

Overview

Under the Stormwater Management Statute (38 M.R.S.A §420-D) instituted by the Maine Department of Environmental Protection, a person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the Department.

Section 4.B.3.C of Chapter 500 addresses a redevelopment project requiring a Stormwater Management Law permit and provides a waiver from the General Standards provided the department determines that the new use of the existing impervious area is not likely to increase the stormwater impacts. As the proposed use of the impervious surface is similar to the existing use, the Department has determined that a decrease in pavement surface is not likely to increase stormwater impacts. Basic Standards will be met as presented in the Erosion and Sedimentation Control Report for this project.

The proposed development shall also meet the requirements of the City of Portland. As the proposed stormwater discharge is expected to enter the municipal system, the City will likely require some level of on-site treatment prior to discharge.

Introduction

The Richmond Company has retained Gorrill-Palmer Consulting Engineers, Inc. to prepare development plans and permit applications for a proposed 14,014 +/- square-foot Walgreens pharmacy with drive-up service. The pharmacy will be located on the northwest corner of the intersection of Washington Avenue and Allen Avenue in Portland. The existing site is currently occupied by several operating businesses including an auto body shop. Figure 1 is a map showing the project location.

Development Description

The development site for the proposed pharmacy includes seven separate parcels, Lots E8, E12, E36, E37, E42, E47 and E50 of Portland Assessor's Map 344, totaling approximately 1.60 acres.

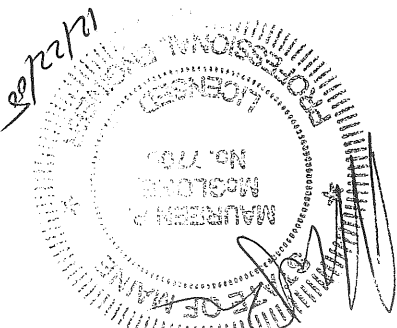
Abutting land uses include:

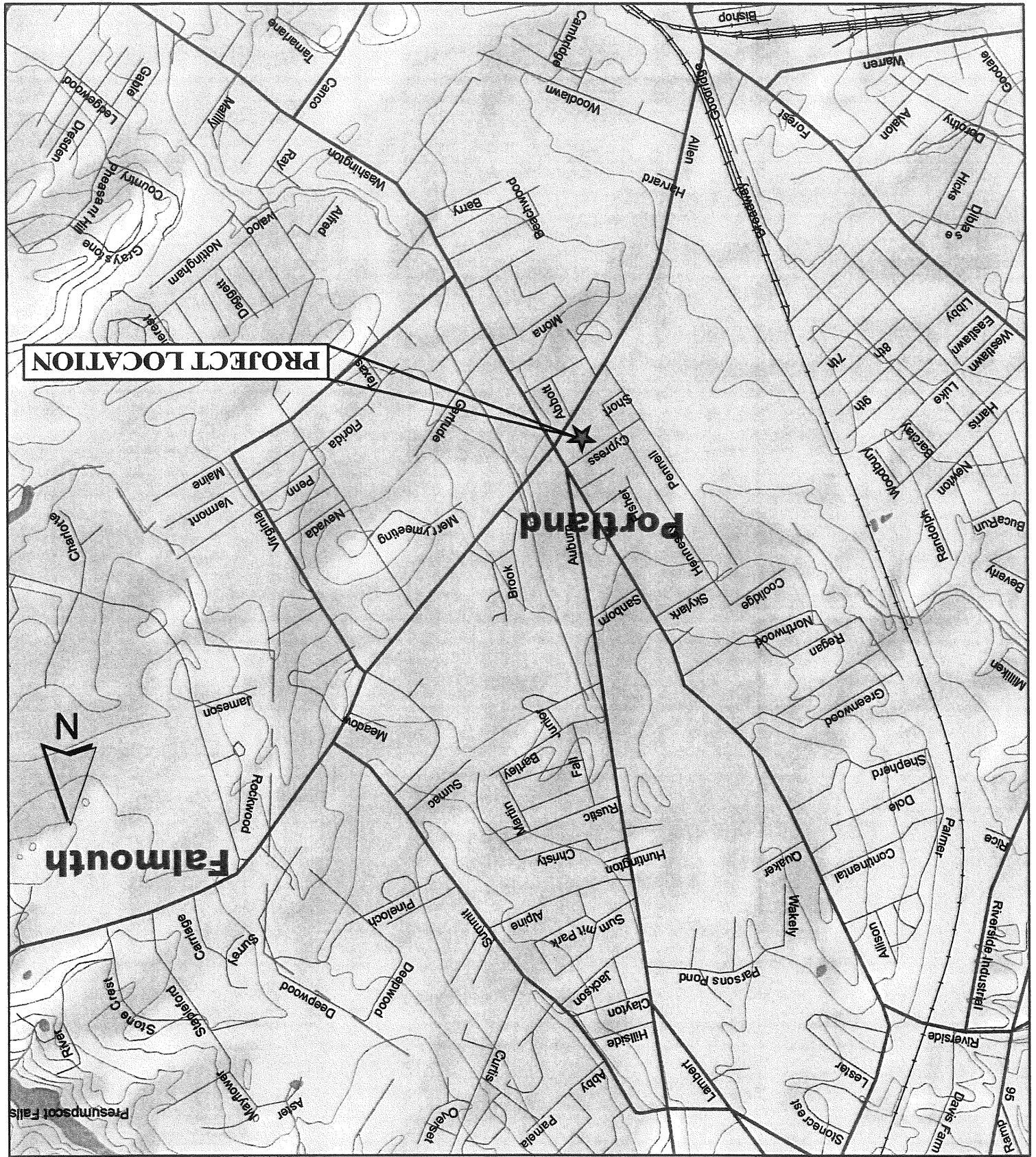
- North – Residential/Commercial Uses
- East – Washington Avenue/Commercial Uses
- South – Allen Avenue/Commercial Uses
- West – Residential/Commercial Uses

