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# Final Management Plan, The Greenberg Headwaters Park

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Prepared for  
Town of Bennington Select  
Board  
205 South Street  
Bennington, Vermont  
05201

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Town of Bennington Select Board  
205 South Street  
Bennington, VT 05201

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Final Management Plan, The Greenberg Headwaters Park  
Adopted by Bennington Select Board on \_\_\_\_\_

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## **I. Background**

The Town of Bennington purchased the Greenberg Headwaters Park (Headwaters) in March 2015 from the Norman and Selma Greenberg estate. The property is about 168 acres in size and encompasses the confluence of South Stream and Jewett Brook, and a portion of the Walloomsac River downstream from that confluence. The Park is located just a few blocks east of downtown Bennington.

Funds raised for the purchase included a \$122,000 grant from the Vermont Housing and Conservation Board (VHCB), and a little over \$100,000 in private donations from individuals, businesses, and foundations.

The Park is protected by a permanent conservation easement held by the Vermont Land Trust (VLT). The easement will ensure that the biological diversity, important wildlife habitat, and natural communities on the site and the ecological processes that sustain these natural resource values are protected in perpetuity; and that the trails, wetlands and uplands are forever available to the public for walking, kayaking, birdwatching, and other low-impact outdoor experiences. A map of the protected property and those few acres excluded from the easement area can be found as Map 1 in this plan.

### **A. Interim Management Plan**

An interim management plan was adopted in March 2015 by the Town of Bennington. The interim plan pledged a final plan within a year of the date of the closing, to be developed by the Bennington County Conservation District (BCCD) with the assistance of the Friends of Headwaters Park (Friends). That interim plan envisioned the final document as sets of maps, 1) describing the site's natural resources; 2) elements such as buffers which serve to protect those resources, or, conversely, elements such as invasive species which threaten them; and 3) zones of allowable disturbances, from none to maximally disturbing. For each zone, lists of allowable actions were to be proposed. Taken together, those lists were to outline – but not prescribe – the desired future condition for each part of the Park, and to guide future managers in their management decisions. Management zones are shown on Map 2 of this Plan.

The interim management plan also recommended that several steps be taken to maximize the new Park's potential as soon as possible, given limited resources available to the Friends and the Town. Some actions are not yet completed and will be addressed during the next stage of the development of the Park. They include

- Soliciting educator input on how the Town's schools can use the project site as an outdoor education laboratory.
- Where appropriate, additional parking areas will be created.
- All parking areas will be appropriately signed. (Note: interpretive panels in kiosks will be erected at the renovated parking area at the Beech Ball field and the informal parking area off Belvedere Street before the end of 2015.)
- ADA-compliant access will be explored.
- A new bridge across the rivulet on the west edge of the Beech Street ball field will be built.
- Submit a wetland determination petition and/or apply for wetland permits as needed for the installation of new amenities within the wetland boundary. (This process is still in its early stages.)
- Develop a fundraising plan for the improvement of existing and the development of new amenities.

### **B. Process of Creating Final Management Plan**

The Friends group met three times in the summer of 2015 and held five outings or events in the

summer and fall of 2015. The meetings and outings were intended to increase participation in the Friends group and encourage use of the Park, to educate the public regarding the site's potential, and to solicit explicit recommendations for amenities and improvements at the Park. Additionally, a core group representing the Town and the Friends met several times. Staff from BCCD also met with a graphic designer, an engineer, a mowing contractor, the Vermont Natural Resources Conservation Service (NRCS) Wildlife Biologist and Bennington County soil conservationist, and the State's wetland scientist for the region. These meetings addressed maintenance issues, trail building, interpretive kiosk design and content (two kiosks will be installed in 2015), new parking areas, wetland permitting and others, all as required by the interim management plan.

Also as required by the interim plan, members of the Town highway crew and facilities staff rebuilt a parking area, mowed trails, responded to public complaints about camping and littering, and assisted in clean ups. Two contractors were also hired to mulch-mow trails. The Bennington Police responded routinely to public complaints about illegal ATV use and campfires. Members of the Friends reached out to ATV users to explain the easement's prohibition of motorized uses. Signage regarding this prohibition as well as others such as "no camping" and "no fires" was installed at various entrances to the park.

### **C. Amendment and Implementation**

This plan is designed to assist managers through 2021. It should be revised at that time. Amendments may be made at any time according to I.B, paragraph 1 of the Grant of Development Rights, Conservation Restrictions, and Public Access Easement, Appendix 1 of this Plan.

The plan's implementation will be the responsibility of the Town, with help provided by the Friends of Headwaters and other community volunteers.

Maintenance of and improvements to Headwaters will be the responsibility of the Town's Department of Facilities/Buildings and Grounds and the Town Highway Department. Both have offices at 205 South Street, Bennington, VT 05201. Facilities Manager Larry McLeod can be reached at 802-442-1037. Highway Foreman R.J. Joly can be reached at 802-442-1037.

## **II. Property Description**

### **A. Natural Resources, General**

The Greenberg Headwaters Park a mix of open water, streams, wetlands and uplands, is an exemplary natural area located just blocks from the community's downtown and within an established neighborhood of mostly single family homes.

Jewett Brook and South Stream drain the southern portion of the property. The Walloomsac River, forming at their confluence, cuts through the northern section. All three watercourses are deep enough to be navigable for at least portions of their length at least part of the year. Fish population surveys last done in 1993 documented the presence of wild brook, brown and rainbow trout populations in South Stream, and of wild brown trout populations in Jewett Brook.

In the summer and fall of 2014, Michael Batcher, Regional Planner with the Bennington County Regional Commission as well as a Professional Wetland Scientist, mapped vegetative cover types, with a particular focus on the wetlands, on the project site. He found that most of the site, about 98 acres, is emergent or shrub swamp (a Vermont Class 2 significant wetland type), or floodplain forest. The wetland boundary as mapped by Mr. Batcher was considered by the Vermont Land Trust in its easement document as the boundary of the "ecological protection zone." About 37.4 acres are upland forest, and 27.4 acres are open, successional and disturbed uplands. A former trolley line occupies about 3.1 acres. His map of cover types is included as Map 3 of this Plan.

In the summer of 2015, staff from the Bennington County Conservation District and a student in the Community College of Vermont's Emerging Leaders program mapped all the ashes greater than six inches in diameter in the northern floodplain forest. The mapping was done in preparation for the eventual arrival of the emerald ash borer, as it will help the Town and the Friends decide which, if any, ash trees it chooses to treat against this invasive insect. (The interim management plan considered white ashes, *Fraxinus americana*, an endangered species. The mapping project also identified black ash, *F. nigra*, and, possibly, green ash, *F. pennsylvanica* – which, for the purposes of this plan, will also be considered endangered.) The map of ashes in the northern part of the parcel is available at BCCD.

In the summer of 2015, Vermont NRCS State wildlife biologist Toby Alexander and soil conservationist Philip Rivara visited the Park to offer advice on managing three discreet old field habitats: on either side of Morgan Street on the south (about five and two acres), and on the east side of Morgan Street on the north (about eleven acres). Mr. Alexander noted that all three fields are invaded to lesser or greater extent by exotic non-native shrubs, especially bush honeysuckles and buckthorn. All the fields, however, also contain native trees and shrubs which can be encouraged to occupy larger portions of the site, to the benefit of shrubland birds, pollinators, grassland dependent skippers (a type of butterfly), small mammals, and reptiles and amphibians. His report is included as Appendix 2 of this Plan.

## **B. Cultural and Recreational Resources, General**

### **1) Terrestrial Trails and Linkages**

An abandoned trolley line about 0.6 miles in length runs generally NNE to SSW on the west side of the site. The northern approximately 0.2 miles are grown in; the remaining length of the old rail bed is traversable. The trolley ballast underfoot there is sound; and drainage is generally good. The trolley line was brushhogged twice in the summer of 2015, the second time with a mulching mower. Much of the trolley line was also raked by volunteers at a work event held in October 2015, to increase ease of walking on the trail.

Approximately 2.4 miles of informal trails provide additional easy access to various parts of the site, including to Jewett Brook and the Walloomsac River.

A loop trail of about 3,327 feet in length traverses the old field east of Morgan St. In summer of 2015 that trail system was mowed. The southern end, largely covered in brome grass, was cut by the Town highway crew using their equipment. The northern portion, mostly vegetated in native and non-native invasive shrubs, was cut with a mulching mower. That length of trail is now wide enough to be mow-able using Town equipment in the future.

In low water, passage can be had across Jewett Brook to what is largely a sandy knoll, the center of which is located about 500 feet northeast of the Morgan Street crossing of the Brook. The knoll too is cut with a network of informal trails. A Trails subcommittee of the Friends has agreed to close off all but 2,736 of trail at that location. A short length of the trail near a viewpoint over a pond may require bog-bridging.

The upstream end of the Walloomsac River is crossed by a Town-owned footbridge, which also supports a water main underneath. The bridge provides good access for anglers to one of several deep pools in the network of water that laces the site.

The linkages to adjoining neighborhoods and nearby open spaces the site incorporates are exceptional features of the property.

A Town-owned ball field and parking area lie adjacent to the site on the northeast, providing easy access for residents of the Beech Street neighborhood. An interpretive kiosk will be installed near the parking area in 2015.

On the northwest, a Town right of way and a path through a town-owned cemetery provide access to the site from Main Street (VT Route 9) and neighborhoods north and south. The Belvedere Street right of way leads to and from the project site, providing access for residents of the Morgan Street neighborhood. An interpretive kiosk will be installed at the east end of Belvedere Street in 2015.

Some linkages aren't yet developed. They include a link from the southern terminus of the trolley line to a log landing in the Y Woods on Middle Pownal Road, and from there to trails in the Y Woods. And it includes a link from the southwestern corner of the Park through the State-owned Route 279 right of way, and thence south to the 96-acre Greenberg Nature Reserve owned by the non-profit One World Conservation Center, and to its education center.

Map 4 illustrates the existing trail system at Headwaters Park. Map5 illustrates possible new linkages to Headwaters.

## **2) Waterways**

The site's watercourses are also connecting corridors. Jewett Brook is floatable in higher flows both up- and downstream of an occasionally used put-in near Morgan Street. Downstream, the Walloomsac River is navigable in higher flows to near Main Street (VT Route 9) and a Town-owned parking area on the right bank there (though the bank is steep). Both South Stream and the Walloomsac River, as well as the downstream reaches on Jewett Brook, are traversable on foot by anglers or other river explorers.

## **3) Existing Amenities**

Participants in the public meetings held to discuss the future of the park pointed out several potential or existing recreational resources that could be enhanced. They include

- Three fishing access sites, at pools located in Jewett Brook and the Walloomsac River
- A swimming hole in the Walloomsac River
- A possible viewpoint to the northeast at a high point in the old field east of Morgan Street
- A viewpoint to the west from a high point in the upland forest overlooking South Stream. The site is already known locally as "the balcony."
- A clearing at the east end of Belvedere Street which could easily be made into a parking area.
- A pull off on Morgan Street south of Jewett Brook which could be expanded into a lot to serve kayakers.
- A trail from the edge of the new parking lot at the Beech Street ball field to the bridge near the entrance to the Park. (The Town plans to install a kiosk at the entrance to this trail in 2015.)

These and possible new amenities are discussed in greater detail in Section III of this Plan.

## **III. Management of the Park**

The overarching goal for management of the Park is to provide low impact recreational opportunities while protecting the site's natural communities and ecological processes. The Grant of Development Rights, Conservation Restrictions, and Public Access Easement envisions the property as comprising three different zones, two of which by law must be governed according to that principle: the ecological protection zone (EPZ) and the protected property. The third zone is excluded land. With the following exception, allowed uses in the EPZ and the protected property are identical. Within the protected property only, one or two parcels of land, located south of Belvedere Street, west of the former trolley line, and east of Morgan Street, and totaling no more than two acres, may be conveyed to a Vermont Housing and Conservation Board-eligible entity for use as affordable single-family housing. (The easement does not require such conveyance.) Uses of the excluded land are not prescribed in the

easement document (they are “excluded” from the easement), although those sites were purchased by the Town and are incorporated in Headwaters Park.

While the easement document provides a legal framework which must be followed in all future management actions, the Park can be further divided into discreet management zones on the basis of their natural communities. Such zones can then be described according to uses ecologically best suited for them. This plan proposed four such zones:

- The ecological protection zone or mapped wetland, and the watercourses which flow through it
- The wetland buffer – a fifty-foot buffer on the outside edge of the wetland, which dimension is also a legal entity as defined by the State of Vermont’s Wetland Rule
- The active management zone – the floodplain forest; former trolley line; open, successional and disturbed uplands, and upland forests shown on Map 2.

The Greenberg Headwaters Park is an extraordinary natural and recreational resource without regard to its spatial context. As one of several links in a potential network of streams and trails and greenways, however, stretching from One World Conservation Center and the Greenberg Preserve near the Bennington/Pownal border to the Robert Frost Trail in North Bennington and Shaftsbury, its recreational value is multiplied many times. There are, however, gaps in this network of green (and blue – along Jewett Brook, along the Walloomsac River, and along Paran Creek). One has been the subject of much effort by the Town of Bennington and the Bennington Regional Planning Commission. This, the “Ninja Trail,” is already partially cleared. As envisioned, it stretches from the Town’s River Walkway near Benmont and Depot Streets, along Benmont Street, over the Hunt Street pedestrian bridge, along the Walloomsac River to the Morse Industrial Area, across Furnace Brook, under the Vermont Route 279 overpass, and along Vermont Route 67A to Bennington College. Map 6 illustrates the route of the proposed Ninja Trail.

Another gap, owned by the Vermont Department of Transportation (VTrans), lies between Headwaters Park and the Greenberg Preserve to the south. While not controlled by the Town, this gap in effect constitutes a fourth management zone for Headwaters Park. A brief discussion of how this gap might be filled is therefore also incorporated in the Plan.

The following discussion of uses suitable for each zone is a compilation of ideas expressed and recommendations made at meetings of and outings for the public and for the Friends of Headwaters Park, by members of an ad hoc Headwaters Park trails crew, by consulting natural resources professionals, and by staff from the Town of Bennington, the Vermont Land Trust, the Bennington County Conservation District, and others.

#### **A. The Ecological Protection Zone (EPZ) or mapped wetland**

The EPZ is a state-significant wetland complex that includes areas of forested wetland, emergent marsh, and open water totaling about 86 acres. Its boundaries are coterminous with the boundaries of the wetland mapped by Michael Batchner in 2014, and include those portions of South Stream, Jewett Brook and the Walloomsac River located inside the boundary of the wetland. (Surveys conducted since the land was conveyed to the Town suggest that a portion of the “floodplain forest” cover type located in the northwestern portion of the Park might better be mapped as wetland and therefore included in the EPZ. The easement document makes provision for changing the boundaries of the EPZ by mutual agreement of the Grantor and Grantee. This Plan specifically recommends revisiting the floodplain forest at some time in the future to ascertain its true wetland status, and, if appropriate, to remap it and revise this Plan accordingly.)

#### **1) Beaver**

Beaver activity is a major shaper of this landscape. Neighbors tell of ice skating years ago on a large pond in the south-central portion of the wetland which no longer exists. Aerial photographs show that South Stream has occupied a number of channels in the past, channels that may have formed in response to beaver occupation elsewhere in the wetland. Indeed, certain beaver sloughs have grown larger in the few months before and after the purchase of the Park by the Town, and water levels in the large pond that drains to Jewett Brook near the Morgan Street bridge have fluctuated widely in that same period. (It is unclear, however, what role human intervention may have played in those changes in water levels.)

From time to time, beaver dams on Jewett Brook have threatened to cause flooding of yards of residents near the Morgan Street bridge, or of Morgan Street itself. Occasionally, Town crews would respond by dismantling the dams. More often, it has been reported, area residents would take action themselves. In fact, the State game warden for the area gave permission to at least one nearby landowner to act to limit beaver damage whenever the need arose, without any need to notify the Town or State.

Lands of those near Headwaters Park, and especially near the Morgan Street crossing of the Brook, will continue to be protected as necessary from flooding caused by beaver in the future. However, per the terms of the easement, any action will be taken only by the Town and only in accordance with Best Management Practices for Resolving Human-Beaver Conflicts in Vermont (BMPs), published by the Vermont Fish & Wildlife Department and the Vermont Department of Environmental Conservation in 2002, revised in 2004. A pamphlet summarizing that document is included as Appendix 3 of this Management Plan. As a courtesy, the Town will notify the Vermont Land Trust Regional Stewardship Manager of the proposed action and will reference in that notification the section of the BMPs justifying the action. A response such as this is also authorized, without any requirement for notification, by the Vermont Wetland Rules (2010) (Rule) Allowed Uses Section 6.15, "wildlife or fisheries management activities, including the removal of beaver dams."

## **2) Floaters' trails**

All activities taking place within the EPZ must conform to the Rule. The Rule requires a permit for all proposed uses in the wetland and its 50' buffer except "allowed uses" as defined in Section 6 of the Rule. Wetland permits are generally provided when it can be proven that the proposed use poses no threat of undue adverse effect, other than a minimal impact, on protected wetland functions and values.

Much of the rationale for the Town's purchase of the land and a frequently noted opportunity at outings and meetings of the public and the Friends is the potential the Park provides for floating trails and for trails generally. Representatives of both the Town's Economic Development and Facilities Departments have expressed hope that floating trails, an otherwise locally uncommon recreational opportunity, can be made available to residents and visitors.

But access to the waterways, and comfortable passage through them (without major blowdowns or overhead obstructions) is key to making them available to a floating constituency with a variety of skills and mobilities. The Friends and the Town's committee members agree that floating access areas should be sited at the pond near the Morgan Street crossing of Jewett Brook, and on the downstream side of the bridge over the Brook, on the right bank looking downstream. Other locations could include the bridge over the Walloomsac River.

