



## PUBLIC NOTICE

**Comment Period Begins:** July 18, 2023  
**Comment Period Ends:** August 18, 2023  
**File Number:** NAE-2023-01347  
**In Reply Refer to:** Michael S. Adams  
**Phone:** (978) 318-8485  
**Email:** Michael.s.adams@usace.army.mil

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**SUBJECT:** The District Engineer, U.S. Army Corps of Engineers, New England District (USACE), has received a request dated 18 May 2023 for an amendment to the Ducks Unlimited (DU) Vermont In-Lieu Fee Program Instrument (hereafter ILF Program) to establish the DU Batten Kill In-Lieu Fee Site to compensate for wetland impacts in the Upper Hudson Service Area off the south side of VT Route 7A in Manchester, Vermont (Latitude 43.11902 N, Longitude -73.10520 W). The USACE is soliciting comments on the DU Batten Kill Site Prospectus.

**SPONSOR:** Ducks Unlimited, Inc., ATTN: Patrick Raney, 159 Dwight Park Circle, Syracuse, New York 13209

**BACKGROUND:** The Ducks Unlimited, Inc. ILF Program is authorized by the Corps. A copy of the signed ILF agreement entitled "Ducks Unlimited, Inc. - Vermont In-lieu Fee Program" dated December 07, 2010, and includes details about the ILF Program goals and objectives in general and can be found at the following link: <https://www.nae.usace.army.mil/Portals/74/docs/regulatory/Mitigation/VT.pdf>

The Batten Kill Site has been submitted as a proposed addition to the ILF Instrument pursuant to 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources (Federal Register: April 10, 2008, effective June 9, 2008). Pursuant to 33 CFR 332.8 (d), where the District Engineer will provide public notice of the proposed addition of ILF program mitigation sites. As such, we are issuing a public notice to solicit comments for the instrument modification due to the proposed addition of the Batten Kill Site mitigation site.

Ducks Unlimited, Inc. ILF Program has accrued funds from Army Corps of Engineers Department of the Army permitted impacts throughout the State of Vermont and New York.

**PURPOSE:** The purpose of the proposed 124.45-acre Batten Kill Site is to provide wetland mitigation to compensate for wetland impacts within the Upper Hudson Service Area.

**GENERAL INFORMATION:** An ILF program involves the restoration, establishment, re-establishment, enhancement, rehabilitation and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army permits. Similar to a mitigation bank, an ILF program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the ILF program sponsor. The operation and use of an ILF program are governed by an ILF program instrument. A group of federal and state regulatory and resource agency representatives known as the Interagency Review Team (IRT) oversee the establishment and management of the program. The IRT is chaired by the USACE. The primary role of the IRT is to facilitate the establishment of the ILF program through the development of an ILF Instrument. The IRT also reviews ILF mitigation proposals and provides comments to the USACE. The approval of the use of the ILF program for specific projects is the decision of the USACE pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act (CWA). The USACE provides no guarantee that any particular individual or general permit proposing to use the ILF program for compensation mitigation would be authorized.

**PROJECT DESCRIPTION:** The following types of compensatory mitigation are proposed to occur at the Batten Kill Site:

- Reestablishment of 15.45 acres of wetland
- Enhancement of 12.36 acres of riparian upland
- Preservation of 49.72 acres of riparian upland
- Preservation of 46.92 acres of wetland

The sponsor is also requesting to transfer monies from the Richelieu Service Area to the Upper Hudson Service Area to ensure adequate funding for this project. The request will be evaluated in accordance with the approved Instrument Modification #6 which provides standard operating procedures for this request.

Please see enclosed prospectus entitled "DU Batten Kill Site Prospectus", dated "18 May 2023" for more detail.

#### **NATIONAL HISTORIC PRESERVATION ACT**

Based on our initial review of the proposal, it appears there is little likelihood that a historic property exists or may be affected due to the nature, scope, and magnitude of the work, and/or structures to be permitted. This is based upon the following: the action area has been extensively modified by previous work and the nature of the proposed work, structure, or discharge of dredged or fill material would not affect historic properties even if such properties present within the affected area. Additional review and consultation to fulfill requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the permit review process.

#### **ENDANGERED SPECIES CONSULTATION**

The USACE is reviewing the Site for the potential impact on federally-listed threatened or endangered species and their designated critical habitat pursuant to section 7 of the Endangered Species Act as amended. Our review will be concluded prior to the final decision.

#### **EVALUATION**

After the end of the comment period, the district engineer will review all comments received and make an initial determination as to the potential of the proposed project to provide compensatory mitigation for activities authorized by DA permits. That determination will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. Factors relevant to the proposal will be considered including conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

## COMMENTS

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. The USACE will consider all comments received to determine whether to allow the sponsor to proceed to develop a final mitigation plan. Comments are also used to determine the need for a public hearing, and to determine the overall public interest of the proposed activity. People submitting comments are advised that all comments received will be available for public review in their entirety and will be considered a matter of public record.

Comments should be submitted in writing by the above date. If you have any questions, please contact Michael S. Adams at [michael.s.adams@usace.army.mil](mailto:michael.s.adams@usace.army.mil), (978) 318-8485, or (802) 872-2893.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the proposal. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The USACE holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. Copies of letters of objection will be forwarded to the sponsor who will normally be requested to contact objectors directly in an effort to reach an understanding.

**THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.**

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Dale E. Beter  
Chief, Technical Support Branch  
Regulatory Division

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Pease contact Ms. Tina Chaisson at [bettina.m.chaisson@usace.army.mil](mailto:bettina.m.chaisson@usace.army.mil) or (978) 318-8058 if you would like to be removed from our public notice mailing list.

