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October 29, 2020

FILED ELECTRONICALLY

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
#17 State House Station
Augusta, ME 04333-0017
Ruth.a.burke@maine.gov

**RE: Appeal of #L-28632-NJ-A-N / L-28632-TC-B-N
Apartments at Brunswick Landing, LLC**

Dear Mr. Draper:

With regard to the above-referenced matter, enclosed please find the following supplemental evidence submitted on behalf of my client and the Licensee, Apartments at Brunswick Landing, LLC:

1. A letter dated September 4, 2020, to the Licensee from Curtis Neufeld, P.E., of Sitelines (consultant to Licensee). This letter addresses certain points raised in the pending appeal, including various issues related to Chapter 500 compliance and the appellant's PFAS/PFOA concerns, also enclosing a relevant Congressional Research Service publication entitled "Regulating Drinking Water Contaminants: EPA PFAS Actions."
2. An email dated March 12, 2018, to Mr. Neufeld from Chris Rhodes of Helios, forwarding an email from Paul Burgio, the BRAC Environmental Coordinator for the Department of Navy, regarding PFAS testing on the subject property.
3. Plans prepared by Resolution Consultants, titled "Historical PFAS Shallow Groundwater Samples Above USEPA LHAs" for the former Brunswick Naval Air Station property (July 16, 2019), and "Historical PFAS Deep and Bedrock Groundwater Samples Above USEPA LHAs" (July 17, 2019).

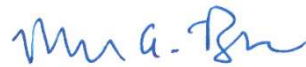
October 29, 2020
Page 2

4. A letter dated October 23, 2020, to the Licensee from Steve Levesque, Executive Director of the Midcoast Regional Redevelopment Authority (MRRA), providing useful background on the MRRA stormwater discharge permits and approvals, capacity of the MRRA stormwater system, and MRRA's participation in the Department of Navy's environmental remediation program in conjunction with DEP and the U.S. Environmental Protection Agency.

We are providing this supplemental evidence in response to the issues raised in Mr. Katz's appeal, and for the purpose of facilitating the prompt and efficient review of the same by the Board. We look forward to a further discussion of these issues with the Board during its review of this appeal.

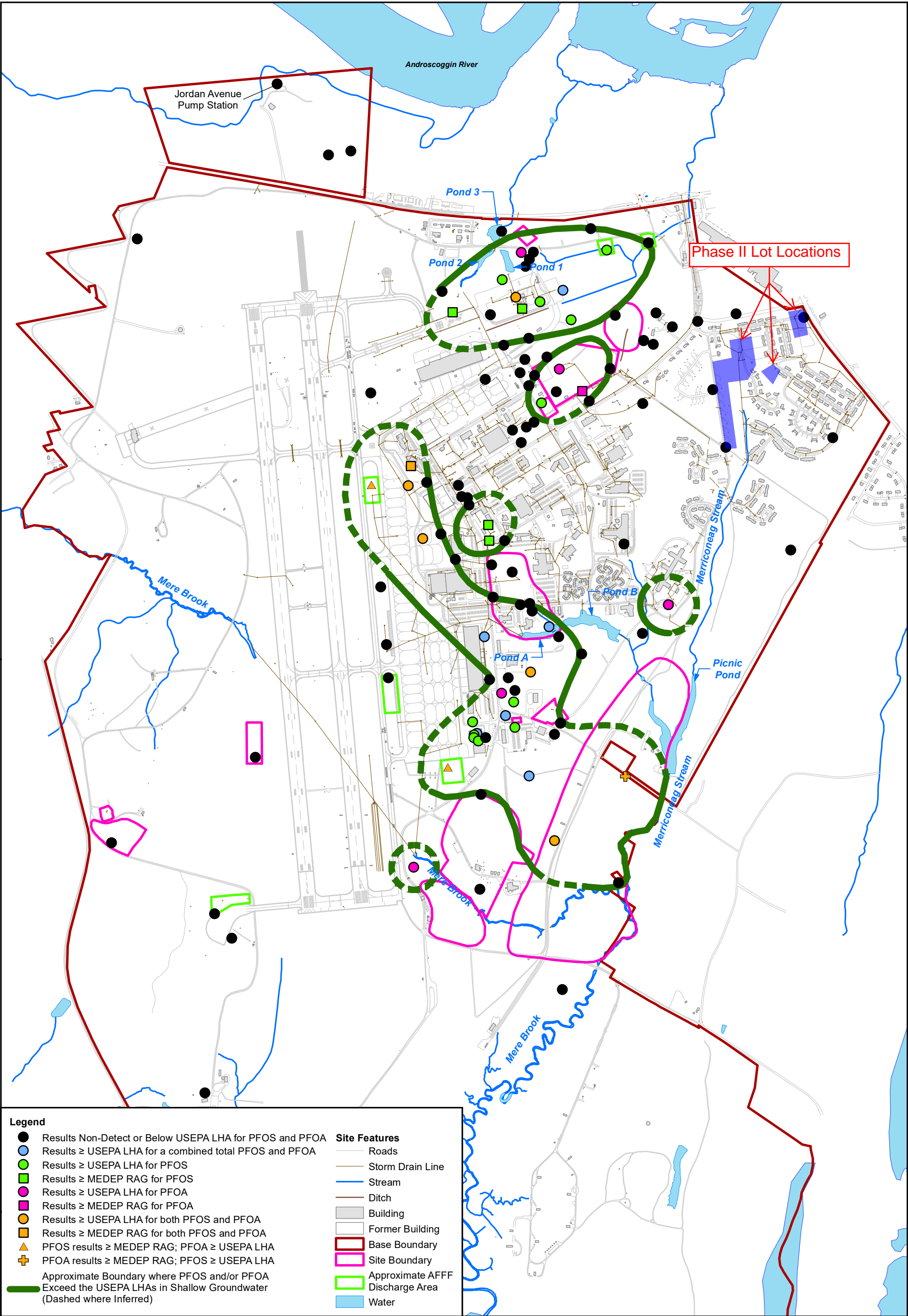
Thank you for your attention to this matter.