Both sites are located within the EPZ and thus will require a wetland permit for construction, unless structures referenced in Section 6 of the Rule, specifically catwalks or footbridges as elaborated upon in Section 6.16, Best Management Practices for Duck Blinds, Fences, Catwalks, Docks, Appendix 4 of this Plan, can be constructed. This Plan calls for catwalks at those launching sites as one of two

options. Such catwalks must be constructed of untreated wood such as hemlock, northern white cedar, white oak, or black locust (all are resistant to rot when intermittently wetted). These materials are somewhat costly compared to, for example, treated wood. Such structures would also be liable to damage by flood and ice, and may need to be removed for the winter and early spring months.

The second option, and the more feasible and cost effective if permissible, is to secure a Wetland Rules General Permit for trail construction in a natural area and at a surface water margin as defined in the Vermont Wetland General Permit (3-9025), Appendix 5 of this Plan. The permit could allow up to 3000 square feet of mowing or cutting woody vegetation to inexpensively create and maintain walkable access trails. (Mowed trails would also have the advantage of reducing the threat of wild parsnip, unfortunately common in this area.) Removable docks or ramps could also be placed at the water edge at the pond and the Brook, if permissible. Such features would have to be removed in the off season to protect them from flood and ice.

The Town hopes to expand an existing pull-off south of the Morgan Street crossing of Jewett Brook, to provide convenient parking for would-be floaters. A general permit application could include a request to cut, mow, and maintain a trail from the enlarged parking area to the pond and the Brook, and with the other proposed access trails, likely remain under the 3000 square foot permit threshold. The trail would unavoidably cross either wetland or wetland buffer, but would provide floaters with a safer alternative to walking along the side of Morgan Street, a very busy road with a narrow shoulder.

A general permit request could also reference clearing of debris in and over the Jewett Brook channel both up and downstream of the Morgan Street bridge. A work day late each April or after flood events could maintain a safe, though challenging, floating route in the Brook.

General permits are good for five years.

Proposed floaters' access trails are illustrated on Map 7.

### **3) Terrestrial trails within the EPZ**

Members of the Friends' ad hoc trail crew suggest that a loop trail be created from the floater's pond, across its outlet stream (either on a bridge or natural substrate), and along a former dam to the network of trails on the sandy knoll. Some length of this proposed connector would traverse wetland and wetland buffer, and would therefore require a wetland permit. It should be noted, however, that the crossing of the outlet stream could require a good deal of maintenance. Beaver seem to keep at least a low and leaky dam at the outlet. A higher dam could threaten the safety and longevity of a constructed crossing, and a crossing on natural substrate, e.g. beaver dam material, might be hard to make attractively walkable. Nonetheless, this Plan proposed pursuing such a connection in future.

### **4) Non-native invasives**

Most of the woody vegetation in the EPZ, in so far as it has been explored, seems to consist of native species. An exception is the eastern interface of the wetland with South Stream, much of which is heavily invaded by multiflora rose. Such dense stands of this species cannot be eradicated cost-effectively, so no management of this species is recommended at this time. In future, however, new tools such as biocontrols may become available. If affordable, effective, and safe, this Plan recommends experimenting with such tools for control and/or eradication of multiflora rose, wherever it might be found in the Park. As long as invasives management is in accordance with a plan developed by the management team and, if pesticides are to be used, is implemented by a certified applicator, it is an allowed use per the Rule.

## **B. The wetland buffer**

### **1) Trolley line**

The former Bennington North Adams Street Railway trolley line bed is still extant in the Park. The route is flat and straight, and the rail bed's substrate is relatively firm. For these reasons, the Friends have suggested it might be a good candidate for ADA-compliant surfacing.

Such redevelopment is potentially appropriate only on the southern 1640+ feet of the rail bed, much of which passes through the wetland buffer. Most of the rest of the old rail bed, about 1160±, was long ago abandoned. It is entirely grown in with occasionally large diameter trees, below grade, poorly drained, and often wet. This plan recommends no improvements to this abandoned rail bed.

Any construction or other extraordinary improvements to the trail in the buffer zone will require a wetland permit.

A permit is not required for routine mowing or trail maintenance, per the Rule, 1.1.3, which states "These rules shall not apply to any land use for which.... no local, state or federal permits related to either the regulation of land use or the protection of wetlands are required and where substantial construction was commenced prior to February 23, 1990."

### **2) Other trails**

The Town may wish to someday create access for fishing and wildlife viewing to Jewett Brook upstream of the Morgan Street crossing of the Brook, from either Morgan Street or Middle Pownal Road or both. The cutting and maintaining of any new trail through the buffer zone will require a wetland permit. Perhaps the request could be part of a general wetland permit application described in III.A.2 above.

### **3) Other amenities**

Mention was made at a public meeting of a possible bird blind or wetland platform near the base of the open, successional and disturbed upland in the southeastern portion of the park. If constructed according to Section 6.16, Best Management Practices for Duck Blinds, Fences, Catwalks, Docks of the Rule. This Plan recommends constructing any amenity in the wetland buffer in that area per that regulation.

## **C. The active management zone**

The active management zone at Headwaters is essentially all those portions of the park that are not wetland or wetland buffer. Restrictions as to uses in these areas are relatively relaxed compared to the Ecological Protection Zone.

### **1) Floodplain forest**

The floodplain forest community type is present in two locations in the park – in the north, and in the southeast. Since there is at present no access to the southeastern site except via the wetland or over privately held lands, no management is recommended for this area at present. Should the access situation change in future, silviculture could be permitted on frozen ground, and invasives management is recommended. As long as invasives management is in accordance with a plan developed by the management team and, if pesticides are to be used, is implemented by a certified applicator, it is an allowed use per the Rule.

The following recommendations pertain only to the northern floodplain forest plant community, where the goal of all management activities is to enhance floodplain forest benefits and values.

- Close off and revegetate ATV trails near the trolley line. Maintain only the trail along the Walloomsac River on the east, a trail on the old trolley rail bed to the bridge abutment, and the pent road between the trolley rail bed and Morgan Street.

- Restore eroded streambanks.
- Consider erecting a kiosk or signage interpreting the former crossing of the Walloomsac River by the Bennington and North Adams Street Railway.
- Practice early detection/rapid response to forestall invasion by non-native plant species. Special vigilance will be required for species not now present in Vermont but which threaten us from the south. These include Japanese stilt grass (*Microstegia vimineum*), mile-a-minute vine (*Persicaria perfoliata*), Amur corktree (*Phellodendron amurense*) and others.
- Treat invasive plant species throughout the site and replant as necessary with native plant species.
- Protect and preserve specimen ashes from emerald ash borer by injecting with pesticides as the latest research recommends. (Such information is available at a number of websites, including the USDA Forest Service's [www.emeraldashborer.info](http://www.emeraldashborer.info) and Cornell Cooperative Extension at [ccerensselaer.org/environment/invasive-pests/emerald-ash-borer](http://ccerensselaer.org/environment/invasive-pests/emerald-ash-borer). Note that formerly recommended neonicotinoids are now suspected of causing honey bee declines and for that reason should be avoided. The locations and diameters of ash trees larger than 6" DBH are available from BCCD.

2) **"Times Square" disturbed area** (intersection of Cross Trail, Trolley Trail, and other trails in the area to be closed down)

The following recommendations for this area were made at various public meetings and on outings during the development of this Plan.

- Close off all trails except Cross Trail and Trolley Trail.
- Maintain black- and raspberry openings for picking and wildlife habitat.
- Find funding for and construct a dog park with separate fenced runs for small and large dogs.
- At the Cross Trail crossing of the Walloomsac River, create a picnic area.
- Other improvements to be decided upon.

3) **Old field northwest of Jewett Brook**

Please see the note on page 4 of this plan regarding the possibility of subdividing from this area two lots of a maximum total of two acres to be used for affordable housing.

The Town has already committed to creating a parking lot for four or more vehicles at the end of Belvedere Street and the entrance to the Park (an informal area exists there now), and to erecting a kiosk with interpretive signage at the parking area.

The eleven-acre old field already offers opportunities for birders, butterfly watchers and others to enjoy wildlife watching, and, with management, can offer even richer outdoor experiences. On the recommendation of many members of the Friends group, including landowners whose properties abut the area, a good deal of time and labor was invested in this ecosystem immediately following its acquisition by the Town. Residents noted that black-legged tick pressures had been high on the site, and encouraged the Town to mow its system of trails. This request was easily fulfilled in the southern end of the site, where a smooth brome grass sod dominates. The Town was able to use its roadside mowing equipment in this location. The northern part of the site is much shrubbier, and trails were narrow. Additionally, much of the shrub cover consists of non-native invasive species. To make it possible for the Town to use its mowing equipment there, and to reduce the impact of invasive species, the Town hired a contractor to mulch-mow the trails to a at least a ten-foot width as required by the Town's mowing equipment. A plan to manage invasive species was developed and funding to implement it was sought. (BCCD is still waiting to learn whether the grant application was successful.) And the USDA Natural Resources Conservation Services Vermont State wildlife biologist visited the site (and two other old

fields elsewhere in the park) to offer recommendations to enhancing habitat for shrubland bird and native pollinator species. The recommendations of members of the Friends and assisting natural resource professionals follow.

- Manage to increase cover of native shrub species from the present approximately 20% to about 30%-50% by encouraging gray dogwood, viburnum species, black cherry, ash, brambles, and the occasional native perch tree.
- Control non-native invasive plant species using herbicide treatment and/or grinding down (mulch-mowing).
- If funding permits, implement the non-native invasive control plan outlined by Polatin Ecological Services. This plan is on file at the BCCD.
- Enhance structural diversity, perhaps by implementing a random mowing regime.
- Delay mowing until August 15 or later, after the breeding season.
- Maintain some portion of the brome grass sod to benefit grassland-dependent skipper butterflies, small mammals, and reptiles and amphibians.
- Encourage herbaceous plants such as milkweed, golden alexanders, vervains, asters, goldenrods, wild bergamot, Joe Pye weed, boneset, thoroughworts, sunflowers, mountain mint, lupine, and others in the open areas in both the southern and northern portion of the field.
- Consider working with the Mount Anthony Union Middle School to collect seeds of pollinator species and grow them on the greenhouse at the school for later transplanting to the old field.

#### **4) Old field south of Jewett, east side of Morgan Street**

The Town of Bennington expects to enlarge an existing pull off and install an interpretive kiosk at the northern edge of this feature, probably in spring 2016.

According to members of the Friends and our assisting natural resource professionals, this old field should be managed similarly to the old field north and west of Jewett Brook, including:

- Manage to increase cover of native shrub species, especially gray dogwood, from the present approximately 5% to about 30%-50%.
- Control non-native invasive plant species using girdling, herbicide treatment and/or grinding down (mulch-mowing).
- If funding permits, implement a non-native invasive control plan similar to that outlined by Polatin Ecological Services in spring 2015. This plan is on file at the BCCD.
- Enhance structural diversity, perhaps by implementing a random mowing regime.
- Delay mowing until August 15 or later, after the breeding season.
- Maintain some portion of the brome grass sod to benefit grassland-dependent skipper butterflies, small mammals, and reptiles and amphibians.
- Encourage herbaceous plants such as milkweed, golden alexanders, vervains, asters, goldenrods, wild bergamot, Joe Pye weed, boneset, thoroughworts, sunflowers, mountain mint, lupine, and others in the open areas in both the southern and northern portion of the field.
- Consider working with the Mount Anthony Union Middle School to collect seeds of pollinator species and grow them on the greenhouse at the school for later transplanting to the old field.

Additional recommendations particular to this site are:

- Note that a stand of box elder was called out as an “upland forest” inclusion in the field in the cover types mapping of the project site. Its ground cover layer is dominated by garlic mustard, which this Plan recommends be eradicated through annual pulling and careful disposal. Such efforts could become a school or service club recurring project.
- Manage toward sapling to small pole size scattered perch trees numbering about 5 per acre.

- Aspen is present on the site. Should we wish to expand its presence into the field, it could be cut in winter, which promotes regeneration by sprouting from the roots.
- White pine present on the site could shade out the shrubs preferred by shrubland birds and other wildlife, ideal cover for which is 0-6 feet in height.
- Consider some selective cutting to open views into the wetland.

#### **5) Old field south of Jewett, west side of Morgan Street**

This 2+ acre old field should be managed similarly to the other two old field habitats, that is: manage against invasive plants and for native shrubs.

Other measures recommended include:

- Manage for a minimum patch size of ten feet in diameter or more.
- Create many patches of woody habitat of different sizes throughout the field with small and larger gaps of herbaceous areas between.
- If any areas of dry exposed soil are found, these could be managed as designated turtle nesting areas.
- Consider bird boxes, which would need routine maintenance and predator guards.

#### **6) Disturbed upland, southeastern-most corner of the Park**

These two parcels totaling about four acres were acquired by friends of the Headwaters project in 2014 to enable a trail connection from the Park across land owned by the VT Agency of Transportation to One World Conservation Center's Greenberg Preserve, land also conserved by the Vermont Land Trust. At this time the only management activities called for here by this Plan are:

- Conduct a careful survey to find the best possible location for a connector trail across Morgan Street to VTrans land to the southwest.
- If it becomes clear that an arrangement to create a connecting trail from Headwaters across VTrans land is imminent, create a trail on this site to connect the Park to VTrans land.

#### **7) Upland forest nearest Beech Street ballfield**

This part of the Park provides easy access from the ball field to the bridge over the Walloomsac River, and has been well-used for years. Few changes to it are envisioned over the life of this plan, with the following exceptions:

- A bridge over a small tributary to the Walloomsac River on the western edge of the ball field is needed. The Town has initiated discussions with a local engineering firm regarding its design and construction, and BCCD was advised by State agency staff that a streambank alteration permit and a wetland permit will be required for the bridge.
  - A design for the bridge should be secured. (The Town's facilities staff has asked that the bridge be handicapped-accessible.)
  - A streambank alteration and wetland permit should be secured.
  - Funds for the bridge materials should be secured.
  - The bridge should be constructed as soon as possible, preferably during the 2016 field season.
- As suggested by members of the Friends group, a picnic area or sitting/observation site should be created at the so-called "balcony" – the high land overlooking South Stream and the wetland. Note that the Park is to be "carry in/carry out" facility. No garbage cans are to be installed there or anywhere in the Park.
- Clip trails as necessary at a height adequate for snowshoe-ers and skiers.

- Consider enlisting the members of the Bennington Rugby Football Club as volunteers in caring for this area.
- Consider involving the Southwestern Vermont Career Development Center Forestry and Heavy Equipment program in managing invasives in the understory of this upland forest.

#### **8) Upland forest southeastern corner**

Access to this area is difficult, therefore no management is recommended at this time. Should access for some reason improve in future, silviculture could be permitted there on frozen ground, and invasives management is recommended.

#### **9) Sandy knoll**

This 8-acre mostly forested island of sand (its soil type is Windsor loamy sand) is encircled by the wetland and Jewett Brook, and is now only accessible when water levels in Jewett Brook are low (generally around 100 c.f.s. at the North Bennington gage on the Walloomsac River). It is heavily invaded by non-native species, predominantly buckthorn, but also contains several open fields, and stands of large white, red and Scots pine. It offers several excellent views over a wide place on the Brook and over the wetland.

In one location several feet long, the trail to and from the island is low and close to the wide place on the Brook, and can be wet. The interior of the island is laced with a network of dry and walkable trails, but so numerous as to often confuse, not interest, a walker.

A very rustic shelter composed of branches, tarps, and an old door is located in the southwestern part of the island in a grove of pines. The area around it is littered with some large and heavy items such as a gas range. It will be hard to clean it up without the use of a motorized vehicle of some sort.

An ad hoc trails crew and various individual members of that team visited the island several times in 2015. Their recommendations follow:

- Clean up the island.
- Close off trails that offer little in the way of enjoyment.
- Create a new trail to connect the existing loop on the island with the proposed pond access trail described in IIIA.2.
- Build a bog bridge over the stretch of wet area near the wide place on Jewett Brook. Such a feature would be an allowed use under Section 6.16 of the Rule. No wetland permit would be needed.
- Keep some of the existing openings mowed to encourage unusual native species now present in them. This includes an opening containing large patches of grass-of-parnassus, *Parnassia* sp., a sun-loving species (and oddly, a species typical of wetlands).
- Clip trails to be kept open as necessary to accommodate snowshoe-ers and skiers.
- Revegetate the former ATV “jumps” located in the northern corner of the knoll.
- Manage against non-native invasive species and for native woody species where possible.
- Consider involving the Southwest Vermont Career Development Center’s Forestry and Heavy Equipment program in invasive species control and apple tree release.

#### **10) Upland forest between Morgan Street and Middle Pownal Road**

Some neighbors report that a remnant cross-country ski trail exists in this location. Members of the Friends group mention that now one must walk down Middle Pownal Road to access the system of trails in the Y Woods. This plan therefore recommends:

- Widen the remnant trail and clip it to accommodate snowshoe-ers and skiers.

- Create a connection from the southern terminus of the old trolley line across the upland forest to the former log landing off Middle Pownal Road in Y Woods, and from there to the trails in Y Woods and the cemetery.

#### IV. Future connections

It is the intention of the Town of Bennington and the Friends to pursue a trail easement over lands owned by the Vermont Agency of Transportation and acquired by that Agency for the southern leg of the so-called Bennington Bypass, Vermont Route 279. This plan recommends that negotiations regarding that possibility begin immediately.

Since that process is likely to continue over the course of a few to several years, this Plan recommends soliciting immediately from VTTrans permission to allow the public access across their land on an informal trail, with a native earth surface, beginning at Morgan Street on the north and ending at the Norman and Selma Greenberg Preserve on the south along a route mutually acceptable to all parties.

