

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 agencies and non-governmental conservation organizations. This group comprised:

- Hannah Phillips, Co-Chair, State Lands Administration Program Manager, Department of Forests, Parks and Recreation
- Becca Washburn, Co-Chair, Director of Lands Administration and Recreation, Department of Forests, Parks and Recreation
- Bob Zaino, Natural Community Ecologist, Department of Fish and Wildlife
- Danielle Owczarski, State Lands Ecologist, Department of Fish and Wildlife
- John Austin, Director of Wildlife, Department of Fish and Wildlife
- 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 Planner, The Nature Conservancy
- Pieter van Loon, Forest Program Director, Vermont Land Trust
- Kate Wanner, Senior Project Manager, Trust for Public Land

In addition to this working group, input from ANR leadership, ANR staff, and other stakeholders was gathered through focus groups, partner interviews, and surveys and considered by the work group.

This document represents our group’s recommendations to the Science and Policy Group for responding to 10 VSA Chapter 89 Section 2803 (b)(4). Within the context of 10 VSA Chapter 89, we interpret “state lands” to include only those lands owned in fee by the Agency of Natural Resources or its three Departments: the Department of Forests, Parks and Recreation, the Department of Fish and Wildlife, and the Department of Environmental Conservation.

At present, state lands that are described or designated in the following ways align with the Category 1 Ecological Reserve definition. We expect that these categories will be counted towards Category 1 in the initial inventory of lands:

1. Highly Sensitive Management Areas – a land management classification assigned when 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 land-owning department 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 Category 1 lands through our existing processes. We have strived to establish options to capture the range of permanency that is acceptable to meet the goals of Act 59. Our recommendations are summarized as follows:

1. Establish New Statutory Designation: Ecological Reserve
2. Create New Land Management Sub-Classification: Ecological Representation Area
3. Create New Land Management Sub-Classification: Reserve Development Area
4. 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.
5. Utilize landscape-scale conservation planning analyses to inform the designation of Ecological Reserves on state lands.
6. Initiate an evaluation of the role the Forest Legacy Program can play in increasing conserved ecological reserve areas.

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 (ERAs) on state land will be inactionable without increased staff capacity for state land management and planning. The Agency is simply unable to increase our pace of planning without additional resources. Further discussion of staff capacity limitations is provided at the end of this report.

Finally, the group recognizes the unique and important role that state lands play in the overall conservation landscape in Vermont and acknowledge that state lands are likely to be classified into all three categories identified in 10 VSA Chapter 89 Section 2801. This mix of categories provides benefits ranging from clean air and water to critical biodiversity conservation to recreation to sustainably harvested forest products to remote areas for hunting and refuge. The work group’s recommendations within this report are written with those important contributions in mind and the working group acknowledges it is ANR’s statutory responsibility and in the public interest to provide for multiple uses of state lands.

Methods

The group used a deliberative process to arrive at recommendations and, where possible, sought to reach consensus. Ultimately, all recommendations herein have group 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 ERAs; 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 ERAs on state lands. We then ranked each of the existing tools by “management constraints” and “permanency of protection,” two criteria for evaluating “Wildlands,” as established in [*Wildlands in New England: Past, Present, and Future*](#) (WWF&C 2023). Figure 1 below represents tools that the working group felt met the definition of an Ecological Reserve as defined in Act 59.

We then identified gaps in the suite of options available to support ecological reserve 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 reserves will help put more lands on the path towards a more permanent ecological reserve.

