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Article 1. Establishment

Sec. 1-1. Authority, Findings, and Purpose.

The Town of Rutland hereby promulgates the following Ordinance pursuant to 24 V.S.A § 2291(14) and (15) in order to provide for the management of stormwater runoff in the lands of the Town of Rutland subject to the Municipal Separate Storm Sewer System (MS4) General Permit 3-9014 issued by the Vermont Department of Environmental Conservation.

The Select Board finds that: the management of stormwater is necessary to reduce stream channel instability, water pollution, siltation, sedimentation, local flooding; the management of stormwater is necessary to protect groundwater; and the erosion of stream banks, water pollution, siltation, sedimentation, local flooding, and/or groundwater contamination caused or contributed to by unmanaged stormwater runoff constitutes a public nuisance.

The purposes of this Ordinance are to:

- A. To minimize and/or control the quantity and quality of stormwater runoff;
- B. To protect natural resources, particularly streams, lakes, wetlands, floodplains and other natural aquatic systems on developed sites and elsewhere from degradation that could be caused by construction activities and post-construction;
- C. To prevent soil erosion and sedimentation resulting from construction sites and non-point source pollution associated with development and redevelopment;
- D. To prevent further degradation of and to foster the improvement of stormwater- impaired waters in the Town of Rutland as defined by 10 V.S.A. §1264(12);
- E. To control the discharge of sediment, stormwater, and non-stormwater into the Town of Rutland's Municipal Separate Storm Sewer System (MS4), and/or surface or groundwater in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES);
- F. To address the adverse impacts caused by the public nuisance of unmanaged stormwater runoff and to thereby promote the public safety, health, and welfare by reducing the impacts of flooding and streambank erosion; reducing public expenditures for the removal of sediment from stormwater drainage systems and natural resource areas; and by preventing damage to municipal infrastructure from inadequate stormwater controls; and

G. To establish a permit process to administer MS4 General Permit No. 3-9014;

Sec. 1-2. Applicability.

This Ordinance shall apply to the designated MS4 areas within the Town of Rutland as delineated in the map attached hereto as Appendix A. Specific provisions are applicable only to lands within the watershed of Moon Brook or the Stream Buffer Area of Moon Brook, as depicted in the map attached hereto as Appendix B, shall apply only to those designated areas as indicated in Articles within this Ordinance.

Sec. 1-3. Responsibility for Administration.

The Administrative Officer shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Administrative Officer may be delegated by the Administrative Officer to persons or entities acting in the beneficial interest of or in the employ of the Town of Rutland.

Sec. 1-4. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, it shall not affect the validity or application of other provisions of this Ordinance.

Sec. 1-5. Relation to Other Ordinances of the Town of Rutland.

If the provisions of these regulations conflict with the provisions of any other valid and enforceable Ordinance(s), the stricter provisions shall prevail.

Sec. 1-6. Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge or discharge of pollutants.

Sec. 1-7. Documents Incorporated by Reference.

- A. Town of Rutland Subdivision Regulations, as most recently amended.
- B. Vermont Stormwater Management Manual, as most recently enacted.

- C. The Low Risk Site Handbook for Erosion Prevention and Sediment Control (published by the Vermont Department of Environmental Conservation, as amended).

Article 2. Definitions

For the purposes of this Ordinance, the following shall mean:

“Administrative Officer” shall mean the designated Administrative Officer of the Town of Rutland, Vermont.

“Agent” shall mean a person authorized to act in the place of another person.

“Applicant” shall mean a property owner or duly designated representative who files an application for a land disturbance activity.

“Best Management Practices” or “BMPs” shall mean a schedule of activities, prohibitions of practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution.

“Clearing” shall mean any activity that removes ~~the~~ vegetative surface cover.

“Construction” shall mean land-disturbing activity associated with development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

“Common Plan of Development” shall mean a development that is completed in phases or stages when such phases or stages share a common state permit or Town subdivision permit related to the regulation of land use, the discharge of wastewater or a discharge to surface waters or groundwater, or a development designed with shared common infrastructure. Common plans include, but are not limited to, subdivisions, industrial and commercial parks, and university and other campuses. Construction activities or portions of construction activities that have achieved final stabilization as of the effective date of this Ordinance shall not be considered for purposes of determining what constitutes disturbance under a common plan of development that requires coverage under this Ordinance. Following completion of the common plan components on a parcel of land, any additional development of the parcel shall be considered as separate from the original common plan for the purposes of evaluating whether one or more acres of land will be disturbed.

“Construction Activity” shall mean activities subject to a Construction Permit issued by the State of Vermont pursuant to its NPDES permit responsibilities. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Construction Season” shall mean the period of time between May 1 and October 31, when land disturbance activities may occur without special provision for winter conditions under this Ordinance.

“Construction and Demolition Debris” shall mean those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure including houses, buildings, industrial or commercial facilities, and roadways.

“Designated Enforcement Officer” shall mean the Administrative Officer or other Town officer as may be designated by the Select Board.

