

ACT 59 STATE LANDS WORKING GROUP REPORT

Introduction

10 VSA Chapter 89 Section 2803 charges the Agency of Natural Resources (ANR) and the Vermont Housing and Conservation Board (VHCB) with “an assessment of how State lands will be used to increase conserved ecological reserve areas,” as defined in Section 2801 of Act 59.

To undertake this assessment, VHCB and ANR convened a working group of experts from state agency and non-governmental conservation organizations. This group comprised of:

- Becca Washburn, Co-Chair, Director of Lands Administration and Recreation, Department of Forests, Parks and Recreation
- Hannah Phillips, Co-Chair, State Lands Administration Program Manager, Department of Forests, Parks and Recreation
- Bob Zaino, Natural Community Ecologist, Fish and Wildlife Department
- Danielle Owczarski, State Lands Ecologist, Fish and Wildlife Department
- John Austin, Director of Wildlife, Fish and Wildlife Department
- Lisa Thornton, Stewardship Forester, Department of Forests, Parks and Recreation
- Will Duane, Land Acquisition Coordinator, Department of Fish and Wildlife
- Jim Duncan, Forestry State Lands Manager, Department of Forests, Parks and Recreation
- Liz Thompson, independent ecologist
- Gus Goodwin, Senior Conservation Planning, The Nature Conservancy
- Pieter van Loon, Forest Program Director, Vermont Land Trust
- Kate Wanner, Senior Project Manager, Trust for Public Land

This document represents our group’s recommendations to the Science and Policy Group for responding to 10 VSA Chapter 89 Section 2803 (b)(4).

At present, state lands that are described or designated in the following ways align with the Act 59 Ecological Reserve Areas definition. We expect that these categories will be counted towards Ecological Reserve Areas in the initial inventory of lands:

1. Highly Sensitive Management Areas – a land management classification assigned when long-range management plans are developed for state land parcels.
2. Natural Areas – a state land designation established in 10 VSA 2607, assigned by signature of the Commissioner of the Department of Forests, Parks and Recreation and the Governor.
3. State lands protected with Conservation Easements with “primary ecological intent”
4. State lands protected with Conservation Easements with “ecological protection zones”

Our recommendations focus on identifying and filling gaps in the suite of options that exist to support designation of Ecological Reserve Areas through our existing processes. We strived to

establish options to capture the range of permanency that meet the goals of Act 59. Our recommendations are as follows:

1. Establish New Statutory Designation: Ecological Reserve Area
2. Update Land Management Classifications:
 - a. Create New Land Management Sub-Classification in Highly Sensitive Management Areas: Ecological Representation Area
 - b. Create New Land Management Sub-Classification in Special Management Areas: Ecological Enhancement Area
3. Eliminate the VHCB conservation easement co-hold requirement for state fee land acquisitions and adopt a different legal mechanism to protect public investment in land conservation through VHCB.
4. Utilize landscape-scale conservation planning analyses to inform the designation of Ecological Reserve Areas on state lands.

Importantly, these recommendations are within the Agency’s capacity to deliver on through existing processes, and with our existing staff capacity. Any proposals resulting from the Act 59 planning effort to increase state land ownership or to increase the amount of ecological reserve areas on state land will be inactionable without increased capacity for state land planning and management. The Agency is simply unable to increase our pace of planning without additional resources.

Methods

The group used a deliberative process to arrive at recommendations and, where possible, sought to reach consensus.

The work group began by discussing what deliverables would meet the charge of 10 VSA Chapter 89 Section 2803 (b)(4) and arrived at the following work group objectives:

1. Evaluate existing “tools” that the state has to conserve ecological reserve areas; discuss strategies to make existing tools more effective.
2. Identify gaps in our suite of tools; identify new tools that could help fill these gaps.
3. Identify a process by which we will assess state lands and make decisions about when/why different tools are used.

We began by identifying existing tools that the state has to designate ecological reserve areas on state lands. We then ranked each of the existing tools by “management constraints” and

“permanency,” two criteria for evaluating “wildlands,”¹. Figure 1 below represents tools that the working group felt met the definition of an Ecological Reserve Area as defined in Act 59.

We then identified gaps in the suite of options available to support ecological reserve area designation on state lands and discussed new tools to fill these gaps. These proposed new tools are depicted in Figure 1 and discussed in the Recommendations section below.

Generally, the working group felt that it was important to have a variety of tools spanning the “permanency” spectrum, and that tools with higher permanency should also be procedurally more challenging to designate. For this reason, establishing other lower barrier options to designate ecological reserve areas will help put more lands on the path towards a more permanent ecological reserve.

