

Agenda Summary
July 22, 2026

Agenda Item No. A-2

3-Acre Stormwater Permit Management Agreement

Black Bear Run and Black Bear Run Homeowners Association

Summary: Enclosed is a proposed 3-Acre Stormwater Permit Management Agreement which has been agreed with the Black Bear Run Homeowner Association for the 3-Acre Stormwater Permit required for this development. The Agreement defines the permit related responsibilities for each party. In general, each party is responsible to operate, repair, replace and upgrade the stormwater system component under its ownership – i.e. the Town is only responsible for stormwater system components within the Town Highway Rights of Way. It also establishes each party's responsibilities for certain shared common expenses associated with the one-time Impact Fee, annual inspections and operating fees, recertifications for permit renewals required every five years and compliance upgrades for future regulatory or statutory changes, which we advise should be anticipated. It also establishes the Town as an Administrative Co-Permittee, managing inspections, reporting, invoicing and collections with authority to charge interest, apply liens and collect delinquent accounts to the same extent as delinquent property taxes. It also indemnifies parties from liabilities for the default of individual parties and includes provisions for terminations and a sunset provision requiring agreement of the parties to extend the Agreement after 20 years. This is a simplified version of the recently approved Agreement with Ampersand et-al's for Depot Street and Thomas Lane Phase 1. Staff recommended acceptance of the Agreement as presented.

Town Plan Policy Impact: N/A

Fiscal and HR Impact: The current estimate for the Impact Fee is \$62,750, of which the Town would be responsible for 25% or \$15,688. This may be reduced slightly before finalization by portions of the \$50K grant secured by BBR HOA being eligible for portions of the Impact Fee. Annual costs for shared common expenses and serving as Administrative Co-Permittee are estimated to be \$5-\$10K/year. Human resources efforts associated with this are estimated at over 50 person-hours over the last few years.

Recommendation: Move to approve the proposed 3-Acre Stormwater Permit Management Agreement, conditioned upon the acceptance and endorsement by the Black Bear Run Homeowners Association, Inc., and authorize the Town Manager to endorse the Agreement on behalf of the Town.

3-ACRE STORMWATER PERMIT MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2026, (the “Effective Date”) by and between **BLACK BEAR RUN HOMEOWNERS ASSOCIATION, INC** a Vermont non-profit corporation with a place of business in the Town of Stowe, County of Lamoille in the State of Vermont (“BBR HOA”), and, the **TOWN OF STOWE**, a Vermont municipality in the County of Lamoille and State of Vermont, acting by and through its Selectboard (“Town”) with each being a “Party” and collectively the “Parties”.

WHEREAS, the Parties are the owners of certain real property and improvements thereon developed originally in 1983 as part of a 21-lot residential subdivision located off Vermont Route 100, which is shown on Existing Conditions Plan drawing C-1 dated April 17, 2026, prepared for BBR HOA by Mumley Engineering (“Engineer”), attached hereto as Exhibit A; and

WHEREAS, The Vermont Agency of Natural Resources (“Agency”) issued Discharge Permit No. 1-0593 authorizing a discharge of treated stormwater runoff from the impervious surfaces of the development, including its roads, driveways, parking areas, and rooftops, to an unnamed tributary to Little River.

WHEREAS, the Permit was necessary to construct the development and required construction, operations, maintenance and repair of certain stormwater systems and components thereof intended to manage, intercept, convey and treat stormwater discharges off impervious surfaces of the development. BBR HOA remains the sole permittee on said Permit; and

WHEREAS, on February 25, 2019, amended on December 19, 2025, the Agency adopted General Permit 3-9050 amending the Stormwater Permitting Rule of Chapter 22 of the Environmental Protection Rules (“3-Acre Rule”), intended to reduce the adverse effects of stormwater runoff by enhancing the management of stormwater runoff and compliance with current Vermont Water Quality Standards; and