“Drainage Way” shall mean any channel that conveys surface runoff throughout the Site.

“Erosion Control” shall mean a measure that prevents or controls wind or water erosion in agriculture, land development, coastal areas, riverbanks or construction.

“Erosion and Sediment Control Plan, Major” shall mean a set of plans prepared by or under the direction of a licensed professional engineer or a certified professional in erosion and sediment control indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction on a site that disturbs more than one acre of land, either individually or as part of a common plan of development. The content of a Major Erosion and Sediment Control Plan is specified herein.

“Erosion and Sediment Control Plan, Simplified” shall mean a plan indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction on a site meeting the criteria in §6.3(C) or (D) of this Ordinance. The content of a Simplified Erosion and Sediment Control Plan is specified in herein.

“Grading” shall mean any excavation or fill of material, including the resulting conditions thereof.

“Green Infrastructure” means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control or collect stormwater runoff. See 10 V.S.A. §1264(b)(4).

“Hazardous Materials” shall mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illegal Discharge” shall mean any direct or indirect non-stormwater discharge to the MS4, except as exempted in §4.3 of this Ordinance.

“Illicit Connections” shall mean any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4, and any connections to the MS4, from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Administrative Officer.

“Impervious Surface” shall mean those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

“Industrial Activity” shall mean activities subject to Industrial Permits as defined in 40 CFR §122.26 (b) (14) (“storm water discharge associated with industrial activity”).

“Infiltration Basin” shall mean any structure or device designed to infiltrate retained water to the subsurface.

“Land Development” shall mean the construction or re-construction of impervious surface on a tract or tracts of land.

“Land Disturbance Activities” shall mean any activity that disturbs or breaks the topsoil or results in the movement of earth on land.

“Land Disturbance Permit” shall mean a permit approved by the Town of Rutland Stormwater Commission, which authorizes land disturbance activities within the regulated area of the Town of Rutland pursuant to this Ordinance.

“Limits of Disturbance” shall mean the boundary within which all construction, materials and equipment storage, grading, landscaping and related activities shall occur.

“Maintenance Agreement” shall mean a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

“Municipal Authority” shall mean the Select Board of the Town of Rutland.

“Municipal Separate Storm Sewer System” (or “MS4”) shall mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed

or used for collecting or conveying stormwater and that is: (i) located in the Moon Brook watershed and the Town of Rutland as depicted on Appendix A; (ii) owned or operated by Town of Rutland; (iii) and discharges to surface waters or ground water. MS4 shall not include a combined sewer or any part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR §122.2

“National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” shall mean a permit issued by EPA (or by the State of Vermont under authority delegated pursuant to 33 USC §1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Non-Point Source Pollution” shall mean pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from mining, construction, subsurface disposal and urban runoff sources.

“Non-Stormwater Discharge” shall mean any discharge to the MS4 that is not composed entirely of stormwater.

“Person” shall mean any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner, the owner's agent, or the operator of a premises.

“Pollutant” shall mean anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

“Premises” shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Sediment” shall mean soil, sand, and minerals washed from land into surface waters or onto other lands.

“Sediment Control” shall mean measures that prevent eroded sediment from leaving the Site.

“Septic Permit” shall mean a Vermont Wastewater System & Potable Water Supply Permit.

“Site” shall mean a parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

“Soil Erosion” shall mean when land or soil is diminished or worn due to wind or water.

“Stabilization” shall mean the use of accepted practices that prevent exposed soil from eroding.

“Start of Construction” shall mean the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

“Stormwater” shall mean precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain.

“Stormwater Commission” the public body of the Town of Rutland appointed by the Town of Rutland Select Board to administer and enforce the Ordinance. Upon the adoption of this Ordinance, the Select Board appoints the members of the Town of Rutland Planning Commission to serve as the Stormwater Commission.

“Stormwater Management” shall mean the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge and detrimental changes in stream temperature that affect water quality and habitat.

“Stormwater Management Plan” shall mean a comprehensive plan consistent with the requirements of the Vermont Stormwater Management Manual, as most recently adopted, and designed to manage the volume, rate, and pollutant load of stormwater runoff after a site has undergone final stabilization following completion of the construction activity.

“Stormwater Runoff” shall mean precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.

“Stormwater Treatment Practices” shall mean measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or non-point source pollution inputs to stormwater runoff and water bodies.

“Stream Buffer Area” shall mean those areas within fifty (50) feet of the top of bank of Moon Brook, or a tributary thereto as designated on the map in Attachment B of this Ordinance.

“Surface Waters” shall mean any receiving waters existing on the surface of the ground, including but not limited to; brooks, streams, rivers, wetlands, ponds, or lakes.

“Wastewater” shall mean any water or other liquid, other than uncontaminated stormwater, discharged from premises.

“Watercourse” shall mean any body of water, including, but not limited to lakes, ponds, rivers, and streams.

