



VIA ELECTRONIC DELIVERY TO: [ANR.EndangeredPermit@vermont.gov](mailto:ANR.EndangeredPermit@vermont.gov)

July 12, 2023

Chris Herrick, Commissioner  
Vermont Fish and Wildlife Department  
Commissioner's Office  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3702

Dear Commissioner Herrick:

On behalf of Audubon Vermont, Vermont Natural Resources Council, and Vermont Center for Ecostudies, thank you for the opportunity to provide the following comments on the [Draft Threatened and Endangered Species Takings Permit \(EH-2023-03\)](#) associated with the Franklin County State Airport runway extension and hangar development being led by the Vermont Agency of Transportation (VTrans).

**I. Description of organizations submitting comments:**

Audubon Vermont protects birds and the places they (and people) need, today and tomorrow, throughout the Americas using science, advocacy, education, and on-the-ground conservation. Audubon Vermont has been involved in grassland conservation for nearly two decades and has participated in grassland bird working groups both in Vermont and regionally. Audubon Vermont partners with public and private landowners to manage and protect critical grassland habitat across the state. Mark LaBarr, Audubon Vermont Conservation Biologist, is one of the primary authors of the Grassland Bird Management and Recovery Plan. Mark LaBarr and Audubon Vermont Conservation Biologist Margaret Fowle both serve on the Science Advisory Group for Birds to the Vermont Endangered Species Committee.

Vermont Natural Resources Council (VNRC) is a nonprofit organization with sixty years of experience in Vermont. Through research, education, collaboration, and advocacy, VNRC protects and enhances Vermont's natural environments, vibrant communities, productive working landscapes, rural character and unique sense of place. As part of this work, VNRC takes a deep interest in the maintenance of wildlife species and their habitat, and the overall biodiversity in Vermont, and has commented on previous incidental take permits in Vermont.

The Vermont Center for Ecostudies (VCE) is an independent conservation science organization that promotes wildlife conservation in Vermont and across the Americas through the combined strengths of scientific research and citizen engagement. The Center's findings inform agency personnel, law and policy makers, land managers, and members of the general public. Along the way, VCE involves thousands of amateur naturalists, or "citizen scientists" in their work, both in gathering data and



implementing conservation activities resulting from it. VCE's scientists have studied the migration ecology of grassland birds from Vermont to South America, expanded the knowledge of Eastern Meadowlark populations in Vermont, engaged many owners of Vermont's grassland bird habitats in modified land management practices through the Center's Grassland Ambassadors program, and written the Grasshopper Sparrow and Eastern Meadowlark recovery plans for the State. Nearly every professional scientist on VCE's staff serves on a Scientific Advisory Group (SAG) to the State's Endangered Species Committee.

## **II. Importance of Grassland Bird Habitat in Vermont:**

Vermont grasslands are home to significant populations of some of the most threatened birds in the Northern Hemisphere. As a result of significant declines in grassland birds, the Department of Fish and Wildlife (DFW) and the Agency of Natural Resources (ANR) approved, in 2014, the [Vermont Grassland Bird Management and Recovery Plan](#) prepared by conservation professionals and scientists at Audubon Vermont, University of Vermont, Vermont Center for Ecostudies and DFW. As explained in this Plan, grassland birds are facing population declines "consistently steeper and more widespread than any other assemblage of birds." (Page 7). Further, the Plan notes that "[t]hese declines are attributed to the loss and modification of grassland habitat." (Id).

Birds that nest in grasslands, including hayfields, pastures, fallow fields, other agricultural lands, and airfields, have suffered dramatic declines in Vermont and throughout the United States. Over the past 45 years, these declines have been largely driven by habitat loss stemming from the intensification of industrial agricultural practices, habitat succession and degradation, and development. Habitat degradation is further driven by intensive pesticide use and energy infrastructure within grasslands. Relevant to the permit application at issue, careful management and stewardship of remaining grasslands is increasingly critical to protect and recover grassland bird species. Conserving and maintaining productive grasslands not only benefits birds but also pollinators and other vulnerable insects that form the foundation of the food web. In addition, permanent grasslands help us reach carbon sequestration goals by serving as carbon sinks. Vermont plays a role in conserving grassland bird species due to the loss of native grasslands in the Midwest and projected distribution shifts driven by climate change. Vermont's importance to grassland conservation at the continental scale is reflected in the work of conservation collaboratives across North America including Partners in Flight and the North American Bird Conservation Initiative.

