STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

IN THE MATTER OF

APARTMENTS AT BRUNSWICK LANDING, LLC Brunswick, Cumberland County APARTMENTS AT BRUNSWICK LANDING	) STORMWATER MANAGEMENT LAW) NATURAL RESOURCES PROTECTION ACT) FRESHWATER WETLAND ALTERATION)))
APPEAL filed by JOSHUA KATZ	)) APPEAL)
L-28632-NJ-C-Z L-28632-TC-D-Z APPEAL DENIED	))) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ; 38 M.R.S. § 420-D; Section 401 of the Federal Water Pollution Control Act (33 U. S. C. § 1341); and the Department's rules including Chapter 500, *Stormwater Management*; Chapter 310, *Wetlands and Waterbodies Protection*; and Chapter 2, *Rule Concerning the Processing of Applications and Other Administrative Matters*, the Board of Environmental Protection (Board) has considered the appeal of JOSHUA KATZ (the Appellant) of Department of Environmental Protection (Department) Order L-28632-NJ-A-N/L-28632-TC-B-N (Department Order) issued to Apartments At Brunswick Landing, LLC (the Licensee). The Board has considered the administrative record on appeal, including supplemental evidence admitted into the record, and FINDS THE FOLLOWING FACTS:

1. PROCEDURAL HISTORY:

A. History of Site: The project site is within the larger area formerly occupied by the Brunswick Naval Air Station (BNAS). The BNAS began operation in 1942 but is no longer an active military base and is undergoing redevelopment for civilian use. Known as Brunswick Landing, much of the former BNAS property is managed by the Midcoast Regional Redevelopment Authority (MRRA), a State-designated redevelopment authority. Brunswick Landing has been subdivided into individual lots of record since the closure of BNAS. Subsequent to Brunswick Landing being acquired by MRRA, some redevelopment is occurring without review under the Site Location of Development Act (Site Law) in accordance with the Site Law exemption for former military bases, as set forth in 38 M.R.S. § 488(15), but environmental review is often required, as here, under other DEP laws.

B. History of the Project: On May 15, 2020, the Licensee filed applications with the Department for a Stormwater Management Law and Natural Resources Protection Act (NRPA) permit for the construction of an apartment complex that consists of nine, 3-story, approximately 1,200-square foot buildings, each with 12 apartment units, a 2,400-square foot clubhouse, walkways, and parking areas for 172 vehicles on a 5.69-acre parcel of land in Brunswick Landing, and to fill approximately 14,440 square feet of forested wetlands for the construction of the apartment complex.

This application was accepted for processing on June 3, 2020. After consideration of the applications, reviewer comments, public comments, and additional filings by the applicant, the Department approved the applications in Department Order #L-28632-NJ-A-N/L-28632-TC-B-N, dated July 22, 2020 and filed with the Board on July 23, 2020.

On August 20, 2020, a timely appeal to the Board was filed jointly by Suzanne Johnson, David Page, Paul Ciesielski, and Joshua Katz (the Appeal). The Appeal includes a request that the Board reverse or modify the decision of the Department, as well as a request that the Board hold a public hearing to discuss the potential for the degraded storm sewer system to transport contaminated groundwater on site at Brunswick Landing.

On September 9, 2020, the Licensee filed a motion to dismiss the appeal on the grounds that the four parties who signed the appeal lacked standing as aggrieved persons, as defined in Chapter 2. On September 30, 2020, the Board Chair ruled that one appellant, Joshua Katz, is an aggrieved person and may bring the appeal before the full Board, but the other appellants were dismissed form the appeal. The licensee requested reconsideration of the Chair's ruling allowing the appeal from Joshua Katz to go forward, but that request was denied. The issue of standing is discussed further in Finding 3, below.

