STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:	)	
	)	
APARTMENTS AT BRUNSWICK LANDING, LLC	)	**STORMWATER MANAGEMENT LAW**
Brunswick, Cumberland County	)	**NATURAL RESOURCES PROTECTION ACT**
	)	
APARTMENTS AT BRUNSWICK LANDING	)	**FRESHWATER WETLAND ALTERATION**
	)	
L-28632-NJ-A-N (approval)	)	
L-26832-TC-B-N (approval)	)	

RESPONSE OF APARTMENTS AT BRUNSWICK LANDING, LLC TO THE APPEAL OF JOSHUA KATZ

In accordance with the Department's Rules, Chapter 2, Section 24(C), Apartments at Brunswick Landing, LLC submits this response to the appeal of the stormwater permit issued by the Department of Environmental Protection ("Department") and signed by the Commissioner on July 22, 2020. Apartments at Brunswick Landing, LLC respectfully requests that the Board deny the appeal for the following reasons: (1) the Appellant, Joshua Katz, lacks standing to bring this appeal; and (2) even if he had standing to appeal, the Appellant has not met his burden to demonstrate that the record evidence before the Commissioner or supplemental evidence submitted in this appeal justifies reversal of the stormwater permit.

INTRODUCTION

On May 15, 2020, Apartments at Brunswick Landing, LLC (hereinafter, "ABL") filed an application with the Department for approval of the stormwater management system associated with its proposed development of nine 3-story, approximately 1,200-square foot apartment buildings, together with a 2,400-square foot clubhouse, walkways and parking areas for 172 vehicles (the "Project"). *See* Department Order #L-28632-NJ-A-N, #L-28632-TC-B-N at 1 (July

22, 2020) ("Order"). The Project site consists of a 5.69-acre parcel of land. (*Id*.) The Project will result in 2.83 acres of impervious surface and approximately 5.67 acres of developed area. (*Id*.)

The stormwater management system for the Project will involve a combination of "individual roof dripline filters for each of the buildings and two (2) Subsurface Sand Filters to detain and treat the developed and impervious area from the proposed development." (Sitelines 5/15/20 Letter at 1.) The system will provide treatment and detention for all storm events, and will discharge treated stormwater into the existing Brunswick Naval Air Station ("BNAS") storm drain system in Admiral Fitch Avenue. (*Id*.)[1]

On July 22, 2020, the Department issued an order signed by the Commissioner pursuant to Maine's Stormwater Management Law, 38 M.R.S. § 420-D and Chapter 500 of the Department's rules (hereinafter, the "Order"), granting a permit for the Project's stormwater management system. In the Order, the Department divided its conclusions into two sections: (1) stormwater standards; and (2) wetlands and waterbodies protection rules. With regard to the stormwater standards, the Department first considered the Basic Standards set forth in § 4(B) of Chapter 500, dealing with erosion and sedimentation control, inspection and maintenance, and housekeeping. The Department concluded that ABL's proposed stormwater system will meet the Basic Standards because it will utilize Best Management Practices ("BMPs"), it submitted an executed long-term contract for the ongoing maintenance of the stormwater control structures, and will comply with the housekeeping performance standards contained in Appendix C of Chapter 500. (Order at 2.)

[1] A full plan showing the BNAS Stormwater Collection System, dated October 2009, has been submitted by the Department for inclusion in the record for this appeal.

Next, the Department concluded that the application meets the General Standards contained in § 4(C) of Chapter 500. In support of that conclusion, the Department found that the plan "includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts." (Order at 2-3.) The Department further found, in compliance with § 4(C)(2)(a)(i), that the proposed system is designed to control runoff from no less than 95% of the impervious area and no less than 80% of the new developed area, and that general treatment measures will mitigate for approximately 80% of the newly developed area, including 97% of the total impervious area. (Order at 3.) This complies with the standards set forth in Chapter 500.

