

THE STATE OF NEW HAMPSHIRE

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PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

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Website:
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June 11, 2008

Debra A. Howland
Executive Director and Secretary
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301



Re: DW 08-036, City of Portsmouth
Petition to for Franchise Approval for Extension of
Sewer Service in Greenland

Dear Ms. Howland:

On March 10, 2008, the City of Portsmouth (Portsmouth) filed a petition pursuant to RSA 362:4 III (a) to extend sewer service to two properties in the Town of Greenland (Greenland). Staff conducted discovery and Portsmouth's responses are attached. Staff has reviewed the filing and data responses and recommends the Commission grant the authority requested.

The first property is a truck stop at the intersection of Ocean and Greenland Roads, currently owned by Siegel Limited Partnership (Siegel) and operated by TravelCenters of America, LLC. The facility's septic system failed in 1997, leading the New Hampshire Department of Environmental Services (NHDES) to urge connection to the Portsmouth sewer system. As a result, the facility's former operator, Travel Ports of America (Travel Port), constructed an approximately 6,000 foot sewer force main for that purpose. The construction was done under an agreement between Travel Port, Siegel and Portsmouth, provided as Exhibit 2 to the filing. Greenland consented to the connection at that time (Exhibit 3). Through inadvertence or oversight, Portsmouth did not seek any Commission franchise approval in relation to that extension of service at the time, and now seeks retroactive approval.

The second property involves extension of sewer service to a proposed mall also located on Greenland Road, along the route of the previous Travel Port force main. The property abuts Portsmouth and is owned and being developed by PDNED Greenland LLC, also known as Packard Development (Packard). The mall will contain a Lowe's Home Improvement Center, a Target store, and a Stop & Shop supermarket. Packard requested extension of service to the property as a preferred environmental solution to a septic system, particularly given its proximity to important wetland areas and Great Bay (petition para. 12).

Alternatives being reviewed include connection to the Travel Port main or construction by Packard of its own parallel force main, as shown on Exhibits 5 and 6 of the filing, respectively. While such details have not been finalized, Packard has reached a tentative agreement with Portsmouth for provision of service (Exhibit 8). Resolution of the details will not change the footprint of the requested franchise area. Construction of the main, which was held up pending resolution of various legal challenges unrelated to the Commission's jurisdiction, is now underway.

Both the Travel Port and Packard sewer agreements call for charging the same sewer rate as is charged within Portsmouth city limits, with the exception of certain additional capital improvements charges. These are primarily intended to cover the cost of upgrades to the city's sewer infrastructure associated with increased flows from the developments involved. Portsmouth indicates such charges are similar in nature to those applied to private developments within the city limits (response to Staff 1-6). The initial term of each agreement is 30 years. Service to both properties will be provided on the same terms and under the same regulations as are applied inside the city (petition para. 20; see also Travel Port agreement at para.14 and Packard agreement at para. 15).

Portsmouth clarified in its response to Staff 1-1 (b) that the specific lots it seeks authority to serve are lots 44 (Packard) and 54 (Travel Port) on Greenland tax map R-21. Portsmouth serves some 6,200 other sewer customers and has affirmed that its sewer system has the capacity to accept the additional effluent now anticipated from the Packard property (Exhibit 7). Greenland and NHDES both support the proposed interconnection (Exhibits 10 and 11). No other sewer utilities serve the area.

Staff believes Portsmouth's filing and responses demonstrate it has the managerial, financial and technical capabilities necessary to serve the two properties. Staff also believes that since Portsmouth will provide service under the same terms and conditions as provided to customers within the municipal boundaries, Portsmouth's provision of sewer service should remain exempt from Commission jurisdiction pursuant to RSA 362:4 III (a). The statute does not exempt a municipality from the need for franchise approval under RSA Chapter 374, and Staff recommends the Commission grant such approval for the two properties described.

If there are any questions regarding this, please feel free to contact me.

Sincerely,



Douglas W. Brogan
Utility Engineer



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

May 1, 2008

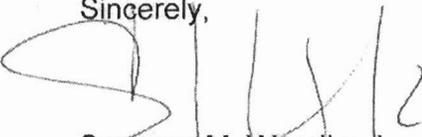
Librarian
NHPUC
21 South Fruit Street
Suite 10
Concord, NH 03301-2429

**RE: Docket #: DW 08-036 City of Portsmouth
Petition to Extend Sewer Service Franchise in the Town of Greenland**

Dear Sir/Madam,

Please find enclosed for filing the City of Portsmouth's Responses to Staff's Data Requests Set #1.

