, a group of Lyman Moore Middle School students addressed the Energy and Environmental Sustainability Committee (predecessor to the Transportation, Sustainability and Energy Committee) requesting support in their efforts to eliminate the use of foam in the school department. More recently, the Waste Reduction Group – a coalition of City staff, school staff and community members focused on reducing lunch room waste – worked to find alternatives to foam trays as part of a larger sustainability effort that culminated in Superintendent Morse's announcement and the adoption of a formal sustainability policy by the Portland Board of Education.

Discussions in Portland about the merits of polystyrene foam have always included reference to the Town of Freeport's decision to ban foam food packaging in 1990. Freeport residents led by student activists expressed concern about the widespread use of this foam packaging. They argued that it was not recyclable in their recycling program and constituted a large portion of roadside litter. Ban advocates also indicated that they were concerned about the impact of polystyrene foam litter on the water quality of Casco Bay and about its impacts on wildlife. Opponents of the ban, including franchisees of fast food restaurants and polystyrene foam manufacturers, argued that the ban would not be effective at ending litter and that the town could develop a program to recycle polystyrene foam. After deliberation, the Freeport Town Council voted in July, 1989 to become the first town in Maine to ban the use of polystyrene foam packaging with the ban going into effect on January 1, 1990.

The Freeport ordinance states:

no retail food vendor shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers.

When it took effect, the ordinance required restaurants, coffee shops, take out services and supermarkets to find alternatives to foam when packaging food products. Store managers in Freeport have found suitable alternatives and the businesses who opposed the ban continue to operate successfully. The ban has also not prevented business expansion, as demonstrated by Shaw's Supermarkets decision to build a store in Freeport in 2003. While staff have had to make adjustments, the Freeport supermarket has been able safely package the food items packaged in the store without the use of polystyrene foam.

During their meeting on March 11, the Green Packaging Working Group heard from Freeport Town Engineer Albert Presgraves about Freeport's experience with the polystyrene foam ban. Mr. Presgraves confirmed that local retailers and restaurants have found alternative packaging materials that have successfully met their needs. He did not believe that the town had been forced to take any enforcement action to gain compliance with the ordinance. He felt that most Freeport residents continue to support the prohibition on foam packaging. This local support provides business owners with incentive to use non-foam packaging. It also promotes compliance with the ordinance as residents quickly inform any new business owners about the ordinance if they inadvertently serve food in foam containers.

The majority of the Green Packaging Working Group members feel that Freeport's experience provides a useful model for Portland. As a retail center, food service establishments including coffee shops, fast food restaurants, formal dining and supermarkets play an important role in that town's economy. Local residents as well as tourists attracted to the variety of shopping opportunities dine out regularly. The ban on polystyrene foam food package has not diminished the rich variety of dining choices available in Freeport. Food service establishments have adapted to the ban and are able to operate successfully with alternatives. Restaurants in Portland will be able to do the same.

While Freeport was the first municipality in Maine – and one the earliest in the country -- to prohibit polystyrene foam packaging, communities across the country have followed suit. In California alone, more than thirty five cities and counties have done so. This includes San Francisco, Oakland and San Jose. Seattle has banned foam packaging as has Portland, OR. On the east coast, Suffolk County, NY has adopted a ban. Brookline, MA residents passed a ban in 2012 during their annual town meeting and officials in Somerville, MA endorsed a ban in May, 2013. Mayor Bloomberg has proposed a ban in New York City. More than 100 cities across the country have adopted bans and proposals are currently in front of elected officials around the country.

As part of its work, the Green Packaging Working Group studied some of the ordinances passed in other communities in order to build on the foundation provided by the Freeport model. This exercise led to the inclusion of a number of amendments in the final draft. One of the most significant was explicitly prohibiting the use of polystyrene foam packaging by the City of Portland. The group recognizes that the City and Schools have each developed administrative policies regarding the use of foam, but feels that it is important for the City to lead by example on this issue. Another key addition gleaned from other examples was providing time for merchants to exhaust supplies of packaging they have already purchased. The Working Group regarded this to be an issue of fairness and wished to respond to members of the public who raised concerns about this issue.

The primary reason Freeport and dozens of other communities around the country have chosen to prohibit the use of polystyrene foam packaging is the impact on the environment from the use, disposal and management this material. The Green Packaging Working Group has identified several factors that cause it to recommend prohibiting the use of foam packaging:

- **Litter** – Take out containers constitute a significant portion of the litter found along Portland's streets and in our public spaces. Much of it is polystyrene foam containers, which won't

biodegrade. Over time, foam litter breaks into smaller and smaller pieces and ultimately is washed into catch basins and ultimately into Casco Bay. Banning polystyrene foam food containers will prevent this harmful material from entering the environment.