## **III. Benefits of Birds to Vermont's Culture and Economy:**

Vermont hosts a remarkable diversity of breeding bird species. Through taking key actions to protect habitat on our forests, farms, and fields, ANR, DFW and countless partners—including many proactive developers, community leaders, farmers, foresters, and others—have helped efforts to recover at-risk birds and sustain the diversity of birds that delight us with their rich songs and vibrant colors. Collectively, Vermonters have taken these actions, often at considerable expense and effort, not only for



the joy of observing these birds, but because protecting these priority species also supports Vermont's culture and economy.

Vermont leads the United States in the per capita number of residents who participate in birding, nearly twice the national average. ([Economics of Conservation in Vermont, Final Report, Joe Roman and Jon Erickson \(June 2015\)](#) at Page 14). A significant majority of Vermonters consider recreational activities such as birdwatching as extremely important to their communities. (Id. at Page 8). Further, many out-of-state birders from across the nation and the world visit Vermont to experience the state's incredible opportunities to encounter birds. Collectively, birders significantly benefit Vermont's economy, including Franklin County, which hosts several rare species and birding hot spots such as the Missisquoi National Wildlife Refuge. While we do not have precise statistics for the economic benefits of birding in Vermont or Franklin County, the US Fish and Wildlife Service estimated in its 2016 publication, [Birding in the United States: A Demographic and Economic Analysis](#), that nationally there were 45 million birders, who spent \$39 billion in direct birding-related expenses, resulting in the creation of 782,000 jobs and \$35 billion in employment income, and contributed \$16 billion in local state and federal taxes.

#### **IV. Impacts of Franklin County State Airport Expansion on Grassland Birds:**

The proposed Franklin Airport expansion will impact two state threatened grassland bird species, the Grasshopper Sparrow (*Ammodramus savannarum*), and Eastern Meadowlark (*Sternella magna*). Two other priority grassland species including another state threatened species, the Eastern Whip-poor-will (*Antrostomus vociferus*), and the Vesper Sparrow (*Pooecetes gramineus*), a Species of Special Concern and a Species of Greatest Conservation Need in Vermont, may also be affected. The primary impact of the expansion will be the result of reducing the availability of nesting habitat and causing disturbance during the breeding season due to ongoing construction. As populations of these birds continue to dwindle, the value of occupied habitat will increase exponentially.

The Grasshopper Sparrow is of particular concern at this site because land in and around the Franklin County State Airport supports the largest breeding population of this species in the state. Since Grasshopper Sparrows breed in very limited numbers in other parts of the state, this airport is one of the two remaining strongholds for this species in Vermont. Unlike more common species of grassland birds, Grasshopper Sparrows prefer nutrient-poor, sparsely vegetated sites. Vermont possesses a very limited amount of this habitat, all of which is occupied by Grasshopper Sparrows. The localized conditions at Franklin County State Airport providing suitable habitat for Grasshopper Sparrows are difficult to artificially create. It is critical to recognize that mowed (or unmowed) lawns are not a sufficient substitute for the existing habitat these birds require and use at the airport.

#### **V. The Airport Expansion is Currently Proceeding in Violation of Vermont's Threatened and Endangered Species Law:**

The airport widening, initiated this Spring and still currently underway, violates Vermont's Threatened and Endangered Species law (10 V.S.A. Chapter 123). VTrans was or should have been aware that a Threatened and Endangered Species Takings Permit was required prior to the start of this work.



Proceeding with construction of a project that jeopardizes the existence of a threatened or endangered species in direct contravention of a clear statutory mandate does not represent the respect for the rule of law that Vermont citizens expect from Vermont State Government. It also disregards the critical role that ANR and DFW play in protecting the environment and weakens the relevance of Vermont Threatened and Endangered Species law.