“Waterway” shall mean a channel that directs surface runoff to a watercourse or to the public storm drain.

Article 3. Enforcement

Sec. 3-1. Enforcement Remedies

The Town of Rutland, by and through its authorized agents, shall have the authority to enforce the provisions of this Ordinance, and any orders, violation notices, or enforcement orders issued hereunder, pursuant to 24 V.S.A., Chapter 59, and may pursue all civil and criminal remedies in connection with any violation hereunder.

- A. Remedies not Exclusive: The remedies set forth herein are not exclusive of any other remedies available, including criminal prosecution, under any applicable federal, state or local law. Election of one remedy shall not preclude pursuing other remedies and nothing herein shall prohibit the Town of Rutland from seeking multiple remedies.
- B. Judicial Bureau Municipal Civil Complaint Ticket: The Town Administrator or other Designated Enforcement Officer may enforce any violation of this Ordinance before the Vermont Judicial Bureau pursuant to Chapter 59 of Title 24 and Chapter 29 of Title 4 of the Vermont Statutes Annotated. Enforcement actions before the Judicial Bureau shall commence by the issuance of a municipal civil complaint pursuant to 24 V.S.A. §1977. On application of the Town of Rutland pursuant to 24 V.S.A. §1974a(c), the Judicial Bureau may order that the violation cease.
- C. Civil Penalties and Waiver Fees: Each day that a violation continues shall constitute a separate violation pursuant to 24 V.S.A. §1974a(a).

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- (1) The first offense ticketed for a violation shall be punishable by a civil penalty of one hundred dollars (\$100.00); the waiver fee shall be fifty dollars (\$50.00);
 - (2) A second offense ticketed shall be punishable by a civil penalty of two hundred dollars (\$200.00); the waiver fee shall be one hundred dollars (\$100.00);
 - (3) A third offense ticketed for shall be punishable by a civil penalty of five hundred dollars (\$500.00); the waiver fee shall be two hundred and fifty dollars (\$250.00); and
 - (4) Upon the fourth offense, or if the civil penalty for all continuing civil ordinance violations is greater than \$800, the enforcement action shall be brought in the Criminal Division of the Superior Court, Rutland Unit, pursuant to 24 V.S.A. §1974a(b).
 - (a) In determining the civil penalty, the Superior Court

D. Stop Work Order:

- (1) In the event that any person holding a Land Disturbance Permit issued pursuant to this Ordinance, or a Subdivision Approval, Flood Hazard Permit, a 19 V.S.A. §1111 dig-in-the street permit, or any other permit issued by the Town of Rutland authorizing land development or land disturbance activities within the areas subject to this Ordinance, violates this Ordinance, the Administrative Officer may issue a Stop Work Order.
- (2) The recipient of a Stop Work Order may appeal the Order of the Administrative Officer by filing a Notice of Appeal with the Chairperson of the Town of Rutland Stormwater Commission with 15 days of the date of the Stop Work Order. The recipient shall file a copy of the Notice of Appeal with the Administrative Officer.
- (3) After receipt of a Notice of Appeal of a Stop Work Order, the Stormwater Commission shall hold a public hearing on the appeal at the next regularly –scheduled hearing of the Stormwater Commission. Not less than 7 days prior to the appeal hearing, the Stormwater Commission shall post notice of the appeal hearing in three or more public places within the Town of Rutland in conformance with the time and location requirements of 1 V.S.A. §312(c)(2) and shall send notice of the appeal hearing to the Appellant by First Class U.S. mail.

E. Revocation of Permit:

- (1) In the event that any person holding a Land Disturbance Permit issued pursuant to this Ordinance, or a Subdivision Approval, Flood Hazard Permit, a 19 V.S.A. §1111 dig-in-the street permit, or any other permit issued by the Town of Rutland authorizing land development or land disturbance activities within the areas subject to this Ordinance, violates this Ordinance, the Administrative Officer may file with the Chairperson of the Town of Rutland Stormwater Commission written Petition for Permit Suspension or Revocation. The Administrative Officer shall send a copy of the Petition for Permit Suspension or Revocation to the permit holder by First Class U.S. mail.
- (2) In the Petition for Permit Suspension or Revocation, the Administrative Officer shall identify the permit and include an explanation of the action, inaction, and/or factual circumstances that constitute violation(s) of the permit.
- (3) The Stormwater Commission shall hold a public hearing on the Petition for Permit Revocation or Suspension within 45 days of the date of the Petition. Not less than 15 days before the public hearing, the Stormwater Commission shall provide public notice as set forth follow the warning and notice procedures set forth in 24 V.S.A. §4464(a)(1)(A) and (B) and shall send a copy of the notice of hearing to the permit holder by First Class U.S. mail.