On October 6, 2020, MRRA submitted a request to participate in the appeal process and sought permission to submit proposed supplemental evidence. Citing its ownership of a portion of the storm sewer system in the larger Brunswick Landing, MRRA requested the opportunity to file supplemental evidence for the record and to orally comment when the Board hears the appeal. On October 9, 2020, the Conservation Law Foundation (CLF) requested that it be permitted to participate as an interested person and to provide proposed supplemental evidence for the record. In the October 16, 2020 response to these requests, the Board Chair ruled that because neither MRRA nor CLF filed an appeal of the Department Order, neither party would be allowed to propose supplemental evidence, but that both parties could participate as interested persons during the appeal process.

After review of the appeal document and its associated exhibits, Department staff determined that portions of the documents related to the overall condition of the storm sewer system for the larger parcel, the ownership of the system, and groundwater contamination affecting the system as a whole were not part of the Department's administrative record and should therefore be considered as proposed supplemental

evidence. The criteria for admitting proposed supplemental evidence is found in Chapter 2, § 24(D)(2).

On October 29, 2020, the Licensee offered supplemental evidence related to the contaminated groundwater issues being addressed at the former BNAS and a letter, dated October 23, 2020, from MRRA to the Licensee regarding ownership of the storm sewer system that will receive runoff from the project, the capacity of the system, and groundwater on the project site.

On November 3, 2020, the Board Chair ruled that a document attached as a link would not be admitted and also set a deadline for the Licensee's response to the Appellant's proposed supplemental evidence.

On November 10, 2020, the Appellant filed a response addressing the October 23, 2020, correspondence from MRRA. On November 13, 2020, the Licensee filed a motion to strike the Appellant's November 10, 2020 response, including all attachments, arguing that the Appellant's November 10th response was not compliant with the rules of procedure set forth in Chapter 2.

On December 17, 2020, the Board Chair issued a decision stating the following:

- If Suzanne Johnson is representing the Appellant as an attorney she should so notify the Board; and
- The November 10, 2020 correspondence from the Appellant is not admitted into the record.

In this same correspondence, the Board Chair set a January 4, 2021 deadline for any response from the Appellant on the admissibility of the Licensee's proposed supplemental evidence.

On December 29, 2020, the Appellant submitted objections to two letters from MRRA that were included in the Licensee's proposed supplemental evidence.

On January 15, 2021, pursuant to Chapter 2, § 24(D)(3), the Department requested that the Chair allow evidence to be added to the record by the Department in response to the issues raised in the appeal. This evidence included a map showing the layout of the storm sewer system for the former BNAS and a May 15, 2020 letter from Sitelines, PA, the Licensee's stormwater consultant, to MRRA. Included in the letter was a table comparing the pre-development and post-development flow rates from the project site.[1]

On January 20, 2021, the Board Chair issued a ruling on the supplemental evidence offered by the Appellant, Licensee, and the Department. Statements in the appeal that referred to documents that were not in the record and not offered by the Appellant as proposed supplemental evidence were struck from the appeal, however, the Appellant's

[1] The Licensee included this May 15, 2020 letter within Attachment H-1 to its Application.

discussion of Maine's PFAS Task Force was accepted into the record. From the Licensee's proposed supplemental evidence, an e-mail email dated March 12, 2018 was not admitted because the Licensee failed to show due diligence in bringing the document to the Department's attention at the earliest possible time. Other documents proposed as supplemental evidence by the Licensee were admitted, including a letter dated September 4, 2020 (with enclosures regarding PFAS and drinking water contaminants), a letter dated October 23, 2020 (addressing MRRA's role in managing stormwater at the former BNAS), and Plans dated July of 2019 regarding groundwater samples. The two documents offered by the Department were accepted into the record, although the May 15, 2020 letter previously had been filed as an attachment to the Licensee's application. The January 20, 2021 correspondence from the Board Chair notified the parties, and any other person, that pursuant to Chapter 2, §§ 24(C) and 24(C)(4), a written response to the merits of the appeal must be filed by February 9, 2021. On January 21, 2021, redacted versions of the appeal and the supplemental evidence from the Licensee that would be included in the record were distributed to the parties.