The overall existing site for the proposed pharmacy is approximately 1.60 acres, consisting of 1.34 acres of impervious (in existence prior to November 16, 2005) and 0.26 acres of non-impervious area. The majority of the surface runoff from the site currently enters multiple stormdrain structures within the site, which then conveys the stormwater into the municipal system located within Washington Avenue. The remaining impervious area on site flows into catch basins located within the Right-of-Way of Allen and Washington Avenue. Discharge from the proposed development enters a storm sewer separate from the City's sanitary system. However, this separated system currently rejoins the existing combined system further downstream. Completion of the downstream storm sewer separation is anticipated during construction of Phase 3 of the Fall Brook separation project. For further information on off-site drainage, refer to the attached Washington Ave./Allen Ave. Intersection Improvement Plans, dated April 13, 2004.

STORMWATER MANAGEMENT
PLAN

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PROPOSED PHARMACY, PORTLAND, MAINE

JN: 1909
 DATE: OCT 2007
 FILE: 1909.LOCMAP.MXD
 SOURCE: MAINE GIS WEBSITE

GP
 Gorrill-Palmer Consulting Engineers, Inc.
 Traffic and Civil Engineering Services
 207-657-6910
 Fax: 207-657-6912
 mailbox@gorrillpalmer.com
 www.gorrillpalmer.com

PO Box 1237
 15 Shaker Road
 Gray, ME 04039

Location Map K16
 Figure No. 1

The project site would appear to be tributary to the stormdrain system that eventually discharges to Fall Brook, which is identified as an Urban Impaired Stream by MDEP Chapter 502. The project, as proposed, does not create 3 acres or more of impervious area and therefore is not subject to the Urban Impaired Stream Standard. In addition, the project proposes to reduce the amount of impervious area (both structure and pavement) that is currently contributing to Fall Brook.

It is GPCB's understanding that the Richmond Company intends to demolish the existing buildings and construct a 14,014 +/- square foot Walgreen's with a drive-thru facility on site. The existing parking field is proposed to be reconstructed to accommodate 49 parking spaces. The site is proposed to be accessed through three curb cuts; one on Washington Avenue and two on Allen Avenue. The project site abuts the Espo's Restaurant site, which will remain.

Through a land swap with the Espo's property and a land swap with Ritco, another abutting property owner, the final parcel size will be approximately 1.32 acres, of which approximately 1.02 acres, as proposed, will be impervious. The quantity of stormwater entering the municipal system has not increased as part of the development, only the path that it will take to get to the municipal system. As part of the proposed site development, a majority of the stormwater will be collected by multiple stormdrain structures within the site and treated prior to entering the municipal system. Collecting the stormwater on-site will reduce the amount of stormwater flowing over land and across sidewalks to catch basins within the street as well as reduce the possibility of ice buildup during the winter months.