F. Stormwater Commission Decisions:

- (1) The Stormwater Commission shall issue a written decision on an appeal of a Stop Work Order or a Petition for Permit Suspension or Revocation. The written decision shall include a statement of the factual bases upon which the Stormwater Commission has made its conclusions and a statement of the conclusions. The Stormwater Commission may include in its decision reasonable conditions and safeguards as it deems necessary to implement the purposes of this Ordinance. The minutes of the meeting may suffice, provided the factual bases and conclusions are set forth therein. The written decision shall include a statement of the permit holder's right of appeal.
- (2) The Stormwater Commission shall send a copy of the written decision to the permit holder by First Class U.S. mail.

G. Appeal of Stormwater Commission Decision:

- (1) A permit holder may appeal a decision of the Stormwater Commission to the Criminal Division of the Superior Court, Rutland Unit by filing a complaint and summons as set forth in V.R.C.P. 75(b).
- (2) The complaint and summons must be filed with the clerk of the Criminal Division of the Superior Court, Rutland Unit within 30 days of the date of the date of the Stormwater Commission decision.
- (3) The Criminal Division of the Superior Court, Rutland Unit shall conduct an appeal on the record in the nature of certiorari pursuant to V.R.C.P. 75.

H. Injunctive Relief:

- (1) The Town of Rutland may bring an action in the Criminal Division of the Superior Court, Rutland Unit pursuant to 24 V.S.A. §1974a(b) to prevent, restrain, correct, or abate any violation or activity causing a violation. The Superior Court may exercise all plenary powers available to it, including without limitation, the issuance of an injunction or order to compel the violator to:
 - (a) Eliminate illicit connections and/or non-stormwater discharges to the MS4;
 - (b) Discontinue practices, activities, or operations that lead to violations of this Ordinance;
 - (c) Abatement or remediate stormwater pollution or contamination hazards and the restoration of any affected property;
 - (d) Restore stream banks, other lands, or waterways;
 - (e) Implement source control or treatment through the use of best management practices;
 - (f) Perform of monitoring, analysis, and reporting;
 - (g) Fix and order compensation for any public property destroyed, damaged, or injured;
 - (h) Order reimbursement to the Town of Rutland of expenditures incurred as a result of, or in response to the violation(s) of this Ordinance; and

- (i) Provide access to the Town of Rutland and/or its agents to the subject property as needed to abate or correct the violation.
- I. Enforcement Costs, Expenses, and Attorney's Fees: In any proceedings before the Criminal Division of the Superior Court, Rutland Unit and/or the Vermont Supreme Court in which the Town of Rutland is the substantially prevailing party, the Town of Rutland may recover from the adverse party the enforcement costs, expenses, and attorney's fees reasonably incurred.

Article 4. Illicit Connections and Illegal Discharges

Sec. 4-1. Applicability

Article 4 applies to all properties within the Town of Rutland that are located within the Moon Brook watershed as depicted in Appendix A.

Sec. 4-2. Prohibitions

- A. Solid Waste Disposal: No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any premise, public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, or any surface water of the Town of Rutland any object or material, including but not limited to: Refuse, rubbish, garbage, animal waste, litter, yard waste, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution, or interfere with the operation, maintenance and access to the MS4. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.
- B. Illicit Connections: The construction, use, maintenance, and/or continued existence of illicit connections to the MS4 are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. Illegal Discharges: No person shall discharge or cause to be discharged into the MS4, any materials, including but not limited to pollutants or waters containing any pollutants, other than stormwater, or any materials that may impede the natural flow of stormwater or the functionality of the MS4.
- D. Management of Construction Waste and Debris: Any person conducting activity involving the outdoor generation or storage of construction waste or debris shall comply with the following:

- (1) Construction wastes and/or debris stored in piles and/or open containers shall be covered during windy conditions that would result in the mobilization of debris into the MS4 or waterways, and shall be covered prior to significant forecasted rain (0.25 inches in a 24-hour period); and
- (2) No dumpsters shall be hosed out onto the construction site.

Sec. 4-3. Exemptions

The commencement or continuance of any illegal discharge to the MS4 is prohibited except as follows:

- A. Water line flushing or other potable water sources, landscape irrigation or lawn watering, approved stream flow diversions, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pool draining (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants;
- B. Discharges specified in writing by the Administrative Officer as being necessary to protect public health and safety;
- C. Dye testing is an allowable discharge, but requires a verbal or emailed notification to the Administrative Officer prior to the time of the test; and
- D. Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4 by the Administrative Officer.

Sec. 4-4. Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES stormwater discharge regulation, and/or permit shall comply with all provisions of such regulation and/or permit. Proof of compliance with said regulation and/or permit may be required in a form acceptable to the Administrative Officer prior to the allowing of discharges to the MS4.

Sec. 4-5. Monitoring of Discharges

This section applies to all premises that have stormwater discharges associated with industrial activity, including construction activity.