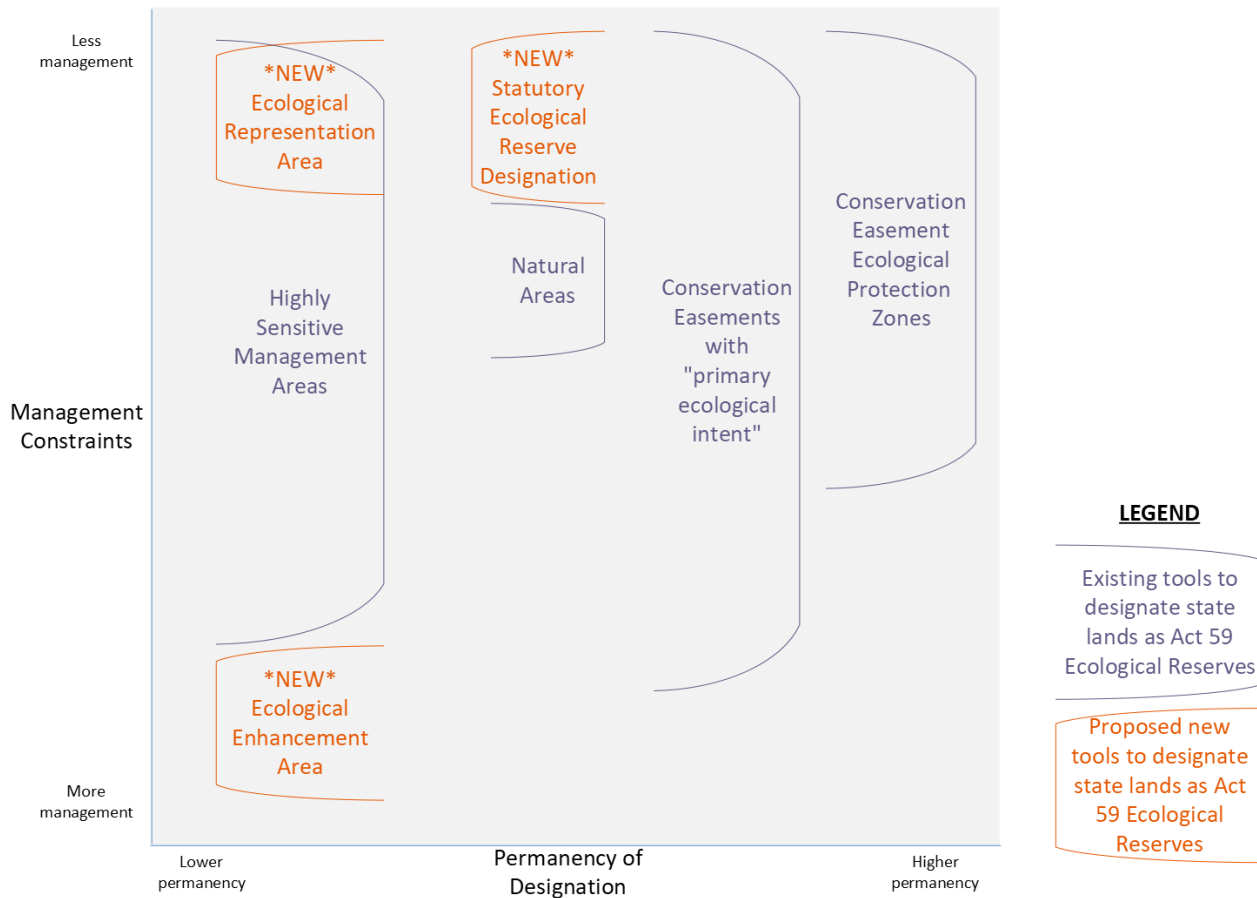


Figure 1. Existing and Proposed New Methods for Establishing Ecological Reserve Areas on State Lands

¹ Foster, D., E. E. Johnson, B. R. Hall, J. Leibowitz, E. H. Thompson, B. Donahue, E K. Faison, J. Sayen, D. Publicover, N. Sferra, L. C. Irland, J. R. Thompson, R. Perschel, D. A. Orwig, William S. Keeton, M. C. Hunter Jr., S. A. Masino, and L. Howell. 2023. Wildlands in New England. Past, Present, and Future. Harvard Forest Paper 36. Harvard University.

Work Group Recommendations

1. Establish New Statutory Designation: Ecological Reserve Area

We recommend establishing a new state land designation in statute, an Ecological Reserve Area. Compatible ANR lands identified through the long-range management planning process can be subsequently designated as Ecological Reserve Areas through a complimentary designation process.

Ecological Reserve Areas are, by definition, places where natural processes prevail (“...that is managed to maintain a natural state within which natural ecological processes and disturbance events are allowed to proceed with minimal interference” (Act 59). Natural Areas, conversely, are areas in which active management may be necessary to protect the values for which they were originally established (“manage or maintain the areas for the preservation of their natural condition”). Despite these differences in management philosophy, Natural Areas and Ecological Reserve Areas may contain similar natural features.

