STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

JANET L. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

August 1, 2025

RE: Maine Pollutant Discharge Elimination System (MEPDES) Permit MER041000
Maine Waste Discharge License (WDL) W009170-5Y-H-M
Municipal Separate Storm Sewer System (MS4) – General Permit
Final Permit Modification

Dear MS4 Permit Holders:

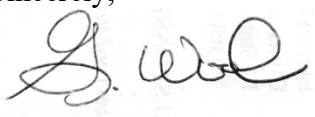
Enclosed please find a copy of the **final** MEPDES permit and Maine WDL **modification** which was approved by the Department of Environmental Protection. Please read this permit/license and its attached conditions carefully. Compliance with this permit/license will protect water quality.

Any interested person aggrieved by a Department determination made pursuant to applicable regulations, may appeal the decision following the procedures described in the attached DEP FACT SHEET entitled "*Appealing a Commissioner's Licensing Decision*."

If you have any questions regarding this matter, please feel free to call me at 287-7693 or e-mail me at gregg.wood@maine.gov. Your Department compliance inspector copied below is also a resource that can assist you with compliance. Please do not hesitate to contact them with any questions.

Thank you for your efforts to protect and improve the waters of the great state of Maine.

Sincerely,



Gregg Wood
Division of Water Quality Management
Bureau of Water Quality

Enc.
cc: Lori Mitchell, Megan Griffin, Laura Crossley, Holly Ireland, DEP/CMRO
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

MUNICIPAL SEPARATE STORM SEWER SYSTEM	)	MAINE POLLUTANT DISCHARGE
GENERAL PERMIT	)	ELIMINATION SYSTEM PERMIT
STATE OF MAINE	)	
MER041000	)	MAINE WASTE DISCHARGE LICENSE
W009170-5Y-H-M **APPROVAL**	)	**MODIFICATION**

Pursuant to the provisions of Federal law, 33 USC, §1251, Maine Law 38 M.R.S., 414-A et seq., and applicable regulations, the Maine Department of Environmental Protection (Department/DEP) is initiating a modification to Maine Pollutant Discharge Elimination System (MEPDES) General Permit (GP) #MER041000/Maine Waste Discharge License W009170-5Y-C-R. The GP was issued on October 15, 2020, for a five-year term with an effective date of July 1, 2022. With its supportive data, agency review comments and other related materials on file, the Department FINDS THE FOLLOWING FACTS:

1. PROCEDURAL HISTORY

On January 17, 2023, the Friends of Casco Bay (FOCB) filed a timely appeal with the Maine Board of Environmental Protection (BEP) pertaining to the Department's December 17, 2022, approvals of Low Impact Development (LID) ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth.

On November 2, 2023, the BEP took up the appeal by the FOCB at its meeting and issued a Board Order on the appeal on the same date. See Attachment A of this permit modification for a copy of the Board Order Findings of Fact and Order on Appeal for an in-depth discussion of the appeal and the BEP's decision. The Board Order concluded and ordered as follows:

> The Board therefore concludes that the Department's approvals of the Licensees model LID ordinances must be vacated and remanded for the Department to set clear, specific, and measurable standards for the municipal LID ordinances consistent with the MS4 GP, as modified by the Permit Modification, including Appendix F. The Board recognizes that the Permit Modification's July 1, 2024, deadline for final adoption of model LID ordinances is fast approaching. The Board does not have authority to modify that deadline pursuant to this appeal

1. PROCEDURAL HISTORY (cont'd)

because the Permit Modification itself is not before us. On remand, however, the Department certainly may consider whether the July 1, 2024, deadline should be modified for the Licensees and pursue any appropriate mechanism for doing so.

Therefore, the Board VACATES and REMANDS to the Commissioner the Department's December 14, 2022 approvals of the model LID ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth for the Department to expeditiously set clear, specific, and measurable standards for the municipal LID ordinances consistent with Section 2(A)(5)(a) of the Permit Modification, including Appendix F, in accordance with this Order.

2. MODIFICATION(S)

At the November 2, 2023, BEP meeting, legal counsel representing the 13 municipalities commented that the July 1, 2024, deadline established in the November 23, 2021, permit modification (MER041000/W009170-5Y-E-M) to adopt the LID Ordinances would be impossible to comply with because most permittees would need anywhere from 15 to 18 months for LID ordinances to make their way through the local processes for adoption. The Department concludes that the July 1, 2024, deadline would be impossible for the permittees to comply with at this point considering the time necessary to adopt the ordinances at the local level.

On January 12, 2023, EPA submitted a letter to the Department stating that "the approved ordinances do not meet the regulatory requirements found at 40 CFR 122.34, or the terms of the MS4 General Permit . . . requiring each MCM condition to contain clear, specific, and measurable terms." EPA further objected to the Department's December 14, 2022, approvals in that the approval letters "provide vague direction" regarding the incorporation of LID measures and "indicat[e] the communities have an option to include clear, specific and measurable LID measures" at a future time. Concluding that "immediate action is needed" to address the inadequate ordinances, EPA proposed that the Department:

> [1] [R]evoke approval of the model LID ordinances submitted by those permit holders that did not contain clear, specific and measurable terms for each LID measure found in Table 1 of Appendix F of the MS4 General Permit and issue new approval letters that contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that those permit holders must adopt in their LID ordinance as required by the MS4 General Permit.

2. MODIFICATION(S) (cont'd)

[or]

[2] Modify the MS4 General Permit to contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that all permit holders must adopt in their LID ordinance.

Regardless of which remedy in the January 12, 2023, EPA letter is implemented, the same time constraints for the ordinances or other regulatory mechanisms to make their way through the local processes for adoption are applicable to the additional 17 municipalities that are subject to the MS4 permit. The 17 municipalities are the City of Auburn, City of Bangor, Town of Berwick, City of Brewer, Town of Eliot, Town of Hampden, Town of Kittery, City of Lewiston, Town of Lisbon, Town of Milford, Town of Old Orchard Beach, City of Old Town, Town of Orono, Town of Sabattus, Town of South Berwick, Town of Veazie and Town of York.

On June 26, 2024, the Department issued permit modification MER41000/W009170-5Y-G-M modifying the date by which all 30 municipalities subject to the MS4 permit must adopt a LID ordinance or regulatory mechanism for stormwater management on new and redevelopment sites from July 1, 2024, to November 5, 2025.

To fully address the Board's November 2, 2023, Order, this permit modification Department is setting clear, specific, and measurable standards for the municipal LID ordinances consistent with Section 2(A)(5)(a) of this Permit Modification, including Appendix F, as follows.

A. Low Impact Development

5. MCM5 - Post-Construction Stormwater Management in New Development and Redevelopment.

Each permittee must implement and enforce a program to address post construction stormwater runoff to the maximum extent practicable from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development that discharge into the MS4.

a. The permittee must implement strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts as follows:

Within one year of this permit modification being finalized (including any appeal), each permittee must adopt a LID Ordinance or other regulatory mechanism for stormwater management on new and redevelopment sites which establishes clear, specific and measurable standards for each of the LID measures contained in Table 1 of Appendix F of this permit modification to the maximum extent practicable. See Attachment B of this permit modification for a copy of Table 1 of Appendix F.

2. MODIFICATION(S) (cont'd)

The LID ordinance or other regulatory mechanism must include at a minimum, clear and specific language for each of the following sections:

1. Purpose
2. Definitions
3. Applicability
4. Procedure
5. Submission Requirements
6. Performance Standards
7. Enforcement
8. Severability
9. Waivers
10. Authority

See Attachment C of this permit modification for example text for each of the ten sections cited above. Section 6, *Performance Standards*, must be based on Table I, Appendix F of this permit modification. See Attachment B of this permit modification for a copy of Table 1 of Appendix F.

3. RESPONSE TO COMMENTS

See Attachment D of this permit modification.

CONCLUSIONS

Based on the findings in this modification, the Department makes the following CONCLUSIONS:

1. The discharge(s) covered under this GP, either by itself or in combination with other discharges, will not lower the quality of any classified body of water below such classification.

2. The discharge(s) covered under this GP, either by itself or in combination with other discharges, will not lower the quality of any unclassified body of water below the classification which the Department expects to adopt in accordance with state law.

3. The provisions of the State's antidegradation policy, Maine law, 38 M.R.S. § 464(4)(F), will be met in that:

   (a) Existing in-stream water uses and the level of water quality necessary to protect and maintain those existing uses will be maintained and protected,

   (b) Where high quality waters of the State constitute an outstanding natural resource, that water quality will be maintained and protected.

   (c) Where the standards of classification of the receiving water body are not met, the discharge will not cause or contribute to the failure of the water body to meet the standards of classification,

   (d) Where the actual quality of any classified receiving water body exceeds the minimum standards of the next highest classification that higher water quality will be maintained and protected; and

   (e) Where a discharge will result in lowering the existing water quality of any water body, the Department has made the finding, following opportunity for public participation, that this action is necessary to achieve important economic or social benefits to the State.

4. The discharge(s) covered under this GP will be subject to effluent limitations that require application of best practicable treatment as defined in 38 M.R.S. § 414-A(l)(D).

ACTION

Based on the findings and conclusions as stated above, the Department APPROVES the modification of #MER041000/W009170-5Y-G-M, *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,* issued by the Department on June 26, 2024, SUBJECT TO THE ATTACHED CONDITIONS, including:

1. The terms and conditions included in Part I-IV of #MER041000/W009170-5Y-C-R, *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,* issued by the Department on October 15, 2020, and any subsequent modifications thereof not modified by this permit modification remain in effect and enforceable.

2. *Maine Pollutant Discharge Elimination System Permit Standard Conditions Applicable To All Permits,* revised July 1, 2002, attached to #MER041000/W009170-5Y-C-R, *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,* issued by the Department on October 15, 2020.

3. This permit modification becomes effective upon signature and expires on July 1, 2027, concurrent with #MER041000/W009170-5Y-C-R, *General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,* issued by the Department on October 15, 2020, and any other subsequent modifications thereof. If the GP is to be renewed, it will remain in force until the Department takes final action on the renewal.

DONE AND DATED AT AUGUSTA, MAINE, THIS 1 DAY OF August 2025.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY: Brian Kavanah
Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice January 3, 2024.

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY
MS4 Permit Modification 8/1/2025

ATTACHMENT A

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

MUNICIPAL SEPARATE STORM SEWER SYSTEM GENERAL PERMIT APPROVAL OF DRAFT LOW IMPACT DEVELOPMENT ORDINANCES	)	**BOARD ORDER**
STATE OF MAINE MER041000 W009170-5Y-F-Z	)	**FINDINGS OF FACT AND ORDER ON APPEAL**

Pursuant to 38 M.R.S. § 341-D(4) and 06-096 C.M.R., ch. 2, *Rule Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), the Board of Environmental Protection (Board) has considered Friends of Casco Bay's (FOCB) appeal of the Department of Environmental Protection's (Department) December 14, 2022 approvals of Low Impact Development (LID) model ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth pursuant to the Municipal Separate Storm Sewer System (MS4) General Permit. Based on the materials filed in support of the appeal, responses to the appeal, and other related materials in the Department's file, the Board FINDS THE FOLLOWING FACTS:

1. BACKGROUND AND PROCEDURAL HISTORY

A. MS4 General Permit

Municipal stormwater discharges are subject to regulation pursuant to section 402(p) of the Clean Water Act. 33 U.S.C. § 1342(p). In 1999, the U.S. Environmental Protection Agency (EPA) promulgated a rule requiring National Pollutant Discharge Elimination System (NPDES) permits for discharges from small MS4s (the Phase II Rule).[1] 64 Fed. Reg. 68722 (Dec. 8, 1999). The Phase II Rule requires small MS4s to reduce pollutants discharged from the MS4 "to the maximum extent practicable . . . to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act." 40 C.F.R. § 122.34(a). The Phase II Rule requires that

[1] An MS4 is defined as a conveyance or system of conveyances designed or used for collecting or conveying stormwater (other than a publicly owned treatment works as defined at 40 C.F.R. § 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, the Maine Department of Transportation, the Maine Turnpike Authority, State agency or Federal agency or other public entity that discharges to waters of the State other than groundwater. Generally, the definition of "small MS4" includes (1) those MS4s that serve less than 100,000 persons and are located within the urbanized area boundary as determined by the latest U.S. Census and (2) construction sites that disturb one to five acres. *See* 64 Fed. Reg. 68722 (Dec. 8, 1999); 40 C.F.R. § 122.26(b)(16).

small MS4s implement stormwater management plans (SWMPs) that include six "minimum control measures" (MCMs). *Id.* § 122.34(b). Small MS4s may seek coverage under an applicable general permit or may apply for an individual NPDES permit.

In 2001, the Department received authorization from EPA to administer the NPDES permit program for most of the State of Maine through what is commonly referred to as the Maine Pollutant Discharge Elimination System (MEPDES) permitting program. The Department is authorized by rule to issue general permits for certain wastewater discharges, including discharges from MS4s. 06-096 C.M.R., ch. 529, *General Permits for Certain Wastewater Discharges*. The Department issued the first MS4 General Permit for the State of Maine on July 1, 2013.

In 2016, following a court challenge to the Phase II Rule, EPA promulgated an amended rule, *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System General Permit Remand Rule*, 81 Fed. Reg. 89320 (Dec. 9, 2016) (the Remand Rule). The Remand Rule requires state permitting authorities to issue to small MS4s either a "Comprehensive General Permit" or a "Two-Step General Permit." *See* 40 C.F.R. § 122.28(d). The Remand Rule also clarifies that the conditions of a general permit "must be expressed in terms that are 'clear, specific, and measurable'" and that "the permit requirements must be enforceable, and must provide a set of performance expectations and schedules that are readily understood by the permittee, the public, and the [state] permitting authority alike." 81 Fed. Reg. at 89326.

On December 6, 2019, the Department initiated the formal process to renew the MS4 General Permit (GP), last issued by the Department on July 1, 2013, for a five-year term. On October 15, 2020, the Department issued a combined Waste Discharge License (WDL), W009170-5Y-C-R, and MEPDES GP, MER041000, thereby renewing the MS4 GP for a period of five years. The MS4 GP regulates the discharge of stormwater from thirty small municipal MS4s across the State. In accordance with the Remand Rule, the MS4 GP requires regulated entities to implement and enforce a program, under MCM 5, to address post-construction stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale.

B. 2020 Appeal

On November 13, 2020, FOCB filed a timely appeal of the MS4 GP with the Board. Relevant to the present appeal, FOCB argued that the Permit had to require that the municipal post-construction ordinance or other regulatory mechanism under MCM 5 mandate the use of LID site-planning and design strategies to the maximum extent practicable.[2]

[2] As defined in the MS4 GP, LID "means an approach to land development or redevelopment that provides water quality treatment of stormwater as close to its source as possible."

On June 17, 2021, the Board remanded the MS4 GP to the Commissioner for the incorporation of "clear, specific, and measurable LID BMPs [best management practices] into the permit." Board Order, Exhibit (Ex.) 7, at 6-7.[3]

On November 23, 2021, the Department issued a Permit Modification (MEPDES MER041000/WDL W009170-5Y-E-M), which included relevant language as follows:

> **5. MCM5 - Post-Construction Stormwater Management in New Development and Redevelopment.**
>
> Each permittee must implement and enforce a program to address post construction stormwater runoff to the maximum extent practicable from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development that discharge into the MS4.
>
> a. The permittee must implement strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts as follows:
>
> On or before September 1, 2022, each permittee must develop a Model LID Ordinance for stormwater management on new and redevelopment sites which establishes performance standards for each of the LID Measures contained in Table 1 of Appendix F. The Model LID ordinance should, at a minimum, refer to Appendix F for guidance.
>
> The Model LID Ordinance shall be submitted to the [Department] for review by September 1, 2022. [The Department] will post the model ordinance for public comments and approve it, with or without modifications, on or before November 1, 2022.
>
> On or before July 1, 2024, each permittee shall adopt an ordinance or regulatory mechanism that is at least as stringent as the required elements of the Model LID Ordinance or incorporate all of its required elements into the permittee's code of ordinances or other enforceable regulatory mechanism.

Permit Modification, Ex. 8, at 7-8.

[3] Citations to "Exhibits" refer to the exhibits submitted by FOCB with its appeal. Page numbers refer to the exhibit page numbers, not the individual page numbers within the exhibit document.

C. 2022 Ordinance Approvals and Present Appeal

On or before September 1, 2022, all thirty entities covered by the MS4 GP submitted draft model LID ordinances to the Department, which were posted for a 30-day public comment period on the Department's website.

