

**Testimony to the Vermont House Committee on Fish, Wildlife and Water Resources**

**The Nature Conservancy**

**Heather Furman, State Director**

**RE: Vermont Railway - Shelburne Transload Facility and TNC's LaPlatte River Marsh Natural Area**

**February 10, 2016**

---

Thank you Representative Deen for inviting me to speak on behalf of our irreplaceable natural resources. My name is Heather Furman, and I am the State Director for The Nature Conservancy in Vermont.

The Conservancy is the largest international nonprofit conservation organization in the world, with a chapter in Vermont, and in all 50 states as well as 39 countries. We have been based in Vermont since 1960, and have served as a leader in safeguarding the full spectrum of biodiversity in the Green Mountain State. We have nearly 7,000 members in Vermont. We have conserved 300,000 acres of land and over 1,200 miles of shoreline. We own and manage 55 natural areas comprising 20,000 acres, and we co-own another 24,000 acres of working forestland.

I am here today to speak for the trees. Specifically, the LaPlatte River Marsh ecosystem in Shelburne, Vermont, and the two generations of Vermonters, as well as for the hundreds of thousands of federal, state and local dollars that have been invested in the protection of this place. The Nature Conservancy owns and manages 230 acres and holds conservation easements on another 52 acres along the lower LaPlatte River that directly abuts the 32 acre property of Vermont Rail Systems, Inc. in Shelburne, VT, which is the site of the proposed Shelburne Transload or Intermodal Facility. The Conservancy, in conjunction with the State of Vermont's Housing and Conservation Board, the Town of Shelburne, Green Mountain Audubon, Federal Duck Stamp, and many other public agencies and private partners, has led the conservation of this ecologically significant area since 1976.

The lower LaPlatte River downstream of Route 7, and the surrounding wetland and upland natural communities, have long been recognized as important natural areas of statewide significance that are worthy of continued protection because they contain the following attributes:

- i.) wetlands that are in such a condition to meet the criteria of Class 1 wetlands as defined in statute;
- ii.) critical wildlife habitat consisting of mapped deer wintering areas and other habitat for bobcats and bear;
- iii.) natural resources of statewide significance including nine species of rare plants [one on the state-endangered list], a rare butterfly, a rare salamander, and two species of state-endangered fish;

iv.) an extensive floodplain forest that has been described by the Vermont Natural Heritage Inventory, part of the Vermont Department of Fish and Wildlife, as one of the best such examples in the state of Vermont, giving it an A-rank (the top ranking), and

v.) a forested upland buffer for one of the highest quality floodplain forests in the state of Vermont. The upland buffer forest is an example of the rare Valley Clayplain Forest (Sand-Over-Clay<sup>1</sup>). The Valley Clayplain Forest is a natural community in Vermont that occurs on clay soils in the Champlain Valley. It was the dominant forest type in the Champlain Valley prior to European settlement, but now is one of the most severely altered communities in Vermont (Thompson and Sorensen 2000). We do have occurrences of recovering Clayplain Forest in areas around Vermont, however this forest is mature and has a statewide quality rank.

The forested uplands adjacent to the LaPlatte River and its wetlands that are a part of the Vermont Railways, Inc. property slated for development of the Shelburne Transload Facility have provided critical habitat for wildlife including deer wintering areas and movement corridors for bobcat, bear and other wildlife in the context of the surrounding urban/suburban landscape. Prior to the Railroads recent clearing of 19 acres of rare Valley Clayplain Forest, the buffer these uplands provided to our conserved lands, encompassing adjacent wetlands and the LaPlatte river, was critical because it moderated the climate of the interior floodplain forest creating conditions of temperature, shade and humidity that the floodplain forest requires in order to function. Siting preemption, the Railroad was not subject to local setback requirement review for our lands and completely removed the forest to within inches of our property boundary. The loss of this buffer will reduce the effectiveness of the floodplain forest to support water quality, encourage the encroachment of invasive species into the floodplain forest, and decrease the abundance and diversity of plant and animals that support a healthy ecosystem.

In 1988 and 1989, The Nature Conservancy provided Act 250 testimony on a proposed development at this 32 acre site. The proposed development was for warehousing and light industry and consisted of 5 buildings built in 3 phases.