- A. Access to Premises: The Administrative Officer shall be permitted to enter and inspect any premise subject to regulation under this Article as often as may be necessary to determine compliance with this Article.
- B. If a person has security measures in force that require proper identification and clearance before entry into its premises, the person shall make the necessary arrangements to allow access to representatives of the Administrative Officer.
- C. A person shall allow the Administrative Officer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- D. The Administrative Officer has the authority to:
 - (1) Set up on any permitted premises such devices as are necessary in the opinion of the Administrative Officer to conduct monitoring and/or sampling of the premises' stormwater discharge.
 - (2) Require a person the installation of sampling and/or monitoring equipment as necessary.
 - (a) The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator of the premise at their own expense.
 - (b) All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy. The owner or operator of the premise shall demonstrate calibration techniques and satisfactory operation of the devices to the Administrative Officer upon request.
- E. Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the owner or operator of the premise at the written or oral request of the Administrative Officer and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator of the premise.

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- F. Unreasonable delays in allowing the Administrative Officer access to permitted premises are a violation of this Article. A person who is the operator of a premise with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Administrative Officer reasonable access to the permitted premises for the purpose of conducting any activity authorized or required by this Article.
 - G. If the Administrative Officer has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Administrative Officer may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 4-6. Requirement to Prevent, Control, and/or Reduce Stormwater Pollutants by the Use of Best Management Practices.

- A. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.
- B. Any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

Sec. 4-7. Notification of Spills.

- A. Notwithstanding other requirements of law, as soon as any person responsible for a premises or operation, or responsible for emergency response for a premises or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- B. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

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- C. In the event of a release of non-hazardous materials, said person shall notify the Administrative Officer either in person, by phone, or via email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed or emailed to the Administrative Officer within three business days of the phone or personal notice.
 - D. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge, steps taken to remediate said illicit discharge, and the actions taken to prevent its recurrence. Such records shall be retained on-site by the owner or operator for no less than 5 years.

Article 5. Land Disturbance Permit

Sec. 5-1 Applicability

Article 5 applies to those properties within the Town of Rutland that are located, in whole or in part, in a Stream Buffer Area of the Moon Brook watershed as depicted in Appendix B.

Sec. 5-2 Land Disturbance Permit Application and Approval Procedure

- A. No land disturbance on a property located in whole or in part in a Stream Buffer Area may be commenced without the issuance of a Land Disturbance Permit by the Administrative Officer.
- B. Application for a Land Disturbance Permit shall be on a form prescribed by the Stormwater Commission, and shall include all information required for a Major Erosion and Sediment Control Plan, Simplified Erosion and Sediment Control Plan, and Stormwater Management Plan, as applicable to the proposed activity pursuant to this Ordinance.
- C. **Technical Review:** The Stormwater Commission shall have the authority, but not the obligation, to secure professional services to provide technical assistance with the review of a Land Disturbance Permit application and any accompanying documents. The applicant shall bear the cost of such technical assistance to the Town of Rutland.
- D. **Land Disturbance Permit Requirements and Standards:** A Land Disturbance Permit shall incorporate all applicable requirements, findings and conditions related to erosion and sediment control pursuant to Article 6 of this Ordinance, and post-construction stormwater management pursuant to

Article 7 of this Ordinance. In addition, the Stormwater Commission shall apply the following requirements and standards:

- (1) The clearing of existing trees of greater than 3 inches diameter at breast height that are not dead, diseased, or heavily damaged by ice storms or other natural events, and the clearing of any other vegetation other than Class A or Class B Noxious Weeds, as defined by the Vermont Agency of Natural Resources, is permitted only upon identification of trees to be removed and the identification of supplemental plantings and protective measures to be installed;
- (2) Any project involving the clearing of existing vegetation, addition or modification of impervious surface or structures, or disturbance of more than 5,000 square feet of land surface area located within the Stream Buffer Area shall require a Land Disturbance Permit and submittal of a Simplified Erosion and Sediment Control Plan, as defined in this Ordinance;
- (3) Unless authorized by the Stormwater Commission in conjunction with review of a Land Disturbance Permit and Simplified Erosion and Sediment Control Plan, no new or expanded impervious surface or building area shall be constructed within the Stream Buffer Area and no turf grass lawn area shall be established or expanded, within a horizontal distance of 10 feet from the top of the stream bank;
- (4) For a lot where a single-family and two-family residential use exists on the Effective Date of this Ordinance, or is proposed, and that includes land within the Stream Buffer Area, 1 accessory structure with a floor area located at grade, or involving land disturbance for footings and pilings totaling less than 20 square feet, may be permitted at least 20 feet horizontal distance from the top of the stream bank;
 - (a) On lots subject to subsection 4, tree houses and decks or similar structures, without at-grade floor area, and involving land disturbance for footings or pilings totaling less than 20 square feet, may be sited at least 10 feet horizontal distance from the top of the stream bank;
- (5) Any application for land disturbance or subdivision review involving a lot that includes land within the Stream Buffer Area shall include provisions to demarcate, with sturdy plantings, fencing, or a combination thereof, a boundary line shall be located no less than 10 feet a horizontal distance from the top of the stream bank;

