

RESPONSE SUMMARY
GENERAL PERMIT 3-9050 FOR OPERATIONAL STORMWATER PERMITTING
DRAFT GENERAL PERMIT 3-9050

The Vermont Agency of Natural Resources, Department of Environmental Conservation (Department or DEC), proposes to issue General Permit 3-9050. The Department placed Draft General Permit 3-9050 on public notice from September 20, 2019 through December 2, 2019. The Department held three public meetings during the public comment period.

The Department received both verbal and written comments on draft General Permit 3-9050. The following is a summary of the public comments on the draft permit and the Department's responses to those comments. Comments have been paraphrased and combined where appropriate. Where comments during this public comment period were directed at the "Stormwater Rule," the Department presumes they were intended for draft General Permit 3-9050.

Comments on the draft general permit were submitted by the following parties: Agri-Mark, Inc.; Associated Industries of Vermont; Audubon; Bolduc Auto Salvage, Inc.; Brian Campbell; Champlain Regional Chamber of Commerce; Chris Howland; City of Rutland; City of South Burlington; Conservation Law Foundation; Dolores Luebke; Enman Kesselring Engineers; G.W. Tatro Construction, Inc.; Grenier Engineering; Gerry Silverstein; H.A. Manosh, Inc.; John deBruin; John Klar; Krebs and Lansing; Lake Champlain Committee; Lamoille County Regional Planning Commission; Lazy Acres Homeowners Association; Long Trail Engineering; Lynn Edmunds; Mount Snow, Vermont; Northwest Regional Planning Commission; Omya; Paul Nesky; Pomerleau Real Estate; Rebecca Teese; Rock of Ages; Ski Magic, LLC; Smugglers' Notch Resort; Spruce Peak Realty, LLC; Sterling View Cooperative Community; Stevens & Associates; Timothy Shea; Town of Cambridge; Town of Colchester; Town of Essex; Town of Hyde Park; Town of St. Albans; Town of Stowe; Town of Williston; Vermont Agency of Transportation; Vermont Agricultural Fairs Association; Vermont Chamber of Commerce; Vermont Conservation Voters; Vermont League of Cities and Towns; Vermont Natural Resources Council; Vermont Ski Areas Association; Village of Essex Junction; and William Parkinson.

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Comments on the Permit Process, Outreach, and Public Notice

1. Public outreach and engagement are important components to drafting a rule and general permit for new legislation. The Lamoille County Planning Commission and municipal partners did not receive a formal announcement or letter notifying partners of the public comment period when drafting the 3 Acre Rule. Given the impact this rule and general permit will have on multiple sectors of the economy including private property, the notice of public comment should have been distributed via multi-media avenues to reach a larger audience.

Response: The Agency agrees that public outreach and engagement are crucial to the development of successful regulations. To that end, the Agency engaged in public outreach on both the Stormwater Permitting Rule and General Permit 3-9050. The formal process for the adoption of both regulations was preceded by consultation with stakeholders, including multiple presentations and direct outreach via email. The Stormwater Program's website included draft documents, summaries, and updates on both processes. Additionally, the proposed general permit was noticed via the Environmental Notices Bulletin (ENB), and statewide newspapers of public record.

2. Limiting public comments to the Environmental Notice Bulletin, provides a barrier to the public and impacted landowners interested in commenting. Only allowing submission of comments via an online system creates an unnecessary barrier for rural Vermonters in areas without broadband access, older Vermonters, and low-income Vermonters who may not have home internet access. We encourage DEC to reevaluate this Rule and General Permit and consider enhancing public engagement while revising these documents.

Response: The Agency regrets any challenges the public may have encountered in providing comments on the general permit. The Agency developed the Environmental Notice Bulletin to provide a comprehensive application that allows the public to sign up for permit notices, follow permit applications, and submit public comments. Given the number of permits processed by the Agency, this consolidated approach is necessary for the public's benefit, as well as for the Agency's administrative needs. Understanding that some individuals prefer to comment in person, the Agency holds public meetings during the general permit adoption process at which time comments may be made verbally or submitted in writing at the meeting. Three public meetings were held for this general permit, and the public comment period was approximately 60 days.

3. Comment: (Multiple similar comments received) Section 9 of Appeals of the draft Stormwater General Permit states "Pursuant to 10 V.S.A. Chapter 220, an aggrieved person shall not appeal this permit or an authorization under this permit unless the person submitted to the Secretary a written comment during the applicable public comment period or an oral comment at the public meeting conducted by the Secretary." According to the VT DEC "3 Acre Properties" page, notification letters have only been sent to impacted landowners in the Lake Champlain and Memphremagog watersheds. Affected landowners outside these watersheds will not be aware of this requirement to comment in order to appeal the permit. Will there be another public comment period for other watersheds in the state to notify other landowners about this requirement to comment for appeals?

Response: The general permit is valid for a period of five years. Given that "three-acre sites" outside of the watersheds of Lake Champlain, Lake Memphremagog, and stormwater-impaired waters, have until 2033 to

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obtain permit coverage, there will be at least two more public comment periods on the general permit before those projects are required to apply. The Agency will be contacting those properties in advance of issuing future iterations of the general permit.

The Agency notes that direct notification of landowners is an important outreach tool but is not required of the Agency. The Agency made a good faith effort to provide this additional outreach but acknowledges that our information regarding ownership of affected parcels is imperfect, and incomplete, and as such not all owners received notification. This is especially true outside of the Lake Champlain watershed where impervious cover data and land ownership information were largely incomplete at the time of issuance of the draft permit. This is of particular note in the Lake Memphremagog watershed. Finally, the Agency notes the requirement to obtain permit coverage was established by the Legislature in 2015, and the technical standards affecting these projects were largely established through adoption of the Stormwater Permitting Rule earlier in 2019. The earlier rulemaking process conformed with applicable public notice requirements but did not involve direct notification of landowners.

4. Comment: (Multiple similar comments received) All impacted property owners should be given an opportunity to comment on the permit before being subject to the requirements. As of November 13, 2019, the Agency's website for the Draft General Permit 3-9050 states that only property owners within the Lake Champlain and Memphremagog waters are being notified at this date, thereby omitting property owners in the other drainage areas from commenting in this process. It was clarified at the Milton Public Meeting on Oct. 31, 2019 that the Agency did not have impervious surface data outside of the listed watersheds and therefore does not have the ability to identify three-acre sites for the entire state. As it stands currently with this public comment period, municipalities and landowners in the remaining drainage areas do not have a sense of the impact of this permit requirement in order to comment at this time.
NRPC recommends that General Permit state the 3-acre determination will not apply to land outside of these identified drainage areas until the necessary data is available and a public process is held.

Response: See previous response.

Comments on the Schedule for Submitting Applications and Constructing Required Stormwater Systems

5. Comment: Multiple comments were received regarding the timeline for "three-acre sites" to submit an application for permit coverage, referred to as a Notice of Intent (NOI) under the general permit. Some comments suggested that the draft general permit is not consistent with the timeframes for obtaining permit coverage in Act 64 and 10 V.S.A. § 1264.

Response: State statute (10 V.S.A. § 1264) requires all "three-acre sites" to have permit coverage "on or before October 1, 2023" (for projects in the watersheds of Lake Champlain, Lake Memphremagog, or the watershed of a stormwater-impaired water). Statute further directs the Agency to develop a general permit covering these "three-acre sites" and that the general permit "shall . . . [e]stablish a schedule for implementation of the general permit by geographic area of the State. The schedule shall establish the date by which an owner of impervious surface shall apply for coverage under [the general permit]." Notwithstanding concerns regarding the feasibility of sites complying with the schedule proposed under the general permit, the schedule is consistent with Act 64

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and 10 V.S.A. § 1264. Further, it would be administratively infeasible to process all permit applications, provide technical assistance, and provide funding support, for projects if the schedule for submitting permit applications was put off until 2023.

6. Comment: The permit required under Act 64 was delivered later than required by statute, and in some watersheds, compliance is significantly earlier than planned during the initial drafting of the permit.

Response: The Agency acknowledges that the final general permit will be issued after the date established by the Vermont State Legislature, and that various iterations of the application schedule were contemplated during the drafting of the general permit.

7. Comment: Multiple comments were received regarding the overall schedule for submitting Notices of Intent (NOIs) for “three-acre sites” suggesting that the schedule was unrealistic given the time needed for applicants to secure the necessary financial resources, coordinate with other landowners, and retain an engineer. Several comments suggested that the July 1, 2020 application date (for “three-acre sites” in stormwater-impaired waters that were not previously permitted) was especially unrealistic.

Response: The Agency acknowledges that the overall schedule for submittal of NOIs was excessively “front-loaded” in the draft general permit and has revised the submittal dates in the final general permit to provide for more time. The earliest permit applications are now not due before twelve months following the effective date of the final general permit, with the exception of previously-permitted “three-acre sites” whose authorizations will expire during the first twelve months which shall apply prior to expiration of their previous authorizations. Additionally, the general permit has been modified to provide projects additional time. Specifically, projects will submit an initial application, or notice of intent (NOI), based on basic project information. Based on this application projects will receive an 18-month permit authorization. At the end of the 18-month period, projects will be required to submit a second NOI, including all required technical submittals, site plans, and engineering feasibility analysis. Projects will then receive up to a five-year permit authorization based on the second NOI. The permitted stormwater system will need to be constructed prior to expiration of the up-to five-year authorization. Relatedly, 2.3.C of the final general permit (When to Submit an NOI) has been modified. The draft general permit provided permit coverage for permits for “three-acre sites” that will expire during the first twelve months from the effective date of the general permit, provided those sites continued to comply with their permit authorizations and provided they submitted a registration. Because the requirements associated with the Initial NOI are substantially reduced from those proposed under the draft general permit there is no longer a need to provide these projects with “automatic” permit coverage during the first twelve months. Consequently, these projects shall submit an Initial NOI prior to expiration of their existing permit authorizations. “Three-acre sites” with permits that are expired as of the effective date of the general permit will continue to have twelve months to submit their Initial NOI.

8. Comment: NRPC recommends that DEC extend the NOI deadlines for segments in the stormwater-impaired waters and Lake Champlain TMDLs by one year or more to enable their compliance with the permit. Some of the 3-acre sites may be identified in an approved Flow Restoration Plan (FRP). The trajectory of FRP projects in terms of feasibility and implementation does not align with the application of this permit. This could result in a lost opportunity to meet channel protection standards

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if the 3-acre sites move forward ahead of a FRP project and only address the redevelopment standard.

Response: See previous response concerning revisions to the schedule. Concerning “three-acre sites” in stormwater-impaired waters, and their relationship to FRPs, the Agency notes that these sites are required to comply the Channel Protection Standard, in addition to the Redevelopment Standard.

9. Comment: Comments were received expressing concern that the schedule for submittal of the NOIs, and for constructing required stormwater treatment practices, does not take into account the capacity of consulting engineers and construction contractors to perform the necessary work.

Response: The Agency acknowledges this concern. In addition to revising the application schedule to provide applicants additional time, there may be some ability among private sector engineers and construction contractors to increase capacity based on the increased demand for their services.

10. Comment: (Multiple similar comments received). Much of our impacted membership, specifically those not possessing previous institutional knowledge related to the permit process, have indicated their desire for additional opportunity for educational development through engagement with public and private professionals. Further, providing increased opportunity for parcel owner education, including through a deadline extension, would better enable DEC to inform owners of any financial resources available for assistance in bringing properties into compliance. At this time, many of the Vermont Chamber's impacted members, especially small businesses, do not benefit from immediate access to the financial resources necessary to realistically plan for or develop engineering feasibility assessments or notices of intent.

Response: Please see previous responses to comments related to schedule. The Agency agrees that additional time would assist both landowners and the Agency in terms of developing and implementing a funding strategy and has accordingly revised the general permit to provide as much additional time as possible in recognition of statutory requirements.

11. Comment: It would be helpful to all parties to have a clear and succinct table of deadlines pertaining to the permit, outlined in the "Implementation Deadlines" section.

Response: The Agency acknowledges the comment and will publish an application schedule on our website. Additionally, affected projects will receive direct notification from the Agency concerning applicable deadlines.

12. Comment: Comments were received suggesting that the October 2023 date for “three-acre sites” to obtain permit coverage be revised to a later date.

Response: The October 2023 date is established by 10 V.S.A. §1264(g). The Agency does not have the authority to revise this date.

13. Comment: Section 2.3 When to Submit a Notice of Intent for Permit Coverage - Under E.4. it says, "For projects not within the watersheds of a stormwater-impaired water, Lake Champlain, or Lake Memphremagog: no later than the date to be determined by the Secretary, which, pursuant to 10

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V.S.A. § 1264(g)(3)(A)(ii), shall be no later than October 1, 2033." Is this a typo? Should it be October 1, 2023?

Response: October 1, 2033 is the date established by statute.

14. Comment: The Town of Stowe is concerned about the 2023 implementation timeline as being unrealistic for the following reasons: Most Vermont municipalities receive funding approval once per year at Annual Meeting. Capital projects of this magnitude will have to go through a multi-stage process (e.g. alternative analysis, preliminary engineering, permitting, final engineering, construction documents/bidding, construction). In order to meet the 2023 timeline, Stowe will need to seek funding for an alternative analysis, preliminary engineering and permitting at its March 2020 Annual Meeting. The Department Heads and I are in the process of preparing it without having the benefit of a final General Stormwater Permit. At the 2021 Annual Meeting, the Town would then seek funding for final engineering, construction/bid document. At the 2022 Annual Meeting, seek funding for construction, or budget significant new funding in our operating budget to pay the annual impact fee.

Response: The Agency notes that the October 2023 date is the end date by which all "three-acre sites" need to be permitted, rather than the date by which stormwater systems need to be installed. Additionally, the general permit has been modified to provide projects additional time. Specifically, projects will submit an initial application, or notice of intent (NOI), based on basic project information. Based on this application projects will receive an 18-month permit authorization. At the end of the 18-month period, projects will be required to submit a second NOI, including all required technical submittals, site plans, and engineering feasibility analysis. Projects will then receive a five-year permit authorization based on the second NOI. The permitted stormwater system will need to be constructed within that five-year period.

15. Comment: Subpart 2.7.A.2 dictates that 3-acre projects will be required to implement stormwater treatment practices per the schedule in the authorization to discharge. VHB agrees that the flexibility provided by this language will be necessary given the multiple challenges to implementation but suggests the inclusion of 5-year time period for implementation to provide landowners with some timeframe for capital planning and to engage consultants.

Response: Please see previous responses concerning the change to application schedules, and the move to a two-step notice of intent (NOI) process. Permittees will typically have five years after submittal of their second NOI to implement the required practices.

16. Comment: (Multiple similar comments received) Subpart 2.3.E provides deadlines for the submission of a Notice of Intent ("NOI") for 3-acre projects, "where the project was not previously permitted." VHB recommends that a new subpart in Section 2.3 is added to clarify parcels that have existing unexpired permits covering some or all of a portion of the impervious surface, the entire parcel is not required to apply until the expiration of the first permit on this parcel, if that is Vermont Department of Environmental Conservation ("DEC")'s intent.

Response: The Agency revised the general permit, adding Subpart 2.3.F, to address this situation.

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17. Comment: Re Subpart 2.3, it is not clear what the timeline is for projects that have a current permit but are also subject to Subpart 1.3.D if they are not subject to Section 2.3.C nor Section 2.3.D. If these sites are located outside the watersheds of stormwater-impaired waters, Lake Champlain, or Lake Memphremagog can they renew their permit per Section 2.3.B, and then address the 3-acre requirements per Section 2.3.E.4?

Response: A “three-acre site” subject to Subpart 1.3.D., that is not subject to Subparts 2.3.C. or 2.3.D., would apply under Subpart 2.3.B. In short, these projects apply prior to permit expiration. However, the Agency acknowledges that the General Permit did not make clear that “three-acre sites” outside the impaired waters do not need to meet the new standards until subsequent permit terms. Per statute, these projects do not need permit coverage meeting requirements for “three-acre sites” until 2033. Consequently, Subpart 1.3.D of the final General Permit has been modified to clarify that it does not include the “three-acre sites” outside the impaired waters.

18. Comment: Re Subpart 2.3.E: What is the timeline for waterways where no TMDL has been established?

Response: Whether a TMDL has been established does not affect the schedule for submitting a required Notice of Intent. The status of receiving water, i.e. whether it is one of the identified impaired waters, affects when a project is required to meet the standards for “three-acre sites.”

19. Comment: Subpart 2.3 gives different deadlines for different situations. For instance a 3-acre site could exist BOTH within the watershed of the Main Lake (deadline 01/01/2021) AND within a stormwater impaired watershed (07/01/2020). The section should address which situation has primacy in terms of the NOI deadline.

Response: Projects that are within two watersheds, as described in the comment, would need to meet the earlier deadline. Meeting the earlier deadline also necessarily complies with the latter deadline. The Agency has provided additional language in Subpart 2.3.E of the General Permit to clarify this point.

20. Comment: Is Subpart 2.3.E.2 intended to cover all projects within stormwater-impaired watersheds or only those which are not contributing to Lake Champlain?

Response: This Subpart covers all projects in the watershed of any stormwater-impaired water, whether or not the water is contributing to Lake Champlain.

21. Comment: Re Subpart 2.6.B: What is the process for submitting a "registration"? Where can this documentation be found?

Response: The Agency will develop the required form and process concurrent with the issuance of the General Permit.

22. Comment: Re Subpart 2.7.A.2: It is challenging to understand what "compliance" means and when it is required. Based on our reading this section states that sites subject to Subpart 1.3.D (3-acre sites) will need to obtain a permit by the deadlines listed in Section 2.3, but that construction of these

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facilities can be after the Section 2.3 deadlines, so long as it is completed prior to the permit renewal deadline, which per Section 8.18 will be 5 years after the permit is signed.

Response: Subpart 2.3 covers when a Notice of Intent is required. Implementation of the required practices is covered by Subpart 2.7. The schedule for implementation will generally be five years (the term of the authorization) but may be less.

23. Comment: Re Subpart 3.1.A-C: Is it possible to have a non-impaired waterway that contributes to Lake Champlain or Lake Memphremagog? What would the timeline for compliance for this designation be per Section 2.3.E?

Response: For purposes of Subparts 3.1 and 2.3 the Agency presumes all regulated projects located within the watershed of a stormwater-impaired water, Lake Champlain, or Lake Memphremagog “contribute” to the impairment.

24. Comment: A comment was received suggesting Subparts 2.3.B-D be “revoked”.

Response: The Subparts in question concern when an application is required. The proposed revisions are inconsistent with statute (10 V.S.A. § 1264) and the Stormwater Permitting Rule and would improperly eliminate the requirements for submitting a permit application for several permit categories.

25. Comment: A comment was received suggesting Subparts 2.6.B and C be “revoked”.

Response: The Subparts in question provide permit coverage to expired permits, and expiring permits, during the first 12 months following issuance of the final General Permit. Removing these provisions would leave these categories of projects with expired permits, and potential resulting defects in title, until they submit a Notice of Intent and obtain permit coverage. The proposed revision provides no benefit to water quality or to permittees.

26. Comment: A comment was received regarding Subpart 2.7.A.2 suggesting the elimination of the requirement for implementation of stormwater treatment practices on “three-acre sites” occur no later than prior to the expiration of the authorization to discharge.

Response: The general permit has been revised to require implementation of stormwater treatment practice on “three-acre sites” occur no later than prior to expiration of the authorization issued after the first 18-month authorization period.

27. Comment: The time frame for compliance should follow the template established under the MRGP for town highways. The definition of "watershed improvement permit" for schedule of compliance no longer than five years in Part 1, Section 1.7 should be increased to match MRGP requirements; i.e. 20 years.

Response: The definition of “watershed improvement permit” is established by 10 V.S.A. § 1264. The Agency does not have the authority to revise this definition.