In testimony, TNC stated that it “strongly feels that the solitude of the nature preserve and its quality as a natural area will be irreversibly compromised by Phase III of this project.” Phase III was a building that would be closest to the river, and our protected lands. As the time, the District Commission conducted a site visit onto TNC land across the LaPlatte to visually inspect how the Phase III building might impact the natural area.

The Act 250 permit was issued with conditions on March 28, 1990. There were standard erosion control requirements such that no sediment could be discharged to surface waters, as well as the following conditions:

---

<sup>1</sup> **Natural Communities of the LaPlatte River Marsh Natural Area.** Sorenson, Hohn and Shawler. *For The Nature Conservancy and Vermont Department of Fish and Wildlife.* January, 2016

1. The permittees shall maintain a 50 foot undisturbed, vegetated buffer zone around the wetland on the north side of the property...which shall remain totally undisturbed and no construction or removal of vegetation can happen.....without prior approval.
2. The Permittees shall maintain a 150 foot undisturbed, vegetated buffer zone which measures from the edge of the 100 year floodplain of the LaPlatte River...except for the area around the Phase III building at which point the buffer comes within 15 feet of a corner of the proposed building, and the buffer zone area shall remain totally undisturbed; no construction or removal of vegetation...without prior approval.

The 100 year floodplain of the LaPlatte was said to extend to the 102 foot elevation level, and according to the prior Act 250 permit, no construction of any kind was allowed in the floodplain-- at or below 102 feet. It is our understanding that there is considerable discussion right now over whether this permit is still in effect. If it is, then we believe the buffer zone was likely violated with the Railroad's recent clearing of the land, which came, in some places, to within 3 inches of the boundary to our easement-held property, and within 40 feet of the rivers bank. The Railroad's current site plan set, which is on file at the Town of Shelburne's website, depicts the construction of two salt storage sheds beginning at 106 ft. elevation, with construction extending to the very edge of the property boundary. While it would need to be verified with on-the-ground surveying, we have estimated the distance between the river bank and one of the proposed salt storage shed at a distance of less than 150 feet.

Regardless of whether the 1990 Act 250 permit is still in effect, the past 26 years have seen a dramatic increase in storm events with high water that often reaches and exceeds the 100 year floodplain. We also recognize, certainly now in this post-Irene era, the importance of floodplain function for clean water and community risk reduction. At a time when we, as a state are making significant investments in protecting the water quality of our Lake, setting priorities for natural infrastructure restoration, and acknowledging the vital role of floodplain forests and their ecosystems, it is bewildering why a project like this could be allowed to move forward without sufficient environmental review.

The Nature Conservancy has concluded that the proposed development of the Shelburne Transload facility undermines a special natural resource of local, regional and statewide significance, and compromises two generations of investment that have brought about the protection of the LaPlatte River Marsh. Due to the Railroad's claim of Federal preemption, we simply have no assurance that this project will be properly sited, built and managed, and we do not believe that this is an appropriate location for such a facility. We have serious concerns that the proposed storage of salt, fuel and vehicles in such close proximity to the river will have irreversible and undue adverse impacts on our natural resources, especially our water quality and wildlife habitat. We are asking our state and federal partners to provide the leadership we need right now to find an appropriate alternative location that does not compromise this outstanding natural resource of statewide significance, the high quality floodplain forest, the rare, threatened and endangered species, and continued public use and enjoyment of an irreplaceable resource. Thank you.



