Chapter 501: STORMWATER MANAGEMENT COMPENSATION FEES AND MITIGATION CREDIT

**SUMMARY**: This Chapter establishes standards for applicants paying a compensation fee or undertaking mitigation to meet the requirements of the *Stormwater Management Law*, 38 M.R.S. §420-D(11) and Department rules.

**1. Applicability.** This Chapter applies to all projects for which an applicant pays a compensation fee or undertakes mitigation to meet the requirements of the Department’s 06-096 CMR ch. 500, *Stormwater Management* rules. Compensation fees must be paid to the Department’s compensation fund or to an organization authorized by the Department pursuant to the *Stormwater Management Law* 38 M.R.S. §420-D(11).

**2. Definitions**

**A. Compensation fee utilization plan.** “Compensation fee utilization plan” means a plan that specifies how funds received as a compensation fee payment will be allocated to reduce the impact of stormwater pollution to an impaired water resource.

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

**C. Direct watershed of a waterbody or wetland.** “Direct watershed of a waterbody or wetland” means the land area that drains via overland flow, drainageways, waterbodies, or wetlands to a given waterbody or wetland without first passing through a lake or pond.

**D. Disturbed area.** Disturbed area” means all land areas that are stripped, graded, grubbed, filled, bulldozed or excavated at any time during the site preparation or removal of vegetation for, or construction of, a project. "Disturbed area" does not include maintenance. A land area on which the cutting of trees, without grubbing, stump removal, disturbance or exposure of soil has taken place is not considered a "disturbed area".

**E. Drainageway.** “Drainageway” means a natural or man-made channel or course to or from which surface discharge of water may occur. Drainageways include, but are not limited to streams (whether intermittent or perennial), swales, ditches, pipes, culverts, and wetlands with localized discharge of water.

**E. High use parking lot**. “High use parking lot” means a commercial or other parking lot where parking is used most days and each visit is typically for a duration of less than two consecutive hours, such as a parking lot serving a convenience store, high-turnover restaurant, shopping center, or supermarket.

**G. Impervious area.** “Impervious area” means the total area of a parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete and underdrained artificial turf fields are all considered impervious.

**H. Infiltration.** “Infiltration” means the process by which runoff percolates through the unsaturated overburden and fractured bedrock to the water table, including any process specifically used to meet all or part of the stormwater standards of this Chapter by actively directing all or part of the stormwater into the soil. For the purposes of this Chapter, infiltration does not include:

(1) Incidental wetting of soil in ditches, detention basins or the equivalent;

1. Wetting of underdrained basins, dry swales, or similar filtration systems that do not subsequently discharge to groundwater; or

(3) Wetting of buffers meeting Department requirements for use as stormwater control.

Discharge of runoff to areas of the site where the water will collect and percolate into the ground is considered infiltration if the volume, rate, or quality of the discharge does not meet Department standards for use of the area as a stormwater treatment buffer. Underdrained swales, underdrained ponds, and similar practices that discharge to surface waters or to buffer strips meeting Department requirements in 06-096 CMR ch. 500, Appendix F for stormwater buffers are not considered infiltration systems, although these may be used to treat runoff prior to discharge to an infiltration area.

**I. Lake or pond.** “Lake or pond” meansa lake or pond classified as GPA under the Water Classification Program, 38 M.R.S. §464 *et seq.*

**J. Landscaped area.** “Landscaped area” means an area of land that has been disturbed and re-planted or covered with one or more of the following: grass or other herbaceous plants, shrubs, trees, or mulch; but not including area that has reverted to a natural, vegetated condition. An area of grass is considered landscaped if it is mowed more than twice per twelve month period.

**K. Maintenance.** “Maintenance” means an activity undertaken to maintain operating condition, original line and grade, hydraulic capacity, and original purpose of the project. Paving an impervious gravel surface at original line, grade and hydraulic capacity is considered maintenance. Replacement of a building is not considered maintenance of the building.