The presence of grassland birds at the Franklin County State Airport and the importance of habitat there have been well-known for years by birders, biologists, and airport staff. At a minimum, since 2014, when ANR approved Vermont's Grassland Bird Management and Recovery Plan referenced above, the State has known that habitat loss is the most significant factor responsible for grassland bird population declines in their breeding range. More specifically, the Recovery Plan addresses the Franklin County State Airport's critical role in the survival of the Grasshopper Sparrow in Vermont. The Plan includes the following statement: "Current threats [to the Grasshopper Sparrow] are similar to other grassland species . . . . In addition, planned construction at the Franklin County Airport and lack of permanent protection of the site at Camp Johnson jeopardize the long-term viability of this species in Vermont." (Page 28).

To avoid creating a dangerous precedent, including encouraging other project developers to disregard Vermont's Threatened and Endangered Species law, or other important state environmental laws, we request that you deny VTrans' permit application for the referenced project. The construction of the Franklin County State Airport expansion is not a "lawful activity" until a valid permit is issued under 10 V.S.A. § 5408(b). The proper response by DFW should be to take enforcement -- including the possibility of criminal enforcement, given that VTrans appears to have intentionally and knowingly violated the Vermont Endangered Species Act. As part of any such enforcement, the Department should require VTrans to stop any work on the expansion that impacts Grasshopper Sparrow habitat until and unless an incidental take permit is issued.

**VI. VTrans has not met the requirements for demonstrating that the project will not impair the conservation or recovery of any endangered or threatened species by failing to submit restoration and management plans as part of its application:**

The Department should deny the permit because VTrans has not met the requirements for obtaining an incidental take permit. The conditions presently in the draft permit indicate that VTrans will be required to submit a variety of plans for approval only after the permit is issued. To avoid or mitigate harm to the habitat of the impacted grassland birds, especially the Grasshopper Sparrow, all those plans, including the Revegetation Plan, Grassland Restoration and Management Plan, and Long-term Grassland Habitat Mitigation Strategy, should have been submitted as part of the application process. As this permit application process is currently proceeding, these plans appear to be crafted as an afterthought to justify an ongoing project. Approving this permit without requiring those plans to be submitted as part of the application deprives the Department's experts and the public of the opportunity to evaluate whether those plans are sufficient to ensure that proceeding with the airport expansion will "not impair



the conservation or recovery” of the affected endangered or threatened species before the permit is issued as required in 10 V.S.A. § 5408(b).

**VII. The Endangered Species Committee’s evaluation of the proposed plans should be considered before the issuance of a final permit:**

Further, and related to the issue raised in Section VI of our comments above, regarding the timing of the submission of the various plans, the inability of the Endangered Species Committee to review those plans in a public forum, or provide substantive comments that the public can review along with the draft permit violates the required process.

According to 10 V.S.A § 5404(b), the Endangered Species Committee (ESC) shall advise the Secretary on all matters related to endangered and threatened species including “how to protect those species.” The draft permit states that the advice of the Endangered Species Committee is “in development” and yet the ANR Secretary has already determined in Section 9(I) of the draft permit that “after receiving advice from the Endangered Species Committee” the proposed activity is consistent with the purposes of 10 V.S.A. Chapter 123, and a takings permit is authorized. We fail to see how a draft permit could be authorized before the ESC’s advice is fully developed and its specific recommendations are addressed in the draft permit.

While the Endangered Species Committee recommended that the permit be issued, this advice was conditional and expressly reflects the frustration of the committee with the process:

The draft permit that we are evaluating is in response to both the project at hand (runway lengthening), but also work that is ongoing without a permit (runway widening). This is problematic for three reasons. First, the airport widening is a violation of Vermont’s Endangered Species Act. This violation has not been prosecuted; consequently, adoption of the components of the permit along with our additional permit conditions are mandatory for this work to continue.

Second, the processes by which VTRANS engaged the ESC and Bird SAG were unprofessional. We were asked to evaluate a vague permit application and provide feedback in a short period of time (at one point, within 48 hours). Although VTRANS indicated they would modify the permit, this was never done, and the actual work required to design a project that minimized and mitigated effects on T/E species fell to VT Fish and Wildlife staff. In the end, we are forced to evaluate a permit for a construction project that will occur prior to restoration and mitigation work.