# Protected Lands Map

LaPlatte River Marsh Natural Area  
Shelburne, Chittenden County, VT

-  Nature Conservancy - Owned
-  Nature Conservancy - Easement

0 500 Feet



Area of Interest

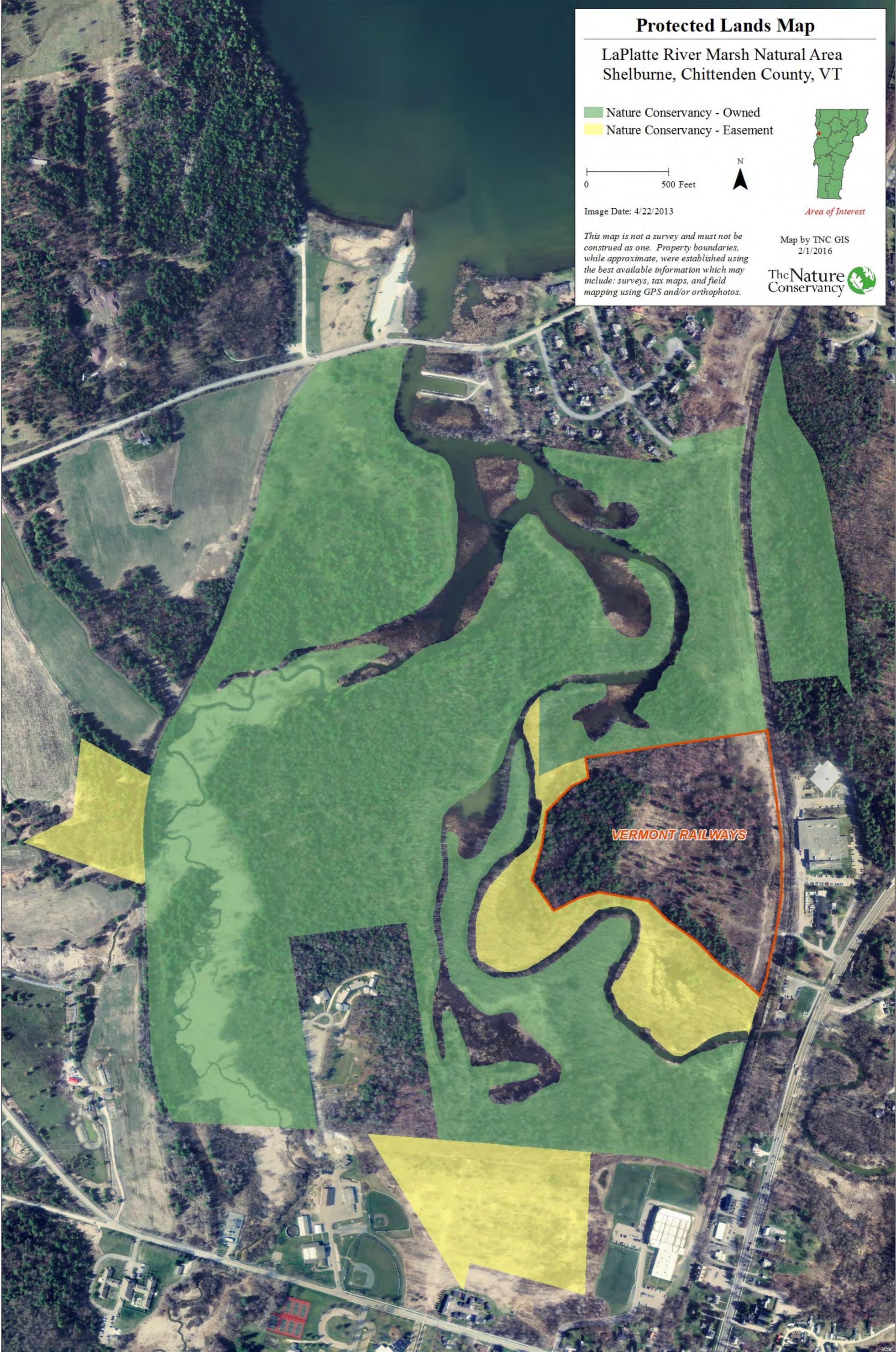
Image Date: 4/22/2013

*This map is not a survey and must not be construed as one. Property boundaries, while approximate, were established using the best available information which may include: surveys, tax maps, and field mapping using GPS and/or orthophotos.*

Map by TNC GIS  
2/1/2016



**VERMONT RAILWAYS**



# Extent of Clearing

## LaPlatte River Marsh Natural Area Shelburne, Chittenden County, VT

-  Nature Conservancy - Owned
-  Nature Conservancy - Easement
-  Approximate Extent of Clearing by Vermont Railways
-  Boundary Pins and Photopoints\*