On September 29, 2022, FOCB commented on the draft model LID ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth (collectively, the Licensees). FOCB contended that the ordinances did not comply with the Permit Modification and the Remand Rule because they did not include measurable performance standards for the nine LID elements described in Appendix F to the Permit Modification. Table 1 of Appendix F to the Permit Modification delineates nine "LID measures" and corresponding techniques: Minimize site clearing; Protect natural drainage system; Minimize the decrease in time of concentration; Minimize impervious area or the effect of impervious area; Minimize soil compaction; Minimize lawns and maximize landscaping that encourages runoff retention; Provide vegetated open-channel conveyance systems; Rainwater is stored for later reuse for the building or landscape; and Stormwater Quality Treatment and Retention Requirements (e.g., buffers, pervious pavement).

On December 14, 2022, the Department issued letters to all thirty entities covered by the MS4 GP approving the draft LID model ordinances as submitted. The Department noted that it did not have any "objection to the proposal as written." The Department went on to state:

> However, the Department would like the [Licensee] to be aware that the Department is in the process of commencing rulemaking to revise 06-096 Chapter 500, *Stormwater Management.*[4]. . . The final rule is likely to contain clear, specific and measurable LID measures and techniques that the [Licensee] may want to incorporate into the final LID Ordinance to clarify expectations and the enforceability of the ordinance.

Department Letter, Ex. 5.

On December 16, 2022, the Department responded to FOCB's comments on the model ordinances. The Department explained its position as follows:

> A number of [the MS4] communities did not establish clear, specific and measurable performance standards in their [model ordinances] knowing that the Department is preparing to begin the stakeholder process to make revisions to

[4] The Chapter 500 stormwater rules mainly govern projects requiring a stormwater permit pursuant to the Stormwater Management Law, 38 M.R.S. § 420-D, and projects requiring a permit pursuant to the Site Location of Development Law, 38 M.R.S. §§ 481-490.

> Department rule Chapter 500, *Stormwater Management*. Establishing clear, specific and measurable LID measures and techniques will likely be established in the revised [Chapter 500] rule. The Department has no objection to the proposed ordinances as written to date but has advised the MS4 communities to participate in the Chapter 500 rulemaking and incorporate clear, specific and measurable techniques that are established in the final rule into their final LID Ordinances.

Department Response, Ex. 3.

On January 12, 2023, EPA submitted a letter to the Department stating that "the approved ordinances do not meet the regulatory requirements found at 40 CFR 122.34, or the terms of the MS4 General Permit requiring each MCM condition to contain clear, specific, and measurable terms." EPA further objected to the Department's December 14, 2022 approvals in that the approval letters "provide vague direction" regarding the incorporation of LID measures and "indicat[e] the communities have an option to include clear, specific and measurable LID measures" at a future time. Concluding that "immediate action is needed" to address the inadequate ordinances, EPA proposed that the Department:

> [1] [R]evoke approval of the model LID ordinances submitted by those permit holders that did not contain clear, specific and measurable terms for each LID measure found in Table 1 of Appendix F of the MS4 General Permit and issue new approval letters that contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that those permit holders must adopt in their LID ordinance as required by the MS4 General Permit.
>
> [or]
>
> [2] Modify the MS4 General Permit to contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that all permit holders must adopt in their LID ordinance.

Letter from Lynne Jennings, Chief, Water Permits Branch, EPA, to Gregg Wood, MS4 Program Manager, Maine Department of Environmental Protection (Jan. 12, 2023), at 3.

On January 17, 2023, FOCB filed with the Board an appeal of the Department's approval of the model ordinances submitted by the Licensees.

On March 3, 2023, the Cumberland County Soil & Water Conservation District (CCSWCD), which represents the Licensees,[5] requested that the Board dismiss FOCB's appeal as untimely and because the Department's LID ordinance approvals did not constitute final agency action. On April 4, 2023, the Board Presiding Officer denied CCSWCD's Motion to Dismiss.

On May 8, 2023, CCSWCD submitted a letter to the Board as a Response to FOCB's appeal. In that letter, CCSWCD suggested leaving the existing, approved model ordinances in effect with an understanding that the Licensees would "commit to incorporating the Chapter 500 LID provisions that we expect the Department will adopt, where applicable to their individual circumstances, into their ordinances."

2. STANDING

FOCB states that it is a nonprofit organization with more than 3,000 members that works to improve and protect the environmental health of Casco Bay and its watershed. FOCB states that its members depend on clean and healthy water in the Bay and that it has identified stormwater pollution as one of the most serious threats to the Bay. FOCB further states that it will be negatively affected if stormwater pollution is not adequately controlled. FOCB participated in the MS4 permitting process before the Department by filing comments and attending stakeholder meetings.

The Board finds that FOCB may suffer particularized injury as a result of the Department's MS4 permitting decision and that FOCB therefore is an aggrieved person and has standing to bring this appeal pursuant to Chapter 2, §§ 1(B) and 24.

3. REMEDY REQUESTED

FOCB requests that the Board vacate and remand the Department's approvals of the draft municipal LID ordinances to the Department "for a comprehensive review of the municipal model LID ordinances and to require the development of a uniform model baseline that establishes the minimum elements and performance standards to be included in municipal LID ordinances."[6]

[5] CCSWCD states, and FOCB does not contest, that it convenes the Interlocal Stormwater Working Group, which is comprised of the Licensees and a few additional entities. As explained in the Board's April 4, 2023 Order, the Board considers CCSWCD to be representing the Licensees in this appeal proceeding.

[6] FOCB also requests that the Board remand the November 23, 2021 Permit Modification. However, the appeal period for the Permit Modification passed long before FOCB filed the present appeal. FOCB also does not challenge the Permit Modification itself, but instead takes issue with the Department's subsequent approvals of the model ordinances. Therefore, the Board does not have jurisdiction to remand or otherwise affect the Permit Modification pursuant to this appeal.

4. RESPONSE TO REQUEST FOR A PUBLIC HEARING

FOCB requests that the Board hold a public hearing on this appeal. Pursuant to 38 M.R.S. § 341-D(4) and Chapter 2, § 24(A), holding a public hearing is discretionary. The Board concludes that a public hearing is not warranted because FOCB had the opportunity to submit evidence and comment to the Department during the public comment period and did avail itself of the opportunity. Further, the record is sufficiently developed to allow the Board to decide the appeal based on that record, FOCB's arguments, and CCSWCD's response.

5. DISCUSSION AND FINDINGS OF FACT

The applicable statutes and regulations require that small MS4s reduce stormwater pollution to the maximum extent practicable using minimum control measures that are "clear, specific, and measurable." 40 C.F.R. § 122.34; 81 Fed. Reg. at 89326. The Board's Order in the 2020 Appeal specifically noted that "although LID [BMPs] are not specifically required by the Remand Rule or Department regulations . . . incorporating clear, specific, and measurable LID BMPS into the permit would satisfy the Remand Rule and is also reasonable and appropriate." Ex. 7, at 6. Further, the Permit Modification specifically provides that the municipalities "must implement strategies which include a combination of structural and/or non-structural [LID] BMPs" by submitting to the Department, and eventually adopting, an ordinance or other regulatory mechanism that "establishes performance standards for each of the LID Measures contained in Table 1 of Appendix F." Ex. 8, at 8.

FOCB, CCSWCD, and EPA all appear to agree that the model ordinances submitted by the Licensees and approved by the Department do not include "clear, specific, and measurable" performance standards. Even in approving the model ordinances, the Department acknowledged that the submitted ordinances do not include "clear, specific and measurable LID measures" and suggested that the municipalities "may want to incorporate [such measures] into the final LID Ordinance" based on the results of the pending Chapter 500 rulemaking process. *See, e.g.*, Ex 5, at 1. The Board therefore concludes that the Department erred by approving model LID ordinances that do not contain "clear, specific, and measurable" performance standards.

CCSWCD suggests that the most efficient way to resolve this appeal would be to direct the Department to require that the Licensees adopt ordinances incorporating any LID provisions that are eventually developed through the Chapter 500 rulemaking process. We understand the pragmatic reasons for looking to the ongoing Chapter 500 rulemaking process as an efficient way of establishing uniform LID standards. However, whereas EPA demonstrates a need for "immediate action" to address the deficient model ordinances, the Chapter 500 rulemaking process has an indefinite end date and an undetermined substantive outcome. The Board is charged with the responsibility to decide appeals "as expeditiously as possible" (Ch. 2 § 24(G)) and lacks authority to expressly delay resolution of this appeal and make such resolution contingent on a future outcome in a distinct proceeding.

The Board therefore concludes that the Department's approvals of the Licensees'[7] model LID ordinances must be vacated and remanded for the Department to set clear, specific, and measurable standards for the municipal LID ordinances consistent with the MS4 GP, as modified by the Permit Modification, including Appendix F. The Board recognizes that the Permit Modification's July 1, 2024 deadline for final adoption of model LID ordinances is fast approaching. The Board does not have authority to modify that deadline pursuant to this appeal because the Permit Modification itself is not before us. On remand, however, the Department certainly may consider whether the July 1, 2024 deadline should be modified for the Licensees and pursue any appropriate mechanism for doing so.

ORDER ON APPEAL

Therefore, the Board VACATES and REMANDS to the Commissioner the Department's December 14, 2022 approvals of the model LID ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth for the Department to expeditiously set clear, specific, and measurable standards for the municipal LID ordinances consistent with Section 2(A)(5)(a) of the Permit Modification, including Appendix F, in accordance with this Order.

DONE AND DATED IN AUGUSTA, MAINE THIS 1st DAY OF NOVEMBER, 2023.

BOARD OF ENVIRONMENTAL PROTECTION

BY: Robert S. Duchesne
ROBERT S. DUCHESNE, PRESIDING OFFICER

[7] Although FOCB mentions the other municipalities in their appeal, the Board considers FOCB to have only appealed the Department's approvals for the Licensees -- the thirteen municipalities represented by CCSWCD. It is unclear whether FOCB, an organization focused on the environment of Casco Bay, would have aggrieved status as to municipalities in other watersheds. While a uniform approach to the model ordinances for all thirty municipalities covered by the MS4 GP may be advisable, the Board does not have the authority at this time to order relief as to the municipalities that are not part of this appeal.

ATTACHMENT B

APPENDIX F
LOW IMPACT DEVELOPMENT MEASURES

1 - Minimize Site Clearing

Performance Standards

a. Require that all applicants provide an inventory of sensitive areas present on site pre-development as part of the development application and prioritize* their protection. Layout of the development should be aligned with conservation of sensitive areas present onsite. Applicants must provide a narrative description of how they prioritized these areas for protection from disturbance. Sensitive areas include:

   i. Waters of the State
   ii. Protected Natural Resources
   iii. Predevelopment drainageways
   iv. High Permeability Soils
   v. Existing stormwater treatment buffers.
   vi. Shoreland Zone setbacks.
   vii Significant and Essential Wildlife Habitats
   viii Areas vulnerable to anticipated sea level rise based on FEMA's 100-year flood elevation and at least 1.5 feet of relative sea rise by 2050 and 4 feet of relative sea level rise by 2100 consistent with Maine law, 38 MRS, Chapter 3, Section 484.
   ix Open shellfish harvesting areas.
   x. Public beaches and recreational areas.

b. Require that all development proposals show limits of disturbance on all site plans. Limits of disturbance must be marked on-site using flagging, fencing, signs or other means prior to any disturbance and must be maintained throughout each project.

c. Maintain a minimum 25-foot buffer on all protected natural resources including intermittent streams.

2 - Protect natural drainage system

Performance Standards

a. Require that new culvert crossings for any waters of the state use Maine Stream Smart Principles to preserve the natural pre- development drainageways and be designed in accordance with all required state and federal permits. Stream crossings over portions of streams that have been artificially channelized are not subject to this standard.

b. Require that proposed developments preserve the natural pre-development drainageways. This does not include instances where the time of concentration for pre-development drainageway is the same as or shorter than the post-development drainageway.

3 - Maximize time of concentration

Performance Standards

See Section 10 of this document.

4 - Minimize impervious area

Performance Standards

a. Minimize the impervious surfaces on the site using the following strategies:

- Multi-story buildings and parking garages.
- Utilize pervious installed storm water treatment measures.
- Minimize connected impervious areas by treating at the source. Direct runoff from roadways and parking areas into water quality treatment buffers and utilize best management practices (BMPs) such as grassed underdrain soil filters, bioretention facilities, etc.

4 - Minimize impervious area (cont'd)

b. Roads:

i. Minimize the width of proposed roads by not exceeding the minimum width requirements as established in applicable land use code. Waivers of minimum pavement and shoulder widths will be considered; however, waivers will not be granted for widths less than the minimum required by emergency vehicles.

ii Minimize the width of proposed driveways to the minimum width as established in applicable land use code or as required by emergency vehicles.

Optional Standards

a. Require that dead-end streets be no longer than 1000 feet.

b. Require dead-end roads to be constructed to provide a hammerhead or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space and/or has a stormwater treatment measure to promote on-site infiltration.

c. Require that cul-de-sac roads be constructed with the center used for stormwater treatment measures unless type A or B soils are present in the center, in which case this area should be used to promote natural infiltration on-site.

c. Parking:

i. Minimize the number of proposed parking spaces by not exceeding the minimum parking requirements for use in the applicable land use code.

4 - Minimize impervious area (cont'd)

Optional Standards

Offer waivers for minimum parking standards set forth in local zoning laws by:

- Establishing shared parking provisions.
- Limiting parking lot travel aisles to a maximum of 22 feet wide.
- Requiring garages under buildings where appropriate, optionally tied to a density or height bonus.
- Incorporating maximum commercial parking space size with a 9-foot width and a 19-foot length and allow developers to reduce the 19-foot length if an equivalent overhang was provided in all developments.
- Ensure parking volume requirements are up to date, including establishing maximum parking limits in appropriate areas.

5- Minimize the effect of impervious area

Performance Standards

a. Require that **new development** sites that will result in more than 20,000 sq. ft. of impervious area to disconnect or treat (construct and maintain or connect to a structural stormwater treatment measure) no less than 95% of the impervious area and no less than 80% of the developed area unless site constraints make this threshold unachievable. Directing runoff from impervious areas to vegetated areas is considered to meet the disconnection requirement.

   i. Treatment and retention measures used to meet performance standard (a) of this section must achieve 80% removal of total suspended solids and at least 60% removal of both total phosphorus and total nitrogen.

   ii. Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures that maximize infiltration to replicate pre-development hydrology.

5- Minimize the effect of impervious area (cont'd)

b. Require that **redevelopment** of sites with more than 20,000 square feet of impervious area disconnect or treat 30% of the existing impervious area plus 100% of any new impervious area unless site constraints make this standard unachievable.

   i. Treatment and retention measures used to meet performance standard (b) of this section must achieve 80% removal of total suspended solids and at least 60% removal of both total phosphorus and total nitrogen.

c. Require that roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures that maximizes infiltration.

6- Minimize soil compaction

Performance Standards

a. Restrict construction equipment movement, parking and storage to only the disturbed area or existing impervious area. See performance standard 1(b) for the requirement to mark out areas on-site as well as on-site plan.

b. Areas to be revegetated due to compacted soils as a result of construction activities shall be rototilled, aerated, have soil amendments incorporated or other like corrective actions based on site soils and conditions prior to planting.

7- Minimize lawns and maximize landscaping that encourages runoff retention

Performance Standard

a. Utilize Maine Native or Climate-Resilient Northeastern native plants in any proposed general buffer area or any stormwater treatment buffer where planting of buffers is proposed. Plantings should be appropriate for the site conditions: trees, grasses and or other native plants in sufficient numbers and density to prevent soil erosion and replicate natural site conditions.

b. Planting of invasive plants is prohibited. See Maine Department of Agriculture, Conservation & Forestry's/Maine Natural Areas Program Advisory List of Invasive Plants – 2019.

7- Minimize lawns and maximize landscaping that encourages runoff retention (cont'd)

c. Grading and landscape design should minimize erosion potential by way of creating sheet flow directed to well vegetated areas to achieve retention and decrease the time on concentration.

Exception:

Notwithstanding other provisions in municipal ordinances or state law, requirements to plant "Maine Native Vegetation" or "Climate Resilient Northeast Native Vegetation" shall not be construed as a restriction on the rights of individuals to engage in agricultural practices that are legally protected by the Maine Agriculture Protection Act and the "Right to Food" provision in the Maine Constitution (Constitution, Art. I, §25).

8– Provide vegetated open-channel conveyance systems

Performance Standard

a. Prioritize the use of vegetated open-channel conveyance systems for managing runoff of new roads. The applicant may submit an alternative analysis which demonstrates that this performance standard is impracticable.

b. In designing vegetated conveyance measures, transitions to and from culverts must be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydrologic conditions associated with the conveyance measure.

c. Require that all new and redesigned roads must take into consideration existing topography and utilize existing drainage ways, swales, depressions and storage areas in their natural state to preserve the natural hydrology, drainage and infiltration features.