As part of the development, a majority of the proposed impervious areas for Espo's property will drain to the drainage structures within the Walgreens project site. The remaining existing impervious from the Espo's property will enter the existing drainage system maintained by Espo's prior to discharge to the municipal system within Allen Avenue. The following table represents the existing, proposed, and net change in impervious surfaces for the development site, including the Espo's parcel:

Existing vs. Proposed Impervious Surface

	Existing	Proposed	Net Change
Pharmacy			
Site Area	1.60 ac	1.32 ac	-0.28 ac
Structure	0.40 ac	0.32 ac	-0.08 ac
Pavement	0.94 ac	0.70 ac	-0.24 ac
Total Impervious	1.34 ac	1.02 ac	-0.32 ac
Restaurant (Espo's)			
Site Area	0.62 ac	0.86 ac	+0.24 ac
Structure	0.07 ac	0.07 ac	0.00 ac
Pavement	0.52 ac	0.61 ac	+0.09 ac
Total Impervious	0.59 ac	0.68 ac	+0.09 ac
Total Site			
Total Site Area	2.22 ac	2.18 ac	-0.04 ac (1)
Structure	0.47 ac	0.40 ac	-0.07 ac
Pavement	1.46 ac	1.30 ac	-0.16 ac
Total Impervious	1.93 ac	1.70 ac	-0.23 ac

(1) 0.04 acres to be transferred to Ritco

As shown in the above table, both existing sites are almost entirely impervious, and as a result of the proposed redevelopment, an additional 8,500 +/- sq. ft. of landscaped area is proposed. As the amount of impervious is decreased, it is not anticipated the redevelopment will result in an increase in stormwater impacts. Pre and Post-Development stormwater calculations for the site have been included as an attachment.

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As part of the proposed site development, curbing along the perimeter of the parking lot and a Downstream Defender® Advanced Vortex Separator have been added to collect and treat a majority of the runoff from the site. The Downstream Defender is very effective at the removal of sediment, oil and floatables from stormwater runoff. The location of the proposed Downstream Defender has been shown on the drawings and a detail of the Downstream Defender has been shown within the plan set. As an additional stormwater treatment measure, on-site catch basins will be fitted with the "Snout" oil and debris separator (or approved equal) to reduce pollutant loading in the municipal stormwater system.

Maintenance of Facilities

The stormwater facilities will be maintained by the Applicant. Long-term operation/maintenance recommended for the stormwater facilities is presented below. A standard inspection report is included as Attachment B. The responsible party may contract with such professionals as may be necessary in order to comply with this provision and may rely on the advice of such professionals in carrying out its duty hereunder, provided, that the following operation and maintenance procedures are hereby established as a minimum for compliance with this section.

Inspection and Maintenance Frequency and Corrective Measures:

The following areas, facilities, and measures will be inspected and the identified deficiencies will be corrected. Clean-out must include the removal and legal disposal of any accumulated sediments and debris.

Catch Basins:

Inspect catch basins two times per year (preferably in Spring and Fall) to ensure that the catch basins are working in their intended fashion and that they are free of debris. Clean structures when sediment depths reach 12" from invert of outlet. If the basin outlet is designed with a hood to trap floatable materials (i.e. Snout), check to ensure watertight seal is working. At a minimum, remove floating debris and hydrocarbons at the time of the inspection.

Vegetated Areas:

Inspect slopes and embankments early in the growing season to identify active or potential erosion problems. Replant bare areas or areas with sparse growth. Where rill erosion is evident, armor the area with an appropriate lining or divert the erosive flows to on-site areas able to withstand the concentrated flows. The facilities will be inspected after major storms and any identified deficiencies will be corrected.

Roadways and Parking Surfaces:

Clear accumulations of winter sand in parking lots and along roadways at least once a year, preferably in the spring. Accumulations on pavement may be removed by pavement sweeping. Accumulations of sand along road shoulders may be removed by grading excess sand to the pavement edge and removing it manually or by a front-end loader.