Third, the Department determined that a portion of the stormwater runoff from the Project will discharge into an existing public storm sewer system under the jurisdiction of the Midcoast Regional Redevelopment Authority (hereinafter, "MRRA"). (Order at 3.) The Order notes that the Executive Director of MRRA had provided a capacity to serve letter dated June 15, 2020, authorizing ABL to discharge runoff into MRRA's storm sewer system. (*Id*.) Based upon that evidence and its review of the stormwater system's design, the Department determined that the Project meets the Discharges to Public Storm Sewer Systems Standard set forth in Chapter 500(4)(J). (*Id*.)

Finally, on the issue of wetlands and waterbodies rules, the Department determined that ABL has avoided and minimized wetland impacts to the greatest extent practicable and proposed the least environmentally damaging alternative that meets the Project's overall purpose. (Order at 4.)

Based upon these findings of fact, the Department granted a stormwater permit for the Project, subject to several conditions of approval. These included the use of a qualified engineer to oversee the construction of the stormwater management system in accordance with the approved plans; submission of a log of inspection reports for the system on at least an annual basis, the submission of as-built drawings for the stormwater treatment BMPs, and removal of storm sewer grit and sediment materials from the stormwater control structures and their disposal in accordance with the Maine Solid Waste Management Rules. (Order at 5.) In addition, the Order was subject to the Department's Stormwater Standard Conditions. (Order at 6-7.)

ARGUMENT

As a threshold issue in this appeal, ABL reiterates its argument that Joshua Katz (the "Appellant") lacks standing to pursue this appeal, due to the fact that he can neither demonstrate that he participated in the licensing proceeding at the Department nor show that he has sustained any "particularized injury" from the issuance of the Order. On the merits, the Appellant brings two general categories of arguments, neither of which actually challenge the Department's findings or conclusions. First, the Appellant contends that there is per- and polyfluoroalkyl substances ("PFAS") contamination in surrounding areas, and asserts—without support—that the Project's stormwater management system will increase the level of pollution in the ground waters surrounding the Project. However, there is no authority under Maine's Stormwater Law or Chapter 500 for the Board or the Commissioner to regulate PFAS through review of a stormwater permit application. Second, the Appellant brings unsupported claims that the MRRA public storm sewer system is not capable of accepting additional stormwater from the Project. Notwithstanding those arguments, the issue in this appeal is whether the Project meets all applicable standards under Chapter 500, not whether there are environmental impacts unrelated

to the Project. However, because the Appellant does not demonstrate that the Department's conclusion that ABL's proposed system meets the standards set forth in Chapter 500 was somehow erroneous, the Board must deny the appeal.

I. THE APPELLANT LACKS STANDING TO BRING THIS APPEAL.

On September 30, 2020, the Board Chair ruled on the motion to dismiss filed by ABL, concluding that Joshua Katz, as a recreational user of the BNAS property, has standing to bring this appeal.[2] Although the motion to dismiss was denied in part, ABL reiterates to the full Board its arguments as to standing—both to preserve the issue and to assert that the issue of standing is a separate and independently sufficient ground for denial of the appeal.

A. Applicable Law.

In order to appeal the Commissioner's Order, the Appellant must demonstrate that he is an "aggrieved person." *See* 06-096 C.M.R. ch. 2, § 24 ("Final license decisions of the Commissioner may be appealed to the Board by persons who have standing as aggrieved persons."). Chapter 2 defines an aggrieved person as follows:

> "Aggrieved Person" means any person whom the Board determines may suffer particularized injury as a result of a licensing or other decision. The Board will interpret and apply the term "aggrieved person," whenever it appears in statute or rule, consistent with Maine state court decisions that address judicial standing requirements for appeals of final agency action.