WHEREAS, Section 22-107(b)(4) of the 3-Acre Rule, requires that a discharge of regulated stormwater runoff from impervious surface of three or more acres, which were never previously permitted or permitted with stormwater infrastructure that did not incorporate the requirements of the 2002 Stormwater Management Manual, the entire development (3-Acre Permit Properties) shall be subject to the requirements of the new 3-Acre Rule General Permit 3-9050 (GP 3-9050). Such is the case for the 3-Acre Permit Properties, originally permitted and constructed under the original Discharge Permit 1-1231; and

WHEREAS, the parties have been individually noticed by the Vermont Department of Environmental Conservation (VTDEC), that an application (Notice of Intent - NOI) for coverage under GP 3-9050 is past due; and

WHEREAS, BBR HOA has engaged Engineer to undertake the requisite “Engineering Feasibility Analysis” (“EFA”) and prepare and submit the NOI required for possible coverage under GP 3-9050; and

WHEREAS, the Engineer’s EFA finds that the original stormwater systems are not compliant with the GP 3-9050 requirements and, potential upgrades are limited to modifications to the existing wet ponds within regulated wetlands and wetlands setbacks and, on private residential properties within a multi-lot development in a manner that

deprives owner(s) productive use of their property, therefore qualifying for the Maximization Feasible Criteria waiver per Section 4.1(C)(3)(c) of GP 3-9050 and therefore, compliance upgrades are not required but Stormwater Impact Fees will be assessed and be payable to VTDEC prior to authorization of coverage under GP 3-9050; and

WHEREAS, Section 2.1(A) of GP 3-9050 requires all owners of impervious surfaces within the 3-Acre Permit Properties for which permit coverage is required be Co-Applicants for the NOI; and

WHEREAS, the Town requires this Agreement as a condition precedent for the Town to be Co-Applicant to the NOI for coverage under GP 3-9050; and

WHEREAS, there are currently approximately **5.02** acres of impervious surface area within the 3-Acre Permit Properties required to be covered under GP 3-9050; and

WHEREAS, the Town has ownership of the road in its Town Highway Rights-of-Way known as Black Bear Run, Town Highway 111, consisting of 1.255 acres of impervious surface which is twenty-five percent (**25%**) of the total impervious surface area within the 3-Acre Permit Properties; and

WHEREAS, Private properties within the BBR HOA contain approximately 3.765 acres of impervious surface, which is seventy-five percent (**75%**) of the total impervious surface area within the 3-Acre Permit Properties; and

WHEREAS, the Parties wish to define their respective responsibilities for the operations, maintenance, repair, replacement and upgrades of the existing stormwater infrastructure and, the apportionment and payment by the Parties associated with the initial Impact Fees, annual Operating Fees and Compliance Inspections and

Recertifications associated with obtaining and renewing coverage under GP 3-9050 as may be amended from time to time in accordance with future regulatory or legislative change(s).

NOW THEREFORE, in consideration of these premises and mutual covenants and other good and valuable considerations, BBR HOA, acting through a duly authorized agent and the Town, acting through its Selectboard, covenant and agree as follows:

1. Recitals: The Parties hereby confirm that the statements and facts set forth in the Recitals hereinbefore are true and correct, in reliance upon which the Parties are entering into this Agreement.
2. Co-Permittees: The Parties agree that they will be Co-Permittees to the NOI for coverage under GP 3-9050.
3. Sole Responsibility: The Parties and their successors and assigns, shall be solely responsible, including all costs thereto, for all maintenance, repairs, replacements and upgrades of stormwater infrastructure located on their respective parcels in the 3-Acre Permit Properties. The Town is solely responsible for all stormwater infrastructure within the Town Highway Rights-of-Way. BBR HOA is solely responsibility for all stormwater infrastructure outside of the Town Highway Rights-of-Way, including, but not limited to the existing wet ponds, pond embankments and pond outlet works.
4. Shared Common Expenses: The Parties agree to share common expenses associated with obtaining, complying with and renewing coverage under GP 3-9050, including but not limited to the initial one time Impact Fee, annual Operating Fees, annual Inspections and re-certifications by a Vermont licensed Professional Engineer required for permit renewals every five years, in proportion to each party's individual

percentage of the impervious surface contained within the 3-Acre Permit Properties listed in the Recitals.