Downstream Defender® Advanced Vortex Separator

Maintenance for the Downstream Defender shall conform to manufacturers specifications. During the first year of operation, the unit should be inspected every six months to determine the rate of sediment and floatables accumulation. Subsequent maintenance will include the inspection of the unit, removal of sediment and floatables; and documentation of maintenance performed. It is expected that the maintenance schedule of this units will follow the semi-annual schedule proposed for the other stormwater facilities.

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Conclusion

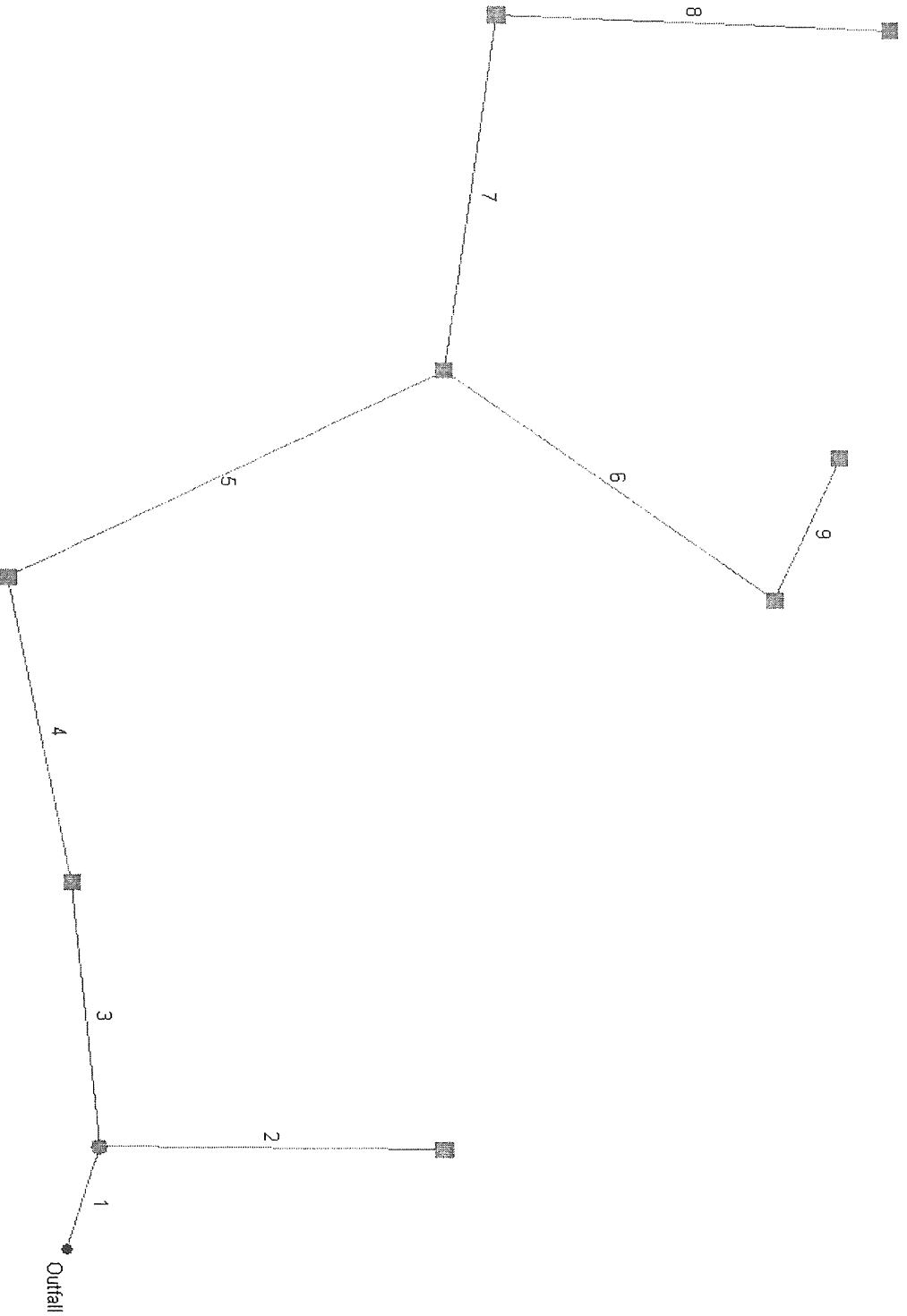
The Applicant has provided Stormwater treatment measures as well as specifying a maintenance plan for all stormwater measures.