Sincerely,



Suzanne M. Woodland
Assistant City Attorney

SMW/rao

enclosure

cc: Doug Brogan, NHPUC (via electronic service)
Mark Naylor, NHPUC (via electronic service)
Marcia Thunberg, NH PUC (via electronic service)
Amanda Noonan, Consumer Affairs Director, NHPUC (via electronic service)
Steve Judge, Esq., (via electronic service)

h:\smw\public works\puc\ltr to librarian re-data response request #1

City of Portsmouth

DW 08-036

Staff Data Requests – Set 1

Data Request Received: 4/7/08
Request No. **Staff 1-1**

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: It is difficult to ascertain where the various Travel Port and PDNED properties referenced in the deeds provided in the filing are located. Other documents reference tax map lot numbers, but no tax maps were provided. In this regard:

- a) Please provide the Greenland and Portsmouth tax maps or portions thereof showing the parcels relevant to the filing.
- b) Please identify those lots the City is seeking franchise authority for.

RESPONSE: The City has provided as Exhibit 1-1 (a) the Greenland tax map showing the parcels relevant to the filing. The parcels are identified as Greenland Tax Map R-21 Lot 54 (TravelPort) and Greenland Tax Map R-21 Lot 44 (PDNED). Attached as Exhibit 1-1(b) is the Portsmouth tax map showing the remainder of the PDNED property in the City of Portsmouth, Tax Map 279, Lot 6. The City has also provided as Exhibit 1-1 (c) an aerial view of the two lots with the existing force main shown.

The City is seeking authority to serve the Greenland properties identified on Tax Map R-21, Lot 54 and Map R-21, Lot 44.

Data Request Received: 4/7/08
Request No. **Staff 1-2**

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: Please confirm that the three condominium units referenced in para. 13 of the PDNED sewer agreement are the three commercial facilities (currently anticipated to be Lowe's, Target and Stop & Shop) referenced in para. 8 of the petition. If not, please explain.

RESPONSE: The City confirms that the three units referenced in Paragraph 13 of the PDNED sewer agreement are the commercial facilities referenced in paragraph 8 of the Petition.

Data Request Received: 4/7/08
Request No. Staff 1-3

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: Please comment on the potential for additional sewer customers from within or nearby the proposed franchise area, whether through future connection to the existing or proposed sewer lines or by other means, including the extent to which any interest has been expressed in such service.

RESPONSE: The Town of Greenland has not requested the extension of sewer service beyond that indicated in this Petition. The City is aware that there may be a future need for service for residential property owners in nearby neighborhoods. Some of those property owners have older septic systems in environmentally sensitive areas. To date the City has received no request from the Town of Greenland, residents in the area or the Department of Environmental Services. The Town of Greenland (along with other neighboring towns) has been invited to participate in the City's presently ongoing sewer Master Planning process.

Data Request Received: 4/7/08
Request No. Staff 1-4

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: If the Commission were to grant the City's request, when would the City anticipate that agreements such as the sewer agreement with PDNED (Exh. 8) and the Assignment of Contract Rights and Intangible Assets (Exh. 4) would be finalized?

RESPONSE: It is my understanding from speaking with the legal department that the sewer agreement with PDNED can be signed at any time. The parties had been waiting for certain conditions of a Settlement Agreement to be fulfilled. With regard to the Assignment of Contract Rights and Intangible Assets attached at page 38 of Exhibit 4, it was executed on December 6, 2007, the same day that Carol Hughes executed the Warranty Deed attached at page 31 of Exhibit 4. PDNED has provided two signature pages for the Assignment attached as Exhibit 1-4.

Data Request Received: 4/7/08
Request No. Staff 1-5

Date of Response: 4/17/08
Witness: Gail Cunningham
Enterprise Fund Controller

REQUEST: Please indicate what sewer rates are (or in PDNED's case will be paid by each of the following, including any associated flat or fixed fees and any rate differentials for higher volumes of usage:

- a) Travel Port;
- b) PDNED;
- c) Customers inside Portsmouth.