On February 2, 2021, the Licensee filed a response on the merits of the appeal.

2. PROJECT DESRIPTION:

The Licensee's project includes the construction a stormwater management system for an apartment complex that consists of nine, 3-story, approximately 1,200-square foot buildings, each with 12 apartment units, a 2,400-square foot clubhouse, walkways, and parking areas for 172 vehicles on a 5.69-acre parcel of land. The project entails the alteration of approximately 14,440 square feet of forested wetlands. The project is shown on set of plans the first of which is entitled "Apartments at Brunswick Landing," prepared by Sitelines, PA, and dated April 11, 2020 with a latest revision date on any of the sheets of July 8, 2020. The parcel was partially developed with a driveway and two single family residences, all of which were proposed to be demolished. The project would result in the creation of approximately 5.67 acres of developed area, of which 2.83 acres would be impervious area. The project site is located on the north side of Admiral Fitch Avenue in the Town of Brunswick.

3. STANDING:

The appeal was filed in a timely manner and signed by four individuals: Suzanne Johnson, David Page, Paul Ciesielski, and Joshua Katz. On September 9, 2020, the Licensee filed a motion to dismiss the appeal arguing that the individuals lacked standing to bring the appeal because they failed to demonstrate that they are aggrieved persons, as defined in Chapter 2, § (1)(B) of the Department's *Rule Concerning the Processing of Applications and Other Administrative Matters*. The Licensee argued that to have standing the parties must show that they participated in the licensing proceeding before the Commissioner and that they will suffer a particularized injury as a result of the Commissioner's decision to grant a license.

In its response to the motion, the individuals argued that the project will utilize the MRRA storm sewer system which they claim discharges contaminated water to Mare Brook (also referred to as Mere Brook) and ultimately Harpswell Cove, posing a threat to public health and the environment, and that the situation would be exacerbated by the additional flow from the proposed apartment complex. They argued that they have been actively involved as members of the BNAS Restoration Advisory Board, along with members of the Brunswick Area Citizens for a Safe Environment (BACSE), in discussions with the Department and others concerning the storm system and contamination at BNAS, and they submitted correspondence demonstrating their participation in such discussions.

The Licensee argued that the individuals' assertion of particularized injury, that they reside in Brunswick and Harpswell, downstream of the project site, does not demonstrate that they will suffer any injury distinct from that of the general public. The Licensee further argued that membership on the BNAS Restoration Advisory Board in and of itself does not confer standing to any of the individuals. With respect to Appellant Joshua Katz, the Licensee argued that he failed to demonstrate how his recreational use of the BNAS property will be impacted by the Licensee's development.

The Board Chair, in his September 30, 2020 ruling, determined that Suzanne Johnson, David Page, and Paul Ciesielski, did not demonstrate how they would be aggrieved by the decision. The Board Chair also found that Suzanne Johnson was copied on correspondence with the Department on the proposed application and had effective knowledge of the application such that she and/or the Restoration Advisory Board could have participated in the Department's licensing proceeding. The Board Chair determined that Suzanne Johnson, David Page, and Paul Ciesielski may continue as interested persons during the appeal process.

The Board Chair concluded that Joshua Katz, as a recreational user of the BNAS property, had made a sufficient demonstration of particularized injury to have standing to bring the appeal, and although Appellant Katz did not file written comments on the application, he had participated in proceedings to express his concerns about groundwater contaminants reaching Picnic Pond and the condition of the storm system on the former BNAS.

In its February 9, 2021 response to the Appeal, the Licensee reiterates its prior arguments that Joshua Katz lacks standing.

For the reasons previously articulated by the Board Chair, the Board finds that the appellant, Joshua Katz, is an aggrieved person, as defined in Chapter 2, Section 1(B), and may bring this appeal before the Board.

