

JANET L. MILLS

April 23, 2025

STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM COMMISSIONER

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 **Revised Proposed Draft Modification**

Dear MS4 Permit Holders:

Attached is a **revised proposed draft** MEPDES permit and Maine WDL **modification** which the Department proposes to issue as a final document after opportunity for your review and comment. By transmittal of this letter, you are provided with an opportunity to comment on the revised proposed draft permit modification and its special and standard conditions. If it contains errors or does not accurately reflect present or proposed conditions, please respond to this Department so that changes can be considered.

By copy of this letter, the Department is requesting comments on the revised proposed draft permit from various state and federal agencies and from any other parties who have notified the Department of their interest in this matter.

The formal 21-day public comment period begins today, Wednesday, April 23, 2025, and ends on Wednesday, May 14, 2025. All comments on the revised proposed draft permit must be received in the Department of Environmental Protection office on or before the close of business on **Wednesday**, **May 14, 2025**. Failure to submit comments in a timely fashion may result in the final license/permit document being issued as drafted.

Comments in writing should be submitted to my attention at the following address:

Maine Department of Environmental Protection Bureau of Water Quality Division of Water Quality Management 17 State House Station Augusta, ME 04333-0017

AUGUSTA 17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017 (207) 287-7688 FAX: (207) 287-7826 BANGOR 106 HOGAN ROAD, SUITE 6 BANGOR, MAINE 04401 (207) 941-4570 FAX: (207) 941-4584
 PORTLAND

 312
 CANCO
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 PORTLAND,
 MAINE
 04103

 (207)
 822-6300
 FAX:
 (207)
 822-6303

PRESQUE ISLE 1235 CENTRAL DRIVE, SKYWAY PARK PRESQUE ISLE, MAINE 04769 (207) 764-0477 FAX: (207) 760-3143 If you have any questions regarding the matter, please feel free to contact me.

Sincerely,

C) U?

Gregg Wood Division of Water Quality Management Bureau of Water Quality

Enc.

cc: Lori Mitchell, MDEP/CMRO Ellen Weitzler USEPA Richard Carvalho, USEPA Ivy Frignoca, Casco Bay Keeper Jack Dafoe, AAG MS4 Permit Holders



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-H-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:

On or before November 5, 2025, 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.

General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer

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. Approval Standards

- 7. Performance Standards
- 8. Enforcement
- 9. Severability
- 10. Waivers
- 11. Authority

See Attachment C of this permit modification for example text for each of the eleven sections cited above. Section 7, *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

Reserved until the close of the 21-day public comment period.

4/23/2025 Revised Proposed Draft Permit Modification

General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer

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 ____ DAY OF 2025.

COMMISSIONER OF ENVIRONMENTAL PROTECTION

BY:_____ Melanie Loyzim, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of Public Notice January 3, 2024 .

Date filed with Board of Environmental Protection

This Order prepared by GREGG WOOD, BUREAU OF WATER QUALITY MS4 Revised Proposed Permit Modification 4/23/2025

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
STATE OF MAINE
MER041000
W009170-5Y-F-Z

BOARD ORDER

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. <u>BACKGROUND AND PROCEDURAL HISTORY</u>

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).

Municipal Separate Storm Sewer	FINDINGS OF FACT
System General Permit – LID	
Approvals	AND
State of Maine	
MER041000	ORDER ON APPEAL
W009170-5Y-F-Z	

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. <u>2020 Appeal</u>

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."

FINDINGS OF FACT

AND

ORDER ON APPEAL

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.

FINDINGS OF FACT

AND

ORDER ON APPEAL

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 openchannel 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.

FINDINGS OF FACT

AND

ORDER ON APPEAL

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.

FINDINGS OF FACT

AND

ORDER ON APPEAL

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. <u>STANDING</u>

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. <u>REMEDY REQUESTED</u>

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.

FINDINGS OF FACT

AND

ORDER ON APPEAL

4. <u>RESPONSE TO REQUEST FOR A PUBLIC HEARING</u>

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. <u>DISCUSSION AND FINDINGS OF FACT</u>

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.

FINDINGS OF FACT

AND

ORDER ON APPEAL

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, 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 (Proposed Draft 10-2-2024) 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 and their associated Shoreland Zoned buffer areas.
- ii. Protected Natural Resources
- iii. Predevelopment drainageways
- iv. High Permeability Soils
- v. Existing stormwater treatment buffers. All stormwater buffers and Shoreland Zoned buffer areas. Prioritize listed Maine Native and Climate-Resilient Northeastern Native Vegetation. Removal of diseased or poor condition vegetation is allowed unless buffer functions are compromised
- vi. Shoreland Zone setbacks.
- vii. Significant and Essential Wildlife Habitats
- viii Areas vulnerable to existing and future flooding and storm surge due 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.