# DU Batten Kill Site Prospectus

## Upper Hudson Service Area

**Prepared by:**

Ducks Unlimited Vermont In-Lieu Fee Program



**GREAT LAKES &  
ATLANTIC REGION**



**To be considered by:**

United States Army Corps of Engineers and  
The Interagency Review Team

New England District  
11 Lincoln Street  
Room 210  
Essex Junction, VT 05452

New England District  
Regulatory Division  
696 Virginia Road  
Concord, MA 01742-2751

**DATE: 18 May 2023**

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## **Batten Kill ILF Site Prospectus**

Ducks Unlimited, Inc., (DU) as the sole sponsor of the Ducks Unlimited Vermont In-Lieu Fee Program, proposes to establish the DU Batten Kill In-Lieu Fee Site to compensate for wetland impacts in the Upper Hudson In-Lieu Fee (ILF) Service Area. The program was approved in 2011, and this prospectus is intended to describe a site for inclusion under the existing ILF program. This document provides the basis for initial public comment and IRT response to the site. DU intends to address concerns raised comments through direct communication, and in a full mitigation plan for the site following public notice.

### **The sponsor's mailing address is:**

Ducks Unlimited, Inc.  
159 Dwight Park Circle  
Syracuse, New York  
13209

### **The contact for Ducks Unlimited:**

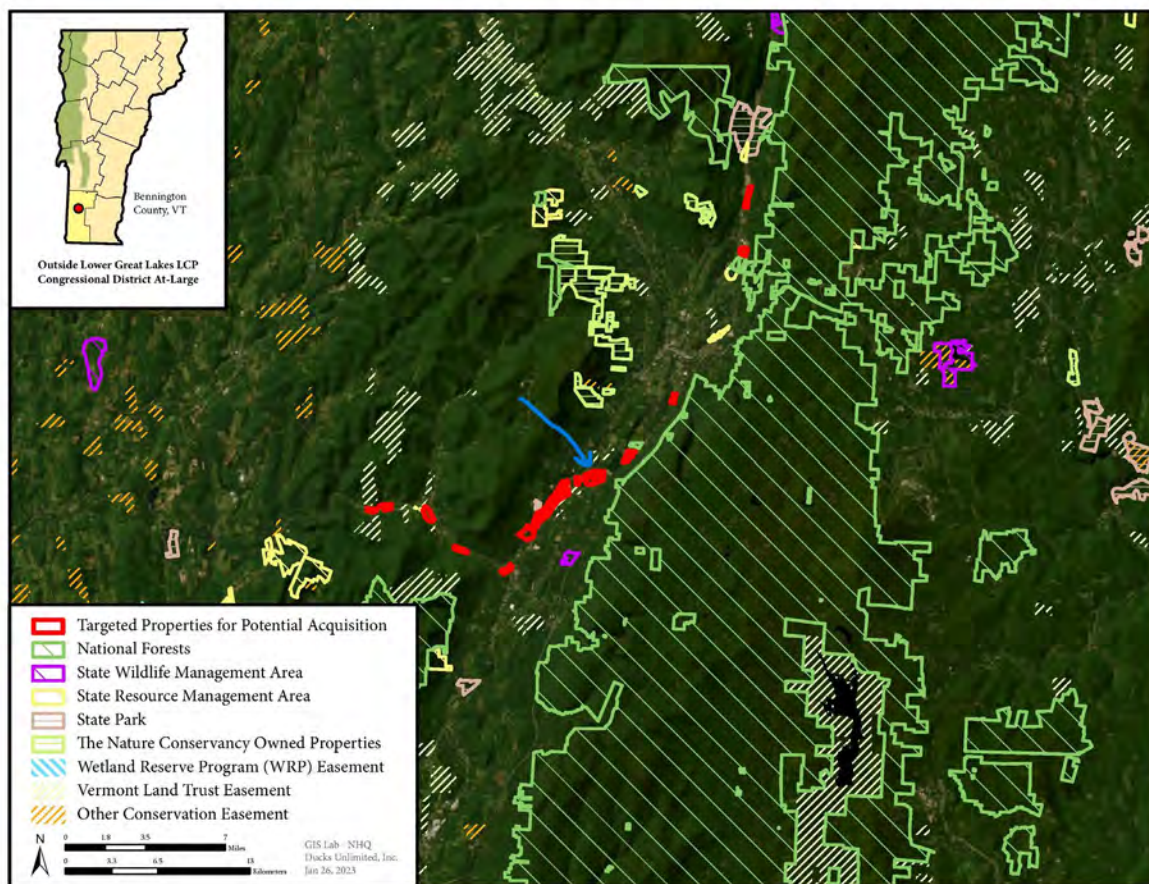
Patrick Raney, Ph.D.  
(o) 315-453-8025  
(c) 315-708-9614  
[praney@ducks.org](mailto:praney@ducks.org)

Per 33CFR 332.8(d)(2) the prospectus provides an overview of the proposed ILF site and is the basis for public and Interagency Review Team (IRT) initial comment. The prospectus must provide a summary of the information on a proposed ILF site at a sufficient level of detail to support informed public and IRT comment. Information required under 332.8(d)(6) will be submitted after evaluation of this prospectus is complete. This includes information concerning: the basis for the ILF sites proposed service area; accounting procedures; provisions stating that legal responsibility for providing the compensatory mitigation lies with the sponsor once a permittee secures credits from the sponsor; default and closure provisions; reporting protocols; and other information deemed necessary by the District Engineer. In addition, a mitigation plan including the specific information required in 332.4(c)(2)-(14) will be provided along with a credit release schedule, which is tied to achievement of specific milestones.



## Introduction

Ducks Unlimited performed searches of high-priority for protection and restoration properties in the Upper Hudson Watershed. This watershed has had the least amount of credit sales of any watershed in the program at 1.08 credits sold since 2011. This watershed is a fairly steep one, with 3 major rivers (Batten Kill, Winooski and Walloomsac Rivers) working their way westerly where the ultimately connect to the Hudson River in New York State. This watershed is fairly undeveloped and has a high incidence of protected lands, which together with steep terrain and minimal population result in very low background rates of mitigation requirements. DU assessed the suitability of parcels in each of these watersheds for protection and use as potential ILF sites, of the three riparian areas, the Batten Kill offered the highest concentration of parcels potential suitable for the program. Parcels identified below in red were identified as undeveloped lands within the Batten Kill floodplain. The proposed site is indicated with a blue arrow (Figure 1).