4. FINDINGS & CONCLUSIONS OBJECTED TO:

The Appellant objects to the Department findings in Section 2(C) of the Department Order that the project will meet the Discharges to Public Storm Sewer System Standards contained in Chapter 500, § 4(J) and the corresponding conclusion that the project satisfies the Stormwater Management Law, 38 M.R.S. § 420-D, and the Department rules implementing this law, Chapter 500 *Stormwater Management* rules.

The Appellant argues that stormwater from the development will discharge into retention ponds owned by the U.S. Navy and MRRA is without legal authority to give the Licensee permission to discharge into these water bodies.

The Appellant also argues that the Department Order fails to address per- and polyfluoroalkyl substances (PFAS) contamination at the former BNAS, now referred to as Brunswick Landing, and the possible infiltration of PFAS-contaminated groundwater into MRRA's storm sewer system and the conveyance of contaminated groundwater both on the former BNAS site and to water bodies off site. In this objection the Appellant does not cite any specific permitting standards applicable to the Licensee's project.

5. REMEDY REQUESTED:

The Appellant requests that the Board reverse the Department Order and deny issuance of a stormwater permit to the Licensee or, alternatively, that the Board modify the Department Order to make development of the apartments conditional upon the upgrading of the MRRA storm sewer system

The Appellant also requests that the Board conduct a public hearing on the appeal.

6. RESPONSE TO REQUEST FOR A PUBLIC HEARING:

The record for appeals before the Board is the evidence in the administrative record prepared by and relied upon by the Department staff in its review of the application, unless the Board admits supplemental evidence or decides to hold a =hearing on the appeal. As summarized above in Section 1(B), the record on appeal includes supplemental evidence provided by the Appellant, Licensee, and Department. Pursuant to 38 M.R.S. § 341-D(4), holding a public hearing on an appeal is discretionary.

When a person appeals a Department order and requests a hearing:

> [T]he appellant must provide 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 expert or technical witness would testify.

Ch. 2, § 24(B)(4).

Here, the Board finds the Appellant included general statements about the value of a public hearing in the Appeal document but did not include an offer of proof. Additionally, the relevance of the requested hearing and suggested focus, in light of the applicable permitting standards, is not addressed by the Appellant or self-evident to the Board. The permit application was pending for two months and the record was open for public comment throughout that period.

The Appellant states the property surrounding MRRA's storm sewer system has come into public usage and that, therefore, "a public hearing for this permitting process should have been held submitting the input of all stakeholders to the property and public scrutiny of MRRA's decision to encourage additional influent into its degraded stormwater system." Appeal at p. 7, para. 16. The Appellant appears to be referencing the area around Picnic Pond, which is owned by the Navy. While the Board appreciates the public interest in the recreational use of Brunswick Landing and the relationship between this use and the environmental condition of property owned by the Navy, MRRA, and others at Brunswick Landing, the Board finds the general public interest is not a basis for holding a public hearing on the development authorized in the Department Order at issue here. The development approved is located on Admiral Fitch Avenue and, as discussed below, the stormwater from the approved project is treated in accordance with the Stormwater Management Law before it leaves the site and is not likely to impact Picnic Pond or publicly accessible areas. The Board finds that the record for a determination with regard to the project is adequately developed with regard to the statutory criteria and that a public hearing is not warranted.

8. ANALYSIS AND FACTUAL FINDINGS:

The Department Order approves the construction of the project under the Natural Resources Protection Act, 38 M.R.S. §§ 480-A through 480-JJ, and Stormwater Management Law, 38 M.R.S. § 420-D, as well as a water quality certification pursuant to 33 U.S.C. § 1341. The Appellant only objects to findings and conclusions related to the Department's approval of the apartment project under the Stormwater Management Law. Accordantly, the Board limits its review to Section 420-D and the accompanying Department rules, Chapter 500, *Stormwater Management.*

The Stormwater Management Law provides: "A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the [D]epartment." 38 M.R.S. § 420-D. The law further provides that:

> The [D]epartment shall adopt rules specifying quantity and quality standards for storm water. Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates and suspended solids but may not directly address other dissolved or hazardous materials unless infiltration is proposed.

