

**Threatened & Endangered Species Takings Permit**

Statutory Authority: 10 VSA § 5408

**1. Permittee****Kyle Wells****Vermont Agency of Transportation (VTrans)**

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**2. Permit Period****Effective Date:** 7/15/2023**Expiration Date:** 12/31/2027**Authorization #:** EH-2023-03**Amendment #** 0**3. Principal Officer:** Joe Flynn**4. Subpermittee(s):** Rollin Tebbetts, VTrans staff and runway construction and grounds management contractors.**5. Authorized Species:** Grasshopper Sparrow (*Ammodramus savannarum*), Eastern Whip-poor-will (*Antrostomus vociferus*) and Eastern Meadowlark (*Sturnella magna*)**6. Authorized Activity:** Franklin County State Airport runway extension and hangar development**7. Location of Authorized Activity:** Franklin County State Airport.**8. Findings**

- A. The Permittee applied for a Threatened & Endangered Species Takings Permit under 10 V.S.A. § 5408 to authorize the incidental take of grassland birds.
- B. The runway extension and hangar development at the airport (the Project) is not de minimis in nature and will have the following benefits: improved airport capacity and safety.
- C. The Permittee is currently widening the Franklin County Airport's runway and has proposed extending the runway and developing new airplane hangars. The overall impact of these developments is expected to result in the loss of 38.3 acres of grasshopper sparrow and Eastern meadowlark breeding habitat.
- D. On 5/11/2023 the Agency of Natural Resources (ANR) submitted a memo to VTrans titled "Risk of harm to state threatened grasshopper sparrow and state endangered eastern meadowlark from current, on-going airport construction activities" outlining actions to limit the take of protected birds during construction activities.
- E. On 6/7/2023 the ANR submitted a memo to VTrans titled "Mitigation for loss of habitat and risk of harm to state threatened grasshopper sparrow and eastern meadowlark from current, on-going airport construction and future proposed activities" outlining actions to mitigate for impacts to protected birds and their habitats.

**Status of Grasshopper Sparrow, Eastern Whip-poor-will and Eastern Meadowlark in Vermont**

- F. The proposed expansion site is the larger of the two remaining populations of Grasshopper Sparrow (state threatened), in Vermont. Its habitat requirements are very specialized. The management practices at the airport during the last 24 years have been compatible with this species' habitat needs, supporting a breeding population and the most consistent and longest-running occupied Grasshopper Sparrow habitat in Vermont.
- G. The site is also used by the Eastern Whip-poor-will (state threatened) and Eastern Meadowlark (state threatened) for breeding.
- H. This site is also used for breeding by the Vesper Sparrow, a Species of Special Concern and a Species of Greatest Conservation Need in Vermont.

**Advice of the Endangered Species Committee**

- I. On 6/30/2023 the Endangered Species Committee provided its advice to the Agency of Natural Resources Secretary. That advice includes recommendations to:
  - i. Require specific deadlines for implementation and completion of the Revegetation and Grassland Restoration and Management Plans and the Long-term Grassland Habitat Mitigation Strategy, required under Section 11 of this permit and timely reports on the status of each;
  - ii. Require the halting of construction if the deadlines for the development, implementation and completion of the Plans and Strategy are not met;
  - iii. Require that the Grassland Restoration & Management Plan be reviewed annually by VFWD with Bird-

Scientific Advisory Group assistance and, if needed, revised;

- iv. Only consider future airport construction projects that are documented in the Permittee's Airport Long-term Development Plan required under this permit;
- v. Specify that any further violations of the state's threatened and endangered species law could be grounds for nullifying this permit and all work should cease.