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- (a) This requirement shall not apply to the modification of an existing single-family or two-family residential use,
- (6) Any lots within the Stream Buffer Area that are subject to land disturbance on or after the Effective Date of this Ordinance shall be seeded or stabilized. Lands lying within a horizontal distance of 10 feet from the top of stream bank shall be seeded with a combination of trees, shrubs, and plantings. Where ground cover or grasses are planted, a naturalized mix of grasses suitable to the climate of Central Vermont shall be utilized, rather than sod or standard turf grass, and the vegetation shall not be mowed more than once per calendar year after establishment; and
- (7) Where a lot abuts a hardened stream channel, or where impervious surfaces, structures, or operation of use exist within 10 feet horizontal distance from the top of the stream bank on of the Effective Date of this Ordinance, the Stormwater Commission may exempt the application from these standards and requirements, provided other supplemental landscaping, tree planting, erosion control, are/or stormwater treatment measures are implemented.
- E. Review and Approval: The Stormwater Commission shall review each application for a Land Disturbance Permit to determine its conformance with the provisions of this Ordinance, unless explicitly exempted within this Ordinance. Within 45 days after receipt of a complete application, the reviewing authority shall render a written decision.
- (1) The Stormwater Commission may approve the application subject to such reasonable conditions as it deems necessary to secure substantially the objectives of this Ordinance. Such conditions may include the submission of a Simplified Erosion and Sediment Control Plan for land disturbance activity that has the potential to cause significant erosion, result in the transport of sediment to surface waters or the MS4, or to endanger property or public safety if not properly mitigated and controlled.
- (2) The Stormwater Commission may require a permit holder to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the plans approved pursuant to Article 6 and/or Article 7 and/or any other permit condition(s).
- F. Denial of Application: A denial of a Land Disturbance Permit application shall include a statement of the reason(s) and shall inform the applicant of the procedure for submitting a revised application to address any deficiencies.

Sec. 5-3 Appeal of Land Disturbance Permit Decision

- A. A permit holder may appeal a decision of the Stormwater Commission to the Civil Division of the Superior Court, Rutland Unit by filing a complaint and summons as set forth in V.R.C.P. 75(b).
- B. The complaint and summons must be filed with the clerk of the Civil Division of the Superior Court, Rutland Unit within 30 days of the date of the date of the Stormwater Commission decision.
- C. The Criminal Division of the Superior Court, Rutland Unit shall conduct an appeal on the record in the nature of certiorari pursuant to V.R.C.P. 75.

Article 6. Erosion and Sediment Control**Sec. 6-1. Applicability of Erosion and Sediment Control**

- A. Article 6 applies to those properties within the Town of Rutland that are located, in whole or in part, in a Stream Buffer Area of the Moon Brook watershed as depicted in Appendix B, upon which occur any land disturbance activity that causes or results in clearing, grading, and/or construction.
- B. All projects undertaken by the Town of Rutland within a Stream Buffer Area shall be subject to the applicable provisions of this Article.
- C. Article 6 does not apply to land disturbance activity that is subject to the provisions of the Vermont Construction General Permit 3-9020 (2006) for Stormwater Runoff from Construction Sites, as amended, or which is otherwise exempted under this Ordinance.
- D. Determination of Stream Buffer Area Boundaries: A Stream Buffer Area shall be defined as those areas within 50 feet horizontal distance from the top of the stream bank. In any uncertainty exists as to the boundary of the Stream Buffer Area, the Stormwater Commission shall determine the location of the boundary.

Sec. 6-2. Prohibitions.

No person required to obtain a Land Disturbance Permit, Subdivision Approval or any other form of approval for land disturbance activities, shall cause, allow or permit the release of any sediment created by soil erosion resulting from these activities, to any other property, the MS4 or surface waters.

Sec. 6-3. Erosion and Sediment Control Requirements

In order to obtain a Land Disturbance Permit pursuant to Article 5, the applicant must comply with the following erosion and sediment control provisions:

- A. For any project that will disturb more than one acre of land, the applicant shall submit evidence of an application to the Vermont Department of Environmental Conservation for coverage under the Vermont Construction General Permit 3-9020 (2006) for Stormwater Runoff from Construction Sites, as amended, or for an Individual Construction Stormwater Discharge Permit, whichever applies;
- B. For any project that will disturb more than one acre of land under a Common Plan of Development, but which is not subject to the requirements of Vermont Construction General Permit 3-9020 (2006), the applicant shall submit a Major Erosion and Sediment Control Plan, as defined in this Ordinance, in conjunction with the application for a Land Disturbance Permit;
- C. Any project involving the clearing of existing vegetation, addition or modification of impervious surface or structures, or disturbance of more than 5,000 SF of land surface area located within the Stream Buffer Area of Moon Brook, as depicted on the map in Appendix B of this Ordinance, shall require a Land Disturbance Permit and submittal of a Simplified Erosion and Sediment Control Plan, as defined in this Ordinance; and
- D. The Administrative Officer may require application for a Land Disturbance Permit and submittal of a Simplified Erosion and Sediment Control Plan for any land disturbing activity that, in his or her sole determination, has the potential to cause significant erosion, result in the transport of sediment to surface waters or the MS4, or endanger property or public safety if not properly mitigated and controlled.