28. Comment: Some properties in South Burlington will be subject to the new 3 acre site requirements and have also been identified as sites requiring stormwater improvement projects in approved FRPs. In these instances, which implementation timeline will the property be subject to? Will the property need to make upgrades on a schedule established in the 3-9050 permit, or will the property be required to make upgrades in line with the schedule established in the FRP? It is our recommendation that property owners in this situation be held to the later of the two implementation dates. Due to the amount of impervious surface involved, these are likely some of the largest, most complex, and most costly projects in a FRP. Therefore, it makes sense to allow these property owners additional time to comply.

Response: A project will be required to comply with the schedule in the General Permit. If the MS4-regulated municipality assumes full legal responsibility for the stormwater system pursuant to Subpart 1.6 then the project may be constructed per the municipality's approved FRP implementation schedule.

29. Comment: Coordinating Construction Timeframes. If you plan to redevelop or undertake a project on your parcel prior to the requirement to comply with the GP how can you do this and ensure that you are able to make stormwater retrofit improvements during that construction timeframe rather than at a separate time? In other words, we want to be efficient and conduct all construction work during one period of time rather than do it twice.

Response: A project that plans to undergo significant site modification prior to the requirement to obtain permit coverage may seek permit coverage early and undertake all construction in accordance with permit requirements.

Comments on Application Requirements

30. Comment: Re Subpart 2.1, the requirement that an owner be a co-applicant can be problematic. This issue will be exacerbated by the new permit because there will be more financial liability than ever associated with stormwater permit(s). In fact, Part C under this section simply exempts municipalities, stormwater utilities, and VAOT from this requirement. Why do municipalities, stormwater utilities, and VAOT have their own set of rules? There should be an acceptable legal remedy such as an easement, deed covenant, land lease, etc. such that the owner does not need to be a "co-applicant".

Response: In the Agency's experience it is important for compliance purposes to have all affected landowners as co-permittees. Where landowners were not the permittee the Agency experienced many projects where the affected landowners, typically residents, were left responsible for non-compliant projects once the developer sold all remaining interest. The entities identified have a statutory exemption from this requirement in part because they have dedicated programs to ensure compliance with permit requirements, and they typically retain an ongoing interest to the projects in question.

31. Comment: (Multiple similar comments received) Requiring a full EFA at the time of filing an NOI will result in a property owner spending significantly more on planning in the event that the DEC disagrees with the original findings of the EFA. We suggest first requiring a preliminary finding of

feasibility which can take into account factors pertinent to the project to be presented to the DEC. After there is a concurrence of the findings of a preliminary EFA by the DEC, a property owner can then undertake a broader analysis and further planning to file an NOI.

Response: The Agency intends that the Notice of Intent (NOI) process will include logical steps to ensure that the Agency and applicant review the project in a step-wise process such that projects do not overly invest in stormwater system designs that may not be approvable. For example, NOI guidance may direct an applicant to seek a review of the preliminary EFA by the Agency where the EFA suggests the applicant will not be able meet stormwater treatment requirements.

32. Comment: The use of a general permit is a good idea, including the filing of a “Notice of Intent” to obtain compliance. For developments completed or permitted prior to the 2002 manual, the NOI should be just that, a notice of intent to comply with the current regulations. It should not be required to be accompanied by an engineering analysis and a stormwater system design. The first step after filing an NOI in these cases should be an evaluation of the need to make modifications to the preexisting development. Proceeding with an application should only be required where a significant stormwater discharge problem exists. An engineering feasibility analysis of need should consider soil conditions, runoff and proximity to streams and water bodies. There will be situations where no redevelopment is warranted or where redevelopment to standards results in little or insignificant reductions to water quality. It appears that the draft 9050 proposes that redevelopment would not be required if the redevelopment would result in a 10% or less improvement. While the redevelopment standard is lower than for new development, it still makes little sense to spend huge amounts of money for minimal improvement. The percent improvement threshold should be much higher.

Response: Projects with existing effective stormwater treatment systems may be able to meet standards with minimal investments. The Agency is reluctant to modify the 10% threshold, above which installation of treatment measures are required, because it would likely mean a greater number of projects would ultimately need to obtain permit coverage in order to compensate for treatment not taking place on some “three-acre sites”. Any change to the 10% threshold would need to be accomplished by an amendment to the Ch. 22 Stormwater Permitting Rule.

Comments on the Three-Acre Permit Threshold

33. Comment: We know that all stormwater discharges are not created equal and do not have the same impacts on the receiving waters. The GP singles out parcels 3-Acres and greater and ignores smaller parcels even though engineering analysis and common sense indicate that these smaller parcels may in many instances have a greater impact and be more important to address than the parcels identified by DEC for the GP. This arbitrary selection of 3-Acre and greater parcels will impose significant cost and legal obligations on these parcels and ignores parcels under 3-Acres that may be equally or more important to address. It is unclear why this 3-Acre threshold has been selected by statute, rule and now by the GP. DEC has acknowledged that this threshold is arbitrary and needed further investigation for many of the reasons mentioned above. Nevertheless, the GP is now being moved forward. Without taking a more comprehensive view of stormwatersheds and identifying all of the parcels that need to be addressed to find optimal solutions we believe that application of this GP to a

select group of parcels is not equitable, not scientifically defensible, and an arbitrary use of regulatory authority.

Response: The three-acre threshold was initially proposed as a potential permit threshold under the draft Lake Champlain TMDL Phase I Implementation Plan as a means to achieve necessary phosphorus reduction in stormwater from developed lands in the watershed. The permit threshold was adopted by Act 64 of 2015, and incorporated into 10 V.S.A. § 1264, before the Agency analyzed whether it was in fact sufficient to achieve the TMDLs. The threshold was, however, informed by previous regulatory thresholds and the scale of required phosphorus reductions, and it was therefore not arbitrary.

Subsequent to the adoption of the three-acre threshold, the Agency was able to estimate the reductions in stormwater-related phosphorus that are likely to occur as a result of this general permit. Generally speaking, and with the exception of the Missisquoi Bay and South Lake B segments, implementation of the three-acre requirements are sufficient to meet TMDL targets, without overshooting the required reductions. In the case of South Lake B, given the relatively small amount of developed lands, a minimal amount of investment in non-regulatory reductions in stormwater is likely to be sufficient to meet the TMDL target. For several other watersheds, whether the three-acre threshold is sufficient will be more dependent on the extent of future growth and the actual amount of treatment that occurs.

34. Comment: It seems unfair to those of us who meet or just barely meet the 3 acre point to be getting hit this hard. Certainly there are often cases where a 2 acre or even 1 acre lots may produce a lot more pollution than we might on our 3 acre site. Seems like there should be some way to take account of soil conditions, topography and use of the land on site. Feels like the legislature has purposefully attacked a small group to avoid a taxpayer revolt, but once they have taken advantage of the small group of three acre owners they will move on to the two acre, then one acre, then every homeowner and business now that they have gotten their hands into the property tax cookie jar.

Response: See previous comment and response. There is no plan or need to reduce the permit threshold below three acres of impervious surface, with the exception of the watershed of the Missisquoi Bay.

Comments on Costs, Impact Fees, and Funding

35. Comment: How much money per acre do you estimate on the average this will cost? We recommend that a study is performed to look at the economic impacts of this draft permit before it is finalized. This will likely have impacts on cost of living and doing business here in Vermont. Given the default impact fee of \$50,000 per acre in the permit it is safe to assume that this is in the ballpark of what DEC estimates as the cost per acre to install stormwater infrastructure. The cost to implement this permit may run into the hundreds of millions of dollars.

Response: The Agency does not have an accurate estimate of total costs associated with implementation of the stormwater requirements stemming from Act 64 of 2015, including the implementation of the General Permit. Costs will vary substantially between individual projects depending on what standards the project needs to meet, existing conditions, and the size of the project. With that said, the Agency has previously used \$30,000 per acre for generating rough cost estimates. This value is based on cost information compiled by the Agency approximately 15 years ago, for compliance with multiple standards (Water Quality, Recharge, and Channel

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Protection) of the Vermont Stormwater Management Manual (Manual). Although \$30,000/acre is dated, most “three-acre sites” are required to only meet the Redevelopment Standard, as such costs are less than for projects meeting multiple standards under the Manual. Additionally, some “three-acre sites” will require little to no site modification to comply with the General Permit, thus further complicating development of an average cost estimate. Using an average cost of \$30,000 per acre of impervious surface results in total costs in the hundreds of millions of dollars.

36. Comment: It appears that the estimation of cost to comply with the regulations may be low for many sites.

Response: The Agency acknowledges that there is uncertainty as to what the actual cost of implementation will be.

37. Comment: Section 4.1 regarding the Engineering Feasibility Analysis does not allow cost to factor into consideration. As a designer it is very clear that underground storage tanks will need to be a common BMP tool for meeting the required treatment on many sites. Our firm recently designed and permitted two sites that implemented underground storage tanks for treatment. The combined construction costs of the infrastructure at the two sites (7668-INDS and 7667-INDS.T) was approximately \$500,000, not including the engineering and permitting fees for the project. This cost provided treatment for 2.26 acres. It seems clear that the \$221,239.00 per acre fee greatly exceeds what anyone should consider feasible. Language should be included in the permit that defines the monetary value of "feasible".

Response: The Agency acknowledges that installation of underground treatment structures is very expensive.

38. Comment: The economics to installing these systems needs to be a consideration and should be worked into the feasibility study. There needs to be reasonable consideration given to the value of a property vs. the cost to install a system.

Response: The feasibility criteria were established in the Stormwater Permitting Rule and are not modified by the General Permit. The value of the property is not one of these criteria.

39. Comment: During the tight window of time proposed, the public and private sector will be reaching out to a limited number of qualified consultants to undertake engineering and permitting. Then we will all be reaching out to a limited number of qualified construction contractors to implement the work. This will result in inflated costs.

Response: The Agency acknowledges that increased demand for engineering and contractors may result in increased costs.

40. Comment: We, as a community, continue to support and are committed to continually following the Stormwater Best Managed Practices. However, it is becoming increasingly difficult to find ways to reduce the tax burden in our community with each new rule issued by the DEC. The Draft List of 3 Acre sites provided by the DEC includes two well respected businesses in our town. The Draft General Permit 3-9050 with its current expectations, will undoubtedly have a negative financial

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impact on these businesses and, concurrently, on the economic health of the town itself. The Town of Cambridge would like to add their support to the comments submitted by the Lamoille County Planning Commission (LCPC) and the Vermont Ski Areas Association (VSAA).

Response: The Agency acknowledges the comment and the likely costs associated with the General Permit. In response, DEC will offer technical and financial aid to landowners, including resources to support engineering design as well as grants and low-cost loan packages to help with the cost of implementation. Specifically, DEC will be pairing resources from the Clean Water Fund and its State Revolving Fund (SRF) to offer cost share to landowners to complete the engineering analysis for their property. DEC will have more than \$2 million available in FY21 and anticipates making available a similar amount of resources in FY22 and 23. In addition, DEC has partnered with the Lake Champlain Basin Program to offer significant financial support to schools to design and implement stormwater solutions.

In working to structure a financial assistance program to support implementation of stormwater practices on commercial, industrial and residential three-acre properties, DEC has engaged the Department of Financial Regulation and several Vermont banks to evaluate a range of possible approaches for offering low-cost, long-term financing. Although significant progress had been made in establishing a financial assistance framework in late-2019 and early-2020, that work was largely upended by the COVID-19 pandemic and the resulting significant economic uncertainty it has created for landowners and lending institutions alike. Given the evolving nature of the impacts of the pandemic on State, Federal and, frankly, global economies, we anticipate that the financial assistance program will need to continue to be adapted and honed over the next 24 months as the first three-acre sites transition from the engineering design phase to the construction phase and remain committed to ensuring robust financial assistance tools are available to support this important water quality work.

41. Comment: The new stormwater rules will impact property values and the ability for landowners to sell their property. Proposed treatment standards and impact fees will pose a significant challenge to owners who wish to sell their property.

Response: In addition to the response to the previous comment, the Agency understands that it will be essential to provide funding assistance to projects that do not have the resources to comply with the General Permit.

42. Comment: For many parcels achieving the requirements of the GP will involve significant financial resources. In fact, the default for the inability to achieve the requirements of the GP require the payment of impact fees that are \$50,000 per acre resulting in costs of potentially \$150,000 and upward depending on the parcel size. These costs (engineering and retrofit costs or alternatively the impact fee or a combination of both) will cripple many businesses. Simply stated, many businesses will not have the financial capacity to meet the terms of the GP. The question is what does this mean to that business going forward? Will they be able to continue to operate? What impact will their inability to meet the financial requirements being driven by the GP be on their business? What actions will ANR take in these instances? Depending on answers to these questions, does this raise the potential for a regulatory taking of their property? Will it impede their ability sell, borrow, or engage in other business transactions? Prior to finalizing the GP, ANR must give significant consideration to how these likely scenarios will play out where businesses and owners of 3-acre parcels will not have the financial resources to comply with the GP. To ignore this and move forward

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with adoption of the GP will create a legal and financial quagmire in significant proportions of Vermont and have the added impact of not achieving our shared water quality improvement goals.

Response: Please see previous responses concerning the Agency's funding plan.

The comment does not explain its basis for suggesting the potential for a regulatory taking, but emphasizes financial constraints and impacts. The Agency cannot predict or evaluate the potential that the application of the general permit to a particular property may rise to a regulatory taking of property under the *Penn Central* factors, as this requires an ad hoc, factual inquiry into the unique physical, financial, and economic characteristics of the property. The Agency notes that only in very extreme circumstances have courts concluded such a regulatory taking has occurred.

43. Comment: Comments were received stating that the stormwater impact fees are too high and that many applicants would be unable to afford them, that they would harm affected landowners, and that they would be detrimental to the overall economy.

Response: The Agency acknowledges that the stormwater impact fees will present a significant financial challenge for some projects. As background, the Agency was directed by Act 64 / 10 V.S.A. § 1264 to include stormwater impact fees in the new Stormwater Permitting Rule (adopted in March 2019), and the proposed general permit. The purpose of stormwater-impact fees is to ensure that projects that are not able to fully meet standards are still able to indirectly mitigate the impact of their stormwater by providing funds to projects that exceed standards. The Agency established the stormwater impact fees in the Stormwater Permitting Rule. They are not modified by the proposed general permit and may only be revised by amending the Stormwater Permitting Rule. The Agency believes that the stormwater impact fees, in most cases, will be less than the cost of paying to construct a stormwater system that meets standards.

Stormwater impact fees can be as high as a total of \$50,000 per acre of impervious surface. The basis for this value is as follows. The stormwater impact fees were originally established in 10 V.S.A. 1264a, and subsequently included in the 2006 version of the Ch 22 Stormwater Management Rule and were set at a total of \$30,000 per acre of impervious surface. For purposes of the revised Ch. 22 Stormwater Permitting Rule (effective March 2019) the Agency used a published inflationary index to adjust the \$30,000 value to 2019 dollars, which resulted in a value of \$50,000. The Agency further broke down the \$50,000 figure based on the belief that compliance with the Channel Protection Standard and Water Quality Treatment Standard were roughly similar in cost, hence each were assigned at \$25,000 per acre of impervious surface. The fee for the Redevelopment Standard is also \$25,000, however the Redevelopment Standard is part of, and only applicable in lieu of, the full Water Quality Treatment Standard.

Although some projects are potentially subject to a maximum fee of \$50,000 per acre of impervious surface this will only be the case where a project is in the watershed of a stormwater-impaired water, or Lake Champlain, when there is no TMDL in place. Currently, Lake Champlain and all but a small handful of the stormwater-impaired waters have a TMDL. Further, only projects that do not even partially meet standards will pay full fees. Rather, "three-acre sites" in the Lake Champlain watershed that are not also in a stormwater-impaired watershed will pay a maximum fee of \$12,500 per acre because these sites are required to only meet the Redevelopment Standard which is \$25,000 per acre of impervious surface multiplied by the difference between the required water volume (50%) and the average water quality volume achieved. Consequently, a

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project that provides no treatment (0% of the water quality volume achieved) pays \$25,000 x 50%, or \$12,500 per acre. A “three-acre site” in a stormwater-impaired water with a TMDL is also subject to the \$12,500 Redevelopment Standard fee, as well as a \$25,000 per acre of impervious surface fee for the Channel Protection Standard, or a total of \$37,500 per acre.

Projects that meet the Water Quality Treatment, Redevelopment, or Channel Protection Standards by constructing stormwater systems will likely incur costs that are in excess of the stormwater-impact fees.

Projects may only pay impact fees when site constraints preclude construction of stormwater systems.

44. Comment: 4.2.E.2 provides impact fees for various stormwater treatment standards on a “per acre of impervious surface” basis. (i.e. \$25,000/acre to meet the redevelopment standard, \$25,000/acre to meet the water quality standard, and \$25,000/acre to meet the channel protection standard). Are these fees intended to reflect the actual cost to construct stormwater treatment to meet the stormwater treatment standards? If not, what does VT DEC believe the actual cost to meet the various stormwater treatment standards will be on a per acre basis? Assuming these values do not match, what is the reasoning behind setting impact fees such that the fee does not reflect, and is perhaps much lower, than the actual cost of installing stormwater treatment?

Response: See response to previous comment.

45. Comment: (Multiple similar comments received) Subpart 3.1.B.1 states, “If a project is unable to infiltrate the regulated stormwater runoff from the one-year 24-hour storm event, the project shall comply with the offset or stormwater impact fee requirements of Subparts 4.2 and 4.4.” Subpart 4.2.B states, “The Secretary shall assess stormwater impact fees based on the acreage of impervious surface where compliance with the applicable treatment standards is not achieved.” Infiltration of the one-year, 24-hour storm runoff is not applicable to any current stormwater treatment standard, therefore VHB questions how impact fees will be calculated for projects that meet all required treatment standards but cannot provide infiltration. For example, how would impact fees be calculated on a site where Groundwater Recharge is waived due to soil conditions, the Water Quality standard is fully met with a non-infiltrative practice, and the Channel Protection standard is fully met with a dry basin?

Response: Under Subpart 3.1.B.1, infiltration of the one-year storm is “an applicable treatment standard.” Under Subpart 4.2.E, new development and expansions are subject to a fee of \$10,000 per acre of impervious surface for which compliance with the applicable treatment standard (infiltration of the one-year storm) is not achieved. A project that is waived from meeting the infiltration standard, and that does not infiltrate the one-year storm, would be subject to this fee. In the example cited in the comment, the project would pay the \$10,000 per acre fee. The Agency notes that Subpart 3.1.B.1 applies to certain impaired waters that have no TMDL, hence the highest treatment standard is warranted. This fee is comparable, albeit adjusted for inflation, to the fee that new development and expansion projects paid under the previous version of the Chapter 22 Stormwater Rule -that fee being \$6,000 per acre of impervious surface, as established in 2006.

46. Comment: Subpart 3.1.B.2 provides treatment requirements for 3-acre sites discharging to impaired waters without a TMDL in place and states that these requirements are not applicable to portions of

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sites that met the standards of the 2002 Vermont Stormwater Management Manual or its replacement. This subpart further states that sites for which an EFA determines that compliance with the applicable standards is achievable on less than 75% of the site are subject to impact fees and offsets and sites which achieve compliance with applicable standards on 85% or more of the site are eligible to receive impact fees. Are these percentages applied to the site as a whole or to the portion of the site that do not currently meet the requirements of the 2002 Vermont Stormwater Management Manual or its replacement? For example, if 90% of a site is currently meeting the requirements of the 2002 Manual and treatment of the remaining 10% is not feasible as determined by an EFA, is that site eligible to receive impact fees? VHB recommends that this subpart be revised to clarify to which impervious areas these percentage treatment targets apply and how impact fees will be calculated for sites which are partially treating to the standards of the 2002 Manual or its replacement. A similar comment was received regarding 3.1.C.4.e.