## 9. Statutory Determination

- A. 10 V.S.A. § 5408(b) provides that "after obtaining the advice of the Endangered Species Committee, the Secretary may permit, under such terms and conditions as necessary to carry out the purposes of this chapter, the incidental taking of a threatened or endangered species or the destruction of or adverse impact on critical habitat if: (1) the taking is necessary to conduct an otherwise lawful activity; (2) the taking is attendant or secondary to, and not the purpose of, the lawful activity; (3) the impact of the permitted incidental take is minimized; and, (4) the incidental taking will not impair the conservation or recovery of any endangered species or threatened species.
- B. The Permittee requests an Endangered & Threatened Species Takings Permit for incidental take.
- C. The state of Vermont recognizes the value which plants, fish and wildlife in their natural environment have for public enjoyment, ecological balance, and scientific study. See 1981, No. 188 (Adj. Sess.), § 1(a).
- D. The state of Vermont recognizes the need for protection and preservation of these plants, fish and wildlife in their natural environment. *Id.*
- E. The General Assembly of Vermont intends that the species of wildlife and wild plants normally occurring within this state which may be found to be threatened or endangered within the state should be accorded protection as necessary to maintain and enhance their numbers. *Id.* at § 1(b).
- F. The General Assembly of Vermont intends that the state should assist in the protection of species of wildlife and wild plants which are determined to be threatened or endangered elsewhere pursuant to the federal Endangered Species Act. *Id.*
- G. 10 V.S.A. § 5408(i)(2) allows the Secretary to require mitigation strategies and mitigation funds, in addition to the permit fees, to mitigate the impacts of a taking or the destruction of or adverse impact on critical habitat. Mitigation may include compensation, including payment into the Threatened and Endangered Species Fund, provided that any payment is commensurate with the taking or adverse impact proposed.
- H. The Secretary hereby determines, based upon the findings detailed above and after receiving advice from the Endangered Species Committee, that the proposed activity is an incidental taking that meets the criteria set forth in 10 V.S.A. § 5408(b). An Endangered and Threatened Species Takings Permit is authorized, as conditioned below.

## 10. General Conditions & Authorizations

- A. This permit is issued in accordance with 10 V.S.A. ch.123. All activities authorized herein must be carried out in accord with and for the purposes described in the application submitted. Continued validity or renewal of this permit is subject to complete and timely compliance with all applicable conditions, including the filing of all required information and reports.
- B. This permit is expressly conditioned on compliance with all applicable federal and state laws, regulations and permits.
- C. This permit does not confer upon the Permittee the authority to conduct research without the acquiring necessary landowner permission including, but not limited to, state lands.
- D. By acceptance of this permit, the Permittee and its heirs, successors and assigns agree to provide the Agency of Natural Resources with unrestricted access, at reasonable times to the animal or plant specimens and/or animal or plant parts collected and possessed under this permit, collection and monitoring records, and access to the premises as necessary to ensure compliance with this permit.
- E. The Agency maintains continuing jurisdiction over any taking of threatened and endangered species

associated with the Project, and may, at any time, order the Permittee to undertake remedial measures, if necessary, to ensure the protection and conservation of listed species.

- F. This permit is not valid for endangered and threatened species that are not listed in section 5.
- G. The permit is valid for use by the named Permittee and subpermittees only and may be amended or revoked by the Secretary at any time for cause, or violations of any terms or conditions of this permit or state law.
- H. The Permittee and subpermittees shall carry copies of this permit whenever performing authorized activities and shall make the permit available upon request.

## 11. Specific Conditions & Authorizations

- A. **Consultation:** Each year of the permit term at least 60-days prior to the initiation of vegetation management activities, and throughout the project as needed, the Permittee shall consult with the Vermont Fish & Wildlife Department's designated staff on project methods and protocols. As of the date of this permit issuance, the designated staff member is Wildlife Diversity Program Manager (Rosalind Renfrew 802-461-8387, [rosalind.renfrew@vermont.gov](mailto:rosalind.renfrew@vermont.gov)).

For the purposes of this permit, vegetation management is the system of creating or managing plant communities on any property owned or controlled by the Permittee and associated with the Franklin County Airport, including all methods for control of vegetation such as biological, chemical, cultural and physical (e.g. mechanical and manual) methods of control; and any manipulation of plant and soil that has the potential to have an impact on threatened and endangered grassland birds.

