



ECONOMIC DEVELOPMENT COMMITTEE

DATE: Tuesday, March 19, 2019

TIME: 5:30 PM

LOCATION: Room 209

NOTE: No public comment will be taken on non-action items.

1. Review and accept Minutes of previous meeting held on March 5, 2019.

- a. See attached draft Minutes of 3/5/2019 meeting.

2. Public Hearing and vote to recommend to the City Council proposed Amendment to Waterstone Purchase and Sale Agreement to sell a vacant, land-locked City-owned property adjacent to the Maine Turnpike.

- a. See attached memo and backup material from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to discuss negotiations for the sale of this real estate.

3. Public Hearing and vote to recommend to the City Council proposed Assignment of Credit Enhancement Agreement between the City and Portland Public Market LLC, to assign it to East End Corporation.

- a. See enclosed memo and backup material from Greg Mitchell.

Note: Pursuant to 1 M.R.S.A. 405(6)(C) and 5 M.R.S.A. 13119-A, the Committee may go into executive session to discuss proprietary information.

4. Central and Western Waterfront Development Update - Bill Needelman

- a. See attached Power Point Presentation.

Next Meeting Date: April 2, 2019

Minutes
Economic Development Committee
March 5, 2019

NOTE: These meetings are now live-streamed, which can be viewed at this link: <http://www.portlandmaine.gov/1695/Economic-Development-Committee> These Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A meeting of the Economic Development Committee (EDC) of the Portland City Council was held on Tuesday, March 5, 2019, at 5:30 p.m. in Room 209 on the second floor of Portland City Hall. Present from the Committee was its Chair Councilor Justin Costa and members Councilors Nicholas Mavodones and Spencer Thibodeau; Committee member Councilor Pious Ali arrived as noted herein. Also present from the City Council was Mayor Ethan Strimling. Present from the City staff were Fire Chief Keith Gautreau, Associate Corporation Counsel Michael Goldman, City Manager Jon Jennings, Economic Development Director Greg Mitchell, Acting Police Chief Vern Malloch, and Senior Executive Assistant Lori Paulette.

Chair Costa noted that Councilor Mavodones had a hard stop at 7:15 p.m.

Item #1: Review and accept Minutes of previous meeting held on February 19, 2019.

On motion made by Councilor Thibodeau, seconded by Councilor Mavodones, the Committee voted unanimously to accept the Minutes as presented.

Item #2: Presentation and discussion regarding proposed land exchange concept between the City of Portland and the Maine Department of Transportation – Jon Jennings

Chair Costa noted that there would first be a City staff presentation, followed by discussion between Committee and staff. This would be further discussed in executive session to provide guidance to staff on negotiations.

Mr. Jennings said that he and MDOT have been in discussions for over a year now, with MDOT first contacting the City about its desire to acquire the land under the International Marine Trade Terminal, which it currently leases from the City. This has now evolved into possible land exchanges. Mr. Jennings noted that Planning and the Economic Development Departments did a thorough search of State-owned property. The Wye property was discussed a year ago and not for a homeless shelter but for a public safety building – with the concept of combining both Police and Fire administrations – and shed non-revenue producing assets. The Police Department was built in 1973 and is expensive to maintain now, noting that there is an estimate of \$600,000 to replace windows and parking is an issue as well as others.

Mr. Jennings said that a concept could be for a future RFP for a development partner who would build a Public Safety Building and lease it back to the City. With this concept, the City would not have maintenance costs.

Mr. Jennings noted that MDOT also included the Miss Portland Diner park and ride lot and the Union Branch rail line, on which MDOT would build a shared use path at their expense. There are also other properties in discussion but not ready for public presentation.

(Councilor Ali joined the meeting at this time.)

Chief Malloch echoed Mr. Jennings' concerns about the costs to maintain the current Police Department. The City has been continuously adding money for maintenance, most recently for the elevator. He also noted windows leaking; lack of fire suppression in various

areas; ADA non-compliant in various area; the basement leaks where PD also has self-defense training and limited evidence storage because of the leaking issue; and parking is tight.

Councilor Mavodones asked about call volume and any possible issues at the Wye site, and Chief Malloch did not see any issues.

Captain Gautreau also noted that Central Fire does not meet ADA standards, and it would be very costly for the City to get it up to code.

Councilor Mavodones said that co-locating PD and FD administrations seemed to make sense. He asked if Central Fire Station would no longer be a station, and Captain Gautreau noted that it would be; administrative and command staff would move to the new location.

Councilor Mavodones asked if this kind of co-locating is done nationally, and Chief Malloch said that, although he can't speak to it nationally, Westbrook does this. Chief Gautreau said that Gorham has also done the same thing. Mr. Jennings added that South Portland does as well.

Councilor Thibodeau asked about the size of the building, and Mr. Jennings said that this is at the beginning stage and wanted guidance before allocating money to the endeavor.

Councilor Ali asked if this move would effect response times in other areas of the City, and Chief Malloch said that it would not. Their model will remain the same and described the model, particularly when one shift ends and another begins.

Chair Costa said that the Committee would now move into executive session, while also noting that this is the beginning stage for guidance to staff. There will be opportunity for public comment, and there will be no decision tonight.

Item #3: Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee will go into executive session to provide staff guidance related to the following:

- a. **Review and discuss possible negotiations for a land exchange between the City of Portland and the Maine Department of Transportation; and,**
- b. **Review and discuss possible negotiations for proposed City of Portland and private partnership to establish a pilot initiative for a boardwalk between the Maine State Pier and Ocean Gateway.**

Councilor Thibodeau made a motion to go into executive session pursuant to 405(6)(C) in order to provide guidance related to Items #3(a) and (b) above; Councilor Ali seconded the motion.

Chair Costa asked if there was any public comment regarding going into executive session.

Karen Snyder of the Munjoy Hill area asked if there would be further discussion/action after the executive session.

George Rheault of Bayside noted that two public bodies are involved with 3(a) and questioned the need for an executive session and why there were no representatives from MDOT present.

Seeing no further public comment, Chair Costa closed the public comment session.

Chair Costa noted that after the executive session, there would be no further public discussion or actions taken; the meeting would adjourn at that time. Negotiating land exchanges is an appropriate topic for executive session.

Chair Costa then asked for a vote on the motion and it passed unanimously at approximately 6:03. The Committee came out of executive session at approximately 7:11 p.m., and the meeting then adjourned.

Respectfully submitted – Lori Paulette



Gregory A. Mitchell
Director, Economic Development Department

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: March 13, 2019

SUBJECT: REVISED Purchase and Sale Agreement between City of Portland and Waterstone Properties Group, Inc.

I. SUMMARY

A REVISED Purchase and Sale Agreement is presented for a vote, in the form of a recommendation to the City Council, to sell a City-owned 4.82 acre vacant “land locked” parcel to the Waterstone Properties Group, Inc., for the new sale price of \$100,000.

You will recall that on October 16, 2018 the EDC recommended approval of the ORIGINAL Purchase and Sale Agreement (PSA) to the City Council. The City Council, on November 5, 2018, postponed action on the ORIGINAL PSA to determine the buyer’s planned use of the City property.

Additionally, the EDC held a public hearing and executive session on February 19, 2019 to discuss this property sale and directed staff to have follow up questions with Waterstone officials.

Despite the extensive easement restrictions and wetlands which cross this property, the buyer hopes to develop this property in the future. Based upon the buyer’s interest to possibly develop this property, in the future, a new property sale price was negotiated in the amount of \$100,000.

II. BACKGROUND

The City determined that the 4.82-acre vacant parcel, located in Portland, is not needed for municipal use and should be sold. The process included City-wide department surveys, including staff to the Land Bank and Parks Commissions. City staff double-checked with the staff to the Land Bank and Parks Commission and were informed that there are no current or future plans to use this property as a park or open space because it is landlocked and encumbered with no build easements and wetlands.

The interested buyer for this property is the Westbrook mixed use project developer (Waterstone Properties Group, Inc.).

III. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

EDC approval, in the form of a recommendation to the City Council, on the REVISED Purchase and Sale Agreement between the City of Portland and Waterstone Properties Group, Inc.

IV. FINANCIAL IMPACT

An overview of the Proposed REVISED Purchase and Sale Agreement includes the following:

Parcel Size: 4.82 acres.

Parcel Location and Environmental Constraints. The parcel is located in Portland, between the Maine Turnpike and the proposed large scale mixed-use project in Westbrook. The developer of the mixed use project (Waterstone Properties Group, Inc.) is the buyer for this property. The site is not a legal conforming parcel to develop because it lacks street frontage and there is no access to public utilities. The only option for the City to sell this property is to the property abutter because the site is not a legal conforming property.

Additionally, the site is encumbered by 1.81 acres of wetlands and two CMP easements (including 1.48 acres) which prohibit erecting or maintaining structures of any kind. Also, it is noted that the upland areas, estimated to be 1.53 acres (excluding the no-build CMP easements), are not contiguous, and access to these areas would require crossing wetlands on-site and wetlands located on the adjacent privately owned Westbrook mixed use project property. See attached map showing the location of wetlands, CMP no-build easements, and uplands.

Property Value and Sale Price. The new sale price is \$100,000. It is noted that the property appraisal determined the value of this property to be \$0. See attached excerpt of the Property Appraisal.

Environmental Indemnification. Buyer agrees to indemnify the City regarding any environmental issues, and the property is sold in an “AS IS WHERE IS” condition.

It is noted that the Buyer paid for all costs associated with the property survey and appraisal.

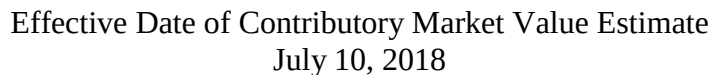
V. RECOMMENDATION

Staff recommends approval of the attached REVISED Purchase and Sale Agreement.

VI. LIST ATTACHMENTS

- Map of Subject Area
- Property Appraisal Excerpt
- REVISED Purchase and Sale Agreement between the City of Portland and Waterstone Properties Group, Inc.

Appraisal Report of the contributory value of a 4.82± acre non-access land parcel in the City of Portland, Maine. This parcel is located adjacent to a development site referred to as the Dirigo Plaza which is referenced on Map 42B, Lot 14 and located in the City of Westbrook. GA File Reference: 2753.



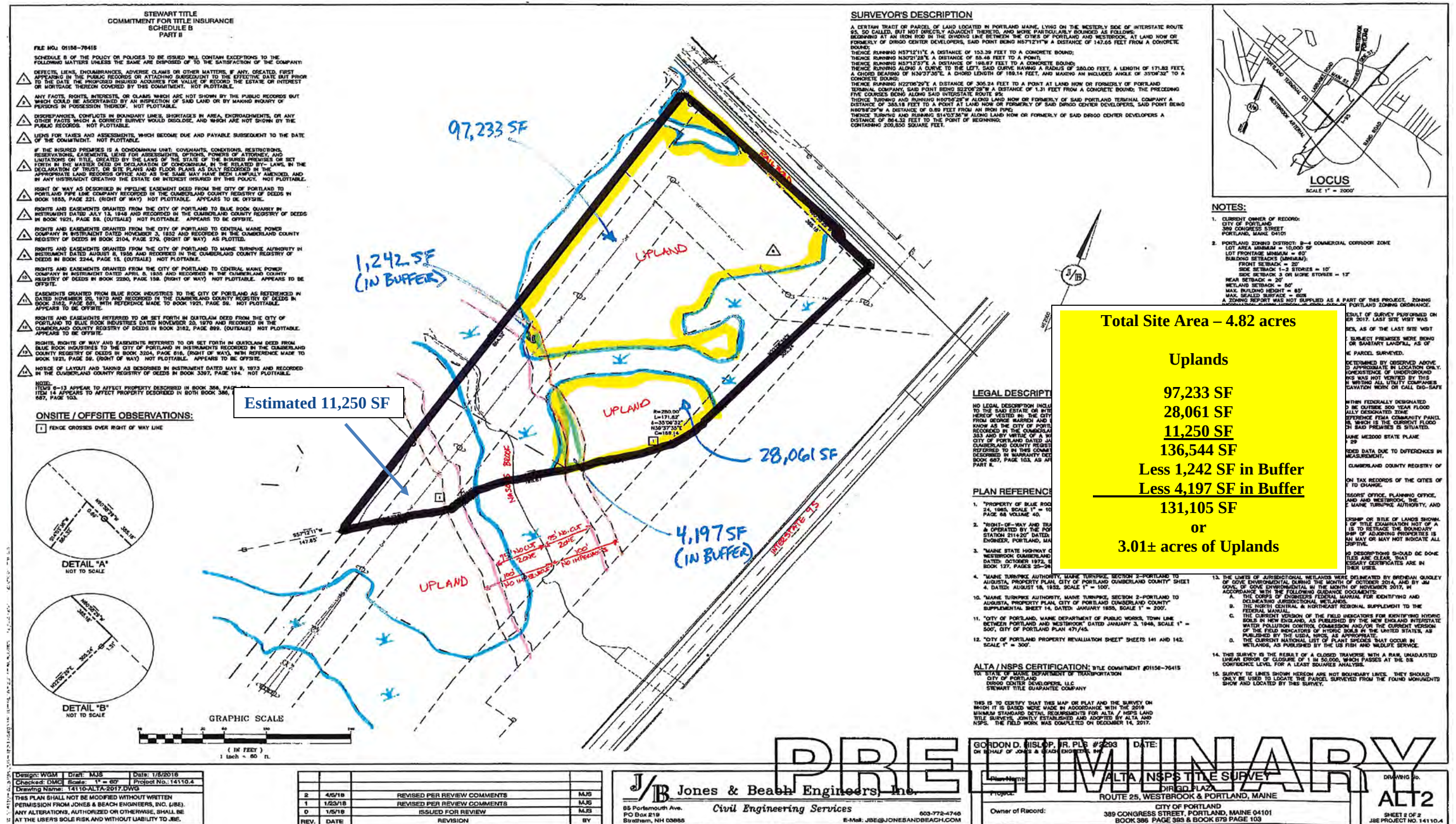
Prepared by:
Goulet & Associates, Inc.
183 Main Street
Lewiston, Maine 04240

Summary of Salient Facts and Conclusions

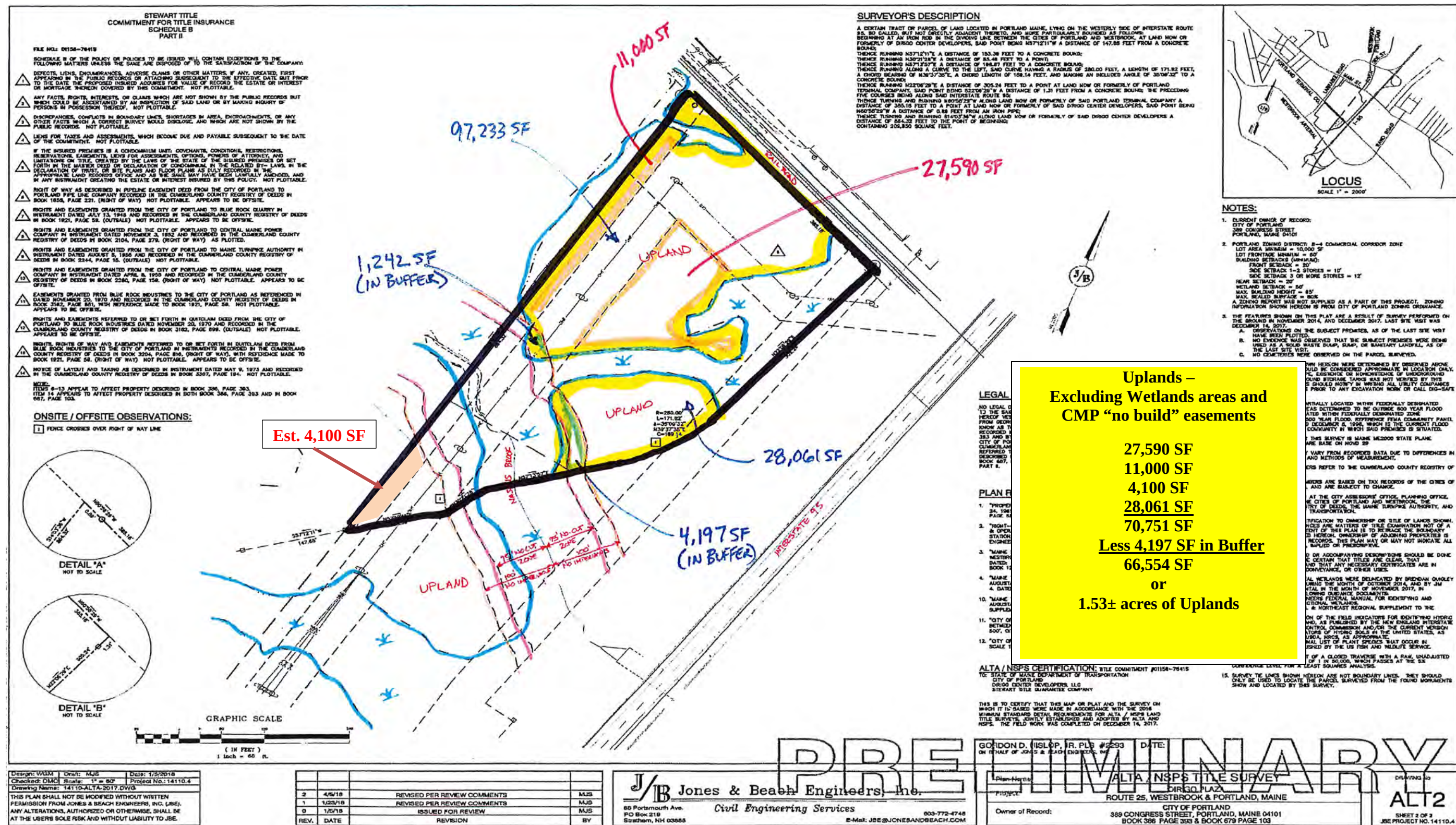
Appraisal Purpose:	The purpose of this appraisal report is to estimate the bulk contributory value of the subject property in light of its assemblage with the abutting Dirigo Plaza site. The intended use is to aid our named client, the City of Portland, in formulating a purchase price for the subject property.
Date of Inspection:	July 10, 2018.
Date of Value:	July 10, 2018.
Date of the Report:	August 8, 2018.
Property Rights Appraised:	Fee Simple Estate.
Property Location:	The property is an interior lot located to the north of Rand Road and to the west of the Maine State Turnpike in the City of Portland. The site represents a portion of Map 243, Lot B-1, Map 244, Lot A-1, Map 252, Lot A-1 and Map 253, Lot A-1. However, the City of Portland's map and lot references are not accurate as they do not reflect the land areas that were previously acquired by the Maine DOT. Refer to extraordinary assumptions.
Title/Owner of Record:	Title to the subject property is referenced to the City of Portland per Cumberland County Registry of Deeds (CCRD) as a portion of Book 386, Page 393 dated July 3, 1871 and CCRD Book 687, Page 103 dated January 31, 1900 per the submitted survey. The subject parcel is the portion of the land area remaining to the north of the 10.33± acres previously acquired by the State of Maine by condemnation by way of a Notice of Layout and Taking recorded in CCRD Book 3397, Page 194 dated May 17, 1973. No specific legal description of the subject parcel is available therefore, the submitted survey was relied upon.