Response: The percentages referenced in the comments are applicable to the portion of the site that does not currently meet the requirements of the 2002 Vermont Stormwater Management Manual. Additional language was added to Subpart 3.1.B.2 to clarify this.

47. Comment: (Multiple similar comments were received regarding whether impact fees are one-time fees) Our Danby location involves a largely underground mine site for which we believe no reasonable stormwater treatment practice will be applicable or feasible. We would note that these fees will be excessive and we question the impact this location is actually having on water quality. Assuming such impact fees are paid, we would like confirmation that these are one-time fees and not a recurring expense to be paid at each permit renewal cycle (multiple similar comments received).

Response: The stormwater impact fees are currently established as a one-time fee.

48. Comment: 4.3 describes project eligibility for receipt of stormwater impact fees. If a project was constructed prior to the effective date of the 3-9050 permit is it eligible to receive these funds? What is the cutoff date for a project to be considered for these funds?

Response: There is no cutoff date, per se, however eligible projects must obtain permit coverage under the General Permit and demonstrate that they are improving the level of treatment by at least 10% over existing conditions. For these purposes, existing conditions are those conditions that existed at the time the Stormwater Permitting Rule went into effect – March 15, 2019.

49. Comment: How do the proposed impact fee apply to properties in the floodplain or near a wetland. If you cannot treat stormwater on your property or meet the 75% site treatment threshold, because you are located in the floodplain or near a wetland, do you still have to pay impact fees?

Response: Yes. The purpose of impact fees is so that projects that can't meet standards due to the proximity of wetlands or floodplains, among other factors, are able to indirectly mitigate the impacts of their stormwater by paying fees that may be used by other projects to exceed standards. Without an impact fee system, projects that have site constraints would in some cases provide no treatment of their stormwater which could mean that the regulatory threshold of three acres of impervious surface would need to be lowered in the future to ensure adequate pollutant reductions are achieved. Directing impact fees to projects that voluntarily exceed standards

could help prevent the need to lower the permit threshold. The specific Engineering Feasibility Analysis criteria are included in Part 4 of the general permit.

50. Comment: VNRC strongly supports the implementation of the 3-Acre General Permit. We also seek to ensure that the rule does not inadvertently undermine other important state policies. Specifically, it is important that fee structures do not make development in our existing, historic centers (downtowns, villages, etc.) more expensive from a stormwater perspective than development in outlying greenfields. Supporting existing historic centers is a key focus not only of our state's land use planning goals (24 V.S.A. §4302), but also of sustained state and local infrastructure, transportation, and historic preservation investment over the last several decades.

We understand that the current fee of \$25,000 per acre of impervious surface for redevelopment, compared to the \$10,000 fee per acre for new development and expansions, may be to account for the fact that onsite treatment will not be possible in our more urban centers.

With that in mind we ask these specific questions: How were these specific fees (\$10,000 for new/expansion, and \$25,000 for redevelopment) determined – what is the basis for each of the fees; On average – taking into account design, construction, and permitting and other fees will the cost of constructing an onsite stormwater treatment system in a newly developed or expanded area be more than, less than, or comparable to the \$25,000/acre of impervious surface fee for redevelopment? How will impact fees be used? Is there a system to ensure that they offset pollution near the project? While mindful of the physical constraints associated with retrofitting existing stormwater systems, we are concerned about disincentivizing downtown and village development and redevelopment.

Response: New development projects face substantially higher stormwater management standards compared to redevelopment projects. Consequently, new development projects are likely to encounter higher costs associated with meeting stormwater requirements than redevelopment projects. Additionally, the vast majority of both new and redevelopment projects are not subject to stormwater impact fees.

As background, redevelopment projects and new development only pay impact fees when they are in an impaired water without a TMDL- a small subset of watersheds. For example, redevelopment projects in the Lake Champlain or Connecticut River watershed are not subject to any stormwater impact fees, nor are new development projects.

With that said, a redevelopment project in an impaired water without a TMDL– again, a narrow subset of projects - may be subject to a higher impact fee than new development, but that is only because the redevelopment project is required to meet the standards in the Vermont Stormwater Management Manual only to the extent it is feasible to do so. That is, a redevelopment project pays impact fees when it can't meet technical standards. (Relatedly, 10 V.S.A. §1264 establishes the technical standards applicable to redevelopment projects in these watersheds; the General Permit cannot modify these standards). A new project is required to meet higher standards than redevelopment projects and there is no feasibility component. Even where a new development project meets the standards of the Vermont Stormwater Manual (Manual) it must still pay \$10,000 per acre of impervious surface, unless it can achieve the additional standard of infiltration of the one-year storm. On the other hand, a redevelopment project that fully meets the standards in the Manual is eligible to receive stormwater impact fees – to get paid, in other words.

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Please see the response to the previous comment for more information related to the establishment of the fees. Additionally, the \$10,000 per acre fee for new development is roughly based on the fee structure established in the 2006 version of the Ch. 22 Stormwater Rule for Stormwater Impaired waters, where new development in an impaired water was subject to a \$6,000 per acre fee. The fees in the new rule were increased for inflation.

Stormwater impact fees shall be deposited in the Stormwater Fund, established under 10 V.S.A. §1264b, and into the account for the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located.

Finally, a project that pays impact fees, rather than meeting the stormwater treatment requirements, will typically incur less costs than a project that actually implements stormwater treatment practices.

51. Comment: The rule must make it abundantly clear that stormwater impact fees are to not only be deposited in the account for stormwater-impaired water of phosphorus impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located, but also that those funds may be used only for project implementation and not for administration at the agency. (Section 4.2 F)

Response: The Stormwater Permitting Rule establishes eligibility requirements for receipt of stormwater impact fees. The fees may not be used for administration by the Agency. The Agency has managed stormwater impact and offset fees under statutory authority since 2006. None of these fees have been used by the Agency.

52. Comment: Stormwater impact fees assessed for those portions of a new development or expansion project not eligible for offset charge capacity would be \$10,000 per acre of impervious surface for which compliance is not achieved. For redevelopment, water quality treatment and channel protection, the impact fee would be \$25,000 per acre of impervious surface where the relevant standard is not met. (Section 4.2 E) Is it possible or likely that a project would need to pay all three of these charges?

Response: No, a project would not need to pay all three impact fees. New development pays the \$10,000 fee, at most. "Three-acres sites" potentially pay both the Water Quality Standard and Channel Protection Standard fees where they are not able to meet these standards. New development is required to meet these two standards, hence they are not subject to those impact fees.

53. Comment: The impact fee structure needs to be clarified. It is unclear whether fees are maximum or cumulative across the compliance structure of quality, quantity, and Channel Protection (CPV). Would landowners be charged both the Channel Protection and Water Quality Standard fees for non-compliant areas of 3-acres sites?

Response: Stormwater impact fees are additive. A given project is subject to the fees applicable to the watershed in which the project is located. For example, a project that is in the Lake Champlain watershed is subject to the impact fee for the Redevelopment Standard. If that same project is also in the watershed of a stormwater-impaired water, it would also be subject to impact fees associated with the Channel Protection Standard. Most "three-acre sites" are in the Lake Champlain watershed and not in the watershed of a

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stormwater-impaired water. As such, the majority of projects are only subject to one impact fee (for the Redevelopment Standard).

54. Comment: Re Subpart 4.2, If a stormwater impact fee has been paid and the project subsequently not built, the secretary should be required to reimburse the permittee. The caveat in the draft rule that payment would be made “when sufficient monies are available in the account into which the permittee paid”, means that the permittee might never be paid.

Response: This is correct. Alternatively, the Agency would need to reserve impact fees until such time a project was built. This would present substantial administrative challenges and would result in less funding available for projects eligible to receive impact fees.

55. Comment: Proposed impact fees will present financial challenges to developing future affordable housing and maintaining current affordable housing.

Response: The Agency notes that impact fees are not applicable to new development, except in cases where there is no TMDL in place. The only affected watersheds without a TMDL in place currently are at Mt. Snow, Killington, and Sugarbush.

56. Comment: Our experience and that of other MS4 Communities confirms that \$25,000 per acre of impervious area is inadequate, especially once the easy to retrofit sites are converted.

Response: The Agency acknowledges that the cost of installing stormwater treatment measures as required for the “three-acre sites” will be higher than the cost of the impact fees in some cases. The impact fees are not intended to necessarily reflect actual construction costs, but instead are intended to provide financial incentive to projects to meet or exceed standards.

57. Comment: Qualification for impact fee funding under 4.3(B)2 requires that the property owner pay for and construct the permitted system prior to funds being issued. As qualification is based upon the percentage of treatment, and this will be known with the issuance of the permit. Why not approve a project for receipt of impact fee funds before construction since most landowners will not otherwise be able to afford construction?

Response: The decision to require construction of stormwater systems prior to receiving stormwater impact fees was made during the development of the Stormwater Permitting Rule. The General Permit cannot modify this requirement. Although payment of fees could support treatment projects, the Agency needs to ensure that impact fees are not committed to projects that have not yet undertaken construction, and also needs to avoid taking on the potentially significant administrative challenge of ensuring projects that have already received funds get built.

58. Comment: Is funding as provided for under 4.3 only for properties located in impaired waters?

Response: The Subpart in question concerns projects eligible to receive stormwater impact fees. Only projects located in the watersheds of Lake Champlain, Lake Memphremagog, or a stormwater-impaired water are

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eligible to receive stormwater impact fees. Similarly, only projects in these waters are potentially subject to payment of stormwater impact fees.

59. Comment: The application fee of \$860/acre of impervious is an insult to these property owners who are already in a position to have to spend 10's of thousands of dollars to install stormwater systems on properties that were previously exempt. Application fees should be waived for 3 acre sites.

Response: Permit application fees are set by the Legislature, and may not be modified by the General Permit.

60. Comment: Will there still be an annual operating fee assessed to each of the general permit holders? If so, will those remain the same? Go up? Go down?

Response: Projects requiring permit coverage under the General Permit are currently subject to operating fees. Operating fees are established by statute and are not modified by the General Permit. The Agency is not aware of any pending legislation that would modify these fees.

61. Comment: As I see it from my side of the table, forcing an annual fee and five year renewals makes it a tax without the state having to call it a new tax.

Response: The fees in question are not a tax.

62. Comment: No State funding to municipalities has been identified or committed to, so engineering and implementing the General Stormwater Permit requirements has the potential to overwhelm our capital budget and displace previously planned projects. Voter approval of funding these new unanticipated capital projects or impact fees can't be assured.

Response: Please see the response to Comment #40.

63. Comment: The State of Vermont doesn't have a plan in place to ensure that the stormwater improvements required by the permit can be funded. It is our opinion that it is premature to issue this permit until the State completes a thorough funding analysis and creates a mechanism that ensures the water quality improvement success that the law intended to provide.

Response: In addition to the proposed funding plan described in the response to Comment #40, the Agency notes that the revised, final General Permit provides applicants with additional time before which their final Notice of Intent is required. This additional time will help allow the Agency to better develop estimates for overall costs, as well as further develop funding programs.

64. Comment: Both municipal and regional partners raised concern regarding funding available to implement 3 Acre Rule projects. We recommend DEC identify additional funding sources for designing, implementing, and maintaining 3 Acre Rule projects. Will funding for 3 Acre Rule projects be part of the Clean Water Fund or a separate pool of funding? In addition to being eligible for receiving impact fees for going 10% above the treatment threshold, can property owners apply for additional Clean Water Fund grants to meet the 3 Acre Rule requirements?

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Response: Please see the response to Comment #40.

65. Comment: How will funding for 3 Acre Rule projects be administered? Please clarify how such financial assistance will be administered by DEC.

Response: Please see the response to Comment #40.

66. Comment: To the extent possible, it would be helpful for property owners who need to bring their property into compliance to have any potential funding information in hand so that they may take this information into consideration while undertaking engineering feasibility assessment (EFA) or filing a notice of intent (NOI).

Response: Please see the response to Comment #40.

67. Comment: If impervious surfaces is the villain in this scenario, instead of imposing a large expense on preexisting facilities, why not place a tax on roofing and paving materials that create the impervious surfaces. This would apply to all culprits not just a select few and would be something that could be planned for and hit the taxpayer a little at a time.

Response: The creation of a sales tax is beyond the scope of the General Permit.

Comments on the Engineering Feasibility Analysis (EFA)

68. (Multiple similar comments received) Is there an exemption for "economically unfeasible" or not practicable projects where the cost exceeds the benefits, and/or the work required to comply with this rule has undue and adverse impacts to other resources and/or other land use laws such as zoning?

There are no exemptions from the requirements of the general permit based on economic feasibility or cost effectiveness. Economic feasibility is not directly included in the Engineering Feasibility Analysis criteria that determine the extent to which a "three-acre site" needs to implement stormwater treatment practices. The Engineering Feasibility Analysis (EFA) criteria, by not requiring an applicant to undertake certain measures, do indirectly allow a permittee to avoid certain actions that might be viewed as unduly burdensome from an economic perspective, such as purchasing additional land. Several EFA criteria allow an applicant to avoid undertaking actions that would result in adverse impact to natural resources such as wetlands, floodplains or forested areas. Additionally, an applicant is not required to undertake actions not approvable under local, state, and federal laws and regulations.

69. Section 4.1 of the proposed permit revises the Engineering Feasibility Analysis (EFA) previously utilized when determining what stormwater treatment is possible on a site. We support these proposed changes.

Response: The Agency acknowledges the comment. The EFA criteria were adopted in the Stormwater Permitting Rule.

70. Comment: We continue to argue flexibility in the EFA process.

Response: The EFA (Engineering Feasibility Analysis) requirements were established in the Stormwater Permitting Rule. The Agency is open to considering revision of these criteria if specific revisions and supporting justification are provided, however a revision to the Rule would be required.

71. Comment: (Multiple similar comments received) Floodplain and wetland restoration projects including vegetation buffers, are not considered an eligible stormwater treatment option. In many scenarios, properties in Vermont's compact village centers are constrained by environmental and topographic features. This limits an owner's ability to treat stormwater on-site. Floodplain/wetland restoration and vegetation buffers may be the only form of stormwater treatment possible on these constrained sites. By not considering these projects an eligible treatment, this Rule is disincentivizing landowners to protect wetlands, stream buffers, and river corridors. We encourage DEC to revisit adding stream restoration projects as an acceptable form of stormwater treatment.

Response: The Agency acknowledges that achieving water quality goals requires the protection and enhancement of wetlands and floodplains. The Agency did not include the restoration of wetlands, floodplains, or other natural resource project as eligible offset projects because the Lake Champlain TMDL accounts for these projects under the "load allocation" where they are needed to achieve the required phosphorus reductions from farms, rivers, and forests. In other words, although these measures are essential, the pollutant reductions resulting from these projects are needed to achieve phosphorus reductions from these other land use sectors. Consequently, the Agency limited offset projects to projects treating stormwater from developed lands, including impervious surfaces.

Since the adoption of the Stormwater Permitting Rule in (effective, March 2019), and since the issuance of the draft general permit, the Agency has continued to investigate whether some portion of the pollutant load reduction associated with natural resource restoration projects may be credited to the developed lands sector. Our preliminary determination based on this investigation is that in the case of floodplain projects, where a river's access to the floodplain is improved such that it is flooded more frequently, and where sediments and nutrients are retained in the floodplain, some portion of the retained sediments and nutrients are appropriately ascribed to the developed lands sector in proportion to the amount of the watershed that is developed (e.g. roads, buildings, parking lots). Similarly, a wetland restoration or creation project that captures sediment and nutrients from developed land may be similarly ascribed to developed land.

Although the Stormwater Permitting Rule and general permit do not allow for natural resource projects to serve as stormwater offsets, these types of projects may be pursued by municipalities regulated under the MS4 General Permit where the municipality is required to develop a Phosphorus Control Plan, or Flow Restoration Plan. Allowing natural resource projects to serve as stormwater offsets for "3-acre sites" would require a change in the Stormwater Permitting Rule and a revision to this general permit.

72. Comment: Previously unregulated or urbanized sites will have significant compliance challenges compared to others. The EFA process alone does not adequately include local and MS4 impacts on such studies.

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Response: The Agency acknowledges that these sites may face substantial constraints in terms of constructing stormwater treatment systems. In such cases, projects may pay impact fees in lieu of constructing a stormwater system based on the Engineering Feasibility Analysis (EFA). The EFA criteria take into account activities that are not approvable under local, state, and federal laws and regulations.

73. Comment: Prioritization of mitigation practices is unclear, as work is done to bring a property into compliance will likely require alteration to other requirements such as wetland buffer or property screening, etc.

Response: The Engineering Feasibility Analysis (EFA) criteria address potential impacts to wetlands and buffer zones. Some projects will require a weighing of potential impacts to wetland functions and values against improvements to water quality resulting from installation or modification of stormwater treatment systems. However, under the EFA criteria, “three-acre sites” are not required to undertake actions that impact wetlands or buffer zones.

74. Comment: Compliance designs may also create conflicts with local permitting and zoning.

Response: Under the Engineering Feasibility Analysis (EFA) criteria an applicant is not required to undertake actions not approvable under local, state, and federal laws and regulations.

75. Comment: Subpart 3.1.C.3.i states that “Activities not approvable under local, state, and federal laws and regulations” as a criterion for infeasibility determination is problematic for several reasons. First, as noted above, we believe that Act 250 amendments or local permits should not be required for these upgrades. Second, it should not be the burden of an applicant to go through what could be a multi-year permit process for other permits to address issues other than water quality, with an uncertain outcome to be able to prove that a stormwater retrofit project is “not approvable”. Finally, if this section is retained in any manner the language should state “local, state or federal laws...” as an applicant could be unable to comply with any one of these and thus be unable to proceed.

Response: Comments related to the applicability of Act 250 are addressed in other responses. Regarding the demonstration that an activity is not approvable, the General Permit does not require an applicant apply for and be denied a state, local, or federal permit to demonstrate that an activity is not approvable. A reasonable showing by the applicant that a given regulation precludes certain activities will suffice for purposes of complying with the general permit. The Agency acknowledges that permit application guidance on this matter will be beneficial. Finally, the Agency agrees that the proposed revision (“local, state or federal laws...”) is more accurate and has modified the final permit accordingly.

76. Comment: the draft permit makes no accommodations for the discovery or remediation of contaminated soils which would add compounding complexity and cost. LCRCC would ask that ANR work alongside stakeholders with these concerns to add language to the GP reflecting complexities that may arise in this situation.

Response: The Engineering Feasibility Analysis criteria specifically address contaminated soils.

77. Comment: (Multiple similar comments received) Subpart 4.1.C does not give consideration to sites which are underlain by urban or contaminated soils, with the exception of infiltration causing pollutant plume transport. For many 3-acre sites, underground STPs may be the only feasible treatment option which would require significant excavation and disposal of excess soils. Urban and contaminated soils must be disposed of in approved locations (typically landfills) for which locations are limited. Disposal of these soils significantly increases construction costs. Based on this VHB recommends the inclusion of a new subpart under Subpart 4.1.C which reads, “The offsite disposal of more than 500 cubic yards of urban or contaminated soils as determined by a site-specific characterization of soil and subsurface conditions.” A value of 500 cubic yards was selected as the rough costs for disposal of these soils is \$100 per cubic yard which would equivalent to a disposal cost of \$50,000 which is equal the maximum possible impact fee per acre of untreated impervious surface.

Response: The Investigation and Remediation of Contaminated Properties Rule (Environmental Protection Rules, Ch. 35) covers the reuse and disposal requirements for so-called “urban soils.” These soils may be reused on site, managed in areas designated as “urban” by the Agency, or landfilled. The proposed revisions to the Engineering Feasibility Analysis criteria could result in substantially fewer retrofit projects in urban areas, and consequently, the Agency has not modified the criteria as proposed.