9- Rainwater Capture and Reuse

Optional Standard

a. Encourage the capture and re-use of water via cisterns or rain barrels for later reuse for landscaping.

10- Stormwater Quality Treatment and Retention Measures

Performance Standards

a. Require individual stormwater treatment measures to treat a maximum of one acre of impervious area, except for institutional or commercial uses where a higher level of storage, detention or treatment can be achieved more cost effectively by treating an area more than one acre.

b. Stormwater quality treatment system must be designed to improve or maintain water quality and to:

   i. Account for upstream and up gradient runoff flows onto, over or through the site to be developed or re-developed.

   ii. Consider chloride source control measures in the urban impaired streams and lakes most at risk watersheds or where chloride is identified as a stressor by the Department.

c. Require retention of rooftop runoff through the use of stormwater treatment measures that utilize infiltration, sheet flow over vegetated stormwater buffers, or capture stormwater for beneficial re-use.

   Exception: Site specific conditions may limit the ability to utilize infiltration (low saturated soil hydraulic conductivity, high seasonal high-water table, rooftops known to have high pollutant loading, for instance rooftops of industrial facilities. In such situations, the applicant shall:

   i. Provide a narrative detailing the site-specific limiting factor and how it cannot be avoided through alternative site layout. In the case of high seasonal high-water table, the applicant must provide a detailed soil investigation as supporting evidence for this limitation. In the case of low saturated soil hydraulic conductivity, the applicant must provide a hydraulic conductivity test or testimony from a licensed professional soil scientist as supporting evidence for this limitation.

   ii. Utilize an alternative design including structural stormwater control measure(s) detaining rooftop runoff with a drawdown time between 24 and 48 hours. In the case of rooftops with high pollutant loading, manufactured or equivalent treatment measures effectively targeting the pollutants of concern must be implemented.

11. – Other

Performance Standards

a. Require that all site plans show snow storage areas.

b. Snow storage in any stormwater treatment measure or shoreland zone buffer is prohibited.

c. The ordinance must provide a mechanism to ensure that stormwater treatment measures will be maintained and functioning as designed in cases where ownership has changed.

ATTACHMENT C

Low Impact Development Strategies for the (City/Town of _____, Maine

Date _____

The following ordinance shall serve as a basis for the City/Town of _____to adopt an ordinance or other regulatory mechanism to address Low Impact Development strategies as required in MCM 5 of the MS4 General Permit.

Table of Contents

Section 1 Purpose

The purpose of this Low Impact Development (LID) Ordinance for Low Impact Development Strategies (the "LID Ordinance") is to protect, maintain and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to minimize the adverse effects of new development and redevelopment on the environment. The performance standards contained in this document were developed to address requirements of the 2022 General Permit for Stormwater Discharges to Municipal Separate Storm Sewer Systems. This ordinance seeks to meet this purpose through the following objectives:

1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;

2. Require that new development, redevelopment and all land conversion activities maintain the natural hydrologic characteristics of the land in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;

3. Establish minimum post-development LID Management standards and design criteria for the control of stormwater runoff quantity and quality, the protection of properties and aquatic and groundwater resources downstream from land development, and to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;

4. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum post-development LID Management standards;

5. Encourage the use of LID practices such as reducing impervious cover and the preservation of greenspace and other natural areas.

Section 2 Definitions

Disturbed Area - Means all land areas of a Site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a Project. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include Redevelopment and new Impervious Areas. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Drainageway – Means the same as “Drainageway” defined in Chapter 500

General Permit – Means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved on October 15, 2020, modified November 23, 2021, and June 26, 2024 and any amendment or renewal thereof.

High Intensity Soil Survey – Means a Class A survey defined by the March 2009 Guidelines for Maine Certified Soil Scientist for Soil Identification and Mapping, prepared by the Maine Association of Professional Soil Scientists or verification of available soil mapping.

High Permeability Soils – Means hydrologic soil groups A or B as determined by on-site soil testing by a certified soil scientist using a High Intensity Soil Survey.

Impervious Area - Means the total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and under drained artificial turf fields are all considered impervious. For the purpose of determining whether a Site exceeds the Impervious Area thresholds requiring conformance to LID performance standards, the City/Town may exclude these from calculation of Impervious Area if these are designed to infiltrate.

Section 2 Definitions

Impracticable – Means impossible in practice to do or carry out. Not achievable.

Lot – Means a contiguous area of land in single ownership comprised of one (1) or more parcels described in deeds, plats or other legal documents recorded in the _County Registry of Deeds.

Low Impact Development (LID) or green infrastructure means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Low impact development strategies may be either nonstructural or structural, except that low impact development strategies utilizing structural stormwater management techniques shall be limited to an impervious contributing drainage area equal to or less than 1 acre. Low impact development strategies include, but are not limited to: bioretention filters, grass swales and channels, vegetated filter strips, permeable pavements, rain gardens and vegetated rooftops.

Maine Native Vegetation – Means vegetation including grass seed mixtures, identified as native to Maine from lists maintained by: US Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine Licensed Landscape Architect.

Maine Stream Smart Principles – Means a Stream Crossing designed by a Maine Professional Engineer who has completed the Maine Audubon Society Stream Smart Workshops (Parts I and II), which includes the standards recommended by that program's stream span, elevation, slope and skew and substrate to promote passage of fish and other organisms and to limit road-damaging flows from extreme weather.

Municipality – Means the City/Town of _____.

Municipal Separate Storm Sewer Systems (MS4) - Means a conveyance or system of conveyances designed or used for collecting or conveying Stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal roads, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater.

Section 2 Definitions

New Development – Means the same as “New Development or Construction” defined in the General Permit. The General Permit defines “New Development or Construction” as follows: “New Development or Construction” means activity undertaken to develop property, including but not limited to: the construction of buildings, parking lots, roads and other new impervious surfaces; landscaping; and other activities that disturb land areas. New Development or Construction does not include Redevelopment or maintenance. Permitted municipalities may define New Development more stringently.

Operation and Maintenance plan: A plan that defines the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a LID Management system to insure that it continues to function as designed.

Parcel – Means the same as "Tract or parcel of land" as defined at 30 M.R.S. §4401.6 *et seq. (or alternately, the municipality may reference their own definition of parcel).* 30 M.R.S. §4401.6 states Tract or Parcel of land means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971

Permitting Authority - Means the Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the City/Town ordinances to approve Development or Redevelopment of Sites.

Project – Means Construction Activity undertaken for New Development or Redevelopment, both as defined in the General Permit, located on a Site that will Discharge Stormwater to a Small MS4 located partially or entirely within the Urbanized Area.

Protected Natural Resource - Means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds, or rivers, streams or brooks as defined in the Natural Resources Protection Act at 38 M.R.S.
§480-B.

Section 2 Definitions

Redevelopment – Means the same as "Redevelopment" defined in the General Permit. The General Permit defines "Redevelopment" as follows: "Redevelopment" means an activity, not including maintenance, undertaken to redevelop or otherwise improve property in which the newly developed area is located within the same footprint as the existing developed area

Regulated Small MS4 - Means any Small MS4 authorized by the most recent, in-force General Permit or the general permits for the Discharge of Stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within the Urbanized Area.

Runoff – Means the part of precipitation from rain or melting ice and snow that flows across a surface as sheet flow, shallow concentrated flow or in Drainageways.

Small MS4 - Means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state, or federally owned systems, such as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16).

Significant and Essential Wildlife Habitats – Means the areas identified as Significant or Essential Habitats of endangered or threatened species as identified by the Maine Department of Inland Fisheries and Wildlife either on the Beginning with Habitat viewer or in consultation with the Maine Department of Inland Fisheries and Wildlife.

Site - Means the portion of a Lot, Parcel, or subdivision which is proposed for Construction Activity, including open space, Stormwater Treatment Measures, and Disturbed Area, subject to this Ordinance.

Stormwater- Means the part of precipitation including Runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in Drainageways. "Stormwater" has the same meaning as "storm water".

Stream Crossing - Means the mechanism by which any road, sidewalk, or other structural feature of a Site will cross or pass over or through a Water of the State which has a stream bank full width of 6 feet or less.

Section 2 Definitions

Stormwater Treatment Measure – Means a Stormwater management system or innovative treatment measure as described in Chapter 500 4.c.(3) Types of treatment measures allowed. These measures include wet ponds, vegetated soil filters, infiltration, buffers, or innovative treatment measures. For purposes of this Ordinance these are cumulatively referred to as Stormwater Treatment Measures, or individually referred to as Stormwater Treatment Wet Pond, Stormwater Treatment Vegetated Soil Filter, Stormwater Treatment Infiltration Measure, Stormwater Treatment Buffer, or Stormwater Treatment Innovative Measure.

Subdivision - As defined in Title 30-A M.R.S. §§ 4401 et seq. (the Maine Subdivision statute) "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

Time of Concentration – Means the same as “Time of concentration” defined in Chapter 500.

Urbanized Area - Means the area of the Municipality so defined by the inclusive sum of the 2000 decennial census and the 2010 decennial census by the U.S. Census Bureau.

Waters of the State – See 38 M.R.S. §361-A (7).

Section 3 Applicability

The LID Performance Standards contained in Section 7 of this LID Ordinance apply to any project for which an application for development review approval is filed with the City/Town on or after
__/__/2026, that creates :

a. A disturbed Area of one or more acres of land, or
b. A Disturbed Area that is less than one acre of land if the Construction Activity creating Disturbed Area is less than one acre of land and is part of a larger subdivision that as approved or amended would create Disturbed Area of one acre or more.

Section 4 Procedure

See _____ of the City/Town Zoning and Land Use Code, Development Review and Standards (or like reference.

Section 5 Submission Requirements

See _____ of the City/Town Zoning and Land Use Code, Development Review and Standards (or like reference). In addition, the following will be required for applications for projects to which this LID Ordinance apply:

5.1 Project Narrative

The applicant shall provide a Project narrative describing:

- the overall approach to Stormwater management at the Project Site,
- a listing of Stormwater Treatment Measures that will be in use, stating which will be maintained privately and which will be offered to the City/Town for acceptance and operation,
- how they have prioritized protection of the sensitive areas from disturbance as required in Section 7, and
- a rationale for any waivers from performance standards (see Sections 7 and 10).

5.2 Project Plans Contents

The applicant shall submit Project Plans which shall consist of a graphic representation of the Site at a scale no smaller than 1 inch = __ feet showing:

- Waters of the State and their associated areas within the Shoreland Zone
- Urban Impaired Streams identified in 06-096 CMR Chapter 502
- Protected Natural Resources
- Significant and Essential Wildlife Habitats
- High Permeability Soils
- Limits of disturbance
- Existing and proposed buffer or setback areas
- Locations of snow storage areas
- Stormwater Treatment Measures to be used
- Predevelopment drainage areas, Drainageways and associated Time of Concentration
- Post-development drainage areas, Drainageways and associated Time of Concentration

Section 5 Submission Requirements

5.3 Submittals related to Infiltration

The applicant must submit the following to permit review of the Project regarding infiltration

- Information required by Chapter 500 Section (7)(D)(5)(c) Infiltration Submittals including a plan for use of de-icing materials, pesticides and fertilizers within the drainage area of any infiltration Stormwater Treatment Measures.
- Locations of any Maine Uncontrolled Hazardous Substance Sites, Maine Voluntary Response Action Program sites, federal Resource Conservation and Recovery Act ("RCRA") Corrective Action sites, or Petroleum Remediation sites on or adjacent to the Site.

5.4 Operations and Maintenance (O&M)

An O&M Plan is required at the time of application for all projects. The maintenance plan must be designed to ensure compliance with the MS4 Permit, this ordinance, and that the Maine Surface Water Quality Standards are met in all seasons and throughout the life of the system. The Operation and Maintenance Plan must remain on file with the *[LID Authority]* and must be an ongoing requirement. It mustl address 1) the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural LID Management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; 2) there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented under the ordinance

Section 6 Performance Standards

At a minimum, the applicant must address the following Low Impact Development standards 1 – 10.

1. Minimize site clearing;
2. Protect natural drainage systems;
3. Minimize the decrease in time of concentration;
4. Minimize impervious area;
5. Minimize the effect of impervious area;
6. Minimize soil compaction;
7. Minimize lawns and maximize landscaping that encourages runoff retention;
8. Provide vegetated open-channel conveyance systems;
9. Rainwater Capture and Reuse;
10. Stormwater Quality Treatment and Retention Requirements

Department Note – Clear, specific and measurable performance standards to be included in this section of LID Ordinance can be found in Table I of Appendix F of the Department's permit modification dated August 1 , 2025.

Section 7 Enforcement

It shall be unlawful for the Owner or their Representative to violate any provision of or to fail to comply with any of the requirements of this LID Ordinance. Whenever the City/Town believes that a person has violated this LID Ordinance, the City/Town may enforce this Ordinance in accordance with 30-A M.R.S.
§ 4452.

(1) Notice of Violation. In addition to the provisions contained in _____of this City/Town Code, whenever the City/Town believes that a Person has violated this LID Ordinance, the City/Town) may order compliance with this LID Ordinance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance;

Section 7 Enforcement

b. At the Owner's expense, compliance with BMPs is required as a condition of approval of a development project including the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or

c. The payment of fines, of the City's/Town's remediation costs and of the City's/Town's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation or this LID Ordinance is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

Section 8 Severability and Conflicts

The provisions of this LID Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this LID Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this LID Ordinance.

Where a provision of this LID Ordinance conflict with another provision(s) of the City/Town Ordinance, the stricter language shall apply.

Section 9 Waivers

The _____ (cite applicable City/Town party) or his or her Designee may grant a waiver if they determine that the applicant has demonstrated equivalent water quality protection standards through the use of best management practices or low impact development strategies that provide an equivalent level of protection. Waivers may include exceptions identified in Section 6, Performance Standards).

Section 10 Authority

The City/Town shall enact an ordinance pursuant to Maine Constitution Art. VIII, Part Second, §1 and 30-A M.R.S. §§3001 et seq. (municipal home rule authority), 38 M.R.S.§413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System (NPDES). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the City/Town as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this LID Ordinance as part of the City's/Town's Stormwater management program in order to satisfy the minimum control measures for Post Construction Stormwater Management in New Development and Redevelopment.

ATTACHMENT D

RESPONSE TO COMMENTS

During the period of October 2, 2024, through the issuance date of the permit/license modification, the Department solicited comments from the permittee and state and federal agencies on the proposed draft permit/license modification to be issued for the discharge(s) from the thirty (30) permittees covered under the MS4 permit. The Department received written comments from the following entities:

1. City of Lewiston
2. Friends of Casco Bay
3. City of Biddeford
4. Bangor Area Stormwater Group
5. Town of Falmouth
6. U.S. Environmental Protection Agency
7. Interlocal Stormwater Working Group
8. Integrated Environmental Engineering, Inc.
9. Wright-Pierce
10. Town of Gorham
11. City of Saco
12. Town of Yarmouth
13. Town of Windham
14. City of South Portland

Many of the commenters listed above had similar comments on a specific element(s) of the proposed permit modification. Rather than respond to each individual comment from each commentor, the responses have been prepared to address common substantive comments on a particular concept(s), paragraph(s) or sentence(s). Commenters will be referred to numerically in each comment as listed above.

Timeline to Adopt the Ordinances

Comment #1 - Commenters #1, #3, #4, #5, #7, #8, #9, #11, #12, and #14 stated that they would like the November 5, 2025, deadline to adopt a final ordinance to be extended to one year after the date permit modification is finalized to allow adequate time for city/town staff to organize the final standards and follow the required public review process and adoption process.

Response #1 – The concept of permittees needing at least 12 months for city/town staff to organize the final standards and follow the required public review and adoption process has been repeated in comments submitted to the Department a number of times over the course of the last three years. On June 25, 2024, the Department issued a permit modification extending the deadline for permittees to formally adopt a LID Ordinance from July 1, 2024, to November 5, 2025. Given the time that has elapsed since issuance of the June 25, 2024, permit modification due to two public comment periods (45 days and 21 days) on this permit modification, the November 5, 2025, date for permittees to finalize their LID ordinances is no longer feasible.