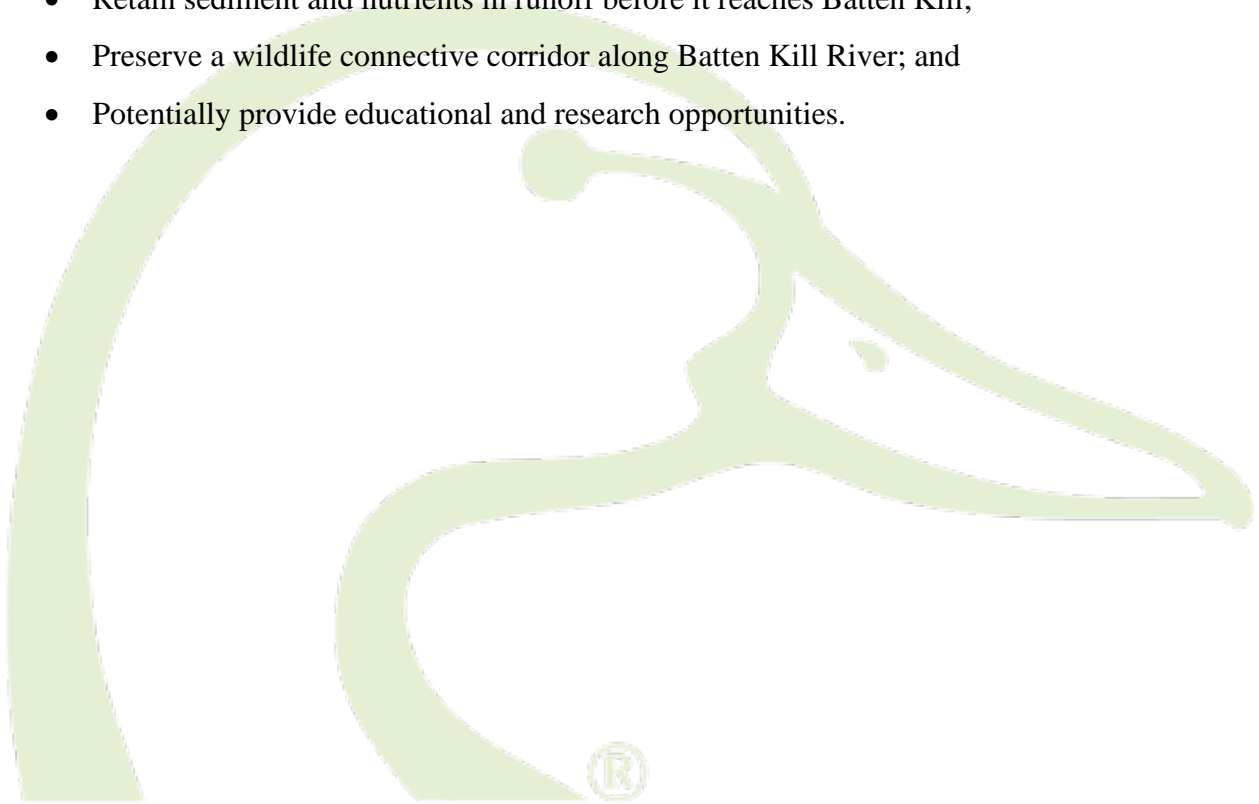
**Figure 1. Batten Kill River Focal Area.**

## 1. Objectives

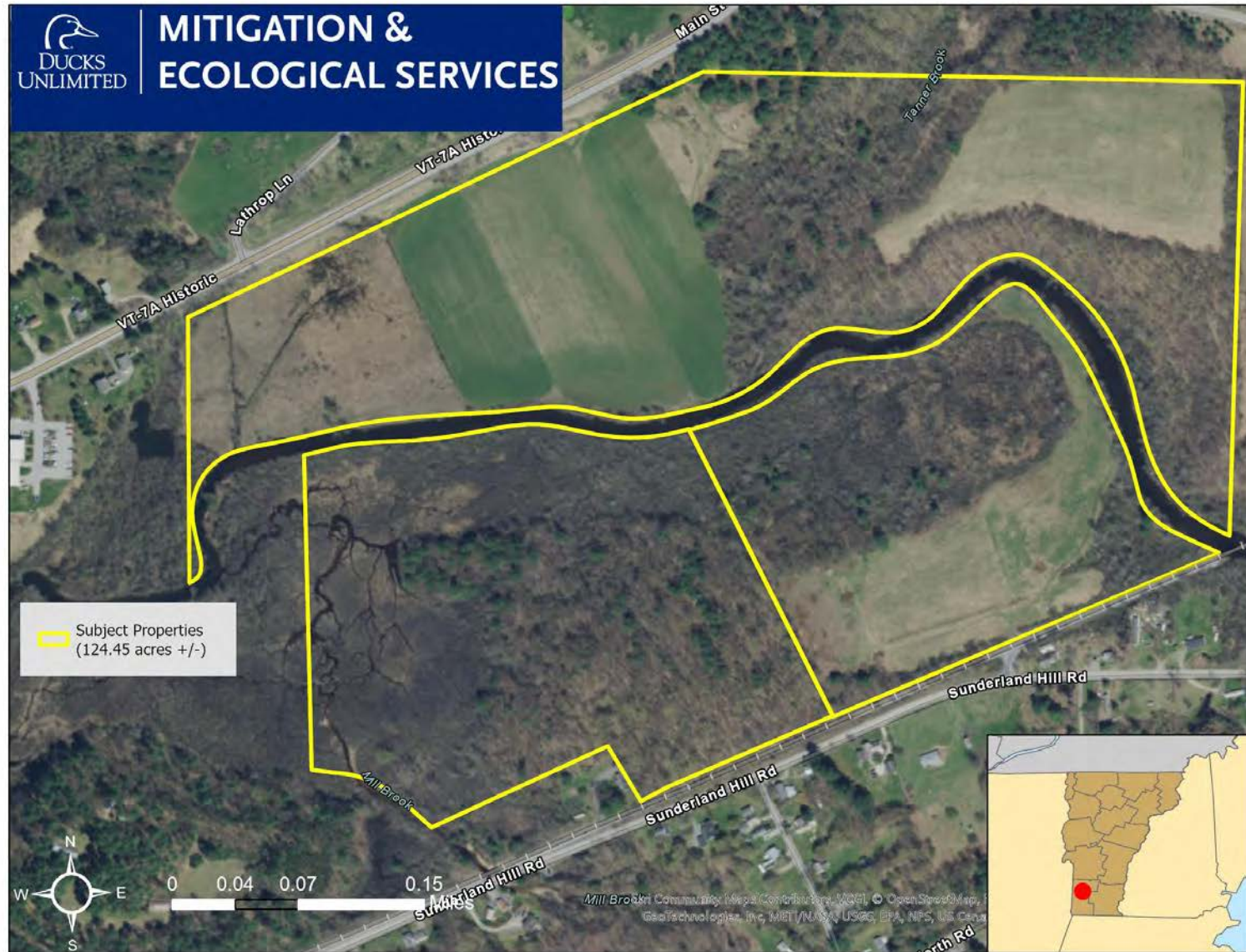
The primary goal of the **DU Batten Kill ILF Site Prospectus** is to provide wetland mitigation on a watershed scale to compensate for wetland impacts within the Upper Hudson Service Area.