5. Duties and Responsibilities of the Town:

5.1 The Town shall remain solely responsible for the operations, maintenance, repair, replacement and upgrades of public stormwater infrastructure located within the Town Highway Rights-of-Way as required to maintain compliance for coverage under GP 3-9050, including all costs incidental thereto.

5.2 The Town shall serve as administrative Co-Permittee and provide BBR HOA with copies of all documentation related to permit compliance and endeavor to keep BBR HOA informed of matters that may have financial or operational impacts to BBR HOA.

6. Duties and Responsibilities of BBR HOA: BBR HOA shall be solely responsible for the operations, maintenance, repair, replacement and upgrades of all private stormwater infrastructure located outside of the Town Highway Rights-of-Way as required to maintain compliance for coverage under GP 3-9050, including all costs incidental thereto.

7. Impact Fees: For the purposes of this Agreement, “Impact Fees” shall be the one-time fee, assessed by and payable to VTDEC, currently estimated to be \$62,750, payable prior to authorization under GP 3-9050, apportioned to each Party by the percentage of total impervious surface area listed in the Recitals. The Town shall send an invoice to BBR HOA for its proportionate share within 14 days of the effective date of this Agreement. Payment shall be due within 30 days of the postmark date of the

invoice. The Town shall make payment to VTDEC of the full Impact Fee within 14 days of its receipt of payment in full from BBR HOA.

8. Operations, Maintenance, Repairs and Replacements: For the purposes of this Agreement, “Operations, Maintenance, Repairs and Replacements” shall be all work required to enable the existing stormwater infrastructure to functionally collect, transport without erosion, and infiltrate stormwater along and under the existing town highway and in existing private stormwater inlets, structures, culverts, drainage swales treatment areas and ponds within the 3-Acre Permit Properties, in accordance and fully compliant with the requirements for coverage under GP 3-9050, as may be amended.

9. Annual Operating Fees, Inspections, Re-Certifications and Reporting:

The Town shall arrange for annual inspections and permit renewal recertifications every five years by a Vermont Licensed Professional Engineer and submit required reporting for covered under GP 3-9050 with copy to BBR HOA. The Town shall invoice BBR HOA its proportionate share, within 30 days of expenses being incurred, for all costs associated with annual operating fees, inspections, renewals and reporting, apportioned by the percentage of impervious surface area listed for apportionment in the Recitals and as a common expense.

10. Compliance Inspections and Deficiencies: The Town and its authorized agents shall have the right of entry upon 3-Acre Permit Properties for the sole purpose of undertaking annual inspections of the stormwater infrastructure covered under GP 3-9050. If deficiencies are noted within the Town Highway Rights of Way, the Town shall implement maintenance, repairs or replacements as required to achieve compliance as soon as practical but within 90 days or receipt of reported deficiencies. If

deficiencies are outside of the Town Highway Rights of Way, the Town shall issue notice to BBR HOA detailing the deficiencies and BBR HOA shall implement maintenance, repairs or replacements as required to achieve compliance as soon as practical but within 90 days of notice or as soon thereafter as reasonably practical if delayed by seasonal conditions, contractor availability or other circumstances beyond the reasonable control of BBR HOA.

11. Compliance Upgrades: For the purposes of this Agreement, “Compliance Upgrades” shall include any future upgrades of stormwater infrastructure that may become required because of future regulatory or statutory changes, the cost of which shall be paid by the Party with ownership interest in the affected stormwater infrastructure. The Town shall be solely responsible for all costs associated with upgrades within the Town Highway Rights-of-Ways and BBR HOA shall be responsible for all costs associated with upgrades outside of the Town Highway Rights of Way.