Sincerely,



Mark A. Bower

MAB/gw
Enclosure
cc: Appeal Service List





**RESOLUTION
CONSULTANTS**

Drawn: JB 07/16/2019

Approved: CD 07/16/2019

Project #: 60271305

N

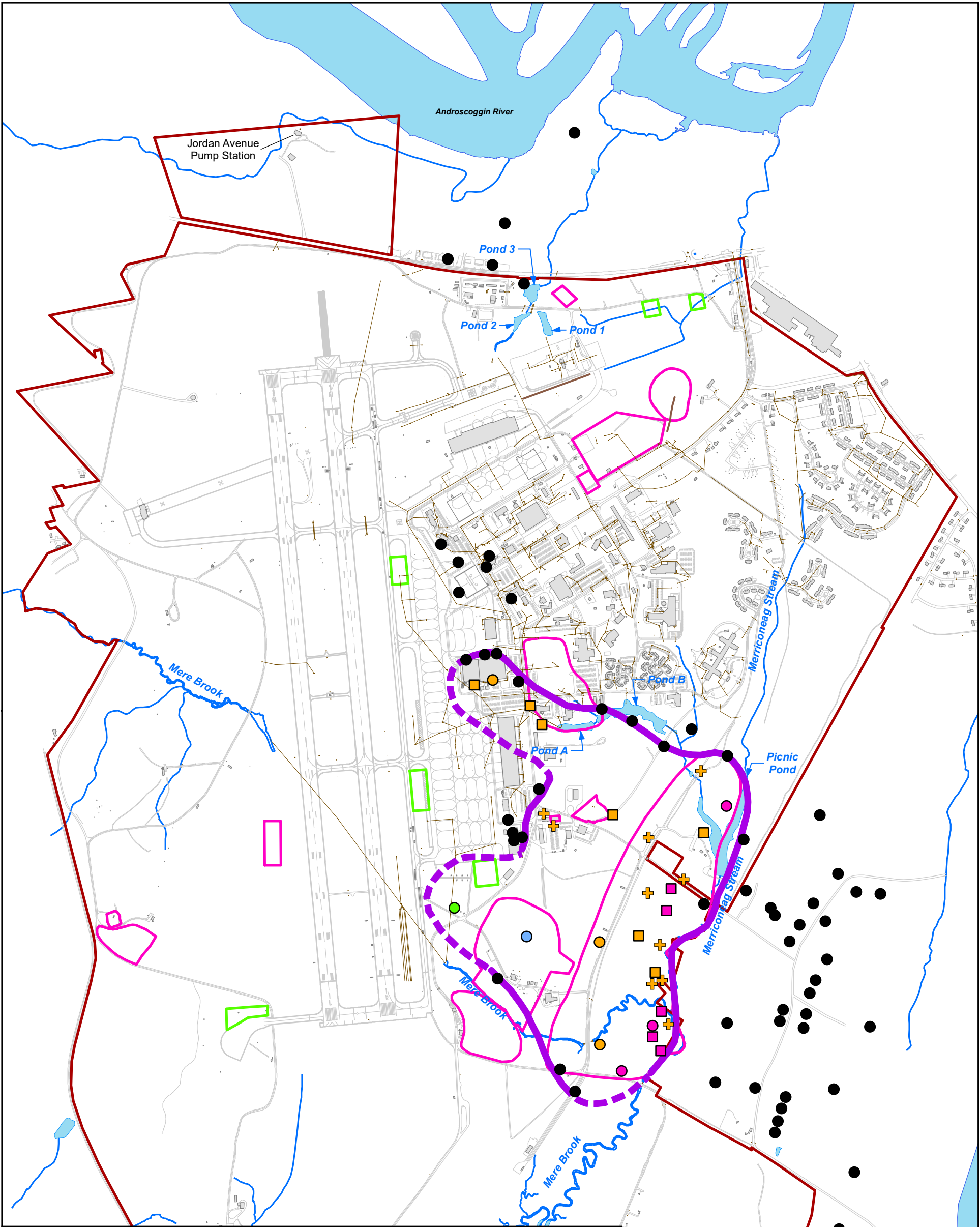
0 600 1,200

Scale in Feet

FIGURE 7-1
HISTORICAL PFAS SHALLOW GROUNDWATER
SAMPLES ABOVE USEPA LHAs

DRAFT

FORMER NAVAL AIR STATION BRUNSWICK
BRUNSWICK, MAINE




Legend

- Results Non-Detect or Below USEPA LHA for PFOS and PFOA
- Results ≥ USEPA LHA for a combined total PFOS and PFOA
- Results ≥ USEPA LHA for PFOS
- Results ≥ USEPA LHA for PFOA
- Results ≥ MEDEP RAG for PFOA
- Results ≥ USEPA LHA for both PFOS and PFOA
- Results ≥ MEDEP RAG for both PFOS and PFOA
- ⊕ PFOA results ≥ MEDEP RAG; PFOS ≥ USEPA LHA
- Approximate Boundary where PFOS and/or PFOA Exceed the USEPA LHAs in Deep Groundwater (Dashed where Inferred)

Site Features

- Roads
- Storm Drain Line
- Stream
- Ditch
- Building
- Former Building
- Base Boundary
- Site Boundary

- Approximate AFFF Discharge Area
- Water



**RESOLUTION
CONSULTANTS**

Drawn: JB 07/17/2019

Approved: CD 07/17/2019

Project #: 60271305

N

0 600 1,200

Scale in Feet

FIGURE 7-2
HISTORICAL PFAS DEEP AND BEDROCK
GROUNDWATER SAMPLES ABOVE USEPA LHAs

DRAFT

FORMER NAVAL AIR STATION BRUNSWICK
BRUNSWICK, MAINE



October 23, 2020

Mr. Loni Graiver
President
Graiver Homes Inc.
40 Farm Gate Road
Falmouth Maine 04105

RE: Stormwater permit appeal - Apartments at Brunswick Landing, LLC

Dear Mr. Graiver,

On behalf of the Midcoast Regional Redevelopment Authority, I would like to offer the following information to support your efforts to respond to the appeal of your DEP stormwater permit for the apartment project at Brunswick Landing. I am hopeful this information will clarify MRRA's role in managing stormwater at the former Navy base and correct serious misstatements made by the Appellants.

As background, The Maine Legislature established the Midcoast Regional Redevelopment Authority (MRRA) under 5 MRSA §13083-I. Under that Statute, MRRA is designated as a public municipal corporation and an instrumentality of the State of Maine. Its statutory mission is to implement the Reuse Master Plans for former Naval Air Station Brunswick properties in Brunswick and Topsham; manage the transition of base properties from military to civilian uses; and redevelop the former base properties to create new high quality jobs for Maine. Under this authority, MRRA has broad powers, including management of the legacy utilities and infrastructure systems it inherits from the Navy. Following is discussion of specific issues related to this appeal.