Land Area:	The subject property contains 4.82± acres and has no road frontage. The site has 1.81± acres of wetland areas and 3.01± acres of uplands areas based on the wetlands survey provided by Jones & Beach Engineers, Inc. The site is also subject to two easements granted to Central Maine Power (CCRD Book 2104, Page 279 dated November 3, 1952 and CCRD Book 2365, Page 181 dated July 12, 1957). Both of these CMP easements prohibit erecting or maintaining any structure of any kind on the easement. Based on the submitted site survey, the upland areas are estimated to be 1.53± acres excluding areas within the no-build CMP easements.
Zoning:	The site is located in the Industrial (I-L) zoning district in Portland. The site has no minimum lot size requirement. However, the minimum road frontage requirement is not met as the subject has no road frontage. The City of Portland does not currently map the subject site. For the purpose of this analysis, it is assumed the site is in a lawful status. Assemblage of the same would be legal and appropriate given the site's Highest and Best use.
Highest and Best Use:	As Vacant – assemblage as open space with the abutting development land parcel, or retention for open space by the local municipality or affiliated non-profits.
Conclusion of Value	Based on the analyses developed within this report, it is our opinion that, as of July 10, 2018, the subject property has <u>no determinable contributory market value</u>. Refer to extraordinary assumptions and scope of work detailed in the Transmittal Letter and engagement.

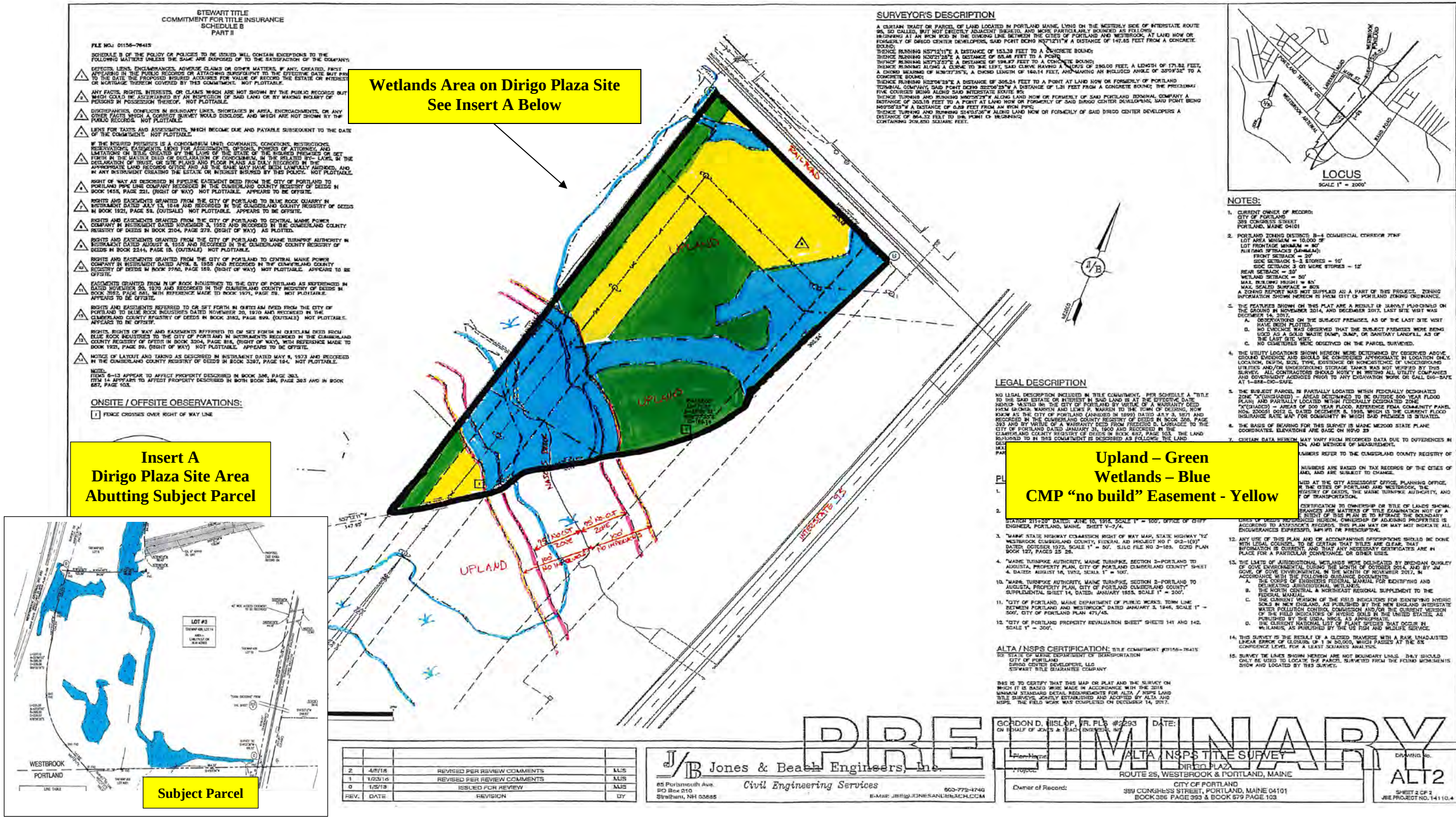
(prior to illustration of the CMP “no-build” easement)



**Subject Parcel with Upland Areas
(excluding Wetland Areas and CMP “no-build” easement)**



Subject Parcel



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this ____ day of _____, 201~~98~~ by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine (hereinafter referred to as “Seller” or “City”), and **WATERSTONE PROPERTIES GROUP, INC.**, a Massachusetts corporation having a mailing address of 322 Reservoir Street, Needham, MA 02494 or nominee or designee (hereinafter referred to as “Buyer”).

RECITALS

WHEREAS, the City is the owner of approximately 4.82 acres of land at Westbrook Arterial and along the Maine Turnpike, Portland, Maine as generally depicted on the boundary survey attached hereto as Exhibit A (the “Survey”) and incorporated herein, and more particularly described in Exhibit B attached hereto and incorporated herein (the “Premises”); and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
2. **CONSIDERATION.** The purchase price for the Premises shall be ~~One Hundred Eleven~~ Thousand ~~Two Hundred Twenty~~ Dollars (\$~~100,000~~~~1,220~~.00) (the “Purchase Price”), subject to the following cost adjustments and conditions:
 - a. The Buyer shall pay the City for the cost of the City’s appraisal for the Premises (“Appraisal Cost”) within 3 business days after the full execution of this Agreement; and
 - b. The Buyer shall pay the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.
3. **TITLE AND DUE DILIGENCE.**
 - a. **Due Diligence Period.** Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is one hundred eighty (180) days after the date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations.
 - b. **Title and Survey Objections.** Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified in subsection d below) that

affect Buyer's intended use of the Premises as contemplated by this Agreement, including the terms of Section 12 below. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

- c. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have thirty (30) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (i) terminate this Agreement (after which neither party will have any further obligation or liability to the other under this Agreement), (ii) waive the objection and close, or (iii) undertake the cure of such objection at its own expense (in which case it shall have thirty (30) days to do so).
- d. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) the easements on the Survey or otherwise described herein; (ii) easements for all public improvements now on, under or over the Premises and for utilities servicing the property, (iii) zoning ordinances, and (iv) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. All of the laws and regulations applicable to the payment of real estate taxes and personal property taxes, except those governing property tax exemptions, shall apply to any such payments in lieu of taxes including, without limitation, how such taxes are calculated and the right to seek abatements and appeals.

4. INSPECTIONS

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to

determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and commercial general liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, then neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. The City acknowledges and agrees that Buyer shall be entitled to terminate this Agreement for any reason or for no reason during the Due Diligence Period by providing written notice of such election to the City during the Due Diligence Period.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Premises shall be prorated as of the closing. Buyer's fifty percent (50%) share of the Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the Appraisal Cost as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated and excluding any alterations made to the Premises by Buyer. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer, at Closing, will have had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.
9. **ENVIRONMENTAL INDEMNIFICATION.** Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of

hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. INTENTIONALLY OMITTED.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel in Portland, Maine at a time agreeable to the parties on the date that is thirty (30) days following the expiration of the Due Diligence Period or such other date as is mutually agreed upon by the parties.

At the Closing:

- a. the City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and marketable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals closing and executing documents on behalf of Buyer are authorized to do so.

12. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

13. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

14. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

15. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

16. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

17. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

18. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR The City: City of Portland
ATTN: City Manager
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR Buyer: Waterstone Properties Group, Inc.
322 Reservoir Street
Needham, MA 02494

With a copy to: Hinckley Allen
650 Elm Street, Suite 500
Manchester, NH 03101
Attention: John H. Sokul, Esq.

19. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

20. **BROKERS.** City and Buyer represent and warrant to each other that no brokerage fees or real estate commissions are or shall be due or owing in connection with this

transaction or in any way with respect to the Premises. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to defend, indemnify, and hold Buyer harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through City. Buyer agrees to defend, indemnify and hold City harmless from any claims, costs, judgments, or liabilities of any kind advanced by persons claiming real estate brokerage fees through Buyer. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

21. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

**WATERSTONE PROPERTIES GROUP,
INC.**

WITNESS

Its:

Approved as to Form:

Approved as to Funds:

City Corporation Counsel's Office

City Finance Department

Exhibit A
Survey

Exhibit B
Legal Description

The land described in Warranty Deeds recorded in Book 386, Page 393 and in Book 687, Page 103.



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell

DATE: March 12, 2019

SUBJECT: Assignment of Tax Increment Financing Credit Enhancement Agreement between the City of Portland and Portland Public Market, LLC to East End Corporation

I. ONE SENTENCE SUMMARY.

Proposed assignment of a City of Portland Tax Increment Financing (TIF) Credit Enhancement Agreement (CEA) from the Portland Public Market, LLC to East End Corporation because of a change of property ownership.

II. BACKGROUND.

In 2009, the City Council approved a TIF District to stimulate new private sector investment in the former Portland Public Market to support the Portland relocation and retention of the former Power Pay Company (credit card transaction company) to purchase and redevelop the site for their company headquarters. The TIF CEA included a thirty-year term with a 75% capture rate for the first eight years, followed by a 50% capture rate for the remainder of the term. It is noted that this property had a declining municipal assessed value while vacant before the property purchase and redevelopment. Additionally, it is noted that this building was redeveloped to a LEED Gold design standard.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED.

EDC and City Council approval of the TIF CEA Assignment to East End Corporation.

IV. FINANCIAL IMPACT.

There is no financial impact to the City related to the TIF CEA Assignment.

V. STAFF ANALYSIS.

Assignment of TIF CEAs are routine matters when property ownership changes and assignments are allowed, with the consent of the City, per Section 7.2. of the attached TIF CEA.

VI. RECOMMENDATION. Staff recommends approval of the TIF CEA Assignment to East End Corporation.

VII. LIST ATTACHMENTS

- Proposed Assignment of the CEA between the City of Portland, Maine and Portland Public Market, LLC to East End Corporation.
- CEA between the City of Portland, Maine and Portland Public Market, LLC.

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

This **ASSIGNMENT AND ASSUMPTION OF AGREEMENT** is entered into by and between **PORTLAND PUBLIC MARKET LLC**, a Maine limited liability company (“Assignor”) and **EAST END CORP.**, a Maine corporation (“Assignee”), and the City of Portland, Maine, a Maine municipal corporation (“City”).

RECITALS:

WHEREAS, the City is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate and did designate in July, 2009 (as finalized by Council action on June 1, 2009), specified areas within the municipal boundaries of the City as the PowerPay/Portland Public Market Municipal Development and Tax Increment Financing District (“**District**”) and adopted a development program and financial plan for tax increment financing for the District, as described in the PowerPay/Portland Public Market Municipal Development Tax Increment Financing Program Application dated May 14, 2009 (the “**TIF Development Program**”); and

WHEREAS, the Maine Department of Economic and Community Development approved the District and the TIF Development Program on July 9, 2009; and

WHEREAS, in furtherance of the goals of the TIF Development Program and the creation of the District, City and Assignor entered into that certain Credit Enhancement Agreement between the City and Assignor dated as of July 1, 2009 (the “**TIF Agreement**”, which together with the TIF Development Program are called herein the “**TIF Documents**”); and

WHEREAS, Assignor has completed the development that is contemplated by the TIF Development Program and owns, and/or holds leasehold or easement rights in, the Property (as that term is defined in the TIF Agreement) that is included within the District; and

WHEREAS, Assignor is now preparing to sell and transfer to Assignee ownership of the Property; and

WHEREAS, Assignor, for and in consideration of the parties’ mutual agreement pursuant to said transfer, has agreed to assign all of its right, title, and interest in, and its duties and obligations under, the TIF Documents as they relate to and concern the District to the Assignee; and

WHEREAS, Assignee wishes to, and hereby does, accept such assignment and agrees to assume Assignor’s obligations under the TIF Documents.

AGREEMENTS:

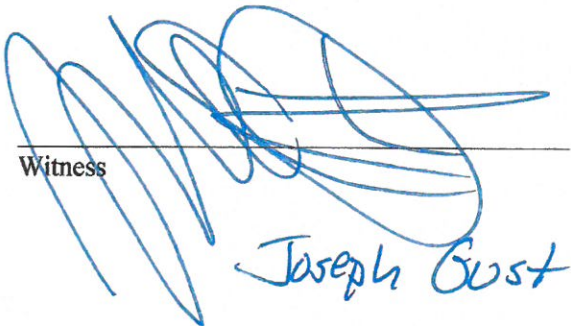
NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Review.** Assignee hereby represents and warrants that Assignee has received and fully reviewed a copy of the TIF Documents, which documents are incorporated herein by reference.
2. **Assumption.** Assignee hereby assumes Assignor's right, title, interest, duties, and obligations under, and agrees to be bound by, the terms and conditions set forth in the TIF Documents.
3. **Effect of Assignment.** All parties hereto agree that the TIF Documents remain in full force and effect notwithstanding this Agreement.
4. **Release.** All parties hereto agree that upon execution of this Agreement, Assignor shall be released from any actual or potential liability arising from or related to the District, the TIF Agreement and/or the TIF Development Program arising after the date of this Agreement (Assignor remaining liable to the City for the performance and observance of the obligations, terms, conditions, provisions and covenants in the TIF Agreement to be performed and observed prior to the date of this Agreement. Assignor represents, and City acknowledges, that all of Assignor's obligations, terms, conditions, provisions and covenants in the TIF Agreement have been fully performed). The Assignor's obligations to defend, indemnify, and hold the City harmless set forth in Section 8.12 of the TIF Agreement shall survive this assignment to Assignee as to any matter arising prior to the date hereof.
5. **Further Assurances.** In furtherance of the agreements set forth herein, each of the parties hereto shall execute and deliver such additional instruments and documents required to confirm and assure the rights and obligations provided for herein, and render effective the consummation of the transactions contemplated hereby.
6. **City Consent.** The City hereby executes this Assignment and Assumption to evidence its consent to this agreement, as required under the TIF Documents.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption as of this 14 day of March, 2019.

ASSIGNOR
PORTLAND PUBLIC MARKET LLC

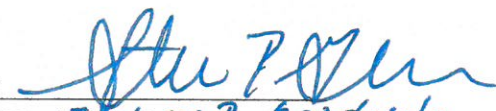
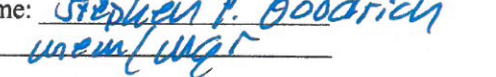
Witness


Joseph Gust

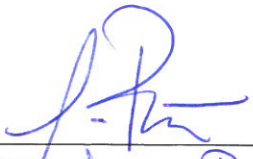
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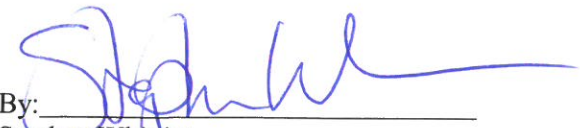
Its:


Stephen P. Goodrich


**ASSIGNEE
EAST END CORP.**



Witness Joseph Porta



By: Stephen Whittier
Its President

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings, its City Manager

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

And

PORTLAND PUBLIC MARKET LLC

Dated as of

July 1, 2009

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of July, 2009, 2009, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, a corporation duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine and PORTLAND PUBLIC MARKET LLC (the "Company"), a Maine limited liability company, having an office at 320 Cumberland Avenue, Portland, Maine 04101.

WITNESSETH THAT

WHEREAS, the City designated the PowerPay/Portland Public Market Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on June 1, 2009 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the District and the Development Program; and

WHEREAS, the City designated the District, adopted the Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Development Program and this Agreement; and

WHEREAS, in connection with the Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Account" shall mean the Company TIF Account, also known as the PowerPay/Portland Public Market Development Program Account.

“Act” means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

“Affiliate” means, with respect to any specified entity, any other entity in which the specified entity has a more 50% ownership interest or of which the specified entity controls more than 50% of the voting power.

“Agreement” shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

“Captured Assessed Value” means the annual percentage of Increased Assessed Value retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

“City” shall have the meaning given such term in the recitals hereto.

“City Tax Increment Revenues” means in each year this Agreement is in effect, an amount of money equal to the percentage of Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

“Company” shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee, successor, or Affiliate thereof.