#### V. Summary of Uses

The following Table A summarizes proposed used by management zone.

	Ecological protection zone	EPZ buffer	Active management area
Uses/Activities			
Ash tree protection using herbicides	Yes, provided a plan consistent with Vermont's Regulations for Control of Pesticides in Accordance with 6 VSA Chapter 87 is on file, in which case this is an approved use according to the Vermont Wetland Rule	Yes, provided a plan consistent Vermont's Regulations for Control of Pesticides in Accordance with 6 VSA Chapter 87 is on file, in which case this is an approved use according to the Vermont Wetland Rule	Yes
Beaver management, including removal of beaver dams	Per <b>Best Management Practices for Resolving Human-Beaver Conflicts in Vermont</b> , VDEC and VF&W, August 2002 revised 2004	Per <b>Best Management Practices for Resolving Human-Beaver Conflicts in Vermont</b> , VDEC and VF&W, August 2002 revised 2004	Yes
Clearing for access and views	Wetland permit needed. Securing a long-term general permit is recommended.	Wetland permit needed. Securing a long-term general permit is recommended.	Yes
Environmental Education Outings	Yes	Yes	Yes
Fishing	Yes	Yes	Yes
Habitat enhancement, including planting	Yes, if conducted per Section 6.23 of the Rule, in which case it is an allowed use.	Yes, if conducted per Section 6.23 of the Rule, in which case it is an allowed use.	Yes
Invasives	Yes, provided a plan	Yes, provided a plan	Yes

Final Management Plan, The Greenberg Headwaters Park  
 Adopted by Bennington Select Board on \_\_\_\_\_

treatment	consistent with Vermont's Regulations for Control of Pesticides in Accordance with 6 VSA Chapter 87 is on file, in which case this is an approved use according to the Vermont Wetland Rule.	consistent with Vermont's Regulations for Control of Pesticides in Accordance with 6 VSA Chapter 87 is on file, in which case this is an approved use according to the Vermont Wetland Rule.	
Jogging/running	Yes	Yes	Yes
Maintenance of all existing and new amenities	Yes	Yes	Yes
Mowing	A wetland permit is required. Securing a long-term general permit is recommended.	This is an allowed use on the trolley, but elsewhere in the buffer a wetland permit is required. Securing a long-term general permit is recommended.	Yes
Nature observation	Yes	Yes	Yes
Other non-motorized recreational activities	Yes	Yes	Yes
Other uses not prohibited by the easement or state and federal regulations	Yes, subject to review by the Town	Yes, subject to review by the Town	Yes, subject to review by the Town
Paddling	Yes	Yes	Yes
Photography	Yes	Yes	Yes
Picnicking	Yes	Yes	Yes
Silvicultural activities	No	No	Yes
Skiing	Yes	Yes	Yes
Snowshoeing	Yes	Yes	Yes
Subdivision	No	No	As permitted by III.6 of easement document signed March 24, 2015
Swimming	Yes	Yes	Yes
Trapping	Yes	Yes	Yes
Tree and shrub pruning	A wetland permit is required. Securing a long-term general permit is recommended.	A wetland permit is required. Securing a long-term general permit is recommended.	Yes
Walking	Yes	Yes	Yes
<b>Amenities</b>			

Final Management Plan, The Greenberg Headwaters Park  
Adopted by Bennington Select Board on \_\_\_\_\_

Benches/Picnic tables	No	No	Yes
Bird blinds for observation only	In accordance with VWR 2010 Section 6.16 Best Management Practices	In accordance with VWR 2010 Section 6.16 Best Management Practices	Yes
Bird boxes	Yes	Yes	Yes
Boat launch/floater access	In accordance with VWR 2010 Section 6.16 Best Management Practices or as provided for by a general permit.	In accordance with VWR 2010 Section 6.16 Best Management Practices or as provided for by a general permit.	
Bog bridges or puncheons	In accordance with VWR 2010 Section 6.16 Best Management Practices	In accordance with VWR 2010 Section 6.16 Best Management Practices	NA
Clearing of debris in stream channel to permit floating	A wetland permit is required. Securing a long-term general permit is recommended.	A wetland permit is required. Securing a long-term general permit is recommended.	NA
Creation of new trails	In accordance with VWR 2010 Section 6.16 Best Management Practices and as per this Plan, or according to a general permit.	In accordance with VWR 2010 Section 6.16 Best Management Practices and as per this Plan, or according to a general permit.	As per this plan.
Dog park	No	No	Yes, subject to review by Town.
Footbridges	In accordance with VWR 2010 Section 6.16 Best Management Practices or according to a general permit.	In accordance with VWR 2010 Section 6.16 Best Management Practices or according to a general permit.	NA
Observation decks	In accordance with VWR 2010 Section 6.16 Best Management Practices or according to a general permit.	In accordance with VWR 2010 Section 6.16 Best Management Practices or according to a general permit.	Yes
Parking areas	If pre-existing. Otherwise, wetland permit required.	If pre-existing. Otherwise, wetland permit required.	Yes
Pavilion	No	No	Yes
Sanitary facilities	No	No	As permitted by III.6 of easement document signed March 24, 2015
Scientific research	Yes	Yes	Yes
Signs, stand alone	Wetland permit required. Securing a general permit is	Wetland permit required. Securing a long-term general	Yes

	recommended.	permit is recommended.	
Signs, trail markers on trees	Yes	Yes	Yes
Viewpoints, overlooks	If vegetation removal is necessary, wetland permit required. Securing a general permit is recommended.	If vegetation removal is necessary, wetland permit required. Securing a general permit is recommended.	Yes

#### **B. Uses Not Permitted at the Greenberg Headwaters Park**

- Camping
- Fires
- Garbage cans
- Grading, filling, or change of the topography except as is necessary to carry out the uses permitted by VLT
- Motorized vehicles, except those required for maintenance by Town employees and Friends; or for emergency purposes; and except for personal assistive mobility devices for use by persons with mobility disabilities.
- Rifle hunting
- Roads or driveways unless permitted by VLT
- Signs or billboards, except those assisting users of the Park, such as interpretive signs and trail markers

For further information re prohibited activities, refer to Grant of Development Rights, Conservation Restrictions, and Public Access Easement.

#### **VI. A Note Regarding a Fundraising Plan and Other Interim Plan Recommendations**

The interim plan for the Park called for some actions which have not been completed.

Neither the Town team nor the Friends have reached out to schools regarding using the Park as an outdoor learning laboratory. One World Conservation Center, a Friend and one of several entities we hope to connect to via both terrestrial and water trails, however, has begun to explore programing at Headwaters for student outings and kids' camps it sponsors.

We hope to complete two new or expanded parking areas. One new site has been cleared and is being graded at the time of this writing. An expansion of an existing pull-off has been explored and roughed out by Town road and facilities staff. The expansion will be designed and implemented so as to cause no impact to the adjacent wetland or wetland buffer.

Kiosk frames have been built at two of three locations and interpretive panels will shortly be installed. The third kiosk will go up in early 2016, when the parking area expansion has been completed.

Discussions regarding ADA-compliant access areas and trails have only barely begun.

The new bridge across the Beech Street ball field rivulet has not been designed. (It is to be ADA-compliant.)

We have received confirmation of various wetland boundaries but have filed no permit requests as yet.

We have not developed a fundraising plan, but we have requested funding for various Headwaters amenities in the 2017 Town budget.

*Development of this Management Plan was funded in part by a Vermont Watershed Grant, supported by purchasers of the state's conservation license plates. Thank you!*



*BCCD also thanks the following for their contributions to the development of this Plan:*

- *Bennington County Regional Commission*
- *Community College of Vermont*
- *Friends of Headwaters Park*
- *Polatin Ecological Services*
- *Town of Bennington*
- *USDA Natural Resources Conservation Service*
- *Vermont Department of Environmental Conservation*
- *Vermont Department of Fish & Wildlife*
- *Vermont Land Trust*
- *Vic Rolando*

**Vermont Land Trust**  
 Town of Bennington  
 Walloomsac Headwaters Park  
 Town of Bennington  
 Bennington Co., VT  
 March 2015

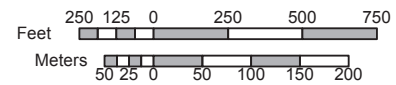
VLT Project #131246 VHCB #2014-053-001

-  Protected Property
-  EPZ
-  Excluded Land

The Town of Bennington - Walloomsac  
 Headwaters Park Property Conservation Plan is  
 based on 2011 DigitalGlobe-Microsoft orthophotos.

1:5,000

1 inch = 416.7 feet

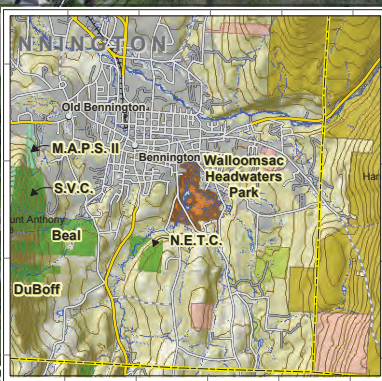


GRID NORTH  




This map is not a survey or subdivision plat, and should not be used or construed for such purposes. It was prepared without the benefit of field measurements or extensive title research. It is intended solely to assist the owner(s) of the conserved land and the holder(s) of the conservation easement in the administration and interpretation of the conservation easement by clearly depicting the presumed boundaries of the protected property, calculating the approximate acreages, and showing the approximate locations of any excluded lands, farmstead or homestead complex, farm labor housing complex, or special treatment areas.

**THIS MAP IS NOT A SURVEY**



**ACREAGE INFORMATION<sup>1</sup>**

Open Land	18.0 acres
Wetland	86.0 acres
Woods	58.5 acres
<b>Total Protected Property</b>	<b>± 162.5 acres</b>
Excluded Land	± 2.2 acres

1. All acreage is approximate, and exclusive of public road rights of way.

**Reviewed and Accepted by:**

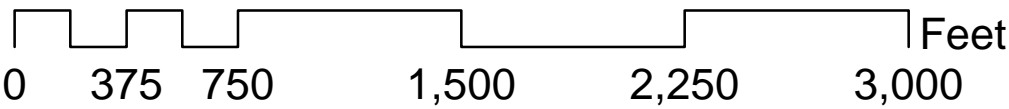
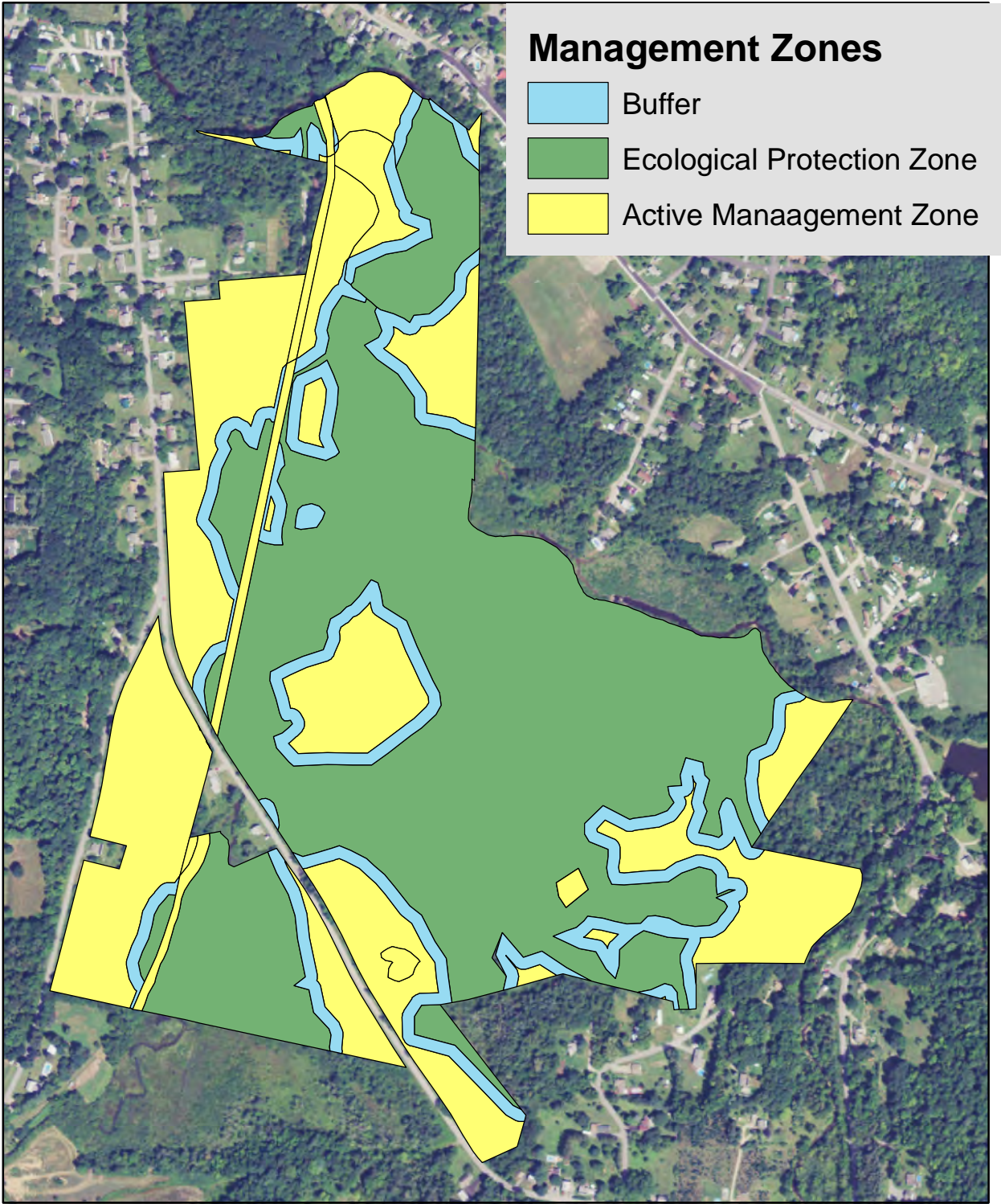
Duly Authorized Agent of  
 the Town of Bennington

Date

Duly Authorized Agent of  
 Vermont Land Trust, Inc.

Date

# Map2: Headwaters Management Zones



**GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS, and  
PUBLIC ACCESS EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the **TOWN OF BENNINGTON**, a Vermont municipality located in the County of Bennington, State of Vermont, on behalf of itself and its successors and assigns (hereinafter "Grantor"), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely give, grant, sell, convey and confirm unto the **VERMONT LAND TRUST, INC.**, a Vermont non-profit corporation with its principal place of business located in Montpelier, Vermont ("VLT"), and the **VERMONT HOUSING AND CONSERVATION BOARD**, an independent board of the State of Vermont ("VHCB"), and their respective successors and assigns (hereinafter collectively "Grantees") as tenants in common, forever, the development rights, perpetual conservation easement restrictions, and public access easement (all as more particularly set forth below) in a certain tract of land (hereinafter the "Protected Property"), together with a right of way for access to the Protected Property over and across the Beech Street Ball Field, situated in the Town of Bennington, Bennington County, State of Vermont. The Protected Property consists of approximately one hundred and sixty two and five tenths of an acre (162.5) acres and the Protected Property and said right of way are more particularly described in Schedule A attached hereto and incorporated herein.

The development rights hereby conveyed to Grantees shall include all development rights except those specifically reserved by Grantor herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The development rights, perpetual conservation easement restrictions and public access easement hereby conveyed to Grantees consist of covenants on the part of Grantor to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that said development rights, perpetual conservation easement restrictions, and public access easement shall constitute a servitude upon the land and shall run with the land.

**I. Purposes of this Grant & Management Plan.**

**A. Statement of Purposes**

1. Grantor and Grantees acknowledge that the Purposes of this Grant are as follows (hereinafter "Purposes of this Grant"):
  - a) To contribute to the implementation of the policies of the State of Vermont designed to (i) conserve the recreational resources of the state and encourage the use of recreational resources, and (ii) foster the conservation of the state's ecosystems, natural communities, native species, and other natural resources through planning, regulation, land acquisition, and tax incentive programs.
  - b) To provide perpetual public, outdoor recreational use of all of the Protected Property that is low-impact, non-commercial and non-motorized, including but not limited to paddling, bird watching, cross-country skiing, fishing, hiking, mountain biking, snowshoeing, trail running, walking, hunting and wildlife observation and other recreational uses which are compatible with the foregoing uses, provided all such uses are consistent with the other Purposes of this Grant.
  - c) To conserve and protect biological diversity, important wildlife habitat and natural communities on the Protected Property and the ecological processes that sustain these natural resource values as these values exist on the date of this Grant and as they may evolve in the future.
  - d) To conserve and protect the Protected Property's undeveloped character and scenic and open space resources for present and future generations.
  - e) To insure that the Protected Property will be owned in perpetuity by a qualified nonprofit, public or other entity approved by Grantees.
2. These purposes will be advanced by conserving the Protected Property because it possesses the following attributes:
  - (a) 86 acres of wetland, providing habitat for a diversity of species and natural communities;
  - (b) 58.5 acres of forest and woodland;
  - (c) A network of recreational trails;
  - (d) traversed by 13,200 feet of Jewett Brook, South Stream, and the

- Walloomsac River;
- (e) located in the vicinity of other properties previously protected by Grantees; and
- (f) extensive areas suitable for paddling.