06-096 ch. 2, § 1(B); *see also Anderson v. Comm'r of the Dep't of Human Servs.*, 489 A.2d 1094, 1097 (Me. 1985) ("To have standing to obtain judicial review of administrative action as an aggrieved person, one must have suffered a resulting particularized injury."). In order to meet

[2] However, the Board Chair did dismiss Suzanne Johnson, David Page, and Paul Ciesielski as appellants, finding that they lacked standing to appeal. Having failed to appeal that determination to the full board, per Section 24(C) of Chapter 2, their dismissal from the appeal has become final.

the "aggrieved person" standard, an appellant must show that "[t]he agency's action must actually operate prejudicially and directly upon a party's property, pecuniary or personal rights." *Storer v. Dep't of Envtl. Prot.*, 656 A.2d 1191, 1192 (Me. 1995) (remanding for dismissal because the appellant was not aggrieved by the action of the Department); *see also Lindemann v. Comm'n on Governmental Ethics & Election Practices*, 2008 ME 187, ¶ 16, 961 A.2d 538, 543 (although the appellant was arguably affected, but not directly or personally injured, by the agency's decision, the appellant's alleged injury was indistinguishable from any injury experienced by other Maine citizens; the appeal was dismissed).

This rule mirrors the well-developed standard set forth by the Law Court for standing to appeal municipal administrative decisions under Rule 80B of the Maine Rules of Civil Procedure: "In order to have standing to file an 80B appeal in the Superior Court, the appellant must prove (1) that it was a party at the administrative proceeding, and (2) that it suffered a particularized injury as a result of the agency's decision." *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, ¶ 8, 2 A.3d 284 (affirming dismissal of the appeal for lack of standing). On the first prong, an appellant must show that he/she participated throughout the administrative process in order to establish standing. *Id*. ¶ 13. On the second prong, the Law Court has explained that a "particularized injury" can be established "when a judgment or order adversely and directly affects a party's property, pecuniary, or personal rights." *Id*. ¶ 18. Although users of affected property may have standing, the aggrieved person's injury "must be distinct from that suffered by the public at large." *Id*. (quoting *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735). "One who suffers only an abstract injury does not gain standing to challenge governmental conduct." *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257; *see id.* ¶ 7

(noting that "[b]eing affected by a governmental action is insufficient to confer standing in the absence of any showing that the effect is an injury.").

To sum up, in order to have standing to appeal the Order, the Appellant must (a) have participated in the Department's licensing proceeding and (b) have a "particularized injury," as that term has been defined in law, resulting from the issuance of the Order. Here, Mr. Katz cannot meet either prong of the analysis.

B. The Appellant has not demonstrated that he participated in the Department's licensing proceeding.

To begin with, the Board should conclude that the Appellant lacks standing to bring this appeal because he has not established that he participated in the Department's licensing proceeding. The appeal document filed by the Appellant contains just two paragraphs with his argument on standing. (Appeal ¶¶ 14-15.) Absent from that argument is any mention that the Appellant participated in the licensing proceeding at the Department level, or that he raised to the Department any of the arguments that he now raises to this Board.[3] Having failed to demonstrate that he participated below, the Appellant has not established the first prong in the standing analysis. *See Friends of Lincoln Lakes*, 2010 ME 78, ¶ 8, 2 A.3d 284.

The only participation that Mr. Katz has identified occurred entirely outside of the above-captioned licensing proceeding. In response to ABL's motion to dismiss, the Appellant attached a single page of comments (undated), which he apparently submitted for purposes of a meeting regarding the Navy's proposed plan for remediation of the Picnic Pond stormwater system. That

[3] According to Robert Green, the Department's project manager for this proceeding, although the stormwater permit was properly noticed (notice to abutters and publication of public notice), the Appellant did not offer comment or otherwise participate during the Department's licensing proceeding. In fact, Mr. Green received just one request for information from another person, Carol White, who copied dismissed appellant Suzanne Johnson on the email. This certainly does not rise to the level of continuous "participation" that is required to establish standing under the law. *See Friends of Lincoln Lakes*, 2010 ME 78, ¶ 13, 2 A.3d 284.

meeting did not occur within this pending licensing proceeding, and ABL was neither present at that meeting nor had the opportunity to respond to any such comments. With these facts as presented by the Appellant, he lacks standing under the applicable case law.