MRRA possesses the appropriate right title and interest to the former base properties discussed in the Appeal.

In 2011, MRRA received a Bill of Sale for the majority of the utility (electric, water and sewer) systems, roads, and stormwater lines on the former base. Properties are conveyed to MRRA or other eligible recipients, once deemed environmentally suitable for transfer by the Navy, US EPA, and the Maine Department of Environmental Protection. In 2010, MRRA and the Navy concluded an Economic Development Conveyance (EDC) agreement with an associated purchase and sale agreement for approximately 1,200 acres, as well as a Public Benefit Conveyance (PBC) agreement for the 1,100-acre airport property. The balance of the properties either have or are in

the process of being conveyed through the PBC mechanism to Bowdoin College, the Town of Brunswick, Southern Maine Community College and Family Focus. Since that initial agreement, the EDC agreement has been increased by approximately 150 acres.

Of the total former base acreage of 3,372 acres, the Navy has conveyed 2,859 acres or 85% of the total to date to the various recipients described above. Approximately 513 acres remain to be conveyed upon receipt of appropriate environmental remediation and clearances. Some of that property includes the subject “picnic ponds”, which were designed and constructed by the Navy to manage drainage and water containment from the base. The Navy and the above-mentioned regulators are currently developing a Record of Decision for the environmental remediation of the subject containment ponds, which is planned to occur in the summer of 2021. Once remediation is complete, a Finding of Suitability for Transfer (FOST) will be developed and MRRA will be asked to accept the deed of the subject property through the approved EDC mechanism.

MRRA possesses the appropriate stormwater discharge permits and related pollution prevention plans and complies with all applicable regulations for land use activities at Brunswick Landing.

MRRA is the State designated sponsor of Brunswick Executive Airport. In accordance with State Law, MRRA possesses a Multisector General Permit (MER05CO27), as well as a compliant Stormwater Pollution Prevention Plan for the airport property. In addition to the airport property, development activities for the remainder of the former base properties fall under the jurisdiction of the Town of Brunswick land use ordinances and State of Maine laws and rules, including, but not limited to the Site Location and Development Law, the Natural Resources Protection Act and Chapter 500 of the Department’s rules.

Following the government’s decision to close NAS Brunswick in 2005, a Reuse Master Plan was developed to guide the ultimate redevelopment of the base properties. Upon completion of that plan, an Environmental Impact Statement (EIS) was prepared to evaluate the impacts of the redevelopment effort. These two documents paved the way for subsequent property transfers to MRRA and other recipients and the management of the land and infrastructure systems.

MRRA serves as the master developer of the former base properties. Once properties are legally conveyed to MRRA, they can be sold or leased to the private sector to fulfill the Reuse Master Plan. Including the PBC and EDC conveyances, there are currently 24 different property owners at Brunswick Landing. Furthermore, MRRA manages the electric and water utilities, as well as the road and stormwater systems, which it currently owns on the campus. All associated activities are legally compliant with appropriate laws and regulations.

MRRA's stormwater system has the capacity to serve the stormwater flow from the proposed project and actively implements an infrastructure improvement program that includes stormwater systems.

Contrary to the assertion made by the Appellants, the MRRA owned stormwater system has more than sufficient capacity to serve this project. The existing stormwater line on Admiral Fitch Avenue, which accepts stormwater from the subject property is a 15" line. With minimal pitch (1%), it is calculated that line will handle 4.207 CFS or 1888.2 GPM of stormwater. 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. Accordingly, we provided the applicant with the "ability to accept" letter.

I would further submit that the existing stormwater system on the overall former base property is currently operating at a fraction of both its historical use and its design capacity. The former Navy base, when fully operational, accommodated the facility and housing needs of over 8,000 Navy personnel and civilians. To accommodate that level of activity, the former base included substantially more structures and related impervious surfaces than the property accommodates today, including over 3 million square feet of buildings, additional pavement and over 1,000 dwelling units.

As of August 2020, Brunswick Landing supports approximately 2,000 employees in approximately 1.8 million square feet of buildings. The current housing on the former base is now approximately 500 units. Prior to closure, the Navy removed a substantial number of these buildings and related parking and storage areas (now grassed and forested). In addition, since the base closed in 2011, MRRA has demolished over 50 additional buildings, that were not suitable for redevelopment and removed over 83,000 square feet of impervious surface, just on the airport. Furthermore, since the early 2,000's, all new development activity occurring on Brunswick Landing must comply with appropriate best management practices and DEP regulations on the retention, treatment, and management of stormwater, which when collectively applied, further reduces the impact on the overall system capacity.

The Reuse Master Plan for the former base redevelopment was determined to be a federal action under the National Environmental Policy Act and accordingly was the subject of the preparation of an Environmental Impact Statement (EIS). Its purpose of the EIS was to evaluate the environmental and socioeconomic impacts of the twenty-year + buildout of the former base properties, including the impacts on the existing utility systems. Following the development of the Reuse Master Plan, MRRA prepared both an Airport Master Plan and an Infrastructure Master Plan. Collectively, these documents guide the land use development of the former base property and MRRA's ongoing capital improvement program.

Like all aging utility and stormwater management systems in the State of Maine, some of the stormwater infrastructure on the Brunswick Landing campus is certainly in need of periodic repair and maintenance. Similar to most communities, MRRA maintains an ongoing maintenance schedule to repair line breaks and clogged basins.

Since 2011, when MRRA began accepting the utility systems from the Navy, it has maintained a robust capital improvement program designed to upgrade the legacy Navy systems to modern standards. In accordance with its Infrastructure Master Plan and capital improvement program, MRRA has invested nearly \$3.5 million in upgrading the sewer, water, electric and road systems on the campus to date. In addition, since receiving the property from the Navy in 2011, MRRA has secured over \$2.4 million to date for the evaluation and improvement to the stormwater drainage systems on the former base. We plan to seek additional funding to continue to evaluate and upgrade all the utility, road and stormwater systems on the Brunswick Landing campus.

MRRA is actively engaged in Navy’s environmental remediation program and promotes best land use practices and sustainability.