Grantor and Grantees recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions and development rights, to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with the Purposes of this Grant. Grantees accept such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

**B. Management Plan.**

Grantor will from time-to-time develop comprehensive Management Plan(s), including updates, revisions and amendments thereto, for the Protected Property (hereafter "Management Plan(s)") in accordance with the terms of this Section I(B). Grantor shall update the Management Plan(s) at least every ten (10) years; or such longer timeframe with Grantees' prior approval, such approval not to be unreasonably withheld. Prior to the final adoption of each Management Plan(s), including updates, revisions and amendments, Grantor shall secure appropriate public input from the general public, as well as, Grantor shall provide Grantees with a copy of each such Management Plan(s) for Grantees' review and approval, which approval shall not be unreasonably withheld or denied provided that the Management Plan(s) is consistent with the Purposes of this Grant. The Management Plan(s) may be modified or amended from time-to-time subject to the approval of Grantees. The Management Plan(s) and all updates, revisions and other amendments to the Management Plan(s) are required to have the written approval of Grantees prior to any activities described in the Management Plan(s) being undertaken.

The Management Plan(s) shall manage the public opportunities for non-motorized, non-commercial recreational and educational activities consistent with the Purposes of this Grant. The Management Plan(s) shall include protections for the health and viability of the ecosystems, natural communities, and native species on the Protected Property, and shall include plans for the management of invasive species. The Management Plan(s) shall also balance the ecological, recreational, and educational goals and uses of the Protected Property, recognizing the equally important values of each. With respect to the ecosystems, natural communities, native species, and other natural resource values described in Section I above, the Management Plan(s) shall draw on expertise from recognized experts in the field of conservation biology and field ecology.

Provided that it is consistent with the Purposes of this Grant, the Management Plan(s) may also provide for forest management activity (including commercial timber harvest) prescribed by a professional forester and approved in writing by the Grantees which, at a minimum, shall comply with the publication "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont", a Vermont Department of Forests, Parks and Recreation publication dated August 15, 1987 (or such successor standard approved by Grantees). The Management Plan(s) shall describe any infrastructure, buildings or improvements on the Protected Property.

When the provisions of Sections II or III below require Grantor to secure Grantees' prior approval for an activity, use or Management Plan(s), Grantees may rely upon the advice and recommendations of the recognized experts in the field of conservation biology and field ecology that Grantees may select to determine whether the proposed activity, use or plan would be unduly detrimental to the wildlife or wildlife habitat, plant or plant habitat potential of the Protected Property, or would be otherwise inconsistent with the Purposes of this Grant; while recognizing that public access throughout the Protected Property is a primary goal.

**II. Restricted Uses of Protected Property.**

The restrictions hereby imposed upon the Protected Property, and the acts which Grantor shall do or refrain from doing, are as follows:

1. The Protected Property shall be used for educational, forestry, non-motorized, non-commercial recreation, habitat conservation, natural area and open space purposes only, except as otherwise specifically permitted under this Grant. No residential, commercial, industrial or mining activities shall be permitted on the Protected Property and no building or structure

associated with such activities shall be constructed, created, erected or moved onto the Protected Property, except as specifically permitted by this Grant. The term "structure" as used in the preceding sentence shall include, but not be limited to, any telecommunications, broadcasting or transmission facility. No other building or structure shall be constructed, created, erected or moved onto the Protected Property, except as specifically permitted by this Grant.

2. Except as otherwise specifically permitted under this Grant, no rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or other easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written permission of Grantees. Grantees may grant such permission if they determine, in their sole discretion, that any such improvement would be consistent with the Purposes of this Grant.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that Grantor may erect and maintain reasonable signs including, but not limited to, signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use (subject to the limitations of Section IV, below). With prior written permission of Grantor, Grantees may erect and maintain signs designating the Protected Property as land under the protection of Grantor and Grantees.

4. The placement, collection or storage of trash, human, hazardous or toxic waste, or any other unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be consistent with this Grant and the Management Plan(s), as well as, approved in advance in writing by Grantees. The temporary storage of trash in receptacles for periodic off-site disposal shall be permitted without such prior written approval.

5. There shall be no disturbance of the surface, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.

6. Grantor shall not give, grant, sell, convey, subdivide, transfer, lease, mortgage, pledge or otherwise encumber the Protected Property without the prior written approval of Grantees, which approval may be granted, denied or conditioned – including the condition that the Protected Property be sold for only nominal consideration - in the Grantees' sole discretion.

7. There shall be no operation of motorized vehicles on the Protected Property except for uses specified in the Management Plan(s), such as for wildlife and plant management, trail grooming and/or maintenance, and for emergency purposes on existing roads or trails only. However, Grantor may permit motorized personal assistive mobility devices for use by persons with mobility disabilities on the Protected Property if consistent with the Purposes of this Grant, and as may be required by 42 U.S.C. §35.137. Snowmobiling may be permitted at the discretion of Grantor.

8. There shall be no manipulation of natural watercourses or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water quality, or which could alter natural water level or flow, except as reasonably necessary to carry out the uses permitted on the Protected Property under this Grant.

9. No use shall be made of the Protected Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantor and Grantees acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantees, therefore, in their sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant.

### **III. Permitted Uses of the Protected Property.**

Notwithstanding the foregoing, Grantor shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for all types of non-commercial, non-motorized outdoor recreational purposes (including, but not limited to paddling, bird-watching, cross-country skiing, fishing, hiking, mountain biking, snowshoeing, trail running, walking, hunting and wildlife observation) consistent with the Purposes of this Grant and permitted under the Management Plan(s).

2. The right to cut and remove trees and other vegetation on the Protected Property in order to implement the Management Plan(s) and to maintain the safety of the public while on the Protected Property, together with the right to construct and maintain roads and trails (including waterway trails) necessary for such activities, all as specified in and in accordance with the Management Plan(s) and which activities shall be consistent with the Purposes of this Grant.

3. The right to establish, maintain and use fields for the purpose of maintaining or enhancing wildlife habitat, plant habitat, or scenic vistas or values on the Protected Property, provided that the initial forest clearing activity required to establish such fields, habitat or scenic values is a component of the Management Plan(s).

4. The right to maintain, repair, improve and replace existing recreational trails (including waterway trails), together with the right to clear, construct, repair, improve, maintain and replace new trails (including waterway trails), including improvements such as bridges, boardwalks, kayak launches, culverts, puncheon and structures that support the function and safety of such trails, provided that the location, use and construction of such new trails and improvements are consistent with the Purposes of this Grant, and are otherwise consistent with the Management Plan(s).

5. The right to construct, maintain, repair and replace permanent or temporary structures, drives and utilities reasonably necessary to support the uses permitted by this Grant (including modest structures to support public outdoor recreation and/or public outdoor education; including without limitation such structures and facilities as kayak launches, boardwalks, fences, picnic tables, benches and other seating, ramps, bridges, lean-tos and other rustic shelters, and sanitary facilities); provided, however, that any such structures and improvements shall be consistent with the Management Plan(s) and the Purposes of this Grant.

6. The right to subdivide from the Protected Property a parcel of land (or two parcels of land if required by local zoning regulations) not to exceed the minimum acreage then required by the zoning laws of the Town of Bennington for up to two (2) affordable single-family residential housing units for conveyance to a VHCB eligible entity that works for affordable housing (the "Subdividable Lot"). Grantor first shall obtain the prior written approval of Grantees for such subdivision, which approval shall not be unreasonably withheld or conditioned, if such subdivision boundaries are located on the parcel of Protected Property located westerly of the Trolley Line, easterly of Morgan Street and southerly of Belvidere Street, and are configured in a manner that is consistent with the Purposes of this Grant. Grantor or the VHCB eligible entity that Grantor conveys the Subdividable Lot to, shall have the right to construct up to two (2) affordable single-family residential housing units and appurtenant non-residential structures and appurtenant improvements on the portion of the Subdividable Lot, not to exceed one (1) acre in area per housing unit (each a "Building Envelope"). Grantees shall release the Building Envelope from this Grant after review and approval of the location, size and configuration of the Building Envelope, and at such time as the affordable single-family residential housing units are conveyed to an eligible household defined within legal documents executed and recorded that maintain the single-family housing units as perpetually affordable. Grantees also shall have the right to release any or all of the remainder of the Subdividable Lot from this Grant, if in their sole discretion, they determine that such a release is consistent with the Purposes of this Grant.

7. The right to construct, maintain, repair, replace, relocate, improve and use systems for disposal of human waste and for supply of water for human consumption (collectively "Systems") on the Protected Property for not more than two (2) single-family residential housing units located in the Building Envelope. Any such Systems may be constructed, maintained, operated, repaired, replaced, relocated or improved on the Protected Property only if there does not exist within the Subdividable Lot any suitable location for such Systems, under the Vermont Department of Environmental Conservation Wastewater System and Potable Water Supply Rules or the then applicable law or regulations governing Systems (collectively "the Rules"), as determined by a person authorized to make such determination under the Rules retained at Grantor's sole cost and expense. Grantor shall first obtain the written approval of Grantees for the location, relocation, replacement or improvement of such systems on the Protected Property, which approval shall not be unreasonably withheld nor

conditioned, provided that:

- a) All reasonable attempts to locate, relocate, replace or improve the Systems within the Subdividable Lot in a manner that complies with the then current Rules are exhausted; and
- b) Such systems are located in a manner consistent with the Purposes of this Grant; and
- c) Such systems are designed by a licensed designer as defined in the wastewater system and potable water supply rules retained at Grantor's sole cost and expense, certified by the licensed designer as complying with the wastewater system and potable water supply rules, installed in compliance with the wastewater system and potable water supply rules, certified by an installer or licensed designer as being installed in accordance with the certified design and approved in accordance with all the then applicable State and Local ordinances, statutes and regulations.

8. The right to construct, maintain, repair and replace parking area(s) as mutually agreed upon in writing by Grantor and Grantees; provided, that the location, size, construction, maintenance, repair and use of such parking area(s) shall be consistent with the Purposes of this Grant, Sections IV and V below and the Management Plans. Said parking area(s) shall be used only in connection with uses permitted under this Grant.

#### **IV. Public Access.**

Grantor covenants and agrees that the Protected Property shall be available to the general public for all types of non-commercial, non-motorized, non-mechanized, dispersed recreational purposes (including, but not limited to, paddling, bird watching, cross-country skiing, fishing, hiking, hunting, snowshoeing, walking and wildlife observation) consistent with the Purposes of this Grant and the Management Plans. Notwithstanding the foregoing, Grantor may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect the Purposes of the Grant or to protect the public health or safety (including hunter safety) with the prior written approval of the Grantees. If Grantees approve a conveyance of the Protected Property, then Grantees may also require that a separate Grant of Public Access Easement also be conveyed to Grantees in a form approved by Grantees.

#### **V. Ecological Protection Zone**

The Ecological Protection Zone comprises a state-significant wetland complex that includes areas of forested wetland, emergent marsh, and open water. The Ecological Protection Zone is generally depicted as "EPZ" on the Town of Bennington Conservation Plan (hereafter the "EPZ"). The boundaries of the EPZ may be changed from time to time by mutual agreement of Grantor and Grantees, as established by written agreement and depicted on a new conservation plan signed by Grantor and Grantees.

Within the EPZ, the goals, prescriptions, and restrictions of this Section V are in addition to the provisions of Sections II, III and IV of this Grant and where inconsistent, the provisions of this Section V shall control.

1. When planning and conducting activities within the EPZ, ensuring the protection of the wetland complex, including all natural communities that naturally develop in the future in the EPZ, and the ecological processes that sustain them, shall be Grantor's highest priority.

2. All activities within the EPZ that may impact the wetland complex and the ecological values of the EPZ shall be included in the most recent, approved Management Plan. All Management Plans shall incorporate steps to retain soil integrity, water quality, natural species composition, natural disturbance regimes and natural hydrology. Without limiting the foregoing, the following activities are allowed in the EPZ:

- a) Limited vegetation management to promote public access, protect public health and safety, or to promote or restore the ecological integrity of the natural community.
- b) Construction and maintenance of new roads or trails.
- c) Construction and maintenance of low-impact recreational structures to promote public access to the waterway (i.e. boardwalks, paddling launch sites).

- d) Clearing of debris from the waterway trails for the purposes of non-motorized boat access.

#### **VI. Enforcement of the Restrictions.**

Grantees shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantees may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, Grantees shall have the right of reasonable access to the Protected Property. In the event that a Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, such Grantee shall give notice to Grantor and the other Grantee of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by Grantor sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, Grantor shall, at Grantees' request, reimburse Grantees for all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by the Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantee to corrective action on the Protected Property, if necessary. If the court determines that Grantor has failed to comply with this Agreement, Grantor shall reimburse the Grantee(s) for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that a Grantee initiates litigation and the court determines that Grantor has not failed to comply with this Agreement and that the Grantee has initiated litigation without reasonable cause or in bad faith, then the Grantee(s) who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees; provided this clause shall not apply to any Grantee protected by the doctrine of sovereign immunity. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Protected Property and accordingly entitle Grantees to such equitable relief, including but not limited to injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantees at law, in equity, or through administrative proceedings.

No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair Grantees' rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

#### **VII. Miscellaneous Provisions.**

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantees before commencing an activity or act, and where Grantees have designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantees. Grantor shall reimburse Grantees or Grantees' designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. When Grantees have authorized a proposed action requiring approval under this Grant, Grantees shall, upon request, provide Grantor with a written certification in recordable form memorializing said approval.

2. It is hereby agreed that the construction of any buildings, structures or improvements, or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations.

3. Grantees shall transfer the development rights, conservation easement and restrictions, and public access easement conveyed by Grantor herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155 Title 10 V.S.A.,

in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

4. In the event that legal rights in the Protected Property, or any part thereof, are extinguished or condemned by eminent domain or other legal proceedings, Grantees shall be entitled to sixty seven and eight tenths of one percent (67.8%) of the proceeds. This percentage represents the relative contribution of Grantees to the fair market value of the Protected Property at the time of acquisition by Grantor. Grantees shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, agricultural, educational, scientific, forestry and natural resources of the State of Vermont through non-regulatory means.

5. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantees of the name(s) and address(es) of Grantor's successor(s) in interest.

6. Grantees shall be entitled to rerecord this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Bennington Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

7. While title is herein conveyed to Grantees as tenants in common, the rights and interests described in this Grant, including enforcement of the conservation easement and restrictions, may be exercised by Grantees collectively, or by any single Grantee individually, provided that court enforcement action by a single Grantee shall foreclose action on the same issue(s) by the other Grantee who shall be bound by the final determination.

8. The term "Grantor" shall include the successors and assigns of the original Grantor, the TOWN OF BENNINGTON. The term "Grantees" shall include the respective successors and assigns of the original Grantees, VERMONT LAND TRUST, INC. and VERMONT HOUSING AND CONSERVATION BOARD.

9. Any signs erected on the Protected Property, which mention funding sources, shall include the Vermont Housing and Conservation Board.

10. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

11. Grantor shall hold harmless, indemnify and defend Grantees against any liabilities, claims and expenses, including reasonable attorney's fees to which Grantees may be subjected, including, but not limited to, those arising from any solid or hazardous waste/hazardous substance release or disposal, or hazardous waste/hazardous substance cleanup laws or the actions, or inactions of Grantor as owner or operator of the premises, or those of Grantor's agents.

12. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation easement and restrictions, public access easement and right of way with all the privileges and appurtenances thereof, to the said Grantees, **VERMONT LAND TRUST, INC.** and **VERMONT HOUSING AND CONSERVATION BOARD**, their respective successors and assigns, to their own use and behoof forever, and the said Grantor, the **TOWN OF BENNINGTON**, for itself and its successors and assigns, does covenant with the said Grantees, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises, and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except easements and use restrictions of record, not intending hereby to reinstate any interest or right terminated or superseded by this Grant, operation of law, abandonment or 27 V.S.A. Ch. 5, Subch. 7; and it hereby engages to warrant and defend the

same against all lawful claims whatever, except as aforesaid.

I herein set my hand and seal this 24 day of March, 2015.

GRANTOR

TOWN OF BENNINGTON

By: Stuart A. Hurd  
Stuart A. Hurd, Town Manager & Its Duly  
Authorized Agent

STATE OF VERMONT  
BENNINGTON COUNTY, ss.

At Bennington, this 24 day of March, 2015, Stuart A. Hurd, duly  
authorized agent of the TOWN OF BENNINGTON, personally appeared and he acknowledged  
this Grant, by him sealed and subscribed, to be his free act and deed and the free act and deed  
of THE TOWN OF BENNINGTON, before me.

Notary Public  
My commission expires: 02/10/19

Approved by the VERMONT HOUSING AND CONSERVATION BOARD:

Date

3/19/15

By: [Signature]

Its Duly Authorized Agent

**SCHEDULE A  
PROTECTED PROPERTY**

Being all and the same lands and premises conveyed to Grantor by:

1. Warranty Deed of Normsel Development Twelve, LLC, dated on or about even date herewith and recorded in the Bennington Land Records; and
2. Warranty Deed of Normsel Development Thirteen, LLC, dated on or about even date herewith and recorded in the Bennington Land Records; and
3. Warranty Deed of Normsel Development Fourteen, LLC, dated on or about even date herewith and recorded in the Bennington Land Records; and
4. Executor's Quitclaim Deed of Nancy H. Humphreys, Executor of the Estate of Roderick Julius Humphreys dated August 6, 2013 and recorded in Book 495, Page 112 of the Bennington Land Records.

In addition, Grantor freely gives, grants, sells, conveys and confirms unto Grantees, forever, a perpetual and separately assignable easement for access by the general public for all types of non-commercial, non-motorized, non-mechanized, dispersed recreational purposes from Town Highway #3 (also known as Beech Street) to the Protected Property, said easement being on, over and across the parcel of land known as the "Beech Street Ball Field" located along the northeast boundary of above-described located in the Town of Bennington, Vermont. Such access easement may be more particularly limited to a specified right of way corridor upon subsequent written agreement of Grantor and Grantees. The rights conveyed herein are in addition to, not in lieu of, the covenants and restrictions otherwise conveyed by this Grant.