The Law Court has held—on a number of occasions—that participation for the purpose of establishing standing must occur within the proceeding that is the subject of the appeal. "One does not participate in a hearing by expressing opposition to an application prior to the hearing, nor by opposing the application at a related preliminary proceeding . . . ." *Lucarelli v. City of South Portland*, 1998 ME 239, ¶ 3, 719 A.2d 534 (citations omitted); *see also Jaeger v. Sheehy*, 551 A.2d 841, 842 (Me. 1988) (holding pre-hearing conversations with a member of the board did not constitute participation); *Dep't of Envtl. Prot. v. Town of Otis*, 1998 ME 214, ¶ 8, 716 A.2d 1023 (holding that written comments by the DEP to a Planning Board at a preliminary phase of an application for a permit did not constitute participation). This is exactly what the Appellant is proposing here and, given the above authorities, he lacks standing to bring this appeal.

Not only is a finding of standing contrary to the well-established case law on standing, it would set an unfortunate precedent for future cases. As noted by the Law Court, the participation requirement is "well established," and the reasoning is sound: issues that could have been raised before the licensing entity should not be permitted to be raised for the first time in an appeal to an appellate board. It is unfair both to ABL and the licensing entity to do so. The rule should not be that an individual can establish standing by making reference to any comments he or she made in the past that might relate in some way to a licensee's project; if so, the well-established rules on standing would become meaningless.

C. The Appellant has not demonstrated that he has suffered a "particularized injury."

Even if he could demonstrate participation at the Department level, the Appellant cannot demonstrate that he has suffered a particularized injury; therefore, he is not an "aggrieved person," and so lacks the requisite standing to bring this appeal of the Order.

The Appellant claims to be an aggrieved person merely as a "recreational user of the BNAS property." (Appeal at 3.) However, he does not describe what or where his recreational use of the BNAS property is, and furthermore, fails to make any showing whatsoever of how the minor addition of the Project's stormwater to MRRA's existing stormwater system will impact his current use of the BNAS property. As such, he has failed to establish that the Commissioner's Order will "operate prejudicially and directly upon [his] property, pecuniary or personal rights." *See Storer*, 656 A.2d at 1192.

Moreover, it is worth noting that the land on which Mr. Katz claims to be recreating is owned by the Navy, and the Picnic Pond System is currently undergoing remediation under state and federal Superfund/CERCLA/UHSSL laws, which prohibit recreational use. (MRRA 10/23/20 Letter at 4.) In fact, in the Appellant's petition appealing the license, he concedes that there is signage on the BNAS property describing the dangerous conditions and restricting access for recreational activities. (Appeal at 7.) Trespassing cannot properly form the basis for particularized injury with regard to recreational use.

Indeed, it is clear from the appeal that the Appellant's complaints arise out of the use of the MRRA's existing stormwater system and existing levels of PFAS on the BNAS site as a whole, and the Appellant's desire to compel MRRA (not ABL) to address those issues to his satisfaction. These claims hardly relate to the Project, which is treating the vast majority of its stormwater on its own site and using MRRA's existing stormwater system for a minor amount of

treated stormwater leaving the site. As found in the Order, the proposed stormwater system meets all applicable review standards, including the Discharges to Public Storm Sewer Systems Standard in Chapter 500(4)(J). The Appellant does not even address the applicable standards in their appeal, let alone demonstrate how the Department's finding impacts his property, pecuniary or personal rights—so as to confer standing to bring this appeal.

II. THE APPEAL MUST BE DENIED ON THE MERITS BECAUSE THE APPELLANT HAS FAILED TO DEMONSTRATE THAT THE PROJECT DOES NOT MEET THE STANDARDS SET FORTH IN CHAPTER 500.