Being a former military installation since 1942, there does exist some environmental contamination on the former Navy base meeting the Superfund site criteria, which has been well documented. Under the United States federal Superfund law, officially known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the US Navy is legally responsible for the remediation of any designated contaminants. In addition, under CERCLA, the Navy is responsible for the investigation and remediation of any contamination resulting from its presence in perpetuity, as well as long-term monitoring of the remediated sites and base property.

That Navy is working with the US EPA and the Maine DEP to develop a Record of Decision (ROD) for the environmental remediation of the subject containment ponds, which is planned to commence in the summer of 2021. The ROD will address contaminated sediments in Ponds A, B, & Picnic Pond that present unacceptable Superfund risk to human health and the environment. These sediments were impacted by past Navy activities when NAS Brunswick was an active military installation. The “site” study area includes Ponds A, B, C, & Picnic Pond. Once remediation is complete, a Finding of Suitability for Transfer (FOST) will be developed and MRRA will be asked to accept the deed of the subject property through the approved EDC mechanism.

The emerging contaminants associated with Per- and Polyfluoroalkyl Substances (PFAS) including PFOS & PFOA, are not currently defined as hazardous substances under CERCLA, but are considered to be pollutants or contaminants under the law. The NAS Brunswick CERCLA Federal Facility Agreement between the Navy, EPA & MEDEP covers releases of CERCLA hazardous substances, pollutants, & contaminants at the former base.

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. DEP staff has been intimately involved with this process and should be able to provide appropriate background documentation and their assessments.

Based upon the comprehensive evaluation above, the Navy has initiated a Remedial Investigation/Feasibility Study (RI/FS) of the property, as well as a comprehensive assessment of the stormwater system to determine if the system is providing a pathway of contaminated groundwater to the drainage systems. If any pathways are discovered during this assessment, the Navy will be expected to mitigate appropriately.

Since its inception, MRRA has worked closely with the Navy, US EPA and the Maine DEP to help facilitate appropriate environmental remediation of contaminated sites and ensure the safe transfer of properties for redevelopment or conservation purposes in accordance with the Reuse Master Plan and meeting its legislative mandate.

As a recent example, MRRA has worked with these entities to establish a model protocol for the management and treatment of PFAS contaminants, should they be encountered during construction related activities. The Navy required, as part of all completed NAS Brunswick real property conveyances, that "...no access to groundwater for dewatering or other purposes be permitted without the prior written approval of the Navy and the applicable federal and state regulatory agencies". Where construction activities are proposed on former NAS Brunswick property that is or has a potential to be contaminated above EPA's Lifetime Health Advisories for PFOS and PFOA, any ground water generated as part of the proposed construction activities will need to be properly managed and treated. The management and treatment of construction-generated ground water will be approved and coordinated by the Navy, in consultation with MEDEP and EPA.

One of the central tenants of MRRA's redevelopment effort is to ensure that all land use activities are conducted in an environmentally sensitive matter, with a focus on sustainability and smart growth. To meet this objective MRRA has adopted development design guidelines and a natural resources management plan to ensure quality development as well as the preservation of natural areas and critical habitats on property it controls. Furthermore, Brunswick Landing derives 100% of its electric power from renewable sources, the majority of which comes from on-campus generation (solar

and anerobic digestion) activities. These are just some of the reasons the NAS Brunswick redevelopment effort has been recognized as one of the best models in the country.

There is no evidence of groundwater contamination at the project site or adjacent properties.

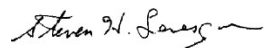
Based upon multiple investigations and recent groundwater sampling conducted by the Navy to date, there is no evidence of contaminants in the groundwater at the project site, nor in the groundwater of the adjacent residential land areas in the vicinity. Also, given the path of the generated stormwater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

In summary,

- ✓ MRRA is compliant with all requisite land use and stormwater management approvals and permits required to manage the redevelopment effort.
- ✓ MRRA, as the legal owner of the majority of the stormwater distribution lines on the former base, has the authority to grant access to its system.
- ✓ MRRA has determined that the existing stormwater system does have sufficient capacity to accept treated stormwater from this project, as well as additional future new development activities on the former base.
- ✓ MRRA actively implements a robust infrastructure improvement program, which includes its owned stormwater systems.
- ✓ MRRA continues to work with the Navy and state and federal regulators to investigate and remediate contamination on the former Navy base.
- ✓ MRRA is unaware of the existence of any groundwater contamination at this site for transport through the stormwater system.

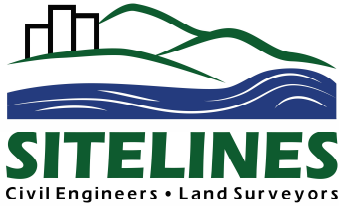
Please let me know if I can be of any further assistance.

Sincerely,



Steven H. Levesque
Executive Director

cc: MRRA Board of Trustees



September 4, 2020

3593

Mr. Loni Graiver
President
Apartments at Brunswick Landing, LLC
40 Farm Gate Road
Falmouth Maine 04105 <via email>

RE: Response to Appeal
Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)
Apartments at Brunswick Landing
Admiral Fitch Avenue, Brunswick, ME 04011

Dear Mr. Graiver:

On behalf of Brunswick Landing Apartments, LLC, Sitelines PA (Sitelines) respectfully disagrees with the basis of the appeal challenging the Stormwater Law permit issued for the Apartments at Brunswick Landing (L-28632-NJ-A-N/L-28632-TC-N). Sitelines prepared the permit application and supporting materials for the permit and submit that the project was designed in accordance with the applicable rules of the Maine Department of Environmental Protection (DEP), specifically Chapter 500: Stormwater Management.

The appeal includes an incomplete quote at the bottom of page 2 regarding the standards of approval. The complete citation from the Introduction of Chapter 500 follows, with the missing piece underlined: “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.” The basis for the appeal is that the permit is invalid because the does not mitigate all potential impacts associated increases and changes in flow, whether the potential impacts are part of the project or not. However, the approved project does meet the appropriate standards, in accordance with Chapter 500.

DEP standards do not require a project to have zero impact as a result of development, as that is an unreasonable standard to enforce. Many sections of Chapter 500 state a project must not “result in unreasonable adverse impacts” to natural resources or down-gradient areas. In recognition that there will be changes in rates and volumes of runoff, the Chapter 500 standards require a project to include a stormwater management system that “. . . 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 . . .”. The standard is to provide removal or treatment, but not total and complete removal and treatment of

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119 Purinton Road, Suite A, Brunswick Landing, Brunswick, ME 04011
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Mr. Loni Graiver
Stormwater Permit (L-28632-NJ-A-N / L-28632-TC-N)
September 4, 2020
Page 2 of 4

all pollutants. 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.