RESPONSE: Customers in Portsmouth and the Travel Port are billed at the following rates:

With a unit being 100 cubic feet, the sewer rates are \$4.89 per unit for the first 10 units each month and \$5.33 for each unit beyond 10 per month. PDNED would be charged the same rates subject only to the capital improvements charge in year 11 as described in Response to Request 1-6.

Data Request Received: 4/7/08
Request No. Staff 1-6

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: The agreement with Travel Port/Siegel includes a 'contribution for capital improvements' of \$300,000 spread over 10 years (para. 15 of agreement). The tentative agreement with PDNED includes a \$1,000,000 'private sewer line access (or hook up) fee' spread over 10 years, followed beginning in year 11 by an 'additional capital improvements charge' equal to 10 percent of the usage charge for the life of the agreement (para.'s 3 and 9 of sewer agreement). To what extent are such charges applied to developers or other customers within the City?

RESPONSE:

In 1999 the City completed a Wastewater Infrastructure Facilities Plan to project waste water flows and to guide capital improvements to the City's waste water infrastructure. The City also has a Long Term Control Plan for EPA ordered combined sewer separation work. Subsequent to the completion of the Wastewater Infrastructure Facilities Plan the City has made regular investments to update the City's waste water system which in many parts of the City are antiquated.

When a customer applies for sewer service, the City of Portsmouth evaluates capacity for the new service. When a new (or expanded) sewer services would exceed or substantially deplete remaining capacity, the City seeks a contribution for capital improvements to upgrade impacted or expanded sewer lines. For example, Lonza

Biologics on the Pease International Tradeport has made significant capital contributions to the City's sewer infrastructure over the last 10 years as its industrial facilities have substantially expanded. The contributions were necessary to provide the increased sewer capacity to support Lonza's significantly increased loads. By way of further example, businesses along Corporate Drive on the Pease International Tradeport have participated in an expansion of the City's sewer service along Corporate Drive on a pro-rata basis.

The \$300,000 contribution received from the agreement with TravelPort was used to offset the cost of improvements to the "brick box" section of the City's sewer system. The brick box section of the City's sewer system extends from a neighborhood known as Pannaway Manor, across Borthwick Avenue and the U.S. Route Bypass , into the downtown to the Deer Street Pumping Station. The TravelPort private line connects to the City's infrastructure at the Pannaway Manor neighborhood and improvements were made to that infrastructure as part of the initial connection. The City has the capability through its ability to bond to fund infrastructure improvements in advance of monies being received for those improvements.

In anticipation of the possible monies from Packard, City Council approval having been received in April of 2006, the City made improvements to the Borthwick portion of the brick box line. There was significant infiltration of groundwater in the failing Borthwick line which limited capacity. But for the upgrades to the Borthwick line, DES might have elected not to support the new PDNED connection.

Although the City of Portsmouth certainly had improvements to the brick box section of the system in its long term facilities planning, the impending new connection and the future availability of funds to support the improvements allowed the project to move forward sooner rather later.

With regard to the 10% capital improvement charge beginning in year 11 of the PDNED agreement, at the time the agreement was negotiated the Town of Greenland's position was unknown and it was not clear who would ultimately be responsible for maintenance of the pumping station and lines. The City anticipates in the future that it may attain ownership of the private pumping station and line(s). The 10% capital improvement charge is intended as a replacement reserve for maintenance similar to capital contributions made by in-City customers for expansion of facilities.

**Data Request Received: 4/7/08
Request No. Staff 1-7**

**Date of Response: 4/17/08
Witness: Gail Cunningham
Enterprise Fund Controller**

REQUEST: Are Travel Port/Siegel current on sewer charges due to the City to date under the existing sewer agreement?

RESPONSE: Yes.

Data Request Received: 4/7/08
Request No. Staff 1-8

Date of Response: 4/17/08
Witness: Gail Cunningham
Enterprise Fund Controller

REQUEST: To what extent are in-City sewer customers responsible for metering their own flows and the associated costs thereof?