Sec. 6-4. Exemptions.

The discharge of any sediment from land disturbance activities approved by the Town to any other property, the MS4 and/or surface waters is prohibited except as follows:

- A. Any emergency activity that is immediately necessary for the protection of life, property or natural resources; and
- B. Any nursery and/or agricultural activity operating as a permitted principal or accessory use on a parcel.

Sec. 6-5. Erosion and Sediment Control Plan.

- A. The requisite content of a Major Erosion and Sediment Control Plan, as applicable, shall be governed by in Vermont General Permit 3-9020 for Stormwater Runoff from Construction Sites, as most recently amended.
- B. The content of a Simplified Erosion and Sediment Control Plan shall be as set forth in the Vermont *Low Risk Site Handbook*, as most recently amended.
- C. Design Requirements. All erosion control practices, sediment control practices, waterway and watercourse protection practices and construction site access practices shall be adequate to prevent transportation of sediment from the site.
 - (1) For Major Erosion and Sediment Control Plans, all practices, at a minimum, shall meet the design requirements set forth in the Vermont Handbook for Erosion Prevention and Sediment Control, as most recently amended; and
 - (2) For Simplified Erosion and Sediment Control Plans, all practices, at a minimum, shall meet the design requirements set forth in the Vermont *Low Risk Site Handbook*, as most recently amended.
- D. In the event of a conflict between the aforementioned design requirements and any adopted provisions or standards of the Town of Rutland, the stricter standards shall prevail.

Sec. 6-6. Access to Land Disturbance Activities.

The Administrative Officer shall be permitted to enter and inspect any land disturbance activities subject to regulation under this Article as often as may be necessary to determine compliance with this Article.

Sec. 6-7. Inspection Requirements.

The Administrative Officer shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. To obtain inspections, the applicant or their agent shall notify the Administrative Officer via email, telephone, or written communication at least 3 working days before the following:

- A. Start of construction, which shall include inspection of the limits of disturbance to ensure the limits are correctly and fully demarcated on the site;

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- B. Installation of all sediment and erosion control measures;
 - C. Completion of site clearing;
 - D. Completion of rough grading;
 - E. Completion of final grading;
 - F. Close of construction season; and
 - G. Completion of final landscaping.

Sec. 6-8. Inspection Certifications.

In lieu of the inspection requirements outlined in Section 6-7, the Administrative Officer may allow or require that the applicant or their agent provide a written certification from a professionally-licensed engineer, or a certified professional in erosion and sediment control, certifying compliance with the Erosion and Sediment Control Plan as approved upon completion of the activities enumerated in Section 6-7 above. The applicant or their agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined in the Land Disturbance Permit, and shall provide written certification to the Administrative Officer upon completion of each inspection, noting any remedial action required to achieve compliance with the Erosion and Sediment Control Plan.

Article 7. Post-Construction Stormwater Management

Sec. 7-1. Applicability of Post-Construction Stormwater Management Requirements.

Article 7 applies to land development activities as enumerated in § 7-3, unless otherwise exempted under §7.5. All projects undertaken by the Town of Rutland within a Stream Buffer Area shall be subject to the applicable provisions of this Article.

Sec. 7-2. Prohibitions.

No person required to obtain a Land Disturbance Permit or Subdivision Approval shall improperly manage stormwater runoff associated with these activities, and shall conform to the requirements of this Article.

Sec. 7-3. Stormwater Discharge Permits.

No person shall be granted a Land Disturbance Permit or Subdivision Approval or other approval for any land development activities regulated under this Ordinance without compliance with the following provisions:

- A. Projects that result in more than one acre of total impervious surface shall require evidence of application to the Vermont Department of Environmental Conservation for coverage under General Permit 3-9015 for Stormwater Discharges or an Individual Stormwater Discharge Permit, as applicable;
- B. Projects resulting in more than one acre of land disturbance, whether as an individual project or under a Common Plan of Development, but resulting in one acre or less of total impervious surface, shall require approval by the Stormwater Commission of a Stormwater Management Plan equivalent to the requirements of General Permit 3-9015 for Stormwater Discharges as enumerated in the Vermont Stormwater Management Manual (Volumes I and II), as most recently amended. Such approval shall be granted in conjunction with issuance of a Land Disturbance Permit as set forth in Article 5 of this Ordinance; and
- C. Any project that, in the opinion of the Administrative Officer has the potential to cause significant erosion, result in the transport of sediment to surface waters or the MS4, or endanger property or public safety as a result of the discharge of unmanaged stormwater runoff from impervious surfaces on the site shall be regulated pursuant to a Stormwater Discharge Permit issued by the Stormwater Commission.

Sec. 7-4. Exemptions.