“Company TIF Account” means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

“Company Tax Increment Revenues” means in each year this Agreement is in effect an amount of money equal to the percentage of Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

“Current Assessed Value” means the then current assessed value of the Property located within the District to be determined by the City’s Assessor as of April 1 of each year that this Agreement remains in effect.

“DECD” means the State of Maine Department of Economic and Community Development.

“Development Program” means the development program and financial plan for the District adopted by the City as described in the document entitled “Proposal to Create a Tax Increment Financing District” presented to the City on behalf of the Company, a copy of which is attached hereto as Appendix A.

“District” shall have the meaning given such term in the recitals hereto.

“Financial Plan” means the financial plan described in the “Financial Plan” section of the Development Program.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means, the assessed value of the District as of March 31, 2009.

"Project" means the renovations of the former approximately 34,000 square foot Portland Public Market building into approximately 46,350 square feet of office space and a retail café space.

"Project Cost Account" means the account in the Development Program Fund described in Section 2.01 of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. § 5222(14), as amended.

"Property" means all real property, including but not limited to the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

"Property Taxes" means any and all ad valorem property taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City, but excluding any county, state or special district taxes that are separately levied, charged or assessed against the Property.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment Revenues" means that portion of Property Taxes assessed by the City on the Captured Assessed Value.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "PowerPay/Portland Public Market Development Program Account" pursuant to, and in accordance with the terms and conditions of, the Development Program.

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Company Tax Increment Revenues for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are at all times invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement at any time any such taxes or amounts are due and unpaid.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, the following percentages of Increased Assessed Value shall be retained as Captured Assessed Value and the Tax Increment on such Captured Assessed Value shall be retained as Retained Tax Increment which Retained Tax Increment shall be deposited when received by the City into the Company TIF Account pursuant to the following allocation percentages, in accordance with the provisions of Section 2.2 of this Agreement and the priorities established by 30-A M.R.S.A. § 5227(3)(B), starting with taxes assessed as of April 1, 2010 and continuing for each of the next 29 years, ending with taxes assessed as of April 1, 2039, said percentage being 75 percent for taxes assessed as of April 1, 2010 through and including taxes assessed as of April 1, 2017 and being 50 percent for all remaining years, all as indicated on Tables Nos. 1 and 2, attached hereto as Exhibits.

Section 3.2. Completion of Development Program.

Prior to receiving the first payment under this Agreement, the Company shall provide evidence reasonably satisfactory to the City of the Company's ability to complete the Project in accordance with State law. Reasonably satisfactory evidence shall include the Company's having closed on the financing for the Project.

Section 3.3. Revaluation.

If, at any time during the life of the District, the assessed value of the District increases by reason of a revaluation, the percentage of Retained Tax Increment paid into the Company TIF Account shall be adjusted so that the retained tax increment revenues attributable to such revaluation, after giving due consideration to any change in the tax rate resulting from such revaluation, is eliminated from the calculation of retained tax increment revenues, it being the intention of the parties that any such revaluation shall not result in the increase in the amount of taxes to be deposited into the Company TIF Account.

Section 3.4. Credit Enhancement Payments.

Within thirty (30) days following the end of each Fiscal Year, the City shall pay to the Company all Retained Tax Increment Revenues due the Company and then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

Section 3.5. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation establish and maintain the Account and to deposit Company Tax Increment Revenues to the Account and its obligation to make required payment to the Company.

Section 3.6. Manner of Payments.

The payments provided for in this Article III shall be paid in immediately available funds directly to the Company in the manner provided hereinabove for its own use and benefit. Notwithstanding the above, no payments shall be made unless used to satisfy debt service on indebtedness incurred to finance qualified "Project Costs" as that term is defined under Chapter 206 of Title 30-A of the Maine Revised Statutes and as described as part of the Project in the Development Program or used to pay directly, or to reimburse the Company for payment of such Project Costs. The City shall make required payments in response to requests for payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit B.

Section 3.7. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be

absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination. Such termination shall not, however, affect the Company's obligation to defend and indemnify the City, which obligation shall survive any such termination.

Section 3.8. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefor under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment Revenues received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment Revenues established under this Agreement.

Section 3.9. Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment (net of any penalties) paid by the City to the Company. Such payment shall be made by the City deducting the 1% fee from the Company TIF Payment.

**ARTICLE IV
PLEDGE AND SECURITY INTEREST**

Section 4.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 4.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry

out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 4.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 4.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

**ARTICLE V
DEFAULTS AND REMEDIES**

Section 5.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable;

b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.6 of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City

or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

Section 5.2. Remedies on Default.

Whenever any Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the non-defaulting party may take any one or more of the following remedial steps: (a) the non-defaulting party may take whatever action at law or at equity as may appear necessary or desirable to collect any amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the non-defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and (b) Portland Public Market LLC shall also have the right to exercise any rights and remedies available to a secured party under the laws of the State of Maine. Neither party has the right to terminate this Agreement.

Section 5.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 5.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION

Section 6.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the 2039-2040 fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, including without limitation payment of all amounts to be paid to Company, unless sooner terminated under Section 3.7 or 7.2 hereof.

Section 6.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

Section 7.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 7.2. No Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company or Tenant without the consent of the City which consent may be withheld for any reason or for no reason; *provided, however*, that the City will not unreasonably withhold, condition or delay its consent to a transfer of the rights of Company hereunder to a subsequent owner of the Property.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Successors.

In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 8.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 8.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 8.4. No Personal Liability.

(a) No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

(b) No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 8.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 8.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 8.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:

Portland Public Market LLC
320 Cumberland Avenue
Portland, ME 04101
Attn: Stephen P. Goodrich, Manager
and James D. Goodrich, Manager

With copies to:

PowerPay, LLC
320 Cumberland Avenue
Portland, ME 04101
Attn: Richard Borts, Chief Financial Officer

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 8.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. §5211 et seq., as amended.

Section 8.9. Net Agreement.

This Agreement shall be deemed and construed to be a "net agreement," and the City shall pay absolutely net during the term hereof all payments required hereunder, free of any deductions, and without abatement, or setoffs; provided, it is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may offset the administrative fee described in Section 3.9 hereof.

Section 8.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 8.11. Project Responsibility.

The Company and the City agree, and the City hereby acknowledges that the Company shall have no obligation to go forward with the Project referred to herein or in the Development Program. Such Project is subject to final approval by the Company.

Section 8.12. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

b. The City agrees to defend, indemnify and hold harmless the Company, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 8.13. Waiver of Recapture if Agreement Found Void.

In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement City agrees to waive its rights to recapture all TIF proceeds paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

WITNESS

CITY OF PORTLAND, MAINE

Sonia Bean

By:

Joseph E. Gray, Jr.
Joseph E. Gray, Jr.
Its City Manager

Portland Public Market, LLC
(Company Name)

Richard Bost

By:

James B. Goodrich
(Print Name)
JAMES B. GOODRICH
Its MANAGER

Exhibit A to Credit Enhancement Agreement

Table No. 1

A Year No.	B Tax Year	C Estimated Increased Assessed Value Retained as Captured Assessed Value	D Allocation of Retained Tax Increment		E
			% to Company	% to City	
1	April 1, 2010	\$5,000,000.	75%	25%	
2	April 1, 2011	\$5,000,000.	75%	25%	
3	April 1, 2012	\$5,000,000.	75%	25%	
4	April 1, 2013	\$5,000,000.	75%	25%	
5	April 1, 2014	\$5,000,000.	75%	25%	
6	April 1, 2015	\$5,000,000.	75%	25%	
7	April 1, 2016	\$5,000,000.	75%	25%	
8	April 1, 2017	\$5,000,000.	75%	25%	
9	April 1, 2018	\$5,000,000.	50%	50%	
10	April 1, 2019	\$5,000,000.	50%	50%	
11	April 1, 2020	\$5,000,000.	50%	50%	
12	April 1, 2021	\$5,000,000.	50%	50%	
13	April 1, 2022	\$5,000,000.	50%	50%	
14	April 1, 2023	\$5,000,000.	50%	50%	
15	April 1, 2024	\$5,000,000.	50%	50%	
16	April 1, 2025	\$5,000,000.	50%	50%	
17	April 1, 2026	\$5,000,000.	50%	50%	
18	April 1, 2027	\$5,000,000.	50%	50%	
19	April 1, 2028	\$5,000,000.	50%	50%	
20	April 1, 2029	\$5,000,000.	50%	50%	
21	April 1, 2030	\$5,000,000.	50%	50%	
22	April 1, 2031	\$5,000,000.	50%	50%	
23	April 1, 2032	\$5,000,000.	50%	50%	
24	April 1, 2033	\$5,000,000.	50%	50%	
25	April 1, 2034	\$5,000,000.	50%	50%	
26	April 1, 2035	\$5,000,000.	50%	50%	
27	April 1, 2036	\$5,000,000.	50%	50%	
28	April 1, 2037	\$5,000,000.	50%	50%	
29	April 1, 2038	\$5,000,000.	50%	50%	
30	April 1, 2039	\$5,000,000.	50%	50%	

Exhibit A to Credit Enhancement Agreement

Table No. 2

Portland Public Market TIF Spreadsheet

TIF Years	Tax Year	Estimated Increased Assessed Value (Cumulative)	Est. Tax Rate (plus 2% per year)	Est. Increased Real Estate Taxes from Captured Value	TIF Revenue to Developer	Revenue to City	Developer Share at 50%	City General Fund at 50%
1	April 1, 2010	5,000,000	0.01809	90,450	75%	25%	67,838	22,613
2	April 1, 2011	5,000,000	0.01846	92,300	75%	25%	69,225	23,075
3	April 1, 2012	5,000,000	0.01883	94,150	75%	25%	70,613	23,538
4	April 1, 2013	5,000,000	0.01920	96,000	75%	25%	72,000	24,000
5	April 1, 2014	5,000,000	0.01959	97,950	75%	25%	73,463	24,488
6	April 1, 2015	5,000,000	0.01998	99,900	75%	25%	74,925	24,975
7	April 1, 2016	5,000,000	0.02038	101,900	75%	25%	76,425	25,475
8	April 1, 2017	5,000,000	0.02079	103,950	75%	25%	77,963	25,988
9	April 1, 2018	5,000,000	0.02120	106,000	50%	50%	53,000	53,000
10	April 1, 2019	5,000,000	0.02162	108,100	50%	50%	54,050	54,050
11	April 1, 2020	5,000,000	0.02206	110,300	50%	50%	55,150	55,150
12	April 1, 2021	5,000,000	0.02250	112,500	50%	50%	56,250	56,250
13	April 1, 2022	5,000,000	0.02295	114,750	50%	50%	57,375	57,375
14	April 1, 2023	5,000,000	0.02341	117,050	50%	50%	58,525	58,525
15	April 1, 2024	5,000,000	0.02388	119,400	50%	50%	59,700	59,700
16	April 1, 2025	5,000,000	0.02435	121,750	50%	50%	60,875	60,875
17	April 1, 2026	5,000,000	0.02484	124,200	50%	50%	62,100	62,100
18	April 1, 2027	5,000,000	0.02534	126,700	50%	50%	63,350	63,350
19	April 1, 2028	5,000,000	0.02584	129,200	50%	50%	64,600	64,600
20	April 1, 2029	5,000,000	0.02636	131,800	50%	50%	65,900	65,900
21	April 1, 2030	5,000,000	0.02689	134,450	50%	50%	67,225	67,225
22	April 1, 2031	5,000,000	0.02743	137,150	50%	50%	68,575	68,575
23	April 1, 2032	5,000,000	0.02797	139,850	50%	50%	69,925	69,925
24	April 1, 2033	5,000,000	0.02853	142,650	50%	50%	71,325	71,325
25	April 1, 2034	5,000,000	0.02910	145,500	50%	50%	72,750	72,750
26	April 1, 2035	5,000,000	0.03027	151,350	50%	50%	75,675	75,675
27	April 1, 2036	5,000,000	0.03087	154,350	50%	50%	77,175	77,175
28	April 1, 2037	5,000,000	0.03148	157,400	50%	50%	78,700	78,700
29	April 1, 2038	5,000,000	0.03210	160,500	50%	50%	80,250	80,250
30	April 1, 2039	5,000,000	0.03274	163,700	50%	50%	81,850	81,850
TOTAL							2,036,775	1,648,475
NPV @8%							\$818,068	

EXHIBIT B to Credit Enhance Agreement

Request for Payment

The undersigned does hereby request payment in the amount of \$_____ from the Development Program Fund and does hereby certify that the amount requested will be used to pay Project costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes, as follows: (indicate applicable provisions)

- Debt service on indebtedness incurred to finance project costs contemplated by the Development Program ("Project Costs"), in the amount of \$_____; and/or
- Direct payment of Project Costs in the amount of \$_____; and/or
- Reimbursement to the undersigned for Project Costs previously incurred, in the amount of \$_____.

There are attached hereto invoices showing the incurring by the undersigned of Project Costs in the amount of \$_____. None of these invoices has been the subject of a previous request for payment from the Development Program Fund.

(Company Name)

Date: _____

By: _____
Its



Central and Western Waterfront Development Summary

2008 to Present

**Economic Development Committee
March 19, 2019**

Bill Needelman
Waterfront Coordinator

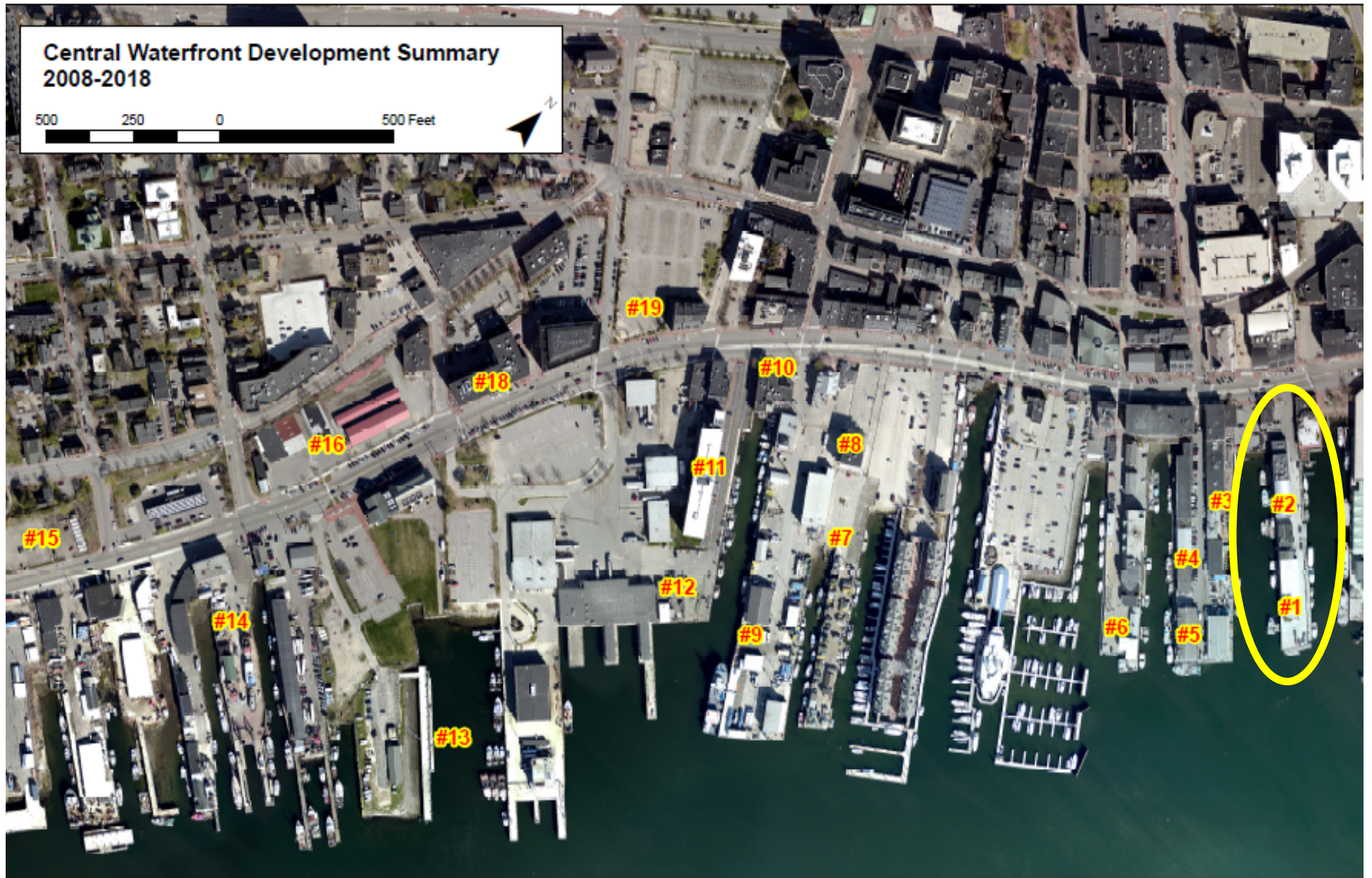
Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet



Central Waterfront Development Summary 2008-2018

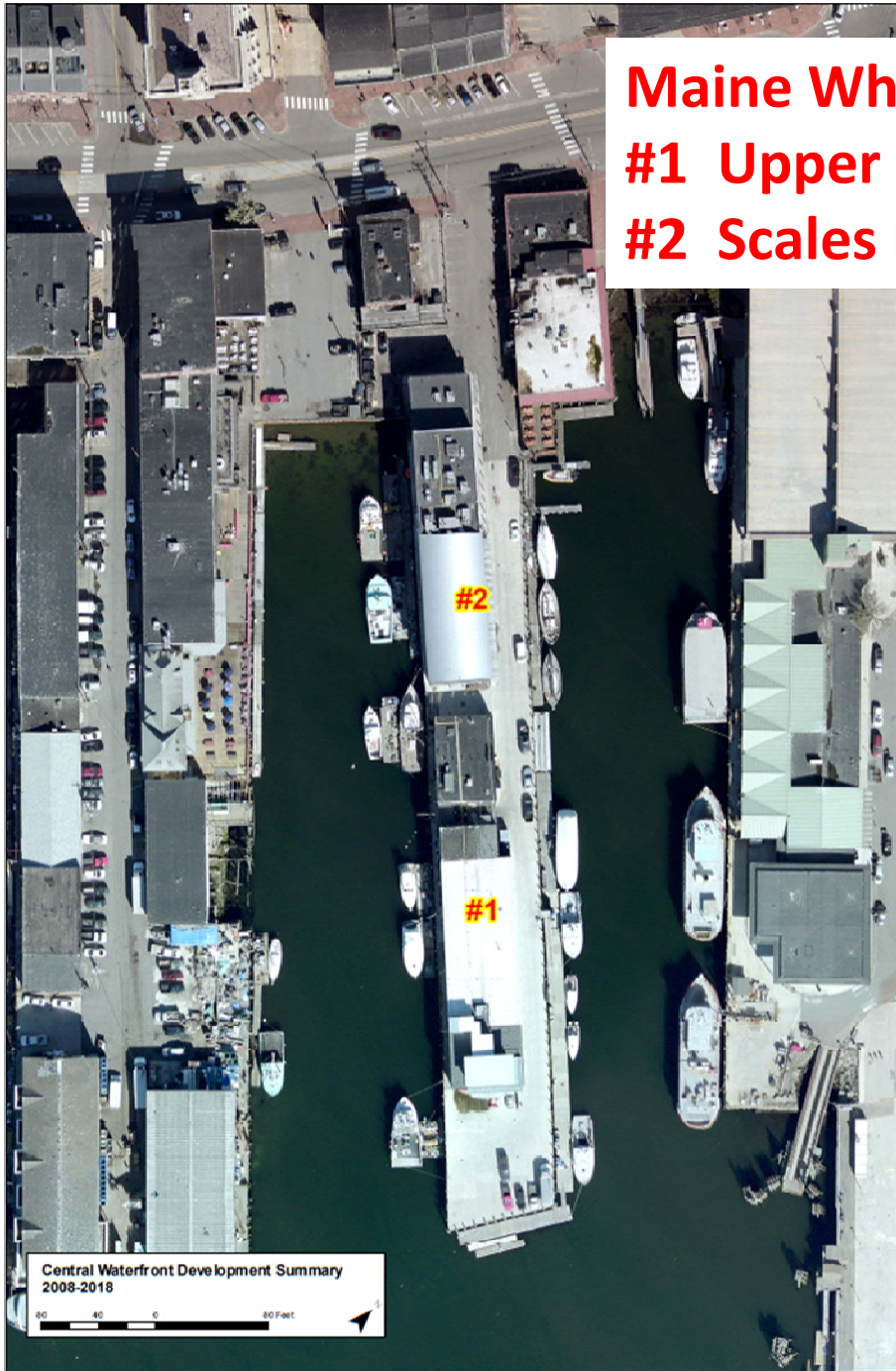
500 250 0 500 Feet



Maine Wharf

#1 Upper Floor Office, +/- 2012

#2 Scales Restaurant and 2 floors office



**Maine Wharf
#2 Scales Restaurant and 2 floors office
Under Construction, 2014**



Maine Wharf

#2 Scales Restaurant and 2 floors office

Under Construction, 2014

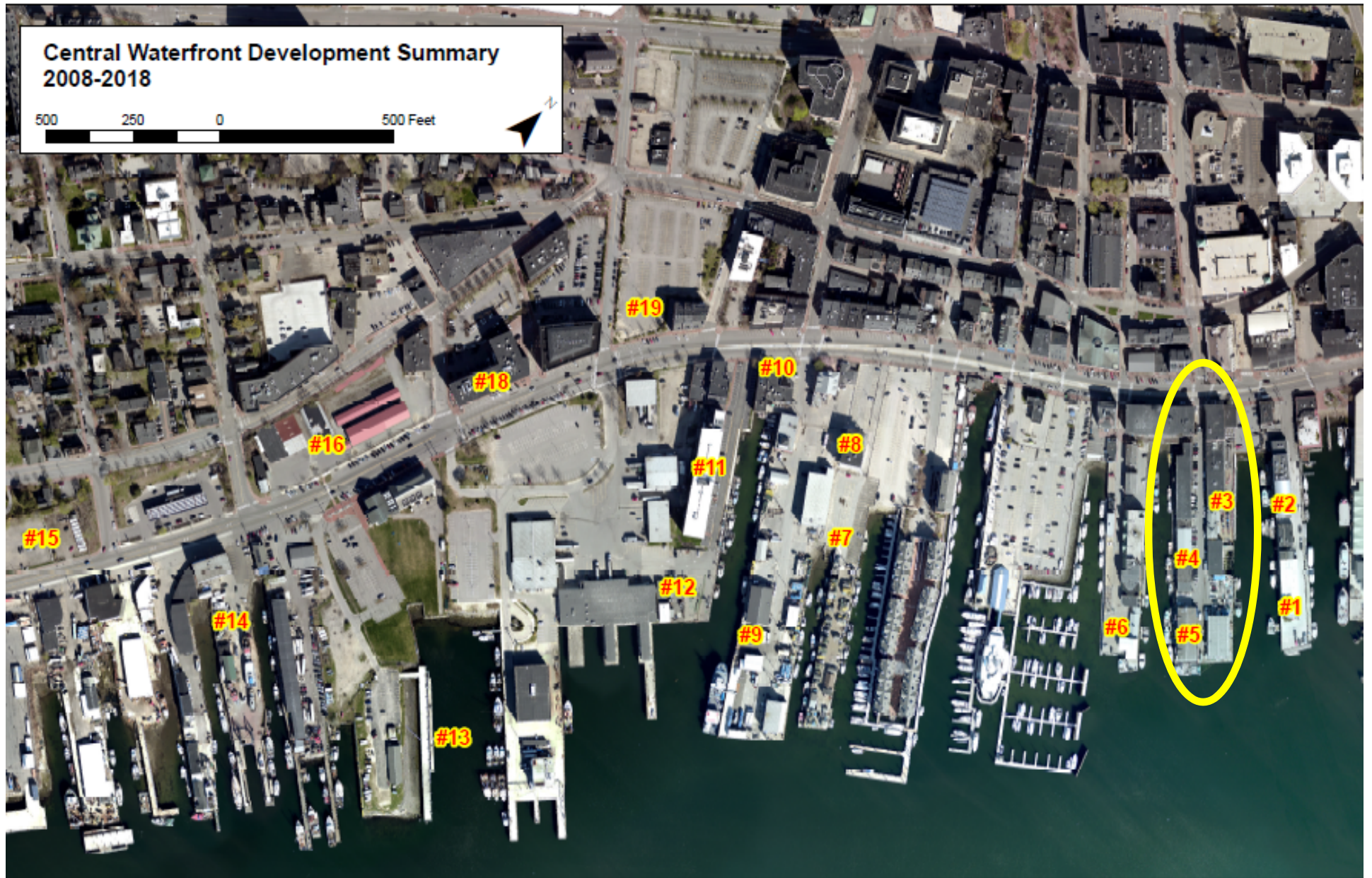


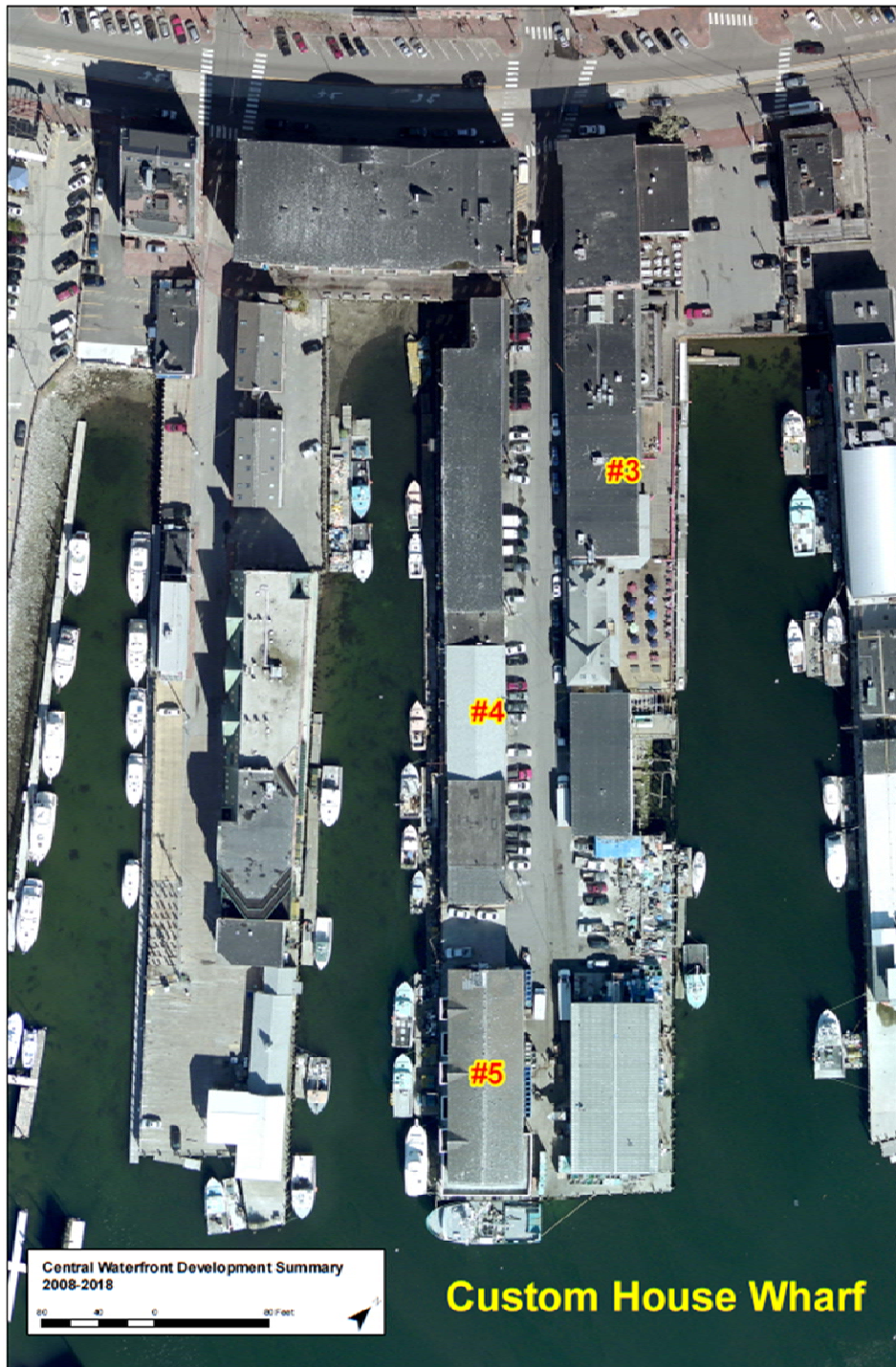
**Maine Wharf
#2 S'ly building rehab
Multiple years**



Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet





Custom House Wharf
#3 Boone's, Porthole
Restaurants

#4 Seabags

#5 Coastal Bait



Custom House Wharf
#3 Boone's, Porthole
Restaurants
#4 Seabags

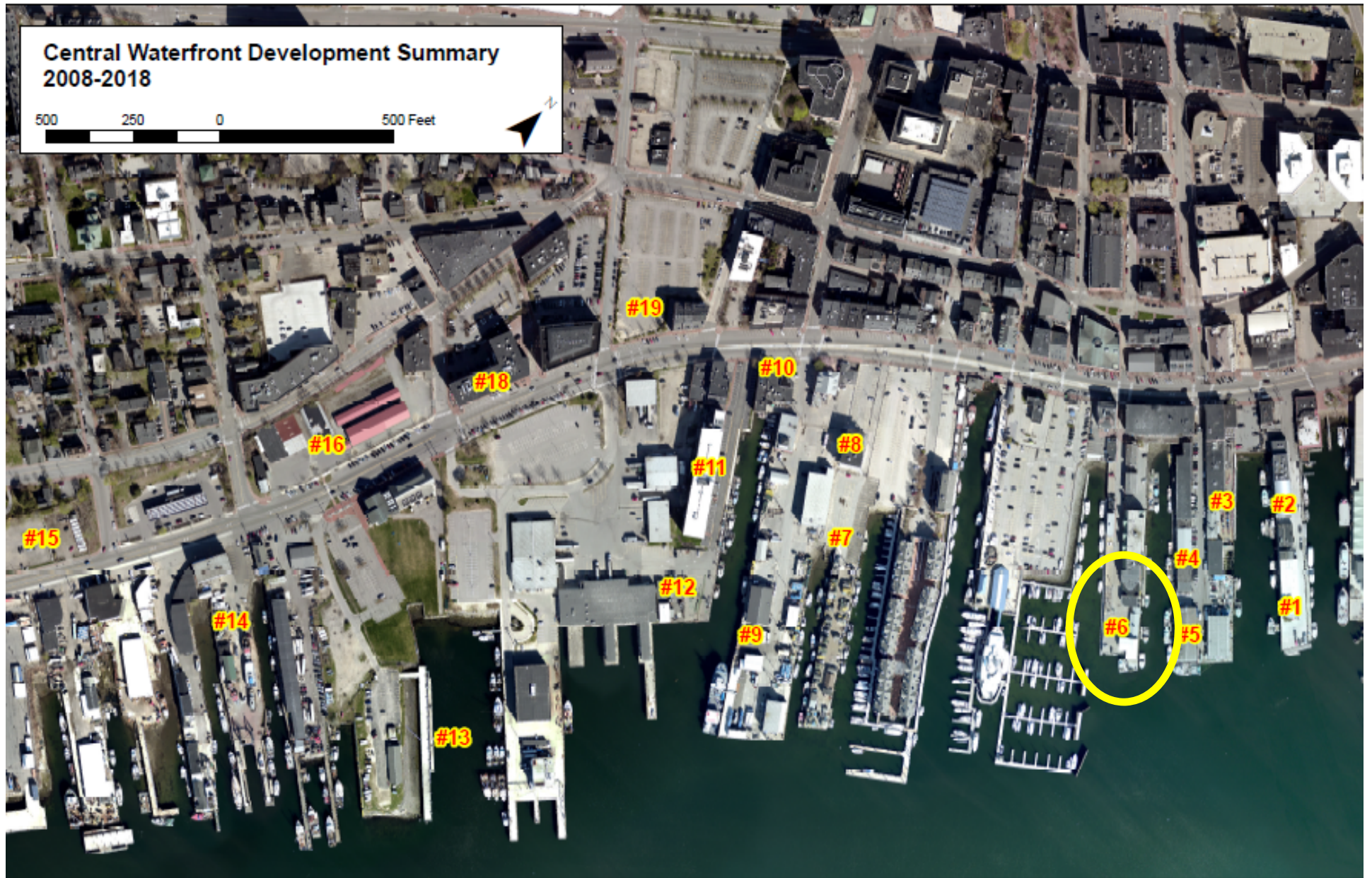


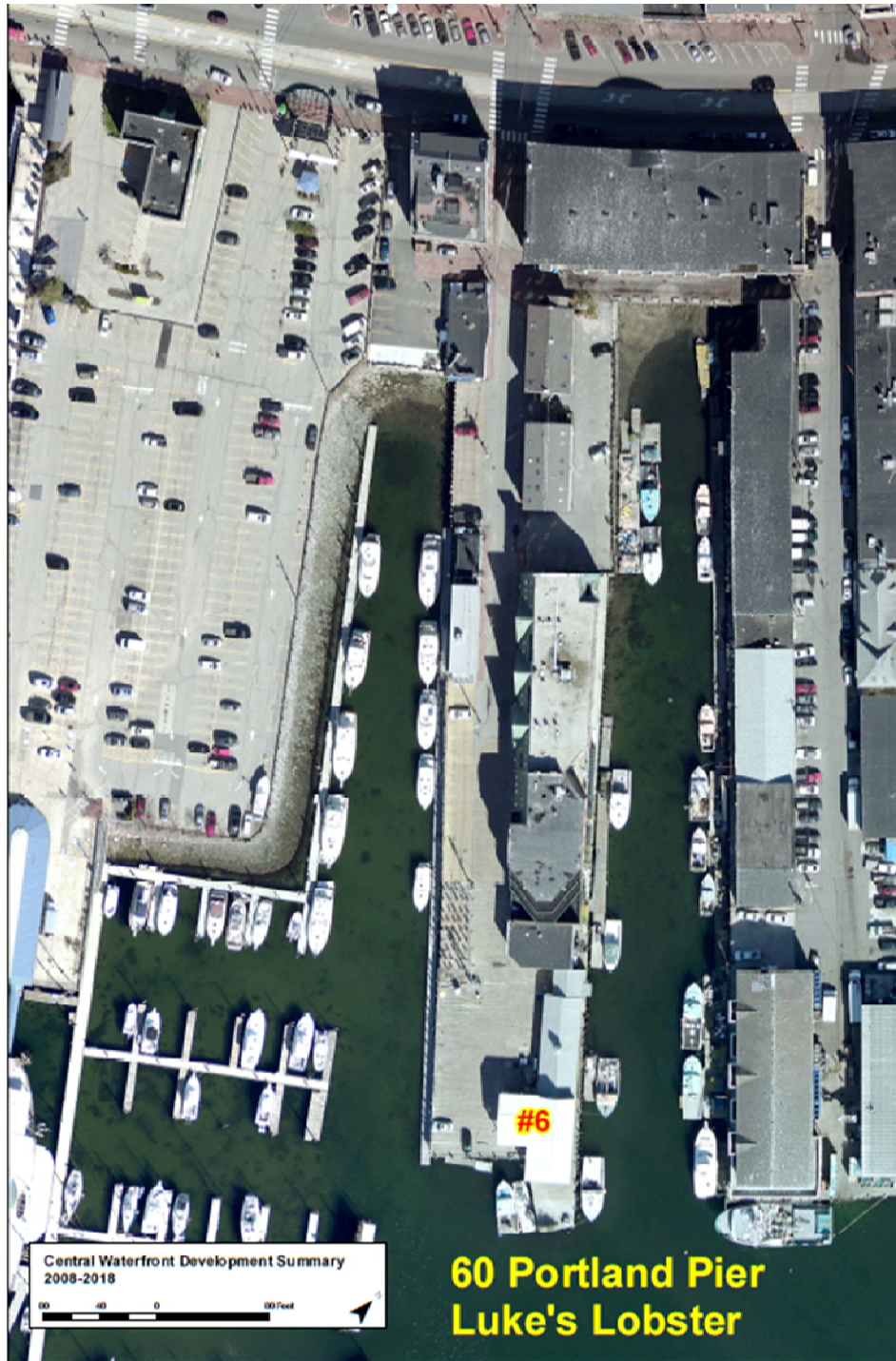
**Custom House Wharf
#5 Coastal Bait**



Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet





**60 Portland Pier
Luke's Lobster**

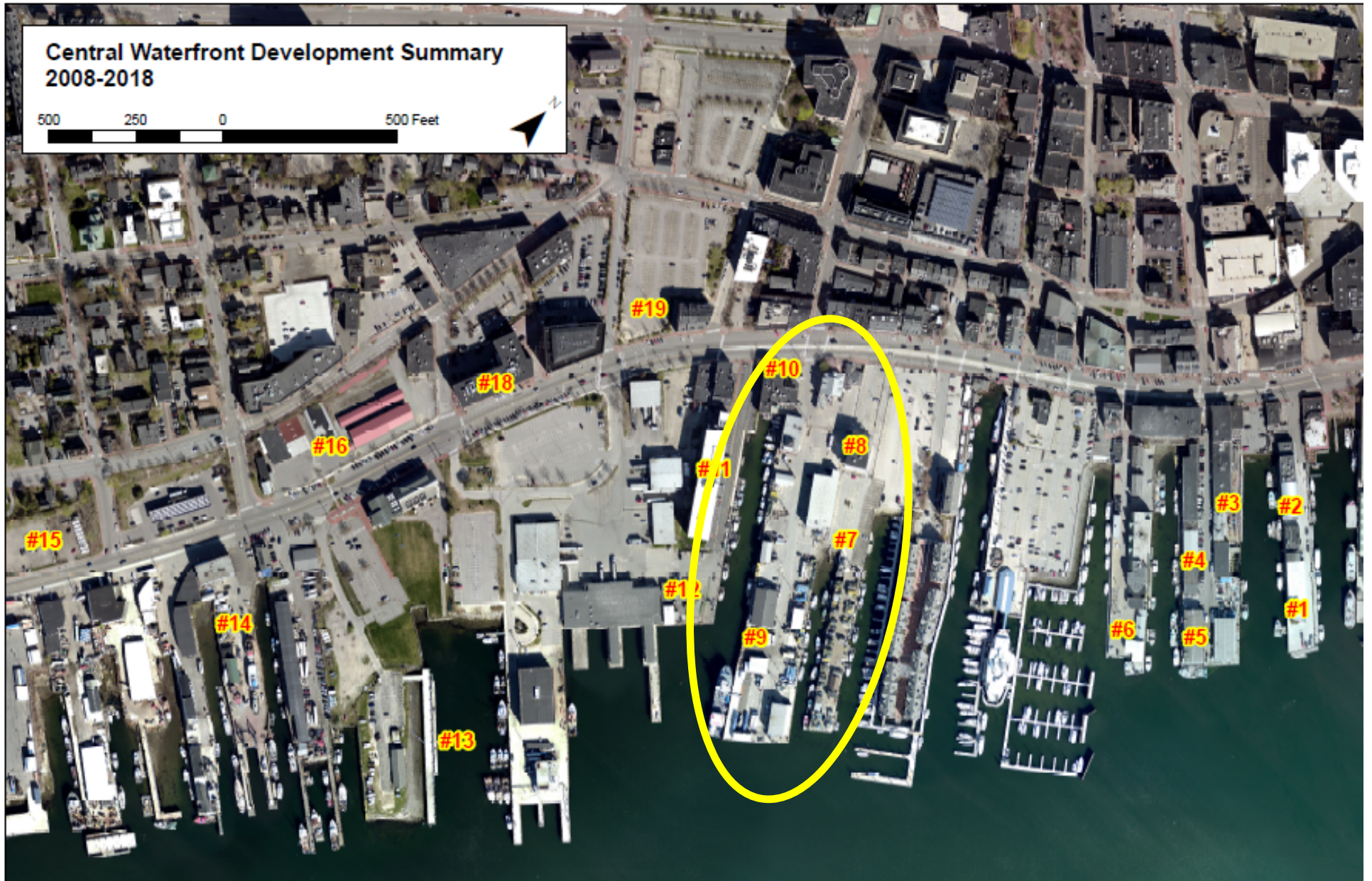
**60 Portland Pier
#6 Lukes Lobster**

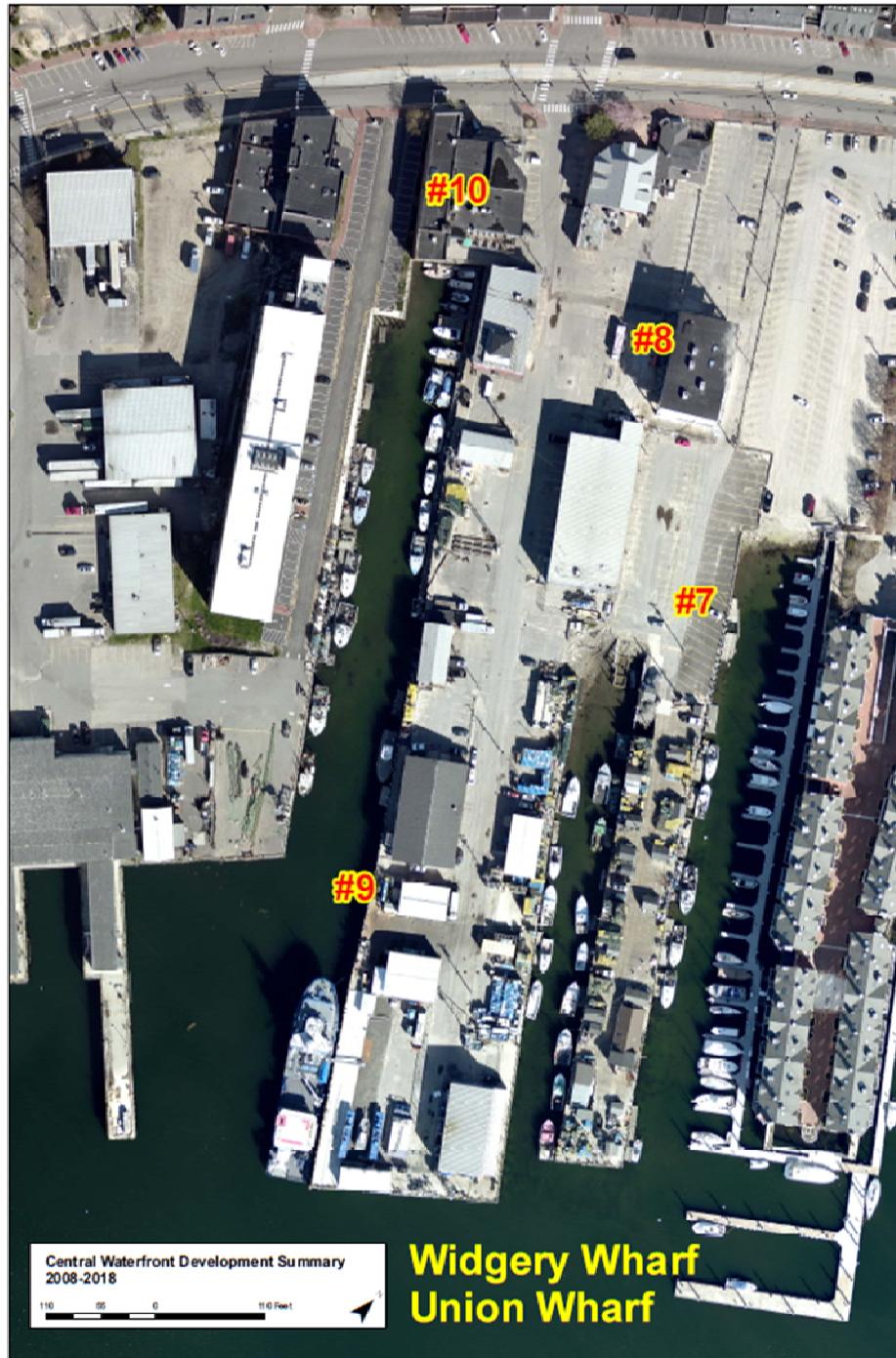


**60 Portland Pier
#6 Lukes Lobster
Under construction**

**Central Waterfront Development Summary
2008-2018**

500 250 0 500 Feet





**#8 30 Union Wharf Office Building
2018**

**#9 Union Wharf Bait Bldg
2012**

**#10 Liquid Riot
Redevelopment**

**Widgery Wharf
Union Wharf**

**#7 Widgery Wharf
Parking 2017**





**#8 30 Union Wharf Office
Building
2018**

**#8 30 Union Wharf Office
Building
2018**



**#9 Union Wharf Bait Bldg
2012**

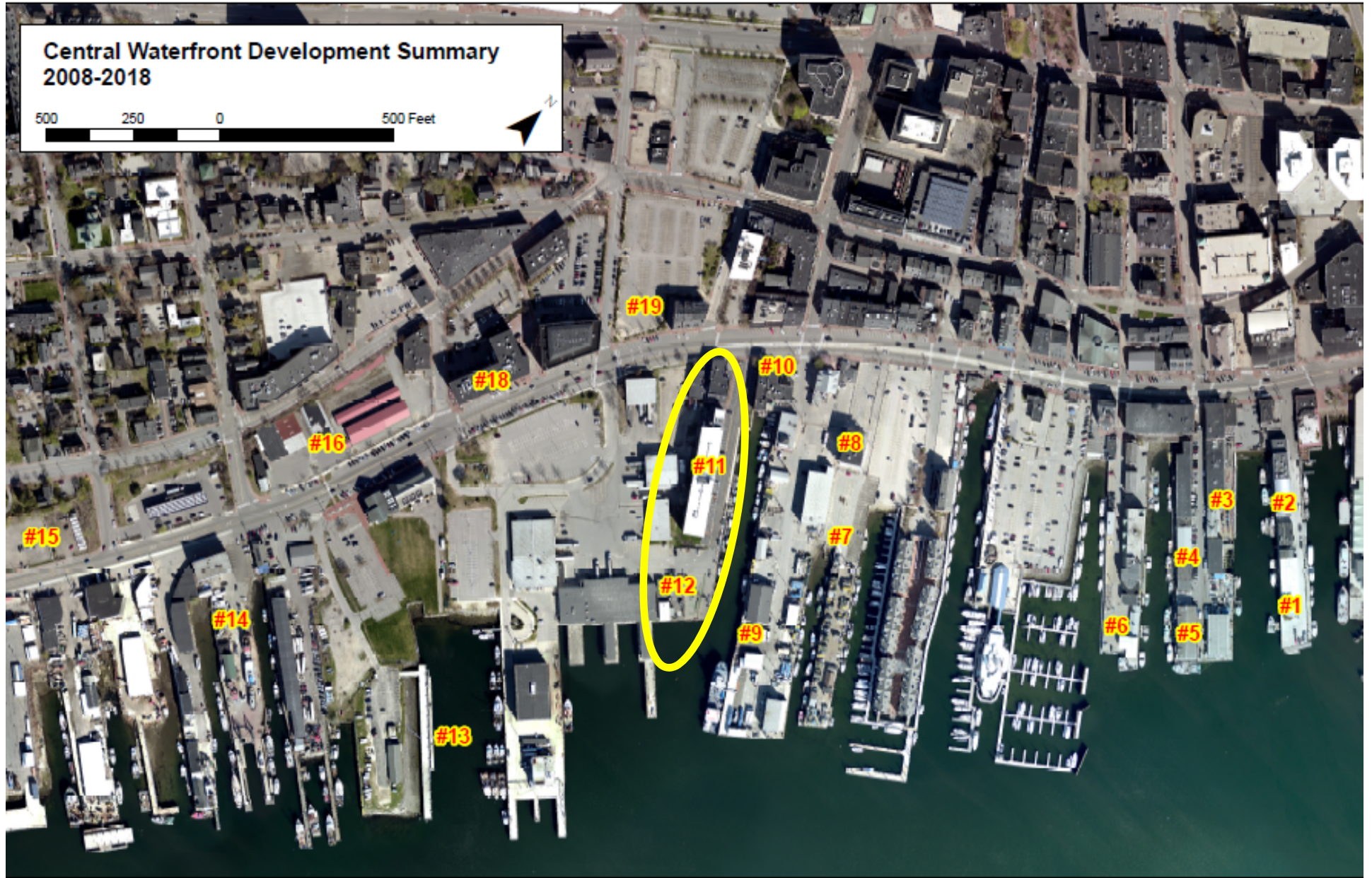


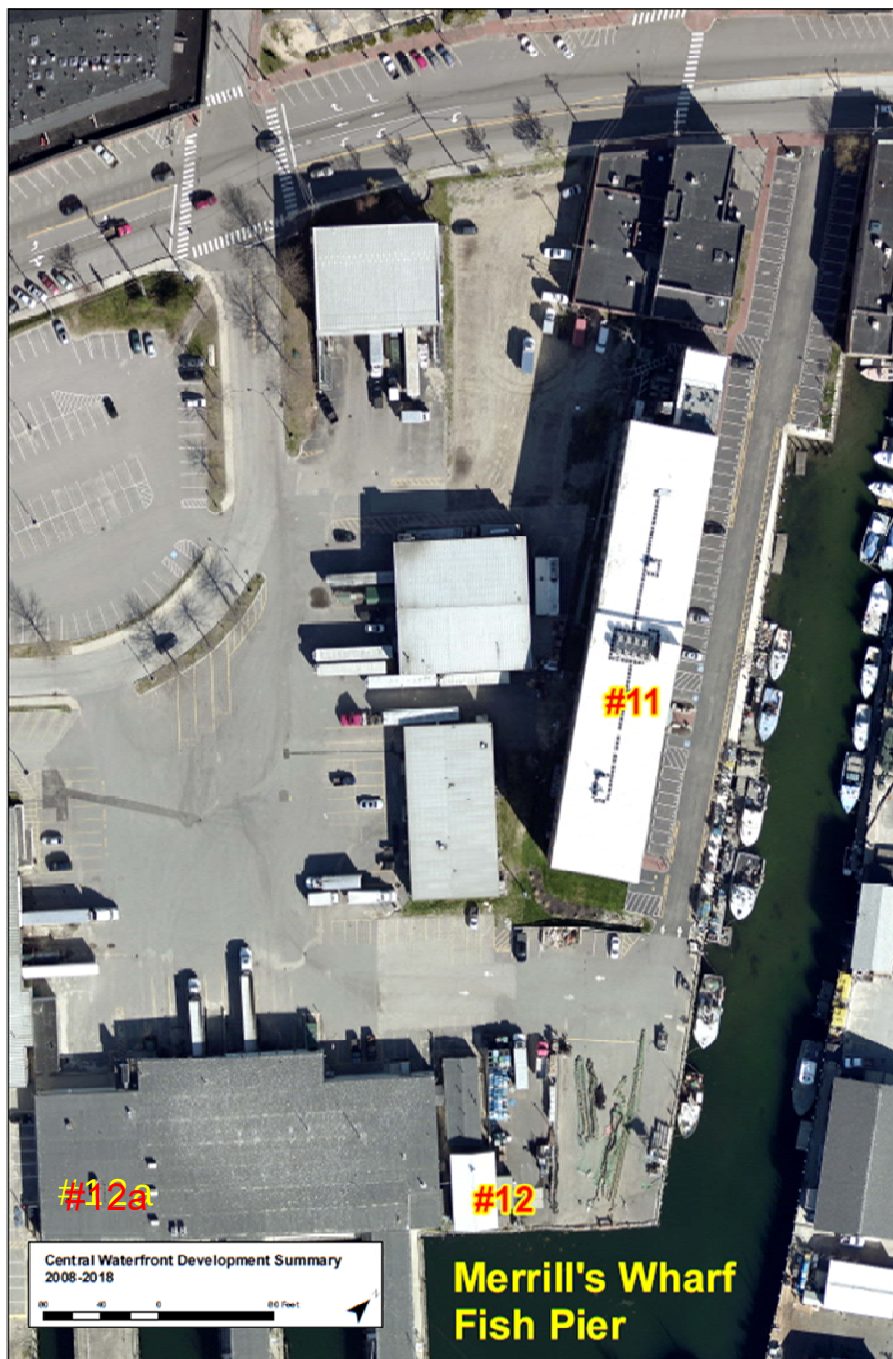


**#10 Union Wharf, Liquid Riot Redevelopment
2013**

Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet





**#11 Merrill's Wharf,
Cumberland Storage
BLDG, Pierce Atwood**

**#12 Dropping Springs
Bait**

**#12a Cozy Harbor
Sublease**

**Merrill's Wharf
Fish Pier**

**#11 Merrill's Wharf,
Cumberland Storage
Twichell-Champlin