RESPONSE: The vast majority of the City's in-City sewer customers are billed for sewer use based on their metered water consumption. Three commercial customers have separate sewer meters for municipal billing purposes. Those customers are Redhook Brewery, Liberty Mutual and Portsmouth Regional Hospital. In those cases, the water consumption does not have a fair correlation to sewer use and sewer meters are utilized. Both water meters and sewer meters are the obligation of the property owner to purchase from the City and install. Once purchased, the City maintains the meters and replaces the meters at no additional cost (assuming there has been no customer neglect or tampering that has resulted in a premature failure of the meter). In most cases, the City provides one metered service line to each legally subdivided lot (as described in our water ordinance). If the property owner, such as a condominium association, chooses to install additional private meters for each building or unit, the property owner is welcome to do that. The City, however, will only read the one recognized municipal meter and bills the property owner not the tenant. That stated, there have been over the years a few exceptions to the present practice. Tenants of manufactured housing parks are billed in accord with the State statute.

Data Request Received: 4/7/08
Request No. Staff 1-9

Date of Response: 4/17/08
Witness: Gail Cunningham
Enterprise Fund Controller

REQUEST: To what extent are in-City sewer customers billed on the basis of metered sewer flows as opposed to metered water consumption?

RESPONSE: See Response to Request 1-8.

Data Request Received: 4/7/08
Request No. Staff 1-10

Date of Response: 4/17/08
Witness: Peter Rice, P.E.
City Engineer, Water/Sewer Division

REQUEST: To what extent are sewage flow limits imposed on in-City customers?

RESPONSE: Some in-City commercial and industrial customers are flow limited. These limits are set in the industrial discharge permits issued to the customer by the City. The limits are based on flow estimates provided by the customers at the time of application.

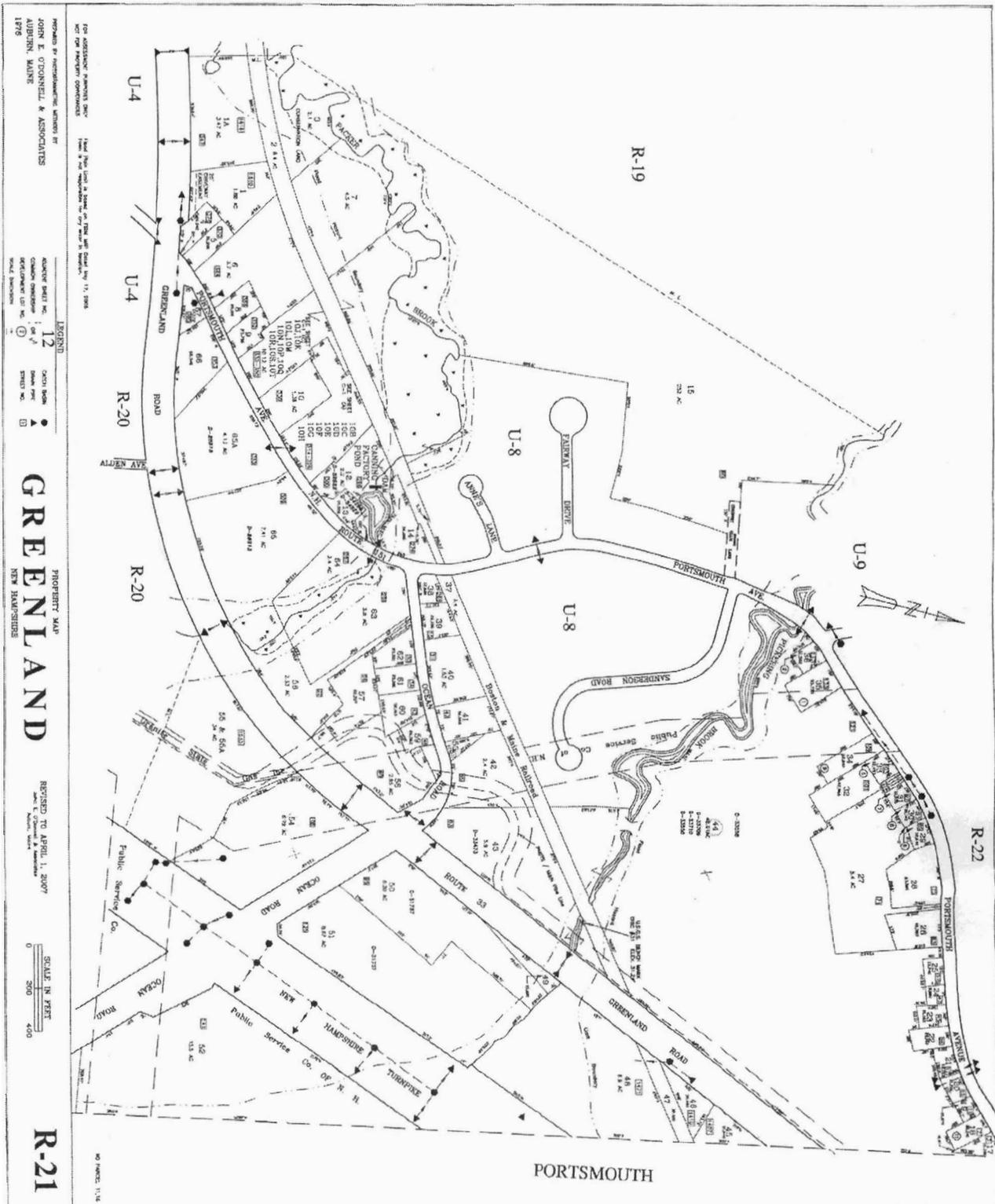
Data Request Received: 4/7/08
Request No. Staff 1-11