More specifically, it will provide an opportunity to:

- Mitigate for wetland impacts;
- Reestablish, rehabilitate, and preserve habitat;
- Preserve and reestablish habitat that may be suitable for rare plant species
- Preserve and improve flood attenuation capacity;
- Retain sediment and nutrients in runoff before it reaches Batten Kill;
- Preserve a wildlife connective corridor along Batten Kill River; and
- Potentially provide educational and research opportunities.







**Figure 2. Proposed ILF Site.** The proposed site encompasses two properties described on the following page.

DU has agreements in place with owners to obtain the property through a fair-market value acquisition. The purchase price for the two tracts as shown above is \$463,000, and was assessed based on an appraisal obtained by DU in the fall of 2022. The Harwood tract is the portion of the property closest to Route 7A, and the westerly parcel to the south of the Batten Kill. The eastern parcel to the south of the Batten Kill is the Wilcox tract. Fair market value of the Harwood tract is \$400,000 and \$63,000 for Wilcox. These closings will occur independently and become a consolidated DU project through the ILF program if approved by USACE and the IRT. DU anticipates being able to generate both preservation and actively produced credits through this project.



## **2. Establishment and Operation**

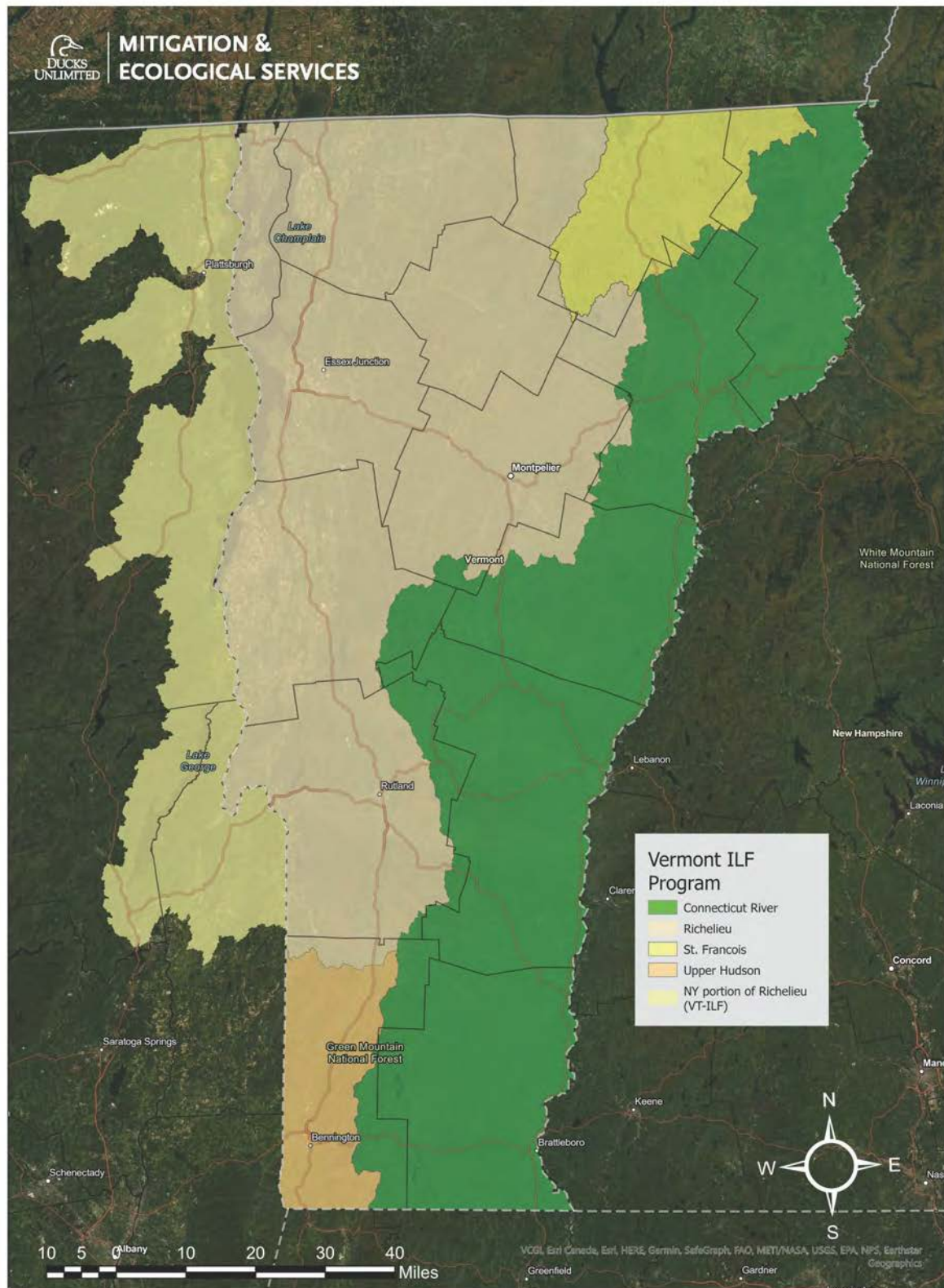
Ducks Unlimited (DU) is the administrator and sponsor of the Ducks Unlimited Inc. Vermont In-Lieu Fee Program, hereafter “ILF Program”. The accounting including fund allocation, reporting procedure requirements, and default and closure provisions are described under the ILF Program Instrument.