Building 1860's**



**#11 Merrill's Wharf,
Cumberland Storage
BLDG, Pierce Atwood
2010**



**#12 Dropping Springs
Bait
2010**



**#12a Cozy Harbor
Sublease
2010**



**Central Waterfront Development Summary
2008-2018**

500 250 0 500 Feet





**#13 Gulf of Maine
Research Institute**

US Coast Guard berth

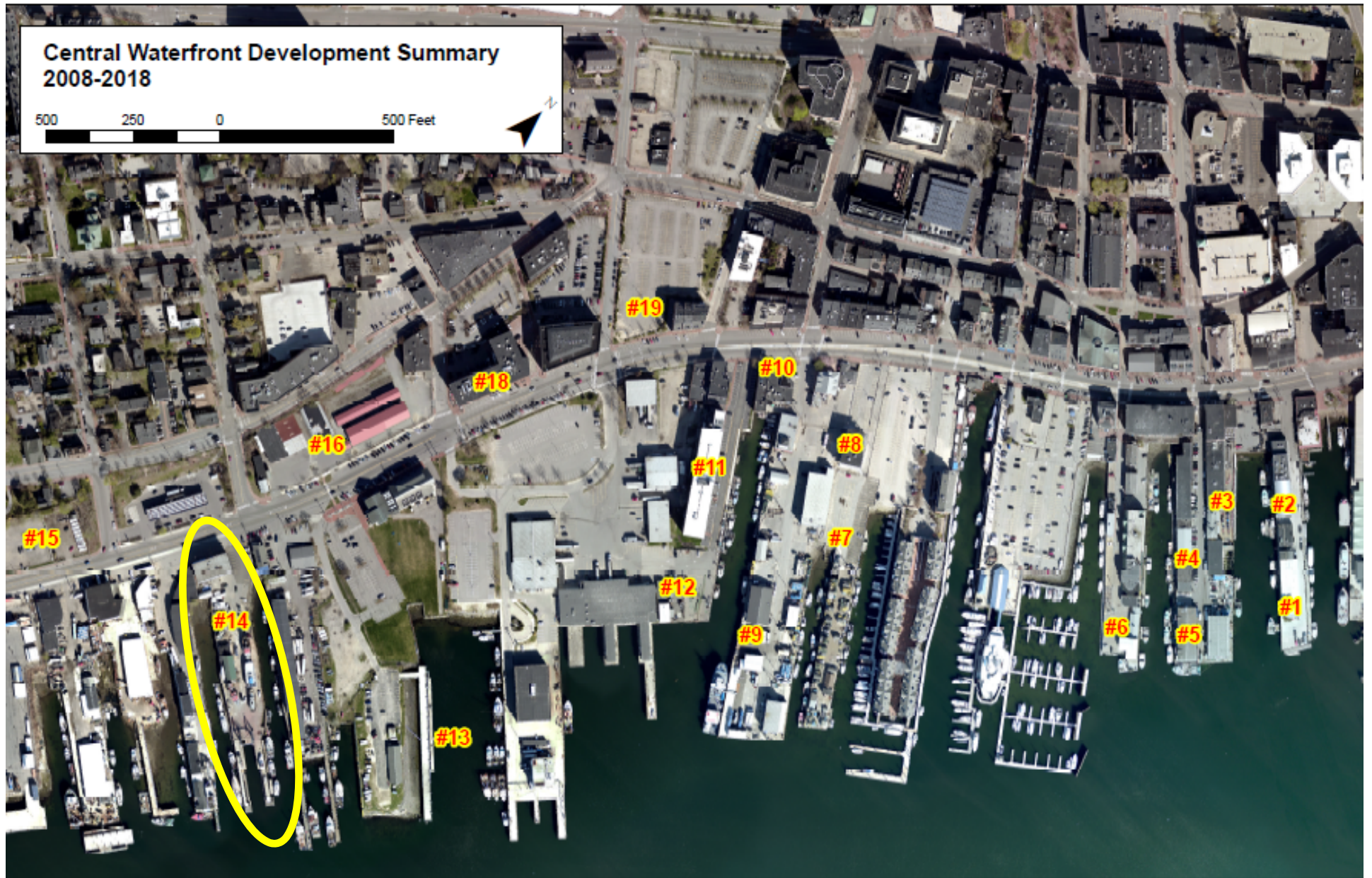
#13 Gulf of Maine Research Institute

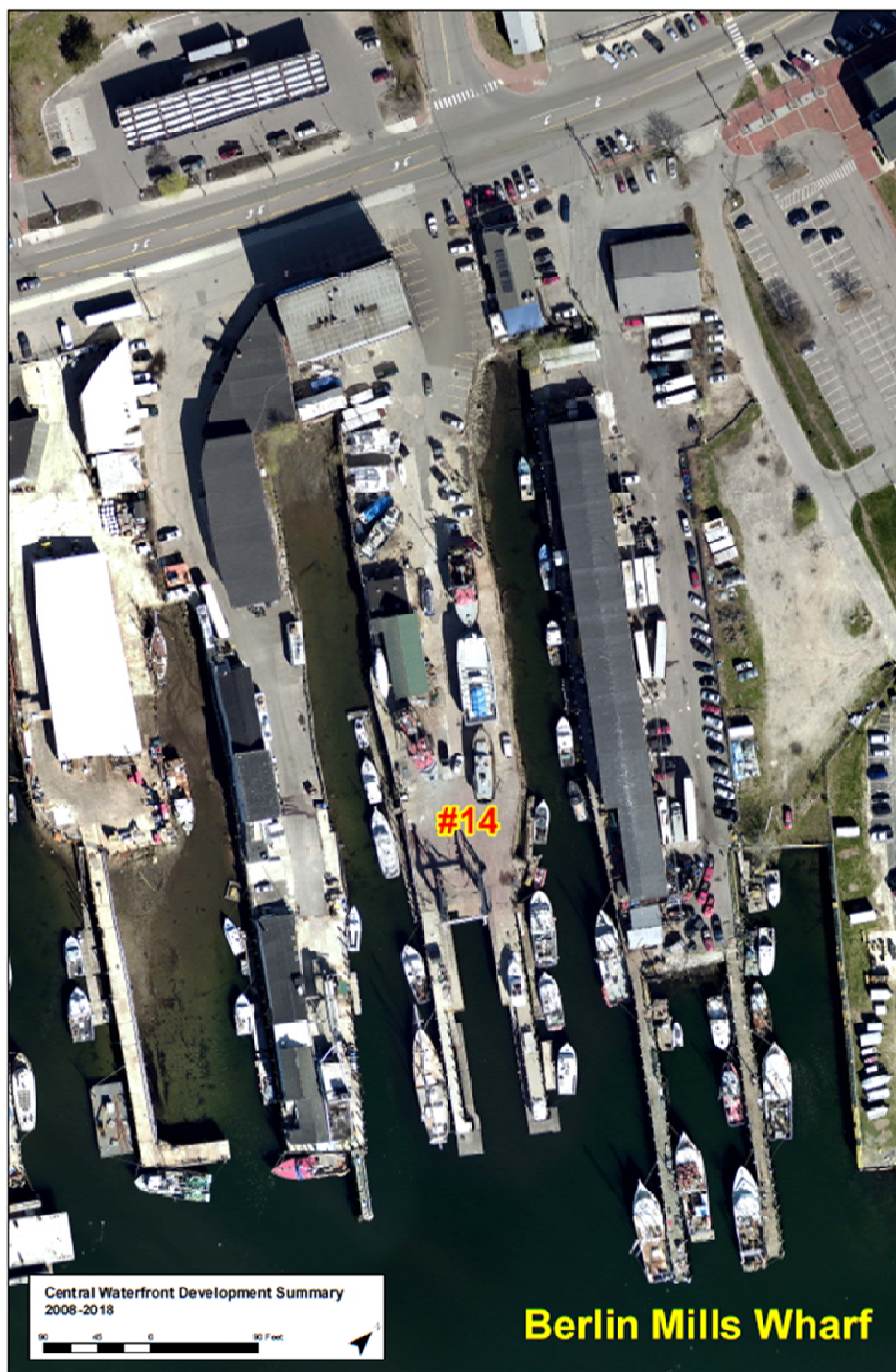
**US Coast Guard berth
2010**



**Central Waterfront Development Summary
2008-2018**

500 250 0 500 Feet





#14 Berlin Mills Wharf

Recent Vacancy

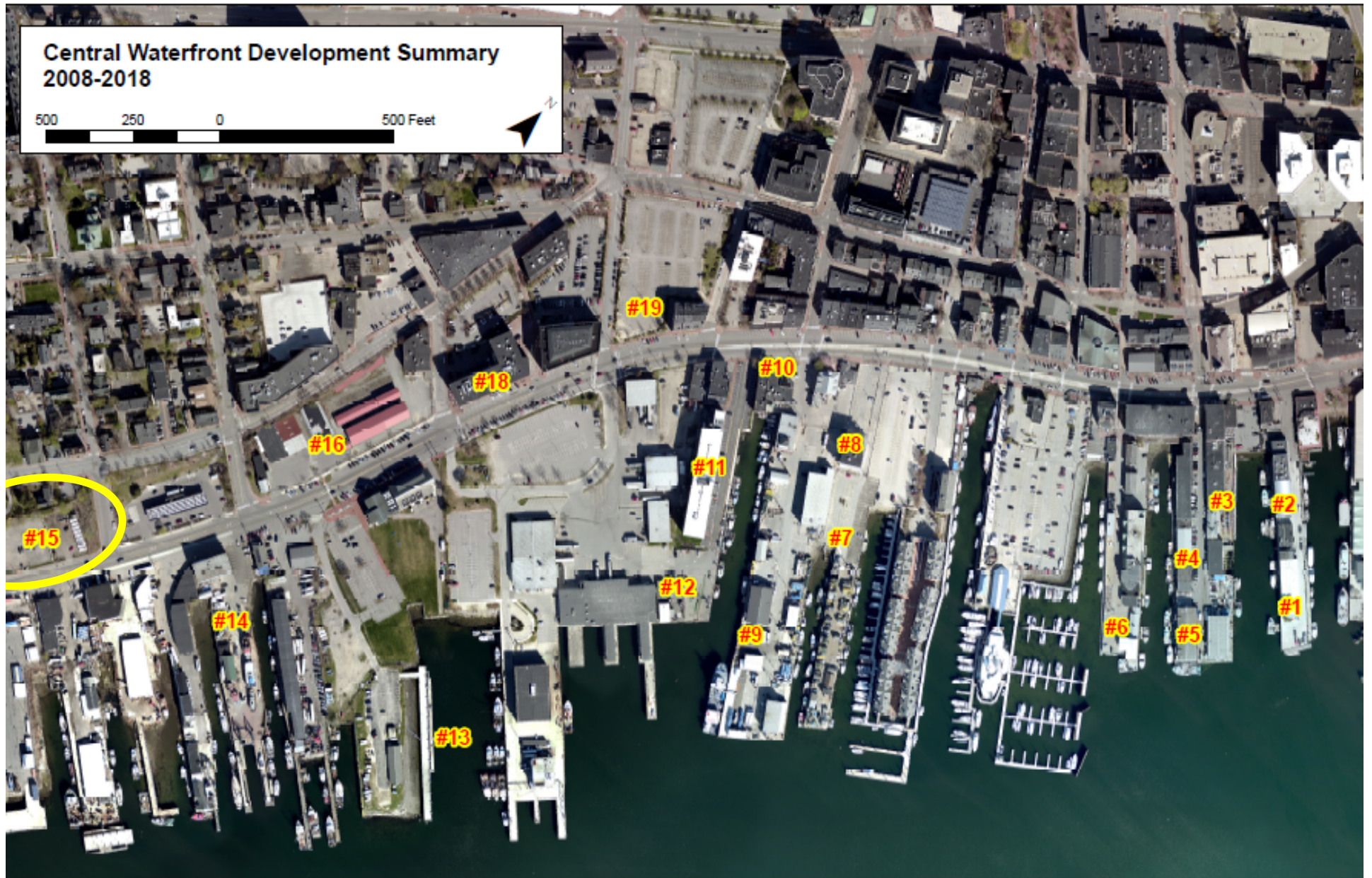
**Boat yard use moved to
Western Waterfront**



#14 Berlin Mills Wharf
Vacant and for sale, 2018

Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet



#15 Angelo's Acre
Vacant lot used for day
parking – recently
expanded with removal of
recycling containers





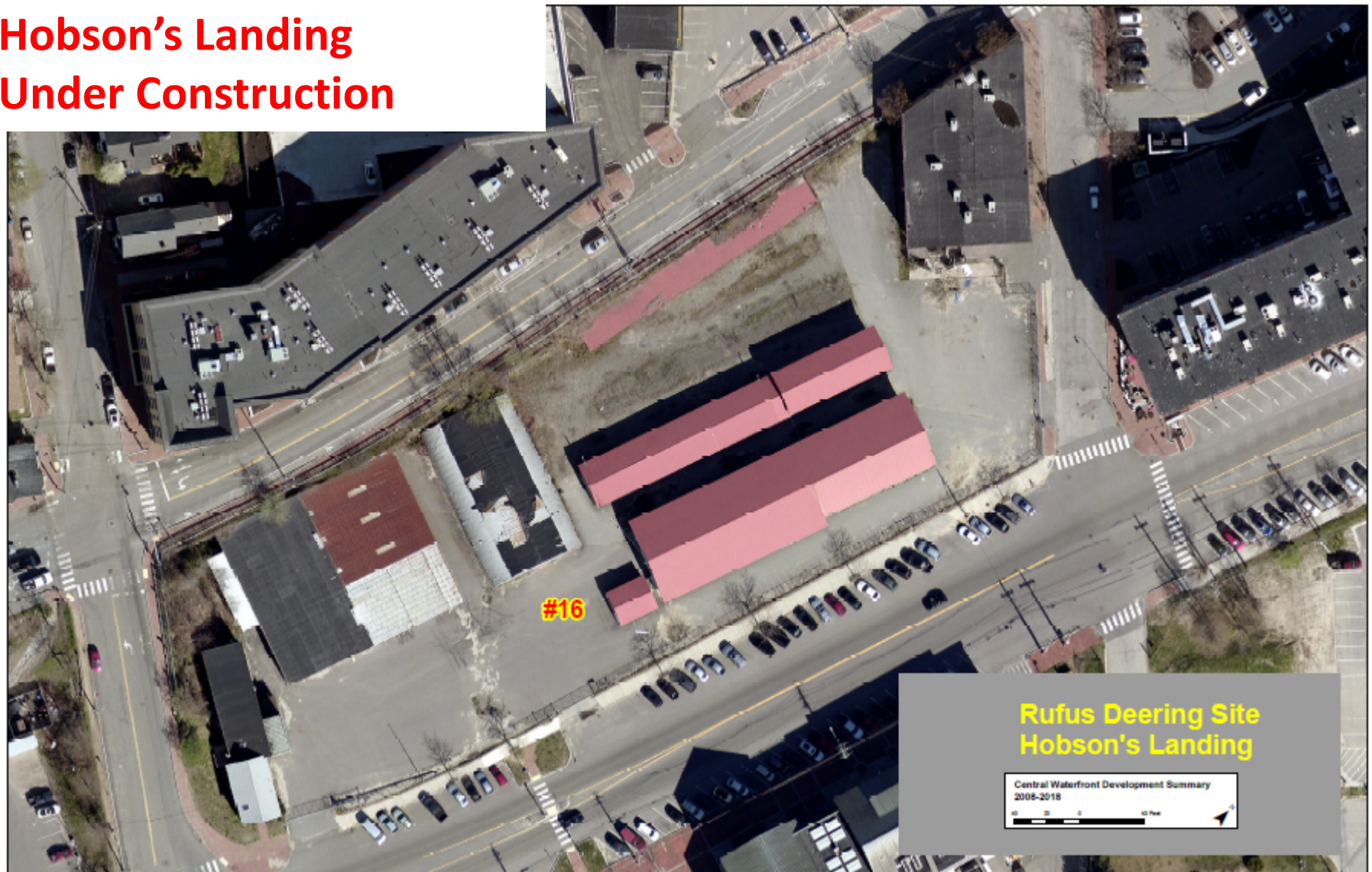
**#15 Angelo's Acre
Vacant lot used for day
parking. Parking use, +/-2016**

Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet



#15 Rufus Deering Site Hobson's Landing Under Construction





**#15 Rufus Deering Site
Demolition December
2018**



#15 Rufus Deering Site
Early progress rendering.
Aerial view from York St.

- * 157 room hotel**
- * 89 condo units**
- * Retail and Parking**



383 Commercial Street
Portland, Maine

#15 Rufus Deering Site From Commercial Street.