38 M.R.S. § 420-D(1).

This law focuses the Department's review of stormwater and stormwater impacts on the quantity and quality of stormwater associated with a particular development. In the context of the present appeal, the stormwater on and leaving the lot developed with the apartments, and whether this stormwater meets the quantity and quality standards established in Chapter 500, is the focus of the Board.

A. The Apartment Project Meets the Standard for Discharges to Public Storm Sewer Systems.

With respect to stormwater quantity, the Appellant argues the stormwater leaving the apartment development and entering MRRA's storm sewer system is greater than MRRA's system can handle. MRRA's system, it is argued, lacks necessary capacity and, therefore, Chapter 500, § 4(J) has not been satisfied.

MRRA is a public instrumentality of the State and was created by the Legislature to facilitate the redevelopment of the former BNAS properties. 5 M.R.S. § 13083-G. MRRA owns and operates a storm sewer system, previously developed by the Navy. As a public instrumentality of the State, the storm sewer system owned by MRRA is a public system. Stormwater from the apartment development discharges to this storm sewer system and, accordingly, must satisfy Chapter 500, § 4(J). This section provides, in its entirety:

> **J. Discharges to public storm sewer systems standard.** The discharges to public storm sewer systems standard applies as described below.
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> (1) **When the discharges to public storm sewer systems standard must be met**. A project must meet the discharges to public storm sewer systems standard if runoff from the project site will flow to a publicly-owned storm sewer system.
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> (2) **Description of discharges to public storm sewer systems standard**. The applicant must obtain authorization from the system's owner to discharge into the system. At its discretion, the Department may require the applicant to demonstrate that the system has adequate capacity for any increases in peak flow rates and volumes to the system and to provide photo documentation that the outfall of the public storm sewer system is being properly maintained.

Ch. 500, § 4(J).

As part of the stormwater management plan included with its application, the Licensee provided stormwater runoff calculations using HydroCAD software, in Attachment H of

the application. Calculations were provided for 2-, 10-, and 25-year storm events, consistent with the Department's Flooding Standard contained in Chapter 500, § 4(F), although this standard does not apply to the Licensee's project since the project includes less than three acres of impervious area and does not otherwise trigger review under the Site Location of Development Law. These stormwater calculations showed that post-development runoff rates for stormwater leaving the site and entering MRRA's storm sewer system would be lower than pre-development rates during 10- and 25-year storms. During 2-year storm events, the HydroCAD model results showed a slight increase in runoff rates from 1.48 cubic feet per second (cfs) pre-development to 1.58 cfs post-development.

In a May 15, 2020 letter to MRRA, the Licensee's engineer presented these peak flow calculations and noted that MRRA's system was designed to accommodate storm events larger than 2-year storms and that during the larger modeled storm events post-development runoff rates would decrease. Based on this information the Licensee requested a letter from MRRA stating it has capacity and is willing to accept stormwater from the apartment development into MRRA's storm sewer system. Application, Attachment H-1 (including this May 15, 2020 letter). In a letter dated June 15, 2020, the Utilities Manager for MRRA stated MRRA has sufficient capacity in its storm sewer system to serve the Licensee's development "as described in a letter and plans supplied by [the Licensee's engineer]."

The record reflects that during the course of the application review process the Licensee adjusted its project, including its stormwater management plan. The final plan submitted to the Department is dated June 30, 2020 and includes updated HydroCAD model results. These results state that for all modeled storm events (2-, 10-, and 25-year storms) the cumulative stormwater runoff rates will be lower post-development than they were pre-development, meaning the runoff rates from the project site into MRRA's storm sewer system during these peak events would be reduced as a result of development of the apartments. The updated model results also state that the cumulative post-development runoff rates associated with the final stormwater design and stormwater management plan are lower for all three storm categories when compared to the rates in the original plan included as Attachment H to the application. Stormwater Management Plan, revised June 30, 2020 at 5 (Analysis Point 4 summary table).