## **3. Service Area**

The proposed 124.45-acre (+/-) DU Batten Kill ILF site is located within the Upper Hudson Service Area, approximately 4.4 miles south of the town of Manchester Center in Bennington County, as shown in Figures 2. The project site lies within the Upper Hudson ILF Service Area shown in Figure 3. The coordinates for the project entrance are 43°06'1.68" N, 73°06'56" W. To date DU has sold just 1.08 credits in the Upper Hudson Service Area since 2012 comprised of two separate credit sales, indicating this watershed has low demand. DU requests that 6.8 credits sold through the Richelieu Service Area be transferred to the Upper Hudson Service Area for use at this site to ensure adequate funding for a full project. This watershed drains toward the Hudson River in New York State. According to the Compensation Planning Framework (CPF) in DU's ILF Instrument, the following goals are listed for the Upper Hudson watershed, which will be addressed by the proposed compensatory mitigation project: fish conservation, manage and re-vegetate riparian buffers, and prioritize river floodplain forests for conservation.

DU estimates the proposed Site will produce between 12 and 15.5 credits depending on how much of the farm fields revert to wetland. Such credit production would be sufficient to offset existing and foreseeable future impacts in this watershed. DU requests to augment the small amount of Upper Hudson Service Area funds (only 1.08 credits have been sold) by transferring 6.8 credits from the Richelieu to be satisfied at this site. That amount of funds would enable DU to purchase the property, develop a mitigation plan and reestablish, rehabilitate, and preserve wetlands on site. DU requests funds/credit obligations be transferred from the Richelieu service area to enable this project to proceed as DU has collected insufficient funds to fund even a preservation only project otherwise. The Richelieu watershed as the highest credit production watershed in our program is sufficiently well-capitalized to be able to continue developing and implementing existing projects in that watershed even with this transfer of funds. Ultimately a transfer of credits and funds would result in more on the ground outcomes.





**Figure 3. Service Area.** The Upper Hudson ILF Service Area (HUC 020200) shown in light orange.

#### **4. General Need and Technical Feasibility**

The 124.45-acre Site lies within a high priority area for conservation of cold-water stream, with several existing easements, national forest lands and a WRE easement protecting portions of this river corridor (Figure 4). Mowed fields at this site were historically cleared of woody vegetation, leveled with at least some ditching on the site leading to a reduction in historic wetland extent. (Figures 5-9). This mitigation project will ensure the preservation and restoration of wetland and upland habitats. This Site is conducive to a somewhat passive floodplain restoration.

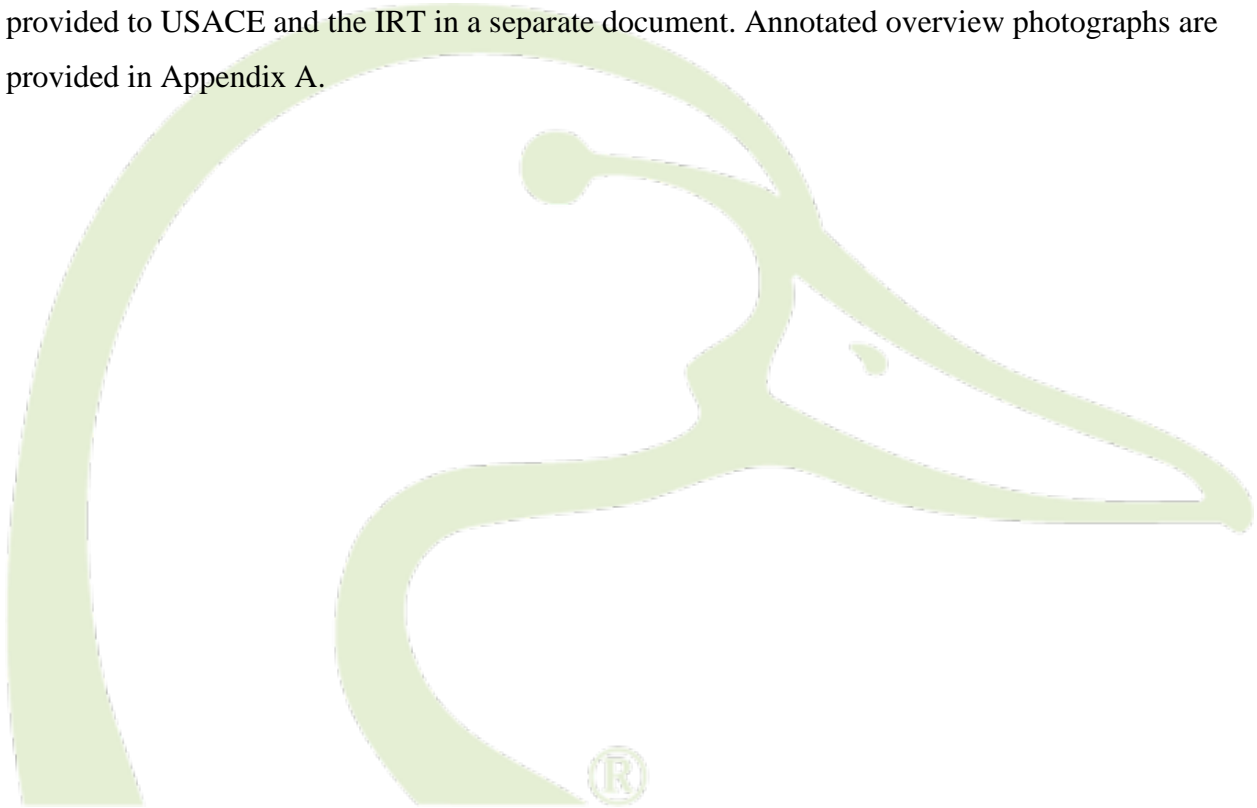
Approximately 24.60 acres are being maintained by current owners as agricultural lands that are regularly mowed. A 1.36-acre area along the western side of the property has reverted to wetlands following agricultural abandonment. Areas directly adjacent to this wetland would likely revert to a flood-plain wetland with cessation of mowing and reintroduction of microtopography and hydrophytic vegetation.