78. Comment: For many 3-acre parcels stormwater retrofits may require significant excavation and disposal of excess soils. If contaminated, these soils must be disposed of in approved locations (typically landfills) for which locations are limited. Disposal of these soils significantly increases construction costs. In addition, some locations may require the blasting of ledge for construction of stormwater retrofits. Omya’s operations are regulated under other permits, many of which require monitoring of discharges from the site. The current draft GP does not specifically consider the requirements of other State permits as part of the Engineering Feasibility Analysis, which may further reduce the feasibility of providing operational stormwater treatment when retrofitting an existing site while maintaining compliance with prior authorizations. For example, the installation of an operational stormwater treatment practice via blasting that is feasible under the draft GP but created a potential for discharge to groundwater that was in conflict with other permits. Based on this, DEC should include new exemption(s) in the list under Subpart 4.1.C which deems stormwater retrofits infeasible if they require the significant excavation and disposal of contaminated soil or the blasting of ledge/bedrock such that it would pose a risk to groundwater quality and/or be in contradiction of other permitting requirements on the site.

Response: In addition to the previous response, the Agency notes that under the Engineering Feasibility Analysis, Subpart 4.1.C.3, activities that are not approvable under local, state, or federal laws and regulations are not required to be undertaken. Additionally, any stormwater permit issued must comply with the Groundwater Protection Rule and Strategy (see Part 6 of the General Permit).

79. Comment: Re Subpart 3.1.A.2: What if meeting the redevelopment standard is not feasible per the EFA? Or does this section only refer to redevelopment sites that are not subject to Subpart 1.3.D?

Response: Subpart 3.1.A.2 covers redevelopment projects. Redevelopment projects are required to meet the Redevelopment Standard in the Stormwater Management Manual. Redevelopment projects are not subject to

Subpart 4.1 (Engineering Feasibility Analysis). Subpart 4.1 (Engineering Feasibility Analysis) applies to “three-acre sites.”.

Comments on Flexibility in Approach, Collaboration and Cost-Effectiveness

80. Comment: (Multiple similar comments received) The draft GP takes a parcel by parcel approach and is silent on taking a more comprehensive solution that takes a holistic approach of treating multiple parcels that share a stormwatershed by utilizing land more efficiently and designing solutions that are more cost effective. If implementation of this draft GP is to be successful DEC must provide the time, expertise, and financial assistance for comprehensive solutions across multiple parcels to be evaluated. We realize that in some instances that will not be appropriate or even an option, but in the more densely developed urban and suburban areas it will be critical to meet our collective water quality goals. This is another reason that DEC should return to the original timeframes of 2023 and 2028 discussed above. Comprehensive and collaborative solutions will be potentially more complicated, involving multiple landowners and likely municipalities or even State agencies. Requiring a parcel by parcel approach with abbreviated timelines will shortchange the ability to evaluate optimal solutions. It will not achieve the water quality improvements that DEC has used as the basis for adoption of the stormwater rules and this GP.

It is also our belief that the provisions of recently enacted Act 76 create the flexibility for a community within a specified watershed to reach a specific TMDL reduction, at a specific dollar cost. In contrast, the GP created by Act 64 will force a patchwork of projects achieving an unspecified TMDL reduction, at an unspecified cost. In addition to collaboration between permittees, we would ask that ANR to take a proactive role in incentivizing and facilitating collaboration between parcels falling under the GP and MS4 municipalities as well as non-MS4 communities. Such action can provide significant cost savings for parcel owners and municipal taxpayers. In general, to whatever extent possible, we ask that every effort be taken so that the final version of the permit does not prohibit flexibility or creative solutions.

Response: The Stormwater Permitting Rule, and the General Permit, do allow for some degree of collective solutions. Multiple adjoining regulated projects may seek coverage under a single permit, provided they are in the same watershed. Further, property owners may work with municipalities or stormwater utilities, where they exist, to pursue a collective approach to meeting permit requirements, pursuant to Subpart 1.6 of the General Permit. As noted in other responses, the General Permit is consistent with the statutorily mandated timeframes for applying for, and obtaining, permit coverage.

81. Comment: As you know, PRE has been working with you to find a way to make sure that implementation of the new 3-Acre requirements can be implemented in an economically, timely, and comprehensive manner. The requirement to go back and retrofit parcels with stormwater controls in the already built environment has never been required at this scale. Unlike designing stormwater controls for a new project, retrofitting parcels will present many significant challenges in terms of site limitations, business interruption, and of course cost. Knowing how challenging this will be we explored with you the approach taken in the Long Creek watershed in South Portland, Maine. In that area landowners formed a watershed management district to design, build, maintain and administer a

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comprehensive solution for their small watershed rather than ask each individual property owner to design and build at great cost separate stormwater controls on their parcels. We know that without taking a similar approach where property owners work together to treat stormwater across larger areas that the goals of the GP will fail as most landowners will not be able to afford to implement the requirements and our collective phosphorus reduction goals will not be achieved.

Response: As noted in the previous response, “three-acre sites” and other regulated facilities may seek collective solutions either through joint permit coverage—i.e. multiple sites covered by one permit—or through joining with a municipality or utility. Property owners within a given municipality, or even across multiple municipalities, could petition those municipalities to either create a stormwater utility, or assume full legal responsibility for the stormwater systems in question. In such a case the municipality or utility would become the permittee and could have the flexibility of meeting phosphorus reduction targets across all the affected properties. The Agency notes that the foregoing approach has only been accomplished under the MS4 General Permit, to date, and that pursuing it outside of the MS4 General Permit would require substantial communication and coordination between permittees, municipalities, and the Agency to identify an acceptable permitting strategy.

Although the Agency appreciates the successful aspects of the Long Creek approach in addressing stormwater, it may have limited applicability to informing solutions in Vermont. The Long Creek watershed is 3.5 square miles, urban, and includes four municipalities. Almost all landowners are required to obtain stormwater permits as a result of a legal action – the 89 permittees collectively own 98% of the impervious surface in the watershed. Almost all affected owners have joined the District, rather than pursuing individual solutions, where their annual fees are implemented towards a range of projects aimed at restoring Long Creek, from street sweeping to stream restoration.

On the other hand, the Lake Champlain watershed in Vermont is over 8,000 square miles and includes over a hundred municipalities. Unlike in the Long Creek watershed where almost all owners of impervious surface are required to have stormwater permit coverage, in the Lake Champlain watershed the 700 or so “three-acre sites” include, very roughly, under 5% of landowners. In other words, the vast majority of property owners in Vermont are not “three-acre sites” and may lack a compelling reason to participate in any sort of collective approach to stormwater management. Addressing this issue—the potential lack of demand for broader collective solutions—is beyond the scope of both the General Permit and the Stormwater Permitting Rule.

82. Comment: (Multiple similar comments received) LCRCC would ask the ANR to consider how best to facilitate collaboration between parcels that fall under the permit that are in close proximity to one another, if not in the same watershed. It is the belief of LCRCC that the provisions of Act 76 create the flexibility for a community within a specified watershed to reach a specific TMDL reduction, at a specific dollar cost. In contrast, the GP that has been created due to Act 64 creates a patchwork of projects achieving an unspecified TMDL reduction, at an unspecified cost. In addition to collaboration between permittees, LCRCC asks ANR to take a proactive role in incentivizing and facilitating collaboration between parcels falling under the General Permit and municipalities with Municipal Separate Storm Sewer (MS4) Permits. Such action can provide significant cost savings for parcel owners and municipal tax payers. In general, to whatever extent possible, LCRCC asks that every effort be taken so that the final version of the permit does not prohibit flexibility or creative solutions.

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Response: The Agency acknowledges and supports the desire to maximize collaboration and flexibility. While not explicitly identified in the General Permit, it may be possible for multiple regulated parcels, most likely “three-acre sites”, within the same watershed to meet treatment standards as a single regulated site. The Agency expects that there will be few projects that would opt for such a route, given the complexities that may arise over time due to changes in ownership and changes to buildings and infrastructure.

Concerning facilitating collaboration between parcels subject to the General Permit in municipalities covered by the MS4 General Permit, the Agency notes that Subpart 1.6 of the General Permit provides the statutory provision exempting projects from the need for permit coverage where a municipality has assumed responsibility for the stormwater system under the terms of a stormwater permit issued to the municipality. This provision does provide flexibilities for both the municipality and landowners. Several municipalities have exercised this option.

83. Comment: Under the draft GP if a 3-Acre parcel receives stormwater runoff from neighboring parcels that are sub-jurisdictional or from local or municipal roads and infrastructure, what are the obligations and options of the 3-Acre parcel for addressing these outside discharges onto the parcel? What legal tools are available to the parcel owner or ANR to require such discharges to be treated from these other sources? How does this differ if one is in an MS4 community or not? What incentives and assistance will the State offer to help explore collaborative solutions to treat stormwater discharges that are within a common storm watershed?

Response: Generally speaking, the owner of a “three-acre site” is not required to treat stormwater runoff on to their land, but rather, must ensure such stormwater is routed so as to not interfere with the treatment of runoff from the site. In terms of “other tools” available to compel these other properties to treat their stormwater, the Agency may designate such discharges as requiring a permit, pursuant to § 22-107 of the Stormwater Permitting Rule. Additionally, a person may petition the Agency to exercise its residual designation authority pursuant to (40 C.F.R. § 122.26(a)) to require such projects to obtain permit coverage. These “tools” do not differ in an MS4 community, however, a MS4-regulated municipality may petition the Agency to exercise residual designation authority for discharges to its separate storm sewer system.

84. Comment: With respect to 3-Acre sites, VHB believes there may be substantial opportunities for modifications to the GP that would allow for collaboration between adjacent or nearby properties which could result in equal or better treatment, more efficient use of land, and reduced financial burden than for individual owners to develop free-standing systems on their own properties. We do not believe that the current structure of the GP provides sufficient incentives for flexibility to allow applicants to pursue these opportunities. There are many reasons why a 3-Acre site owner may not desire to construct treatment on their site even if feasible, including but not limited to construction costs, creating a limitation on future development potential for the property, or aesthetic reasons. VHB proposes that as a means of compliance with this permit, 3-Acre site owners may voluntarily enter into an agreement with a third-party entity or multiple entities (public or private) to have those entities provide some or all of the required amount of treatment for the applicant’s land. VHB would propose that the treatment be required to be provided in the same impaired watershed or same lake basin segment as applicable. In order to ensure that the treatment goals of the GP and the Rule are met, the level of treatment to be provided by the third party should be equivalent to the amount of

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treatment determined to be feasible under an Engineering Feasibility Analysis for the applicant's parcel. All parties could also be required to be co-applicants and if necessary, establish an ownership and/or maintenance agreement. This compliance option could either be included as an alternative under Subparts 3.1.A, B, and C or as an alternative method of offset under Subpart 4.4. If included under the Offsets subpart, VHB would propose a separate "Voluntary Offset" category which is not subject to the monetary value requirements of Subpart 4.4.G. Property owners should be able to gauge the worth of their own land and elect to enter into agreements with other owners when it is agreeable to all parties, provided that the treatment goals of the GP have been satisfied.

Response: The general permit allows applicants to pursue off-site offset projects. Offset projects are stormwater treatment projects that do not otherwise require permit coverage where an applicant obtains permit coverage and constructs a stormwater system in conformance with the standards in the general permit. By implementing an offset project an applicant may be eligible to receive impact fees for the offset project that mitigate the impact fees that they would otherwise pay. Under the Stormwater Permitting Rule, and the draft general permit, an applicant does not have the flexibility to treat off site impervious surface in lieu of treating its own impervious surface.

85. Comment: Permit technical constraints do not allow for flexibility for site constrained landowners.

Response: The Agency did attempt to provide for both flexibility in terms of the range of allowable stormwater treatment practices in the Vermont Stormwater Management Manual, while at the same time accomplishing a requisite level of certainty in terms of permit requirements. Absent specific examples or recommendations in the comment regarding flexibility, it is difficult for the Agency to provide a more detailed response.

86. Comment: The permit does not allow flexibility for technical, market-based solutions to address permit compliance.

Response: Absent specificity in the comment it is difficult to provide a detailed response.

87. Comment: (Multiple similar comments received) Many parcels covered by the GP are commercial with tenant leases requiring specific amenities, such as parking, which the property owner will now need to amend to comply with the GP. LCRCC requests that ANR work with potentially affected stakeholders to understand these agreements and create a process to address them.

Response: While acknowledging the challenges faced by all property owners in terms of complying with the General Permit, the Agency believes the General Permit affords some time to address lease requirements. Staff in the Agency's Stormwater Program are available to discuss strategies for particular projects to comply with the General Permit.

88. Comment: Re Subpart 4.4: The agency should again consider the benefits of allowing offset projects between different sectors – for instance a wastewater treatment facility funding a land-based stormwater mitigation project. If that is part of this rule, I did not find it.

Response: Developing a program for allowing offsets between sectors is beyond the scope of the General Permit. The extent of allowable offsets was established in the Ch. 22 Stormwater Permitting Rule. Although the

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Agency remains open to pursuing inter-sector pollutant trading concepts we acknowledge that we have not yet undertaken the substantial investigation into establishing appropriate “baselines” (pollutant reduction thresholds above which trading may occur) and stakeholder conversations required to inform any such program.

89. Comment: (Multiple similar comments received) 3-9050 fails to require proof of adverse impacts as a trigger to implementation of the requirements under 3-9050. Rather than using only an acreage trigger, ANR should provide an alternative path for those parcels that can show no negative off-site stormwater impacts.

Response: Under the General Permit a site with no negative impact impacts on surface waters may likely have a level of existing stormwater treatment for which they may take credit to reduce or eliminate the need to construct new stormwater treatment systems. The acreage trigger for requiring permit coverage is established by 10 V.S.A. § 1264.

90. Comment: The Town is currently pursuing redevelopment of our North Hyde Park designated Village Center. Requiring stormwater improvements within the Flood Hazard Area or in densely settled areas could limit that effort unless stormwater provisions allow "best fit" solutions such as a flexible design review process; similar to the ANR Wastewater System and Potable Water Supply Rules, specifically the variance provisions of Section 1-802.

Response: Redevelopment projects involving one or more acres of redeveloped impervious surface are required to obtain an operational stormwater permit. These projects are required to meet the Redevelopment Standard of the Vermont Stormwater Management Manual. This standard was designed to provide flexibility and, in the Agency’s experience, provides a workable standard that still achieves significant water quality benefits.

91. Comment: The Stormwater General Permit requires on site treatment in order to avoid paying impact fees. As many historic Vermont villages are situated in the floodplain facing environmental constraints, please consider incorporating off-site treatment as an eligible treatment practice for permit coverage.

Response: The general permit allows applicants to pursue off-site offset projects. Offset projects are stormwater treatment projects that do not otherwise require permit coverage where an applicant obtains permit coverage and constructs a stormwater system in conformance with the standards in the general permit. By implementing an offset project an applicant may be eligible to receive impact fees for the offset project that mitigate the impact fees that they would otherwise pay. Under the Stormwater Permitting Rule, and the draft general permit, an applicant does not have the flexibility to treat off site impervious surface in lieu of treating its own impervious surface, unless warranted for a “three-acre site” based on the Engineering Feasibility Analysis criteria in Subpart 4.1 of the General Permit.

92. Comment: The Town of Stowe has been informed that there are two town-owned 3-Acre Rule parcels: the Stowe Arena/Memorial Park parcel and the highway department/wastewater treatment plant parcel. The developed portion of Memorial Park that contains the Stowe Arena and parking lots drains towards, and is constrained by, a Class 2 wetland. The developed area of the parcel, developed before the adoption of the Vermont Wetland Rules, extends well into the 50-ft. wetland buffer. There

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does not appear to be room to construct adequate stormwater infrastructure outside of the 50' wetlands setback. The abutting Class 2 wetland itself serves as a natural, highly-functioning stormwater renovation system containing the values described in 10 V.S.A. §905b (18)A. In addition, the 40-acre parcel contains approximately 33.5 acres of permanently protected open space that cannot be developed. This includes another 15-acre Class 2 wetland. The prescriptive stormwater regulations proposed does not recognize the existing functional naturally occurring stormwater renovation systems.

The highway department/wastewater treatment plant parcel is likewise constrained by its proximity to the Little River and does not appear to have adequate available area for stormwater infrastructure due to a large amount of underground and above ground infrastructure.

The Town of Stowe may have to pay a large impact fee or a penalty, using funds that could be better used to satisfy the conditions of the existing Municipal Roads General Permit or other public benefit. The combination of funding the work under the MRGP along with the cost of the 3-acre stormwater permit will place an undue financial burden on many communities and their taxpayers.

There should be waiver provisions or reduced impact fees for municipalities that have demonstrated a commitment to enhancing water quality with points awarded for activities such as: Local River Corridor Regulations; River Corridor Easements; Local Stormwater Regulations; Local Wetland Regulations; Setbacks from watercourses; A demonstrated financial commitment to land conservation; Existing natural stormwater renovation systems, such as wetlands; Size of the parcel in comparison to the impervious surface area; Cost I benefit of meeting the requirement; Highly functioning municipal wastewater treatment plant.

Response: Regarding the proximity of Class 2 wetlands to the Town's property, it is accurate that under the Engineering Feasibility Analysis in the General Permit permittees do not need to undertake construction in wetlands or associated buffer zones, and that projects may as a result of avoiding these areas pay stormwater impact fees in lieu of meeting treatment standards. The proposed General Permit, and the Agency's overall approach to managing stormwater, acknowledges that wetlands and their functions and values are best protected by treating stormwater before it enters a wetland rather than using these natural systems for waste disposal.

The proposed waiver for municipalities who have developed programs for the activities enumerated in the comment would require a revision of the Stormwater Permitting Rule and is beyond the scope of the proposed general permit. Further, although the activities described bring tremendous benefit to water resources, implementation of the Lake Champlain TMDL generally accounts for those activities taking place to meet pollutant loads from land use sectors other than developed lands. In other words, generally speaking, those activities are necessary in addition to addressing stormwater from developed lands in order to meet TMDL targets.

93. Comment: Draft General Permit 3-9050 does not provide an off-site mitigation option for those 3-acre parcels that cannot physically accommodate new stormwater infrastructure. Limiting the options to shoe-horning stormwater infrastructure into an existed developed parcel or paying a fee or penalty is too narrow a focus. There should be other options such as enhancing existing wetlands, land

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conservation or supporting the development of stormwater infrastructure on alternative parcels that could have more impact in treating stormwater runoff.

Response: The Agency acknowledges the comment, and further acknowledges that the suggested approach is well beyond the scope of the General Permit and could require revisions to the Stormwater Permitting Rule, Lake Champlain TMDLs, and possibly state statute.

94. Comment: In order to meet 3 acre requirements, some properties may be interested in constructing stormwater treatment practices in “managed wetland buffer” (this term refers to wetland buffer that already has diminished function due to land use. For example, this would include an area within 50’ of a class 2 wetland that is currently maintained as lawn). If wetland rules do not allow these areas to be utilized for stormwater treatment, property owners will be required to pursue other treatment options on-site. This will likely result in the need to install underground stormwater treatment practices, which are significantly more expensive. It may also result in property owners indicating that they can’t install any stormwater treatment on-site (per the revised EFA). Has DEC considered allowing stormwater treatment to be installed in managed buffer? Please note that we do not support installation of stormwater treatment practices in natural buffer or natural wetlands.

Response: Impacts to regulated wetlands and their buffer zones are managed by the Vermont Wetland Rules. Regulations concerning these projects are not modified by the General Permit. Whether a given project’s impacts to protected wetland and buffer zones may be permitted is necessarily a project-by-project determination.