The Apartments at Brunswick Landing meet the General Standard and Flooding Standard, as defined in Chapter 500, by collecting stormwater with a combination of catch basins and storm drains that convey runoff to two (2) subsurface filtration systems, which provide treatment and detention for all storm events. The systems have been designed in accordance with DEP criteria identified in Chapter 500 and Chapter 3 of the BMP Manual. The BMP designs were reviewed and approved by the DEP and these findings are confirmed in the permit. These are fact not challenged in the appeal.

The Appellants state the stormwater management system fails to meet Section 500(4)J regarding connection to the downstream stormwater system. As noted in the appeal, the stormwater system was constructed by the Navy and transferred to MRRA. Whether the stormwater system is public or private is not debated. This system and the tributary area of the former naval air station were all constructed well before the adoption of Maine statutes related to stormwater and are considered non-jurisdictional for DEP permitting purposes. The capacity and performance of the MRRA owned stormwater system downstream was considered from downstream of the location where the project connects to the nearest outfall. The rate of runoff entering the system was demonstrated to be below the capacity of the storm drain pipes. This was reviewed and confirmed by an independent engineering firm retained by MRRA.

There are no standards in Chapter 500 for evaluation of groundwater infiltration into downstream drainage systems or contaminants in groundwater down-gradient of the project location. 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. This is not a practice we have encountered in any municipality or for any application made to the DEP in over 20 years of practice.

If evaluation of groundwater contamination were a standard, the existing levels of contamination would need to be evaluated and a baseline established for a given contaminant. Since there are no maximum contaminant levels (MCLs) established for known contaminants in the DEP rules or state statutes, it is impossible to evaluate the impact of additional runoff.

Furthermore, since PFAS/PFOA is not yet regulated as a hazardous substance by the EPA, there are no State or Federal MCLs 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 DoD 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. Therefore, the statements in the appeal that the stormwater added to the MRRA



Mr. Loni Graiver
Stormwater Permit (L-28632-NJ-A-N / L-28632-TC-N)
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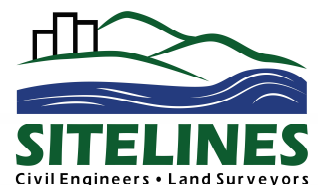
stormwater system is exacerbating a problem is not quantifiable or supported by any available threshold or standard in Chapter 500.

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.

The Appellants did not contact Sitelines about this project during its review. Sitelines has reached out to Town of Brunswick Staff and the DEP project manager to confirm if there was correspondence regarding the statements in the appeal. The concerns and consideration stated in the appeal were similarly not raised at the public meetings held by the Town of Brunswick, and no requests for their consideration was made. We understand the project was discussed at a meeting of the Reuse Advisory Board (RAB) in August, which was after the permit was issued. It is unclear what standing the Appellants have for an appeal made on the second to last day of the appeal period when the concerns were not even known to the review authorities, Applicant, or Sitelines.

It is understood that the issue of PFA / PFOA as an emerging contaminant is of concern on the local and Federal level. We have enclosed correspondence regarding the rulemaking at the Federal level that states studies are still underway. Sitelines has attended some meeting with of the RAB and know that the Navy is preparing a Record of Decision (ROD) regarding some cleanup measures and that the Appellants do not consider the scope of the ROD to be comprehensive enough. It is also our understanding that the Navy is responsible for environmental remediation for parcels at Brunswick Landing essentially forever. Sitelines is not indifferent to the issues regarding this contaminant, but we are not aware of any rules or laws that are germane to the Stormwater Law permit issued.

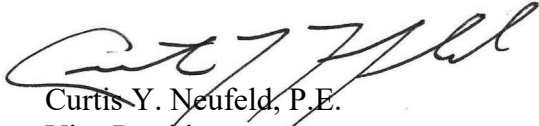
A permit must be reviewed for compliance with the standards in place at the time of consideration. The Stormwater Law permit issued for the Apartments at Brunswick Landing is appropriate and valid because the project meets the current performance standards of Chapter 500. Since the considerations listed in the appeal are principally about the groundwater and infrastructure downstream of the project location, not the stormwater management plan approved by the permit, Sitelines respectfully request the appeal to Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N) be determined to be not relevant to the applicable standards, and not be considered by the board of review.



Mr. Loni Graiver
Stormwater Permit (L-28632-NJ-A-N / L-28632-TC-N)
September 4, 2020
Page 4 of 4

We appreciate your consideration of this request. Please feel free to contact me with any questions.

Very truly yours,



Curtis Y. Neufeld, P.E.
Vice President

Enclosure



Updated February 26, 2020

Regulating Drinking Water Contaminants: EPA PFAS Actions

The 116th Congress has held hearings and passed legislation directing the U.S. Environmental Protection Agency (EPA) and other departments and agencies to take a range of actions to address per- and polyfluoroalkyl substances (PFAS) in drinking water. EPA actions to respond to PFAS contamination under the Safe Drinking Water Act (SDWA) have received significant attention. The National Defense Authorization Act for FY2020 (NDAA, P.L. 116-92) amended SDWA to increase PFAS monitoring and authorize appropriations for grants to address PFAS in public water supplies, among other PFAS provisions.

Over the past decade, EPA has been evaluating several PFAS under SDWA to determine whether national drinking water regulations are warranted for one or more of these substances. On February 20, 2020, EPA announced preliminary decisions to develop SDWA regulations for the two most frequently detected PFAS, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). This In Focus outlines EPA actions to address PFAS under SDWA and reviews related legislation.

Background

PFAS include thousands of diverse chemicals, some of which have been used for decades in an array of industrial, commercial, and U.S. military applications. The chemical characteristics of PFAS have led to the use of various PFAS for an array of purposes such as fighting fuel-based fires and for processing and manufacturing numerous commercial products (e.g., stain-resistant and waterproof fabrics, nonstick cookware, and food containers).

In 2016, EPA reported that PFOA and/or PFOS were detected in at least one public water system in 24 states. Four other PFAS were also detected in some systems. (Historically, PFOA and PFOS were the most produced PFAS, and U.S. manufacturers have phased out their production and most uses.)