Therefore, rather than establishing a hard deadline that may have to modified once again if this permit modification is appealed, the suggestion of language stating the final deadline is extended to one year after the date permit modification is finalized, including finalizing any appeals, is appropriate. Therefore, Section 2(A)(5)(a) the permit modification is being modified to read in relevant part as follows:

A. Low Impact Development

5. MCM5 - Post-Construction Stormwater Management in New Development and Redevelopment.

Each permittee must implement and enforce a program to address post construction stormwater runoff to the maximum extent practicable from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development that discharge into the MS4.

a. The permittee must implement strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts as follows:

Within one year of this permit modification being finalized (including any appeal), each permittee must adopt a LID Ordinance or other regulatory mechanism for stormwater management on new and redevelopment sites which establishes clear, specific and measurable standards for each of the LID measures contained in Table 1 of Appendix F of this permit modification to the maximum extent practicable. See Attachment B of this permit modification for a copy of Table 1 of Appendix F.

Comment #2- Commenter #4, #5, #7 and #13 – Requests clarification on whether "optional standards" such as the ones listed in Section 4 of Appendix F are truly optional for municipalities to include in their ordinances?

Response #2 – Yes, the optional standards are optional and are suggestions to strength the municipalities ordinance.

Comment #3 – Commenter #3 and #5 – Request clarification on the definitions section in Attachment C (Model Ordinance) as to whether municipalities are required to use the definitions in the sample ordinance for terms that are used in the draft permit modification or do municipalities have the flexibility and discretion to use different terms that are otherwise undefined in the draft permit modification.

Response #3 - Municipalities have the flexibility and discretion to use different terms that are otherwise undefined in the draft permit modification.

RESPONSE TO COMMENTS (cont'd)

Comment #4 – Commenter #5 would like clarification on what process, if any, MEDEP will be using to review each permittee's ordinance to verify compliance with the permit modification.

Response #4 – The ordinances for each municipality will be treated like any other compliance requirement in a permit and will be reviewed by stormwater compliance staff to determine compliance with the permit conditions. Municipalities are welcome to submit drafts of their ordinances to the compliance staff prior to the final submission deadline for review and comment.

Comment #5 – Commenter #4 – states that Section 4a of Appendix F utilizes the word "strategies" rather than "standards" which introduces uncertainty about enforceability and would like clarification whether applicants may opt out of strategies by providing justification.

Response #5 – The bullets in section 4a of Appendix F are not standards and commenters on a previous draft of Appendix F suggested using the word strategies as a more appropriate term. Yes, applicants may opt out of strategies by providing a justification as Appendix F as drafted states " (developer provides narrative describing why strategies cannot be achieved at site if exception is requested)."

Comment #6 – Commenter #4, #10, #11 and #13 – Requests clarification to Section 10.a.i detailing specific performance curves or performance references to be cited by developers to determine if stormwater control measures are meeting pollutant removal goals detailed in the requirement.

Response #6 – According to recent research conducted at the University of New Hampshire, the following BMPs that are properly designed, constructed, inspected and maintained can achieve the removal rates for total suspended solids (TSS), total phosphorus (TP) and total nitrogen (TN) as follows:

Pollutant Removal Efficiencies for Best Management Practices for Use in Pollutant Loading Analysis				Values Accepted for Loading Analyses		
BMP Type	**BMP**	**Notes**	**Lit. Ref.**	**TSS**	**TN**	**TP**
Stormwater Ponds	Wet Pond		B, F	70%	35%	45%
	Wet Extended Detention Pond		A, B	80%	55%	68%
	Micropool Extended Detention Pond	TBA				
	Multiple Pond System	TBA				
	Pocket Pond	TBA				
Stormwater Wetlands	Shallow Wetland		A, B, F, I	80%	55%	45%
	Extended Detention Wetland		A, B, F, I	80%	55%	45%
	Pond/Wetland System	TBA				
	Gravel Wetland		H	95%	85%	64%

RESPONSE TO COMMENTS (cont'd)

Infiltration Practices	Infiltration Trench (≥75 ft from surface water)		B, D, I	90%	55%	60%
	Infiltration Trench (<75 ft from surface water)		B, D, I	90%	10%	60%
	Infiltration Basin (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Infiltration Basin (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Dry Wells			90%	55%	60%
	Drip Edges			90%	55%	60%
Filtering Practices	Aboveground or Underground Sand Filter that infiltrates WQV (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Aboveground or Underground Sand Filter that infiltrates WQV (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Aboveground or Underground Sand Filter with underdrain		A, I, F, G, H	85%	10%	45%
	Tree Box Filter	TBA				
	Bioretention System		I, G, H	90%	65%	65%
	Permeable Pavement that infiltrates WQV (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Permeable Pavement that infiltrates WQV (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Permeable Pavement with underdrain		Use TN and TP values for sand filter w/ underdrain and outlet pipe	90%	10%	45%

RESPONSE TO COMMENTS (cont'd)

Pollutant Removal Efficiencies for Best Management Practices for Use in Pollutant Loading Analysis				Values Accepted for Loading Analyses		
BMP Type	**BMP**	**Notes**	**Lit. Ref.**	**TSS**	**TN**	**TP**
Treatment Swales	Flow Through Treatment Swale	TBA				
Vegetated Buffers	Vegetated Buffers		A, B, I	73%	40%	45%
Pre-Treatment Practices	Sediment Forebay	TBA				
	Vegetated Filter Strip		A, B, I	73%	40%	45%
	Vegetated Swale		A, B, C, F, H, I	65%	20%	25%
	Flow-Through Device - Hydrodynamic Separator		A, B, G, H	35%	10%	5%
	Flow-Through Device - ADS Underground Multichamber Water Quality Unit (WQU)		G, H	72%	10%	9%
	Other Flow-Through Devices	TBA				
	Off-line Deep Sump Catch Basin		J, K, L, M	15%	5%	5%

Comment #7 – Commenter #5 requests clarification on Section 1(a)(viii) of Appendix F which states "*Areas vulnerable to anticipated sea level rise based on FEMA's 100-year flood elevation and at least 1.5 feet of relative sea rise by 2050 and 4 feet of relative sea level rise by 2100 consistent with Maine law, 38 MRS, Chapter 3, Section 484."* The commenter states it seems unnecessary and confusing to reference the two different dates (the years 2050 and 2100) if the intent is to have applicants start accounting for 4 feet of sea level rise immediately.

Response #7 – The intent is to immediately protect for the areas in which there is an anticipated 1.5 feet of sea level rise in the next 25 years and consider future strategies for protecting areas subject to the anticipated sea level rise of 4 feet in the years 2050 – 2100.

RESPONSE TO COMMENTS (cont'd)

Comment #8 – Commenter #5 states Section 4(b)(Optional Standards)(b&c) of Appendix F are in conflict with one another. The draft language is as follows:

b. *Require dead-end roads to be constructed to provide a hammerhead or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space and/or has a stormwater treatment measure.*

c. *Require that cul-de-sac roads be constructed with the center used for stormwater treatment measures unless type A or B soils are present in the center, in which case this area should be used to promote natural infiltration on-site.*

Response #8 – The Department agrees with the commenter and the two sub-sections have been consolidated to read as follows:

> *Require dead-end roads to be constructed to provide a hammerhead or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space and/or a stormwater treatment measure to promote on-site infiltration.*

Comment #9 – Commenter #7 and #9 state "… an example ordinance was included with a set of definitions. Since the ordinance was provided as an example , it is our understanding that each permittee will have the flexibility in defining terms within their ordinances unless a term used in Appendix F is specifically defined within the permit modification."

Response #9 – Yes, permittees will have the flexibility in defining terms within their ordinances.

Comment #10 – Commenter #10 and #14 - Commenter #10 states "The Town of Gorham would like to express our desire for Low Impact Development standards to be included in the Chapter 500 update, and not be done as a permit modification. The Town of Gorham has concerns that if the LID is not implemented as part of Chapter 500 update it will drive sprawl within Gorham. This would be due to development with the Town's Maine DEP Regulated Urbanized Area would be subject to more stringent stormwater standards than those areas in Gorham located outside of the Regulated Urbanized area."

Response #10 – The revisions to Chapter 500 requirements are being managed by the Bureau of Land Resources within the Department of Environmental Protection. This permit modification is being issued by the Bureau of Water Quality. In October of 2020, both Bureaus were trying to coordinate the schedules such that the Chapter 500 rulemaking was to be completed first and then the MS4 permit would follow allowing permittees to incorporate the new or revised standards in Chapter 500.

RESPONSE TO COMMENTS (cont'd)

On January 17, 2023, the Friends of Casco Bay (FOCB) filed a timely appeal with the Maine Board of Environmental Protection (BEP) pertaining to the Department's December 17, 2022, approvals of Low Impact Development (LID) ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth.

On November 2, 2023, the BEP took up the appeal by the FOCB at its meeting and issued a Board Order on the appeal on the same date. The Board Order concluded and ordered as follows:

> The Board therefore concludes that the Department's approvals of the Licensees model LID ordinances must be vacated and remanded for the Department to set clear, specific, and measurable standards for the municipal LID ordinances consistent with the MS4 GP, as modified by the Permit Modification, including Appendix F. The Board recognizes that the Permit Modification's July 1, 2024, deadline for final adoption of model LID ordinances is fast approaching. The Board does not have authority to modify that deadline pursuant to this because the Permit Modification itself is not before us. On remand, however, the Department certainly may consider whether the July 1, 2024, deadline should be modified for the Licensees and pursue any appropriate mechanism for doing so.
>
> Therefore, the Board VACATES and REMANDS to the Commissioner the Department's December 14, 2022 approvals of the model LID ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth for the Department to **expeditiously** (emphasis added) set clear, specific, and measurable standards for the municipal LID ordinances consistent with Section 2(A)(5)(a) of the Permit Modification, including Appendix F, in accordance with this Order.

On January 12, 2023, EPA submitted a letter to the Department stating that "the approved ordinances do not meet the regulatory requirements found at 40 CFR 122.34, or the terms of the MS4 General Permit . . . requiring each MCM condition to contain clear, specific, and measurable terms." EPA further objected to the Department's December 14, 2022, approvals in that the approval letters "provide vague direction" regarding the incorporation of LID measures and "indicat[e] the communities have an option to include clear, specific and measurable LID measures" at a future time. Concluding that **"immediate action is needed"** (emphasis added) to address the inadequate ordinances, EPA proposed that the Department:

RESPONSE TO COMMENTS (cont'd)

[1] [R]evoke approval of the model LID ordinances submitted by those permit holders that did not contain clear, specific and measurable terms for each LID measure found in Table 1 of Appendix F of the MS4 General Permit and issue new approval letters that contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that those permit holders must adopt in their LID ordinance as required by the MS4 General Permit.

[or]

[2] Modify the MS4 General Permit to contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that all permit holders must adopt in their LID ordinance.

In the above actions required by both the EPA and Board of Environmental Protection, the permit modification is to be issued independently from the Chapter 500 rulemaking. Though the Bureau of Land Resources conducted stakeholder meetings and technical group meetings over the course of the last 12 months, a draft of the revised rule has not been made public as of the date of this permit modification. The new/revised Chapter 500 rulemaking will be required to follow a lengthy public process by the Board on Environmental Protection that may take up to an additional 12 months.

It is true the Town's Maine DEP Regulated Urbanized Area is being subject to more stringent stormwater standards than those areas in Gorham located outside of the Regulated Urbanized area. That is why there are separate federal and state rules that pertain to the thirty (30) MS4 communities (urbanized areas) established by the EPA in Maine under the Clean Water Act. Areas outside of the urbanized areas are not subject to the more stringent standards. The new/revised Chapter 500 rulemaking will establish standards for the non-urbanized areas.

Comment #11 – Commenter #14 states "There is no benefit to creating independent treatment standards in a local LID regulatory mechanism, since treatment is already thoroughly addressed in the current Rule Chapter 500 as well as the proposed Chapter 500 that the Land Bureau intends to present to the Maine legislature in the upcoming session. Regardless of the area trigger(s) established in the local LID regulatory mechanism, the mechanism should point to Chapter 500 for guidance on selecting and designing treatment systems."

RESPONSE TO COMMENTS (cont'd)

Response #11 – At the beginning of the stakeholder process (calendar year 2019) for the renewal of the MS4 permit, stakeholders agreed that all specific requirements were to be incorporated into the MS4 permit rather referencing other Department rules or regulations that would require permittees to look up other applicable regulations to determine compliance with the MS4 permit. The permittees wanted everything in one document. In addition, with the rewrite of Chapter 500 still pending, the Department cannot write the MS4 permit with requirements to comply with the new Chapter 500 given the permittees have no idea what the new requirements will be. Permits must be written based on the rules and regulations that are in effect at the time of issuance of the permit.

Comment #12 – Commenter #14 states language in Section 5.a proposes treatment of impervious area, directing runoff to vegetated areas, and disconnecting impervious area. All of these are addressed by Chapter 500, so there is no need to create an independent treatment standard (such as treating 70% of impervious area on a site) in a local LID regulatory mechanism. In fact, it could be contradictory if the LID Ordinance is required to be implemented before the Chapter 500 rulemaking process is completed.

We suggest that the following is appropriate:

> "a. Require that new development sites that will result in more than 20,000 sq. ft. of impervious area manage impervious and developed areas consistent with requirements in Maine DEP Rule Chapter 500 to replicate pre-development hydrology as much as possible."

Response #12 – See Response to Comments #10 and #11.

Comment #13 – Commentor 14 states "The proposed definition of "low impact development" includes language that is inconsistent with the concepts and measures this Permit Modification is intended to capture or with concepts and measures captured in the Chapter 500 Rulemaking process. Deleting the last two sentences would improve this definition and provide consistency.

> Further, LID is not synonymous with "green infrastructure", and the term "green infrastructure" should be removed from this definition.
>
> The revised definition of low impact development would therefore be:
>
> "Low impact development" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small- scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible."

RESPONSE TO COMMENTS (cont'd)

Response #13 : The definition in this permit modification is exactly the same as the definition in Part II, Section U of the final MS4 permit renewal issued on October 2, 2020 and reads as follows: "Low impact development" or "green infrastructure" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Low impact development strategies may be either nonstructural or structural, except that low impact development strategies utilizing structural stormwater management techniques shall be limited to an impervious contributing drainage area equal to or less than 1 acre. Low impact development strategies include, but are not limited to: bioretention filters, grass swales and channels, vegetated filter strips, permeable pavements, raingardens and vegetated rooftops." Therefore, the final permit modification remains unchanged

Comment #14 – Commenter 14 makes references to TSS and nutrient removal in Section 10(e) of Appendix F should be eliminated completely since this approach is not used in Maine and would lower the bar on stormwater treatment significantly

Response #14 – Clear, specific and measurable standards have been at the core of multiple appeals of the MS4 permit. EPA supports the inclusion of percent removal standards for new and redevelopment in standards as stated in their May 14, 2025, letter to the Department. Therefore, the final permit modification remains unchanged.

Comment #15 – Commenter #14 objects to the draft language in Section 5(b) of Appendix F that requires roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures. The commenter states in relevant parts;

> "There is no need to create an independent treatment standard in a local LID regulatory mechanism. Instead, this paragraph could refer to Chapter 500: whether current or proposed, the rule chapter prioritizes putting clean roof runoff back into the ground."
>
> "Roof drip edge filters are an effective option to maximize the use of infiltration and evaporation to mimic pre-development hydrology of a site as much as possible."
>
> "Mandating that roof runoff discharge to a structural stormwater BMP means that the BMP (for example, an underdrained soil filter) would be larger than it really needs to be. A larger BMP would take up more of the site and would represent a greater deviation from pre-development conditions and hydrology. This should be avoided as it results in the *opposite* of the intended goal of replicating pre-development hydrology as much as possible."
>
> "Mandating that roof runoff discharge to the ground surface creates an opportunity for erosion and represents a deviation from pre-development hydrology"

We suggest that the following is appropriate:

"b. Require that roof runoff be managed consistent with requirements in Maine DEP Rule Chapter 500, maximizing infiltration to replicate pre-development hydrology as much as possible."

Response #15 – See responses #10, #11 and #14. Given each site is different and has different capabilities to manage roof runoff , the option to discharge to the ground (stormwater treatment buffers) remains in the permit. As for the unintended consequences of oversizing structural treatment BMPs due to the addition of roof runoff, the Department agrees this may be an additional expense and not necessary as roof runoff is relatively clean water. Therefore, the language suggested by the commenter is being modified by the Department to read as follows:

b. Require that roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures that maximize infiltration to replicate pre-development hydrology.

Comment #16 – Commenter #14 states language in Section 5.c points the reader to Section 10 for standards for the stormwater systems that will provide treatment- something that Chapter 500 already does. As noted in Comment #2, there is no need to create an independent treatment standard in a local LID regulatory mechanism. We suggest that the following is appropriate:

"c. Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures (designed consistent with requirements in Maine DEP Rule Chapter 500) to the maximum extent practicable for new development sites that will result in more than 20,000 sq. ft. impervious area."