Excepted and excluded from this description of the Protected Property are the following parcels of land:

1. A parcel located on the westerly side of Morgan Street (Town Highway #476) containing 0.15 acre more or less, (excluding those areas within the road rights of way which are assumed to be three rods wide), and the perimeter of which is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point located along the westerly sideline of the Morgan Street right of way (assumed 3 rod width), said point marking a northerly corner of lands n/f Baker; thence proceeding  
South 16° West 155 feet more or less, along a westerly boundary of lands n/f Baker; thence turning and proceeding  
North 73° 15' West 40 feet more or less, along the Protected Property; thence turning and proceeding  
North 16° 45' East 195 feet more or less, along the Protected Property to a point on the westerly sideline of the Morgan Street right of way; thence turning and proceeding  
South 29° 15' East 55 feet more or less, along the westerly sideline of the Morgan Street right of way to the point of beginning.

2. A parcel located easterly of Morgan Street (Town Highway #476) and southerly of Belvedere Street (Town Highway #475) containing 1.0 acre more or less, and the perimeter of which is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point marking a southeast corner of lands n/f Clara J. Bishop Life Estate, said point being in a southerly direction, 75 feet more or less, along an easterly boundary of lands n/f Clara J. Bishop Life Estate from the intersection of the northeast corner of lands n/f Clara J. Bishop Life Estate and the southerly sideline of the Belvedere Street right of way (assumed 3 rod width); thence proceeding  
South 3° 45' East 110 feet more or less, along the Protected Property; thence turning and proceeding  
South 86° West 110 feet more or less, along the Protected Property; thence turning and proceeding  
South 3° 30' East 615 feet more or less, along the Protected Property; thence turning and proceeding  
South 87° West 40 feet more or less, along the Protected Property to a southeast corner of lands n/f Engle; thence turning and proceeding  
In a northerly direction 720 feet more or less, along the easterly boundaries of lands n/f Engle; lands n/f Moreau; lands n/f Wassick; lands n/f Harrington; lands n/f Rice; and lands n/f

Turner to a point marking a northeast corner of lands n/f Turner, a southeast corner of lands n/f Morin and a southwest corner of lands n/f Clara J. Bishop Life Estate; thence turning and proceeding  
In an easterly direction 150 feet more or less, along a southerly boundary of lands n/f Clara J. Bishop Life Estate to the point of beginning.

3. A parcel located northerly of Foster Drive (Town Highway #96) containing 1.0 acre more or less, and the perimeter of which is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a northerly corner of lands n/f McPhail, said corner marking the southwesterly corner of the parcel herein described; thence proceeding  
In a northerly direction, 30 feet more or less, along an easterly boundary of lands n/f McPhail to a northeasterly corner of lands n/f McPhail; thence turning and proceeding  
North 0° East 240 feet more or less, along the Protected Property; thence turning and proceeding  
North 90° East 295 feet more or less, along the Protected Property; thence turning and proceeding  
South 0° West 90 feet more or less, along the Protected Property to a point marking a northwest corner of lands n/f McGuckin and a northeast corner of lands n/f Morin; thence turning and proceeding  
In a westerly direction, 200 feet more or less, along a northerly boundary of lands n/f Morin to a northwest corner of lands n/f Morin; thence turning and proceeding  
In a southerly direction, 190 feet more or less, along a westerly boundary of lands n/f Morin to a point marking a northeasterly corner of lands n/f McPhail; thence turning and proceeding  
In a generally westerly direction, 100 feet more or less, along a northerly boundary of lands n/f McPhail to the point of beginning.

4. A parcel located westerly of Beech Street (Town Highway #3) containing 0.05 acre more or less, and the perimeter of which is more particularly described as follows, all bearings are referenced to "Grid North:"

Beginning at a point along a southerly boundary of lands n/f Peck and marking a northwesterly corner of lands n/f Bank of New York Mellon Trust; thence proceeding  
In a southwesterly direction 123.75 feet more or less, along a westerly boundary of lands n/f Bank of New York Mellon Trust to a northwesterly corner of lands n/f Oldham; thence turning and proceeding  
In a northwesterly direction 55 feet more or less, along the Protected Property to a southerly corner of lands n/f Peck; thence turning and proceeding  
In a northeasterly direction 90 feet more or less, along a southeasterly boundary of lands n/f Peck to the point of beginning.

Meaning and intending to include in this description of the Protected Property lands lying westerly of Beech Street and easterly of Morgan Street in the Town of Bennington, Vermont and generally described as containing a total of one hundred and sixty two and five tenths of an acre (162.5) acres, more or less.

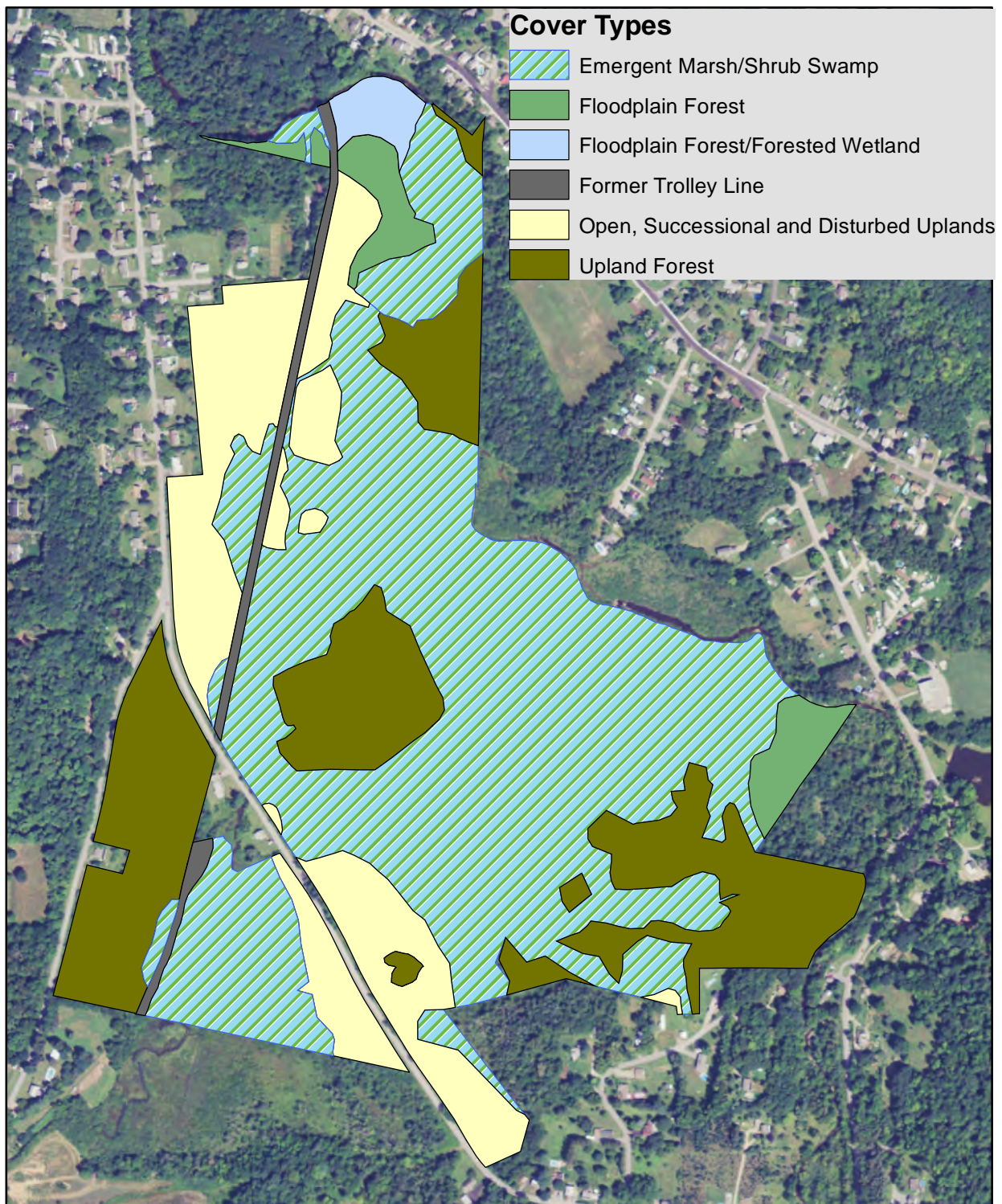
**NOTICE:** Unless otherwise expressly indicated, the descriptions in this Schedule A and in any subsequent Schedules are not based on a survey or subdivision plat. The Grantor and Grantees have used their best efforts to depict the approximate boundaries of the Protected Property and any excluded parcels, complexes or special treatment areas on a plan entitled "Vermont Land Trust – Town of Bennington Walloomsac Headwaters Park, Town of Bennington, Bennington Co., VT, dated March 2015" signed by the Grantor and VLT (referred to throughout this Grant and its Schedules as "Town of Bennington Conservation Plan"). The Town of Bennington Conservation Plan is based upon Vermont Base Map digital orthophotos and other information available to VLT at the time of the Plan's preparation. Any metes and bounds descriptions included in the Schedules herein are approximate only. They are computer generated and are not the result of field measurements or extensive title research. The Town of Bennington Conservation Plan and any metes and bounds descriptions herein are intended solely for the use of the Grantor and Grantees in establishing the approximate location of the areas described and for administering and interpreting the terms and conditions of this Grant. No monuments have been placed on the ground. The Town of Bennington Conservation Plan is kept by VLT in its Stewardship Office. **The Town of Bennington Conservation Plan is not a survey and must not be used as a survey or for any conveyance or subdivision of the land depicted thereon.**

Grantor and Grantees do not intend to imply any limitation on the area of land included in this

description, should a survey determine that additional land is also encumbered by the Grant. If, in the future, the Grantor or Grantees shall prepare a survey of the Protected Property, of any portion thereof, or of any excluded lands, and that survey is accepted by the other party or confirmed by a court, the descriptions in the survey shall control.

Reference may be made to the above described deeds and records, and to the deeds and records referred to therein, in further aid of this description.

# Map 3: Headwaters Cover Types



0 375 750 1,500 2,250 3,000 Feet



**Site Visit –Bennington County Conservation District  
USDA Natural Resources Conservation District**

**SITE/OWNER NAME:** Greenberg Park/Town of Bennington

**TOWN:** Bennington

**LOCATION:** ~3/4 mile south on Morgan Street from Route 9

**PERSONNEL:** Toby Alexander, Phil Rivara, Shelly Stiles (BCNRCD) and

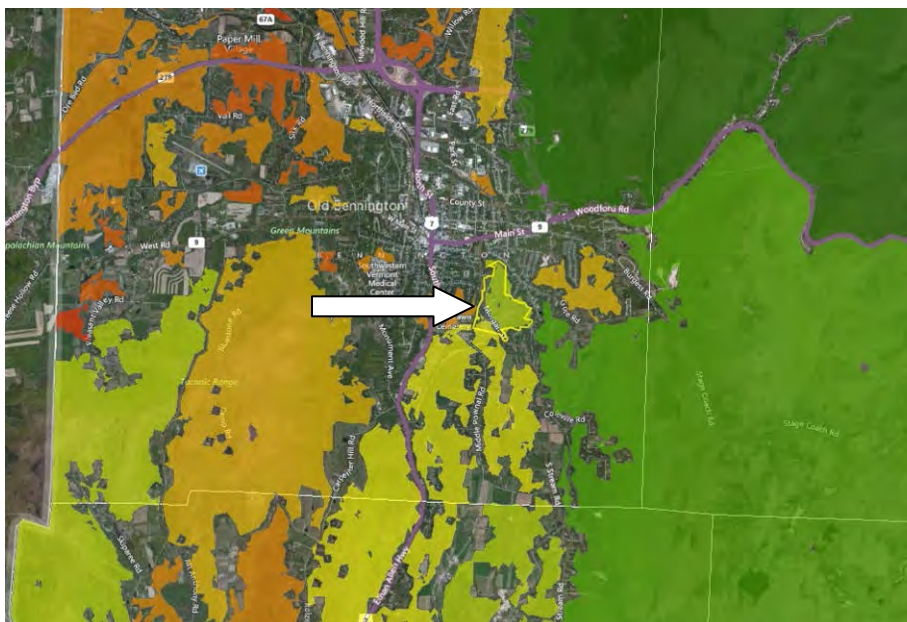
**DATE:** 5/7/2015

**LANDOWNER PRESENT:** No

**SUBMITTED BY:** Toby Alexander

**SUMMARY:** I was asked by Shelly Stiles to visit this new town park to evaluate habitat and potential. The focus of the visit was to evaluate the old fields which are found at the margins of the dominant class 2 wetlands along the Walloomsac River on the property. The landscape surrounding the property is Bennington City and suburbs with large landscape forests beyond. Being in a developed area there may be some negative effects of wildlife predation by domestic cats and perhaps dogs. Invasive plants were common on the land we walked as well which is due to likely being old agricultural land and being near developed areas.

Habitat blocks are areas of contiguous forest and other natural habitats that are unfragmented by roads, development, or agriculture. Habitat blocks provide many ecological and biological values critical for protecting native species and the integrity of natural systems. While this property is found in a developed area it is actually determined to have a habitat block value of 6 out of 10 by itself. This is likely due to its relatively large size (168 acres) and riparian/wetland functions and values and a very rare black dash butterfly found at north end of parcel (from Heritage Program). Most of the 168 acres are mapped class 2 state significant wetlands. In addition, the town property is nearly (separated by a road and 2 house lots ~450 feet) connected to high quality wildlife habitat blocks to the East and North East.



Town Property (white arrow) has a wildlife habitat block value of 6. Note Value 9 habitat block (dark green) to the East and Value 10 habitat block (darkest green) to the Northeast. Red and oranges are low habitat block values.

The habitat block immediately to the east is dominated by the Green Mountain National Forest and has a habitat block value of 9 out of 10. This block is over 51,000 acres. The block to the north is also dominated by GMNF and has a habitat block value of 10 out of 10. This block is over 97,000 acres. Most natural corridors from the large landscape level forests are likely fragmented but there is still potential for use by some wide ranging species such as moose and bear.



**Southern 2 fields at white arrow. Norther larger field with orange arrows**



**South fields 1 and 2**

We first looked at the southernmost fields on Morgan Street which are found opposite each other on the East and West sides of the road. The field on the east side of the road (Field 1) measures about 4.2 acres and the field on the west side (Field 2) measures about 2.1 acres.

**Field 1** is a good size to manage for early successional – old field habitat. Generally, 5 acres or more is a target for old field management. NRCS in Vermont has prioritized early successional habitat due to state and regional conservation plans as well as current scientific literature identifying declining wildlife species that require these habitats. Old fields with a good shrub and small tree component can provide very good habitat for “shrubland” birds and other early successional wildlife. Shrubland birds are the group of birds that use old fields and young forest that include some species with some significant declining populations. Typical target species in Vermont found in old field habitats with patchy shrubby areas include field sparrow, eastern towhee, brown thrasher, and golden-winged warbler in the Champlain Valley. NRCS in Vermont tends to focus on managing habitat for birds as they tend to have

the best population and habitat requirement/management information compared to other groups (e.g. most mammals, reptiles, amphibians, etc.). By managing for maximizing habitat complexity, plant species and interspersed cover we can provide for birds, mammals, herps and pollinators. See attached Information Sheets on Early Successional Habitat, Shrubland Birds and Invasive Plants.



**Field – 1 south end, most shrubs are exotic**

The southern and eastern parts of field 1 are dominated by invasive exotic shrubs. Both common and glossy buckthorn were found, bush honeysuckle, and autumn olive. The herbaceous layer, at time of visit, included grasses (brome), goldenrod, wild parsnip and sensitive fern in wet parts. As you travel down the hill toward the wetland (to south-east) there is a large clump of mature boxelder. A good deal of garlic mustard was found beneath and around this clump of boxelder. We found a good amount of blackberry down the hill which provides excellent cover and food source. We looked at the margin and actual wetland next. The margin was a better mix of species including gray dogwood, silky dogwood, shrub willow (a lot of Bebb's), blueberry with aspen, and larch as well. This margin of the wetland and field area could be a potential area for management. If there is interest in expanding some of these species into the field, some winter cutting could help. This would particularly be useful for regenerating aspen as it will sprout from roots if cut in winter. This type of management, such as strip cuts (a chain width) from dryer to wetter portions, is commonly done for feeding areas for woodcock. Maintain at least some large aspen as this is a favored cavity tree for wildlife (soft wood – easy to excavate).



**Field 1 – field edge, wetland margin, aspen, silky dogwood**

We next headed over to the North end of the field which is the highest point. We noted a few large apple trees about the field that should be maintained as a food source for pollinators (flowers) and wildlife (fruit). There are small white and Scotch pine near top of the hill and this drops off to the North with a great view of the wetland that is being obscured. Much better representation of native woody species here. We found a few black and chokecherry at margins and found more gray dogwood on the side hill. There was also more aspen at the edges here toward the west and road. We also saw a small viburnum (nannyberry). Interestingly there was what appeared to be a planted row of honeysuckle as well.



**Field 1 – North end, gray dogwood clones**

**Management for Field 1:** There are different options for management for field 1. The field could be allowed to grow up but it seemed that there was interest in maintaining diversity for wildlife. I would prioritize maintaining and expanding upon the good habitat to the north. Gray dogwood should be allowed to continue to spread clonally. It is an excellent cover. As part of this, invasive plants should be controlled to release native woody species. The district may consider removal of most of the pine as this will spread and shade out cover. For shrubland birds and other early successional wildlife, low cover 0-6 feet is a key height to have thick cover. Removal row of honeysuckle would help the habitat and the view. It seems that recreation and bird watching here would be great mix. Views of the wetland could be opened up a bit by selective cutting. Again, favor cutting down and/or treating invasive plants to release native species.