Chapter 500, § 4(J) requires an applicant to obtain authorization from the owner of a publicly-owned storm sewer system to discharge into the system. At its discretion, the Department "may require the applicant to demonstrate that the system has adequate capacity for any increases in peak flow rates and volumes to the system." With the information summarized above before it, the Department found, focusing in the Department Order on the June 15, 2020 authorization from MRRA but aware of the peak runoff rate model results, that the proposed project will meet the Discharges to Public Storm Sewer Systems Standard contained in Chapter 500. Department Order, § 2(C).

The Appellant describes the existing public storm sewer system as a legacy system and argues it does not have adequate capacity to receive additional discharge and, therefore, the Licensee's apartment project cannot satisfy the criteria of Chapter 500, § 4(J). Appeal at 6, para. 12.

In its response to the appeal, the Licensee points to MRRA's June 15, 2020 letter as fully satisfying its obligation under Section 4(J) to obtain authorization from MRRA to discharge to its storm sewer system and to its own engineer's May 15, 2020 request letter as providing the justification for MRRA's determination that it can accommodate the stormwater from the apartment development. The Licensee also points to information provided by MRRA indicating this system currently is operating at only a fraction of the capacity formerly used by the Navy. MRRA indicates this is the result previously existing impervious areas having been replaced by grassed and forested areas following departure of the Navy and any new development being subject to stormwater regulations that previously were not applied at the military base. Licensee Response at 15-16.

In analyzing the Appellant's claim that Chapter 500, § 4(J) has not been satisfied by the Licensee, the Board begins by considering whether the Licensee obtained authorization to discharge to MRRA's system. The Board finds the Licensee obtained authorization in MRRA's June 15, 2020 letter and, as MRRA explains in its October 23, 2020 letter provided by the Licensee as supplemental evidence, that MRRA has the legal ability to provide this authorization. This authorization followed MRRA's review of the development and modeled runoff rates as originally proposed by the Licensee in its application and a determination by MRRA that its storm sewer system has sufficient capacity to accommodate runoff from the apartment site. While the final stormwater management plan (dated June 30, 2020) approved in the Department Order includes modifications of the original plan, these modifications further reduce overall stormwater runoff rates from the apartment site and into MRRA's system for all storm events modeled in a manner consistent with the Chapter 500 Flooding Standard. As a result, MRRA's determination that it had adequate capacity to serve the development remains unaffected by the updated plans. The Board affirms the finding of the Department and itself finds the June 15, 2020 authorization from MRRA satisfies the requirement in Chapter 500, § 4(J) that an applicant to obtain authorization from the owner of a publicly-owned storm sewer system to discharge into the system.

In analyzing the Appellant's claim that Chapter 500, § 4(J) has not been satisfied by the Licensee, the Board next considers whether the Licensee has demonstrated that MRRA's storm sewer system "has adequate capacity for any increases in peak flow rates and volumes to the system." Ch. 500, § 4(J)(2). While this evaluation of capacity is solely discretionary under Chapter 500, § 4(J)(2), the Board finds it appropriate to consider whether MRRA's storm sewer system can accommodate any increases in peak flow. If capacity of the system would be stressed as a result of the apartment development, that stress would occur during periods of peak flow.