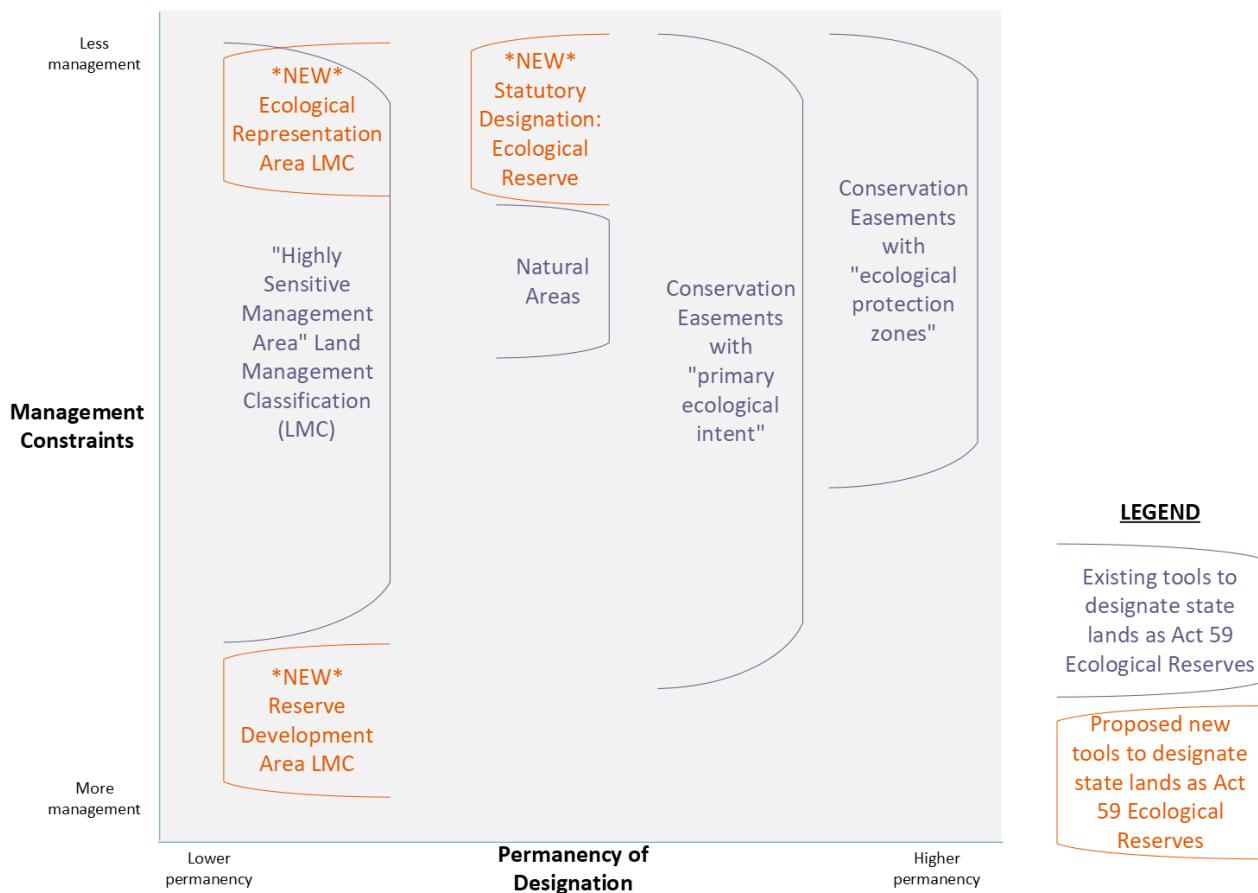


Figure 1. Existing and Proposed New Methods for Establishing Ecological Reserves on State Lands

Work Group Recommendations

1. Establish New Statutory Designation: Ecological Reserve

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

Ecological Reserves 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 Reserves may contain similar natural features.

We recommend a process for establishing Ecological Reserves that is largely comparable to the Natural Areas process (10 VSA 2607), whereby the Commissioner, with the approval of the Governor following public notice and hearing, 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 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 Reserves a higher degree of permanency than a designation assigned through a management planning process.

We recommend that any statute formalizing an Ecological Reserve designation be accompanied by a procedural document that outlines the criteria by which candidate sites will be evaluated. These criteria should 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 resilience, or perceived ability to respond to future stress (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. 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, 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 Category 1 inventory. Creating this sub-class fills a known gap in the type of lands that can count towards Category 1 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.

Highly Sensitive Management Areas may not necessarily become permanently designated Ecological Reserves, but they represent a candidate pool from which to select permanently designated Ecological Reserves on state lands. If the legislature establishes a permanent Ecological Reserve designation, we recommend establishing a new LMC, called a *Candidate*

Statutory Ecological Reserve, through which state lands staff can indicate their support for this permanent designation.