*Applicants must provide a description in their narrative of how they prioritized these areas for protection from disturbance.

1 - Minimize Site Clearing

- 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. Where possible, site building layout, clearing and grading shall be considered to avoid removal of existing trees and shrubs Native site vegetations hall be retained or protected to the maximum extent practicable.
- c. Maintain a minimum 25-foot buffer on all protected water resources including intermittent channels streams,.
- d. Unless other state, local or federal rules allow reduced setbacks, limit development within 75 feet of any stream and 250 feet of any great pond, river, or wetland of special significance as defined in 06-096 CMR Chapter 310 and 25 feet from intermittent channels.
- e. Require new rural developments to preserve at least 40% of the development lots as open space and new suburban development lots to preserve 25% of the development as open space. Municipalities may allow exceptions allowing applicants to pay a fee in lieu which is dedicated to open space or may provide open space in an alternate location within the same watershed. Areas that are preserved or protected in 1(a) of this section can be counted towards open space preservation.

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 rural and suburban proposed developments maximize the use of preserve the natural pre-development drainageways on site by using the natural flow patterns and pathways for the post-construction drainage system. and that construction activities will not impede or otherwise alter drainageways so as to have an unreasonable adverse impact on a wetland or surface waterbody or an adjacent parcel. 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.

2 - Protect natural drainage system (cont'd)

c. Maintain a minimum 25' buffer on all natural water resources including intermittent channels. (Moved to 1c)

Exceptions:

- Stream crossings over portions of streams that are artificially channelized are not subject to this standard.
- The applicant may submit an alternative analysis which demonstrates that this performance standard is impracticable.
- If the time of concentration for a predevelopment drainageway is the same as or shorter than the post-development drainageway. (Incorporated into 2a&b above.)

3 - Minimize the decrease Maximize time of concentration

Performance Standards

See Section 10 of this document.

4 - Minimize impervious area and minimize effect of impervious areas

Performance Standards

- a. Minimize the impervious surfaces on the site using the following standards strategies (developer provides narrative describing why standards strategies cannot be achieved at site if "exception" is requested):
 - Go vertical with 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 and minimize effect of impervious areas (cont'd)

b. Roads:

. Minimize the length/and widths of proposed roads and driveways.

- i. Minimize the width of proposed roads by meeting 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 (rural and suburban areas).
- b. Require dead-end roads to be constructed to provide a hammerhead (when less than 200 feet), 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. as described below (rural and suburban Areas).
- 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 (rural and suburban areas).
- c. Parking:

i. Minimize the number of proposed parking spaces by adhering to the minimum parking requirements for use in the applicable land use code.

4 - Minimize impervious area and minimize effect of impervious areas (cont'd)

Optional Standards

In urban areas — Offer waivers for minimum parking standards set forth in local zoning laws by:

Establish "In Lieu of" Parking programs with the following components:

Fee in lieu of parking

Car-share-in-lieu of parking

Transit-in-lieu

- Bike/pedestrian infrastructure improvements
- Note that the in-lieu program may optionally be tied to incentives, such as density or height bonuses.
- 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 in urban and suburban areas that will result in 5,000 sq. ft. or more and less than 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. In such cases, disconnect or treat the impervious area to the maximum extent practicable.

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

- b. 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.
- c. Require that runoff from sidewalks and peak use overflow parking be directed into stormwater treatment buffers or structural stormwater treatment measures to the maximum extent practicable 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.

*Directing runoff from impervious areas to vegetated areas is considered to meet the disconnection requirement. Additional stormwater quality treatment is not required (Moved to 5(a) above) **This requirement applies to new development sites that will result in 20,000 sq. ft. or more impervious area. Properly designed stormwater treatment systems are required for these sites. See Section 10, *Stormwater Quality Treatment and Retention Measures*, of this document. (Moved to 5(b&c) above)

d. 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.

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). (Moved to Section 7)

6- Minimize soil compaction

Performance Standards

- a. Restrict construction equipment movement, parking and storage to only the disturbed area or existing impervious area. See Measure 1 requirement to mark out areas on-site as well as on-site plan.
- b. Require performance guarantees to assure longevity of vegetative establishment.
- b. Areas to be vegetated shall be rototilled to a depth of 6 to 9 inches prior to planting.

7- Minimize lawns and maximize landscaping that encourages runoff retention

Performance Standard

- a. Require the use of Utilize Maine Native or Climate-Resilient Northeastern native plants in any proposed general buffer area shoreland zoning buffer 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.
- 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. All new and redesigned roads shall take into consideration existing topography and utilize existing drainageways, swales, depressions and storage areas in their natural state to the maximum extent practicable.
- 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 should be protected from erosion caused by flow acceleration and turbulence. The vegetation must be tolerant of the hydrologic conditions associated with the conveyance measure.