**L. Medium use parking lot.** “Medium use parking lot” means a parking lot that is used most days and where vehicles are parked for an extended period of time, typically longer than two consecutive hours, such as an “employees only” parking lot, a school, and long-term parking at an intermodal transportation facility such as an airport, bus terminal or railroad station,

**M. Pre-development area. “**Pre-development area” means an impervious or developed area created prior to the effective date of the *Stormwater Management Law* for a stormwater project, or the effective date of the jurisdictional threshold under which a development is licensed for a Site Law development.

**N. Site Law**. “Site Law” means the *Site Location of Development Law*, 38 M.R.S. §§ 481-490.

**O. Stormwater.** “Stormwater” means the part of precipitation, including runoff from rain or melting ice and snow, that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways.

**P. Stormwater Management Law.** “Stormwater Management Law” means the *Stormwater Management Law*, 38 M.R.S. §420-D.

**Q. Stream.** “Stream” means a river, stream, or brook as defined in theNatural Resources Protection Act at 38 M.R.S. §480-B.

**R. Urban impaired stream.** “Urban impaired stream” means a stream or stream segment that meets the criteria of 06-096 CMR ch. 502 subsection (3)(B) and is listed in 06-096 CMR ch. 502, Appendix B.

**S. Waterbody.** “Waterbody” means a lake, pond, river or stream.

**T. Watershed.** “Watershed” means the land area that drains, via overland flow, drainageways, waterbodies, or wetlands to a given waterbody or wetland.

**U. Wetland.** “Wetlands” means coastal and freshwater wetlands as defined in the Natural Resources Protection Act, 38 M.R.S. §480-B.

**3. Mitigation through compensation fees or projects.** This Section applies to projects for which the applicant pays a compensation fee and/or undertakes mitigation through compensation projects in order to meet, or in lieu of meeting, certain stormwater standards. Mitigation projects eliminate off-site sources, or may reduce on-site sources as provided in this Section.

1. **Projects required to meet the urban impaired stream standard**
2. **Compensation fees or mitigation credits used to meet the urban impaired stream standard**. If a project is required to meetthe urban impaired stream standard described in 06-096 CMR ch. 500 subsection (4)(D), compensation fees or mitigation credits used to meet the urban impaired standard are determined based on Table 1, whether or not the developed area will be receiving treatment to meet the general standards.

**Table 1**

**Compensation or Mitigation Based on Development Type**

|  |  |  |
| --- | --- | --- |
| **Type of surface** | **Compensation fee**  **(per acre\*)** | **Mitigation credits required (per acre\*)** |
| **Non-roof impervious area** | $12,500 | 0.5 credits |
| **Roof** | $5,000 | 0.2 credits |
| **Landscaped area** | $2,500 | 0.1 credits |

\*fees or credits for fractions of an acre are prorated.

(2) **Compensation fees**. Compensation fees may only be used in watersheds where a compensation fee utilization plan developed by a municipality or other entity has been approved by the Department. A compensation fee utilization plan specifies how funds received from an applicant will be allocated to reduce the impact of stormwater pollution to an urban impaired stream. A plan must include provision to ensure that money will only be used for the intended purpose through establishment of a dedicated account. If a compensation fee utilization plan is proposed by an entity other than a municipality, the entity must demonstrate that the plan has been submitted to the municipality in which the project is located for review and adoption prior to submittal of an application to the Department.

(3) **Amount of mitigation credit**. Table 2 indicates the amount of on-site or off-site mitigation credit earned by a project in the direct watershed of an urban impaired stream for a variety of allowed off-site and on-site pre-development mitigation activities.