We recommend a process for establishing Ecological Reserve Areas that is comparable to the Natural Areas process (10 VSA 2607), whereby the Commissioner, with the approval of the Governor, may designate and set aside areas as Ecological Reserves. Candidate lands would be identified through a long-range management planning process. Reversing an Ecological Reserve Area designation, or modifying the boundary, would similarly require public process, the recommendation of the Commissioner and signature of the Governor. This process is intended to grant Ecological Reserve Areas a higher degree of permanency than a designation assigned through a management planning process.

We recommend that any statute formalizing an Ecological Reserve Area designation be accompanied by a procedural document that outlines the criteria by which candidate sites will be evaluated. These criteria may include, but are not limited to:

1. Ecological representation (noting that sites with low representation may still make good candidates even if they have low inherent resilience, like sandplains)
2. Evaluating a location’s perceived ability to respond to future stress (resilience) (may be informed by size, landscape context, etc.).

Candidacy should be evaluated by staff within ANR through the District Stewardship Teams and ANR Lands Stewardship Team.

2. Update Land Management Classifications

a. Create New Land Management Sub-Classification: Ecological Representation Area

We recommend establishing a new sub-class of the Highly Sensitive Management Area (1.0) land management classification (LMC), called *1.3 - Ecological Representation Area*:

1.3 Ecological representation areas, including associations of natural communities, geophysical settings, or other areas which make an outstanding contribution to meeting the ecological representation goals identified in Vermont Conservation Design.

All Highly Sensitive Management Area sub-classes count towards the Act 59 Ecological Reserve Area inventory. Creating this sub-class fills a known gap in the type of lands that we are currently able to classify as Ecological Reserve Areas on state lands.

Land management classifications can be changed from management cycle to management cycle and do not have a high degree of permanence but rather are “open-ended but expected to persist” (Act 59 Conservation Categories Working Group Report, January 26, 2024). These lands can be given an elevated level of permanence through the permanent statutory Ecological Reserve designation described above.

b. Create New Land Management Sub-Classification: Ecological Enhancement Area

We recommend establishing a new sub-class of a Special Management Area (2.0) LMC, which would be assigned to areas that will benefit from active management in the near-term to create or restore conditions that will qualify these lands as a Highly Sensitive Management Area in the long-term. The expectation is that if management achieves the desired goals, these areas will be reclassified as Highly Sensitive Management Areas in a subsequent management planning cycle. Land management classifications are assigned through the long-range management planning process. We expect these lands to map into Act 59 Biodiversity Conservation Area.

3. Eliminate the VHCB conservation easement co-hold requirement for state fee land acquisitions and adopt a different legal mechanism to protect public investment in land conservation through VHCB.

We expect that existing state lands will play an important role in contributing to the Act 59 Ecological Reserve Area goals. We also anticipate that acquiring new state lands will be a key strategy. In that light, the growing burden of conservation easement stewardship, and the time and expense required to negotiate an easement, are real barriers to Vermont’s success in meeting the goals of Act 59. In situations where the state is intended to be the fee owner of new conservation opportunities, we recommend VHCB waive their requirement for an easement co-holder. The work group was mindful of VHCB’s capacity for significant growth in their stewardship program and recommends that VHCB work with ANR and other conservation partners to identify another legal mechanism to protect the public’s investment in land

conservation that does not require the same level of stewardship required by conservation easements.

4. Utilize landscape-scale conservation planning to inform the designation of Ecological Reserves on state lands.

We recommend that state land ecological reserve areas be considered in the following ways through each of these existing planning frameworks:

The *Act 59 Conservation Plan* should establish the scientific foundation upon which all other planning documents, regardless of ownership, can reference when evaluating the opportunity that an individual land unit or portfolio of lands present to contribute to the Act 59 conservation targets. It should include (but not be limited to):

- A scientific analysis of ecological representation in ecological reserves by biophysical region
- An evaluation of the “availability” of certain types of land to contribute to representation targets (including state, federal, and private lands)
- An analysis of “enduring” and “open-ended but expected to persist” protections

Long-Range Management Plans will continue to be the tool by which location-specific decisions are made about various designations. These plans shall include at a minimum (but is not limited to):

- The assignment of ANR’s Land Management Classifications.
- Discussion of how multiple uses are balanced within a particular unit.
- An evaluation of lands to determine their compatibility with various designations that align with Act 59 Ecological Reserves (Ecological Reserve, Natural Area, HSMA sub-classes, SMA sub-classes).

The statewide *ANR Land Acquisition Plan* provides direction about land acquisition priorities and should include at a minimum (but is not limited to):

- A discussion of how the *Act 59 Conservation Plan* will influence land acquisition priorities.
- Gives context that allows the District Stewardship Team to assess land protection partner proposals.
- Updated guidance for District Stewardship Team review of land protection opportunities that prompts consideration of the compatibility of the lands with the Ecological Reserve designation.