3. Create New Land Management Sub-Classification: Reserve Development 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 Category 2 (Biodiversity Conservation Area).

4. 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 ERA goals. We also anticipate that acquiring new state lands will be a key strategy in achieving the goal of increasing conserved ERAs. 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 is 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.

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

We recommend that state land ecological reserves be considered in the following ways through each of these existing or possible future planning frameworks:

The *Act 59 Conservation Plan* should establish the scientific foundation that 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

We recommend completing an ecological analysis of the full state lands portfolio that provides further context to inform the application of the Act 59 Conservation Plan. This analysis should include:

- An analysis of the opportunities that exist on individual state land units to achieve ecological reserve representation targets within each biophysical region.
- A discussion of how this analysis should be considered and applied through the long-range management planning process.

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 Category 1 (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* and the state lands ecological analysis 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.

6. Initiate an evaluation of the role the Forest Legacy Program can play in increasing conserved ecological reserve areas.

We identified the Forest Legacy Program as a potentially compatible funding source to support expansion of protected lands with an ecological reserve-style conservation easement or other legal protection. We recommend that ANR work with 1) with Forest Legacy Program staff, and 2) with the Forest Legacy Program State Forest Stewardship Coordinating Committee to evaluate the proposed use of Forest Legacy funds to support protection of lands as ecological reserves with compatible legal restrictions. While the state lands work group was solely charged with considering how to increase ERAs on state lands, the group recognized the

potential for this funding source to increase ERAs on private lands as well. The State regularly uses Forest Legacy Program funds to conserve land, both public and private, but has not used this funding source for this purpose before.

Further Discussion

Capacity Limitations

The following existing methods for increasing ERAs on state lands are recognized by the work group, but are limited by the state's staff capacity to implement:

- The **assignment of land management classifications** through the long-range management planning process is a staff-intensive process, and staffing to support land management planning is dramatically under-resourced. The assignment of state land into the three categories identified in 10 VSA Chapter 83 will depend on the land management planning process. The pace by which state lands are classified into the three categories could be increased with expanded state lands planning capacity.
- While **acquisition of new lands** by the State will likely be identified as a key strategy to meet the ERA conservation goals identified in the Act 59 Conservation Plan, the State's lack of staff capacity to support state land acquisition, stewardship, and planning will likely make accelerating the rate of State acquisition and ongoing stewardship difficult if not impossible. Many aspects of the state land acquisition process depend on the participation of staff who are already overburdened by the responsibility of planning for and managing state lands; staff participation with a goal of increasing ERAs through land acquisition will rely more intensively on these same staff. For example, if it is a goal to identify candidate ERAs through the land acquisition process, ecological inventories will need to be conducted earlier in the acquisition process to inform easement restrictions or special protection zone delineations. An accelerated pace of conservation will be difficult if not impossible without a parallel discussion regarding staff capacity for state lands planning and stewardship.

Strategies Discussed but not Recommended:

The work group discussed the following additional strategies for increasing ERAs on state lands, but ultimately did not include them in the recommendations above for the reasons described below:

- **Enrolling state lands in the carbon market:** the work group discussed whether enrolling state lands in the carbon market could be a strategy for increasing ERAs on state land. The group concluded that doing so could potentially increase the amount of ERA on state lands, but that allocating limited staff capacity towards advancing the other recommendations above is more likely to make meaningful contributions

towards the goal of increasing ERAs on state land. Acknowledging that managing the enrollment of lands in the carbon market and the sale of carbon credits is a staff intensive project with a management commitment of only 40-80 years, the work group felt that the expanded staff capacity required to manage a carbon program would be better directed towards state lands management planning (and the assignment of land management classifications), as well as the identification, designation and management of Natural Areas and Ecological Reserves. Furthermore, the work group felt that the lands that would be logical for the state to enroll in the carbon market would likely be lands that would already count into the ERA category, and therefore the carbon market might not be an effective catalyst to trigger the designation of new lands.