Response #16 – See responses #10, #11 and #14 above.

Comment #17 – Commenter #14 states language in Section 5.d creates a new standard for redevelopment of sites with greater than 60% impervious cover. As noted impervious comments, there is no need to create an independent treatment standard in a local LID regulatory mechanism.

We suggest that the following is appropriate:
"

d. Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat impervious area consistent with requirements in Maine DEP Rule Chapter 500."

RESPONSE TO COMMENTS (cont'd)

Response #17 – See responses #10, #11 and #14 above.

Comment #18 – Commenter #14 states Section 10.a: Sub-paragraph (i) of this paragraph refers to removal of 80% of total suspended solids (TSS) and 50% removal of nutrients. This TSS % removal approach is currently used in Massachusetts, where review of proposed projects is at the local level, not by the state regulatory agency (Massachusetts Department of Environmental Protection). Maine DEP has not used TSS % removal in decades because it would allow for the use of proprietary BMPs that are approved in other states but do not meet the rigorous standards of the Water Bureau staff (Jeff Dennis and Dave Waddell) who evaluate BMP performance. Further, revised Chapter 500 includes a new requirement to select stormwater treatment systems based on the stressor, including nitrogen or phosphorus, so arbitrarily requiring 50% removal is contradictory. This reference should be eliminated completely since it would lower the bar on stormwater treatment significantly. There is no benefit to creating independent treatment standards in a local LID regulatory mechanism since this treatment is already thoroughly addressed in Chapter 500.

Response #18 - See responses #10, #11 and #14 above.

Comment #19 – Commenter #3 states section 6(b) would cause more erosion and is unrealistic; contractors state there is no readily reliable available construction equipment that can rototill 6-9" deep.

Commenter #13 stated "Windham agrees that soil compaction due to construction activities needs to be addressed. However, this performance standard is not measurable (hard to enforce) and may do more harm than good (increased soil disturbance, exposing seed bank/invasives, destroy soil structure). We request the standard be changed to reflect these concerns. Proposed wording might state: *"Where soil is compacted through construction activity, corrective action must be taken to aerate and promote re-vegetation."*

Commenter # 9 stated "To allow flexibility in reducing compaction in areas to be revegetated, consider expanding 6b to include rototilling, aeration and soil amendments as well as other appropriate techniques based on the site soils and conditions."

Commenter #1 stated "This performance standard is not feasible physically. This standard appears to be creating an additional rule without rulemaking."

RESPONSE TO COMMENTS (cont'd)

Response #19 – Section 6(b) of the final permit modification has been revised to read as follows:

Areas to be revegetated due to compacted soils as a result of construction activities shall be rototilled, aerated, have soil amendments incorporated or other like corrective actions based on site soils and conditions prior to planting.

Comment #20 – Commenter #3 states section 1(a) aims to protect high permeability soils (HSG A or B) yet these soil types are what work best for infiltration BMPs , this seems counterintuitive.

Response #20 – High permeability soils do favor high infiltration rates but do not provide high pollutant attenuation rates. Stormwater that has an elevated pollutant loading (metals especially) would have a high likelihood of making their way to the ground water and may exceed drinking water standards. Though these construction activities take place in the urbanized area where public water is available, Maine law requires that all groundwaters be suitable as a public drinking water supply, including groundwater where public water is available.

Comment #21 – Commenter #1 references Section 1(c) that states

> *Maintain a minimum 25-foot buffer on all protected water resources including intermittent streams.*

The commenter states protected water resources and intermittent streams are not defined. This standard creates a new rule that expands the requirements of the current Natural Resources Protection Act (NRPA) and appears to provide additional regulation and enforceable requirements without first developing rules under the APA

Response #21 – The setback of 25 feet is consistent with the numeric setback requirement in 06-096 CMR Chapter 305 (C)(2) that states in relevant part " Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity."

An intermittent stream is a watercourse that flows only during certain times of the year, typically during wetter periods when groundwater provides a sufficient baseflow or when runoff from rainfall is high.

Pursuant to 06-096 CMR Chapter 500(3)(CC) protected natural resource means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks as defined in the *Natural Resources Protection Act* at 38 M.R.S. §480-B. To be consistent with Chapter 500, the phrase *protected water resources* in the draft permit modification has been modified to *protected natural resources*.

RESPONSE TO COMMENTS (cont'd)

Comment #22 – Commenter #1 references Section 2(a) that states;

> *Require that new culvert crossings for any waters of the state use Maine Stream Smart Principles to preserve the natural pre-development drainageways and be designed in accordance with all required state and federal permits. Stream crossing over portions of streams that have been artificially channelized are not subject to this standard.*

The commenter states this standard requires guidelines for stream crossings to be applied to any waters of the state. This is impractical. There are already state laws that govern stream crossings.

Response #22 – The use of Maine Stream Smart Principles should be taken into considered for new culvert crossings of all waters of the state as they are protected natural resources. See response #21. The final permit remains unchanged.

Comment #23 - Commenter #1 references Section 2(b) that states;

> *Require that proposed developments maximize the use of natural pre-development drainageways. This does not include instances where the time of concentration for pre-development drainageway* is *the same as or shorter than the post-development drainageway.*

The commenter states the performance standard to "maximize" is not clear, specific and measurable. The argument could be made that development is prevented altogether.

Response #23: The definition of maximize is to make as large or great as possible. In the context of LID, every effort should be made to make us of natural pre-development drainage ways when designing projects. The final permit remains unchanged.

Comment #24 – Commenter #1 references Section 4(a) that states;

> *Minimize the impervious surfaces on the site using the following strategies (developer provides narrative describing why strategies cannot be achieved if "exception" is requested):*
>
> *Multi-story buildings and parking garages.*
>
> *Minimize connected impervious areas by treating at the source. Direct runoff from roadways and parking areas into water quality treatment buffers and utilize best management practices (BMPS) such as grassed underdrain soil filter, bioretention facilities, etc.*

RESPONSE TO COMMENTS (cont'd)

The commenter states the performance standard to "minimize" is not clear, specific and measurable. Requiring the use of multi-story building and parking garages extends the Department's authority beyond current rules and regulations. These standards may conflict with local zoning and land use regulations, comprehensive plans, and historic districts. These bullet points appear to be creating rules without rulemaking under the APA.

Response #24 – The definition of minimize is to reduce to the smallest possible amount, size, extent or degree. These are suggested strategies to minimize impervious area if implemented. If any of these strategies are in conflict with local zoning and land use regulations, comprehensive plans or historic districts, then a permittee may choose not to put them in their ordinance and are free to address minimizing impervious areas using other strategies.

Comment #25 – Commenter #1 references Section 5(a) that states;

> *Require that new development sites that will result in more than 20,000 sq. ft. impervious area to disconnect or treat (construct and maintain or connect to a structural stormwater treatment measure) no less than 70% of the impervious area unless site constraints make this threshold unachievable. Directing runoff from impervious areas to vegetated areas is considered to meet the disconnection requirement. Additional stormwater quality treatment is not required.*

The commenter states the proposed performance standard conflicts with existing Chapter 500 criteria, which state the threshold for treatment is one acre or more of impervious area or 20,000 square feet or more **in a direct watershed of an urban impaired stream** (emphasis added).

Response #25 – The December 9, 2016,Federal Register (Vol 81, No. 237) contains the background information regarding the adoption of Remand Rule in 40 CFR §122. In several sections of the background information for the rule, EPA makes reference to advancing the requirements/standards in each permitting action. EPA states in relevant part that the approach to meet the MS4 permit standard is an iterative process of developing, implementing and improving stormwater control measures and should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. EPA also states the agency emphasizes that what constitutes compliance with MS4 standards continues to evolve. The need to reevaluate the meaning of maximum extent practicable for each permit term, as well as the need to determine what is necessary to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act means that what constitutes compliance will by necessity change over time. The Department believes the 20,000 sq. ft. threshold for all projects, regardless if located inside or outside of watershed of an urban impaired streams, is appropriate to address stormwater impacts to receiving waterbodies.

RESPONSE TO COMMENTS (cont'd)

Comment #26 - Commenter #1 reference Section 5(c) that states:

> *Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures for new development sites that will result in more than 20,000 sq. ft. impervious area. Properly designed stormwater treatment systems are required for these sites. See Section 10, Stormwater Quality Treatment and Retention Measures, of this document.*
>
> The commenter states this performance standard prevents redevelopment and encourages sprawl. Requiring sidewalks to be redesigned so that runoff is directed to a treatment buffer may conflict with ADA requirements. This standard appears to be creating an additional rule without rulemaking under the APA.

Response #26- Section 5(b) as drafted does not require permittees to redesign existing sidewalks so that runoff is directed to a treatment buffer or BMP. This requirement is targeting new development sites that will result in more than 20,000 sq. ft. impervious area. It is not promoting or encouraging non-compliance with ADA requirements

Comment #27 – Commenter #1 reference Section 5(b) that states

> *Require that roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures. Properly designed stormwater treatment systems are required for these sites. See Section 10, Stormwater Quality Treatment and Retention Measures, of this document.*

The commenter states rooftop runoff is composed of stormwater and is allowed in the MS4. This performance standard is contradictory to standard 10(d) and appears to be creating an additional rule without rulemaking under the APA.

Response #27 -See Response #15 above.

Comment #28 - Commenter #1 reference Section 10(e) that states;

> *Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus 100% of any new impervious area.*

The commenter states this performance standard conflicts with Chapter 500 Redevelopment Standard Section 4(C)(2)(d). Chapter 500 has a detailed point system to determine the level of treatment required for redevelopment projects. This standard appears to be creating an additional rule without rulemaking under the APA.

RESPONSE TO COMMENTS (cont'd)

Response #28 – The standards for redeveloped sites in this permit modification are similar to the standards established in the state of New Hampshire's stormwater program which the USEPA has endorsed. The standards reflect the most current best management practices to address stormwater associated with impervious cover.

Comment #29 - Commenter #1 reference Section 8(a) that states;

> *Prioritize the use of vegetated open-channel conveyance systems for managing runoff of new roads. The applicant may submit an alternative analysis which demonstrates that this performance standard is impracticable.*

The commenter states the word prioritize is not a specific and measurable standard. Vegetated open channels are not always appropriate or safe on new roads. This standard appears to be creating an additional rule without rulemaking under the APA.

Response #29 – Prioritize is defined as determine the order for dealing with (a series of items or tasks) according to their relative importance. If utilizing a vegetated open-channel conveyance system(s) for managing runoff of new roads it is not appropriate for a given situation or road, then utilize another conveyance system.

Comment #30 - Commenter #1 reference Section 8(b) that states;

> *In designing vegetated conveyance measures, transitions to and from culverts should be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydraulic-conditions associated with the conveyance measure.*

The commenter states the word should is not a clear, specific and measurable standard. Erosion protection is a design standard that is handled at the local level and as part of Maine Erosion and Sediment Control standards (MRS Title 38, Chapter 3, §420-C).

Response #30 – To be more clear and specific, Section 8(b) has been revised to read as follows:

> *In designing vegetated conveyance measures, transitions to and from culverts must be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydraulic-conditions associated with the conveyance measure.*

RESPONSE TO COMMENTS (cont'd)

Comment #31 – Commenter #1 references Section 10(c)(1) that states;

> *Stormwater quality treatment system must be designed to improve or maintain water quality and to:*
>
> 1. *Account for upstream and up gradient runoff flows onto, over or through the site to be developed or re- developed.*

The commenter states Chapter 500 General standards Section 4(C)(2)(b) currently states:

> "(b) Upgradient runoff. The runoff from any upgradient area must be either directed away from the stormwater treatment measure or that measure, not including buffers, must be sized to address the runoff volume from the upgradient area at 50% of the sizing requirements for an area that is landscaped, unless the upgradient area is on soil with hydrologic condition A or B."

The proposed performance standard is a modification of Chapter 500 language and intent without rulemaking according to the APA.

Response #31 – Section 10(c)(1) as drafted simply states upgradient runoff that runs onto, over or through a new or redevelopment site must be accounted for in the design stormwater quality treatment systems. It is not superseding any requirements in 06-096 CMR Chapter 500.

Comment #32 – Commenter #1 references Section 10(a) that states:

> *Require that new development sites that will result in 20,000 sq. ft. or more of impervious area treat no less than 95% of the impervious area and no less than 80% of the developed area.*

The commenter states this is creating a new standard that exceeds the current thresholds in Chapter 500. Impervious areas greater than or equal to one acre, or 20,000 square feet within a direct watershed of an Urban Impaired Stream, must incorporate stormwater quality treatment as part of the General Standards in Chapter 500.

RESPONSE TO COMMENTS (cont'd)

Response #32: Section 4(C)(1)(a) of Chapter 500 states in relevant part as follows:

> ***C. General standards.*** *The general standards apply as described below in addition to the basic standards described in Section 4(B).*
>
> *(1) When the general standards must be met. A project must meet the general standards if the project results in:*
>
> *(a) Direct watershed of an urban impaired stream. 20,000 square feet or more of impervious area, or 5 acres or more of developed area, in the direct watershed of an urban impaired stream; or*

Section 4(C)(2)(a)(i) of Chapter 500 reads as follows:

> ***Treatment requirements****. To meet the general standards, the applicant must demonstrate that a project's stormwater management system includes treatment measures that will provide pollutant removal or treatment, and mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms and potential temperature impacts, unless the Department determines that channel protection and/or temperature control are unnecessary due to the nature of the resource. This must be achieved by using one or more of the methods described in this Section as follows:*
>
> *(a)* ***Treatment level****. A project's stormwater management system must:*
>
> *(i) Provide treatment of no less than 95% of the impervious area and no less than 80% of the developed area;*

The threshold of 20,000 sq.ft. of impervious area in this permit modification is more stringent than the current Chapter 500 rule in that it applies regardless of a project being in the direct watershed of an urban impaired stream or not. See Response #25 above. The numeric thresholds in this permit modification are identical to the current Chapter 500 thresholds. These are not new standards. Therefore, the permit modification remains unchanged.

Comment #33: Commenter #1 references Section 10(a)(i) that states:

> *Treatment and retention measures used to meet performance standard (a) of this section must achieve 80% removal of total suspended solids and at least 50% removal of both total phosphorus and total nitrogen.*

The commenter states currently the State of Maine does not utilize a Total Suspended Solids (TSS) removal standard, and TSS is not included in Chapter 500. Nitrogen removal is also not included in Chapter 500, nor has the Maine DEP established any rules relating to nitrogen removal from stormwater. Chapter 500 only applies phosphorous removal from lake watersheds.

Response #33 – The removal rates cited above are consistent with the removal rates requirements in the MS4 permits for New Hampshire and Massachusetts for re-development sites. Nitrogen has been included in the requirement as nitrogen is the limiting nutrient of concern in marine environments and total phosphorus is the limiting nutrient of concern for freshwaters. Both nutrients may be transported to receiving waters by adhering to total suspended solids. See Response #6 for control measures that have been determined to being effective in achieving these removal rates.

Comment #34 - Commenter #1 references Section 10(c)(2) that states:

> *Chloride source control measures must be prioritized in the urban impaired streams and lakes most at risk watersheds or where chloride is identified as a stressor by the Department.*

The commenter states currently the State of Maine has not established any specific rules regarding chloride source control, nor has it established criteria to determine watersheds at risk through rulemaking. Chloride pollution to fresh water is an ongoing concern, and the Department should enter into substantive rulemaking process to establish clear, specific, and measurable standards to protect freshwater resources from chloride contamination.

Response #34 – The Department agrees a substantive rulemaking process needs to be implemented to establish clear, specific, and measurable standards to protect freshwater resources from chloride contamination. Until such time that process is completed, permittees must consider chloride source control measures in the urban impaired streams watersheds and lakes most at risk watersheds.

Comment #35 - Commenter #1 references Section 10(d) that states:

d. *Require retention of rooftop runoff through the use of stormwater treatment measures that utilize infiltration, sheet flow over vegetated stormwater buffers, or capture stormwater for beneficial re-use.*

Exception: Site specific conditions may limit the ability to utilize infiltration (low saturated soil hydraulic conductivity, high seasonal high-water table, rooftops known to have high pollutant loading, for instance rooftops of industrial facilities. In such situations, the applicant shall:

i. *Provide a narrative detailing the site-specific limiting factor and how it cannot be avoided through alternative site layout. In the case of high seasonal high-water table, the applicant must provide a detailed soil investigation as supporting evidence for this limitation. In the case of low*

saturated soil hydraulic conductivity, the applicant must provide a hydraulic conductivity test or testimony from a licensed professional soil scientist as supporting evidence for this limitation.

ii. *Utilize an alternative design including structural stormwater control measure(s) detaining rooftop runoff with a drawdown time between 24 and 48 hours. In the case of rooftops with high pollutant loading, manufactured or equivalent treatment measures effectively targeting the pollutants of concern must be implemented*

The commenter states this proposed performance standard appears to be requiring stormwater infiltration as a Stormwater Control Measure (SCM)/Best Management Practice (BMP) for rooftop runoff. Chapter 500 currently includes standards for infiltration in the General Standards and in Appendix D. Infiltration is just one of the many allowed SCM/BMP that can be used for rooftop runoff. A developer may have reasons for not wanting to infiltrate stormwater.