The Green Packaging Working Group recognizes that banning foam will not, by itself, eliminate litter in Portland. Doing so, however, augments measures recommended by the Solid Waste Task Force in 2011 and that are now being implemented by the City. These include widespread deployment of Big Belly trash compactors in public spaces. These containers have a large capacity and contain waste material so it cannot be strewn by scavengers. The deployment of recycling carts to replace the small, open top bins currently used by the City's recycling program will also reduce litter on our streets. This effort is slated to begin in FY14.

- **Impact on Casco Bay and other waterways** – Plastic marine debris is an enormous problem that reduces water quality and harms wildlife around the world. Polystyrene foam breaks down into smaller and smaller pieces as it degrades. Once it enters our waterways wildlife often mistake these pieces for food and consume them. As polystyrene foam cannot be digested, the animals that eat it eventually die from starvation. The City of Portland is spending millions of dollars to improve the water quality of Casco Bay and its urban streams. Reducing the amount of polystyrene entering the environment is consistent with this effort. Preventing pollution by eliminating a source is a prudent and cost effective approach. Opponents of a ban on polystyrene foam often argue that alternative products cost somewhat more than foam products. While that is true, this argument does not factor in damage to habitat, decreased water quality and costs for environmental clean-ups that stem, in part, from the use of foam packaging.
- **Lack of Recycling Options** – The recycling program offered by the City of Portland and ecomaine is very comprehensive and accepts a wide range of packaging materials made of paper and plastic. This includes paper cups, paper plates, plastic cups, plastic clamshells, cardboard boxes, foil and other metal containers. Polystyrene foam is one of the few commonly used packaging materials that are not recyclable in the local program. The Green Packaging Working Group recognizes that polystyrene foam packaging is technically recyclable but emphasizes that it is not practical or convenient to do so in our region and that few communities around the country offer such a program. Barriers to recycling foam include a lack of reliable markets for postconsumer foam, difficulty in handling foam at the recycling plant and challenging economics for transporting foam due to its low density. (A letter from Kevin Roche, Executive Director of ecomaine regarding these challenges is appended to this report.)
- **Availability and Use of Alternatives To Polystyrene Foam Packaging** – As demonstrated by the experience in Freeport and the adoption of paper serving trays by Portland Schools, alternatives to polystyrene foam packaging are readily available. A recent survey of eateries in Portland

conducted by Portland Public Services staff members bears this out. Of the businesses surveyed, 54% used cardboard and paper packaging to serve their food, 41% used polystyrene foam, 37% used compostable products, 29% used non-polystyrene plastic products and 25% use metal or foil packaging. (Many businesses used more than one type of packaging.) This indicates that many businesses have already begun moving away from foam packaging.

The widespread use (and overuse) of packaging in Portland and around the country is a significant waste of natural resources. Most packaging materials are used only once. A store clerk places a product in the packaging – often multiple layers of it – and gives it to a customer. Once the customer arrives at his or her destination, the packaging almost always ends up in the trash. Some of it might get recycled and a small portion of it might even get re-used in some way. A significant portion of it ends up as litter along the street or in a public space. All of the packaging eventually becomes part of the waste stream and must be managed. Even if the packaging eventually gets recycled or combusted for energy instead of being sent to a landfill or littering the outdoors, it constitutes a poor use of materials and energy used to produce it and transport it to the consumer. The Green Packaging Working group encourages people to take pro-active measures to minimize packaging waste. This includes using a reusable travel mug when getting coffee and requesting that restaurants and take out establishments use as little packaging as possible when preparing food to go.

Banning the sale of polystyrene packaging in Portland would eliminate a pernicious and environmentally damaging form of packaging from our local waste stream. Other forms of packaging pose waste management challenges of their own. The Green Packaging Working Group looks forward to continuing our work by examining ways to address the environmental and waste management challenges presented by the huge quantity of plastic bags distributed to consumers at grocery and retail establishments. We look forward to reporting our findings and recommendations to the City Council.