Attachments

Attachment A - Stormwater Calculations — available at PL Board (not in attachment)
Attachment B - Stormwater Inspection Report

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Hydraflow Plan View



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Project File: 1909_SW_121508.stm

No. Lines: 9

12-22-2008

Storm Sewer Summary Report

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Line No.	Line ID	Flow rate (cfs)	Line size (in)	Line length (ft)	Invert EL Dn (ft)	Invert EL Up (ft)	Line slope (%)	HGL down (ft)	HGL up (ft)	Minor loss (ft)	HGL Junct (ft)	Dns line No.
9		0.66	12 c	40.0	76.51	76.71	0.500	79.93*	79.95*	0.01	79.96	6
8		0.78	12 c	93.0	76.48	77.41	1.000	79.99*	80.03*	0.02	80.05	7
7		1.89	12 c	93.0	75.91	76.38	0.505	79.51*	79.78*	0.14	79.91	5
6		2.95	15 c	98.0	75.91	76.41	0.510	79.52*	79.72*	0.14	79.86	5
5		5.53	15 c	116.5	75.23	75.81	0.498	77.83*	78.69*	0.60	79.29	4
4		5.82	15 c	81.0	74.72	75.13	0.506	76.63*	77.29*	0.51	77.80	3
3		6.43	15 c	69.0	74.27	74.62	0.507	75.66*	76.34*	0.21	76.56	1
2		0.65	12 c	82.0	74.27	78.50	5.159	76.00	78.84	n/a	78.84	1
1		6.92	18 c	28.0	74.03	74.17	0.500	75.18	75.32	0.34	75.66	End

Project File: 1909_SW_121508.stm

Number of lines: 9

Run Date: 12-22-2008

NOTES: c = cir; e = ellip; b = box; Return period = 10 Yrs. ; *Surcharged (HGL above crown). ;] - Line contains hyd. jump.

Maintenance

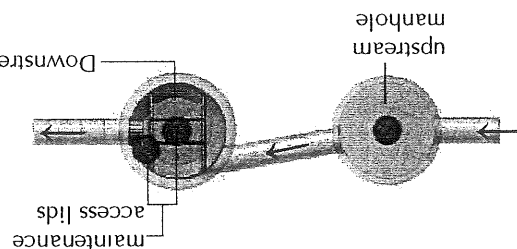


The Downstream Defender is easy to maintain using a sump-vac to remove captured sediment and floatables. Cleanout ports are located in the top of the manhole and provide access to pollutant storage areas. Maintenance is generally conducted every 12 to 18 months, although individual maintenance schedules are site specific. Hydro International works with owners and municipalities through networks of certified maintenance contractors to ensure proper maintenance practices.

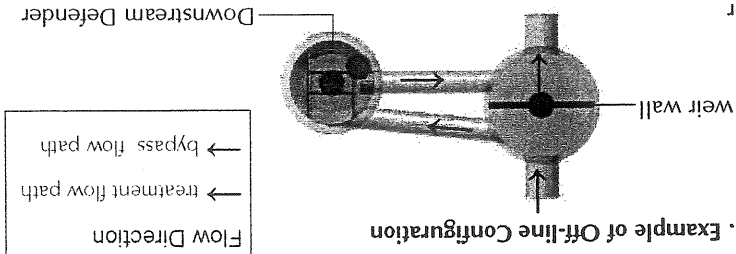
Sizing and Design

The Downstream Defender is sized and designed to accommodate site parameters. The device is commonly installed in an on-line configuration (figure A). In an off-line configuration an upstream diversion structure with an integral weir diverts treatment flows to the Downstream Defender. Excess storm flows spill over the weir directly to the outlet (figure B).

A. Example of On-line Configuration



B. Example of Off-line Configuration



Low Headloss

The Downstream Defender has clear openings and no internal restrictions in order to minimize hydraulic losses, blockages and the risk of upstream flooding.