95. Comment: We know that farms are the largest contributors of phosphorous to the environment that is not naturally occurring. We also know Vermont has impaired waterways in some of our urban areas more proximate to Lake Champlain. Not to negate the impact of storm water runoff in areas outside of this, but the overall impact is more diluted in upstream rural areas. By using the "all- in" approach throughout Vermont we are taking away limited time and resources that might have a greater impact on reducing phosphorous if our efforts were more targeted to larger phosphorous producers that are more proximate to impaired waterways.

Response: All land-use sectors in the Lake Champlain watershed are required to undertake substantial measures to reduce phosphorus, including agriculture, wastewater, and developed lands. Additionally, communities with stormwater-impaired waters face additional obligations to restore these waters. Although a project closer to Lake Champlain may have a greater effect on reducing phosphorus than those in the upper watersheds (farther from the lake), projects in the upper watershed create local water quality benefits by reducing sediment and nutrients to local streams and rivers, and creating more flood-resilient road infrastructure statewide.

96. Comment: The draft General Permit requires that sites permitted under Rules prior to 2002 upgrade to the current Rules. The current Rules prioritize infiltration, with pretreatment. Some of the old systems have infiltration measures in place, but do not have pretreatment that would comply with the current Rules. There should be flexibility for existing systems that might not fully comply with the current Rules, but meet the objectives of the current Rules. It is understood this may be difficult to quantify and that there are competing interests - such as initial costs versus longevity.

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Response: The Agency supports providing property owners flexibility such that existing stormwater infiltration systems may remain in use. In order to comply with the Stormwater Permitting Rule § 22-112 (Groundwater Protection Rule and Strategy), addressed by Part 6 Groundwater Public Trust of the General Permit, some of these projects may require an individual permit.

97. Comment: We support and encourage a reduced scope of compliance that considers capture and treatment of the "first flush" or higher concentration of pollutants rather than the standard design criteria.

Response: "Three-acre sites" are required to meet the Redevelopment standard of the Water Quality Treatment Standard, which equates to 50% of the Water Quality Volume. Roughly speaking, these sites treat the runoff from 0.5" of rain. This is a "first-flush" approach. The same sites in stormwater-impaired waters must also meet the Channel Protection Standard, which requires 12-hour detention of the one-year storm. Although not a "first-flush" standard, it is necessary to address the range of storm flows that are responsible for creating the impairment.

Comments on Technical Standards

98. Comment: Subparts 3.1.A, B, and C provides stormwater treatment standards categories for projects based on their receiving water and/or ultimate receiving water. Respectively and simplified, these categories include discharges to non-impaired waters and non-Champlain/Memphremagog, discharges to impaired waters or contributors to Champlain/Memphremagog without a Total Maximum Daily Load ("TMDL") or Water Quality Remediation Plan ("WQRP"), and discharges to impaired waters or contributors to Champlain/Memphremagog with a TMDL or WQRP. The language in these three subparts creates confusion as to which category is applicable for the circumstance where a project is discharging to a non-impaired water that is contributing to phosphorus to Lake Champlain or Lake Memphremagog. Or perhaps more problematically, these projects could theoretically fall under both 3.1.B and 3.1. C.

VHB understands that the intent is for projects discharging to a non-impaired water and are contributing phosphorus to Champlain or Memphremagog to meet the requirements of Subpart 3.1.C. To provide greater clarity and since both Lake Champlain and Lake Memphremagog have TMDLs in place, VHB recommends that Subpart 3.1.B read, "For discharges of regulated stormwater runoff to a stormwater-impaired water for which no TMDL, watershed improvement permit, or WQRP has been adopted, or for discharges of phosphorus to waters which are phosphorus impaired or contribute to the impairment of a phosphorus-impaired water without a TMDL in place, the following treatment standards apply:" and that the first sentence of Subpart 3.1.C read, "For discharges of regulated stormwater runoff to a stormwater-impaired water for which a TMDL, watershed improvement permit, or WQRP has been adopted, for discharges of phosphorus to Lake Champlain or Lake Memphremagog, or for discharges of phosphorus to a non-stormwater-impaired water that contributes to the impairment of Lake Champlain or Lake Memphremagog, the Secretary shall determine that there are sufficient pollutant load allocations for the discharge and the discharge shall comply with the following treatment standards and any additional requirements necessary to comply with the Vermont Water Quality Standards or implement the TMDL or WQRP."

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Response: Generally speaking, the language in the proposed general permit is consistent with the Stormwater Permitting Rule, and the Rule is consistent with 10 V.S.A. § 1264. The proposed revisions substantially modify this language and are inconsistent with statutory requirements. 10 V.S.A. § 1264 includes requirements for specific classes of impaired waters (stormwater-impaired waters, and discharges that contribute to the impairment of Lake Champlain and Lake Memphremagog). The proposed language in the comment refers to “impaired waters”, without further description. There is no statutory basis for applying the requirements to “impaired waters” generally. Additionally, the proposed language would impose new requirements on “phosphorus impaired waters”, again generally, as opposed to limiting those requirements to Lake Champlain and Lake Memphremagog. Finally, the proposed revisions appear to incorrectly assume that the approval of the TMDLs for Lake Champlain and Lake Memphremagog could not be withdrawn. For these reasons the Agency has not revised the Subparts in question.

The Agency does note that projects may be subject to both Subparts 3.1.B. and 3.1.C. However, because 3.1.B. is more stringent, projects complying with 3.1.B. will also comply 3.1.C.

99. Comment: Subpart 3.1.A.4 appears to include a full assessment of 3-acre sites which discharge to non- impaired and non-Champlain or Memphremagog contributing waters, regardless of prior permitting or currently operating treatment systems. VHB recommends revising the final sentence to align with Subpart 3.1.B.2 and to read, “For purposes of complying with this subpart, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped, except, if portions of a previously authorized project met the standards of the 2002 Vermont Stormwater Management Manual or its replacement, those portions shall demonstrate compliance with the terms of the operational stormwater permit issued most recent to the project.”

Response: Subpart 3.1.A.4 applies to “impervious surfaces of three or more acres requiring permit coverage under Subpart 1.3.D...” Subpart 1.3.D requires permit coverage of impervious surface of three or more acres “...that did not incorporate the requirements of the 2002 Stormwater Management Manual...” As such, Subpart 3.1.A.4 does not apply “regardless of prior permitting” as suggested in the comment. Although the Agency declines to make the suggested revision, permit application guidance will be beneficial on this and a range of other issues to avoid confusion.

100. Comment: (Multiple similar comments received) Subparts 3.1.A.6 and 3.1.C.4.d have differing requirements for isolated impervious surfaces of 400 square-feet or less. It is VHB’s opinion that the requirements indicated by 3.1.A.6 are sufficient to protect water quality and that providing full compliance with Simple Disconnection would not have appreciable benefit, therefore VHB recommends revising Subpart 3.1.C.4.d to align with Subpart 3.1.A.6.

Response: The Agency did not intend to have different treatment standards for these two categories. Rather, the inclusion of two differing standards was a drafting error – the standard changed during a revision to the draft permit prior to releasing the permit for public notice, however the change was not made to both categories. Subpart 3.1.C.4.d has been revised in the final permit to be the same as 3.1.A.6.

101. Comment: Subpart 3.1.B. does not include the provisions for 3-acre sites to provide alternate compliance methods for roadways and isolated impervious surfaces provided by Subparts 3.1.A.5

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and 3.1.A.6. The challenges associated with providing treatment for these types of impervious surfaces are the same regardless of project location. VHB recognizes the necessity of additional requirements for sites discharging to impaired waters that do not have a TMDL or WQRP in place but feels that the requirements to not increase pollutant load and the requirement to meet additional treatment standards are sufficient in this regard. It is VHB's recommendation that additional subparts should be added to Subpart 3.1.B which mirror the language in Subparts 3.1.A.5 and 3.1.A.6.

Response: The Agency does not have the discretion to establish the treatment standards for discharges to waters covered by Subpart 3.1.B (discharges to certain impaired waters without a TMDL). Rather, 10 V.S.A. § 1264(h)(2) establishes the treatment standards. The Agency may add additional requirements to permits as necessary to comply with the Vermont Water Quality Standards and the Clean Water Act but may not impose a less stringent standard than established in statute.

102. Comment: In Subpart 3.1.C.4.a, VHB recommends revising the final sentence to read, “For purposes of complying with this subpart, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped, except, if portions of a previously authorized project met the standards of the 2002 Vermont Stormwater Management Manual or its replacement, those portions shall demonstrate compliance with the terms of the operational stormwater permit issued most recent to the project.”

Response: The proposed revision is not necessary because the requirement is only applicable to impervious surfaces of three or more acres requiring permit coverage under 1.3.D., which applies to impervious surfaces that do not have a permit that incorporates the requirements of the 2002 Vermont Stormwater Management Manual.

103. Comment: For Subpart 4.1.A.- The Redevelopment Standard of the 2017 Vermont Stormwater Management Manual (“VSMM”) generally requires treatment of 50% of the Water Quality volume for a site. The EFA section of the GP should clarify if this standard can be met on a sitewide basis taking into consideration existing complying treatment, or if this standard will only apply to the portion of a 3-Acre site that requires updated treatment. VHB's position is that the former approach, whereby existing treatment is taken into consideration establishes a more equitable and uniform standard of treatment across all jurisdictional sites.

Response: The standard applies only to the portion of a “three-acre site” that requires updated treatment. The intent behind the statutory requirement for “three-acre sites” was to provide enhanced stormwater treatment where there was no treatment, or where the treatment pre-dated the 2002 Stormwater Management Manual (Manual). As such, a “three-acre site” consists of the portions of a site not already subject to the Manual, and the requirement to meet the Redevelopment Standard applies to that portion of a site.

Although portions of a project that are already subject to a permit incorporating the requirements of the Manual are not included in assessing the level of treatment achieved for a “three-acre site”, a “three-acre site” that was not previously permitted to the standards in the Manual does get credit for any existing treatment that may happen to meet the standards of the Manual.

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Allowing the standard to be met on a site-wide basis, including portions of a site that are already compliant with the Stormwater Management Manual, as proposed, would diminish the overall level of treatment provided. Further, in cases where a site undergoes a substantial expansion, it would effectively allow sites to meet the Redevelopment Standard by building new impervious surface that is subject to the Water Quality Treatment Standard of the Stormwater Management Manual while not providing treatment for the existing impervious surface.

104. Comment: Subpart 11.1.A.3 does not give consideration where an existing shoulder berm is not a water quality issue due to its minimal length, negligible slope, or extensive surrounding vegetation. In many cases, the need to remove a shoulder berm may result in the removal of existing vegetation that is difficult to stabilize without slope armoring or additional fill causing environmental impacts without benefiting water quality. VHB recommends modifying the last sentence of Subpart 11.1.A.3 to read: Shoulder berms may remain in place if the road crown is in-sloped or out-sloped to the opposite side of the road; or if the shoulder berm does not cause the concentration of water to erode any of the gravel pavement and does not result in eroded soils where water discharges from the road surface.

Response: Where an applicant demonstrates that a road segment is not hydrologically connected to surface waters they are not required to bring the road segment up to standards. Where a road segment is in fact hydrologically connected the Agency believes that removal of berms is warranted because berms do create conditions likely to adversely affect water quality because they prevent runoff from otherwise leaving the traveled portion of the roadway, thus concentrating the runoff and causing erosion.

105. Comment: In some locations it has taken decades for healthy vegetation to become established especially on steep slopes surrounding existing isolated roads. There may be a detriment to water quality when attempting to modify a road to address minor noncompliance with portions of Part 11. VHB recommends adding a Subsection stating: “Existing Isolated Roads segments shall be waived from any criteria contained in subparts 11.1 through 11.3 if those criteria do not reduce net erosion.”

Response: The practices in Subparts 11.1 through 11.3 are designed to enhance vegetation and reduce existing erosion and prevent future erosion. In the Agency’s experience they are effective standards.

106. Comment: When evaluating the Tier 1, Tier 2, and Tier 3 practice options for the Engineering Feasibility Analysis, we recommend that the presence of any existing Tier 3 Wet Pond be sufficient justification for the continued use of a Tier 3 practice to meet the Redevelopment, Water Quality, and Channel Protection treatment standards.

Response: The selection of the appropriate tier of practice (Water Quality Practice Selection) is described in the Vermont Stormwater Management Manual. We note that a project with an existing Tier 3 Wet Pond is likely to have a permit complying with the 2002 Stormwater Management Manual (Manual), and hence would not be a “three-acre site.” In cases where such a project was required to meet additional standards under the General Permit, in the Agency’s experience similar projects have been able to justify continued use of the Tier 3 practice under the Treatment Practice Selection criteria in the Manual.

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107. Comment: Re Subpart 3.1.C.4.d, what is the reasoning behind 400 square feet vs 300 square feet or 500 square feet? 500 square feet would also be protective of water quality while also providing for additional flexibility to disconnect.

Response: Four-hundred square feet was chosen because it is reasonably representative of the type of small, isolated, impervious surfaces where simpler standards are warranted.

108. Re Subpart 4.3.A.2 (“Projects required to comply with the channel protection standard that do so on 85% or more of a site shall be eligible to receive funds for the portions of the site exceeding 75% that are in compliance with the channel protection standard”). This is very confusing and recommend revisiting to communicate what you are trying to say more clearly.

Response: Projects subject to this standard can get paid impact fees if more than 75% of the site meets the standard. However, projects must exceed the standard by 10%, to qualify. In other words, they need to treat 85% of the site. If they do treat 85% or more of the site, then they get paid based on the amount of the site treated in excess of 75%. These standards were established in the Stormwater Permitting Rule and are not modified by the General Permit.

109. Comment: Subpart 4.1.C.2 discusses projects that are covered by the new 3 acre requirements and also included in a Flow Restoration Plan (FRP). It may be necessary for DEC to further clarify which specific treatment requirements properties subject to these overlapping regulatory requirements will be held to.

Generally speaking, projects included in FRPs are concept level designs that looked first at controlling the volume of stormwater runoff (i.e. meeting the CP_v standard) in order to meet flow based TMDL targets in stormwater impaired watersheds. However, these projects may not fully meet the CP_v, WQ_v, or redevelopment standards.

Projects identified in FRPs were screened for feasibility/constructability related issues, but it is typical for projects to change as they move from concept to a final design completed by a professional engineer. DEC cannot assume that a project identified in an FRP will be constructed exactly as the project concept proposes.

DEC must ensure that properties that have already made stormwater upgrades due to FRP requirements are not now, only a few years later, being required to make and pay for additional upgrades to treat that same impervious surface.

Response: “Three-acre sites” covered by a FRP are also subject to the requirements of the General Permit, unless the MS4-regulated municipality assumes full legal responsibility for the stormwater system under their authorization under the MS4 General Permit. Subpart 4.1.C.2 allows projects that undertook a feasibility analysis as part of the FRP process to consider the stormwater treatment provided to meet the “maximization” requirements of the Engineering Feasibility Analysis requirements. The Agency understands that projects will undergo some level of change between inclusion in the FRP and construction. However, a project’s compliance with the requirements of the General Permit will be determined based on the plans provided as part of the permit application and the project is required to construct in conformance with those plans. Projects that have already

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undertaken an upgrade as part of implementation of the FRP are still required to comply with the General Permit unless the municipality assumes responsibility for the system as described above.

110. Comment: Re Subpart 3.1.A. 2 & 4: How are sites that have a portion of their campus treated to the 2002 standard but another portion that are subject to Subpart 1.3.D handled?

Response: For “three-acre sites” a portion of which is subject to a permit issued in conformance with the 2002 Stormwater Management Manual, the project shall meet the standards for “three-acre sites” on the portion of the site that is not covered by the permit meeting the 2002 Manual. The remainder of the site continues to meet the existing permit requirements.

111. Comment: Re Subpart 3.1.B: This Section seems to be missing parity with Section 3.1.A and 3.1.C. For example it does not include an exception for renewals of un-built projects as in Section 3.1.A.3 or 3.1.C.3, or for linear transportation projects like Section 3.1.A.5 and 3.1.C.4.c, or for isolated impervious treatment in Section 3.1.A.6 and 3.1.C.4.d.

Response: The standards in 3.1.B. (impaired waters, no TMDL) are established by statute (10 V.S.A. § 1264). The Agency does not have the discretion to modify these requirements. The standards in Subparts 3.1.A. and 3.1.C. were established by the Agency in the Stormwater Permitting Rule pursuant to the authority granted the Agency in 10 V.S.A. § 1264.

112. Comment: How does the 3 Acre Rule account for nonstructural practices such as disconnecting runoff from the waters of the state?

Response: “Three-acre sites” are required to meet the Redevelopment Standard, which is effectively 50% of the Water Quality Treatment Standard. Projects meet these requirements by implementing stormwater treatment systems that comply with the Vermont Stormwater Management Manual (VSMM). Section 4.2 of VSMM covers nonstructural practices, including disconnection of stormwater runoff. In short, disconnection may be used to satisfy treatment requirements.

113. Comment: In Subpart 11.2 please consider adding: “E. Or other appropriate methods approved by the Secretary. Practices such as level spreaders, plunge pools, regenerative step pool stormwater conveyances, etc.” should also be allowed and encouraged where appropriate.

Response: The Agency concurs that it is appropriate to include plunge pools and has revised 11.2 accordingly.

114. Comment: If a 3 acre parcel has a post-2002 permit covering 75% of their impervious, are they exempt from the jurisdiction for the remaining 25%?

Response: The remaining 25% of impervious not covered by a post-2002 permit would not be exempt. An entire tract of land with three or more acres of impervious surface requires permit coverage unless the entire project has a stormwater permit that incorporates the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual.

Comments on Interface with Other Regulations, Including Act 250

115. Identify and Address Regulatory and Legal Obstacles to Compliance. The Agency should work with stakeholders to identify potential regulatory obstacles to compliance efforts, particularly Act 250 and local permits and zoning, and identify opportunities under existing authority and develop any necessary legislative proposals required to exempt compliance efforts from such other regulatory obstacles.

Response: The Engineering Feasibility Analysis criteria of the General Permit allow that “three-acre sites” do not need to undertake actions that are not approvable under local, state and federal regulations. Additionally, the Agency intends to promote internal coordinated review for projects that may trigger other permit program jurisdictions.

116. Comment: Permit compliance related construction may trigger Act 250 compliance. This will complicate matters. There is the potential for a high degree of variability of review and applicability determination in each Act 250 district as to how these projects fall under that jurisdiction and prioritization.

Response: The Agency will coordinate with the Natural Resources Board (NRB) to help ensure all District Commissions are aware of the new general permit and the associated statutory requirements and goals, and similarly to ensure Agency staff are aware of which projects are covered by Act 250 permits.

117. Comment: (Multiple similar comments received) Given the critical importance that the State of Vermont has placed on the adoption of stormwater retrofits through the enactment of 2015 Act 64, and to prevent potential unrelated roadblocks to the completion of such work, we recommend that ANR seek a statutory clarification during the upcoming 2020 Legislative session to exempt all upgrades required/approved by ANR pursuant to the GP from Act 250 or local permit review, or at the very least find a way to ensure that such review is coordinated and expedited.

Response: The Agency does not intend to advocate for any such exemption. As noted previously, the Agency is coordinating with the Natural Resources Board (NRB).

118. Comment: The activities associated with complying with the permit may require local permitting and zoning approval. LCRCC requests that ANR work with potentially affected stakeholders and municipalities to understand these potential conflicts and create new language that will avoid them.

Response: The Agency acknowledges that modification of stormwater infrastructure and installation of stormwater treatment practices may require local permits. The Engineering Feasibility Analysis criteria allow that projects that are not approvable under local regulations do not need to be considered by applicants.