There are approximately 46.92-acres of wetlands on site. DU will target reestablishment of wetlands within a 15.45-acre area spanning northern and southern portions of the property. Based on soils and hydrology information for the site, we anticipate disking those areas, disrupting a ditch and eliminating mowing would likely result in at least 50% of that area reverting to wetlands without the need for intensive earth-moving or grading. There appears to be a ditch or buried tile line that is conveying some flow that would be disrupted and plugged to inhibit drainage of the proposed reestablish area along the Route 7A side (see figure 8 and photographs contained at the end of this document). Lower slope areas currently maintained as hay fields are also likely to revert as these areas are bordered by hydrophytic vegetation, flood periodically, and are somewhat sparsely vegetated with some hydrophytes present.

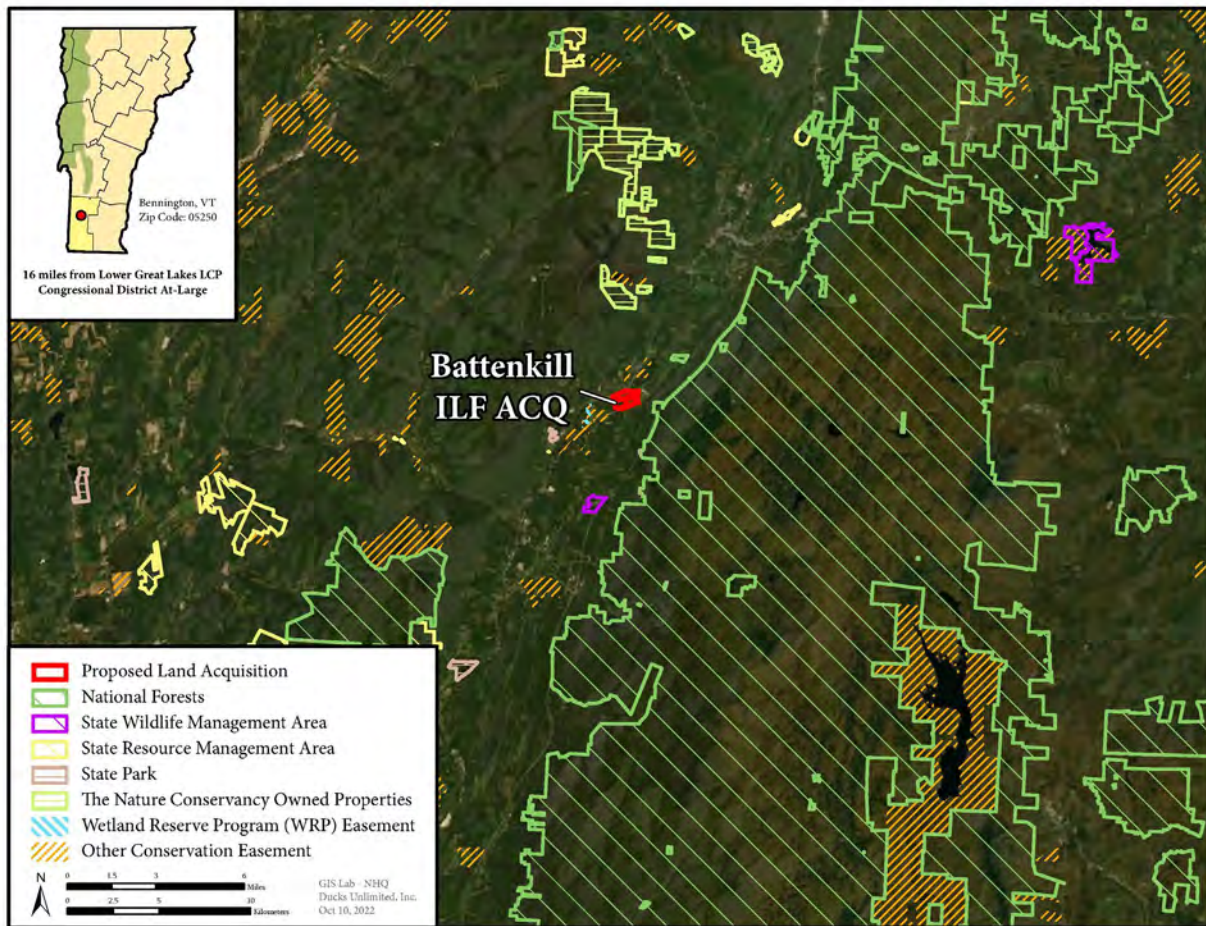
DU proposes to perform a minimal restoration effort, whereby microtopography is reintroduced through disking, and seeding to native hydrophytes, in conjunction with revegetation of scrub-shrub and forested wetland tree species to improve the riparian floodplain forest buffer adjacent to the river. This approach will minimize expense – by reducing the need for a full engineering design but is expected to result in recovery of some wetland acreage. DU proposes to perform a basic tile-drain search in an area of suspected drainage. DU anticipates planting approximately 15.45-acres of targeted wetland reestablishment, expecting approximately half of that area to revert to wetlands. DU would also plant trees in 12.36 acres of the uplands to improve the stream

and wetland buffers around the targeted wetland reestablishment areas. This will be performed in conjunction with vegetation management to limit the spread of invasive species. A detailed restoration plan will be provided in the form of a full mitigation plan for the Site.

Given this watershed has had very limited credit demand, and therefore funding, we propose to limit the monitoring period to 5 years provided the site is making good progress towards achievement of final performance standards identified in a mitigation plan. Increasing the active monitoring and adaptive management period would add significantly to the budgetary requirements and funds required from the Richelieu service area. A proposed budget will be provided to USACE and the IRT in a separate document. Annotated overview photographs are provided in Appendix A.