**Table 2**

**Mitigation Credits Based on Type of Activity and Type of Development**

|  |  |  |
| --- | --- | --- |
| **Mitigation activity** | **Development type** | **Credit earned**  **(per acre\* treated)** |
| **Retrofit with general standards at 1/3 required sizing or with approved flow through sedimentation device** | Road or high use parking lot | 0.5 credit |
| Medium use parking lot | 0.4 credit |
| Other parking lot | 0.3 credit |
| Roof or other impervious area | 0.2 credit |
| Landscaped area | 0.1 credit |
| **Retrofit with general standards at 2/3 required sizing** | Road or high use parking lot | 1.0 credit |
| Medium use parking lot | 0.8 credit |
| Other parking lot | 0.6 credit |
| Roof or other impervious area | 0.4 credit |
| Landscaped area | 0.2 credit |
| **Retrofit with general standards at required sizing** | Road or high use parking lot | 1.5 credit |
| Medium use parking lot | 1.2 credit |
| Other parking lot | 0.9 credit |
| Roof or other impervious area | 0.6 credit |
| Landscaped area | 0.3 credit |
| **Eliminate impervious source area, replace with landscaped area** | Road or high use parking lot | 1.0 credit |
| Medium use parking lot | 0.7 credit |
| Other parking lot | 0.4 credit |
| Roof or other impervious area | 0.2 credit |
|  |  |
| **Eliminate impervious source area, replace with a designed planting and approved maintenance plan that will result in a forest** | Road or high use parking lot | 2.0 credit |
| Medium use parking lot | 1.5 credit |
| Other parking lot | 1.0 credit |
| Roof or other impervious area | 0.5 credit |
| **Retrofit detention with vegetated gravel under-drains** | Impervious areas only | 0.5 credit |

\*credits earned for fractions of an acreare prorated.

In addition to the use of on-site or off-site mitigation or compensation fees, the Department may approve other mitigation measures on a case-by-case basis. Other measures proposed by an applicant must provide at least equivalent protection as measures described in Table 2 above, as determined by the Department.

(4) **Reduction of compensation fees or mitigation credit for projects in watersheds with an approved watershed management plan**. The Department may waive or reduce compensation fees or mitigation credit if a municipality, or quasi-municipal entity having jurisdiction over the area in which the project is located has developed and is implementing a watershed management plan for the watershed in which the project is located. The watershed management plan must be approved by the Department as meeting the purpose of restoring water quality. Within a designated growth area of a municipality with an adopted comprehensive plan that the Maine Department of Agriculture, Conservation & Forestry has found to be consistent with the Planning and Land Use Regulation Act, or within a watershed located in a Service Center Community identified pursuant to 30-A M.R.S. §4301(14-A), implementation of the watershed management plan may be deferred for up to five years from the date of Department approval, or until state or federal financial assistance is available, whichever comes first.

1. **A project required to meet the general standards that is not in the direct watershed of an urban impaired stream.** If a project is required to meet the general standards described in 06-096 CMR ch. 500 subsection (4)(C) and it is not in the direct watershed of an urban impaired stream, the Department may allow the portion of a project’s impervious or developed acreage that must be treated to be reduced through mitigation by eliminating or reducing an off-site or an on-site pre-development impervious stormwater source. For Site Law projects, the amount of reduction in treatment allowed is limited to 50%.

(1) **Source reduction or elimination**. A source is considered to be eliminated if impervious area is removed, the underlying soil is aerated, and the area revegetated and returned to a wooded condition. A source is considered to be reduced if the impervious area is removed, the underlying soil is aerated and the area revegetated and maintained as a lawn or other non-forested area. The amount of reduction in the project’s treated acreage allowed will be determined on a case-by-case basis by the Department, based on the existing and future uses of the project site, the existing and future use of the eliminated or reduced off-site or on-site pre-development impervious area, and the equivalency of these uses. In determining whether to approve a mitigation proposal, the Department will determine whether the expected reduction in stormwater pollutant export and stormwater flows can reasonably be expected to exceed the stormwater pollutant export and stormwater flow resulting from the untreated acreage at the project site.