Date of Response: 4/17/08
Witness: Gail Cunningham
Enterprise Fund Controller

REQUEST: What interest rate is applied to late payments of in-City sewer customers?

RESPONSE: 18% per annum (1 ½ % per month)

h:\smw\public works\pucl\data responses



PREPARED BY ARCHITECTURAL SERVICES BY
 JOHN E. O'DONNELL & ASSOCIATES
 AUBURN, MAINE
 1976

LEGEND
 ADJACENT SHEET NO. 12
 CORNER ORIGINATOR
 SHEET NO. 11

GREENLAND

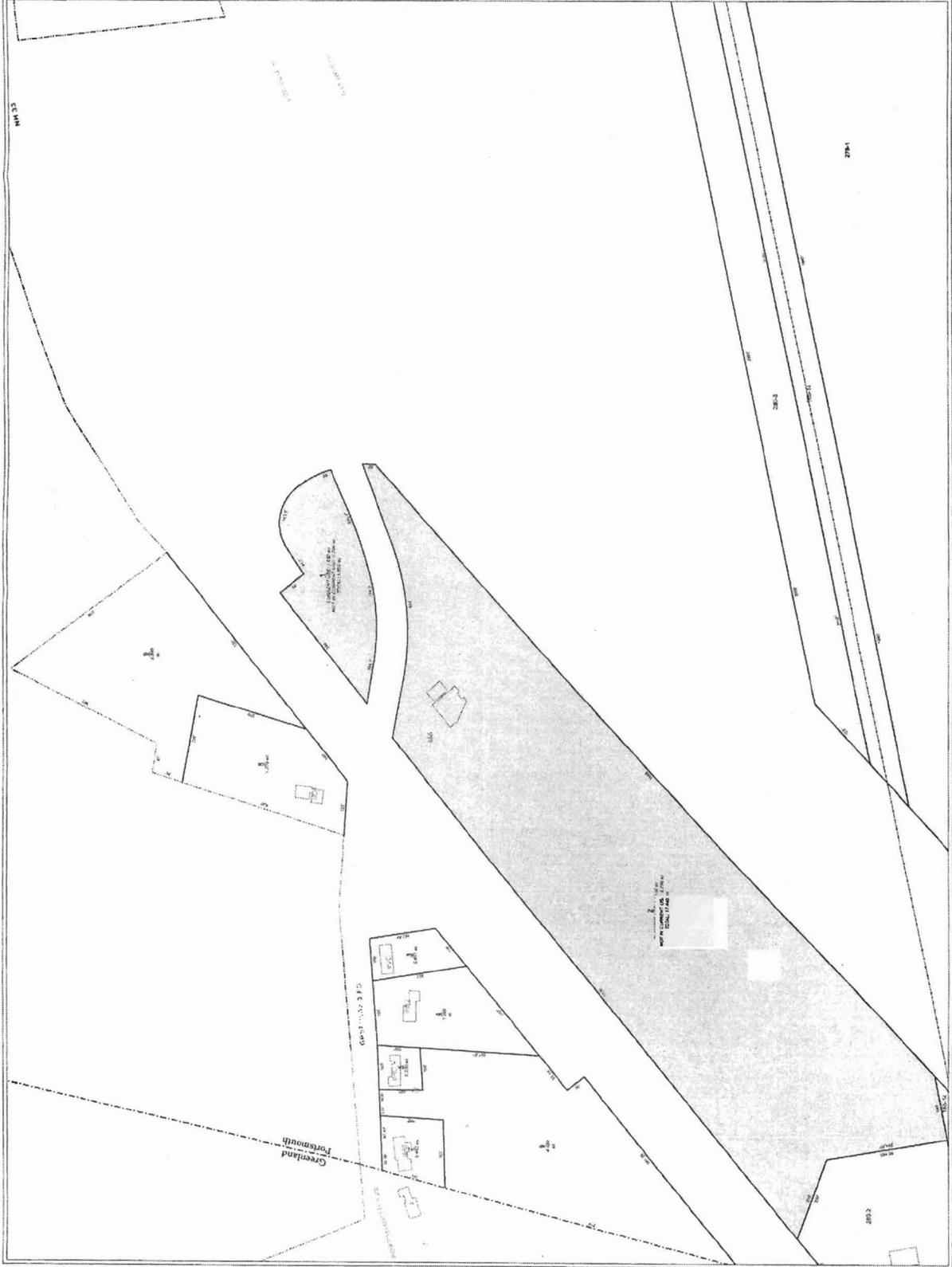
PROPERTY MAP
 NEW HAMPSHIRE