Response #35 – Section 10(d) as written already has an exception from infiltration under certain circumstances.

Comment #36 - Commenter #1 references Section 10(e) that states:

e. *Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus I00% of any new impervious area. Treatment and retention measures used to meet performance standard (a) of this section must achieve 80% removal of total suspended solids and at least 50% removal of both total phosphorus and total nitrogen.*

The commenter states Chapter 500 has established standards through a point system to determine the level of treatment required for a redevelopment project. The proposed standard is creating a new and different performance standard that potentially conflicts with the Chapter 500 standard.

Response #36 – The standards for redeveloped sites in this permit modification are similar to the standards established in the state of New Hampshire's stormwater program which the USEPA has endorsed.

RESPONSE TO COMMENTS (cont'd)

Comment #37 – Commenter #2 stated Standard 5. Minimize the Effect of Impervious Area: Reinsert language to apply 5(a) to new development sites of 5,000 sq. ft. or more and less than 20,000 sq. ft. During the Chapter 500 process, stakeholders consistently commented on the cumulative impacts of runoff from sites smaller than 1 acre in urbanized areas. It is generally accepted that cumulative impacts from stormwater runoff on smaller lots negatively affects water quality and habitat. Although we feel strongly that this should be a required element, we would support it as a required element in threatened, impaired and sensitive watersheds and an optional element elsewhere.

Response #37 – The threshold of 5,000 sq. ft. was shared with Department staff that are authoring revisions to Chapter 500. Staff rejected lowering the threshold as it would be overly burdensome as to the number of new or re-development projects that would need to be reviewed and approved. The reduction to 20,000 sq. ft. in of itself is more stringent than the requirements in the current chapter 500. The current threshold applies to projects that create more than 20,000 sq. ft. with a direct watershed of an urban impaired stream. Therefore, the threshold of 20,000 sq. ft. remains as the lowest threshold.

Comment #38 – Commenter #2 states Standard 8. Provide vegetated open-channel conveyance systems: Add back language to use existing drainageways, swales, depressions and storage areas in their natural state; the goal here should be to preserve natural hydrology. If the original language is problematic, reword this performance standard to require that natural hydrology and drainage/filtration be preserved. Preserving natural hydrology is at the heart of LID and will be a core LID element of the revised Chapter 500 stormwater rules. If the Water Bureau has concerns about how to word this requirement, it should consult with Land Bureau staff.

Response #38 – The language has been revised and incorporated back into Appendix F Section 8(c) as follows:

> *Require that all new and redesigned roads must take into consideration existing topography and utilize existing drainage ways, swales, depressions and storage areas in their natural state to preserve the natural hydrology, drainage and infiltration features.*

RESPONSE TO COMMENTS (cont'd)

Comment #39 – Commenter #2 states that Standard #11 should be revised to add back requirement that the ordinance must provide a mechanism to ensure that the stormwater treatment measures will be maintained and functioning as designed in cases where ownership is transferred.

Response #39 – Standard #11(c) has been reinstated and reads as follows:

> *The ordinance must provide a mechanism to ensure that stormwater treatment measures will be maintained and functioning as designed in cases where ownership has changed.*

Comment #40 – Commenter #2 states with respect to Attachment C: Model LID ordinance, please see our prior comments. In particular, please consider: adding the language regarding objectives to Section 1 proposed in our prior comments; including shellfishing areas and public beaches to Section 5.2, and; adding a Section 5.4 covering operations and maintenance requirements. With regard to operations and maintenance, the Department could alternatively confirm that this model LID ordinance is incorporated into broader municipal land use regulation that requires sufficient operations and maintenance to ensure LID elements operate as intended. Without this, LID elements will not function to improve and protect water quality.

Response #40 – Section 1 (Purpose) of Attachment C has been revised to incorporate the additional language suggested by the commenter. Section 5.2 (Project Plan Contents) has been revised to include open shellfish harvesting areas as well as public beaches and recreational areas that abut a project. As for a new Section 5.4 on Operations and Maintenance, the proposed language suggested by the commenter is overly prescriptive and may create conflicts for permittees. The opening paragraph of the suggested language is generic enough to apply to all 30 permittees. Therefore, the following language is being incorporated into Section 5 of the Model Ordinance.

5.4 Operations and Maintenance (O&M)

> *An O&M Plan is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the MS4 Permit, this ordinance, and that the Maine Surface Water Quality Standards are met in all seasons and throughout the life of the system. The Operation and Maintenance Plan shall remain on file with the [LID Authority] and shall be an ongoing requirement. It shall address 1) the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural LID Management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; 2) there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented under the ordinance.*

RESPONSE TO COMMENTS (cont'd)

A definition for Operation and Maintenance proposed by commenter #2 has been incorporated into Section 2 as well.

Comment #41 – Commenter #2, #3, #4, #6, #7, #9, #11, #13 and #14 commented that the performance standards in Section 5 & Section 10 are in conflict and a remedy is to consolidate these two sections or modify the language in both sections to provide clarity in the standards.

Response #41 – The Department agrees that as drafted, there are conflicts in the standards for Section 5 and Section #10. Therefore, Section 10(a) has been incorporated into Section 5(a). Section 10(e) has been eliminated except that the last sentence in Section 10(e) has been incorporated into 5(d).

Comment #42 – Commenter # 11 requested clarification on Section 5(d) which as drafted states "Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus 100% of any new impervious." The commenter questioned whether there is a minimum area of redevelopment that triggers this standard or is it any amount of redevelopment?

Response #42 – The Department agrees a revision to the language is necessary. The language has been revised to read as follows:

> *Require that redevelopment of sites with greater than 20,000 square feet of impervious area disconnect or treat 30% of the existing impervious area plus 100% of any new impervious.*

ATTACHMENT D

RESPONSE TO COMMENTS

During the period of October 2, 2024, through the issuance date of the permit/license modification, the Department solicited comments from the permittee and state and federal agencies on the proposed draft permit/license modification to be issued for the discharge(s) from the thirty (30) permittees covered under the MS4 permit. The Department received written comments from the following entities:

1. City of Lewiston
2. Friends of Casco Bay
3. City of Biddeford
4. Bangor Area Stormwater Group
5. Town of Falmouth
6. U.S. Environmental Protection Agency
7. Interlocal Stormwater Working Group
8. Integrated Environmental Engineering, Inc.
9. Wright-Pierce
10. Town of Gorham
11. City of Saco
12. Town of Yarmouth
13. Town of Windham
14. City of South Portland

Many of the commenters listed above had similar comments on a specific element(s) of the proposed permit modification. Rather than respond to each individual comment from each commentor, the responses have been prepared to address common substantive comments on a particular concept(s), paragraph(s) or sentence(s). Commenters will be referred to numerically in each comment as listed above.

Timeline to Adopt the Ordinances

Comment #1 - Commenters #1, #3, #4, #5, #7, #8, #9, #11, #12, and #14 stated that they would like the November 5, 2025, deadline to adopt a final ordinance to be extended to one year after the date permit modification is finalized to allow adequate time for city/town staff to organize the final standards and follow the required public review process and adoption process.

Response #1 – The concept of permittees needing at least 12 months for city/town staff to organize the final standards and follow the required public review and adoption process has been repeated in comments submitted to the Department a number of times over the course of the last three years. On June 25, 2024, the Department issued a permit modification extending the deadline for permittees to formally adopt a LID Ordinance from July 1, 2024, to November 5, 2025. Given the time that has elapsed since issuance of the June 25, 2024, permit modification due to two public comment periods (45 days and 21 days) on this permit modification, the November 5, 2025, date for permittees to finalize their LID ordinances is no longer feasible.

Therefore, rather than establishing a hard deadline that may have to modified once again if this permit modification is appealed, the suggestion of language stating the final deadline is extended to one year after the date permit modification is finalized, including finalizing any appeals, is appropriate. Therefore, Section 2(A)(5)(a) the permit modification is being modified to read in relevant part as follows:

A. Low Impact Development

5. MCM5 - Post-Construction Stormwater Management in New Development and Redevelopment.

Each permittee must implement and enforce a program to address post construction stormwater runoff to the maximum extent practicable from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development that discharge into the MS4.

a. The permittee must implement strategies which include a combination of structural and/or non-structural BMPs appropriate to prevent or minimize water quality impacts as follows:

Within one year of this permit modification being finalized (including any appeal), each permittee must adopt a LID Ordinance or other regulatory mechanism for stormwater management on new and redevelopment sites which establishes clear, specific and measurable standards for each of the LID measures contained in Table 1 of Appendix F of this permit modification to the maximum extent practicable. See Attachment B of this permit modification for a copy of Table 1 of Appendix F.

Comment #2- Commenter #4, #5, #7 and #13 – Requests clarification on whether "optional standards" such as the ones listed in Section 4 of Appendix F are truly optional for municipalities to include in their ordinances?

Response #2 – Yes, the optional standards are optional and are suggestions to strength the municipalities ordinance.

Comment #3 – Commenter #3 and #5 – Request clarification on the definitions section in Attachment C (Model Ordinance) as to whether municipalities are required to use the definitions in the sample ordinance for terms that are used in the draft permit modification or do municipalities have the flexibility and discretion to use different terms that are otherwise undefined in the draft permit modification.

Response #3 - Municipalities have the flexibility and discretion to use different terms that are otherwise undefined in the draft permit modification.

RESPONSE TO COMMENTS (cont'd)

Comment #4 – Commenter #5 would like clarification on what process, if any, MEDEP will be using to review each permittee's ordinance to verify compliance with the permit modification.

Response #4 – The ordinances for each municipality will be treated like any other compliance requirement in a permit and will be reviewed by stormwater compliance staff to determine compliance with the permit conditions. Municipalities are welcome to submit drafts of their ordinances to the compliance staff prior to the final submission deadline for review and comment.

Comment #5 – Commenter #4 – states that Section 4a of Appendix F utilizes the word "strategies" rather than "standards" which introduces uncertainty about enforceability and would like clarification whether applicants may opt out of strategies by providing justification.

Response #5 – The bullets in section 4a of Appendix F are not standards and commenters on a previous draft of Appendix F suggested using the word strategies as a more appropriate term. Yes, applicants may opt out of strategies by providing a justification as Appendix F as drafted states " (developer provides narrative describing why strategies cannot be achieved at site if exception is requested)."

Comment #6 – Commenter #4, #10, #11 and #13 – Requests clarification to Section 10.a.i detailing specific performance curves or performance references to be cited by developers to determine if stormwater control measures are meeting pollutant removal goals detailed in the requirement.

Response #6 – According to recent research conducted at the University of New Hampshire, the following BMPs that are properly designed, constructed, inspected and maintained can achieve the removal rates for total suspended solids (TSS), total phosphorus (TP) and total nitrogen (TN) as follows:

Pollutant Removal Efficiencies for Best Management Practices for Use in Pollutant Loading Analysis				Values Accepted for Loading Analyses		
BMP Type	**BMP**	**Notes**	**Lit. Ref.**	**TSS**	**TN**	**TP**
Stormwater Ponds	Wet Pond		B, F	70%	35%	45%
	Wet Extended Detention Pond		A, B	80%	55%	68%
	Micropool Extended Detention Pond	TBA				
	Multiple Pond System	TBA				
	Pocket Pond	TBA				
Stormwater Wetlands	Shallow Wetland		A, B, F, I	80%	55%	45%
	Extended Detention Wetland		A, B, F, I	80%	55%	45%
	Pond/Wetland System	TBA				
	Gravel Wetland		H	95%	85%	64%

RESPONSE TO COMMENTS (cont'd)

Infiltration Practices	Infiltration Trench (≥75 ft from surface water)		B, D, I	90%	55%	60%
	Infiltration Trench (<75 ft from surface water)		B, D, I	90%	10%	60%
	Infiltration Basin (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Infiltration Basin (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Dry Wells			90%	55%	60%
	Drip Edges			90%	55%	60%
Filtering Practices	Aboveground or Underground Sand Filter that infiltrates WQV (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Aboveground or Underground Sand Filter that infiltrates WQV (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Aboveground or Underground Sand Filter with underdrain		A, I, F, G, H	85%	10%	45%
	Tree Box Filter	TBA				
	Bioretention System		I, G, H	90%	65%	65%
	Permeable Pavement that infiltrates WQV (≥75 ft from surface water)		A, F, B, D, I	90%	60%	65%
	Permeable Pavement that infiltrates WQV (<75 ft from surface water)		A, F, B, D, I	90%	10%	65%
	Permeable Pavement with underdrain		Use TN and TP values for sand filter w/ underdrain and outlet pipe	90%	10%	45%

RESPONSE TO COMMENTS (cont'd)

Pollutant Removal Efficiencies for Best Management Practices for Use in Pollutant Loading Analysis				Values Accepted for Loading Analyses		
BMP Type	**BMP**	**Notes**	**Lit. Ref.**	**TSS**	**TN**	**TP**
Treatment Swales	Flow Through Treatment Swale	TBA				
Vegetated Buffers	Vegetated Buffers		A, B, I	73%	40%	45%
Pre-Treatment Practices	Sediment Forebay	TBA				
	Vegetated Filter Strip		A, B, I	73%	40%	45%
	Vegetated Swale		A, B, C, F, H, I	65%	20%	25%
	Flow-Through Device - Hydrodynamic Separator		A, B, G, H	35%	10%	5%
	Flow-Through Device - ADS Underground Multichamber Water Quality Unit (WQU)		G, H	72%	10%	9%
	Other Flow-Through Devices	TBA				
	Off-line Deep Sump Catch Basin		J, K, L, M	15%	5%	5%

Comment #7 – Commenter #5 requests clarification on Section 1(a)(viii) of Appendix F which states "*Areas vulnerable to anticipated sea level rise based on FEMA's 100-year flood elevation and at least 1.5 feet of relative sea rise by 2050 and 4 feet of relative sea level rise by 2100 consistent with Maine law, 38 MRS, Chapter 3, Section 484."* The commenter states it seems unnecessary and confusing to reference the two different dates (the years 2050 and 2100) if the intent is to have applicants start accounting for 4 feet of sea level rise immediately.

Response #7 – The intent is to immediately protect for the areas in which there is an anticipated 1.5 feet of sea level rise in the next 25 years and consider future strategies for protecting areas subject to the anticipated sea level rise of 4 feet in the years 2050 – 2100.

RESPONSE TO COMMENTS (cont'd)

Comment #8 – Commenter #5 states Section 4(b)(Optional Standards)(b&c) of Appendix F are in conflict with one another. The draft language is as follows:

b. *Require dead-end roads to be constructed to provide a hammerhead or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space and/or has a stormwater treatment measure.*

c. *Require that cul-de-sac roads be constructed with the center used for stormwater treatment measures unless type A or B soils are present in the center, in which case this area should be used to promote natural infiltration on-site.*

Response #8 – The Department agrees with the commenter and the two sub-sections have been consolidated to read as follows:

> *Require dead-end roads to be constructed to provide a hammerhead or a tear drop cul-de-sac turn-around with a center that is vegetated, used for open space and/or a stormwater treatment measure to promote on-site infiltration.*

Comment #9 – Commenter #7 and #9 state "… an example ordinance was included with a set of definitions. Since the ordinance was provided as an example , it is our understanding that each permittee will have the flexibility in defining terms within their ordinances unless a term used in Appendix F is specifically defined within the permit modification."

Response #9 – Yes, permittees will have the flexibility in defining terms within their ordinances.

Comment #10 – Commenter #10 and #14 - Commenter #10 states "The Town of Gorham would like to express our desire for Low Impact Development standards to be included in the Chapter 500 update, and not be done as a permit modification. The Town of Gorham has concerns that if the LID is not implemented as part of Chapter 500 update it will drive sprawl within Gorham. This would be due to development with the Town's Maine DEP Regulated Urbanized Area would be subject to more stringent stormwater standards than those areas in Gorham located outside of the Regulated Urbanized area."

Response #10 – The revisions to Chapter 500 requirements are being managed by the Bureau of Land Resources within the Department of Environmental Protection. This permit modification is being issued by the Bureau of Water Quality. In October of 2020, both Bureaus were trying to coordinate the schedules such that the Chapter 500 rulemaking was to be completed first and then the MS4 permit would follow allowing permittees to incorporate the new or revised standards in Chapter 500.