119. Comment: (Multiple similar comments received concerning coverage under the Multi-Sector General Permit) As a small business owner operating a family business in existence for 44 years we at Bolduc Auto Salvage, INC / d.b.a. Bolduc Metal Recycling strongly suggest that Draft Storm Water Regulation General Permit 3-9050 be revisited. There are many portions of the Permit that are incompatible with the existing more restrictive Federal Multi-Sector General Permit 3-9003. The

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Federal Multi -Sector Permit is a requirement for our business location and has been in place since 2007, well after the 2002 proposed cut-off. Under the requirement of the Multi-Sector Permit, we are required to conduct quarterly water testing. Since the Multi-Sector Permit also covers the same amount of acreage it makes the General Permit redundant in nature which will only lead to policy confusion as to minimum requirements. For small businesses this is an added operating expense that should not be required again. The Multi sector Permit was extremely costly in design and implementation. To ensure compliance, many small businesses hired engineering companies to design their system and those systems and engineered plans already in place are more than adequate. To require yet another expense to "design" another system is nothing more than another drain on finances and is bad business for Vermont. At what point do we stop penalizing the businesses trying to comply with permit requirements and why should it be so confusing with laws differing from Federal and State. Worse yet, if business currently holds a Multi- Sector Permit and wants to see if it is in compliance with Permit 3-9050 they will be required to cover all costs of the feasibility study, required changes, and implementation. The cost, both in dollars and man hour, could potentially be the final straw for many Vermont businesses that are trying to do the right thing. Is that the message that should be sent if we are trying to encourage economic growth and a friendly business climate? If the State insists that an existing Multi-Sector Federal Permit is not sufficient documentation to meet the requirements of Permit 3-9050 then the State should be required to pay for any additional cost to show compliance.

Many businesses occupy and utilize more than 3 acres of impervious surface but do not own the property their business is located on. Many property owners own more than 3 acres of impervious surface due to past owners or business operations, but currently have no operating business on it. Some property owners may have a business on a portion of the land, but be saving the larger unused portions to pass on to future generation. The requirements should not be such that more than one permit is necessary to cover the same property and the burden of proof or costs incurred in obtaining a second permit for the exact same parcel should be the responsibility of the State if they choose to make that requirement.

The General Permit draft requirement states businesses with three or more acres of impervious surface are required to document any stormwater measures already in place and install additional practices to comply with terms of the permit. We believe in ours and many other cases, the term Multi-Sector Permit could adequately be substituted with no additional requirements. It is our feeling that simply because a property owner is not the business owner or vice versa, that it is the actual operating facility and utilized acreage that should be responsible for the permit. Therefore, for those business already holding a more restrictive Multi Sector permit the State of Vermont should accept that document as is.

Response: They Agency acknowledges that the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) and General Permit 3-9050 both address post-construction stormwater. However, the two permit programs have separate jurisdictional thresholds for when permit coverage is required and differ in their focus. Under the MSGP, the need for permit is based on the activity on the site. Where a regulated facility ceases industrial activity, provided certain conditions are met, the project no longer requires coverage under the MSGP. On the other hand, under General Permit 3-9050, a "three-acre site" requires permit coverage based on the amount of impervious surface, not whether industrial activity is

occurring. Additionally, under the MSGP, the Stormwater Pollution Prevention Plan is focused on ensuring materials used in industrial activities do not pollute receiving waters. The MSGP does not necessarily require structural treatment practices. General Permit 3-9050 requires structural treatment practices designed to address conventional stormwater pollutants, like sediment and phosphorus, that are not typically dependent on whether - or what – industrial activity is taking place.

Comments on Determination of Properties with Three or More Acres of Impervious Surface

120. Comment: (Multiple similar comments received) The DEC letters sent to nearly 700 potentially impacted landowners is based on 2011 GIS data. We therefore do not know how accurate the information is for making jurisdictional determinations. DEC has indicated that it will have a process to review whether a property requires GP coverage. We suggest that prior to the final adoption of the GP that DEC provide an opportunity for this process to take place rather than after its adoption. As a practical matter, a parcel owner does not know their options if they are unsure of whether or not they are subject to the GP. For instance, a parcel owner may want to, or be forced to, file an appeal of the GP if they are subject to its terms but may not take such action if they are not covered by it. Likewise, a parcel owner may want to know the approximate cost of compliance with the GP and need to hire a consulting engineer to conduct this work but would be forced to spend that money even if they were later determined to not be subject to the GP. In other words, parcel owners need to know if they are subject to the GP or not in order to make several legal and financial decisions before the GP becomes final. Informing them after the GP becomes final potentially limits their legal and financial options or will force them to take actions they otherwise may not need to take if jurisdiction over their parcel was clear.

Response: Projects may seek a jurisdictional determination regarding the applicability of the requirements of the General Permit at any time, which may inform their desire to appeal. Similarly, projects may seek professional consultation from engineers or attorneys to assess the applicability of the General Permit and potential costs for complying.

121. Comment: A Town representative identified inconsistencies with parcel ownership on the draft 3 Acre Properties List. Municipalities and school districts are separate landowners and should not be combined as one ownership on the draft 3 Acre List.

Response: The Agency used published Tax Department information to determine ownership for a given parcel. Any project with concerns over whether ownership has been properly ascribed should contact the Agency's Stormwater Program.

122. A Town representative identified inconsistencies with the use of parcel data to calculate impervious surface. For example, when reviewing municipal properties in Stowe on the draft 3 Acre List, it was identified that parcel data utilized by ANR was not the latest version on file with the Town.

Response: The Agency used best available information at the time the parcel and impervious surface analysis was undertaken. We understand some municipalities may have more recent data, and that additional revisions to

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parcel boundaries will take place in the future. Any project that is unsure of whether it was properly classified as a “three acre site” is encouraged to contact the Agency’s Stormwater Program for a jurisdictional determination.

123. Comment: There is a lack of clear technical appeal for 3 Ac determination by the ANR.

Response: Any act or decision by the Secretary of the Agency, including designating a project as a “three-acre site” may be appealed, and nothing in the general permit is intended to modify this right. The Agency encourages any project that is concerned with whether they have been appropriately identified as a “three-acre site” to contact the Stormwater Program to seek a review of the determination. In the event the Agency and the affected landowner disagree with the ultimate decision, the landowner may appeal the decision to the Environmental Division of the Superior Court. The Agency intends to develop additional forms and guidance to help facilitate the review of projects seeking a determination as to their status, however a determination may be obtained now or in the future.

124. Comment: LCRCC is not aware of any efforts to ground truth GIS data used to identify the 700 parcels that received letters notifying them that they now fall into the jurisdiction of the new GP. We suggest that DEC offer an opportunity for property owners to present evidence to the contrary or have such findings verified by DEC staff.

Response: The Agency did not ground truth the data used to identify “three-acre sites”. As noted in the responses to previous comments, any affected property owner may present evidence to the Agency and seek a verification of the determination for their project.

125. Comment: It appears that the agency has not reviewed the MSGP for sites in compiling the “list” of impermeable areas.

Response: The Agency acknowledges it did not review Multi-Sector General Permit (MSGP) project files in developing impervious cover data. Permit applications under the MSGP do not require surveyed site plans, hence any data in the project files would be insufficient for mapping purposes.

General Comments

126. Comment: It is unclear what is meant by "permit coverage." Clarification on this requirement would be welcomed.

Response: The term “permit coverage” refers to a project essentially “having a permit”. In the case of a project applying under a general permit it means a project has applied by submitting a Notice of Intent (NOI) indicating the applicant intends to comply with the terms and conditions of the general permit, and the Agency has issued a permit authorization. Obtaining “permit coverage” under a general permit is distinguished from projects that obtain “individual permits” or “coverage under an individual permit” where a project submits a permit application, and the Secretary grants an individual permit that includes all the necessary terms and conditions.

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127. Comment: This general permit takes a retroactive approach by forcing stormwater treatment requirements and fees on existing properties who were previously grandfathered. This approach is penalizing rather than promoting effective stormwater management.

Response: The Agency notes that the general permit covers new development, redevelopment, permit renewals, along with “three-acre sites.” The Agency acknowledges that addressing “three-acre sites” is retroactive, however that is the intent of Act 64/ 10 V.S.A. § 1264. Addressing stormwater from existing developed lands is necessary for the implementation of the Lake Champlain TMDL, as well as the TMDLs for stormwater-impaired waters.

128. Comment: As were others at the meeting I am very distressed and concerned with the state taking away the "grandfathered in" aspect. Besides fostering a mistrust of the state and greatly increasing the feeling Vermont is unfriendly to business, it will make it more difficult to preserve our historical architecture. There was an element of confidence and safety in buying older buildings knowing that they might not be as practical as a new building and wouldn't bring in the rents a new building does, but they wouldn't be as expensive because of the grandfathering.

Response: Please see previous response. The Agency acknowledges the potential impact to historical properties. Concerning the role of “grandfathering”, the Agency notes that in addition to the statutory requirement for “three-acre sites” to obtain permit coverage, federal regulations grant the Agency the ability to require permits for projects that discharge stormwater that contributes to the impairment of a receiving water, or where necessary to implement the wasteload allocation of a TMDL (see 40 C.F.R. § 122.26).

129. Comment: Clarification on how town and state highway projects interphase with the stormwater permit is welcomed. How do transportation projects relate to the calculation of impervious surfaces? How will this permit interphase with the TS4 and Municipal Roads General Permit? Are sidewalk extensions, replacements or other streetscaping projects implemented by a municipality, considered an exempt public transportation project under this General Permit?

Response: The general permit covers new development, redevelopment, permit renewal, and “three-acre sites.” A new town highway project that requires an operational stormwater permit would obtain coverage under this general permit the same way it would have under General Permit 3-9015. This new general permit does not change which projects require permit coverage, however it does include the new permit threshold adopted by the Legislature; starting July 1, 2022 projects that create a half-acre or more of impervious surface require an operational stormwater permit.

Existing municipal and state highway projects that have three or more acres of impervious surface are not regulated as “three-acre sites” under this general permit. Rather, municipal roads are regulated under the Municipal Roads General Permit (MRGP), and state highways are regulated under the Transportation Separate Storm Sewer System General Permit (TS4 GP). Additionally, once VTrans is authorized under the TS4 GP, it may seek to have new projects authorized under the TS4 GP instead of General Permit 3-9050.

The exemption related to public transportation projects refers to Part 22-105(a)(5)(D) of the Stormwater Permitting Rule and applies to projects that would otherwise need to obtain an operational stormwater permit for the development or redevelopment of one half acre or more of impervious surface, effective July 1, 2022 under

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Part 22-107(b)(2). That is, it is not a broad exemption. Sidewalks would typically qualify as a public transportation project. The phrase “other streetscaping projects” is not so specifically defined to allow a response as to the applicability of the exemption without a specific example. The Agency recommends obtaining a project-specific determination from the Stormwater Program for any project planning to rely on this exemption.

130. Comment: The Exemptions section (1.5) needs to make abundantly and specifically clear in plain English that roads subject to the Municipal Roads General Permit (3-9040) are not also subject to this permit. In fact, regulators should understand that the costly 3-acre permit is going to compete with the costly Municipal Roads General Permit for limited municipal dollars. Relative to this issue, we are confused by the inclusion of standards for roads in section 11.1 of the appendix.

Response: Municipal roads may in fact require coverage under this General Permit and the Municipal Roads General Permit. New municipal roads that exceed permit thresholds require permit coverage under this General Permit. Additionally, municipal roads with existing operational stormwater permits will renew those permits under General Permit 3-9050. Finally, where a municipal road is part of a project that is a “three-acre site” (this will only be the case where the road was previously subject to an operational permit) the road will need to meet the same standards as the rest of the projects. With that said, the vast majority of existing municipal roads will not require coverage under this General Permit.

The standards in 11.1 of the Appendix of the General Permit apply to non-municipal roads.

131. Comment: How does this General Permit relate to energy projects? Are energy development projects exempt from stormwater permit coverage and/or not included in a sites' impervious surface calculations?

Response: There are no exemptions for energy projects under the general permit, or under the Stormwater Permitting Rule or 10 V.S.A. § 1264. With that said, when the Agency reviews solar projects the impervious surface associated with solar panels is calculated based on the material that covers the ground- that is, the base or foundation of the panel. The Agency does not consider an elevated solar panel to be impervious itself, provided precipitation coming off the panel comes into contact with vegetated ground surface.

132. Comment: How does the 3 Acre Rule and Stormwater General Permit relate to Brownfield or Superfund sites? Stormwater treatment on these contaminated sites is likely not possible, due to the high risk of spreading harmful chemicals or allowing them to enter surface waters. Discharge of radioactive or biological waste is referenced in the Rule under General Prohibitions section 22-106, but not clearly defined under General Exemptions, section 22-105. The LCPC recommends DEC clearly note existing brownfield and superfund sites as a general exemption in the Rule and draft Stormwater General Permit.

Response: Exemptions to the requirement to obtain a stormwater permit coverage are established by statute (10 V.S.A. § 1264) and are not modified by either the Stormwater Permitting Rule or the proposed General Permit. Generally speaking, the Agency's Stormwater Program coordinates with the Waste Management Division to ensure stormwater requirements do not conflict with regulations concerning brownfields or superfund sites, and coordinates on the review of individual projects as necessary. Additionally, the Engineering Feasibility

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Analysis (EFA) criteria in the general permit specify that projects do not need to infiltrate stormwater runoff if it will result in subsurface pollutant plume transport.

133. Comment: It is unclear how the draft permit applies to linear impervious facilities that cross parcel and/or municipal boundaries such as recreation paths. For example, the Lamoille Valley Rail Trail is a state-owned path that crosses municipal boundaries, and the Stowe Recreation Path is a Town operated path which crosses multiple private parcels. Who is responsible for accounting for that impervious area; the municipality, state, or landowner? The permit notes exemptions for public transportation projects owned by VTrans or a municipality. How does this permit apply to public transportation projects that are not owned by one of these parties, and maintained by a municipality or other local organization?

Response: Linear impervious facilities, such as a private road or recreational path, may be designated as a “three-acre site” requiring permit coverage if they meet the definition of an “impervious surface of three or more acres” under the general permit. In the case of a trail or recreation path this would mean that a given tract or parcel of land involved in the road or recreation path would need to have three or more acres of impervious surface. If a road or recreation path is made up of multiple parcels, none of which has three or more acres of impervious surface, but where the total impervious surface associated with the facility is more than three acres, the facility would not require permit coverage as a “three-acre site.” The exception to this is where the facility was previously covered by a stormwater permit issued prior to 2002 and where the permit covered three or more acres of impervious surface. Additionally, municipal and State roads are covered by the Municipal Roads General Permit, and the TS4 General Permit, respectively, and are not regulated as “three-acre sites” under the proposed General Permit 3-9050.

134. Comment: Identify the methodology for quantifying impervious surfaces at gravel pit, forestry/logging, and maple sugaring operations. It is unclear how the permit calculates impervious surfaces for these types of operations.

Response: State statute (10 V.S.A. § 1264) defines impervious surface as “manmade surfaces, including paved and unpaved road, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.” The proposed general permit uses the same definition. The quantification of impervious surface does not vary based on land use. However, 10 V.S.A. § 1264 exempts forestry/logging activities, provided they comply with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, (“AMPs”) as adopted by the Commissioner of Forests, Parks and Recreation, and exempts maple sugaring operations where those operations are compliant with the Required Agricultural Practices adopted by the Secretary of Agriculture, Food & Markets (“RAPs”). Impervious surfaces at a gravel pit would be subject to the proposed general permit. The proposed general permit does not modify the definition of “impervious surface” or any of the permit exemptions set forth in statute.

135. Comment: Forestry operations exempt under Subpart 1.5.C only need to follow AMPs adopted by the Commissioner of Forests, Parks and Recreation. There currently is no requirement for any exempt forestry operations to calculate or reduce off-site stormwater pollution or mitigate downstream infrastructure impacts on private or public investments from changes in land cover types (i.e. clear cutting or selective cutting increases downstream negative impacts from increased stormwater volume and velocity).

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Response: The Agency acknowledges the statutory exemption for forestry operations that comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont (AMPs). These regulations were recently updated to ensure consistency with the Agency's Stream Alteration General Permit and strengthen standards pertaining to stream crossings and stream buffers, among other items. The Agency's Department of Forests, Parks and Recreation (FPR) implements the AMPs via Vermont's Use Value Appraisal Program, and on all harvesting operations on Agency lands, as well as lands enrolled in the Forestry Legacy Program. FPR has also embarked on initiatives related to improving water quality, including the Flood Resiliency Initiative and the River Management Initiative, and continues to implement a range of programs providing technical assistance, education, and funding designed to improve water quality from forested lands. Additionally, FPR is responsible for enforcement of water quality violations on logging operations.

136. Comment: How can a Town design a treatment system and select a contractor before a permit is issued and plans have been approved by the Agency? That would conflict with some municipal procurement policies. A Town would need a Notice to Proceed from the permitting Agency after design plan review/approval, before hiring a contractor. The permit needs to identify the process for acquiring a notice to proceed and authorization from the permitting Agency, to alleviate conflict with municipal procurement policies. A municipality can't spend money without a review process to ensure a permit will be received.

Response: A regulated project would not be expected to undertake construction before the Agency issues a permit. The permit would include approval of the site plans.

137. Comment: With 700+ 3-Acre Rule parcels identified in the Lake Champlain watershed alone and the amount of pushback that DEC is likely to have from affected property owners, it is hard to imagine that the current level of staffing will be adequate to deal with the increased workload and enforcement.

Response: The Agency acknowledges the substantial increase in workload that will accompany the new requirements. The Agency's Stormwater Program will need to re-align staff duties to accomplish the additional work.

138. Comment: Regulatory schemes generally do not require upgrades until there is a substantial redevelopment or a proposed new development. The retroactive aspects of this permit will be extremely burdensome and have significant unforeseen consequences to all. 3-Acre Rule parcels outside of MS4 areas should only be required to undertake improvements when there is an existing quantifiable discharge of phosphorous from an existing source or when significant additional impervious surface is added.

Response: The Agency has had a "redevelopment" treatment standard requirement since 2006 that is applicable to a project that undertakes redevelopment of one or more acres of impervious surface. Additionally, the Agency has treatment requirements for projects that expand their impervious surface by 5,000 square feet or more. Although these have been, and will remain, important program components, this approach is unfortunately not sufficient to achieve the phosphorus reduction from developed lands on a schedule consistent with the Lake Champlain TMDL. The proposal that the Agency limit requirements for "3-acre sites" to those with a

quantifiable discharge of phosphorus would be a very large undertaking that would delay implementation and would be unlikely to significantly affect the number of sites required to obtain permit coverage. Phosphorus is a ubiquitous pollutant in stormwater and is likely to be found in the vast majority of sites.

139. Comment: In the feasibility phase a property owner should have the ability to collect stormwater samples at the discharge point from their property and not be subject to jurisdiction of this program if they are found to have phosphorous levels meeting the standards.

Response: As noted in the previous response, phosphorus is a common stormwater pollutant. Based on existing monitoring data collected nationally, it is exceedingly unlikely that sites will discharge untreated stormwater that is below the applicable water quality standard. Implementing a system whereby sites are monitored prior to being regulated would be costly both to applicants and the Agency, especially if the monitoring were designed to capture a representative range of runoff producing rain events and to determine the volume of phosphorus.

140. Comment: In Part 1.3.C please consider adding this language "for linear transportation projects the total resulting impervious is the total new and redeveloped impervious surfaces".

Response: Part 1.3 covers jurisdictional thresholds – i.e., when a permit is required. Jurisdictional thresholds are established by statute (10 V.S.A. § 1264) and are not modified by this general permit.

141. Comment: Subsection 1.3.D has the potential to require single family residential lots that were previously constructed as part of a common plan of development and not required to obtain a stormwater discharge permit for post construction stormwater management to now meet the requirements of the 9-3050 permit, or any subsequently adopted stormwater discharge permit.