The following activities shall be exempt from the provisions of this Article:

- A. Any emergency activity that is immediately necessary for the protection of life, property or natural resources;
- B. Farming or Agriculture, as defined in the Vermont Department of Agriculture Accepted Agricultural Practice Regulations in force at the time of application; and
- C. Forestry operations, as defined in 10 V.S.A. §2602(e).

Sec. 7-5. Stormwater Management Plans

- A. Content. The content of a Stormwater Management Plan shall be as set forth in the Vermont Stormwater Management Manual, as most recently amended.

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- B. Review and Approval. Review and approval of a Land Disturbance Permit that includes a Stormwater Management Plan shall be as set forth in Article 5 of this Ordinance.
 - C. Design Standards. All stormwater management practices, sediment control practices, waterway and watercourse protection practices and construction site access practices shall be adequate to prevent transportation of sediment from the site. At a minimum, all stormwater management practices in a Stormwater Management Plan shall meet the design requirements set forth in the Vermont Stormwater Management Manual, as most recently adopted.
 - D. In the event of a conflict between the aforementioned design requirements and any adopted provisions or standards of the Town of Rutland, the stricter standards shall prevail.

Sec. 7-6. Maintenance of Stormwater Management Practices

A Maintenance Plan shall be prepared and approved in conjunction with all Stormwater Management Plans. The Maintenance Plan shall include detailed maintenance and repair procedures to ensure the continued function of all stormwater management measures, including those landscaped or surfaced areas that are integral to the function of the Plan. The Maintenance Plan also shall include:

- A. Landscape Plan. The applicant must present a detailed plan for the management of vegetation at the site after construction is finished, including identification of all landscaped areas or practices that are to provide stormwater treatment and control, the responsible party for maintenance of vegetation at the site, and practices that will be employed to ensure the healthy condition and function of landscaped areas;
- B. Maintenance Easements. The applicant must ensure access to all stormwater treatment practices at the site for the purpose of inspection and repair by securing all of the maintenance easements needed on a permanent basis. These easements shall be recorded in the land records before the issuance of a Land Disturbance Permit and shall run with the land;
- C. Maintenance Agreement. The applicant must execute a Maintenance Agreement binding on all subsequent owners of land served by a stormwater management measure included in the approved Stormwater Management Plan. The Maintenance Agreement shall specify the required maintenance measures for all stormwater treatment practices, including landscaped or surfaced areas providing stormwater treatment and control, along with a maintenance schedule specifying when and how often maintenance shall be performed on each stormwater treatment practice. The Maintenance

Agreement shall be recorded in the land records of the Town of Rutland before the issuance of a Land Disturbance Permit; and

- D. **Maintenance Records.** The holder of a Land Disturbance Permit maintain records that verify that all required maintenance and inspections were performed in conformance with the approved Stormwater Management Plan. Each of these records shall be maintained for no less than 3 years and shall be made available to the Administrative Officer upon request.

Sec. 7-7. Access to Stormwater Treatment Practices.

Where stormwater treatment practices are being, or have been, constructed subject to regulation under this Article, the Administrative Officer shall be permitted to enter and inspect any land disturbance activities as often as may be necessary to determine compliance with this Article. A. **Access to Premises:** The Administrative Officer shall be permitted to enter and inspect any premise subject to regulation under this Article as often as may be necessary to determine compliance with this Article.

Sec. 7-8. Inspection Requirements.

The applicant shall notify the Administrative Officer in advance of the start of construction. The Administrative Officer shall inspect the approved stormwater treatment practices during the construction phase, and upon notification of completion. If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. No additional work shall proceed until any violations are corrected and all work previously completed has received approval from the Administrative Officer.

Sec. 7-9. Inspection Certifications

In lieu of the requirements outlined in Section 7-9 of this Article, the Administrative Officer may, upon request of the applicant, allow or require that the applicant or their agent provide a written certification from a professionally licensed engineer certifying compliance with the Stormwater Management Plan as approved.

Sec. 7-10. Surety Requirements

As a condition of approval and issuance of a Land Disturbance Permit, the Stormwater Commission require the permit holder deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved Stormwater Management Plan and other related permit conditions. Such surety bond or irrevocable letter of credit may be required to be in place for a period of up to three (3) years following completion to ensure the establishment of landscaping and the proper performance of stormwater treatment required by the permit.

Sec. 7-11. As-Built Drawings

Within thirty (30) days of substantial completion of a project, the permit holder shall submit as-built drawings of all stormwater treatment practices to the Administrative Officer.

Article 8. Effective Date

Unless a petition is filed in accordance with 24 V.S.A. §1973, this Ordinance shall become effective 60 days after the date of its adoption. If a petition is filed in accordance with 24 V.S.A. §1973, the Ordinance shall take effect as provided by 24 V.S.A. §1973(e).

This Ordinance is hereby adopted this _____ day of June, 2017.

RUTLAND TOWN, VERMONT

SELECT BOARD

Joshua Terenzini

John Paul Faignant

Mary Ashcroft

Chris Kiefer-Cioffi

Joseph Denardo