SDWA provides EPA with several authorities to address unregulated contaminants in drinking water supplies and sources. As briefly discussed below, these include the authority to issue health advisories, regulate contaminants in public water supplies, and issue enforcement orders in certain emergency circumstances.

Drinking Water Health Advisories

SDWA authorizes EPA to issue health advisories for contaminants that are not regulated under the act (42 U.S.C. §300g-1(b)(1)(F)). Health advisories provide information on health effects, testing methods, and treatment techniques for unregulated contaminants of concern. They also include nonenforceable levels to help water suppliers and others address contaminants that lack federal (or state) drinking

water standards. In 2016, EPA issued Lifetime Health Advisory levels for PFOA and PFOS in drinking water at 70 parts per trillion (ppt) separately or combined. EPA developed these advisory levels to protect the most sensitive population groups, with a margin of protection, over a lifetime of daily exposure.

Regulating Contaminants Under SDWA

SDWA authorizes EPA to regulate contaminants in water provided by public water systems and specifies a multistep process for evaluating contaminants to determine whether a national primary drinking water regulation is warranted (42 U.S.C. §300g-1). The process includes identifying contaminants of potential concern, assessing health risks, collecting occurrence data (and developing any necessary test methods), and making determinations as to whether a national drinking water regulation is warranted.

To make a positive determination to regulate a contaminant, SDWA directs EPA to find the following: (1) a contaminant may have an adverse health effect; (2) it is known to occur or there is a substantial likelihood that it will occur in water systems at a frequency and at levels of public health concern; and (3) in the sole judgment of the EPA administrator, regulation of the contaminant presents a meaningful opportunity for reducing health risks. Below is an overview of each step and related EPA efforts regarding the assessment of specific PFAS.

Contaminant Selection

Every five years, EPA is required to publish a list of contaminants that are known or anticipated to occur in public water systems and may warrant regulation under the act (42 U.S.C. §300g-1(b)). In 2009, EPA placed PFOA and PFOS on the third such contaminant candidate list (CCL 3) for evaluation (74 *Federal Register* 51850). In November 2016, EPA issued CCL 4, which carried over many CCL 3 contaminants, including PFOA and PFOS, for further evaluation (81 *Federal Register* 81103).

Monitoring for Unregulated Contaminants

To generate nationwide occurrence data for unregulated contaminants, SDWA directs EPA to promulgate, every five years, an unregulated contaminant monitoring rule (UCMR) that requires water systems operators to test for no more than 30 contaminants (42 U.S.C. §300j-4). EPA generally requires monitoring by operators of all public water systems that serve more than 10,000 persons, plus a representative sample of smaller systems. (Roughly, 82% of the U.S. population receives water from public water systems that serve more than 10,000 individuals.)

In 2012, EPA issued the UCMR 3, requiring roughly 5,000 water systems to monitor for six PFAS—including PFOA

and PFOS—between January 2013 and December 2015. According to EPA, 63 water systems (1.3%) serving an estimated 5.5 million individuals detected PFOA and/or PFOS at levels above EPA’s health advisory level of 70 ppt (separately or combined).

Regulatory Determinations

SDWA requires EPA to make a regulatory determination—a determination of whether or not to promulgate a national primary drinking water regulation—for at least five contaminants every five years. In selecting contaminants for regulatory determinations, SDWA directs EPA to prioritize those that present the greatest health concern while considering a contaminant’s effects on subgroups that may be at greater risk of adverse health impacts from exposure to a contaminant (e.g., infants, pregnant women).

In 2016, EPA included PFOA and PFOS on its “short list” of contaminants identified for regulatory determinations in CCL 4 (81 *Federal Register* 81103). On February 20, 2020, the EPA administrator signed preliminary determinations to regulate PFOA and PFOS, along with preliminary determinations not to regulate six other chemicals. EPA is required to publish a preliminary determination and seek public comment before finalizing a determination.

Developing Drinking Water Regulations

Once EPA makes a final determination to regulate a substance, SDWA prescribes a schedule for promulgating regulations. EPA is required to propose a rule within 24 months and promulgate a drinking water regulation within 18 months after the proposal. EPA may extend the deadline for up to nine months (42 U.S.C. §300g-1(b)(1)).

For each regulation, EPA is required to establish a nonenforceable maximum contaminant level goal (MCLG) at a level at which no known or anticipated adverse health effects occur, with an adequate margin of safety. For each contaminant covered by the regulation, EPA generally specifies a maximum contaminant level (MCL)—an enforceable standard applicable to public water suppliers. SDWA directs EPA to set the MCL as close to the MCLG as is “feasible” using best available technology or other means available, taking costs into consideration. SDWA requires that regulations include analytical methods and feasible treatment methods that public water systems can use to monitor for contaminants and comply with the MCL. They also include monitoring and reporting requirements (42 U.S.C. §300f(1), §300g-1).

Emergency Powers

SDWA authorizes EPA to take actions it deems necessary to abate an imminent and substantial endangerment to public health from a contaminant (regulated or unregulated) that is present in or likely to enter a public water system or an underground source of drinking water (42 U.S.C. §300i). This authority is available if state and local authorities have not acted. EPA actions may include issuing orders requiring persons who caused or contributed to the endangerment to provide alternative water supplies or to treat contamination, among other actions. Since 2002, EPA has used this authority to require responses to PFOA and/or PFOS

contamination of water supplies associated with four sites, including three Department of Defense (DOD) sites.

MCLs and Remedial Actions

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or “Superfund”), MCLs may be considered in selecting remedial actions for releases of hazardous substances, pollutants, and other contaminants (42 U.S.C. §9621(d)). However, CERCLA establishes liability only for releases of hazardous substances. No PFAS has been designated as a hazardous substance. In the 116th Congress, several bills (e.g., H.R. 535 and S. 638) would direct EPA to designate PFAS as hazardous substances under CERCLA. The NDAA for FY2020 (P.L. 116-92), Section 316, expands DOD responsibility for response actions to include PFAS and other pollutants or contaminants but does not establish CERCLA liability for these chemicals. (See CRS Report R45986, *Federal Role in Responding to Potential Risks of Per- and Polyfluoroalkyl Substances (PFAS)*.)

PFAS Action Plan: Drinking Water

In February 2019, EPA issued a PFAS Action Plan (EPA 823R18004) that identifies the agency’s efforts to address PFAS under several laws. Among other actions, EPA has developed analytical test methods to support UCMR monitoring of more PFAS and at lower levels. (EPA has validated test methods for 29 PFAS.) The agency is also developing PFAS toxicity information and providing more information about treatment techniques and costs.