(2) **When the amount of roof or non-impervious developed acreage that must be treated may be reduced**. The Department may reduce the portion of a project’s roof or non-impervious developed acreage that must be treated by an equivalent area of on-site, pre-development roof, parking or road surfaces for which the applicant agrees to incorporate and maintain stormwater treatment structures.

1. **A project in the direct watershed of a lake that is required to meet the phosphorus standards.** If a project is required to meet the phosphorus standards described in 06-096 CMR ch. 500 subsection (4)(D), a compensation fee may be paid, or an off-site mitigation credit may be allowed as follows:
2. **Elimination or reduction of off-site sources of phosphorus**. A source is considered to be eliminated if impervious area is removed, and the area is revegetated and returned to a wooded condition. A source is considered to be reduced if the impervious area is removed, and the area is revegetated and maintained as lawn or other non-forested area. For every two pounds of estimated off-site phosphorus export that is removed from the watershed, estimated on-site phosphorus export may be reduced by one pound. If the applicant can demonstrate, based on type of impervious area and intensity of use, that the level of phosphorus export from the eliminated or reduced off-site area is equivalent to or greater than that expected from the proposed impervious area, then a credit may be allowed at a ratio of 1 to 1.
3. **Treatment of certain off-site sources of phosphorus**
   1. Paving of a road to eliminate erosion of the road surface if the Department determines it is a significant source of phosphorus. The amount of credit will be established based on modeling to determine the amount of phosphorus that will be removed.
   2. Repairing a chronic erosion site if the Department determines it is a significant source of phosphorus. The amount of credit will be based on the Department’s determination of the life expectancy of the erosion repair. The ratio of the life expectancy to a 50 year period will determine the percent credit given; e.g., an erosion site that is expected to need repair every 10 years will be given 20% credit for the actual amount of phosphorus that will be removed from the source.
   3. Credit for other treated phosphorus sources will be determined on a case-by-case basis.
   4. A Department-approved inspector may be required to conduct weekly inspections during the period of construction as a condition of approval.

(3) A compensation fee per pound of phosphorous export as described in 38 M.R.S. §420-D(11)(A), or off-site mitigation is allowed at the Department’s discretion, depending on the availability of suitable compensation projects. This option, which permits an applicant to pay a compensation fee in lieu of reducing phosphorous export beyond a project’s allotment, is only allowed for sites where the phosphorous export from the proposed development site has already been reduced by at least 60%. This compensation fee option is not available for projects or portions of projects that are residential subdivisions or roads within residential subdivisions, unless the project is using only wooded or meadow buffers and associated level spreaders and ditch turnouts as described in 06-096 CMR ch. 500 Appendix F to address the remaining phosphorus export reduction required to meet the projects phosphorus allocation, or unless a mitigation project is identified and approved by the Department in the same watershed. The compensation fee per pound of phosphorous export shall be determined based on Table 3.

**Table 3**

**Compensation Fee Per Pound of Phosphorus Export**

|  |  |
| --- | --- |
| **Percentage of Project’s**  **Phosphorous Export** | **Additional Phosphorous Compensation Fee**  **(dollars per pound)\*** |
| 60% | $25,000 |
| 75% | $12,500 |
| 100% | $0 |

\* fees are prorated.

**D. Location.** The mitigation activity must be located in the same watershed as the project to off-set the impact of the pollutant export from the project. More than one mitigation activity may be applied to a project.

**E. Protection from alteration.** Areas in which an off-site or on-site pre-development stormwater source has been reduced or eliminated as described in subsections 3(A), 3(B), and 3(C) above, must be protected from alteration through deed restrictions, a conservation easement to which the Department is a party, or similar measures. These covenants must specify that they may only be modified with Department approval. See Appendix A of this Chapter.

**F. Maintenance and transfer**. Areas revegetated to off-set project impacts must be maintained and any transfer of these areas must be made subject to deed restrictions that require such maintenance and are enforceable by the Department. These deed restrictions must specify that they may only be modified with Department approval.