- B. **Revegetation Plan:** The Permittee shall submit to ANR, by 7/17/2023, a draft Revegetation Plan for ANR's approval, to restore disturbed areas by 10/31/2028 with the goal of closely mimicking pre-disturbance conditions. Plan implementation shall commence between July and September 2023 and shall include completion targets. The Plans shall also incorporate appropriate soil conditions; grass and forb seed mixes; and seeding rates necessary to achieve suitable grasshopper sparrow breeding habitat. The intact grasslands running along the west side of the airstrip at the northern section of the property shall be used as a model for the desired vegetation structure. This Revegetation Plan shall apply to all areas disturbed (approximately 18 acres) as of the date of the issuance of this permit, including:
  - i. All temporary and permanent stormwater basins and all areas immediately surrounding them that required disturbance during their construction;
  - ii. All grounds adjacent to the west side of the stormwater swale, beginning where the slope is leveled off. This includes the temporary dirt road running north-south along the west side of the swale.
- C. **Grassland Restoration & Management Plan:** The Permittee shall submit to ANR, by 8/15/2023, a draft Grassland Restoration & Management Plan for the Franklin County Airport property for ANR review and comment. The Permittee shall submit to ANR by 10/1/2023, the final Grassland Restoration & Management Plan for the Franklin County Airport that meets ANR's approval, developed by the Permittee's qualified grassland bird conservation consultant with input from qualified soil and grass/forb restoration experts and VFWD. The management plan shall:
  - i. Include proposed best management practices to avoid and minimize to the greatest extent possible the taking of threatened and endangered grassland bird species and the destruction of or adverse impacts to their nesting habitat;
  - ii. Restore for grasshopper sparrows grasslands depicted in attached map-1; any additional disturbance planned at the Franklin County Airport through 2026; and brome-dominated sections of the remaining grasslands;
  - iii. Include other measures that minimize potential indirect project impacts (such as lighting, noise, maintenance and other human activities) to grassland birds while they are present on the site.
  - iv. Have an implementation start date of July – Sept 2024, include implementation and completion dates of plan components, and complete restoration by 10/31/2029.

- D. Long-term Grassland Habitat Mitigation Strategy:** The Permittee shall submit to ANR, by 10/1/2023, a draft Long-term Grassland Habitat Mitigation Strategy for ANR review and comment, developed by the Permittee's qualified grassland bird conservation consultant, to create habitat that will sustain the grasshopper sparrow in Vermont. This strategy shall include a risk benefit analysis of each mitigation option, the likelihood that each option will compensate for the overall habitat losses, and strategy implementation and completion dates. The Permittee shall submit to ANR by 12/1/2023, the final Long-term Grassland Habitat Mitigation Strategy that meets ANR's approval. At a minimum, the following mitigation measures shall be evaluated:
- i. Converting the area on the east side of the airport known as "The Fairgrounds" to suitable grasshopper sparrow breeding habitat, including the removal of existing infrastructure;
  - ii. Acquiring, protecting, restoring, and managing the so-called "Handy" field at the south end of the airport to suitable grasshopper sparrow breeding habitat;
  - iii. Restoring and managing grassland habitat at other state airports where grasshopper sparrows have existed in the past;
  - iv. Establishing grassland bird habitat that supports breeding populations of the species listed in Section 5 of this permit elsewhere in Vermont within the known breeding range of the species.

The Strategy shall designate the preferred option or combination of options for the creation of sustainable long term grassland habitat, the long-term plan of action, set forth a detailed phased timeline for the implementation of the plan with dates of completion for each phase, and include adaptive management protocols for ensuring that the habitat is viable over time. Permittee shall implement the Strategy as approved by the ANR.