February 2017

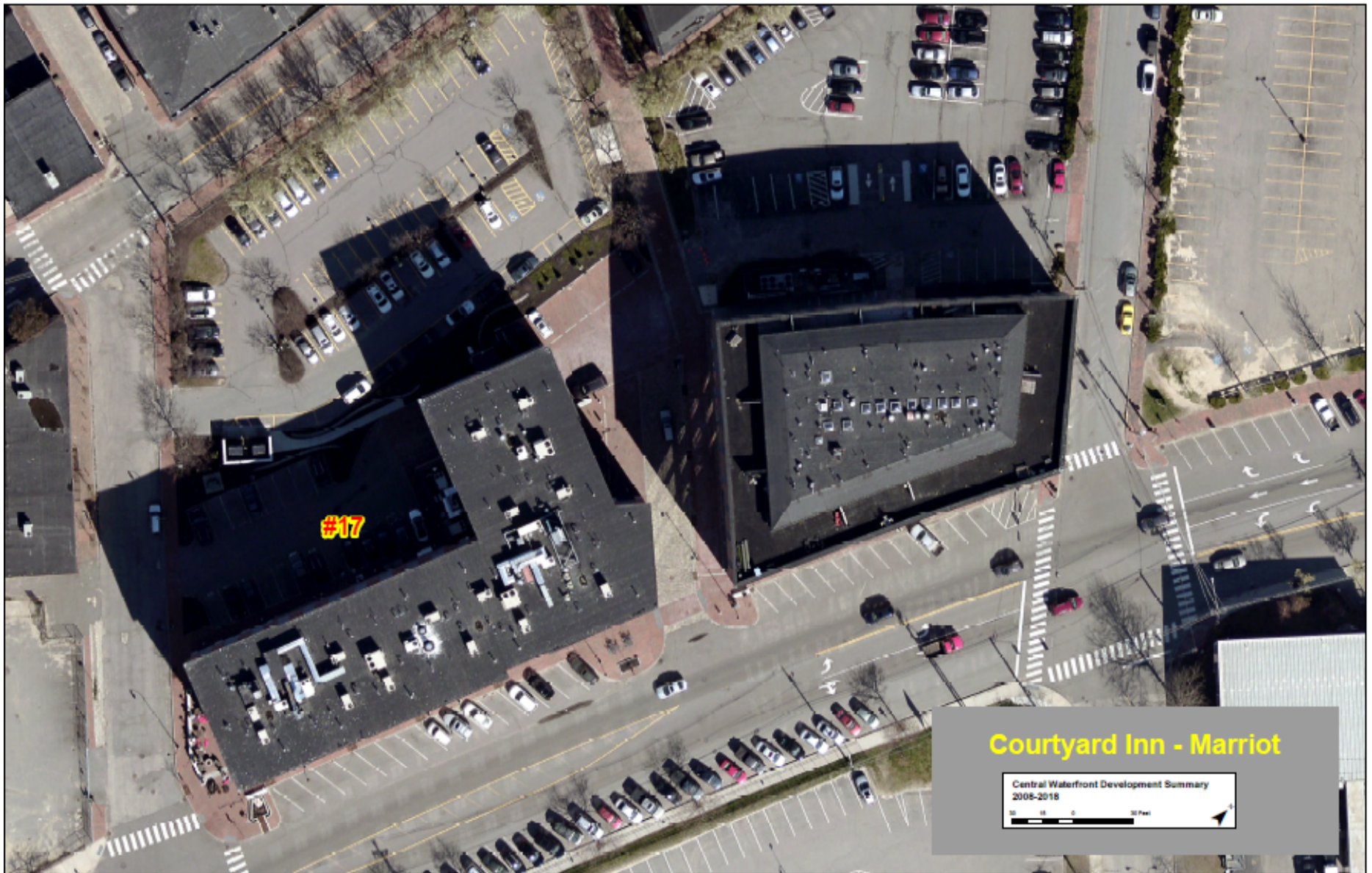


Central Waterfront Development Summary 2008-2018

500 250 0 500 Feet



#17 Courtyard Inn

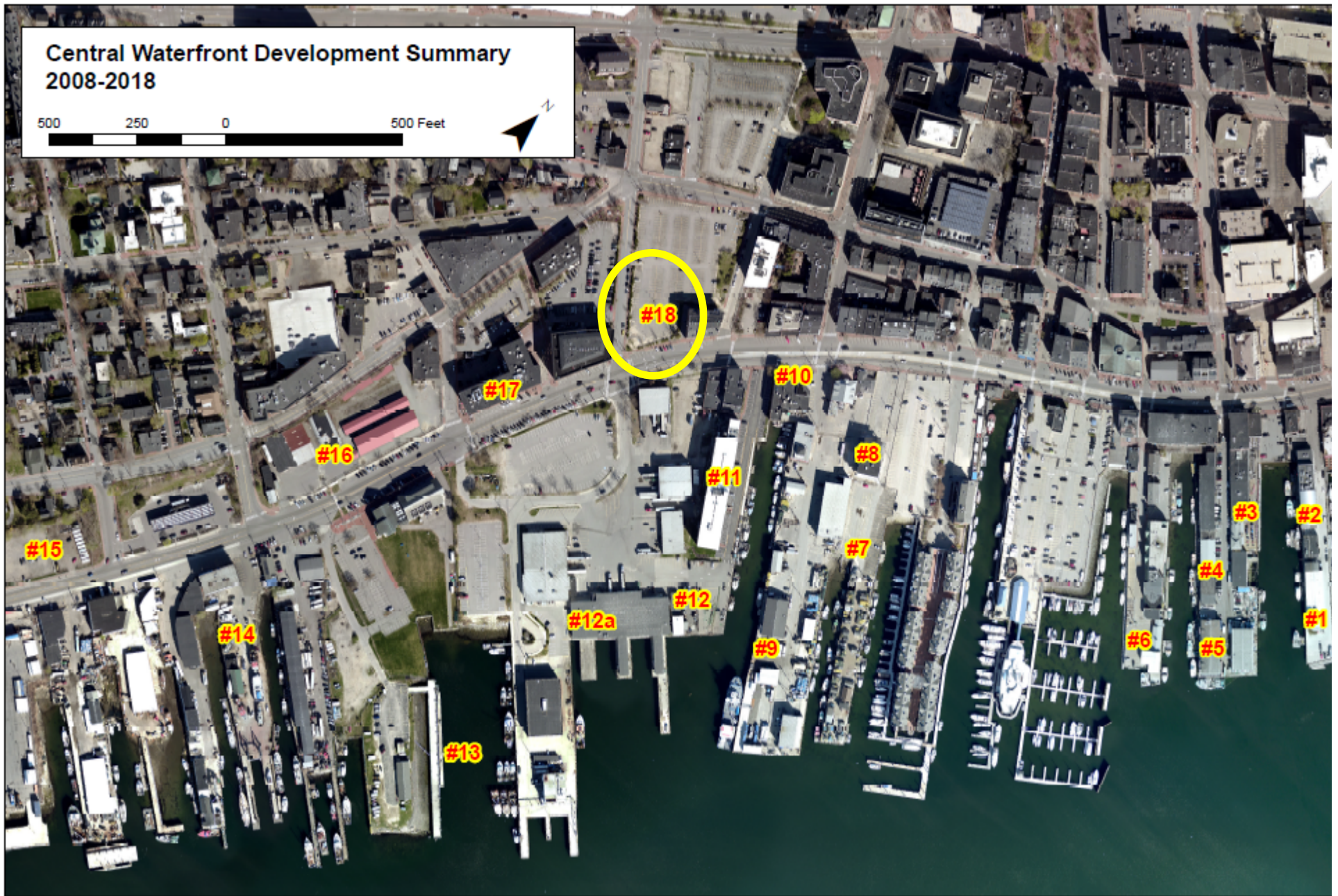


**#17 Courtyard Inn
Under construction
2013**



Central Waterfront Development Summary
2008-2018

500 250 0 500 Feet



#18 Center Street Hotel Pending review



Center Street Hotel
Pending

Central Waterfront Development Summary
2008-2018

0 10 20 Feet



#18 Center Street Hotel
Under review.
Construction anticipated
2019

02

Fathom HKS CONCEPTUAL DESIGN
11.07.2018

#18 Center Street Hotel
Is the first phase of a
major development
master plan, currently
under review



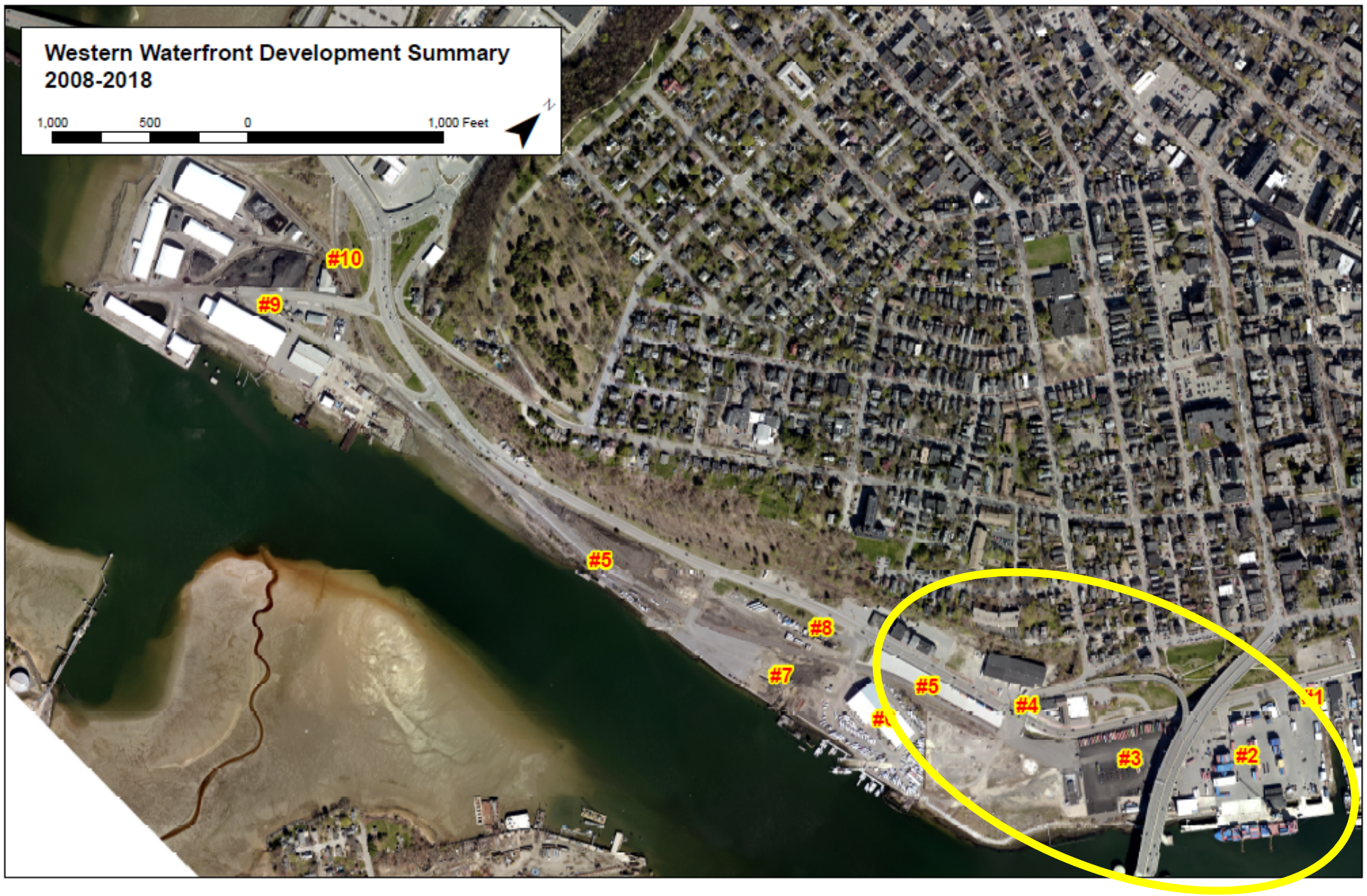
Western Waterfront Development Summary 2008-2018

1,000 500 0 1,000 Feet



**Western Waterfront Development Summary
2008-2018**

1,000 500 0 1,000 Feet



International Marine Terminal

#1 Admin Offices

#1a Ops and Maintenance Bldg

#2 Pier infill and yard improvements

#3 Drop and Pick Lot

#4 Intersection Improvements

#5 Rail extension and improvements



International Marine Terminal
#1 Admin Offices
#2 Pier and Yard improvements
2011