RESPONSE TO COMMENTS (cont'd)

On January 17, 2023, the Friends of Casco Bay (FOCB) filed a timely appeal with the Maine Board of Environmental Protection (BEP) pertaining to the Department's December 17, 2022, approvals of Low Impact Development (LID) ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth.

On November 2, 2023, the BEP took up the appeal by the FOCB at its meeting and issued a Board Order on the appeal on the same date. The Board Order concluded and ordered as follows:

> The Board therefore concludes that the Department's approvals of the Licensees model LID ordinances must be vacated and remanded for the Department to set clear, specific, and measurable standards for the municipal LID ordinances consistent with the MS4 GP, as modified by the Permit Modification, including Appendix F. The Board recognizes that the Permit Modification's July 1, 2024, deadline for final adoption of model LID ordinances is fast approaching. The Board does not have authority to modify that deadline pursuant to this because the Permit Modification itself is not before us. On remand, however, the Department certainly may consider whether the July 1, 2024, deadline should be modified for the Licensees and pursue any appropriate mechanism for doing so.
>
> Therefore, the Board VACATES and REMANDS to the Commissioner the Department's December 14, 2022 approvals of the model LID ordinances submitted by the City of Biddeford, Town of Cape Elizabeth, Town of Cumberland, Town of Falmouth, Town of Freeport, Town of Gorham, City of Portland, City of Saco, Town of Scarborough, City of South Portland, City of Westbrook, Town of Windham, and Town of Yarmouth for the Department to **expeditiously** (emphasis added) set clear, specific, and measurable standards for the municipal LID ordinances consistent with Section 2(A)(5)(a) of the Permit Modification, including Appendix F, in accordance with this Order.

On January 12, 2023, EPA submitted a letter to the Department stating that "the approved ordinances do not meet the regulatory requirements found at 40 CFR 122.34, or the terms of the MS4 General Permit . . . requiring each MCM condition to contain clear, specific, and measurable terms." EPA further objected to the Department's December 14, 2022, approvals in that the approval letters "provide vague direction" regarding the incorporation of LID measures and "indicat[e] the communities have an option to include clear, specific and measurable LID measures" at a future time. Concluding that **"immediate action is needed"** (emphasis added) to address the inadequate ordinances, EPA proposed that the Department:

RESPONSE TO COMMENTS (cont'd)

[1] [R]evoke approval of the model LID ordinances submitted by those permit holders that did not contain clear, specific and measurable terms for each LID measure found in Table 1 of Appendix F of the MS4 General Permit and issue new approval letters that contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that those permit holders must adopt in their LID ordinance as required by the MS4 General Permit.

[or]

[2] Modify the MS4 General Permit to contain performance standards for each LID measure found in Table 1 of Appendix F of the MS4 General Permit that all permit holders must adopt in their LID ordinance.

In the above actions required by both the EPA and Board of Environmental Protection, the permit modification is to be issued independently from the Chapter 500 rulemaking. Though the Bureau of Land Resources conducted stakeholder meetings and technical group meetings over the course of the last 12 months, a draft of the revised rule has not been made public as of the date of this permit modification. The new/revised Chapter 500 rulemaking will be required to follow a lengthy public process by the Board on Environmental Protection that may take up to an additional 12 months.

It is true the Town's Maine DEP Regulated Urbanized Area is being subject to more stringent stormwater standards than those areas in Gorham located outside of the Regulated Urbanized area. That is why there are separate federal and state rules that pertain to the thirty (30) MS4 communities (urbanized areas) established by the EPA in Maine under the Clean Water Act. Areas outside of the urbanized areas are not subject to the more stringent standards. The new/revised Chapter 500 rulemaking will establish standards for the non-urbanized areas.

Comment #11 – Commenter #14 states "There is no benefit to creating independent treatment standards in a local LID regulatory mechanism, since treatment is already thoroughly addressed in the current Rule Chapter 500 as well as the proposed Chapter 500 that the Land Bureau intends to present to the Maine legislature in the upcoming session. Regardless of the area trigger(s) established in the local LID regulatory mechanism, the mechanism should point to Chapter 500 for guidance on selecting and designing treatment systems."

RESPONSE TO COMMENTS (cont'd)

Response #11 – At the beginning of the stakeholder process (calendar year 2019) for the renewal of the MS4 permit, stakeholders agreed that all specific requirements were to be incorporated into the MS4 permit rather referencing other Department rules or regulations that would require permittees to look up other applicable regulations to determine compliance with the MS4 permit. The permittees wanted everything in one document. In addition, with the rewrite of Chapter 500 still pending, the Department cannot write the MS4 permit with requirements to comply with the new Chapter 500 given the permittees have no idea what the new requirements will be. Permits must be written based on the rules and regulations that are in effect at the time of issuance of the permit.

Comment #12 – Commenter #14 states language in Section 5.a proposes treatment of impervious area, directing runoff to vegetated areas, and disconnecting impervious area. All of these are addressed by Chapter 500, so there is no need to create an independent treatment standard (such as treating 70% of impervious area on a site) in a local LID regulatory mechanism. In fact, it could be contradictory if the LID Ordinance is required to be implemented before the Chapter 500 rulemaking process is completed.

We suggest that the following is appropriate:

> "a. Require that new development sites that will result in more than 20,000 sq. ft. of impervious area manage impervious and developed areas consistent with requirements in Maine DEP Rule Chapter 500 to replicate pre-development hydrology as much as possible."

Response #12 – See Response to Comments #10 and #11.

Comment #13 – Commentor 14 states "The proposed definition of "low impact development" includes language that is inconsistent with the concepts and measures this Permit Modification is intended to capture or with concepts and measures captured in the Chapter 500 Rulemaking process. Deleting the last two sentences would improve this definition and provide consistency.

> Further, LID is not synonymous with "green infrastructure", and the term "green infrastructure" should be removed from this definition.
>
> The revised definition of low impact development would therefore be:
>
> "Low impact development" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small- scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible."

RESPONSE TO COMMENTS (cont'd)

Response #13 : The definition in this permit modification is exactly the same as the definition in Part II, Section U of the final MS4 permit renewal issued on October 2, 2020 and reads as follows: "Low impact development" or "green infrastructure" means site planning and design strategies intended to replace or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout a site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Low impact development strategies may be either nonstructural or structural, except that low impact development strategies utilizing structural stormwater management techniques shall be limited to an impervious contributing drainage area equal to or less than 1 acre. Low impact development strategies include, but are not limited to: bioretention filters, grass swales and channels, vegetated filter strips, permeable pavements, raingardens and vegetated rooftops." Therefore, the final permit modification remains unchanged

Comment #14 – Commenter 14 makes references to TSS and nutrient removal in Section 10(e) of Appendix F should be eliminated completely since this approach is not used in Maine and would lower the bar on stormwater treatment significantly

Response #14 – Clear, specific and measurable standards have been at the core of multiple appeals of the MS4 permit. EPA supports the inclusion of percent removal standards for new and redevelopment in standards as stated in their May 14, 2025, letter to the Department. Therefore, the final permit modification remains unchanged.

Comment #15 – Commenter #14 objects to the draft language in Section 5(b) of Appendix F that requires roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures. The commenter states in relevant parts;

> "There is no need to create an independent treatment standard in a local LID regulatory mechanism. Instead, this paragraph could refer to Chapter 500: whether current or proposed, the rule chapter prioritizes putting clean roof runoff back into the ground."
>
> "Roof drip edge filters are an effective option to maximize the use of infiltration and evaporation to mimic pre-development hydrology of a site as much as possible."
>
> "Mandating that roof runoff discharge to a structural stormwater BMP means that the BMP (for example, an underdrained soil filter) would be larger than it really needs to be. A larger BMP would take up more of the site and would represent a greater deviation from pre-development conditions and hydrology. This should be avoided as it results in the *opposite* of the intended goal of replicating pre-development hydrology as much as possible."
>
> "Mandating that roof runoff discharge to the ground surface creates an opportunity for erosion and represents a deviation from pre-development hydrology"

We suggest that the following is appropriate:

"b. Require that roof runoff be managed consistent with requirements in Maine DEP Rule Chapter 500, maximizing infiltration to replicate pre-development hydrology as much as possible."

Response #15 – See responses #10, #11 and #14. Given each site is different and has different capabilities to manage roof runoff , the option to discharge to the ground (stormwater treatment buffers) remains in the permit. As for the unintended consequences of oversizing structural treatment BMPs due to the addition of roof runoff, the Department agrees this may be an additional expense and not necessary as roof runoff is relatively clean water. Therefore, the language suggested by the commenter is being modified by the Department to read as follows:

b. Require that roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures that maximize infiltration to replicate pre-development hydrology.

Comment #16 – Commenter #14 states language in Section 5.c points the reader to Section 10 for standards for the stormwater systems that will provide treatment- something that Chapter 500 already does. As noted in Comment #2, there is no need to create an independent treatment standard in a local LID regulatory mechanism. We suggest that the following is appropriate:

"c. Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures (designed consistent with requirements in Maine DEP Rule Chapter 500) to the maximum extent practicable for new development sites that will result in more than 20,000 sq. ft. impervious area."

Response #16 – See responses #10, #11 and #14 above.

Comment #17 – Commenter #14 states language in Section 5.d creates a new standard for redevelopment of sites with greater than 60% impervious cover. As noted impervious comments, there is no need to create an independent treatment standard in a local LID regulatory mechanism.

We suggest that the following is appropriate:
"

d. Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat impervious area consistent with requirements in Maine DEP Rule Chapter 500."

RESPONSE TO COMMENTS (cont'd)

Response #17 – See responses #10, #11 and #14 above.

Comment #18 – Commenter #14 states Section 10.a: Sub-paragraph (i) of this paragraph refers to removal of 80% of total suspended solids (TSS) and 50% removal of nutrients. This TSS % removal approach is currently used in Massachusetts, where review of proposed projects is at the local level, not by the state regulatory agency (Massachusetts Department of Environmental Protection). Maine DEP has not used TSS % removal in decades because it would allow for the use of proprietary BMPs that are approved in other states but do not meet the rigorous standards of the Water Bureau staff (Jeff Dennis and Dave Waddell) who evaluate BMP performance. Further, revised Chapter 500 includes a new requirement to select stormwater treatment systems based on the stressor, including nitrogen or phosphorus, so arbitrarily requiring 50% removal is contradictory. This reference should be eliminated completely since it would lower the bar on stormwater treatment significantly. There is no benefit to creating independent treatment standards in a local LID regulatory mechanism since this treatment is already thoroughly addressed in Chapter 500.

Response #18 - See responses #10, #11 and #14 above.

Comment #19 – Commenter #3 states section 6(b) would cause more erosion and is unrealistic; contractors state there is no readily reliable available construction equipment that can rototill 6-9" deep.

Commenter #13 stated "Windham agrees that soil compaction due to construction activities needs to be addressed. However, this performance standard is not measurable (hard to enforce) and may do more harm than good (increased soil disturbance, exposing seed bank/invasives, destroy soil structure). We request the standard be changed to reflect these concerns. Proposed wording might state: *"Where soil is compacted through construction activity, corrective action must be taken to aerate and promote re-vegetation."*

Commenter # 9 stated "To allow flexibility in reducing compaction in areas to be revegetated, consider expanding 6b to include rototilling, aeration and soil amendments as well as other appropriate techniques based on the site soils and conditions."

Commenter #1 stated "This performance standard is not feasible physically. This standard appears to be creating an additional rule without rulemaking."

RESPONSE TO COMMENTS (cont'd)

Response #19 – Section 6(b) of the final permit modification has been revised to read as follows:

Areas to be revegetated due to compacted soils as a result of construction activities shall be rototilled, aerated, have soil amendments incorporated or other like corrective actions based on site soils and conditions prior to planting.

Comment #20 – Commenter #3 states section 1(a) aims to protect high permeability soils (HSG A or B) yet these soil types are what work best for infiltration BMPs , this seems counterintuitive.

Response #20 – High permeability soils do favor high infiltration rates but do not provide high pollutant attenuation rates. Stormwater that has an elevated pollutant loading (metals especially) would have a high likelihood of making their way to the ground water and may exceed drinking water standards. Though these construction activities take place in the urbanized area where public water is available, Maine law requires that all groundwaters be suitable as a public drinking water supply, including groundwater where public water is available.

Comment #21 – Commenter #1 references Section 1(c) that states

> *Maintain a minimum 25-foot buffer on all protected water resources including intermittent streams.*

The commenter states protected water resources and intermittent streams are not defined. This standard creates a new rule that expands the requirements of the current Natural Resources Protection Act (NRPA) and appears to provide additional regulation and enforceable requirements without first developing rules under the APA

Response #21 – The setback of 25 feet is consistent with the numeric setback requirement in 06-096 CMR Chapter 305 (C)(2) that states in relevant part " Except for those activities listed in Section 2(C)(1)(a)-(e) above, a 25 foot setback must be maintained between the normal high water line or upland edge of the protected natural resource and the activity."

An intermittent stream is a watercourse that flows only during certain times of the year, typically during wetter periods when groundwater provides a sufficient baseflow or when runoff from rainfall is high.

Pursuant to 06-096 CMR Chapter 500(3)(CC) protected natural resource means coastal sand dunes, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks as defined in the *Natural Resources Protection Act* at 38 M.R.S. §480-B. To be consistent with Chapter 500, the phrase *protected water resources* in the draft permit modification has been modified to *protected natural resources*.

RESPONSE TO COMMENTS (cont'd)

Comment #22 – Commenter #1 references Section 2(a) that states;

> *Require that new culvert crossings for any waters of the state use Maine Stream Smart Principles to preserve the natural pre-development drainageways and be designed in accordance with all required state and federal permits. Stream crossing over portions of streams that have been artificially channelized are not subject to this standard.*

The commenter states this standard requires guidelines for stream crossings to be applied to any waters of the state. This is impractical. There are already state laws that govern stream crossings.

Response #22 – The use of Maine Stream Smart Principles should be taken into considered for new culvert crossings of all waters of the state as they are protected natural resources. See response #21. The final permit remains unchanged.

Comment #23 - Commenter #1 references Section 2(b) that states;

> *Require that proposed developments maximize the use of natural pre-development drainageways. This does not include instances where the time of concentration for pre-development drainageway* is *the same as or shorter than the post-development drainageway.*

The commenter states the performance standard to "maximize" is not clear, specific and measurable. The argument could be made that development is prevented altogether.

Response #23: The definition of maximize is to make as large or great as possible. In the context of LID, every effort should be made to make us of natural pre-development drainage ways when designing projects. The final permit remains unchanged.

Comment #24 – Commenter #1 references Section 4(a) that states;

> *Minimize the impervious surfaces on the site using the following strategies (developer provides narrative describing why strategies cannot be achieved if "exception" is requested):*
>
> *Multi-story buildings and parking garages.*
>
> *Minimize connected impervious areas by treating at the source. Direct runoff from roadways and parking areas into water quality treatment buffers and utilize best management practices (BMPS) such as grassed underdrain soil filter, bioretention facilities, etc.*

RESPONSE TO COMMENTS (cont'd)

The commenter states the performance standard to "minimize" is not clear, specific and measurable. Requiring the use of multi-story building and parking garages extends the Department's authority beyond current rules and regulations. These standards may conflict with local zoning and land use regulations, comprehensive plans, and historic districts. These bullet points appear to be creating rules without rulemaking under the APA.

Response #24 – The definition of minimize is to reduce to the smallest possible amount, size, extent or degree. These are suggested strategies to minimize impervious area if implemented. If any of these strategies are in conflict with local zoning and land use regulations, comprehensive plans or historic districts, then a permittee may choose not to put them in their ordinance and are free to address minimizing impervious areas using other strategies.

Comment #25 – Commenter #1 references Section 5(a) that states;

> *Require that new development sites that will result in more than 20,000 sq. ft. impervious area to disconnect or treat (construct and maintain or connect to a structural stormwater treatment measure) no less than 70% of the impervious area unless site constraints make this threshold unachievable. Directing runoff from impervious areas to vegetated areas is considered to meet the disconnection requirement. Additional stormwater quality treatment is not required.*

The commenter states the proposed performance standard conflicts with existing Chapter 500 criteria, which state the threshold for treatment is one acre or more of impervious area or 20,000 square feet or more **in a direct watershed of an urban impaired stream** (emphasis added).