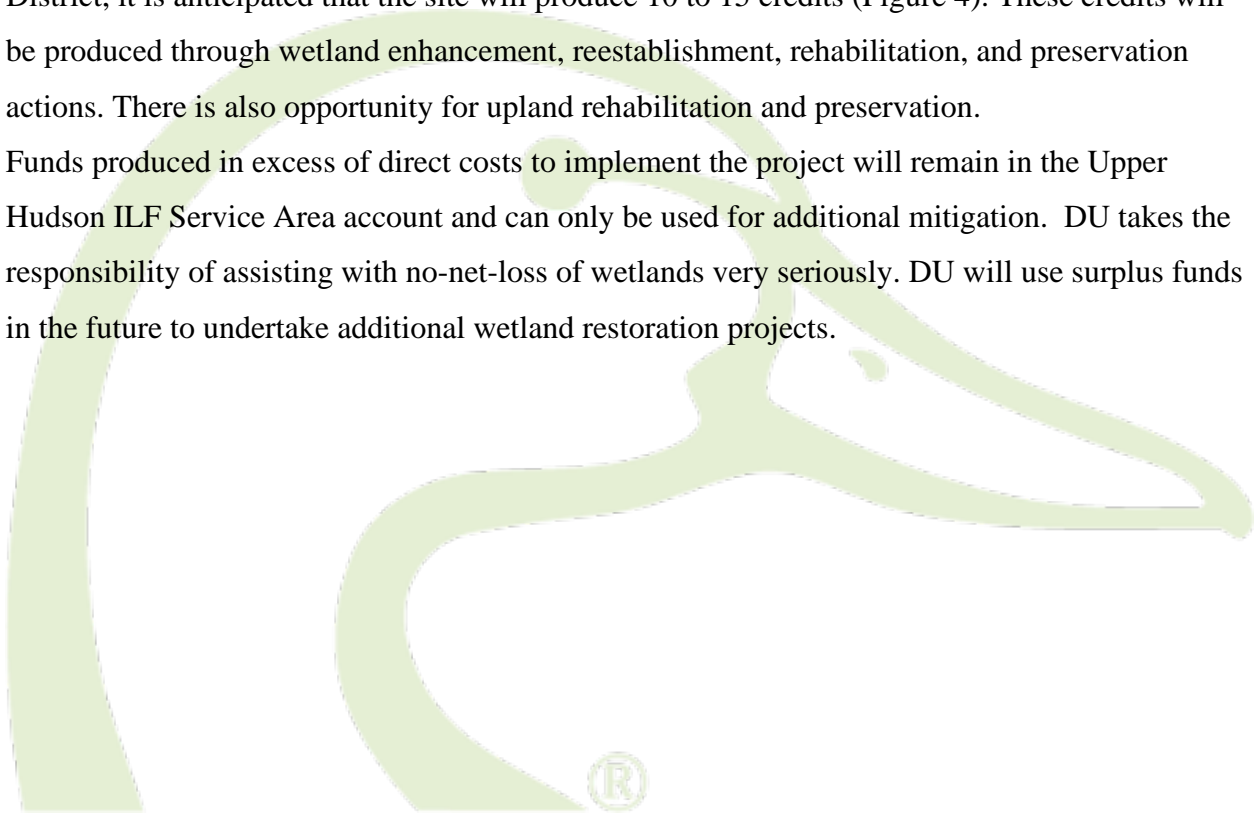


**Figure 4. Site Conservation Context.** The proposed ILF site is shown in red outline. It lies near conservation easements, WRE easements, and is downslope of the Green Mountain National Forest.

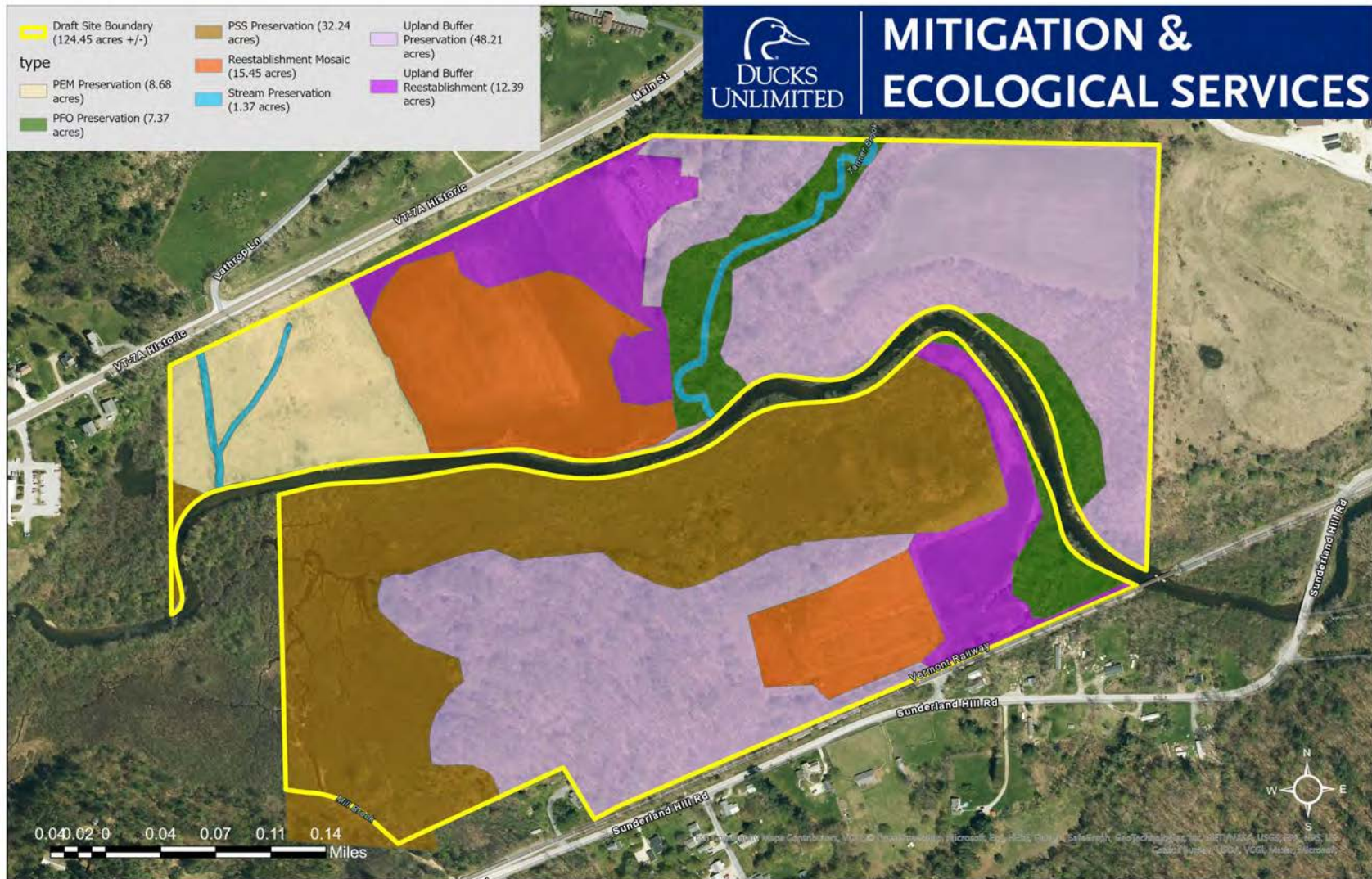
After construction of the property is completed, DU anticipates donating the property to the State of Vermont as an addition to Fish and Games' holdings for public access. A USACE-approved long-term management plan identifying the responsible long-term steward will be developed prior to transfer. DU will retain an access easement to ensure access for management and monitoring.