STATUTORY AUTHORITY: 38 M.R.S. §420-D(11)

EFFECTIVE DATE:

January 13, 2015 – filing 2015-003

AMENDED:

May 22, 2016 – filing 2016-094

**APPENDIX A.** **Suggested templates for deed restrictions and conservation easements**

**for use under the Stormwater Management Law**

**1. Forested buffer, limited disturbance**

DECLARATION OF RESTRICTIONS (Forested Buffer, Limited Disturbance)

THIS DECLARATION OF RESTRICTIONS is made this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

(name) (street address)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, Maine, \_\_\_\_\_\_\_\_, (herein referred to as the

(city or town) (county) (zip code)

"Declarant"), pursuant to a permit received from the Maine Department of Environmental Protection under the *Stormwater Management Law*, to preserve a buffer area on a parcel of land near \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

(road name) (known feature and/or town)

WHEREAS, the Declarant holds title to certain real property situated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Maine

(town)

described in a deed from\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dated

(name) (name of Declarant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, and recorded in Book \_\_\_\_ Page \_\_\_\_ at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County Registry of Deeds, herein referred to as the "property"; and

WHEREAS, Declarant desires to place certain restrictions, under the terms and conditions herein, over a portion of said real property (hereinafter referred to as the "Restricted Buffer") described as follows: (Note: Insert description of restricted buffer area location here)

WHEREAS, pursuant to the *Stormwater Management Law*, 38 M.R.S. Section 420-D and Chapter 501 of rules promulgated by the Maine Department of Environmental Protection, Declarant has agreed to impose certain restrictions on the Restricted Buffer Area as more particularly set forth herein and has agreed that these restrictions may be enforced by the Maine Department of Environmental Protection or any successor (hereinafter the "MDEP"),

NOW, THEREFORE, the Declarant hereby declares that the Restricted Buffer Area is and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the conditions and restrictions set forth herein. The Restrictions shall run with the Restricted Buffer Area and shall be binding on all parties having any right, title or interest in and to the Restricted Buffer Area, or any portion thereof, and their heirs, personal representatives, successors, and assigns. Any present or future owner or occupant of the Restricted Buffer Area or any portion thereof, by the acceptance of a deed of conveyance of all or part of the Covenant Area or an instrument conveying any interest therein, whether or not the deed or instrument shall so express, shall be deemed to have accepted the Restricted Buffer Area subject to the Restrictions and shall agree to be bound by, to comply with and to be subject to each and every one of the Restrictions hereinafter set forth.

1. **Restrictions on Restricted Buffer Area**. Unless the owner of the Restricted Buffer Area, or any successors or assigns, obtains the prior written approval of the MDEP, the Restricted Buffer Area must remain undeveloped in perpetuity. To maintain the ability of the Restricted Buffer Area to filter and absorb stormwater, and to maintain compliance with the *Stormwater Management Law* and the permit issued thereunder to the Declarant, the use of the Restricted Buffer Area is hereinafter limited as follows.

a. No soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants or other fill material may be placed, stored or dumped on the Restricted Buffer Area, nor may the topography of the area be altered or manipulated in any way;

b. Any removal of trees or other vegetation within the Restricted Buffer Area must be limited to the following:

(i) No purposefully cleared openings may be created and an evenly distributed stand of trees and other vegetation must be maintained. An "evenly distributed stand of trees " is defined as maintaining a minimum rating score of 24 points in any 25 foot by 50 foot rectangle 1,250 square feet) area, as determined by the rating scheme in Table 3:

**Table 3**

**Point System for Determining an Evenly**

**Distributed Stand of Trees**

|  |  |
| --- | --- |
| **Diameter of tree at 4½ feet**  **above ground level** | **Points** |
| 2 - 4 inches | 1 |
| 4 - 8 inches | 2 |
| 8 - 12 inches | 4 |
| >12 inches | 8 |