REVISED TO APRIL 1, 2007

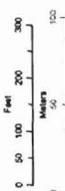
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R-21

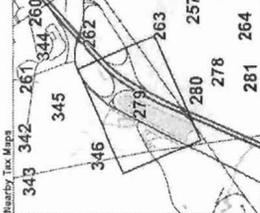
1-1 (b)



- Parcel Legend**
 See the cover sheet for the volume legend.
- 2.5A Lot or block number
 - 2.6A Parcel area in acres (a) or square feet (sf)
 - 2.7 Address number
 - 2.8 Parcel number from neighboring map
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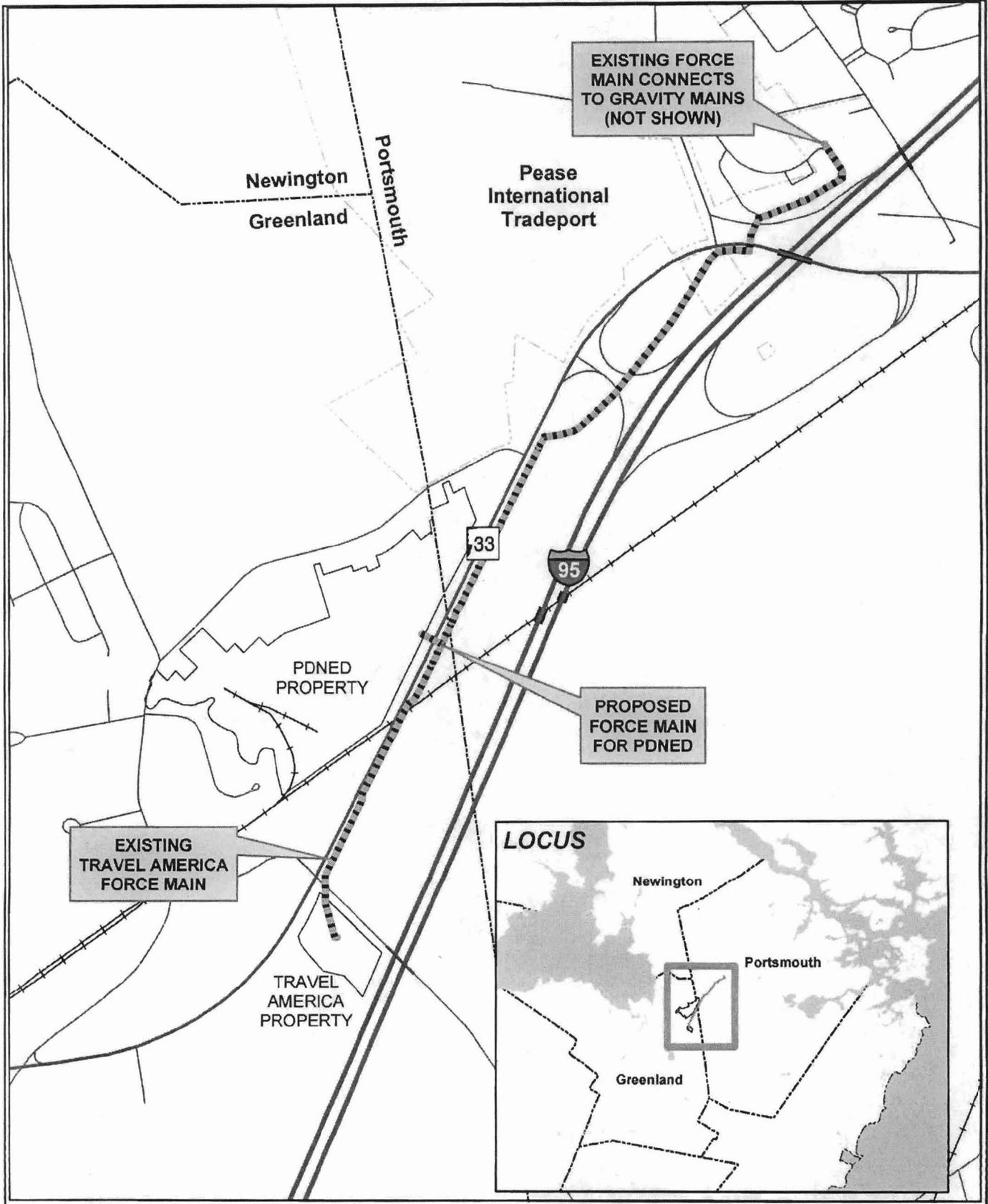