Uncommon trees should be retained and more common species could be removed. In areas like this field where there are so many invasive plants it is a process to shift the plant community to a more native dominated mix. Having small (sapling to small pole size) scattered perch trees 5 per acre is a good goal as many birds like elevated perches. Mowing/brushhogging could be done throughout the field to maintain some grassy/forb openings but the other areas would be good to have native shrubs. Shooting for 30-50% shrubby would be very good with shrub patches being large enough to provide good cover (avoid single scattered shrubs). Current shrub cover appears to be ~5% on field 1 and 2. Having a meandering mowing pattern is best instead of straight lines – this will also make for longer walking trails through open areas. Tree/shrub planting could be tried to enhance the areas with little native shrubs but without significant protection I suspect deer would eat them down. Chainsaw and cut stump herbicide application could be used or large shrubs could be grinded down with a brontosaurus or other grinding machinery. In some areas where control of invasive plants was not important, grinding was used to select against invasive plant and release native shrubs.



**Example of Post Management – invasives/large material grinded down, brush hog around flagged native shrub areas**

**Field 2** (2.1 acres) is found on the west side of Morgan Street. Field 2 was somewhat similar to Field 1 but seemed to have a better representation of native woody species throughout. We found a bit more gray dogwood, chokecherry, viburnum, native shrub willows and blackberry. But, we also found some meadowsweet (*Spirea alba*) which is a great pollinator plant and great low cover. I often find yellow warbler nests in this low growing shrub. The margin of the wetland on this side of the road was more evident with larch and red maple evident.

**Field 2 Management** – Similar to field 1, managed against invasive plants and favor native shrubs. Minimize trees in field area to maintain shrubby condition over time. Allow beneficial species to spread by creating brushhog pattern to mow down and or treat invasives and allow beneficial dogwood, spirea, etc. to spread and form a meaningful clump of habitat. Minimum clump size should be 10 feet diameter or larger if possible. Aim for interspersed habitats. In other words create many clumps of woody habitat of different sizes throughout field with small and larger gaps of herbaceous areas between. For all fields, having open successional areas next to the wetlands may provide good feeding, basking and perhaps breeding habitat. If any areas of dry exposed soil are found these could be managed as designated turtle nesting areas. Other ideas to improve habitat in all of these fields would be to maintain or create rock piles and brush piles. Bird boxes would be another idea but they would need routine maintenance and predator guards.



**Field 2 – south end, shrub clumps/patches need to develop**

**Field 3** is found in the Northwest section of the property and also borders Morgan Street. The field is about 10 acres in size. The south/west side includes about 2 acres of grass dominated area. This would be too small to manage for grassland birds. They require much larger grassland settings. However, similar to field 1 and 2, the successional stage of the field is ideal to manage for shrubland birds and other early successional dependent species. This field has the best habitat of the 3 in patch size, native species diversity and percent cover in shrubs. It is estimated at 20% with some areas of the field higher and lower. There is very good gray dogwood throughout and as in other areas this should be encouraged. There is also some white pine more viburnum, apple, black cherry, ash, rubus (raspberry/blackberry), etc. The northern section of field 3 is the best section with some areas thick with native shrubs and with scattered perch trees.

**Field 3 Management** – The northern section is in pretty good habitat condition. Invasive plant control can take place via herbicide treatment or grinding down to favor natives. Some areas are quite thick with even native woody vegetation and openings could be cut through to provide some walking trails as well as to create more structural diversity. In the southern section of the field, the shrub habitat needs further development. Allowing the shrubs to get larger and expand patches would be a good approach. This can be done simple by flagging off an area around a desired clonal shrub and not mow in that area. Again, invasive plants should be selected against through management. The grassy area could be maintained as such to support grassland dependent skipper butterflies, small mammals and herps. Aiming for 30-50% shrub cover across this field would provide very good habitat. Further pushing the plant community toward native shrub and tree species while selected against the non-natives is a good approach.

Most of the terrain of the fields are conducive to management. Management could take place after the breeding season on or about August 15. If it is determined there are reptiles of concern using the fields, mowing/brush hogging dates should be pushed back to mid October. This site has good potential to provide good old field/shrub habitat for a variety of species while also providing good recreational space.



**Field 3 to the Northwest – note patchiness of the upper section with open, shrubby and tree areas**



**Field 1 south – viburnum island mow around to allow to expand – control honeysuckle in background**



**Field 3 – nice patchiness, favor natives, select against invasives**

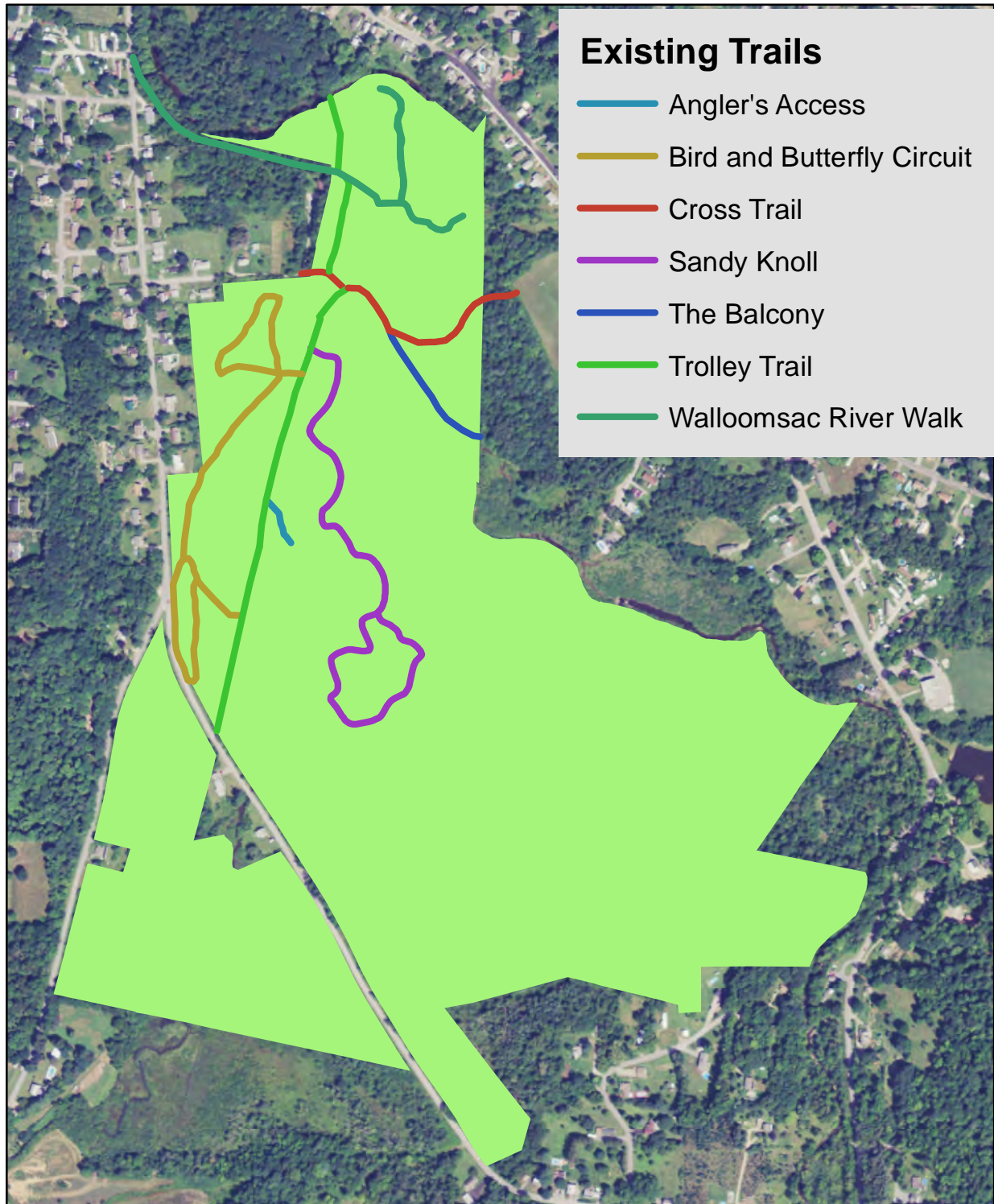


**Field 3 south – Grassy southern end with shrub border**



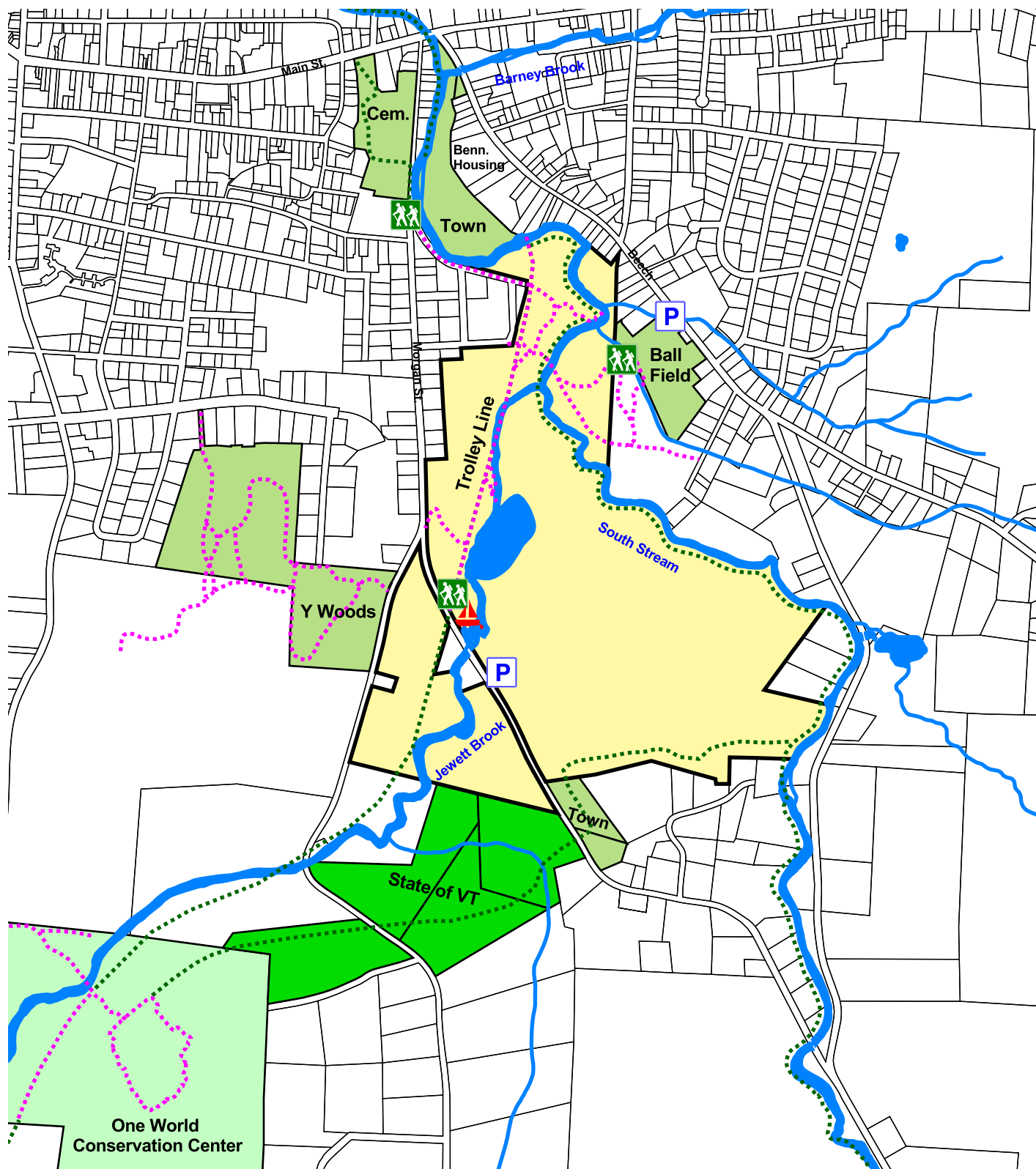
**Field 3 – walking trail/ good shrub habitat**

# Map 4: Headwaters Existing Trails



0 375 750 1,500 2,250 3,000 Feet





- Existing Trails
- Potential Pathways (Town Plan)
- Rivers and Streams

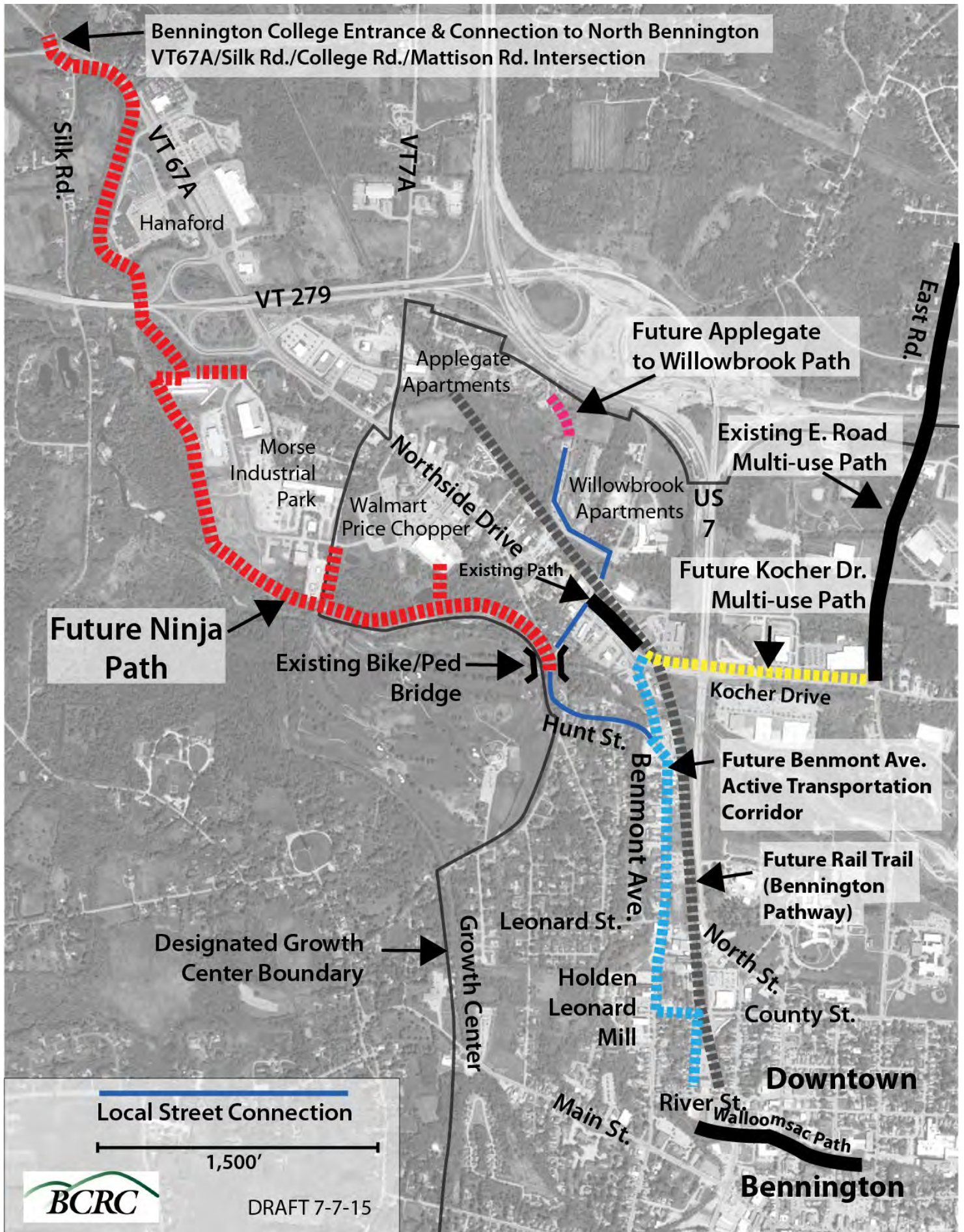
- Greenberg Parcels
- Private Property
- Conserved lands**
  - State
  - Municipal
  - VLT Conserved

## The Walloomsac Headwaters Park and Natural Area

SCALE 1:12,000  
1 Inch = 1,000 Feet



Map produced October 15, 2014 by BCRC.



Best Management Practices for Handling Human-Beaver Conflicts

Although some Vermont statutes allow the removal of both nuisance beaver and beaver dams, other statutes require that water quality and wetlands be protected. These Best Management Practices (BMPs) have been designed to address the issues of nuisance beaver and the alteration or removal of beaver dams while at the same time, and to the greatest extent possible, protect water quality and wetland values. By following these BMPs, including complying with the requirements of the 1272 Order (contained in Appendix 12 of larger document\*), a person or organization will be considered in compliance with the law.

Beaver problems should be brought to the attention of a Fish and Wildlife warden and/or wildlife biologist in the Agency of Natural Resources regional office closest to the problem site, the Wetlands office, or the Wildlife Services Hotline.

Upon receipt of a call, the responding person will ask the caller to provide the following information:

- Does the dam pose a hazard to human health, safety, or property and what is the nature of the hazard? Is the hazard imminent so that there is an emergency situation?
- What is the location of the dam, how long has it been there, and approximately how large is it?
- What is the nature of the problem (flooding of water supply, concerns regarding *Giardia*, threat to roads or cropland, etc.)?
- What are the property uses downstream?

Whenever possible, the caller’s concerns should be satisfied through information and advice given over the phone. If further action is needed, the problem should be referred to the appropriate ANR individual.

TYPE 1 DAMAGE PREVENTION TECHNIQUES

A. **Problem Description:** Beaver are eating ornamental trees and shrubs or damaging other landscape.

Management Response:

First try to:

- Install wire or electric fencing around ornamentals or landscaping. (Refer to Appendix 2 of larger document for examples of how to install this kind of protection).