Even if the Board finds that the Appellant has standing, his appeal fails on the merits. Rather than challenging the Department's conclusions with regard to the actual standards contained in Chapter 500 related to the stormwater management system approved by the Order, the Appellant focuses on ancillary issues related to groundwater and infrastructure downstream of the Project, which are not addressed under Chapter 500. Because the Appellant has failed to meet his burden to demonstrate that the Department erred by issuing the Order, the Board must uphold the findings and conclusions contained in the Order.

A. Standard of Review.

In an appeal from the Department's licensing decision, the Board "may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner," and "[a]ny changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board." 38 M.R.S. § 341-D(4). Here, the findings and conclusions contained in the Order are all well supported, and the Appellant has not met his burden to demonstrate otherwise.

B. Chapter 500 Standards.

As noted in the Order, the regulations that are applicable to the stormwater permit are all contained within Chapter 500 of the Department's regulations, which provides that a "project is required to meet appropriate standards to prevent and control the release of pollutants to waterbodies, wetlands, and groundwater, and reduce impacts associated with increases and changes in flow." 06-096 C.M.R. ch. 500, § 1 (emphasis added). Therefore, the question is whether the proposed system for the Project does meet those appropriate standards set forth by regulation.

The Chapter 500 standards that are applicable to the Project are: (1) the Basic Standards; (2) the General Standards; (3) the Discharges to Public Storm Sewer Systems Standard; and (4) the Wetlands and Waterbodies Protection Rules. As discussed below, the Board should uphold the Department's findings that the Project's proposed stormwater management system meets each of those standards.

1. Basic Standards

For the Basic Standards, ABL was required to "demonstrate that the erosion and sedimentation control, inspection and maintenance, and housekeeping standards specified in Appendices A, B, and C to this Chapter, respectively, are met, and that the grading or other construction activity will not impede or otherwise alter drainageways so as to have an unreasonable adverse impact on a wetland or waterbody, or an adjacent downslope parcel." 06-096 C.M.R. ch. 500, § 4(B).

The Department concluded that the proposed stormwater management system meets the Basic Standards, noting that the plan and plan sheets containing erosion control details that were reviewed by and revised in response to the comments of the Cumberland County Soil and Water

Conservation District ("CCSWCD"). (Order at 2.) The Appellant does not raise any challenges in the appeal with regard to the Basic Standards; therefore, the Board should uphold the findings and conclusions contained in the Order.

2. General Standards

The Project also involves the application of the Chapter 500 General Standards, which require ABL to "demonstrate that a project's stormwater management system includes treatment measures that will provide pollutant removal or treatment, and mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms and potential temperature impacts, unless the Department determines that channel protection and/or temperature control are unnecessary due to the nature of the resource." 06-096 C.M.R. ch. 500, § 4(C)(2). In order to achieve that mitigation, the applicant must use Best Management Practices ("BMPs") that will control runoff from "no less than 95% of the impervious area and no less than 80% of the developed area." *Id*.

The Department concluded that the proposed system meets the General Standards, based on its review of the system design as well as the CCSWCD's review and comment. The Appellant does not assert that ABL fails to meet the mitigation levels required in Chapter 500, nor does he otherwise take issue with the findings in the Department's Order. Rather, the Appellant focuses entirely on the issue of PFAS contamination, which is not a recognized surface water pollutant, as noted by ABL's civil engineer:

> [S]ince PFAS/PFOA is not yet regulated as a hazardous substance by the EPA, there are no State or Federal [Maximum Contaminant Levels] to use as a benchmark. There is a drinking water advisory level of 70 parts-per-trillion established by the EPA, which we recognize that the [Department of Defense] and DEP use this level as a reference; however, this level is currently advisory. Stormwater in an enclosed stormwater system is not a source of drinking water and the outfall is not in the wellhead of a public

> drinking water supply. The application of a drinking water advisory level is not appropriate for this situation.