Where existing trees and other vegetation result in a rating score less than 24 points, no trees may be cut or sprayed with biocides except for the normal maintenance of dead, windblown or damaged trees and for pruning of tree branches below a height of 12 feet provided two thirds of the tree's canopy is maintained;

(ii) No undergrowth, ground cover vegetation, leaf litter, organic duff layer or mineral soil may be disturbed except that one winding path, that is no wider than six feet and that does not provide a downhill channel for runoff, is allowed through the area;

c. No building or other temporary or permanent structure may be constructed, placed or permitted to remain on the Restricted Buffer Area, except for a sign, utility pole or fence;

d. No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment may be permitted on the Restricted Buffer Area;

e. Any level lip spreader directing flow to the Restricted Buffer Area must be regularly inspected and adequately maintained to preserve the function of the level spreader.

Any activity on or use of the Restricted Buffer Area inconsistent with the purpose of these Restrictions is prohibited. Any future alterations or changes in use of the Restricted Buffer Area must receive prior approval in writing from the MDEP. The MDEP may approve such alterations and changes in use if such alterations and uses do not impede the stormwater control and treatment capability of the Restricted Buffer Area or if adequate and appropriate alternative means of stormwater control and treatment are provided.

2. **Enforcement**. The MDEP may enforce any of the Restrictions set forth in Section 1 above.

3. **Binding Effect**. The restrictions set forth herein shall be binding on any present or future owner of the Restricted Buffer Area. If the Restricted Buffer Area is at any time owned by more than one owner, each owner shall be bound by the foregoing restrictions to the extent that any of the Restricted Buffer Area is included within such owner's property.

4. **Amendment.** Any provision contained in this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer Area and by the MDEP.

5. **Effective Provisions of Declaration**. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, shall be deemed a land use restriction running with the land as a burden and upon the title to the Restricted Buffer Area.

6. **Severability**. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

7. **Governing Law**. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(NAME)

STATE OF MAINE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

(County) (date)

Personally appeared before me the above named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who swore to the truth of the foregoing to the best of (his/her) knowledge, information and belief and acknowledged the foregoing instrument to be (his/her) free act and deed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2. Forested buffer, no disturbance**

DECLARATION OF RESTRICTIONS (Forested Buffer, No Disturbance)

THIS DECLARATION OF RESTRICTIONS is made this \_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ,

(name) (street address)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, Maine, \_\_\_\_\_\_\_\_ , (herein referred to as the

(city or town) (county) (zip code)

"Declarant", pursuant to a permit received from the Maine Department of Environmental Protection under the *Stormwater Management Law*, to preserve a buffer area on a parcel of land near \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

(road name) (known feature and/or town)

WHEREAS, the Declarant holds title to certain real property situated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Maine

(town)

described in a deed from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated

(name) (name of Declarant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, and recorded in Book \_\_\_\_ Page \_\_\_\_ at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County Registry of Deeds, herein referred to as the "property"; and

WHEREAS, Declarant desires to place certain restrictions, under the terms and conditions herein, over a portion of said real property (hereinafter referred to as the "Restricted Buffer") described as follows: (Note: Insert description of restricted buffer location here)

WHEREAS, pursuant to the *Stormwater Management Law*, 38 M.R.S. Section 420-D and Chapter 501 of rules promulgated by the Department of Environmental Protection, Declarant has agreed to impose certain restrictions on the Restricted Buffer Area as more particularly set forth herein and has agreed that these restrictions may be enforced by the Maine Department of Environmental Protection or any successor (hereinafter the "MDEP"),

NOW, THEREFORE, the Declarant hereby declares that the Restricted Buffer Area is and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the conditions and restrictions set forth herein. The Restrictions shall run with the Restricted Buffer Area and shall be binding on all parties having any right, title or interest in and to the Restricted Buffer Area, or any portion thereof, and their heirs, personal representatives, successors, and assigns. Any present or future owner or occupant of the Restricted Buffer Area or any portion thereof, by the acceptance of a deed of conveyance of all or part of the Covenant Area or an instrument conveying any interest therein, whether or not the deed or instrument shall so express, shall be deemed to have accepted the Restricted Buffer Area subject to the Restrictions and shall agree to be bound by, to comply with and to be subject to each and every one of the Restrictions hereinafter set forth.