**International Marine Terminal
#1 Admin Offices
Current**



**International Marine Terminal
#1a Ops and Maintenance Bldg
Under construction
New Crane 2018**



International Marine Terminal

#3 Drop and Pick Lot +/-2015

#4 Intersection Improvements +/-2015

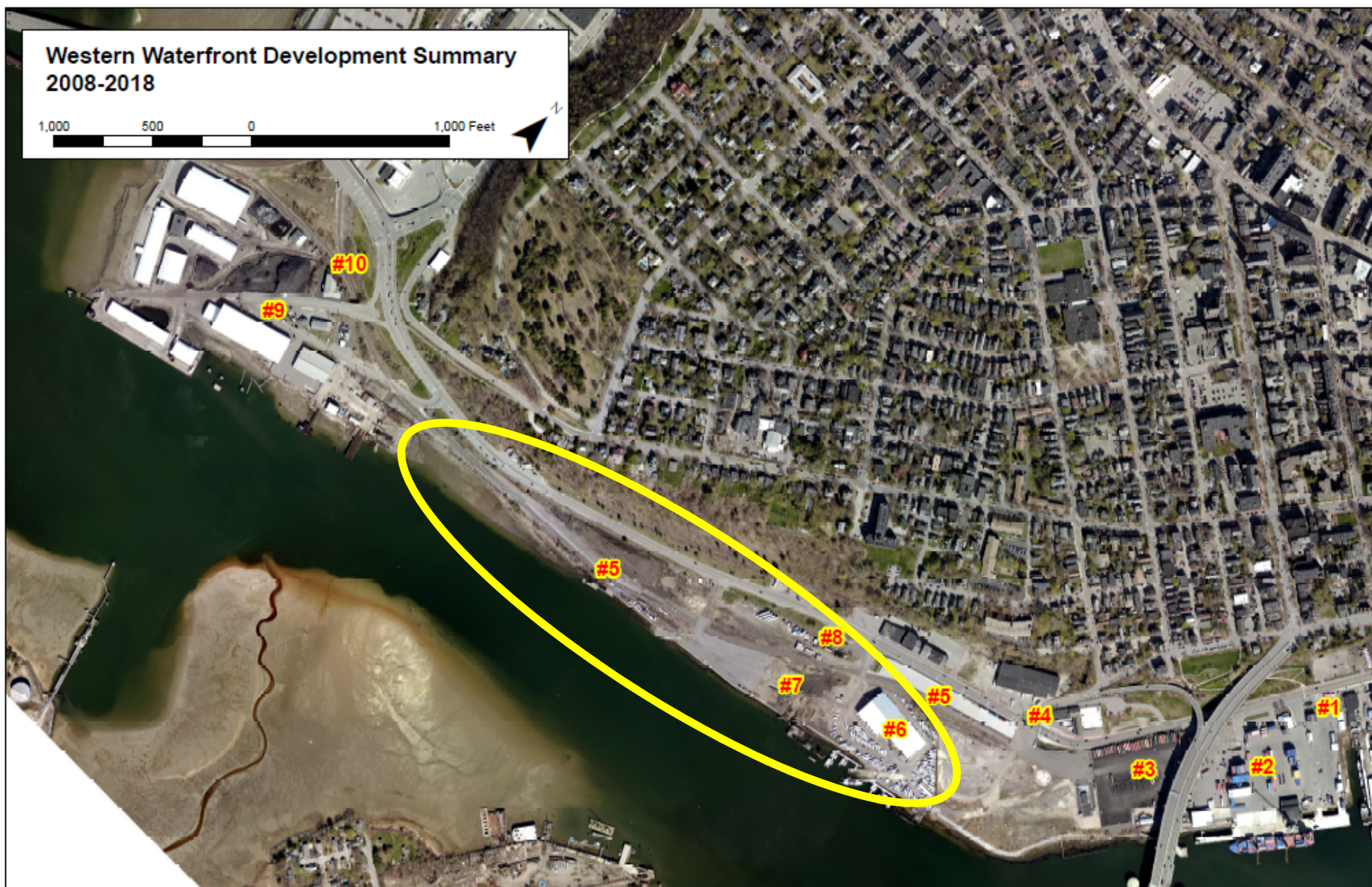


**International Marine Terminal
#5 Rail extension and improvements
2015-2017**



**Western Waterfront Development Summary
2008-2018**

1,000 500 0 1,000 Feet



Portland Shipyard, PYS

#6 PYS Service and Storage sheds

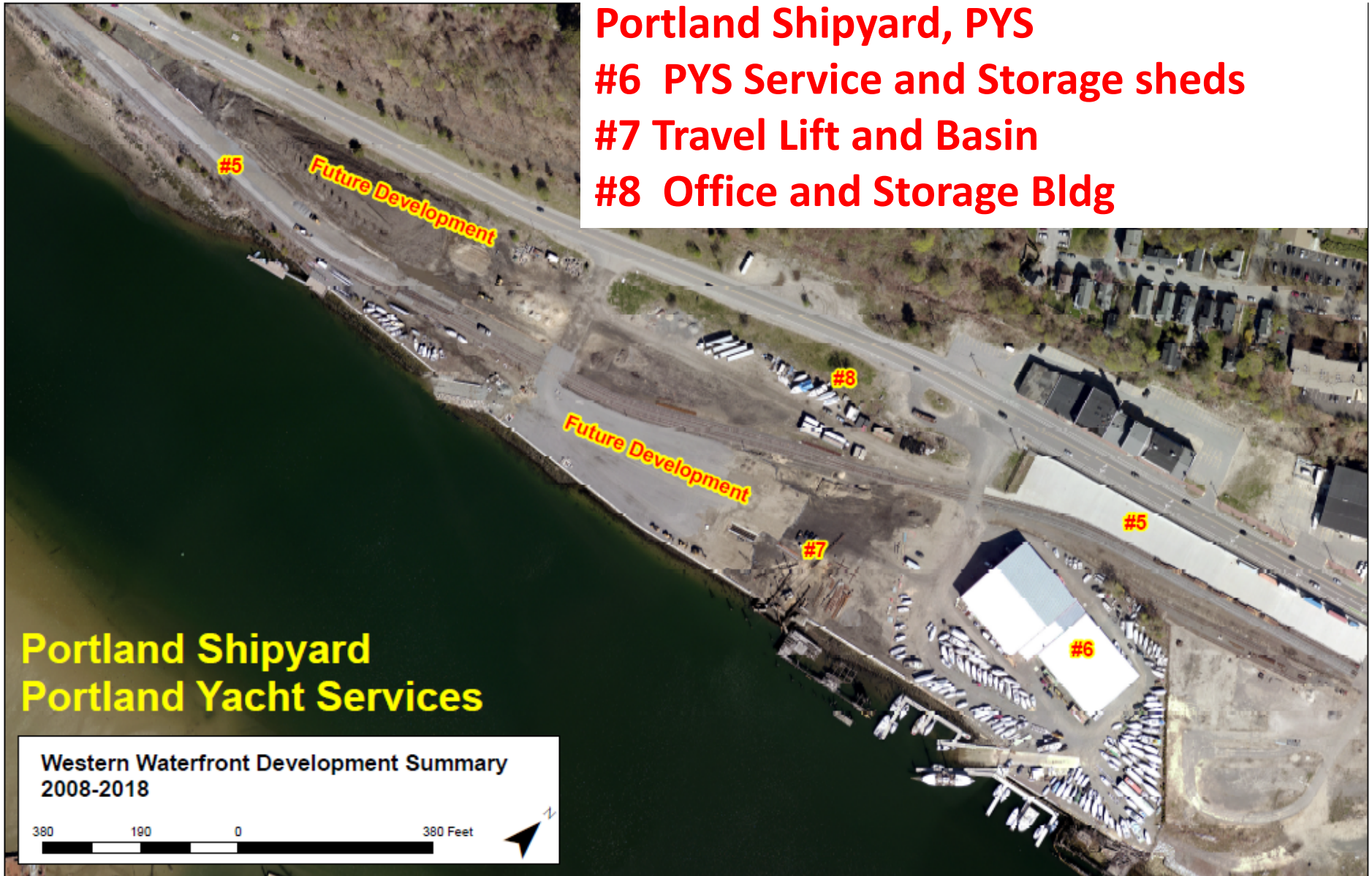
#7 Travel Lift and Basin

#8 Office and Storage Bldg

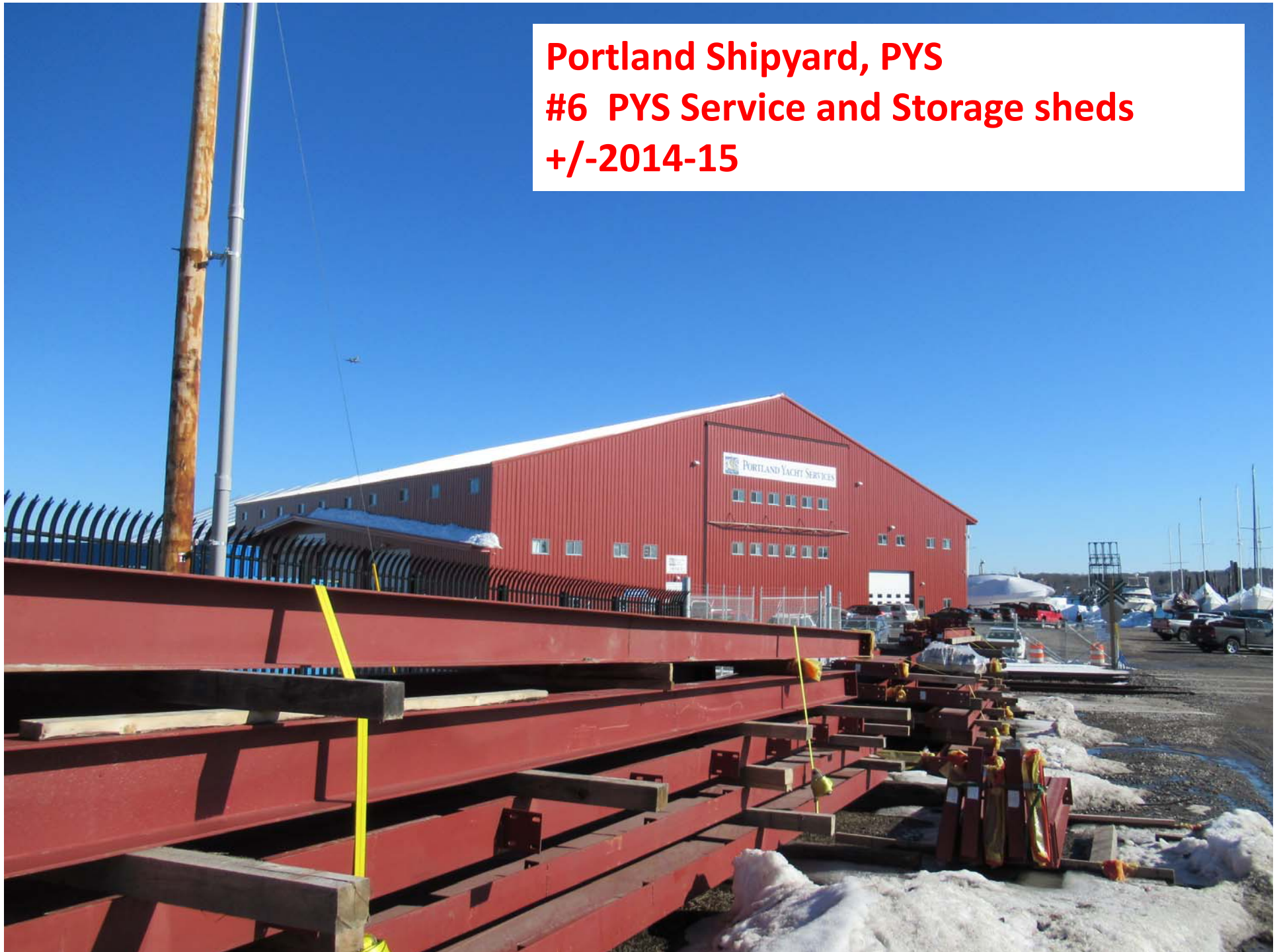
**Portland Shipyard
Portland Yacht Services**

Western Waterfront Development Summary
2008-2018

380 190 0 380 Feet



Portland Shipyard, PYS
#6 PYS Service and Storage sheds
+/-2014-15

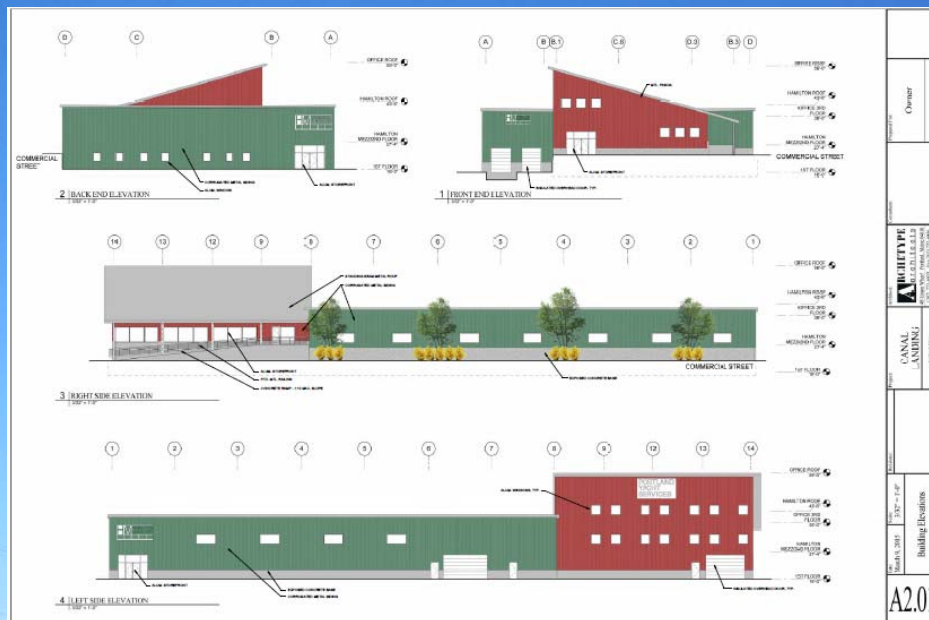




**Portland Shipyard, PYS
#7 Travel Lift and Basin 2018**

Portland Shipyard, PYS
#6 , #7 Associated yard, floats and
ramps 2014-present





**Portland Shipyard, PYS
#8 Office and Storage Bldg
Under construction**

**Western Waterfront Development Summary
2008-2018**

1,000 500 0 1,000 Feet

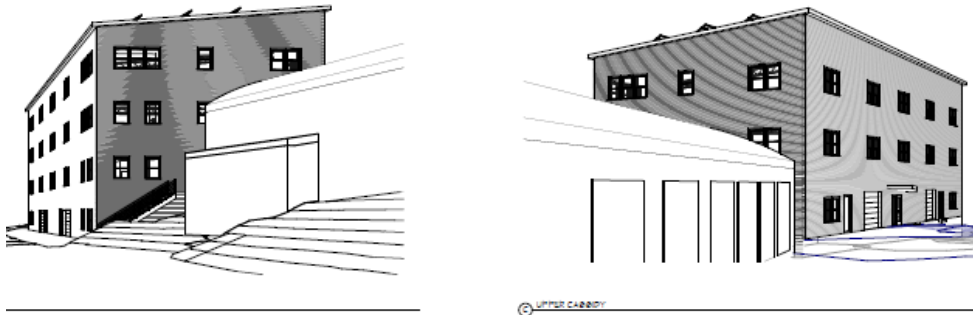




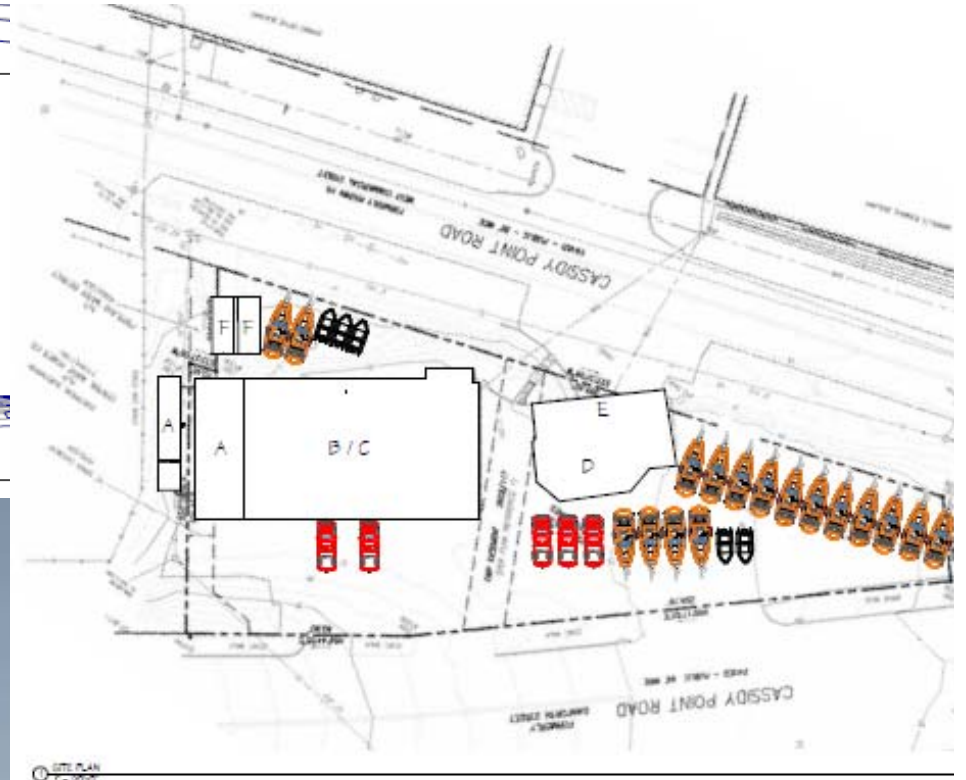
Cassidy Point Hagge and Dana Projects

Western Waterfront Development Summary
2008-2018

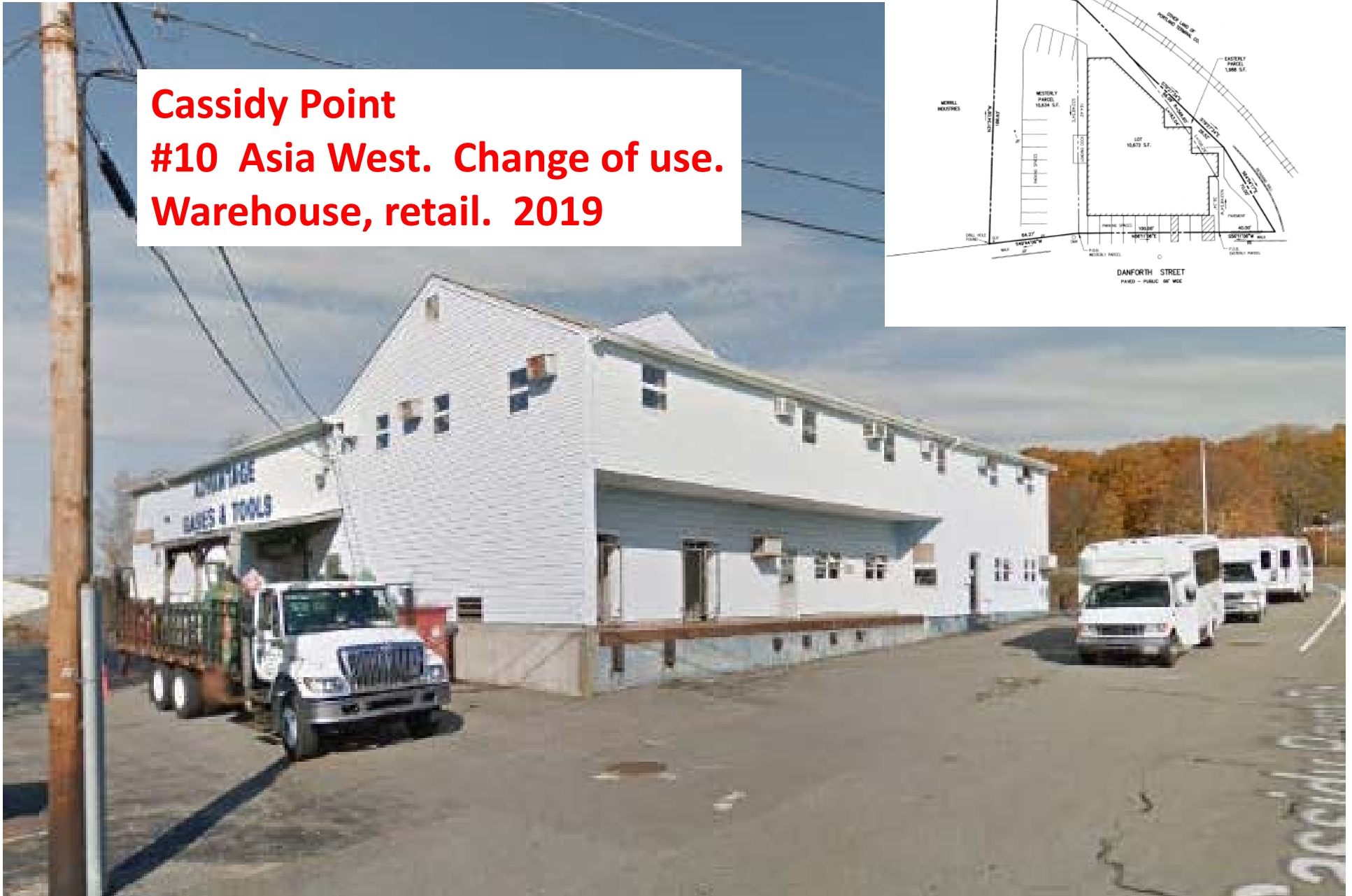
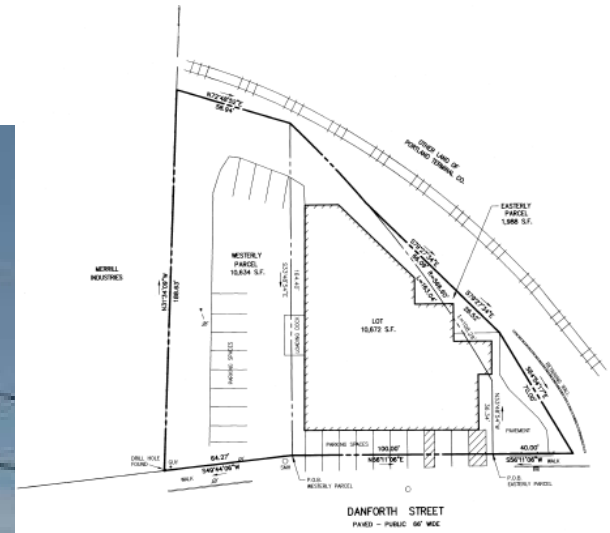
380 190 0 380 Feet



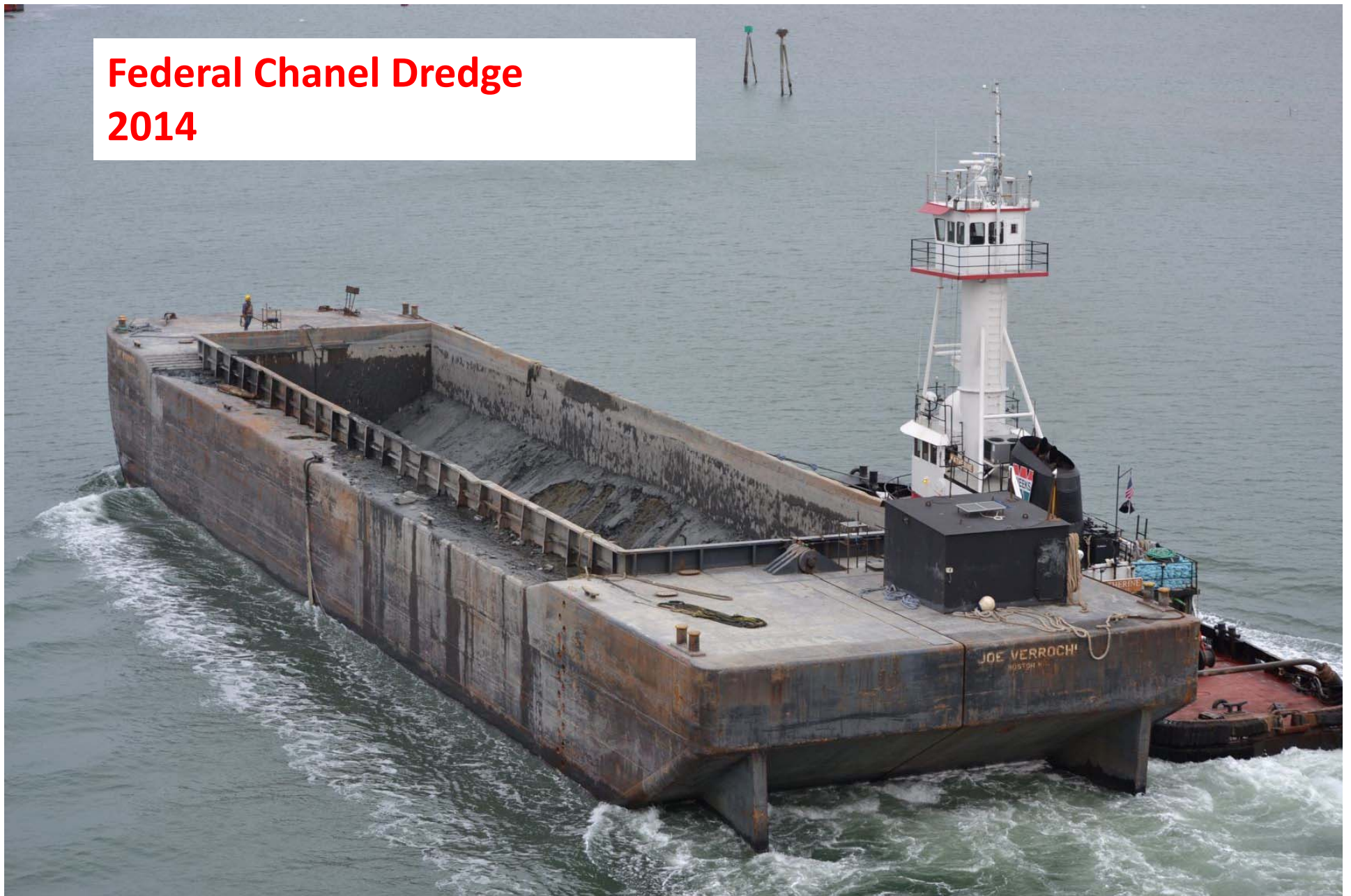
Cassidy Point #9 Hagge light industrial and marine complex. 2019



**Cassidy Point
#10 Asia West. Change of use.
Warehouse, retail. 2019**



Federal Channel Dredge 2014



Federal Channel Dredge 2014



**Pier and Berthing Dredge
Planning underway**



Central and Western Waterfront Development Summary

2008 to Present

Questions?