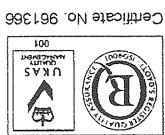
Downstream Defender Design Chart

Model Number and Diameter (ft)	Peak Flow Treatment (cfs)	Maximum Pipe Diameter (in)	Headloss at Peak Treatment Flow (in)	Oil Storage Capacity (gallons)	Sediment Storage Capacity (cubic yards)	Minimum Distance from Outlet Invert to Top of Rim (ft)	Standard Distance from Outlet Invert to Sump Floor (ft)
4	3.0	12	6	70	0.70	3.2	4.0
6	8.0	18	8	230	2.10	3.6	5.9
8	15.0	24	9	525	4.65	4.1	7.7
10	25.0	30	10	1,050	8.70	4.9	9.4

For more information please call our office toll free at 800-848-2706 or inquire at www.hydro-international.biz.



This information is subject to change without notice.



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STORMWATER MAINTENANCE LOG

INSPECTION REPORT

PROJECT INFORMATION

Project Name: Proposed Pharmacy Development
Address: Allen Avenue, Portland, Maine

CONTRACTOR/SUBCONTRACTOR INFORMATION

Inspector Name: _____
Firm: _____
Title: _____
Qualifications: _____

MAINTENANCE OF FACILITIES

- Catch Basins: Inspect catch basins two times per year (preferably in Spring and Fall) to ensure that the catch basins are working in their intended fashion and that they are free of debris. Clean structures when sediment depths reach 12" from invert of outlet. If the basin outlet is designed with a hood to trap floatable materials (i.e. Snout), check to ensure watertight seal is working. At a minimum, remove floating debris and hydrocarbons at the time of the inspection.
- Vegetated Areas: Inspect slopes and embankments early in the growing season to identify active or potential erosion problems. Replant bare areas or areas with sparse growth. Where rill erosion is evident, armor the area with an appropriate lining or divert the erosive flows to on-site areas able to withstand the concentrated flows. The facilities will be inspected after major storms and any identified deficiencies will be corrected.
- Roadways and Parking Surfaces: Clear accumulations of winter sand in parking lots and along roadways at least once a year, preferably in the spring. Accumulations on pavement may be removed by pavement sweeping. Accumulations of sand along road shoulders may be removed by grading excess sand to the pavement edge and removing it manually or by a front-end loader.
- Downstream Defender® Advanced Vortex Separator: Maintenance for the Downstream Defender shall conform to manufacturers specifications. During the first year of operation, the unit should be inspected every six months to determine the rate of

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sediment and floatables accumulation. Subsequent maintenance will include the inspection of the unit; removal of sediment and floatables; and documentation of maintenance performed. It is expected that the maintenance schedule of this unit will follow the semi-annual schedule proposed for the other stormwater facilities.

INSPECTION SUMMARY

Date of Inspection: _____

Major Observations: _____

THE FACILITY IS IN COMPLIANCE WITH THE STORMWATER POLLUTION PREVENTION PLAN WITH THE FOLLOWING EXCEPTIONS:

ACTIONS NECESSARY TO BRING FACILITY INTO COMPLIANCE:

REQUIRED MODIFICATIONS TO STORMWATER POLLUTION PREVENTION PLAN (MUST BE IMPLEMENTED WITHIN 7 DAYS OF INSPECTION):

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CERTIFICATION STATEMENT:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the systems, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature

Typed Name

Title

Date

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DEPARTMENT ORDER
IN THE MATTER OF

THE RICHMOND COMPANY
Portland, Cumberland County
WALGREENS
L-24391-NI-A-N (Approval)
) FINDINGS OF FACT AND ORDER
)
)
)
) STORMWATER MANAGEMENT LAW

Furtuant to the provisions of 38 M.R.S.A. Section 420-D, and Chapters 500 and 502 of the Department's Regulations, the Department of Environmental Protection has considered the application of THE RICHMOND COMPANY with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to redevelop seven abutting parcels, totaling 1.39 acres. Four existing buildings will be demolished and replaced with a 4,750 square foot building with 48 parking spaces. The proposed project is shown on set of plans the first of which is entitled "Walgreen - Store #12326," prepared by Gorrill-Palmer Consulting Engineers, Inc., and dated December, 2007 with a latest revision date on any of the sheets of November 11, 2008. The project site is located on the northwest corner of the intersection of Allen Avenue and Washington Avenue in the City of Portland.