These residential lots currently pay into the Municipal Separate Stormwater Discharge Permit Program thru a Stormwater Utility Fee, which is used to fund municipal stormwater programs that work towards meeting state identified stormwater discharge targets. These programs include, but are not limited to, street sweeping, catch basin cleaning, public outreach and education, etc.

Typically these properties are not managed by a Home Owners Association, which would be in place to assist with orchestrating compliance efforts, and in some cases could provide common property needed for siting a new stormwater treatment system. The potential impacts to a property owner if they are unable to come to an agreement with neighboring property owners could be significant, including but not limited to effecting the property title.

Proposed revision of Subpart 1.3.D.: *A discharge of regulated stormwater runoff from privately owned impervious surface(s) of three or more acres, located on a single lot or contiguous across multiple privately owned lots, which was never previously permitted or was permitted under an individual permit or general permit that did not, at minimum, incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual. If any portion of an impervious surface of three or more acres in size was not permitted or was permitted under an individual permit or general permit that did not, at minimum, incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted*

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Stormwater Management Manual, the entire site shall be subject to the requirements of this general permit;

Response: The language in question, establishing the requirement to obtain permit coverage, is established by statute (10 V.S.A. § 1264) and is not modified by the General Permit. Additionally, the scenario described in the comment – a single family residence and not previously subject to a permit now being required to obtain permit coverage as a “three-acre site” – is exceedingly rare. If a project was not previously subject to a stormwater permit, then it would only require permit coverage as a “three-acre site” if it had three or more acres of impervious surface itself, irrespective of whether it is part of a common plan. To the best of our knowledge, there is one such project in the watersheds of Lake Champlain, Lake Memphremagog, and the stormwater-impaired waters. On the other hand, under statute and the General Permit, if a residential subdivision was previously permitted for three or more acres of impervious surface under a permit that did not incorporate the requirements of the 2002 Stormwater Management Manual, then permit coverage as a “three-acre site” is required.

142. Comment: In Subpart 1.5 (Exemptions from Coverage under this General Permit add a new Subpart H. *“An existing parcel or contiguous parcel(s) subject to 1.3.D will not be required to obtain a stormwater discharge permit if the parcel owner can show that stormwater discharge from the parcel(s) does not exceed the stormwater discharge standards for the immediate receiving waters of the state. If the discharge is to another permitted facility, such as a stormwater utility or municipal system, that operator reserves the right to refuse the stormwater discharge.”*

Response: The proposed revision is inconsistent with state statute (10 V.S.A. § 1264) because it would purport to grant an exemption to a statutory requirement. Further, the General Permit cannot grant any rights to a municipality, or other person, not otherwise provided by law.

143. Comment: (Multiple similar comments received) Subpart 1.6 suggest that stormwater system operators may not be subjected to the requirements of subsection 1.3.A-D if their systems are incorporated into a municipal or utility program. While the language falls short of directing local agencies to accept the systems, the inclusion of the language in a STATE GENERAL PERMIT is strongly suggestive of just that.

When inquiries were made about this subsection it was suggested that some municipalities welcome new infrastructure into their programs. That response reflects the failure by VTDEC to acknowledge and respect the independence of different municipalities. If the incorporation of new assets is in the interest of a municipality or utility that should be left to those agencies to make that determination and to work with the state and other stakeholders as it has in the past. The inclusion of this language in the permit does not support the intention of the permit, and only serves as an opportunity for the state to direct system operators struggling to meet new standards to seek support from local agencies.

Response: This comment concerns the ability for a municipality to assume full legal responsibility for a stormwater system under a permit issued to the municipality, in which case the owners of the property in question do not need to have their own permit coverage. The language in question exists in statute (10 V.S.A. § 1264) and is necessarily included in the Rule and General Permit. In other words, this provision of law exists regardless of whether it is included in the General Permit. In the Agency’s experience, municipalities have

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chosen to use this provision of law on multiple projects because it was in the interest of their residents and provided flexibility for the municipality in terms of implementing Flow Restoration and Phosphorus Control Plans. It is discretionary on the part of municipalities; they are under no obligation to assume responsibility for these stormwater systems.

144. Comment: Previously permitted stormwater systems are being forced to rapidly make costly upgrades to their existing system(s) to meet new permit requirements, or risk not having their permits renewed. While not renewing a permit may appear to be a logical response when a system can't meet new standards, the implications of prohibiting the discharge of stormwater could be catastrophic for properties located within the watershed being served by the system. As a result, when stormwater system operators don't have the resources to meet new permit requirements they look to municipalities and stormwater utilities to take over the systems, or abandon the system all together. Both of these outcomes have negative implications, and result in significant cost to tax payers.

Response: It is unclear from the comment as to what is meant by the catastrophic implications of prohibiting the discharge of stormwater, but the Agency notes that there is no intent to attempt to force existing dischargers to stop discharging.

145. Comment: Additional uncertainty about the regulatory requirements presented in this permit is the inclusion of the following language throughout the permit: "...incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual." The most recently adopted Stormwater Management Manual was adopted in 2017. If system operators invest significant capital into upgrades and retrofits to meet the 2002 standards, will they be required to meet the 2017 Stormwater Management Manual standards with the adoption of the next general permit?

Response: The language in question is based in statute (10 V.S.A. § 1264). It is used to identify which "three-acre sites" require permit coverage. In effect, it means that projects that have a permit that meets the 2002 Stormwater Management Manual, or if they meet the 2017 Stormwater Management Manual, then they are not regulated as a "three-acre site". If the site was permitted to standards in place before the 2002 Manual, then they do need permit coverage as a "three-acre site". "Three-acre sites" are required to meet the Redevelopment Standard, and potentially the Channel Protection Standard, in the 2017 Manual. Projects will not be investing in upgrades to meet the 2002 Manual as suggested by the comment.

146. Comment: In Part 2.1.C please consider changing: "Vermont Agency of Transportation has assumed full legal responsibility for the impervious surface or stormwater system" To: "Vermont Agency of Transportation assumes full legal responsibility for the impervious surface or stormwater system prior to construction of the impervious surface or stormwater system".

Response: The proposed change would require a revision to the Ch. 22 Stormwater Permitting Rule. The Agency is receptive to considering this change during the next revision to the Rule, however the General Permit was not modified in response to the comment.

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147. Comment: In Part 3.1 Please consider adding: “E. Discharges of regulated stormwater runoff from impervious surface owned or controlled by the Vermont Agency of Transportation and permitted under a general permit, which establishes requirements for implementation of the Lake Champlain TMDL, TMDLs for stormwater-impaired waters, and requirements for existing impervious surface outside of those watersheds, satisfy the requirements of subsection 3.1.C.4.

Response: Discharges of stormwater from impervious surface covered under the Transportation Separate Storm Sewer System (TS4) General Permit satisfy the requirements to have permit coverage as an “impervious surface of three or more acres” pursuant to 10 V.S.A. § 1264(g)(3). These impervious surfaces do not require coverage under General Permit 3-9050, hence the suggested revision to the draft general permit is not necessary.

148. Comment: In Subpart 7.3 what would be some examples that would trigger the 24-hour oral report requirement? Please clarify how and/or who the reporting would be to.

Response: By way of examples Part 5 of the general permit prohibits the discharge of materials other than stormwater. Discharges of any number of unauthorized materials could endanger health or the environment. Reporting would be to the Department of Environmental Conservation’s Stormwater Program. The Agency notes that Subparts art 8.13 and 7.3 inadvertently contained similar requirements. The final general permit has been revised to remove the language that had been in 8.13.

149. Comment: In Part 11 please clarify the definition of an isolated road.

Response: An isolated road is all or any portion of a road that meets the requirements of Subpart 3.1.C.4.c.

150. Comment: (Multiple similar comments received) While any permit issued is required to be renewed every 5-years, Vermonters need assurance that the significant infrastructure upgrades undertaken by property owners will stay in compliance for the life of the infrastructure. Such assurance can also lend itself to greater collaboration among stakeholders.

Response: The Agency acknowledges the substantial investment associated with meeting operational stormwater permit requirements, and that the stormwater systems that are constructed to meet requirements are not readily changed. The Agency is, however, also required to impose any treatment standards necessary to comply with the Vermont Water Quality Standards, or other state and federal laws and regulations. In the case of the “three-acre sites” only permitted sites that were permitted prior to 2002 are required to undergo retrofits. These sites will have had more than twenty years between the time they received their initial permit and the time they’ll need to retrofit. Although the Agency attempts to avoid permitted sites from having to undergo retrofits in order to comply with new standards, and will certainly do so in the case of “three-acre sites”, the Agency can’t grant immunity from the need to comply with revised standards in the future.

151. Comment: This rule will likely create property title cloud challenges. Unlike the orphaned stormwater permit issue addressed by MS4’s, these 3 Ac. permits do not fall under the MS4 umbrella.

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Response: The Agency acknowledges that projects that do not meet permit requirements may have a defect on any title to the property as a result. The Agency will make every attempt to provide reasonable schedules, as well as technical and financial assistance, in an effort to minimize any non-compliance. MS4 municipalities may assume full legal responsibility for “three-acre sites” within their municipality by incorporating the site under their authorization under the MS4 General Permit. In these cases, the “three-acre site” no longer requires a separate operational permit.

152. Comment: Impact on Marketable Title and Financial Transactions. It is very likely that businesses of all types will be financially unable to comply with the requirements of the GP or will now have this permit requirement liability on their businesses when it is issued. How will this impact the marketability of title to the land and their businesses? How will this impact the ability to buy, sell or conduct other financial transactions for this business? Similar to those questions raised above, what will be the impact of the GP on property owners that are part of a larger group that owns or is responsible for the parcel in question? How will marketability of title and the ability to conduct other financial transactions be impacted? Who is responsible for complying with the GP where there is no single entity governing the control of the parcel in question or that entity no longer exists?

Response: See previous response. Additionally, all property owners require permit coverage. Consequently, failure to obtain permit coverage could affect title on multiple parcels on a project. Where a permit is required for a multi-parcel project, an owners association shall apply for permit coverage.

153. Comment: State, Federal Government, and not for profit 3-acre parcels must be subjected to the same permit criteria as private parcels.

Response: Generally speaking, all “three-acre sites”, regardless of ownership, are subject to the same regulatory requirements. Exceptions exist for impervious surface owned by a municipality subject to regulation under the MS4 General Permit; municipal roads covered under the Municipal Roads General Permit; and, state highways and associated facilities subject to the TS4 General Permit.

154. Comment: More education and outreach on this complex, statewide topic must be done by the ANR.

Response: The Agency is maximizing the level of education and outreach provided for the general permit while considering all other obligations.

155. Comment: Address possible conflict within multiple permit or MS4 requirements. Some potential jurisdictional conflicts with MS4 permit compliance including but not limited to Phosphorus control Plans and Flow Restoration Plans. There are many potential challenges in this regard with the evolving MS4 permit requirements for future planning which include but are not limited to Phosphorus Reduction plans, Flow Restoration plans, etc.

Response: The Agency is not aware of any direct conflicts within the regulations identified but is receptive to revising existing and future regulations as necessary to address any conflicts that may arise.

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156. Comment: (Multiple similar comments received) VHB understands that the intended duration of an authorization to discharge under this GP will be 5 years but recommends that this be stated in the GP.

Response: Per statute and the Stormwater Permitting Rule an authorization to discharge may not exceed five years. The Agency may grant a shorter duration authorization as necessary.

157. Comment: Subpart 3.1.C.4.c contains a typographical error in the last sentence (Supbart) and the subpart reference number is missing.

Response: The final permit contains the appropriate Subpart reference number.

158. Comment: The phrase “technically feasible” occurs numerous times throughout the document. VHB recommends providing a definition of “technically feasible” that acknowledges economic factors.

Response: The phrase “technically feasible” does not, nor is it intended to, acknowledge or address economic factors.

159. Comment: When municipalities’ takeover the responsibilities of a road, that road then becomes subject to the Municipal Roads General Permit 3-9040. If said road is located within the boundaries of an Operational Stormwater General Permit, municipalities are required to become co-permittees to the Operational Stormwater General Permit in addition to the Municipal Roads General Permit. These overlapping permits create unnecessary burdens to the municipalities, result in legal gray areas with respect to the Operational Stormwater Discharge Permit through which a municipally owned roads transects, and requires municipalities to pay permit fees for multiple stormwater permits required for the same road segment. The 3-9050 permit will be the first Operational Stormwater General Permit to be adopted since the implementation of the Municipal Roads General Permit and provides an opportunity to end the double permit conundrum. The following provides a recommendation to how the currently proposed language can be amended to resolve this issue. Add: 8.4.B.i. *“Where a municipality takes ownership of road(s) the road(s) will be subject to the Municipal Roads General Permit, and the municipality will not be required to file with the Secretary as a co-permittee for the operational permit.”*

Response: The Agency acknowledges that some municipal roads are covered by both the Municipal Roads General Permit and an operational stormwater permit, especially where a municipality takes over a road that requires an operational permit as part of a larger project such as a residential subdivision. Operational permits typically include different stormwater treatment practices, including volumetric control of stormwater and active stormwater treatment practices, whereas the standards in the Municipal Roads General Permit are focused on preventing road-related erosion. It is necessary to keep municipalities as co-permittees on operational permits because a project’s overall stormwater system, and road stormwater system, are often interrelated. A permittee under an operational permit must ensure the stormwater system is properly maintained, consequently all owners of impervious surface, including the municipality, remain permittees. In terms of fees, the Agency does not charge operating fees under operational stormwater permits for the impervious surface that is a municipal road,

where a municipality provides the requisite information to differentiate between road and non-road impervious surface.

160. Comment: Part 11 should remain to recognize town highways are subject to the Municipal Roads General Permit.

Response: Part 11 applies to non-municipal isolated roads. Town highways are instead subject to the Municipal Roads General Permit.

161. Comment: It is well established that stormwater runoff is a leading cause of water pollution. A stark example of the adverse impacts on water quality caused by stormwater runoff is the phosphorus pollution crisis in Lake Champlain. Although developed land only comprises 4% of the surface area of the Lake Champlain Basin, it accounts for 16% of the phosphorous load delivered to the Lake. As human land use intensifies, more pollutants are added to the land surface (e.g., pesticides, fertilizers, animal wastes, oil, grease, heavy metals, etc.) and are washed by precipitation into nearby rivers and streams. At the same time, more impervious and watertight surfaces result in less rainwater penetration, which amplifies the volume of runoff and the pollutant load. As that volume of water runs off developed surfaces, it increases in speed, causing greater erosion and more phosphorus bound up in soils to move through the watershed.

The accelerating impacts of climate change escalate the urgency for implementing the Three Acre General Permit. During increasingly frequent, high-intensity weather events, like the one Vermonters experienced on Halloween of 2019, stormwater and sewage- treatment infrastructure quickly becomes overloaded. Beyond the obvious and immediate risks of injuries and drowning in deep and fast-moving flood waters, long-term threats include “elevated levels of contamination associated with raw sewage and other hazardous or toxic substances that may be in the flood water.”

The extent of impervious surfaces continues to grow with the concentration of Vermont’s population in urban centers, especially inside the Lake Champlain Basin. Meanwhile, the National Oceanic and Atmospheric Administration reports an increase of over six inches of annual precipitation in Vermont over the last century due to climate change, mostly in the form of rain. This perfect storm of factors makes the Three-Acre General Permit, as proposed, a critical step towards reducing phosphorous loading from developed lands by 21%, as required in the 2016 Lake Champlain TMDL.

Rollout of the Three-Acre General Permit is behind schedule, but it’s critical that the Permit’s compliance dates are not pushed back. Regulated entities have already had over a year’s notice of the standards that would be included in this permit (since fall of 2018). With a final compliance date of 2023, there is more than sufficient time to prepare. Vermonters and Lake Champlain cannot afford additional delays.

Response: The Agency acknowledges the contribution from developed lands to the overall phosphorus load to Lake Champlain, and the need to timely address this source of pollution in order to implement the Lake Champlain TMDL. The General Permit, in addition to being required by 10 V.S.A. § 1264, is an Agency obligation under the Lake Champlain TMDL Phase I Plan.

162. Comment: For co-permittee relationships, the stormwater system and therefore the operating permit is shared by a number of partners. The co-permittee relationship is based on the fact that the system has split ownership, meaning one co-permittee generally does not have the legal authority to enter another co-permittee's site, whether to perform system maintenance, complete site assessments, or to construct the upgrades that may be required by this permit. If they did, there would be no need for a shared permit. These co-permittee partners are essentially agreeing through the shared permit to each maintain their own section of the system in accordance with state requirements. What evidence will the state need to recognize that partners have done their due diligence to work in partnership with a co-permittee to achieve permit compliance? Further, how does the state intend to coerce an unwilling co-permittee to comply with the state's requirements?

Response: All owners of impervious surface subject to the requirement to obtain an operational stormwater permit are required to have permit coverage and to comply with the permit. In the event a project fails to comply with permit requirements, say through failure to maintain the stormwater system, the Agency may enforce against any and all permittees. The decision on whom against to enforce, and what information the Agency may rely upon in making such a decision, is case-specific. The Agency notes that there are many existing co-permittee situations involving stormwater permits and very few result in a level of non-compliance requiring an enforcement action.

163. The Stormwater Rule appears to apply to all properties in Vermont in excess of 3 acres. The Stormwater Rule provides no reason for its enactment. Because of the lack of explanation, there is also no justification for applying the Stormwater Rule equally to land that drains to impaired waterways and land that does not drain to impaired waterways. Along the same lines, there is no reasoning for why the rule applies equally to land that is near an impaired waterway and land that is distant from an impaired waterway. Regulating stormwater that is distant from an impaired waterway is not likely to have an impact on the impaired waterway.

Response: The General Permit does apply to all "three-acre sites" statewide, as well as to other regulated activities such as new development. The Agency proposed the concept of regulating "three-acre sites" in the watershed of Lake Champlain, and the Vermont State Legislature, via Act 64 of 2015, made it a statewide requirement (10 V.S.A. § 1264(g)(3)).

The Agency supports the requirement for all "three-acre sites" in the watersheds of Lake Champlain, Lake Memphremagog, and the stormwater-impaired waters to obtain permit, versus the alternative of just those sites that are within a set distance of the receiving water. The watersheds in question are impaired as a result of the sum of activities occurring in the watershed, not just those that are near the water. Managing stormwater upstream of the impaired water does help meet TMDL targets, and provides localized water quality benefits.

164. Comment: The rule provides no explanation for why it does not apply to agricultural land, which generates a much greater amount of phosphorous than the land to which the Stormwater Rule actually applies.

Response: Subpart 1.5.A provides the exemption referenced. This exemption is created by statute (10 V.S.A. § 1264(d)(1)(A)). The Agency does not have the authority to modify the exemption. The Agency of Agriculture Food & Markets is responsible for oversight of the programs necessary to reduce agricultural-related runoff.

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165. Comment: The Stormwater Rule does not explain how it accommodates the common law rights of those who are subject to it. These common law rights include the right to let stormwater flow at its historical rate of flow in its historical location onto a downstream neighbor's property. The Agency has no condemnation power and no right to take these common law property rights without compensation.

Response: The General Permit does not convey any property rights of any sort, or any exclusive privilege.. (See Subpart 8.10)

166. After the Agency settled its litigation with the Conservation Law Foundation, the Agency also failed to request that the Environmental Protection Agency convene a meeting with the State of New York to discuss a common approach over Lake Champlain. The Conservation Law Foundation's litigation was solely against Vermont. As a result, the plan for New York was not updated to provide a consistent approach to water draining into Lake Champlain.

Response: Conservation Law Foundation's legal action against the Environmental Protection Agency in 2008 was limited to Vermont's Lake Champlain TMDLs. New York and Vermont have committed to re-evaluating the TMDL no later than ten years from its adoption in 2016 to determine if revisions are necessary.