1. **Restrictions on Restricted Buffer Area**. Unless the owner of the Restricted Buffer Area, or any successors or assigns, obtains the prior written approval of the MDEP, the Restricted Buffer Area must remain undeveloped in perpetuity. To maintain the ability of the Restricted Buffer Area to filter and absorb stormwater, and to maintain compliance with the *Stormwater Management Law* and the permit issued thereunder to the Declarant, the use of the Restricted Buffer Area is hereinafter limited as follows.

a. No soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants or other fill material will be placed, stored or dumped on the Restricted Buffer Area, nor shall the topography of the area be altered or manipulated in any way;

b. No trees may be cut or sprayed with biocides except for the normal maintenance of dead, windblown or damaged trees and for pruning of tree branches below a height of 12 feet provided two thirds of the tree's canopy is maintained;

c. No undergrowth, ground cover vegetation, leaf litter, organic duff layer or mineral soil may be disturbed except that one winding path, that is no wider than six feet and that does not provide a downhill channel for runoff, is allowed through the area;

d. No building or other temporary or permanent structure may be constructed, placed or permitted to remain on the Restricted Buffer Area, except for a sign, utility pole or fence;

e. No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment may be permitted on the Restricted Buffer Area;

f. Any level lip spreader directing flow to the Restricted Buffer Area must be regularly inspected and adequately maintained to preserve the function of the level spreader.

Any activity on or use of the Restricted Buffer Area inconsistent with the purpose of these Restrictions is prohibited. Any future alterations or changes in use of the Restricted Buffer Area must receive prior approval in writing from the MDEP. The MDEP may approve such alterations and changes in use if such alterations and uses do not impede the stormwater control and treatment capability of the Restricted Buffer Area or if adequate and appropriate alternative means of stormwater control and treatment are provided.

2. **Enforcement**. The MDEP may enforce any of the Restrictions set forth in Section 1 above.

3. **Binding Effect**. The restrictions set forth herein shall be binding on any present or future owner of the Restricted Buffer Area. If the Restricted Buffer Area is at any time owned by more than one owner, each owner shall be bound by the foregoing restrictions to the extent that any of the Restricted Buffer Area is included within such owner's property.

4. **Amendment**. Any provision contained in this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer Area and by the MDEP.

5. **Effective Provisions of Declaration**. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, shall be deemed a land use restriction running with the land as a burden and upon the title to the Restricted Buffer Area.

6. **Severability**. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

7. **Governing Law**. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(NAME)

STATE OF MAINE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

(County)

Personally appeared before me the above named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who swore to the truth of the foregoing to the best of (his/her) knowledge, information and belief and acknowledged the foregoing instrument to be (his/her) free act and deed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**3. Meadow buffer**

DECLARATION OF RESTRICTIONS (Non-Wooded Meadow Buffer)

THIS DECLARATION OF RESTRICTIONS is made this \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(name) (street address)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, Maine,\_\_\_\_\_\_\_\_, (herein referred to as the

(city or town) (county) (zip code)

"Declarant"), pursuant to a permit received from the Maine Department of Environmental Protection under the *Stormwater Management Law*, to preserve a buffer area on a parcel of land near \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

(road name) (known feature and/or town)

WHEREAS, the Declarant holds title to certain real property situated in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Maine

(town)

described in a deed from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, dated

(name) (name of Declarant)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, and recorded in Book \_\_\_\_ Page \_\_\_\_ at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County Registry of Deeds, herein referred to as the "property"; and

WHEREAS, Declarant desires to place certain restrictions, under the terms and conditions herein, over a portion of said real property (hereinafter referred to as the "Restricted Buffer") described as follows: (Note: Insert description of restricted buffer location here)