Legislation in the 116th Congress

In the 116th Congress, numerous bills would address PFAS through various authorities and agencies. Enacted on December 20, 2019, the FY2020 NDAA (P.L. 116-92) includes multiple PFAS provisions, primarily regarding DOD, but several involve EPA and other federal agencies. Title LXXIII includes several PFAS drinking water provisions. Section 7311 requires EPA to add to UCMR 5 all PFAS or classes of PFAS with validated test methods. Section 7312 authorizes, within the Drinking Water State Revolving Fund, a grant program for water systems to address emerging contaminants with an emphasis on PFAS. Section 7312 authorizes appropriations of \$100 million annually for FY2020-FY2024 for this purpose.

On January 10, 2020, the House passed H.R. 535, a broad PFAS bill with several SDWA amendments. The bill would direct EPA to promulgate drinking water regulations for PFAS (with standards for at least PFOS and PFOA) within two years. H.R. 535 would establish a drinking water regulatory process and schedule specifically for PFAS. It would direct EPA to issue a health advisory within a year of finalizing a toxicity value for a single PFAS or class of PFAS. Among other bills, several would direct EPA to issue final or interim regulations for all or some PFAS, authorize grants for systems and/or households to treat PFAS, and/or increase PFAS monitoring. For further discussion of PFAS drinking water bills and EPA actions, see CRS Report R45793, *PFAS and Drinking Water: Selected EPA and Congressional Actions*.

Mary Tiemann, Specialist in Environmental Policy
Elena H. Humphreys, Analyst in Environmental Policy

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Curtis Neufeld

From: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>
Sent: Tuesday, September 1, 2020 1:30 PM
To: Curtis Neufeld
Subject: RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Curt, from my perspective I have no issues with what you have written.

r/Dave

From: Curtis Neufeld <cneufeld@sitelinespa.com>
Sent: Tuesday, September 01, 2020 11:07 AM
To: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>
Subject: [Non-DoD Source] RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Dave,

Thank you for sending that information. I double-checked the issue date of the DEP permit and it was July 23, 2020, which makes it before the RAB meeting. I will try not to get caught up in too much technicality. I will state in my response that I did not receive any questions or comments from the Appellants or the Navy during the review of the permit. Under current DEP standards for a Stormwater Law permit, looking at the performance of downstream storm drain systems for infiltration or potential contaminants in down-gradient groundwater is not a requirement. I will also add to my response that the Navy and DEP are currently studying the PFAS / PFOA issue and no regulations or rule-making have been enacted that would impact the permit issued, so there is no basis for an appeal. Do you see anything in those statements that is inaccurate?

Thanks,
 Curt

Curtis Y. Neufeld
 Vice President
 Sitelines PA

119 Purinton Road
 Brunswick, ME 04011
 (207) 725-1200 x18

From: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>
Sent: Tuesday, September 1, 2020 10:20 AM
To: Curtis Neufeld <cneufeld@sitelinespa.com>
Subject: RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Hi Curt – Please see attached draft RAB minutes for a meeting held on August 6th, particularly the yellow highlighted sections. It appears Suzanne had asked for information regarding the storm water system and permit for the new housing development.

r/Dave

From: Curtis Neufeld <cneufeld@sitelinespa.com>

Sent: Tuesday, September 01, 2020 9:56 AM

To: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>

Subject: [Non-DoD Source] RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Hi Dave,

I would say from May 15-August 15.

From: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>

Sent: Tuesday, September 1, 2020 9:11 AM

To: Curtis Neufeld <cneufeld@sitelinespa.com>

Subject: RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Hi Curt – can you tell me what dates define the period of review? I want to be clear in my response as I do correspond from time to time with the people you have listed below.

r/Dave

David Barney

BRAC Environmental Coordinator

Naval Facilities Engineering Command

BRAC Program Management Office East

PO Box 169

South Weymouth, MA 02190

Phone: (781)-626-0105

Email: david.a.barney@navy.mil

From: Curtis Neufeld <cneufeld@sitelinespa.com>

Sent: Tuesday, September 01, 2020 9:02 AM

To: Barney, David A CIV USN (USA) <david.a.barney@navy.mil>

Subject: [Non-DoD Source] Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Good morning, Dave,

Following up on our previous discussion, this email is to confirm and document that during the review of the Stormwater Law permit for the Apartments and Brunswick Landing you did not receive correspondence from any of the following individuals: Suzanne L. Johnson, David Page, PhD, Paul Ciesielski, PhD, Joshua Katz. In particular, these folks did not contact you to get information on the project or the connection to the MRRRA owned storm drain system.

If you could confirm my understanding by reply to this email I would appreciate it.

Best regards,

Curt

Curtis Y. Neufeld

Vice President

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Curtis Neufeld

From: Jared Woolston <jwoolston@brunswickme.org>
Sent: Tuesday, September 1, 2020 12:21 PM
To: Curtis Neufeld
Cc: Matt Panfil
Subject: RE: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Curt,

No, I did not receive correspondence from these individuals about the Apartments at Brunswick Landing project during review. These BACSE and RAB representatives have expressed concerns about groundwater infiltrating into the former BNAS storm drain system and to Picnic Pond; and seasonal changes in groundwater flow from new infiltration treatment areas at past public meetings and most recently in meetings for the ongoing review of the Record of Decision (ROD) for Picnic Pond. As you know, the town's development review standards for stormwater management defer to the DEP's permit review through the Stormwater Management Law.

Jared Woolston, AICP
 Town Planner
 Town of Brunswick
 85 Union Street
 Brunswick, ME 04011

(207) 725-6660, ext. 4022 (v)
 (207) 725-6663 (f)
jwoolston@brunswickme.org
www.brunswickme.org

From: Curtis Neufeld <cneufeld@sitelinespa.com>
Sent: Tuesday, September 01, 2020 9:01 AM
To: Jared Woolston <jwoolston@brunswickme.org>
Subject: Apartments at Brunswick Landing Stormwater Law Permit (L-28632-NJ-A-N / L-28632-TC-N)

Good morning, Jared,

Following up on our previous discussion, this email is to confirm and document that during the review of the Stormwater Law permit for the Apartments and Brunswick Landing you did not receive correspondence from any of the following individuals: Suzanne L. Johnson, David Page, PhD, Paul Ciesielski, PhD, Joshua Katz. In particular, these folks did not contact you to get information on the project or the connection to the MRRRA owned storm drain system.

