Draft Threatened & Endangered Species Takings Permit
Statutory Authority: 10 VSA § 5408

1. Permittee

Vermont Agency of Transportation (VTrans)
219 N. Main Street, Barre, VT 05641

2. Permit Period

Effective Date: X/XX/2023
Expiration Date: 12/31/202X
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. Said activity has been determined to be non-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 11 acres of grassland 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.

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.

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 has the authority to impose mitigation to offset the takings, in accordance with 10 V.S.A. § 5408 (i)(2).

I. Pursuant to 10 V.S.A. § 5408(b), the ANR Secretary hereby determines, based upon the findings detailed above and after receiving advice from the Endangered Species Committee, that the proposed activity is consistent the purposes of the 10 V.S.A. ch. 123. 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 this activity, 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 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 (VFWD) Bird Biologist (TBD) or Wildlife Diversity Program Manager on project methods and protocols.

B. **Revegetation Plan:** The Permittee shall submit to ANR, by 7/15/2023, a Revegetation Plan that meets ANR’s approval, to restore disturbed areas with the goal of closely mimicking pre-disturbance conditions. The plan shall consider appropriate soil conditions; grass and forb seed mixes; and, seeding rates necessary to achieve suitable grasshopper sparrow breeding habitat. (Note: the seed mixes previously purchased for site reclamation are unlikely to be suitable for the purposes of this plan.) 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:
   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 8/11/2023, a Grassland Restoration & Management Plan, 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 minimize to the greatest extent possible the taking of threatened and endangered grassland bird species and the destruction of or adverse habitat impacts;
   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 can minimize potential indirect project impacts (such as lighting and noise) to grassland birds.

D. **Long-term Grassland Habitat Mitigation Strategy:** The Permittee shall submit to ANR, by 10/1/2023, a Long-term Grassland Habitat Mitigation Strategy, that meets ANR’s approval, developed by the Permittee’s qualified grassland bird conservation consultant, to compensate for unavoidable loss of habitat resulting from the current runway widening, planned runway extension, and stormwater management projects. This strategy shall consider, at a minimum, the following mitigation measures:
   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 a grassland bird habitat mitigation fund to support conservation, restoration, and management in perpetuity of grassland habitat to support breeding grasshopper sparrows elsewhere in Vermont within the known breeding range of the species;
   v. Facilitating grassland bird monitoring and research at Franklin County Airport to track population numbers, restoration progress, and the use of created and restored habitat by grasshopper sparrows.
E. Airport Long-Term Development Plan: The Permittee shall submit to ANR, by 10/1/2023, a plan of potential airport development projects envisioned for the next 20 years.

Construction Limits, Work Stoppage and Notification of ANR

F. 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.

G. 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 perimeter fence until after August 15th.

H. The Permittee is authorized to fill the existing temporary stormwater retention ponds if disturbance to grassed areas is limited to the planned Limit of Disturbance (LOD) only and with efforts made to further minimize the LOD. The fill can include the soil removed during their construction.

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 Long-term Grassland Habitat Mitigation Strategy (11.D).

K. Survey & Monitoring: The Permittee shall provide and facilitate full access to ANR staff and its agents (within Airport and FAA limits) to airport lands for grassland bird monitoring and habitat assessments.

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.


E. The Permittee shall submit the Airport Long-Term Development Plan required in 11.E to the Permits Administrator by 10/1/2023.

Issued by: __________________________________________________________________________ Date: ______________________
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. The address for the Environmental Court is 2418 Airport Road, Suite 1, Barre, VT 05641 (Tel. # 802-828-1660).
area to be restored (6F0435-19)
area to be restored (6F0435-20) and (6F0435-21)
Permanent
Stormwater (6F0435-19)
Temporary
Stormwater (6F0435-19)
Stormwater swale (6F0435-19)
Limit of Disturbance (6F0435-21)
The Fairgrounds
Handy fields
Highgate perimeter
fence mowing

6F0435-19, -20, -21: revegetation areas
Franklin County Airport, Highgate, VT
SPAN: 291-992-10344

Map 1

Created by: Noel.Dodge
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Map 2: Protected Grasslands

approximate undisturbed habitat within earth disturbance area to be verified on the ground

staging area to be verified on the ground