*\*Please see back of map for photos*



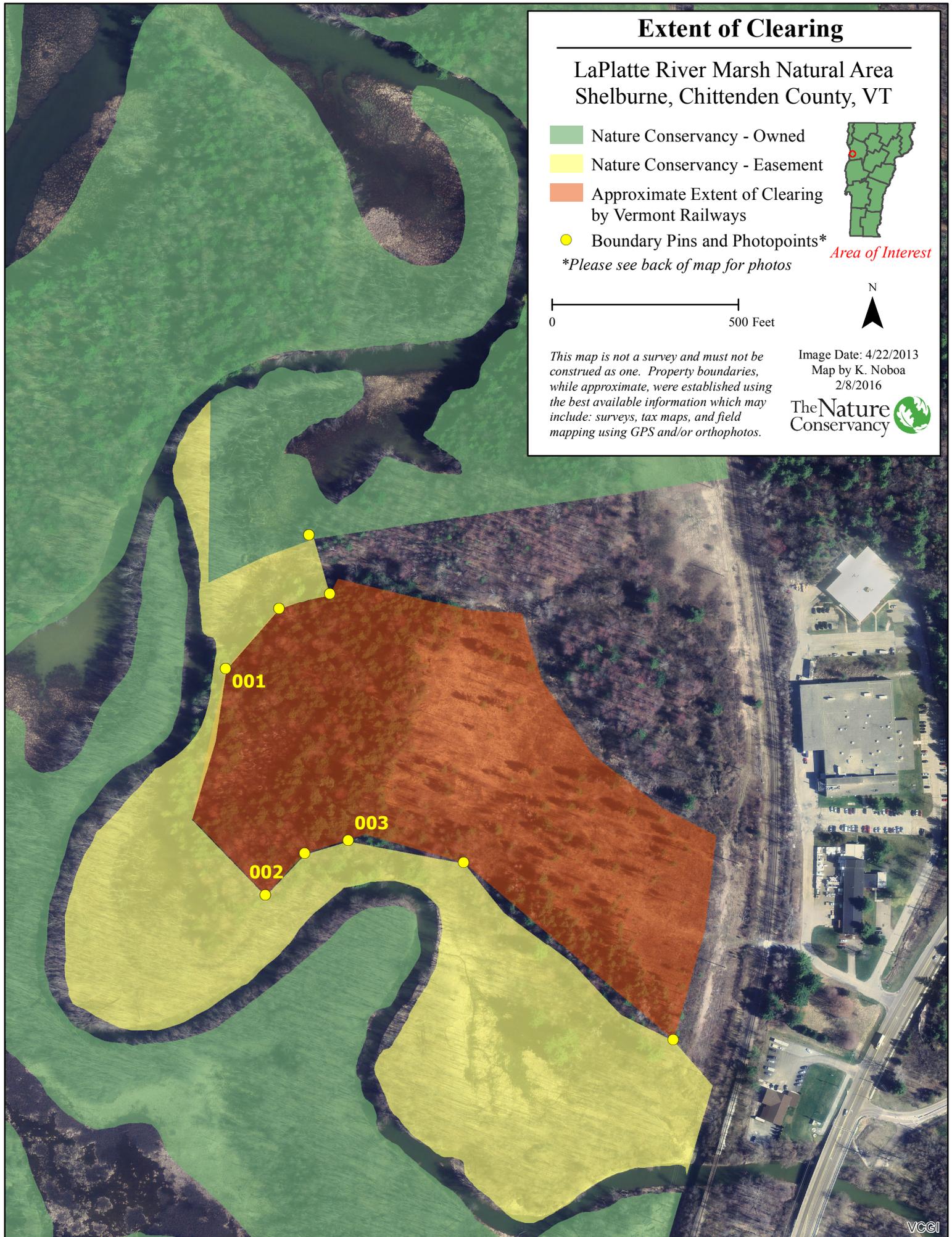
*Area of Interest*

0 500 Feet



*This map is not a survey and must not be construed as one. Property boundaries, while approximate, were established using the best available information which may include: surveys, tax maps, and field mapping using GPS and/or orthophotos.*

Image Date: 4/22/2013  
Map by K. Noboa  
2/8/2016





<b>Photo # 001</b>	<b>Direction: E</b>
<b>Photo Description: Proximity of boundary pin to clearing.</b>	



<b>Photo # 002</b>	<b>Direction: NW</b>
<b>Photo Description: Extent of clearing from SW corner.</b>	



<b>Photo # 002</b>	<b>Direction: NE</b>
<b>Photo Description: Extent of clearing from SW corner.</b>	



<b>Photo # 003</b>	<b>Direction: W</b>
<b>Photo Description: Proximity of boundary pin to clearing.</b>	