167. Comment: It remains unclear how to handle situations in which development of 3-acres of impervious surface was carried out by common plan, or when a past subdivision has occurred, which results in a 3-acre parcel broken up amongst multiple owners. Does each individual owner have an obligation? Do all the properties have an obligation to comply together?

Response: The only "three-acre sites" consisting of multiple parcels under a common plan of development are those projects that were already subject to a stormwater permit that covered the parcels in question. In these cases, issues related to the respective obligation of each parcel have typically been addressed during the previous planning and permitting of the project during its development. Otherwise, for projects that are not already covered by a stormwater permit, "three-acre sites" typically comprise only a single parcel, except in the context of campus type settings like hospitals and college campuses which may comprise multiple parcels.

168. Comment: The permit should include language that clearly defines when jurisdiction applies to a subdivision (commercial, industrial, or residential).

Response: In terms of "three-acre sites", a subdivision may be regulated when it was previously permitted under a permit for three or more acres of impervious surface. New subdivisions may require permit coverage if there will be one or more acres of impervious surface across multiple lots (or one-half acre or more effective July 1, 2022), per Subpart 1.3 of the General Permit.

169. Comment: The exemption language under 1.5(F) requires all local, State, and Federal permits to allow a transition project to be exempt. Due to the varying review periods for different land use permits and multitude of permit programs, we recommend that the possession of one of these permits prior to July 1, 2022 should suffice for the exemption and allow for the issuance of the other permits to follow subsequently after that date.

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Response: The comment concerns the change in the permit threshold for operational permits to one-half acre or more of impervious surface, effective July 1, 2022. The exemption criteria were established in the Chapter 22 Stormwater Permitting Rule and may not be modified by the General Permit. Additionally, the Agency notes this permit threshold was adopted effective May 2018, and goes into effect in July 2022. Consequently, projects will have had four years to plan for the change.

170. Comment: The agency and legislature need to reconsider the wisdom of expanding Permit 3-9050 to one-half acre or more of impervious surface in 2022, just as the implications of the current jurisdictional level are being rolled out, implemented and assessed.

Response: The Agency acknowledges the comment but notes that jurisdictional thresholds for stormwater permits are developed by the Legislature. This is beyond the scope of the General Permit.

171. Comment: Consider providing an exemption for land owned by non-profits on a case by case review basis that includes consideration of financial resources.

Response: Stormwater permit thresholds and exemptions are established by statute, and the Agency cannot modify them through the General Permit.

172. Comment: A flow restoration plan has not yet been developed for the Moon Brook. Please consider not making 3 Acre properties within this watershed subject to the increased requirements and impact fees for Impaired Waters until such a plan is put in place.

Response: The Agency does not have the authority to modify the statutory requirement for “three-acre sites” to obtain permit coverage. Additionally, the Agency has required “three-acre sites” in stormwater-impaired watersheds that have flow restoration plans in place to obtain permit coverage and meet the additional requirement for sites to meet the Channel Protection Standard of the Stormwater Management Manual.

173. Comment: Forcing the property owners to have expensive engineering done, which will then have to be approved by the state engineers anyway, why not let the state engineer work with the land owner and only involve outside engineers if the land owner wants to appeal what the state engineer has asked for.

Response: The Agency does not have staffing levels to provide the suggested service.

174. Comment: Please consider allowing drilled boring logs as a means of determining soil information and seasonal high water table elevations for stormwater system designs. Many of the 3-acre sites will be paved where the stormwater treatment system may need to be located and clients may not have the flexibility of excavating test holes through the asphalt.

Response: The soil evaluation requirements are established by rule in the Vermont Stormwater Management Manual and are not revised by this general permit. The Agency will consider whether revision of the Stormwater Management Rule is warranted based on this comment.

175. Comment: It appears that the agency has grossly underestimated the “impermeable” areas on sites in the state.

Response: Although the Agency has relied upon best available technologies in identifying “three-acre sites” and estimating their associated impervious area we acknowledge that some sites may have substantially more or less impervious surface than estimated. The precise amount of impervious surface on a given site will be established through the application process.

176. Comment: Are there resources available to understand what was allowed under the old permits versus this new process? Meaning, what is likely to be different? And why the changes are required?

Response: Generally speaking, the effectiveness of the Agency’s stormwater treatment standards improved with the adoption of the 2002 Stormwater Management Manual, relative to standards in place prior to that. Copies of the older standards are available upon request, which may be submitted to padraic.monks@vermont.gov. The changes are required by statute and are intended to achieve phosphorus reductions in stormwater necessary to meet the Lake Champlain Phosphorus TMDLs, as well as improve water quality statewide.

177. Comment: Multiple comments were received regarding the distribution of costs, maintenance responsibilities and liabilities on projects with multiple landowners.

Response: Establishing responsibility for costs associated with permit compliance is the responsibility of the permittees. All landowners affected by the permit are required to be permittees.

178. Comment: What protects homeowners within this 3-acre plus parcel from being sued by a contractor who is owed money for their services when all homeowners do not pay?

Response: This is a private civil matter beyond the scope of the General Permit.

179. Comment: If part of a homeowner’s property is used to become in compliance whether through a construction of a stormwater retention pond, planting of vegetation to reduce runoff or other method which renders the land unable to be used for other purposes, I would expect the homeowner’s tax burden to be reduced by the size of the land taken for these purposes.

Response: Impacts on property taxes are beyond the scope of the General Permit.

180. Comment: Water quality volume, water quality treatment, and channel protection are terms which are not defined in the document. In general, there is a lack of definition for many technical terms used throughout the permit. One may presume that the reader is familiar with the terms used in the Stormwater Manual, but these are also very important terms referenced regularly throughout the General Permit and DEC should consider defining those terms in the “definitions” section.

Response: The terms listed are treatment standards under the Vermont Stormwater Management Manual (Manual). These terms are described in detail under the Manual and are not modified by the General Permit.

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181. Comment: Each property with a general permit should have a DEC issued map associated with it showing exactly where impervious surfaces are and exactly how many square feet of impervious surface that is equal to. Existing permits only have an acreage/square footage number and do not have an ANR/DEC issued map to accompany them. This will assist in determining exactly what is included and what is not included from previous impervious surface area determinations and will assist in management of those impervious areas and associated stormwater system(s).

Response: The development of site plans accurately showing the extent of impervious surface is a permit application requirement and is the responsibility of permit applicants. For projects that have a previously issued stormwater permit, the approved plans are available from the Department.

182. Comment: What happens if a significant percentage of sites do not comply with the timeline or the permit requirements set forth in the General Permit? This seems likely given the financial requirements and number of impacted parties from nursing homes, apartment buildings, non-profits, gas stations, ski areas, schools, public works departments, industrial facilities, shopping centers, and so on. What are the tools for enforcement that ANR/DEC plans to use in cases of non-compliance?

Response: The Agency's focus will be on providing outreach and funding to affected projects to ensure applicants have access to resources necessary to comply with the requirements of the General Permit. In the event any given project does not ultimately comply with applicable stormwater regulations, the Agency may use its enforcement authority as described in Subpart 8.1 of the General Permit.

183. This is a very complicated permit with many exemptions and different rules depending on what region/watershed you are in and relies largely on a "feasibility study" to inform all parties what is expected of the "owner" under the new rule. That puts a lot of onus on the engineer to parse out all these complexities. As such, its hard to imagine how the feasibility study would not be a detailed and expensive undertaking with lots of back and forth between the owner, engineer, and DEC especially on larger sites. DEC is going to have to dedicate significant amounts of time and effort to assisting owners and engineers. DEC may have to make many "Records of Decision" with regards to any number of intricacies. Really, this is quite an undertaking as set forth in the draft permit. What resources will be allocated to assist in compliance with complexities of the new permit? Without these technical resources as well as the availability of significant financial resources property owners will be challenged to determine what is even required of them under the draft General Permit.

Response: The Agency acknowledges the need to dedicate significant staff and financial resources towards the implementation of the General Permit.

184. Comment: DEC recently identified and sent letters to all properties in the Lake Champlain basin that will be impacted by the new 3 acre requirements. Some of the sites identified are residential developments that contain many individual parcels that are not represented by any single entity (i.e. a homeowners association). In these cases, DEC sent a letter to each individual, residential, property owner informing them of these new permit obligations. Under previous permits, sites like this were referred to as "orphan systems" and special provisions were put in place to assist these neighborhoods/homeowners. What assistance will DEC provide to assist residential properties that find themselves in this position? Will DEC assist with coordination and engineering

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evaluation/design for these “orphan systems”? Will DEC provide financial assistance to these “orphan systems”?

Response: The Agency acknowledges that multi-parcel projects that do not have a functioning owners association will face additional challenges in complying with the requirements of the general permit. The Agency is not planning to develop a program for “orphan systems” as was the case in the mid-2000s, however we are planning a financial assistance program, as discussed in several responses.

185. Comment: Section 7.5 indicates that material collected in the course of treatment or control of stormwater treatment shall be “properly disposed”. If DEC intends for this to be enforceable that it may be necessary to provide further detail in the permit, or provide guidance on this in the future.

Response: The Agency’s Solid Waste Management Rule governs the disposal of regulated solid waste and is separately enforceable. The Agency will evaluate the possibility of providing additional guidance.

186. Comment: Subpart 8.17.A.3 indicate that all applications for coverage under the 3-9050 permit submitted by a municipality, state, federal or other public agency must be signed by a “principal executive officer or ranking elected official”. Consider adding language that would allow these individuals to designate a specific staff person to sign applications.

Response: The signatory requirements were established in the Stormwater Permitting Rule and are aligned with federal regulations.

187. In highly developed areas Vtrans owned right of way is often the only available green space which could be used for the installation of stormwater retrofit. Vtrans is developing its own phosphorus control plan and may or may not be interested in working with landowners to install treatment within their right of way. We believe there needs to be more flexibility in the 1111 permitting process to allow Vtrans to approve stormwater retrofit installations in their right of way. In addition, we are aware of situations where an area of Vtrans road runs through a private site. A retrofit on the site will require managing this runoff and it is unclear if/how Vtrans will need to participate. Again, without working on collaborative solutions the work required by the GP will not be accomplished.

Response: The General Permit, and the Stormwater Permitting Rule, cannot modify the 1111 permitting process. Applicants may seek to coordinate with VTrans to locate stormwater infrastructure in VTrans’ right-of-way.

188. Comment: Recognizing Previous Compliance. The Agency should work with stakeholders to develop language providing greater recognition for portions of parcels already in compliance with preceding permit requirements.

Response: The Agency recognizes that the vast majority of previously-permitted projects are in compliance with preceding permit requirements. In some cases, the existing stormwater system in place at these projects may satisfy some or all requirements of the General Permit. However, compliance with a permit issued prior to 2002 has no bearing on the statutory requirements for a “three-acre site” to obtain permit coverage.

Comments Concerning Specific Projects

189. Comment: Comments were received concerning the stormwater system at 15 Dubois Drive, South Burlington, including: I think the DEC should send one of its engineers to the development so that the DEC understands there are additional factors for the State to consider before it starts assigning residents of Ledge Knoll responsibilities that are not all-inclusive (eg: Highland Terrace) and may put residents in conflict with a large solar array that sits where a settling pond would logically go (my best guess admittedly as a non-engineer).

Response: These types of constraints are typically addressed by the engineer working on behalf of the landowner. Additionally, the Agency's Stormwater Program staff are available to visit sites upon request.

190. Comment: Was any consideration given to surrounding areas of the impacted sites? For example, Redrock is right next to the park, so it seems this would be a mitigating factor to concerns about runoff. Was a cost benefit analysis completed regarding our specific location on how our association currently impacts (and will impact) runoff with the proposal?

Response: The requirement to have permit coverage as a "three-acre site" is based on the amount of impervious surface. Surrounding or adjacent lands are not a factor in whether permit coverage is required. Cost-benefit analyses were not done for any sites.

191. The Lazy Acres Homeowners, Inc. is charged with maintaining Lazy Acres Road with lot owner dues and is the holder of Stormwater Discharge Permit 3209-9010.R. The road has held a valid stormwater permit since 1982. Lazy Acres in Chittenden is a private road maintained by its property owners. There are 19 lots averaging 8 acres along its 1.1 miles. The road is owned by individual adjoining property owners along the road with a right of way for purposes of travel through the length of the road.

A quick search of the list of affected properties for the proposed General Permit 3-9050, finds no other private roads listed in Chittenden and other nearby towns, yet there are many private roads in each community. We think the reason is our developer decided to own Lazy Acres Road in fee back in 1982 rather than deed each lot burdened by a common road right of way. The former required a discharge permit, the latter did not. The Developer conveyed the road to the lot owners in 2010. Is it fair to burden the current lot owners, who each own 1/19 of Lazy Acres Road, with the potentially ruinous expense of complying with General Permit 3-9050 just because our developer made a misinformed business decision in 1982? From an environmental perspective, there is no reason to treat Lazy Acres Road any differently from the other private roads in Chittenden.

Response: Lazy Acres Road and the associated homes are covered by an operational stormwater permit that covers three or more acres of impervious surface, and the permit was issued based on standards in place prior to 2002. In fact, the permit covers 6.9 acres of impervious surface, including the road and homes. Consequently, stormwater permit coverage as a "three-acre site" is required based on 10 V.S.A. § 1264(c)(7) and the Stormwater Permitting Rule. The ownership form of the road would not have affected permit jurisdiction when

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the original permit was issued in 1982 and has no bearing on whether a revised permit is required under General Permit 3-9050.

192. Comment: Does this raise equal protection issues under the Vermont and Federal constitutions?

Response: The General Permit does not raise equal protection issues under the U.S. Constitution or Vermont Constitution because the regulatory thresholds are rationally based on a legitimate state interest of achieving required phosphorus reductions.

193. Comment: Should Lazy Acres Road be grandfathered so that its lot owners do not have to comply with Draft General Permit 3-9050(2019)? Many of the lot owners have lived there for thirty years or more.

Response: The enabling legislation for the General Permit intentionally addresses stormwater from projects permitted prior to 2002.

194. Comment: If not, are the Lazy Acre lot owners exposed to double taxation? Once when they pay their municipal road taxes, which includes a component for stormwater remediation of public roads, and a second time for having to remediate any stormwater from Lazy Acres Road which runs in to the municipally owned West Road? Any stormwater from Lazy Acres Road flows down hill to the West Road.

Response: The requirements of the General Permit for management of stormwater from the road portion of the project is not a tax and therefore the scenario described in the comment does not constitute any form of duplicative taxation.

195. Comment: 1.3. D Permit Coverage Required. The draft permit states properties with impervious surfaces of three acres or more are covered by the Rule. That language may or may not cover the Lazy Acres private road (it is not clear in our view). The as built road is 1.1 - 1.2 miles in length and has an average 20' width of impervious gravel roadway. The rest of the fifty foot road right of way is open fields or woods. That results in 2.9 acres of impervious surface so Lazy Acres Road may fall below the three acre threshold.

Response: The subject project requires permit coverage as a "three-acre site" because it is currently subject to an operational stormwater permit for three or more acres of impervious surface. Permit jurisdiction is assessed based on the entire project – the road, homes, driveways, etc.

196. Comment: Exemptions from Coverage under this General Permit
A new exemption for Lazy Acres Road should be added to §1.5 of Draft General Permit 3-9050 (2019) as subpart H. : "Private, rural, isolated, gravel, roads having a storm water discharge permit issued before 2002, that are abutted by residential lots with a weighted average size of more than eight (8) acres, an average impervious road surface of less than .5 acres per lot, and that are predominately open fields, woods, or a combination of the two. Any precipitation or snow melt from said lots is presumed to infiltrate the soil and does not become stormwater runoff"

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Response: Exemptions to the requirement to obtain a stormwater permit are established by statute and may not be modified by the General Permit.

197. Comment: Content of Application & Where to file. A. 3. Requires that a designer is a certified professional engineer, yet makes no mention or allowance for the shortage of such professionals to conduct the necessary plans for the hundreds of properties listed by the State. Additionally, as in the case with a not for profit group of homeowners managing a small private road, no consideration is given to small businesses or non-profits on bearing the costs of such service.

Response: See earlier responses concerning costs, funding, and availability of engineering resources.

198. Comment: 3.1 Stormwater Treatment Standards C 4.a. This section requires that all standards must meet what are considered "technically feasible." There is no reference or allowance for what might be considered reasonable costs, especially as it might apply to individual homeowners or small businesses. This provision might imply that if a small group of homeowners need to spend a million dollars, then so be it. This could be in violation of Vermont's Administrative Procedures Act, which requires agencies to consider the impact on small businesses and alternatives for them.

Response: See earlier responses concerning costs and the engineering feasibility analysis (EFA) requirements. The EFA criteria were adopted as part of the Ch. 22 Stormwater Permitting Rule. This Rule was adopted in conformance with the Administrative Procedures Act.

199. Comment: Is it arbitrary and capricious to regulate Lazy Acres Road but no other private road in Chittenden?

Response: See earlier responses concerning the jurisdiction for this project. Multiple residential projects in Vermont with private roads require permit coverage as a "three-acre site".

200. Comment: Is there a demonstrable, factual basis for asserting that these 8 acre, pastured and wooded residential lots generate any storm water runoff that deposits waste into the waters of Vermont? Doesn't the rural nature of these 8 acre lots act as a natural filter to remove waste from precipitation and snow melt?

Response: Permit coverage is required based on the amount of impervious surface and the era of the existing stormwater permit. There is a strong link between impervious cover and receiving water health. To the extent the existing stormwater system meets the Redevelopment Standard of the 2017 Stormwater Management Manual based on the landscape characteristics described in the comment, the project may receive credit towards its stormwater treatment obligations.

201. Comment: If you deem it necessary to regulate Lazy Acres Road, Please consider the following amendments to Draft General Permit 3-9050 (2019). This would greatly reduce the cost of compliance for the Lot owners, some of whom have difficulty paying the current dues for road plowing maintenance, and the annual permit fee.

To be added to §1.3.D as a new subpart 1 if Lazy Acres Road can't be exempted from coverage:

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«Private, rural, isolated, gravel, roads having a storm water discharge permit issued before 2002, that are abutted by residential lots with a weighted average size of more than eight (8) acres, an average impervious road surface of less than .5 acres per lot, and that are predominately open fields, woods, or a combination of the two, shall be presumed to comply with the Non Structural Practices and the Simple Disconnection Practices of the 2017 Amended Storm Water Management Manual as stated in 4.2, and 4.2.1-4.2.3.5 of said Manual. Any precipitation or snow melt from said lots is presumed to infiltrate the soil and does not become storm water runoff. Any stormwater discharges from said lots are authorized as provided in §2.9.A of General Permit 3-9050 (2019). The Secretary of Agency of Natural Resources may rebut the presumption with clear and convincing evidence.»

To also be added to §2.9 as a new subpart A. if Lazy Acres Road can't be exempted from coverage. "Private, rural, isolated, gravel, roads having a stormwater discharge permit issued before 2002, that are abutted by residential lots with a weighted average size of more than eight (8) acres, an average impervious road surface of less than .5 acres per lot, and that are predominately open fields, woods, or a combination of the two, shall be presumed to comply with the requirements of § 2.9 of General Permit 3-9050(2019) and General Permit 3-9030 (2009), Part DI A.3. Any precipitation or snow melt from said lots is presumed to infiltrate the soil and does not become stormwater runoff. The owners of said lots shall be presumed to have maximized infiltration of any storm water runoff, prevented and eliminated soil erosion, and prevented and eliminated delivery of pollutants to storm water conveyances. Any storm water discharges from said lots are authorized. The Renewals of authorizations required by § 1.3.F of General Permit 3-9050(2019) shall be issued upon payment of the annual operating fee required by §8.9 of General Permit 3-9050 (2019) unless the Secretary of Agency of Natural Resources rebuts the presumption with clear and convincing evidence. "

Response: The Agency is not aware of information that would support the proposed revisions.