Response #25 – The December 9, 2016,Federal Register (Vol 81, No. 237) contains the background information regarding the adoption of Remand Rule in 40 CFR §122. In several sections of the background information for the rule, EPA makes reference to advancing the requirements/standards in each permitting action. EPA states in relevant part that the approach to meet the MS4 permit standard is an iterative process of developing, implementing and improving stormwater control measures and should continually adapt to current conditions and BMP effectiveness and should strive to attain water quality standards. Successive iterations of the mix of BMPs and measurable goals will be driven by the objective of assuring maintenance of water quality standards. EPA also states the agency emphasizes that what constitutes compliance with MS4 standards continues to evolve. The need to reevaluate the meaning of maximum extent practicable for each permit term, as well as the need to determine what is necessary to protect water quality and satisfy the appropriate water quality requirements of the Clean Water Act means that what constitutes compliance will by necessity change over time. The Department believes the 20,000 sq. ft. threshold for all projects, regardless if located inside or outside of watershed of an urban impaired streams, is appropriate to address stormwater impacts to receiving waterbodies.

RESPONSE TO COMMENTS (cont'd)

Comment #26 - Commenter #1 reference Section 5(c) that states:

> *Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures for new development sites that will result in more than 20,000 sq. ft. impervious area. Properly designed stormwater treatment systems are required for these sites. See Section 10, Stormwater Quality Treatment and Retention Measures, of this document.*
>
> The commenter states this performance standard prevents redevelopment and encourages sprawl. Requiring sidewalks to be redesigned so that runoff is directed to a treatment buffer may conflict with ADA requirements. This standard appears to be creating an additional rule without rulemaking under the APA.

Response #26- Section 5(b) as drafted does not require permittees to redesign existing sidewalks so that runoff is directed to a treatment buffer or BMP. This requirement is targeting new development sites that will result in more than 20,000 sq. ft. impervious area. It is not promoting or encouraging non-compliance with ADA requirements

Comment #27 – Commenter #1 reference Section 5(b) that states

> *Require that roof runoff be directed to stormwater treatment buffers or structural stormwater treatment measures. Properly designed stormwater treatment systems are required for these sites. See Section 10, Stormwater Quality Treatment and Retention Measures, of this document.*

The commenter states rooftop runoff is composed of stormwater and is allowed in the MS4. This performance standard is contradictory to standard 10(d) and appears to be creating an additional rule without rulemaking under the APA.

Response #27 -See Response #15 above.

Comment #28 - Commenter #1 reference Section 10(e) that states;

> *Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus 100% of any new impervious area.*

The commenter states this performance standard conflicts with Chapter 500 Redevelopment Standard Section 4(C)(2)(d). Chapter 500 has a detailed point system to determine the level of treatment required for redevelopment projects. This standard appears to be creating an additional rule without rulemaking under the APA.

RESPONSE TO COMMENTS (cont'd)

Response #28 – The standards for redeveloped sites in this permit modification are similar to the standards established in the state of New Hampshire's stormwater program which the USEPA has endorsed. The standards reflect the most current best management practices to address stormwater associated with impervious cover.

Comment #29 - Commenter #1 reference Section 8(a) that states;

> *Prioritize the use of vegetated open-channel conveyance systems for managing runoff of new roads. The applicant may submit an alternative analysis which demonstrates that this performance standard is impracticable.*

The commenter states the word prioritize is not a specific and measurable standard. Vegetated open channels are not always appropriate or safe on new roads. This standard appears to be creating an additional rule without rulemaking under the APA.

Response #29 – Prioritize is defined as determine the order for dealing with (a series of items or tasks) according to their relative importance. If utilizing a vegetated open-channel conveyance system(s) for managing runoff of new roads it is not appropriate for a given situation or road, then utilize another conveyance system.

Comment #30 - Commenter #1 reference Section 8(b) that states;

> *In designing vegetated conveyance measures, transitions to and from culverts should be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydraulic-conditions associated with the conveyance measure.*

The commenter states the word should is not a clear, specific and measurable standard. Erosion protection is a design standard that is handled at the local level and as part of Maine Erosion and Sediment Control standards (MRS Title 38, Chapter 3, §420-C).

Response #30 – To be more clear and specific, Section 8(b) has been revised to read as follows:

> *In designing vegetated conveyance measures, transitions to and from culverts must be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydraulic-conditions associated with the conveyance measure.*

RESPONSE TO COMMENTS (cont'd)

Comment #31 – Commenter #1 references Section 10(c)(1) that states;

> *Stormwater quality treatment system must be designed to improve or maintain water quality and to:*
>
> 1. *Account for upstream and up gradient runoff flows onto, over or through the site to be developed or re- developed.*

The commenter states Chapter 500 General standards Section 4(C)(2)(b) currently states:

> "(b) Upgradient runoff. The runoff from any upgradient area must be either directed away from the stormwater treatment measure or that measure, not including buffers, must be sized to address the runoff volume from the upgradient area at 50% of the sizing requirements for an area that is landscaped, unless the upgradient area is on soil with hydrologic condition A or B."

The proposed performance standard is a modification of Chapter 500 language and intent without rulemaking according to the APA.

Response #31 – Section 10(c)(1) as drafted simply states upgradient runoff that runs onto, over or through a new or redevelopment site must be accounted for in the design stormwater quality treatment systems. It is not superseding any requirements in 06-096 CMR Chapter 500.

Comment #32 – Commenter #1 references Section 10(a) that states:

> *Require that new development sites that will result in 20,000 sq. ft. or more of impervious area treat no less than 95% of the impervious area and no less than 80% of the developed area.*

The commenter states this is creating a new standard that exceeds the current thresholds in Chapter 500. Impervious areas greater than or equal to one acre, or 20,000 square feet within a direct watershed of an Urban Impaired Stream, must incorporate stormwater quality treatment as part of the General Standards in Chapter 500.

RESPONSE TO COMMENTS (cont'd)

Response #32: Section 4(C)(1)(a) of Chapter 500 states in relevant part as follows:

> ***C. General standards.*** *The general standards apply as described below in addition to the basic standards described in Section 4(B).*
>
> *(1) When the general standards must be met. A project must meet the general standards if the project results in:*
>
> *(a) Direct watershed of an urban impaired stream. 20,000 square feet or more of impervious area, or 5 acres or more of developed area, in the direct watershed of an urban impaired stream; or*

Section 4(C)(2)(a)(i) of Chapter 500 reads as follows:

> ***Treatment requirements****. To meet the general standards, the applicant must demonstrate that a project's stormwater management system includes treatment measures that will provide pollutant removal or treatment, and mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms and potential temperature impacts, unless the Department determines that channel protection and/or temperature control are unnecessary due to the nature of the resource. This must be achieved by using one or more of the methods described in this Section as follows:*
>
> *(a)* ***Treatment level****. A project's stormwater management system must:*
>
> *(i) Provide treatment of no less than 95% of the impervious area and no less than 80% of the developed area;*

The threshold of 20,000 sq.ft. of impervious area in this permit modification is more stringent than the current Chapter 500 rule in that it applies regardless of a project being in the direct watershed of an urban impaired stream or not. See Response #25 above. The numeric thresholds in this permit modification are identical to the current Chapter 500 thresholds. These are not new standards. Therefore, the permit modification remains unchanged.

Comment #33: Commenter #1 references Section 10(a)(i) that states:

> *Treatment and retention measures used to meet performance standard (a) of this section must achieve 80% removal of total suspended solids and at least 50% removal of both total phosphorus and total nitrogen.*

The commenter states currently the State of Maine does not utilize a Total Suspended Solids (TSS) removal standard, and TSS is not included in Chapter 500. Nitrogen removal is also not included in Chapter 500, nor has the Maine DEP established any rules relating to nitrogen removal from stormwater. Chapter 500 only applies phosphorous removal from lake watersheds.

Response #33 – The removal rates cited above are consistent with the removal rates requirements in the MS4 permits for New Hampshire and Massachusetts for re-development sites. Nitrogen has been included in the requirement as nitrogen is the limiting nutrient of concern in marine environments and total phosphorus is the limiting nutrient of concern for freshwaters. Both nutrients may be transported to receiving waters by adhering to total suspended solids. See Response #6 for control measures that have been determined to being effective in achieving these removal rates.

Comment #34 - Commenter #1 references Section 10(c)(2) that states:

> *Chloride source control measures must be prioritized in the urban impaired streams and lakes most at risk watersheds or where chloride is identified as a stressor by the Department.*

The commenter states currently the State of Maine has not established any specific rules regarding chloride source control, nor has it established criteria to determine watersheds at risk through rulemaking. Chloride pollution to fresh water is an ongoing concern, and the Department should enter into substantive rulemaking process to establish clear, specific, and measurable standards to protect freshwater resources from chloride contamination.

Response #34 – The Department agrees a substantive rulemaking process needs to be implemented to establish clear, specific, and measurable standards to protect freshwater resources from chloride contamination. Until such time that process is completed, permittees must consider chloride source control measures in the urban impaired streams watersheds and lakes most at risk watersheds.

Comment #35 - Commenter #1 references Section 10(d) that states:

d. *Require retention of rooftop runoff through the use of stormwater treatment measures that utilize infiltration, sheet flow over vegetated stormwater buffers, or capture stormwater for beneficial re-use.*

Exception: Site specific conditions may limit the ability to utilize infiltration (low saturated soil hydraulic conductivity, high seasonal high-water table, rooftops known to have high pollutant loading, for instance rooftops of industrial facilities. In such situations, the applicant shall:

i. *Provide a narrative detailing the site-specific limiting factor and how it cannot be avoided through alternative site layout. In the case of high seasonal high-water table, the applicant must provide a detailed soil investigation as supporting evidence for this limitation. In the case of low*

saturated soil hydraulic conductivity, the applicant must provide a hydraulic conductivity test or testimony from a licensed professional soil scientist as supporting evidence for this limitation.

ii. *Utilize an alternative design including structural stormwater control measure(s) detaining rooftop runoff with a drawdown time between 24 and 48 hours. In the case of rooftops with high pollutant loading, manufactured or equivalent treatment measures effectively targeting the pollutants of concern must be implemented*

The commenter states this proposed performance standard appears to be requiring stormwater infiltration as a Stormwater Control Measure (SCM)/Best Management Practice (BMP) for rooftop runoff. Chapter 500 currently includes standards for infiltration in the General Standards and in Appendix D. Infiltration is just one of the many allowed SCM/BMP that can be used for rooftop runoff. A developer may have reasons for not wanting to infiltrate stormwater.

Response #35 – Section 10(d) as written already has an exception from infiltration under certain circumstances.

Comment #36 - Commenter #1 references Section 10(e) that states:

e. *Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus I00% of any new impervious area. Treatment and retention measures used to meet performance standard (a) of this section must achieve 80% removal of total suspended solids and at least 50% removal of both total phosphorus and total nitrogen.*

The commenter states Chapter 500 has established standards through a point system to determine the level of treatment required for a redevelopment project. The proposed standard is creating a new and different performance standard that potentially conflicts with the Chapter 500 standard.

Response #36 – The standards for redeveloped sites in this permit modification are similar to the standards established in the state of New Hampshire's stormwater program which the USEPA has endorsed.

RESPONSE TO COMMENTS (cont'd)

Comment #37 – Commenter #2 stated Standard 5. Minimize the Effect of Impervious Area: Reinsert language to apply 5(a) to new development sites of 5,000 sq. ft. or more and less than 20,000 sq. ft. During the Chapter 500 process, stakeholders consistently commented on the cumulative impacts of runoff from sites smaller than 1 acre in urbanized areas. It is generally accepted that cumulative impacts from stormwater runoff on smaller lots negatively affects water quality and habitat. Although we feel strongly that this should be a required element, we would support it as a required element in threatened, impaired and sensitive watersheds and an optional element elsewhere.

Response #37 – The threshold of 5,000 sq. ft. was shared with Department staff that are authoring revisions to Chapter 500. Staff rejected lowering the threshold as it would be overly burdensome as to the number of new or re-development projects that would need to be reviewed and approved. The reduction to 20,000 sq. ft. in of itself is more stringent than the requirements in the current chapter 500. The current threshold applies to projects that create more than 20,000 sq. ft. with a direct watershed of an urban impaired stream. Therefore, the threshold of 20,000 sq. ft. remains as the lowest threshold.

Comment #38 – Commenter #2 states Standard 8. Provide vegetated open-channel conveyance systems: Add back language to use existing drainageways, swales, depressions and storage areas in their natural state; the goal here should be to preserve natural hydrology. If the original language is problematic, reword this performance standard to require that natural hydrology and drainage/filtration be preserved. Preserving natural hydrology is at the heart of LID and will be a core LID element of the revised Chapter 500 stormwater rules. If the Water Bureau has concerns about how to word this requirement, it should consult with Land Bureau staff.

Response #38 – The language has been revised and incorporated back into Appendix F Section 8(c) as follows:

> *Require that all new and redesigned roads must take into consideration existing topography and utilize existing drainage ways, swales, depressions and storage areas in their natural state to preserve the natural hydrology, drainage and infiltration features.*

RESPONSE TO COMMENTS (cont'd)

Comment #39 – Commenter #2 states that Standard #11 should be revised to add back requirement that the ordinance must provide a mechanism to ensure that the stormwater treatment measures will be maintained and functioning as designed in cases where ownership is transferred.

Response #39 – Standard #11(c) has been reinstated and reads as follows:

> *The ordinance must provide a mechanism to ensure that stormwater treatment measures will be maintained and functioning as designed in cases where ownership has changed.*

Comment #40 – Commenter #2 states with respect to Attachment C: Model LID ordinance, please see our prior comments. In particular, please consider: adding the language regarding objectives to Section 1 proposed in our prior comments; including shellfishing areas and public beaches to Section 5.2, and; adding a Section 5.4 covering operations and maintenance requirements. With regard to operations and maintenance, the Department could alternatively confirm that this model LID ordinance is incorporated into broader municipal land use regulation that requires sufficient operations and maintenance to ensure LID elements operate as intended. Without this, LID elements will not function to improve and protect water quality.

Response #40 – Section 1 (Purpose) of Attachment C has been revised to incorporate the additional language suggested by the commenter. Section 5.2 (Project Plan Contents) has been revised to include open shellfish harvesting areas as well as public beaches and recreational areas that abut a project. As for a new Section 5.4 on Operations and Maintenance, the proposed language suggested by the commenter is overly prescriptive and may create conflicts for permittees. The opening paragraph of the suggested language is generic enough to apply to all 30 permittees. Therefore, the following language is being incorporated into Section 5 of the Model Ordinance.

5.4 Operations and Maintenance (O&M)

> *An O&M Plan is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the MS4 Permit, this ordinance, and that the Maine Surface Water Quality Standards are met in all seasons and throughout the life of the system. The Operation and Maintenance Plan shall remain on file with the [LID Authority] and shall be an ongoing requirement. It shall address 1) the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural LID Management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; 2) there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented under the ordinance.*

RESPONSE TO COMMENTS (cont'd)

A definition for Operation and Maintenance proposed by commenter #2 has been incorporated into Section 2 as well.

Comment #41 – Commenter #2, #3, #4, #6, #7, #9, #11, #13 and #14 commented that the performance standards in Section 5 & Section 10 are in conflict and a remedy is to consolidate these two sections or modify the language in both sections to provide clarity in the standards.

Response #41 – The Department agrees that as drafted, there are conflicts in the standards for Section 5 and Section #10. Therefore, Section 10(a) has been incorporated into Section 5(a). Section 10(e) has been eliminated except that the last sentence in Section 10(e) has been incorporated into 5(d).

Comment #42 – Commenter # 11 requested clarification on Section 5(d) which as drafted states "Require that redevelopment of sites with greater than 60% impervious cover disconnect or treat 30% of the existing impervious area plus 100% of any new impervious." The commenter questioned whether there is a minimum area of redevelopment that triggers this standard or is it any amount of redevelopment?

Response #42 – The Department agrees a revision to the language is necessary. The language has been revised to read as follows:

> *Require that redevelopment of sites with greater than 20,000 square feet of impervious area disconnect or treat 30% of the existing impervious area plus 100% of any new impervious.*

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: August 2021 **Contact: (207) 314-1458**

SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

A person filing an appeal with the Board should review Organization and Powers, 38 M.R.S. §§ 341-D(4) and 346; the Maine Administrative Procedure Act, 5 M.R.S. § 11001; and the DEP's *Rule Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30th calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

HOW TO SUBMIT AN APPEAL TO THE BOARD

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection
c/o Board Clerk
17 State House Station
Augusta, ME 04333-0017
ruth.a.burke@maine.gov

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

REQUIRED APPEAL CONTENTS

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status*. The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested*. The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.

3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 bill.hinkel@maine.gov, or for judicial appeals contact the court clerk's office in which the appeal will be filed.

Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.