Order 223-11/12
Passage: 9-0 6/18/12
MICHAEL F. BRENNAN (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)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER INSTRUCTING THE TRANSPORTATION, ENERGY AND
SUSTAINABILITY COMMITTEE TO CONSIDER AN ORDINANCE OR
RECOMMENDATION BANNING THE SALE OF NON-RECYCLABLE
POLYSTYRENE FOAM (PSF) CONTAINERS**

ORDERED, that the Transportation, Energy and Sustainability Committee shall consider an ordinance or recommendation to ban the sale of non-recyclable polystyrene foam (PSF) containers within the City of Portland and take subsequent action as the Committee deems appropriate.

**Owner Communities**

Bridgton
Cape Elizabeth
Casco
Cumberland
Falmouth
Freeport
Gorham
Gray
Harrison
Hollis
Limington
Lyman
North Yarmouth
Ogunquit
Portland
Pownal
Scarborough
South Portland
Waterboro
Windham
Yarmouth

Associate Members

Baldwin
Hiram
Naples
Parsonsfield
Porter
Saco
Standish

Contract Members

Andover
Cornish
Eliot
Greenland, NH
Hampton, NH
Jay
Kittery
Limerick
Livermore Falls
Manchester
Monmouth
Newington, NH
North Haven
Old Orchard Beach
Poland
Readfield
Sanford
Stockton Springs
Wayne

June 4, 2013

Mr. Troy Moon
Solid Waste Manager
City of Portland
55 Portland Street
Portland, ME 04101

Dear Troy:

You inquired about what challenges we might be faced with by adding polystyrene foam to our single sort recycling program. I offer the following feedback regarding the challenges associated with recycling polystyrene foam:

- Shipping baled polystyrene foam material is very inefficient due to the weight and density. Baling and/or densification of the polystyrene foam could be a challenge and an added cost. You wouldn't want to ship this material very far to market.
- The marketability of recycling polystyrene foam materials is very limited. Markets would need to be identified and anticipated scrap revenues would need to be determined. Market specifications would also need to be researched to ensure that markets would be willing to accept some residue on the foam containers. There has been very little interest from potential buyers of polystyrene foam and this is a significant concern for the industry.
- We take plastic, metal and glass containers. There would need to be an extensive educational component with polystyrene foam to differentiate foam cups, foam peanuts, foam packaging, clamshells, etc.
- Unlike most of the other plastic, foam easily breaks apart and becomes difficult to manage when in tiny pieces. In comparison, most plastic containers stay intact even when squashed by a loader wheel.
- Sorting of small pieces of foam would be challenging in the MRF. In particular, foam peanuts and broken pieces of foam would go everywhere.
- Collection of polystyrene foam from the source is inefficient without significant compaction or densification.
- Additional equipment would be needed to process polystyrene foam.

This outlines our primary concerns with recycling polystyrene foam. Please feel free to contact me if you have any questions.

Sincerely,

Kevin H. Roche
General Manager

cc: John Morin

Our View: Portland right to cut foam food containers

A proposed city ordinance would address a serious public health and environmental threat.

Posted: March 12, 2013 12:01AM

They used to put lead in gasoline. People liked the way it made their cars run, but the damage all that lead in the environment did to people's health was not worth it.

Most of us grew up with mercury fever thermometers in the bathroom medicine cabinet.

But the cumulative effect of so many thermometers breaking and releasing mercury into the waste stream and water table created too big a threat to health and safety to be tolerated.

We are at a similar point in the history of single-use polystyrene packaging. The popular foam cups and burger boxes are made from petroleum. They contain styrene, which the National Institutes of Health lists as one of the substances that are "reasonably considered to be human carcinogens."

The containers are rarely recycled and end up in landfills, where they will remain virtually forever, or burned in incinerators, releasing toxins into the atmosphere.

There is an alternative. The city of Portland is considering an ordinance that would greatly reduce the use of polystyrene by banning foam cups and containers in the city's eateries. That is a reasonable response to a hazardous pollutant that seems safe only because it is so common.

A number of cities out west have recently banned these containers, but Portland doesn't have to look that far for a model.

The town of Freeport banned foam cups and fast-food containers in 1990. Some of the



The Associated Press Portland might prohibit the city's eateries from using polystyrene cups and containers.

biggest chain restaurants in the nation, along with small, local businesses, have managed to adapt. Businesses in Portland would be able to do the same, and so would consumers.

If more cities follow suit, there will be fewer foam products in the waste stream, reducing a health risk. And as the products disappear, the price for alternatives will decrease and consumers will forget they ever relied on the containers to keep their food and drinks warm.

We've been through this kind of thing before. People liked leaded gas and mercury thermometers, but the convenience wasn't worth the damage those products caused.

We would be better off with less foam, and Portland officials are right to start cutting its use here.