12. Invoicing and Collections: The Town shall invoice BBR HOA for common expenses incurred associated with the 3-Acre Permit Properties for coverage under GP 3-9050, apportioned by the percentage of impervious surface area listed for apportionment in the Recitals. Invoices shall be delinquent if not paid within 30 days of the postmark date of an invoice from the Town and subject to a two percent (2%) per month interest charge upon delinquency. The Town may record a lien upon real estate under the authority of 24 V.S.A. § 3614(b), which shall be collectable to the same extent as taxes on realty pursuant to the provisions of 32 V.S.A. Chapter 133. The Town may forward any account one year past due to the Collector of Delinquent Taxes for Tax Sale or pursue any other collection remedies authorized by law.

13. Several Liability: The Town shall not be responsible or liable for any fines, penalties, levies or any other assessments by VTDEC due to the negligence of BBR HOA to abide by the requirements for coverage under GP 3-9050 outside of the Town Highway Rights of Way. BBR HOA shall not be responsible or liable for any fines, penalties, levies or any other assessment by VTDEC due to the negligence of the Town to abide by the requirements for coverage under GP 3-9050 within the Town Highway Rights of Way. The Party responsible for such fines, penalties, levies or other costs assessed by VTDEC agrees that it shall indemnify and hold harmless the other Party of all such expenses.

14. Cooperation by Parties and Termination: The Parties shall reasonably cooperate in the submittal and execution of all applications, reporting, renewals, and other documentation required to maintain compliance with coverage under GP 3-9050 and shall act reasonably promptly upon receipt of a request for information and/or execution of documentation. If coverage under GP 3-9050 is denied or not achievable due to the lack of cooperation by either party, then the cooperating party may provide written notice by certified mail to the non-cooperating party of the intent to terminate this Agreement. If cooperation from the other party or a cure of the noncompliance prohibiting coverage under GP 3-9050 is not achieved within 30 days of written notice, the cooperating party may terminate this Agreement by mailing a written notice of termination to the other party and recording a copy thereof in the Town of Stowe Land Records.

15. Dedication and Acceptance: Nothing contained in this Agreement shall be construed as authorizing or obligating the dedication of the private stormwater systems or components as public infrastructure and nothing contained in this Agreement shall

be construed as obligating the Town to accept any such proffered dedication.

16. Agreement to Extend: Notwithstanding Paragraph 14 above, this Agreement shall terminate on the twentieth (20th) anniversary of the date hereof, unless extended by Agreement of the Parties filed in the Town of Stowe Land Records. If so terminated, thereafter, the obligations imposed on the Parties regarding the stormwater systems for each Party shall be those then imposed by law.

17. Amendments and Counterparts: Any amendment to this Agreement must be in writing, signed by both Parties, witnessed or acknowledged and filed in the Town of Stowe Land Records. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

18. Consent to Record: The Parties agree that the Town shall record, within 5 days of the effective date, this Agreement in the Town of Stowe Land Records.

19. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

[Two Signature Pages Follow.]

Dated this _____ day of _____, 2026.

TOWN OF STOWE

By: _____
Charles Safford, Town Manager
Duly Authorized Agent

STATE OF VERMONT

COUNTY OF LAMOILLE, SS.

On this _____ day of _____, 2026, personally appeared Charles Safford, Town Manager and Duly Authorized Agent of **TOWN OF STOWE**, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **TOWN OF STOWE**.

Before me, _____
Notary Public
My commission expires: _____
My commission #: _____

Dated this _____ day of _____, 2026.

BLACK BEAR RUN HOMEOWNERS ASSOCIATION

By: _____
Duly Authorized Agent

STATE OF VERMONT

COUNTY OF LAMOILLE, SS.

On this _____ day of _____, 2026, personally appeared _____, Duly Authorized Agent of **BLACK BEAR RUN HOMEOWNERS ASSOCIATION**, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act and deed and the free act and deed of **BLACK BEAR RUN HOMEOWNERS ASSOCIATION**.

Before me, _____
Notary Public
My commission expires: _____
My commission #: _____