9- Rainwater Capture and Reuse

Performance Optional Standard

a. Include optional provision for 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 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. unless site constraints make these thresholds unachievable. In such cases, treatment of impervious area(s) shall be to the maximum extent practicable.

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 50% removal of both total phosphorus and total nitrogen.

10 - Stormwater Quality Treatment and Retention Measures (cont'd)

- b. Require individual stormwater treatment measures to treat a maximum of one acre of impervious area, except for institutional or commercial uses where unless a higher level of storage, detention or treatment can be achieved more cost effectively by treating an larger area more than one acre.
- c. Stormwater quality treatment system must be designed to improve or maintain water quality and to: with the followingconsiderations:
 - i. Stormwater treatment measures must take into Account for upstream and up gradient runoff flows onto, over or through the site to be developed or re-developed.
 - ii. 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. Require applicants to submit a Chlorides Source Reduction Plan.
- 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.

10 - Stormwater Quality Treatment and Retention Measures (cont'd)

e. 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 unless site constraints make these thresholds unachievable. In such cases, disconnection or treatment of impervious area(s) shall be to the maximum extent practicable. 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.

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. All stormwater treatment measures must be inspected at least once every three years and properly maintained accordingly. 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.

ATTACHMENT C



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.

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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.

Section 2 Definitions

Buffers – Means the following buffers listed below :

- **Stormwater Vegetative Buffer** a buffer constructed in accordance with Appendix F in Chapter 500 for the purposes of providing pollutant removal.
- Shoreland Zoning Setback Buffer A buffer required by the municipal Shoreland Zoning Ordinance to protect a water of the State.

Chapter 500 – Means Chapter 500 of the Maine Department of Environmental Protection's Rules ("Stormwater Management Rules").

Chapter 502 - Means Chapter 502 of the Maine Department of Environmental Protection's Rules ("Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams").

Climate Resilient Northeast Native Vegetation – Means plants identified as native to the Northeast as identified by the Northeast Regional Invasive Species & Climate Change (RISCC) Network or a Maine Licensed Landscape Architect.

Common Plan of Development or Sale - Means a "subdivision" as defined in Title 30-A M.R.S. §§ 4401 seq. (the Maine Subdivision statute) and in _________ of the City's/Municipality's code of ordinances . Title 30-A M.R.S. §§ 4401.4 "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.

Construction Activity – Means any activity on a site that results in disturbed area.

Developed area. "Developed area" means an impervious area, landscaped area, or unrevegetated area. Developed area includes all disturbed areas except an area that is returned to a condition that existed prior to the disturbance and is revegetated within one calendar year of being disturbed, provided the area is not mowed more than twice per year.

Discharge - Discharge means the accidental or intentional injection, dumping, spilling, leaking, or placingof materials upon or into any land or waters.

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.

Grey Infrastructure — A network of water conveyance, retention and treatment measures such as pipes, ditches, swales, culverts, retention ponds etc. to slow the flow of stormwater during rain events to prevent flooding and reduce the amount of pollutants entering a waterbody.

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 be infiltration Stormwater Treatment-Measures.

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

Lot – Means a contiguous area parcel 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) - Means a broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the Site are suitable for development and then utilizes Stormwater Treatment Measures to manage Runoff from the proposed developed impervious areas. In LID, Stormwater Treatment Measures using natural processes such as vegetated buffers are given preference over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development.

"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, 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.

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.

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.

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.

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.

Rural Areas — Means those zones or districts designated on the City/Town zoning map or in the City/Town's Comprehensive Plan.

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.

Stream Crossing designed in accordance with 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.

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.

Suburban Areas – Means those zones or districts designated on the City/Town zoning map.

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

Urban Areas - Means those zones or districts designated on the City/Town zoning map.

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 / /2025, which results in 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 Protection areas
- 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

5.3 Submittals related to Infiltration Performance Standard

The applicant shall submit the following to permit review of the Project application under the LID-Performance Standards for infiltration: 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.

Section 6 Approval Standards

The local permitting authority shall use the criteria found in ______ of the Zoning and Land Use Code, (or like reference) for review of developments with the addition of:

 The proposed Project protects sensitive areas, provides on-site volume control, providestreatment of Stormwater, and minimizes Impervious Areas.

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 June __, 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 the New Development or Redevelopment, 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 <mark>8</mark> 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 <mark>9</mark> 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 or other regulatory mechanism that is as least as stringent as this LID Ordinance for Low Impact Development Strategies provisions 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.