(Sitelines 9/4/20 letter at 2.) Therefore, the statements in the appeal that the Project's stormwater added to the MRRA stormwater system will exacerbate a PFAS problem are not only unsupported by record evidence, they also cannot be quantified in accordance with any available threshold or standard in Chapter 500. That being the case, the Appellant's arguments relating to PFAS do not present a valid basis for reversing or modifying the stormwater permit.

Moreover, the Appellant has failed to point to any record evidence that the portion of the former BNAS property where the Project will be developed contains any PFAS contamination. In fact, the record evidence is to the contrary:

- "Beginning in 2010, the Navy has been conducting PFAS investigations on and around the former base properties due to emerging concerns of PFAS-containing aqueous film forming foam (AFFF). In 2019, the Navy completed a comprehensive evaluation of PFAS on the former Navy base to better understand the extent of the related issues. These studies have shown that PFAS is generally found in areas of historical industrial uses, such as the airport and areas where AFFF was stored or used for training purposes. The historical and current residential areas of the former base (where this project is located), do not contain PFAS or any other regulated contaminants." (MRRA 10/23/20 Letter at 5.)

- "Based upon multiple investigations and recent groundwater sampling conducted by the Navy to date, there is no evidence of contaminants in the groundwater at the project site, nor in the groundwater of the adjacent residential land areas in the vicinity. Also, given the path of the generated stormwater through the existing residential areas, it is extremely unlikely that the system would carry any contaminants to the Picnic Pond Drainage areas." (MRRA 10/23/20 Letter at 6.)

- "The project parcel is in a part of the former naval air station that has been identified by the Navy as not having PFAS/PFOA contamination. The contacts for the Navy, EPA and DEP were all provided with copies of the plans and present at a pre-submission meeting where the groundwater was discussed. There were no concerns or limitations identified by those agencies during the review process." (Sitelines 9/4/20 Letter at 3.)

Thus, the Appellant's allegations of "irreparable injury of additional PFAS contamination being permitted and further encouraged to circulate into the surface waters of the Brunswick

property by the addition of additional stormwater" (Appeal at 7) are, quite simply, bald allegations without any evidentiary support. Even if the presence of PFAS contamination were a valid basis for the Department to deny a stormwater permit, without any record evidence to the contrary, the Board would have no justification to overturn the findings and conclusions contained in the Department's Order.

Finally, it is worth noting that, notwithstanding the Appellant's argument, the General Standards in Chapter 500 do not create a "zero tolerance" standard for stormwater pollutants, which would be nearly impossible to achieve. As noted by ABL's civil engineer, "Chapter 500 includes a selection of DEP approved best management practices (BMPs) that provide appropriate removal and treatment as determined by DEP staff through vigorous testing protocols." (Sitelines 9/4/20 Letter at 2.) The Department approved ABL's proposed stormwater management system because it will comply with BMPs and will meet the standards set forth in Chapter 500. The Appellant's suggestion that the Project must meet some heightened standard—that has never been applied to other projects—is without basis and should be rejected.

3. Discharges to Public Storm Sewer Systems Standard

In addition to the Basic Standards and the General Standards, the Order concludes that ABL's proposed system meets the Discharges to Public Storm Sewer Systems Standard. The Appellant fails to bring forth any persuasive argument to justify a modification or reversal of that finding, merely arguing that "the proposed additional discharge into [the] Public Stormwater System enhances contamination movement and cannot satisfy the criteria set forth in Chapter 500(4)(J)." (Appeal at 6.) The Board should reject that argument because the Appellant does not actually address the standard contained in the rule.

Chapter 500 sets forth the applicable standard for a discharge to a public storm sewer system. 06-096 C.M.R. ch. 500, § 4(J). First, an applicant must obtain permission from the system's owner to utilize it. *Id*. § 4(J)(2). Here, the Order has established that this part of the standard was met through the MRRA capacity to serve letter, which is not disputed in the Appeal. Second, "[a]t 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 system is being properly maintained." *Id.* Although this portion of the standard is not discussed in the Order, ABL meets this requirement as well.