If that doesn’t work:

- Arrange for lethal reduction and/or removal of beaver population. While problem beavers may legally be removed any time, removal of beaver during the normal trapping season may minimize costs to the landowner and maximize the use of a renewable resource.

B. **Problem Description:** Beaver are digging ditches and channels. There may also be a proliferation of small dams and lodges resulting from an expanding beaver population. No damage has occurred yet.

Management Response:

- Arrange for lethal reduction/control of beaver population. While problem beavers may legally be removed any time, removal of beaver during the normal trapping season may minimize costs to the landowner and maximize the use of a renewable resource.

C. **Problem Description:** Landowner is concerned about rabies or *Giardia*.

Management Response:

First try to:

- Provide educational materials or personal consultation regarding rabies and *Giardia* (Appendix 5 in larger document).

If that doesn’t work:

- Arrange for lethal reduction and/or removal of beaver population. While problem beavers may legally be removed any time, removal of beaver

\*BEST MANAGEMENT PRACTICES FOR HANDLING HUMAN-BEAVER CONFLICTS (larger version):

http://www.vtfishandwildlife.com/library.cfm?libbase\_=Factsheets

during the normal trapping season may minimize costs to the landowner and maximize the use of a renewable resource.

TYPE 2 OBSTRUCTED CULVERTS AND DAMS LESS THAN TWO YEARS OLD

**Problem Description:** This applies to the specific condition where beaver have obstructed a culvert or constructed a dam that is less than two years old and the dam poses a hazard to public health or safety or public or private property.



Management Response:

- Municipalities and state agencies should develop a regular monitoring program for roads, highways, and bridges to identify potential beaver problems and implement appropriate control measures.
- Consider arranging for the lethal removal or reduction of the nuisance beaver (live trapping and the relocation of beaver is not authorized by this procedure). While problem beavers may legally be removed any time, removal of beaver during the normal trapping season may minimize costs to the landowner and maximize the use of a renewable resource.
- Investigate the possibility of installing and maintaining water control structures (such as the use of piping to serve as a siphon to lower the water level in the beaver pond) or exclusionary devices. When installing one of these devices, it may also be necessary to control the size of the beaver population through an annual trapping program.
- Notify downstream landowners if dam removal is the only option.
- Lower the water level of the beaver impoundment by using a pump or siphon (refer to Appendix 6 of larger document for an example). The water level must be reduced gradually so that the impoundment is lowered not more than one foot per day so as to minimize erosion, stream degradation, the potential for downstream flooding, and personal liability for damages. (Note: Beaver could potentially respond in one of two ways: they may abandon the area or attempt to work against all efforts to reduce water levels.)

- To maximize the protection of spawning trout and salmon, and the development of their eggs and fry and if no imminent hazard exists, dam removal will take place only between June 1st and October 1st. Dam removal must be done in accordance with the requirements of Appendix 11.
- Immediately following dam removal, beaver fencing or water control devices should be installed and maintained in accordance with the procedures contained in Appendix 7, 8, 9, and 10 for the purpose of preventing future beaver dam construction.
- Persons who remove beaver dams or culvert obstructions in accordance with these BMPs must notify a Fish and Wildlife warden, one of the Agency of Natural Resources regional offices, or the Wildlife Services Hotline at 1-800-472-2437 as soon as possible.
- Any person who complies with the requirements listed in this section for Type 2 beaver dam problems will need no further authorization from the Agency of those activities. Compliance with the Type 2 requirements constitutes compliance with the 1272 Order contained in Appendix 12.

**NOTICE:** *Beaver dams which obstruct man-made dams, gates, and/or spillways can result in higher pond levels and reduce spillway capacity. This may cause an imminent hazard situation to occur with little to no warning. These beaver dams must be removed immediately upon discovery and as part of routine maintenance of other man-made dams. People who remove beaver dams in this type of situation do not need to comply with the BMPs, but it is recommended that they use the BMPs as guidance.*

TYPE 3 CONFLICTS WITH AN ESTABLISHED BEAVER DAM OR DAM COMPLEX

**Problem Description:** Beaver dam or dams (inhabited or uninhabited) which have been in existence two years or more, and which pose a hazard to human health or safety, or to public or private property.

**Management Response:** In cases involving well-established beaver dams and associated wetlands, Agency personnel must be contacted and a site visit by one or more representatives of the Agency will be

necessary. Agency personnel will work with the landowner, municipality, or state Agency to identify solutions to the problem with the goal of appropriately managing the nuisance beaver and associated hazards while maintaining wetland values, minimizing negative environmental impacts, and reducing personal liability for damages. Responses may vary. For example, with respect to the following situations:

- If a beaver dam and its associated wetlands poses a hazard to human health and safety or has in the past caused substantial damage to property, roads, or railroads, then the procedures described in Type 2 may be appropriate in some cases and will be determined on a site-by-site basis.
- In a situation where a beaver pond is no longer inhabited by an active colony and the potential failure of the unmaintained dam poses a likely threat to adjacent and/or downstream properties and the retention of water no longer serves the ecological function that it once did, ANR personnel may determine that the dam can be removed by lowering the water level no more than one foot per day. Other measures may be necessary during dam removal to protect downstream water quality and habitats.

*In all cases listed above, if a municipality, railroad, or the Agency of Transportation deems a situation to be an imminent hazard (i.e. high water during a significant rain event) to public health and safety or to public or private property and cannot follow the BMPs due to the need for immediate action, they should contact the Department of Environmental Conservation or the Fish & Wildlife Department as soon as possible after taking immediate action.*

**NOTICE:** *The alteration or removal of a beaver dam in accordance with these BMPs does not authorize dredgings, filling, dam construction, or any other activities that may have an adverse effect on wetlands or the waters of the state not authorized by these BMPs.*

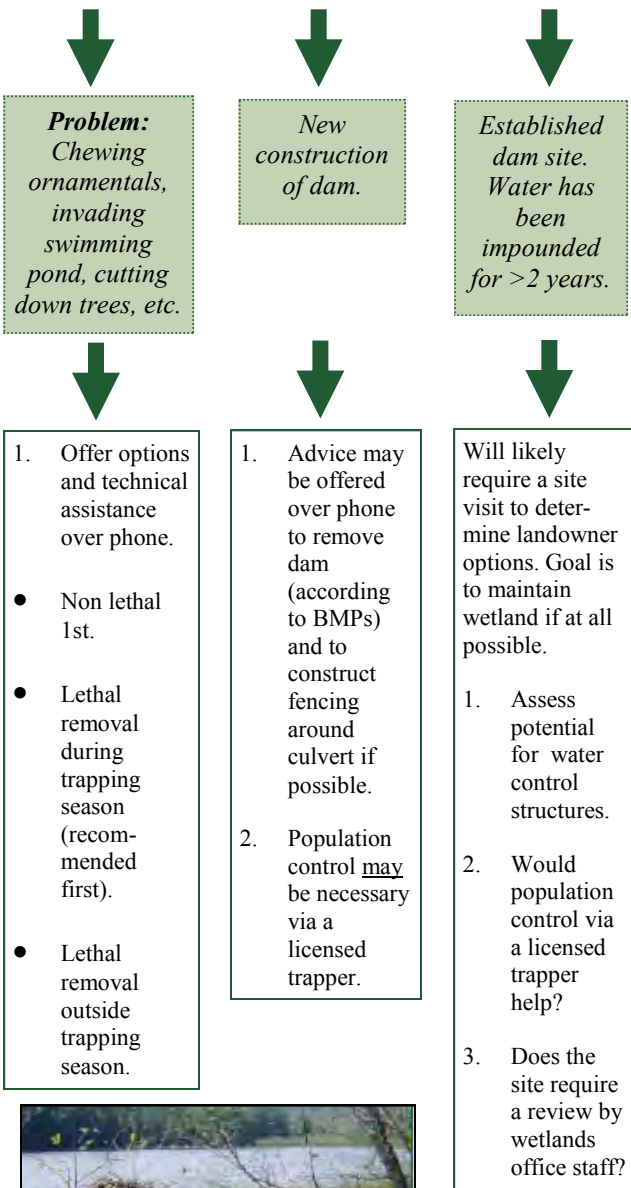
### Phone Numbers:

USDA APHIS Hotline: 1-800-472-2437

Vermont Wetlands Office: 802-828-1535

Chris Bernier, VT F&W Dept.: 802-885-8833

## HUMAN/BEAVER CONFLICT PROTOCOL



Rev. 8/2014 CAB/mmc

Vermont Agency of Natural Resources  
Fish & Wildlife Department  
100 Mineral Street, Suite 302  
Springfield, VT 05156-3168  
www.vtfishandwildlife.com

VERMONT AGENCY OF NATURAL RESOURCES  
FISH & WILDLIFE DEPARTMENT

# Best Management Practices for Handling Human-Beaver Conflicts



## **Section 6.16 Best Management Practices for Duck Blinds, Fences, Catwalks, Docks**

Pursuant to Section 6.16 of the Vermont Wetland Rules, the following Best Management Practices have been developed for this allowed use in order to prevent discharges to Waters of the State, and to maintain the integrity of wetlands and associated waters:

### **6.16 The placement, maintenance or removal of duck blinds, ice fishing shanties, fences, catwalks, footbridges, observation decks, docks exempt similar structures, in compliance with Best Management Practices developed by the Secretary.**

Please read this document carefully in order to determine whether your activity qualifies as an allowed use, to perform the activity in compliance with the best management practices, and to determine if other permits may be necessary.

1. Does the proposed activity qualify for an Allowed Use under Section 6 of the Vermont Wetland Rules?
  - a. This use shall not alter the configuration of the wetland's outlet or the flow of water into or out of the wetland, and no draining, dredging, filling or grading shall occur.
  - b. The placement, maintenance or removal of the structure shall not result in discharge to Waters of the State;
  - c. No clearing of woody vegetation without wetland permit or approval of wetlands office;
2. Best Management Practices
  - a. Construction, siting, installation and removal methods shall be those which have the least impact to the protected wetland:
  - b. Structures such as boardwalks and catwalks shall be sited to avoid impacts to sensitive natural areas:
    - i. Utilize existing structures and pathways, wherever possible.
    - ii. Not all wetland areas can support all types of walks while maintaining wildlife values. If this can't be accomplished, it may be necessary to downsize the project or look for an alternative route.
    - iii. If crossing a sensitive habitat or creating a new trail, keep the crossing as narrow as possible. Skirt sensitive wetland areas, and provide for views from the periphery (lookouts and overlooks) instead of bisecting wetlands.
    - iv. Preserve and enhance existing tree cover and shrubs. Where possible, consider weaving walks around existing trees to help maintain canopy cover and to preserve large diameter trees.
  - c. For the construction of boardwalks, catwalks and similar structures the construction schedule shall account for environmental and habitat conditions:
    - i. Schedule all construction adjacent to or within wetlands during dry periods - or at least not immediately prior to during rain events.
    - ii. Avoid work during the breeding and migratory seasons of sensitive wildlife.
  - d. For the construction of boardwalks, catwalks and similar structures installation activities shall minimize impact to soils, hydrology and vegetation:
    - i. Install structures that do not require fill such as those mounted on posts or floats: No

## **Section 6.16 Best Management Practices for Duck Blinds, Fences, Catwalks, Docks**

concrete footing, masonry, earth or rock fill, sheet piling, bulkheading, cribwork or similar construction.

- ii. The structure shall not significantly alter the flora or fauna of the wetland either with the initial installation or ongoing use:
  - (1) Allow light and water to flow through and underneath the structure by adjusting the height and spacing the travel surface;
  - (2) Height should allow for animal passage over or under structure;
  - (3) Boardwalks in wetlands should not be wider than 3-5 feet;
- iii. No heavy equipment is allowed to enter the wetland for the installation.
- iv. The structure shall be constructed of appropriate materials that are recommended for aquatic use: untreated lumber (e.g., cedar, tamarack, locust, redwood, yew, cypress, and hemlock), composite lumber, plastic lumber, or metal. Other materials may be used with prior approval from the Vermont Wetlands Program
- v. Keep surface waters clear of discharge or turbidity.
- vi. Construction shall take place so that sawdust or other debris is not discharged into the wetland or surface waters.
- e. Invasive species should be prevented using the following methods:
  - i. Any equipment should be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species;
  - ii. If removed material contains invasive species, care should be taken to dispose of the material in a manner that does not spread the invasive species to new areas.
- 3. Additional permit considerations:
  - a. Docks, walls, boathouses, bridges, water intakes, cables, dredging, or fill, may require a Shoreland Encroachment Permit under 29 V.S.A. Chapter 11, while certain small projects or activities do not require a permit.
    - i. Docks shall be no greater than 50 feet in length and the combined surface area of multiple non-commercial docks, mounted on posts or floats within 100 feet of each other which are owned/controlled by one person does not exceed 500 square feet without approval from the Lakes and Ponds Program.
  - b. Structures in wetlands, streams and lakes may be subject to additional state, local and federal regulations.

**Vermont Agency of Natural Resources  
Department of Environmental Conservation**

**Vermont Wetland General Permit (3-9025)**

**I. Purpose**

The Secretary of the Vermont Agency of Natural Resources (Secretary) is issuing this general permit pursuant to 10 V.S.A. § 905b and §9.7 of the Vermont Wetland Rules, effective August 1, 2010, for certain specified activities within certain wetlands and buffers to more effectively and efficiently regulate and protect Vermont's wetlands. The Secretary reserves the right in Section IX.J. of this general permit to require an individual permit if deemed necessary to protect wetlands or buffers.

**II. Definitions**

Unless otherwise defined herein, all terms used in this general permit shall have the meanings set forth in the Vermont Wetland Rules, effective August 1, 2010, the Wetlands Statute, 10 V.S.A. Chapter 37, or if not defined in the Vermont Wetland Rules or Wetlands Statute, shall have their common meaning.

**III. Limitations on Coverage**

The following activities are not eligible for coverage under this general permit:

- A. Activities that are allowed uses under §6 of the Vermont Wetland Rules.
- B. Activities that the Secretary finds will have an undue adverse impact on protected wetland functions and values (§5, Vermont Wetland Rules), or that need additional conditions beyond those in this general permit in order to protect functions and values.
- C. Activities within a Class I wetland or buffer zone.
- D. Activities affecting wetlands significant for the Rare, Threatened, or Endangered (RTE) Species Habitat function pursuant to §5.6 of the Vermont Wetland Rules. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife's Wildlife Diversity Program.
- E. Activities located in or adjacent (within 50 feet) to bogs, fens, or vernal pools.
- F. Activities in or adjacent (within 50 feet) to wetlands that are significant for the Exemplary Wetland Natural Community function pursuant to §5.5 of the Vermont Wetland Rules. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife's Wildlife Diversity Program.
- G. Activities in or adjacent (within 50 feet) to wetlands at or above 2,500 feet in elevation (headwaters wetlands).

- H. Unpermitted as-built projects that required a permit and did not obtain one in violation of the Vermont Wetland Rules.
- I. Activities that have not demonstrated sufficient avoidance and minimization of impacts to the wetland and buffer zone, in accordance with §9.7a.(4) of the Vermont Wetland Rules.
- J. Activities that are components of a single project and/or planned phases of a multi-phased project, where the entire project exceeds the eligibility thresholds in Section IV. of this general permit.
- K. Activities within perennial streams subject to state jurisdiction under 10 V.S.A. Chapter 41, Stream Alterations.

#### IV. Activities Eligible for Coverage

A. The Secretary has determined that activities eligible for authorization under this general permit will comply with the Vermont Wetland Rules and will have no undue adverse effect on protected functions and values. In making this determination, the Secretary has evaluated the potential direct and immediate effects of eligible activities as well as the potential cumulative and ongoing effects on wetland functions and values. This determination is achieved by limiting the impact thresholds of eligible activities based on the condition and use of wetlands and buffer zones, and the nature of the activities. Furthermore, activity-specific best management practices required by this permit for eligible activities limit the potential effects on wetlands, buffer zones, and associated waters.

B. **Eligible Activity Thresholds.** To qualify for this general permit, the proposed activity must not exceed the threshold limit (in square feet) for each category of wetland and buffer, and each category of project. In calculating the size of the area of impact, an applicant shall include filling, dredging, cutting woody vegetation, and temporary and permanent impacts. Indirect impacts such as draining shall also be included in the threshold calculation. Eligible activity thresholds for the different project categories are listed in Table 1. Categories of projects and associated terms are described below:

1. **Linear Projects** are projects associated with linear facilities, including roads, highways, bike paths, railroads, overhead utility lines, underground utility lines, and/or pipelines.
2. **Non-linear Projects** are any projects that are not Linear Projects.
3. **Managed Areas** are wetland and buffer areas where the land use results in diminished function, including mowed lawns, mowed road shoulders, parking areas, roads, managed pasture, hay fields, and/or croplands.
4. **Natural Areas** are wetland and buffer areas that are naturally vegetated or minimally managed areas where the land use does not result in diminished function, including natural areas, areas used for silviculture, and/or old fields.
5. **Surface Water Margins** are wetlands located along waters of the State (e.g. lakes, rivers, streams). The associated threshold applies to the ten feet of wetland margin as measured from the ordinary high water mark for lakes and ponds, or top of bank for streams. No more than 150 square feet of combined wetland and

buffer zone impact is allowed in surface water margins in order to be eligible for coverage under this general permit. This 150 square feet is not in addition to the other thresholds, but is contained within those thresholds.

**Table 1: Eligible Activity Thresholds.** The project must not result in impacts greater than the thresholds listed for each category of wetland and activity.

Wetland or Buffer Type	Linear Projects – Total Area Impacted	Non-Linear Projects – Total Area Impacted
<b>Managed Areas</b>	<5,000 square feet	<3,000 square feet
<b>Natural Areas</b>	<3,000 square feet	<1,000 square feet
<b>Surface Water Margins</b>	<150 square feet – included in above totals	<150 square feet – included in above totals

C. Piecemeal Development. Authorizations under this general permit shall not be issued for piecemeal projects and shall be applied only to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project for purposes of determining eligibility. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project for purposes of determining eligibility. Authorizations under this general permit shall not be issued for any activity that is part of an overall project for which an individual permit is required.