- E. Airport Long-Term Development Plan:** The Permittee shall submit to ANR, by 10/1/2023, a plan of potential Franklin County State Airport development projects envisioned for the next 20 years. This plan shall include estimated commencement and completion dates for each project. The plan shall address how future projects will ensure that the grassland habitat is protected, and no harm or risk of take is presented to the listed bird species.
- F.** Permittee shall be responsible for proactively consulting and coordinating with FWD staff regarding the review and approval of the plans and strategy in this section, including setting up and facilitating meetings and site visits as necessary.

#### **Construction Limits, Work Stoppage and Notification of ANR**

- G.** The Permittee shall direct all runway widening project construction workers and project staff to strictly avoid any activities, vehicular or otherwise, and equipment storage and staging within the delineated areas of protected grassland in attached map-2.
- H.** The Permittee shall prohibit disturbance (including vehicle operations, mowing, equipment storage and staging) of any grassy areas except for the currently maintained strip along and inside of the perimeter fence during the periods April 1—August 15<sup>th</sup>.
- I.** The Permittee is authorized to construct the two permanent stormwater basins as prescribed in the Permittee's stormwater permit. No additional loss of grassland beyond that of the stormwater basins is authorized.
- J.** The commencement of the proposed runway extension project is not authorized until ANR approves the plans and strategies required under this permit.
- K.** The commencement of the proposed runway extension project is not authorized until the Permittee mitigates for the grasshopper sparrow habitat lost during the runway widening project.
- L. Monitoring/Research:** The Permittee shall provide access to the airport property to VFWD staff for the purpose of grassland bird monitoring and research, habitat monitoring and research, and site visitation by VFWD approved individuals to track population numbers, restoration progress, and the use of created and restored habitat by grasshopper sparrows and other grassland birds.
- M. Permit Renewal:** The anticipated life of the proposed construction is three years. The revegetation plan will continue for an additional three years, and post-construction monitoring and management will depend on the timeframe needed to implement options selected in the mitigation strategy. Statute 10 V.S.A. § 5408(3)(j)

limits the term of an individual permit to five years. The Permittee shall apply for permit renewals at least ninety days prior to the expiration of this permit. Provided that the Permittee remains in compliance with the terms and conditions of the permit, the Agency of Natural Resources will renew subsequent permit(s) without an additional permit fee. Nothing in this section shall be construed to prohibit the Agency from amending renewal permit conditions as necessary to protect threatened and endangered species, consistent with the purposes and requirements of 10 V.S.A. Chapter 123.

## 12. Reporting Requirements

- A. The Permittee shall report any incidents of harm or take of any grasshopper sparrow or eastern meadowlark within 48 hours to the VFWD Permits Administrator. At the time of the issuance of this permit, the VFWD Permits Administrator is Jon Kart (jon.kart@vermont.gov; 802-595-1810).
- B. The Permittee shall submit the Revegetation Plan required in 11.B to the Permits Administrator by 7/14/2023.
- C. The Permittee shall submit to ANR, by 8/15/2023, a draft Grassland Restoration & Management Plan for the Franklin County Airport property for ANR review and comment.
- D. The Permittee shall submit the final Grassland Restoration & Management Plan required in 11.C to the Permits Administrator by 10/1/2023.
- E. The Permittee shall submit the Long-term Grassland Habitat Mitigation Strategy required in 11.D to the Permits Administrator by 10/1/2023.
- F. The Permittee shall submit the Airport Long-Term Development Plan required in 11.E to the Permits Administrator by 10/1/2023.
- G. Annual reports detailing actions taken and progress made implementing the plans and mitigations strategies required under this permit will be due annually by November 1<sup>st</sup> each year of the permit term beginning 11/1/2024.
- H. The Permittee and the Permittee's consulting biologist and habitat restoration specialist shall host a meeting with the VFWD bird biologist and Bird-Scientific Advisory Group by December 31<sup>st</sup> each year of the permit term to evaluate progress and identify any needed adjustments to the implementation of the plans and strategy required under this permit.

Issued by:  Date: July 14, 2023  
Christopher Herrick, Commissioner  
Fish & Wildlife Department

### Right to Appeal to Environmental Court

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 Court; 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 and the name of the applicant or 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 online 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).