Chapter 500 provides an established framework for evaluating peak flow rates in the Flooding Standard, which is contained in Section 4(F). Although, as noted above, this section of Chapter 500 does not apply to the Licensee's development, the Board finds review of MRRA's system to accommodate any increase in peak flow under 2-, 10-, and 25-year storms an appropriate exercise of its discretion. Based on the HydroCAD model results discussed above the Board finds that development of the apartments will reduce, not increase, peak flow rates. There is credible evidence in the record from MRRA that it has the capacity to accommodate this stormwater in its system and that the system is operating at a fraction of the capacity at which it was previously used by the Navy due to changes in use and reduced impervious are on the former BNAS property. The Board finds MRRA's storm sewer system has adequate capacity to accommodate stormwater runoff from the apartment site as the development was approved in the Department Order and that the Licensee has satisfied Chapter 500, § 4(J). The conclusion reached by the Department in Section 2(C) of the Department Order is affirmed.

B. The Apartment Project Meets Applicable Stormwater Quality Standards.

Most of the Appeal focuses on the Appellant's concern regarding the movement of PFAS-contaminated groundwater on the former BNAS property, including into an unnamed stream and a series of ponds located along this stream, and ultimately into Mare Brook and Harpswell Cove. The Appellant states that MRRA's storm sewer system is in disrepair and that PFAS-contaminated groundwater is infiltrating this system. Because stormwater from Licensee's apartment development discharges to this same storm sewer system, the Appellant argues the Board should reverse the Commissioner's decision in issuing the stormwater permit to the Licensee or, alternatively, condition approval on MRAA upgrading its system. The Appellant does not provide any citation to statute or rule in support of this argument.

The Stormwater Management Law directs the Department to adopt rules governing both stormwater quantity and quality. The General Standards, contained in Chapter 500, § 4(C), include stormwater treatment requirements and apply to the Licensee's project. Specifically, the Licensee's project must "[p]rovide treatment of no less than 95% of the impervious area and no less than 80 of the developed area." Ch. 500, § 4(C)(2)(a)(i). The Commissioner found these treatment standards are met in Section 2(B) of the Department Order, and this finding is not contested by the Appellant. The Appellant does not argue that stormwater leaving the site of the project contains PFAS or fails to meet stormwater quality requirements. To the extent any PFAS-contaminated water is contained in MRRA's storm sewer system, the Appellant does not alleged this contaminated water comes from stormwater originating at the Licensee's development or that the Licensee in any way contributed to the PFAS identified in groundwater elsewhere at the former BNAS. Accordingly, the Commissioner's application of the General Standards is not reviewed further here, and the Board finds the stormwater associated with the Licensee's development satisfies all applicable stormwater quality standards.

With respect to the possible infiltration of PFAS-contaminated groundwater into MRRA's storm sewer system on the former BNAS, the Board recognizes this is an important environmental and human health issue. With regard to the Appellant's request that the Board condition any approval of the proposed project on improvements being made to the MRRA stormwater system as a whole, the Board has authority to impose conditions when warranted to assure that licensing standards are met, but here the Board finds that the licensing standards are met without the imposition of such a condition. The Board further finds that addressing the issue of PFAS infiltration on the larger BNAS site is beyond the scope of this appeal of an individual permit decision for a project, a project that will not discharge PFAS-contaminated stormwater to MRRA's storm sewer system.

Based on the above factual findings, the Board concludes that:

1. The Appellant filed a timely appeal.

2. The Board will not hold a public hearing on this appeal.

3. The Licensee's project complies the Stormwater Management Law, 38 M.R.S. § 420-D, and accompanying Chapter 500 rules.

THEREFORE, the Board DENIES the request for a public hearing on the appeal, DENIES the appeal of JOSHUA KATZ, and AFFIRMS the Department Order approving the application of APARTMENTS AT BRUNSWICK LANDING, LLC to construct the apartments in Brunswick, Maine and.

All other findings, conclusions, and conditions of Department Order L-28632-NJ-A-N/L-28632-TC-B-N not addressed by this order on appeal are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE, THIS_____ DAY OF _____, 2021

BOARD OF ENVIRONMENTAL PROTECTION

By:_____
Mark C. Draper, Chair