ABL's civil engineer performed an analysis of peak runoff rates at existing and proposed conditions for the 2, 10 and 25-year, 24-hour storm events, and provided the results of the analysis in a May 15, 2020 letter to MRRA's Executive Director. (Sitelines 5/15/20 Letter at 2.) According to the analysis, "anticipated peak flow from the site into the Admiral Fitch Avenue storm drain system is decreased in the 10-year and 25-year storms," and shows only a modest increase in the 2-year event. (*Id.*) As a result, ABL's engineer concluded that there will be no "undue adverse impact on the existing storm drain system or the downstream drainageways" from the Project's proposed stormwater system. (*Id*.) In response, MRRA issued an "ability to accept" letter to ABL on June 15, 2020, which was submitted to the Department as part of the application for a stormwater permit.

For its part, MRRA determined that the MRRA-owned stormwater system "has more than sufficient capacity to serve this project," finding that the stormwater line on Admiral Fitch Avenue will handle 4.207 CFS or 1,888.2 GPM of stormwater. (MRRA 10/23/20 letter at 3.) MRRA concluded: "As determined in our review of the project, the addition of the projected

stormwater flow from the subject apartment project will have a negligible effect on this system." (*Id.*) MRRA further noted that the existing stormwater system is currently operating at a fraction of the capacity formerly used when it was a functional Navy base. (*Id.*) Many of the residential buildings and parking areas that had existed previously, and which had created stormwater from the impervious areas, have been replaced by grassed and forested areas over the years. (*Id.*) Additionally, unlike the prior BNAS development, new developments at MRRA must employ BMPs, which significantly reduce the impact to the overall system. (*Id.*) MRRA does recognize that its stormwater system does require "periodic repair and maintenance," but it has invested nearly $3.5 million in upgrading utilities on site over the past ten years, and will continue to make similar investments going forward to improve and upgrade its stormwater system. (*Id.*) There is no contrary evidence in the record or supplemental evidence to contradict any of MRRA's statements set forth above.

The gist of the Appellant's arguments in this appeal is that the MRRA stormwater system was not designed to handle the additional stormwater from the proposed development (Appeal at 6), and that the system is "dysfunctional and in disrepair," (Appeal at 3). However, as with his other arguments, there is no factual basis for either claim. The appeal must be denied on the merits because the Appellant has failed to demonstrate that the Project does not meet the Discharges to Public Storm Sewer Systems Standard.

4. Conclusion

The Department had a complete stormwater study for the Project, and the record contains substantial evidence that ABL's proposed development will adequately mitigate and treat the stormwater it creates, and will result in a negligible addition of stormwater to the existing MRRA-owned system. In addition, the Department is familiar with the existing public storm

sewer system now owned by MRRA. There have been approximately 12 development projects on the former BNAS property, each presumably utilizing the public storm sewer system.[4] Under these circumstances, the Department properly approved the stormwater management plan for the Project, including its connection to the public storm sewer system.

CONCLUSION

In summary, because the Appellant failed to participate in the Department's licensing proceeding, and has not established any "particularized injury" arising from the Department's approval of the proposed stormwater management system, he lacks standing as an "aggrieved person" under applicable provisions of Maine law. Moreover, the Appellant raises no substantive issues to justify any modification to the Order, which approves the stormwater management system proposed by Apartments at Brunswick Landing, LLC, subject to certain reasonable conditions of approval. The Appellant failed to address any of the applicable review standards contained within Chapter 500 of the Department's rules, and therefore the Commissioner did not err by granting the stormwater permit requested by ABL. Therefore, for the reasons set forth above, the Board must affirm the Order granting a stormwater permit for the Project.

Respectfully Submitted,

Dated: February 9, 2021

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[4] As stated by ABL's engineer, if "infiltration and inflow of groundwater into receiving storm drain systems were a requirement, municipalities would have to have a study of their systems completed, or consultants would be completing such studies for each project connecting to a public system," which simply does not occur. (Sitelines 9/4/20 Letter at 2-3.)

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