If you could confirm my understanding by reply to this email I would appreciate it.

Best regards,
 Curt

Curtis Y. Neufeld
 Vice President

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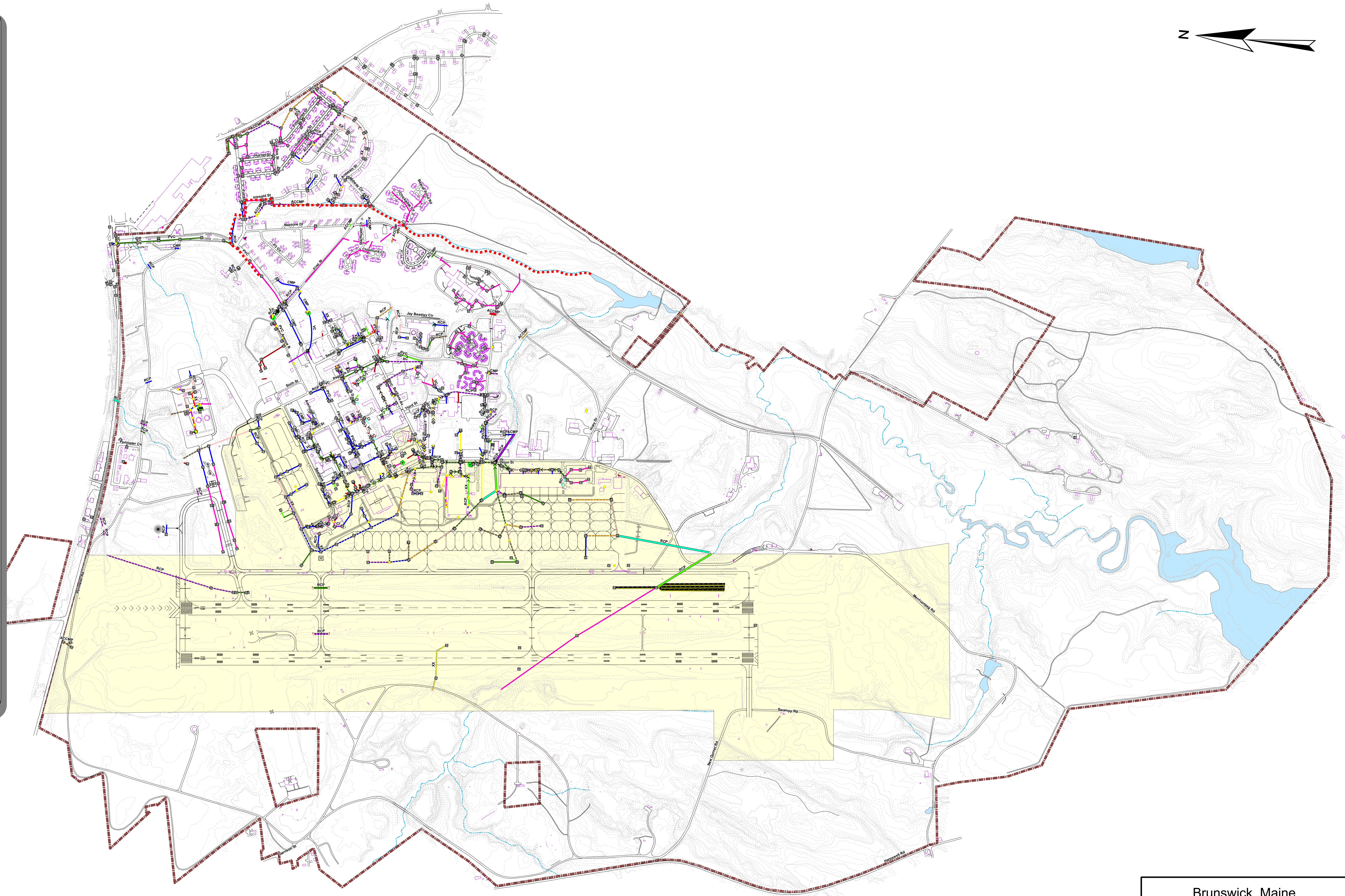
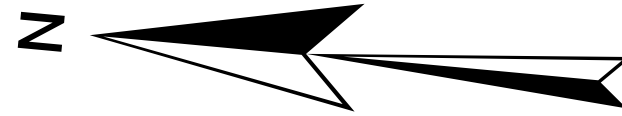
Legend

Stormwater Features

- Catch Basin
- Change
- Flow Direction
- Oil/Water Seperator
- Stormwater Manhole
- Stormwater Valve

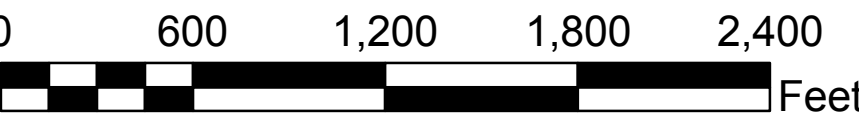
Stormwater Mains

- Culvert Unknown Diameter
- 24" Culvert
- 36" Culvert
- Abandoned Main
- Stormwater Unknown Diameter
- 4" and < Stormwater
- 5" Stormwater
- 6" Stormwater
- 8" Stormwater
- 10" Stormwater
- 12" Stormwater
- 12.5" Stormwater
- 14" Stormwater
- 15" Stormwater
- 16" Stormwater
- 18" Stormwater
- 20" Stormwater
- 21" Stormwater
- 22" Stormwater
- 24" Stormwater
- 26" Stormwater
- 27" Stormwater
- 28" Stormwater
- 30" Stormwater
- 36" Stormwater
- 40" Stormwater
- 42" Stormwater
- 48" Stormwater
- 50" Stormwater
- 60" Stormwater
- 72" Stormwater
- PVC Underdrain
- Unknown Feature
- Airport Boundary
- Project Boundary
- Waterbody
- Stream



Source:

Photogrammetric data obtained from BNAS
Road data obtained from the Maine Office of GIS
Utility data obtained from BNAS
Map developed by Wright-Pierce GIS Dept.



Brunswick, Maine

Stormwater Collection System

Brunswick Naval Air Station

PROJ NO: 11353A DATE: Oct 2009 FIGURE:

WRIGHT-PIERCE
Engineering a Better Environment

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