## V. Required Best Management Practices

### A. Best Management Practices Applicable to All Eligible Projects:

1. Steps shall be taken to prevent the transport of sediment into any wetland or other surface water and to promote re-vegetation following the completion of work:
  - a) If a construction stormwater permit is required (i.e. over an acre of soil disturbance), the permittee shall follow the terms and conditions of that permit. Otherwise, the permittee shall utilize recommended sediment and erosion controls as needed and as described in the Vermont Department of Environmental Conservation's Low Risk Handbook for Erosion Prevention and Sediment Control, or other equivalent controls as approved by the Agency.
  - b) All sediment controls and construction fencing shall be installed prior to beginning any earthwork for the project and removed following the successful establishment of vegetation.
  - c) Disturbed soils shall be seeded and mulched within 48 hours of final grading. Appropriate wetland seed mixes shall be used within wetlands. Appropriate erosion control/conservation seed mixes shall be used within buffers. All areas shall be stabilized within wetlands and mulched with straw or weed-free hay to limit the spread of invasive species.
2. If the impact is temporary in nature, stockpiling of material shall be done on filter fabric or equivalent in the wetland and buffer zone. Temporarily removed wetland soils shall be put back in place in the reverse order that they were

removed and restored to their prior condition to match the original soil profile.

3. Removed and stockpiled materials shall be located outside of wetlands and buffer zones and at least 50 feet from surface waters, and appropriate erosion controls measures as described above shall be used.

4. Impacts from equipment access to the project site shall be limited by utilizing existing or low impact routes using the following sequence of options listed in order of preference:

- a) Access should be limited to upland areas or existing maintained roads to the extent practicable;
- b) Access on other existing primitive roads or existing managed areas (as defined in Section IV.B.3) in wetlands or buffer zones;
- c) Where existing roads are not an option for access, minimize rutting and earth disturbing activities by:
  - (1) Accessing wetland areas with mats or under frozen or dry conditions. Winter construction under frozen conditions may minimize ground disturbance and reduce impacts to wildlife;
  - (2) Delineating the limits of disturbance using a combination of silt fence, flagging, and/or snow fence;
  - (3) Using low-ground pressure or track vehicles in wetlands to minimize compaction and rutting;
  - (4) Minimizing equipment use in wetlands and limiting vehicle trips; and
  - (5) Restoring the project site in order to reverse soil compaction and stabilize the soil on the site, and replanting the site if vegetation has been destroyed.

5. Waste disposal and equipment refueling shall be limited to areas outside wetlands and buffer zones and at least 50 feet from surface waters.

6. Final earthwork shall return wetlands and buffer zones to the original grade.

7. The potential for the introduction and spread of invasive species in wetlands and buffer zones shall be decreased by using the following methods:

- a) All equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species;
- b) If removed material contains invasive species, care should be taken to dispose of the material in a manner that does not spread the invasive species to new areas.

8. Notwithstanding 1-7 above, if there is an existing management plan in place that is more protective of the wetland resources, it may supersede these best management practices.

B. Activity Specific Best Management Practices:

a) Placement, relocation, removal, or upgrade of overhead utility lines in wetlands or buffer zones:

- (1) Poles and wires shall be located in such a way as to minimize the clearing of vegetation to the extent practicable;
- (2) Removal of woody vegetation in wetlands and buffer zones shall occur only within an existing or designated right of way (ROW) for the utility, or for removal of danger trees outside of the maintained ROW:
  - (a) Vegetation management shall be limited to clearing necessary to maintain the utility line in a safe and efficient manner;
  - (b) If cutting of wetland vegetation cannot be avoided, the work shall be completed by hand (chain- or hand saw) instead of using large equipment to preserve wetland soils; and
  - (c) Vegetation shall be cut at ground level, leaving root systems intact.

b) Installation of underground facilities in wetlands or buffer zones including utilities, dry hydrants, foundation drains, directional bores, and wells:

- (1) Trenches shall be filled, mulched, and seeded immediately or upon final inspection of the line;
- (2) If a directional bore is required, the depth of the bore beneath the wetland shall not puncture a confining layer essential to maintain wetland hydrology;
- (3) If drilling or boring is required, drilling fluid shall be composed of bentonite clay, clean water, and Agency approved additives (e.g., "environmentally safe" drill soap or polymers).

c) Activities in surface water body margins:

- (1) Soil and vegetation disturbance shall be minimized to avoid unnecessary impacts to waterbodies:
  - (a) Avoid removing vegetation until just before beginning construction that disturbs the soil;
  - (b) Minimize the area of bare soil within the approved work zone as much as possible;
  - (c) Maintain as much of a naturally vegetated buffer as possible around wetlands and surface waters to slow runoff and trap sediments;
  - (d) Phase construction to minimize the extent of soils disturbed simultaneously; and
  - (e) Dredged material shall be properly disposed of and dewatering of dredged material must take place such that a turbid discharge to waters of the State does not occur;

(2) Minimize the alteration of natural hydrology:

- (a) Maintain historic water level unless otherwise permitted; and
- (b) Any change to hydrology that will obstruct fish passage shall get prior approval from the Department of Fish and Wildlife.

## VI. Findings

A. Under 10 V.S.A. § 905b and §9 of the Vermont Wetland Rules, activity in a Class II wetland or its associated buffer zone is prohibited unless it is an allowed use, or it is authorized by a permit, conditional use determination, or order issued by the Secretary. Section 9.7 of the Vermont Wetland Rules provides that activities eligible for authorization under a general permit must have no undue adverse impact on protected functions and values. In evaluating whether any wetland is a Class II or a Class I wetland, the Secretary shall evaluate the functions that the wetland serves both as a discrete wetland and in conjunction with other wetlands by considering the following functional criteria. Consideration shall be given to the number of and/or extent to which protected functions and values are provided by a wetland or wetland complex including the following: water storage for flood water and storm runoff (§5.1), surface and groundwater protection (§5.2), fisheries habitat (§5.3), wildlife and migratory bird habitat (§5.4), exemplary wetland natural communities (§5.5), threatened and endangered species habitat (§5.6), education and research in natural science (§5.7), recreational value and economic benefits (§5.8), open space and aesthetics (§5.9), and erosion control through binding and stabilizing the soil (§5.10).

B. Activities eligible for coverage under this permit are limited by activity type, square footage thresholds, and existing wetland and buffer zone condition. Linear projects are generally limited to areas adjacent to existing facilities with impacts to the protected wetland functions limited by the required best management practices and the square footage limits for both managed and natural wetland and buffer zone areas. Non-linear projects are generally more limited in scope with impacts to the protected wetland functions minimized by the required best management practices and the square footage limits for both managed and natural wetland and buffer zone areas. If eligible projects are conducted in accordance with the terms and conditions of this permit, there will be minimal or no alteration of the physical and vegetative characteristics that provide the following functions: water storage for flood water and storm runoff (§5.1), surface and groundwater protection (§5.2), fisheries habitat (§5.3), wildlife and migratory bird habitat (§5.4), and erosion control through binding and stabilizing the soil (§5.10). Minimization of impacts is in part due to the 150-foot threshold for impacts to wetlands adjacent to surface waters. The presence of emergent and woody vegetation in wetlands directly adjacent to streams, rivers, ponds, and lakes provides an important means of slowing and storing flood water; filtering water; and preventing erosion from flood events and adjacent runoff. Wetlands adjacent to aquatic resources also have the potential to contribute to fisheries and provide important wildlife habitat. Potential impacts to exemplary wetland natural communities (§5.5), and threatened and endangered species habitat (§5.6), are limited through the Limitations on Coverage in Sections III.D., III.E., and III.F. of this general permit. Given the limited nature of the activities eligible for coverage under this general permit, no potential impacts are predicted for education and research in natural science (§5.7), recreational value and economic benefits (§5.8), and open space and aesthetics (§5.9). Based on the factors described above, if an eligible project is conducted in accordance with the terms and conditions of this general permit, it

will comply with the Vermont Wetland Rules and will not result in undue adverse impacts to wetland functions and values. In determining whether coverage under this general permit should be granted, the Secretary has evaluated the potential effect of the eligible activities on the basis of both their direct and immediate effects as well as on the basis of any cumulative or on-going effects.

## **VII. Relation to Other Permits**

Activities eligible for coverage under this general permit may also require a permit pursuant to other local, state, and federal laws, including a federal wetlands permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. Applicants are responsible for determining if any such permits apply to their proposed activities and obtaining any such permits.

## **VIII. Application for Authorization**

### **A. Application**

1. An applicant for authorization under this general permit shall submit a completed Vermont Wetland Permit Application, General Permit Notice of Intent, all necessary attachments and fees, if any, and all other application information required by the Secretary.
2. The Secretary may require an applicant to submit any additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an authorization under this general permit. The Secretary may deny coverage if the requested information is not provided within 60 days of the Secretary's request.

### **B. Public Notice of Application**

1. Once the Secretary determines that an application for authorization under this general permit is complete, the Secretary shall provide public notice to the clerk of the municipality in which the proposed activity and affected wetland area and buffer are located, shall post notice on the Environmental Notice Bulletin, and shall provide notice to a list of interested persons, if any. The Secretary shall request that the notice be posted by the municipality for no less than ten days.

### **C. Public Comment**

1. For a period of ten days following the Secretary's completion of the public notice requirements above, the Secretary shall provide an opportunity to the public to provide written comments regarding whether the application complies with the terms and conditions of this general permit. The Secretary shall maintain an interested persons list for those individuals/groups that wish to receive copies of notices of all general permit applications within the State or within a certain geographic area. Such notices may be distributed electronically instead of via mail.
2. The period for public comment may be extended at the sole discretion of the Secretary.

### **D. Issuance or Denial of Authorization**

1. Following the ten day public notice period, and upon a determination by the Secretary that the proposed activity meets the terms and conditions of this

general permit, the Secretary shall issue an authorization unless the Secretary determines that an individual permit is required pursuant to Section IX.J. of this general permit.

2. Denials of an authorization shall be issued in writing, stating the reasons for the denial. If an application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for an authorization.

3. Authorizations issued by the Secretary pursuant to this general permit shall be valid for a specified period of time not to exceed five years.

## **IX. General Conditions**

A. All activity shall be completed, operated, and maintained in accordance with the permittee's Notice of Intent and the conditions of this general permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 37 and may be cause for an enforcement action and/or revocation and reissuance, modification, or termination of the permittee's authorization under this general permit. No material or substantial changes shall be made in the project without the written approval of the Vermont Department of Environmental Conservation's Wetlands Program.

B. The permittee shall notify the Vermont Wetlands Program in writing prior to the start of a project and upon completion of the project. The notification of completion shall include a statement that the project was constructed in compliance with the conditions of this general permit and the authorization issued thereunder.

C. The required best management practices in Section V. must be followed to be in compliance with this general permit.

D. The permittee shall record its authorization under this general permit in the land records of the town(s) in which all affected lands are located. Any future deed for such lands shall reference the authorization. Within 30 days of the date of issuance of the authorization under this general permit, the permittee shall supply the Vermont Wetlands Program with a copy of correspondence with the town(s) certifying that the required recordings have been made.

E. The Agency maintains continuing jurisdiction over a project authorized under this general permit and may at any time order remedial measures if it appears likely that undue adverse impacts to protected wetland functions and values are or will occur.

F. Authorization under this general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.

G. Upon receipt of an authorization under this general permit, the permittee agrees to allow Agency representatives access to the property covered by the authorization, at reasonable times and upon presentation of credentials, for the purpose of ascertaining compliance with the authorization, this general permit, the Vermont Wetland Rules, and the Vermont Water Quality Standards and for the purpose of reviewing and copying all records required to be prepared pursuant to this general permit.

H. The Agency, by issuing this general permit and any authorization hereunder, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whomever suffered arising out of the approved project.

I. The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an authorization under this general permit for cause, including:

1. Violation of the terms or conditions of this general permit;
2. Obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;
3. A change in any condition of the wetland that requires either a temporary or permanent change in or cessation of the authorized activity.

J. The Secretary may require a person applying for an authorization under this general permit to apply for an individual permit. Cases where an individual permit may be required include the following:

1. The applicant is not in compliance with the terms and conditions of this general permit;
2. The activity does not qualify for authorization under this general permit taking into account the location of the activity, the size of the activity, the impact of the activity on the functions of the wetland or buffer zone in question including any cumulative or on-going effects.

K. The Secretary may require a person applying for an individual permit to apply for authorization under this general permit provided the Secretary finds that the activity complies with all conditions of this general permit and the activity is more appropriately covered under this general permit.

## **X. Term**

This general permit shall be effective for a period of five years after signature.

## **XI. Appeals**

Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the Clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned; the name of the applicant; and any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is 2418 Airport Road, Suite 1, Barre, VT 05641 (Tel.# 802-828-1660).

If this decision relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Service Board pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this section must be filed with the Clerk of the Public Service Board within 30 days of the date of this decision; the appellant must file with the Clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in

accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the Notice of Appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Service Board, available on line at [www.psb.vermont.gov](http://www.psb.vermont.gov). The address for the Public Service Board is 112 State Street, Montpelier, Vermont, 05620-2701 (Tel. # 802-828-2358).

State of Vermont  
Agency of Natural Resources

David K. Mears, Commissioner  
Department of Environmental Conservation

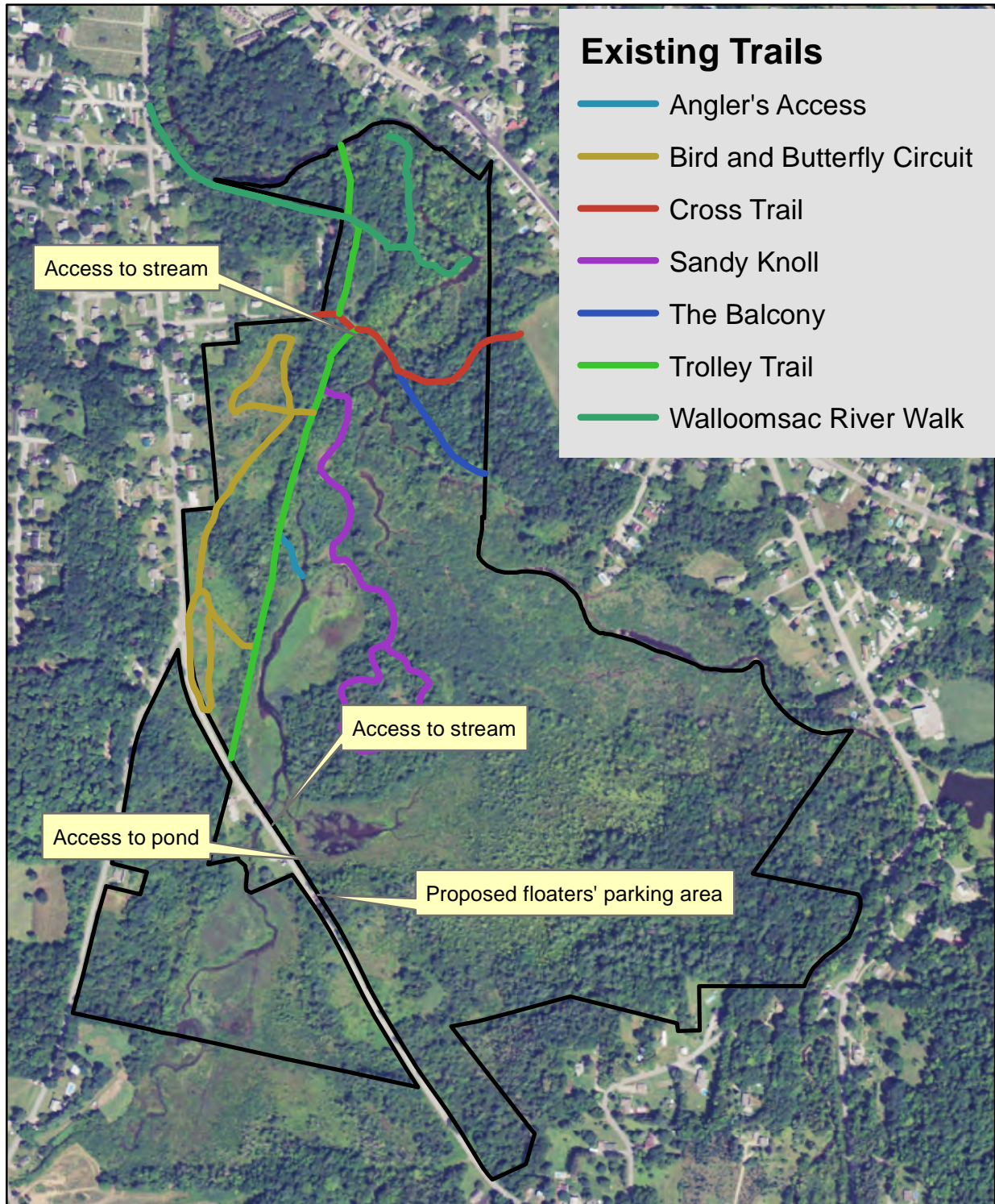
BY:

A handwritten signature in black ink, appearing to read "Peter LaFlamme", is written over a horizontal line.

Digitally signed by Peter LaFlamme  
DN: cn=Peter LaFlamme, o=VTDEC,  
ou=Watershed Management Division,  
email=pete.laflamme@state.vt.us, c=US  
Date: 2013.08.28 13:34:33 -04'00'

Peter LaFlamme, Director  
Watershed Management Division

# Map 7: Headwaters Floaters' Access



0 375 750 1,500 2,250 3,000 Feet