WHEREAS, pursuant to the *Stormwater Management Law*, 38 M.R.S.A. Section 420-D and Chapter 501 of rules promulgated by the Maine Department of Environmental Protection, Declarant has agreed to impose certain restrictions on the Restricted Buffer Area as more particularly set forth herein and has agreed that these restrictions may be enforced by the Maine Department of Environmental Protection or any successor (hereinafter the "MDEP"),

NOW, THEREFORE, the Declarant hereby declares that the Restricted Buffer Area is and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the conditions and restrictions set forth herein. The Restrictions shall run with the Restricted Buffer Area and shall be binding on all parties having any right, title or interest in and to the Restricted Buffer Area, or any portion thereof, and their heirs, personal representatives, successors, and assigns. Any present or future owner or occupant of the Restricted Buffer Area or any portion thereof, by the acceptance of a deed of conveyance of all or part of the Covenant Area or an instrument conveying any interest therein, whether or not the deed or instrument shall so express, shall be deemed to have accepted the Restricted Buffer Area subject to the Restrictions and shall agree to be bound by, to comply with and to be subject to each and every one of the Restrictions hereinafter set forth.

1. **Restrictions on Restricted Buffer Area**. Unless the owner of the Restricted Buffer Area, or any successors or assigns, obtains the prior written approval of the MDEP, the Restricted Buffer Area must remain undeveloped in perpetuity. To maintain the ability of the Restricted Buffer Area to filter and absorb stormwater, and to maintain compliance with the Stormwater Management Law and the permit issued thereunder to the Declarant, the use of the Restricted Buffer Area is hereinafter limited as follows.

a. No soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants or other fill material will be placed, stored or dumped on the Restricted Buffer Area, nor may the topography or the natural mineral soil of the area be altered or manipulated in any way;

b. A dense cover of grassy vegetation must be maintained over the Restricted Buffer Area, except that shrubs, trees and other woody vegetation may also be planted or allowed to grow in the area. The Restricted Buffer Area may not be maintained as a lawn or used as a pasture. If vegetation in the Restricted Buffer Area is mowed, it may be mown no more than two times per year.

c. No building or other temporary or permanent structure may be constructed, placed or permitted to remain on the Restricted Buffer Area, except for a sign, utility pole or fence;

d. No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment may be permitted on the Restricted Buffer Area, except for vehicles used in mowing;

e. Any level lip spreader directing flow to the Restricted Buffer Area must be regularly inspected and adequately maintained to preserve the function of the level spreader.

Any activity on or use of the Restricted Buffer Area inconsistent with the purpose of these Restrictions is prohibited. Any future alterations or changes in use of the Restricted Buffer Area must receive prior approval in writing from the MDEP. The MDEP may approve such alterations and changes in use if such alterations and uses do not impede the stormwater control and treatment capability of the Restricted Buffer Area or if adequate and appropriate alternative means of stormwater control and treatment are provided.

2. **Enforcement**. The MDEP may enforce any of the Restrictions set forth in Section 1 above.

3. **Binding Effect**. The restrictions set forth herein shall be binding on any present or future owner of the Restricted Buffer Area. If the Restricted Buffer Area is at any time owned by more than one owner, each owner shall be bound by the foregoing restrictions to the extent that any of the Restricted Buffer Area is included within such owner's property.

4. **Amendment**. Any provision contained in this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Restricted Buffer Area and by the MDEP.

5. **Effective Provisions of Declaration**. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, shall be deemed a land use restriction running with the land as a burden and upon the title to the Restricted Buffer Area.

6. **Severability**. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

7. **Governing Law**. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(NAME)

STATE OF MAINE, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, County, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ .

(County)

Personally appeared before me the above named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who swore to the truth of the foregoing to the best of (his/her) knowledge, information and belief and acknowledged the foregoing instrument to be (his/her) free act and deed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_