Third, the proposed mitigation areas are not currently suitable for occupancy by Grasshopper Sparrows or Eastern Meadowlark. Even with extensive

anthropogenic modification of the proposed mitigation area (e.g., via herbicide, discing and seeding) to establish an appropriate grassland vegetation community, there is no certainty that these areas will ever support grassland bird populations.

(Vermont Endangered Species Committee, Threatened and Endangered Species Takings Review, Application: VTrans-Wells Franklin Airport Grassland Birds App EH-2023-03.pdf, Date: 30 June 2023).

Additional review by experts is necessary before DFW can conclude that the issuance of the referenced permit and the resulting incidental taking “will not impair the conservation or recovery of any endangered species or threatened species” as required. Further, the inability of the ESC to provide this advice to DFW precludes the public from benefitting from the ESC’s input when commenting on the draft permit. Because the ESC’s input has not been fully developed, it is premature to issue and authorize an incidental take permit.

**VIII. If issued, the draft permit conditions must be adhered to and strictly enforced:**

In the event that the Department proceeds to issue the draft permit, it is of utmost importance that VTrans adhere to the requirements of the proposed permit for work to continue at the Franklin County State Airport. Despite opposing the issuance of the draft permit at this time, Audubon Vermont, VNRC and VCE acknowledge the important work of the DFW staff, the Vermont Endangered Species Committee and the Bird Scientific Advisory Group. Efforts by these entities to develop the specific conditions of the permit have been impressive, especially considering the unique nature of this permit application (in which the applicant is already in clear violation of the Vermont Endangered Species Act) and the short timeline for permit consideration. The recommendations developed by these professionals, if VTrans fully complies with the permit, have the potential to mitigate the loss of grassland bird habitat for the birds addressed in this draft permit.

With the above context in mind, we offer the following comments on the most urgent permit conditions for your consideration:

- 1) We support the development of the plans and strategies outlined in Section 11, B, C, D and E of the permit to ensure conservation measures compensate for both the loss of quantity and quality of habitat and strive to increase fledging success of nesting pairs so that the current populations of affected birds, especially the Grasshopper Sparrow, can stabilize, potentially increase, and occupy all available habitat. Approval processes of these plans should include input from the Endangered Species Committee and the Science Advisory Group for Birds. Once developed, these plans should be reviewed annually.
- 2) We support the strong and specific language in the remaining requirements of Section 11 including the provisions limiting disturbance of grassland birds during the breeding season, providing access to the Airport for survey purposes designed to assess the impacts of the



ongoing construction project, and requiring that VTrans not authorize the runway extension until the Long-term Grassland Habitat Mitigation Strategy is approved.

- 3) We support the timelines in Section 12 for submitting the plans and strategies described in Section 11. We recommend adding language expressly stating that, if these timelines are not met, ongoing work must be halted until said measures are completed and reviewed. The draft permit should be amended to specify that work stoppages should occur if these tasks are not completed during the proposed timeline.
- 4) In addition, the draft permit must explicitly require VTrans to ensure that it has sufficient funding to complete the required plans and associated mitigation or restoration activities. The Department should include language in the permit making clear that lack of available funding for mitigation and restoration is not an excuse for permit non-compliance. We further recommend the addition of language subjecting VTrans to work stoppages and penalties if the permit terms are not met.

Thank you for considering these comments and your commitment to ensuring Vermont maintains healthy, productive grassland habitat for the suite of priority grassland birds that call it home. In this instance, more than usual, the fate of the affected bird species in Vermont is in the State of Vermont's hands. By proceeding on the current course being pursued by VTrans, the Franklin County State Airport project is unnecessarily putting both these vital bird species, as well as the project and its acknowledged economic and community benefits, at risk. VTrans knows better, and ANR and your Department have been entrusted with holding them accountable.

Sincerely,

A handwritten signature in blue ink, appearing to read "DKM".

David K. Mears, Executive Director  
Audubon Vermont

A handwritten signature in blue ink, appearing to read "B. Shupe".

Brian Shupe, Executive Director  
Vermont Natural Resources Council

A handwritten signature in blue ink, appearing to read "Susan M. Hindinger".

Susan M. Hindinger, Executive Director  
Vermont Center for Ecostudies