This map is for assessed purposes only. It is not intended for legal description or conveyance. Parcels are measured as of April 1, 2007. The map is for assessed purposes only and may not represent current structures. Street names appearing on this map may be paper streets. Parcel numbers shown on this map are for assessed purposes only and may not represent current or legal structures.



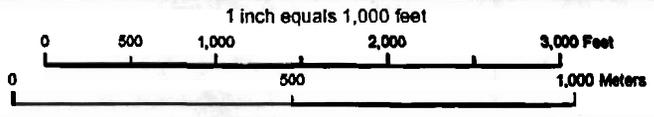
Portsmouth, New Hampshire
 2007
Tax Map 279

1-1(c)



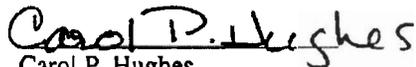
**Proposed Private Force Main for PDNED
Greenland, New Hampshire**

Map prepared by Portsmouth Department of Public Works, 7 March 2008
 Map document: U:\Projects\0371 Sylvania Plant\Force Main 01.mxd



IN WITNESS WHEREOF, the said Assignor has hereunto set its hand and seal as of the ___ day of December, 2007.

ASSIGNOR:


Carol P. Hughes

ASSIGNEE:

PDNED Greenland LLC
a Delaware limited liability company

By: PDNED Manager LLC
A Delaware limited liability company
It's Manager

By: _____
Stephen R. Karp, a Manager

IN WITNESS WHEREOF, the said Assignor has hereunto set its hand and seal as of the ___ day of December, 2007.

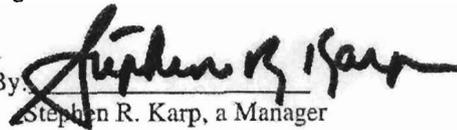
ASSIGNOR:

Carol P. Hughes

ASSIGNEE:

PDNED Greenland LLC
a Delaware limited liability company

By: PDNED Manager LLC
A Delaware limited liability company
It's Manager

By: 
Stephen R. Karp, a Manager

SUZANNE WOODLAND
CITY OF PORTSMOUTH
1 JUNKINS AVENUE
PORTSMOUTH NH 03801

Docket #: 08-036 Printed: June 11, 2008

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:

DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 SOUTH FRUIT STREET, SUITE 10
CONCORD NH 03301-2429

PURSUANT TO N.H. ADMIN RULE 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

RATHER THAN WITH THE EXECUTIVE DIRECTOR

LIBRARIAN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

BULK MATERIALS:

Upon request, Staff may waive receipt of some of its multiple copies of bulk materials filed as data responses. Staff cannot waive other parties' right to receive bulk materials.

DOUG BROGAN
NHPUC
21 SOUTH FRUIT ST, SUITE 10
CONCORD NH 03301-2429

MARK NAYLOR
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AMANDA NOONAN
CONSUMER AFFAIRS DIRECTOR
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