B. Current Use of the Site: The site of the proposed project is completely developed with four buildings and asphalt pavement.

2. STORMWATER STANDARDS:

The proposed project includes approximately 1.07 acres of impervious area and 0.32 acres of developed area. It lies within the watershed of Fall Brook, an urban impaired stream. The applicant submitted a stormwater management plan based on the basic and general standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of catch basins, a subsurface drainage system, and a Downstream Defender Advanced Vortex Separator.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This

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plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ).

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

The applicant proposes to install a Downstream Defender Advanced Vortex Separator to treat the stormwater runoff from the site, prior to discharge to the City of Portland's storm sewer system. Prior to occupancy of the new building, the applicant must submit to the BLWQ a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of Downstream Defender Advanced Vortex Separator.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Department's Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

The Department further finds that the proposed project will meet the Chapter 500 standards for discharges to public storm sewer systems.

B. General Standard: The applicant is requesting an exception from the requirements of the General Standards pursuant to Department Rules, Chapter 500(4)(B)(3)(e). This section provides that redevelopment of impervious area, in existence as of November 16, 2005, is not required to meet the General Standards provided the Department determines that the new use of the existing impervious area is not likely to increase stormwater impacts resulting from the proposed project's stormwater runoff beyond the level of impact already caused by the runoff from the existing impervious area. The applicant noted that stormwater runoff from the project site currently does not receive any treatment. In support of its request, the applicant submitted a table comparing existing and proposed impervious surface for the project

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site. The table indicates there will be a reduction in the total impervious area and net decreases in the amount of roof and non-roof impervious area.

DWM recommended that this exception request be granted because the applicant has adequately demonstrated that the new use of the existing impervious area is not likely to result in an increase to stormwater impacts beyond the level that currently exists.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed project meets the eligibility requirements for an exception from the Chapter 500 General Standard, as outlined in Section 500(4)(B)(3)(e).

The Department finds that the applicant has made adequate provision for an exception from the Chapter 500 General Standard, as outlined in Section 500(4)(B)(3)(e).

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. A. Section 420-D, and Chapters 500 and 502 of the Department's Regulations:

A. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Basic Standards for: (1) erosion and sediment control; (2) inspection and maintenance; (3) housekeeping; and (4) grading and construction activity.

B. The applicant has made provision for an exception from the Chapter 500 General Standard, as outlined in Section 500(4)(B)(3)(e).

C. The applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 standards for discharges to public storm sewer systems.

THIRDFORE, the Department APPROVES the above noted application of THE RICHMOND COMPANY to construct a stormwater management system as described above in Portland, Maine, SUBJECT TO THE FOLLOWING CONDITIONS, and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.

2. In addition to any specific erosion control measures described in this order, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.

3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

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4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.

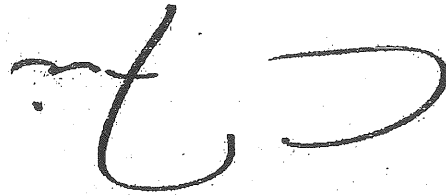
5. Prior to occupancy of the new building, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of Downstream Defender Advanced Vortex Separator to the BLWQ.

6. Storm sewer grit and sediment materials removed from stormwater control structures shall be disposed of in compliance with the Department's Solid Waste Management Rules (06-096 CMR 400 et seq. effective September 6, 1999).

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2008.11.18 08:55:19 -05'00'



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

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STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

(1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. § 420-D(8) and is subject to penalties under 38 M.R.S.A. § 349.

(2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.

(3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.

(4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.

(5) Initiation of project within two years. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference.

(6) Reexamination after five years. If the project is not completed within five years from the date of the granting of approval, the department may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances or requirements which may have occurred during the five-year period.

(7) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the

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conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions

received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

(8) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.

(9) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.

- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
- (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
- (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained

November 16, 2005

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DEF INFORMATION SHEET Appealing a Commissioner's Licensing Decision



Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; taxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.

2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.

3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.

4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. All the matters to be contested. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. Request for hearing. The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. New or additional evidence to be offered. The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. Be familiar with all relevant material in the DEP record. A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials.

There is a charge for copies or copying services.

2. Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal. DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. The filing of an appeal does not operate as a stay to any decision. An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

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