Based on credit-production ratios established in the instrument and used in the New England District, it is anticipated that the site will produce 10 to 15 credits (Figure 4). These credits will be produced through wetland enhancement, reestablishment, rehabilitation, and preservation actions. There is also opportunity for upland rehabilitation and preservation.

Funds produced in excess of direct costs to implement the project will remain in the Upper Hudson ILF Service Area account and can only be used for additional mitigation. DU takes the responsibility of assisting with no-net-loss of wetlands very seriously. DU will use surplus funds in the future to undertake additional wetland restoration projects.

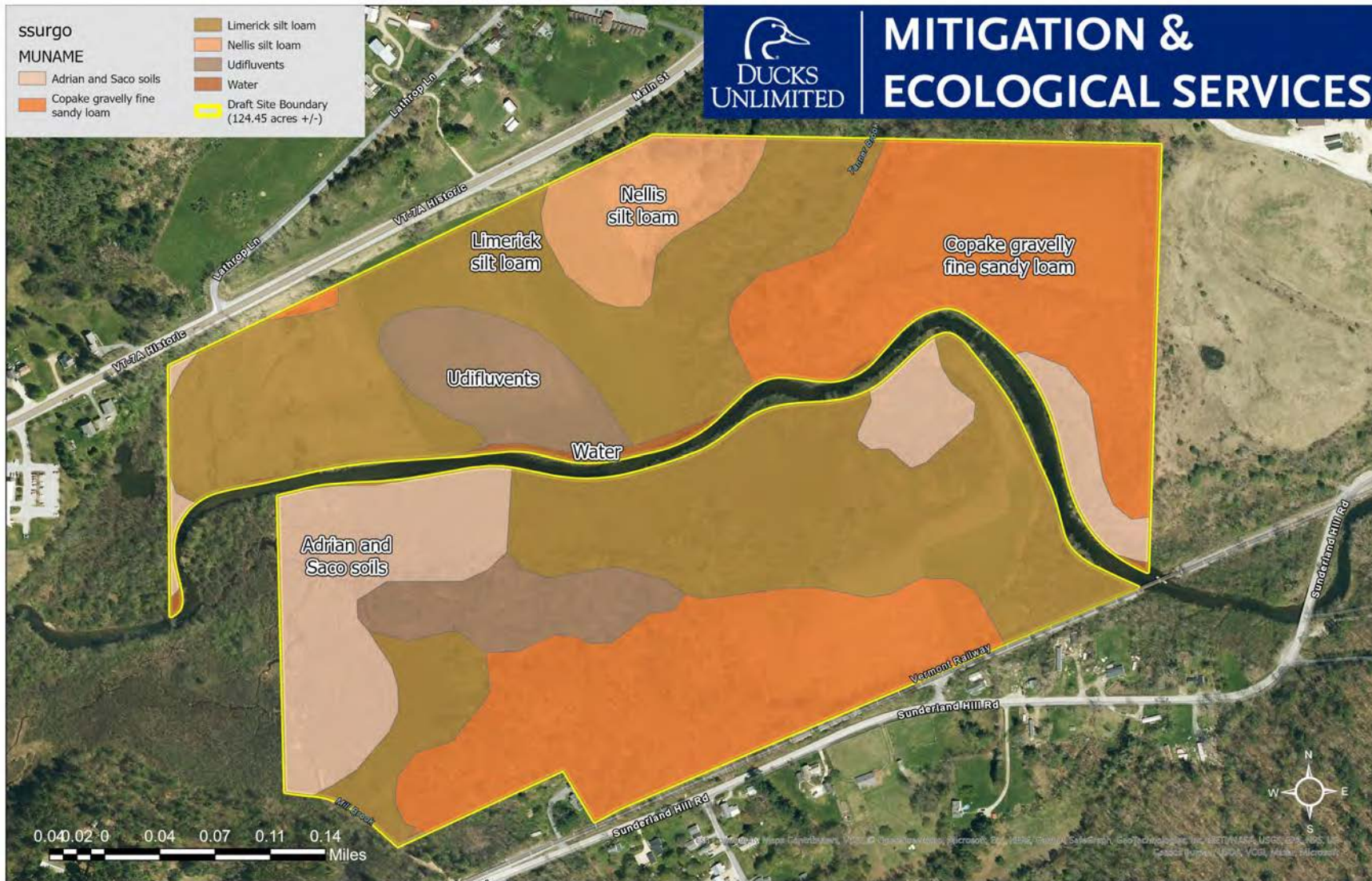






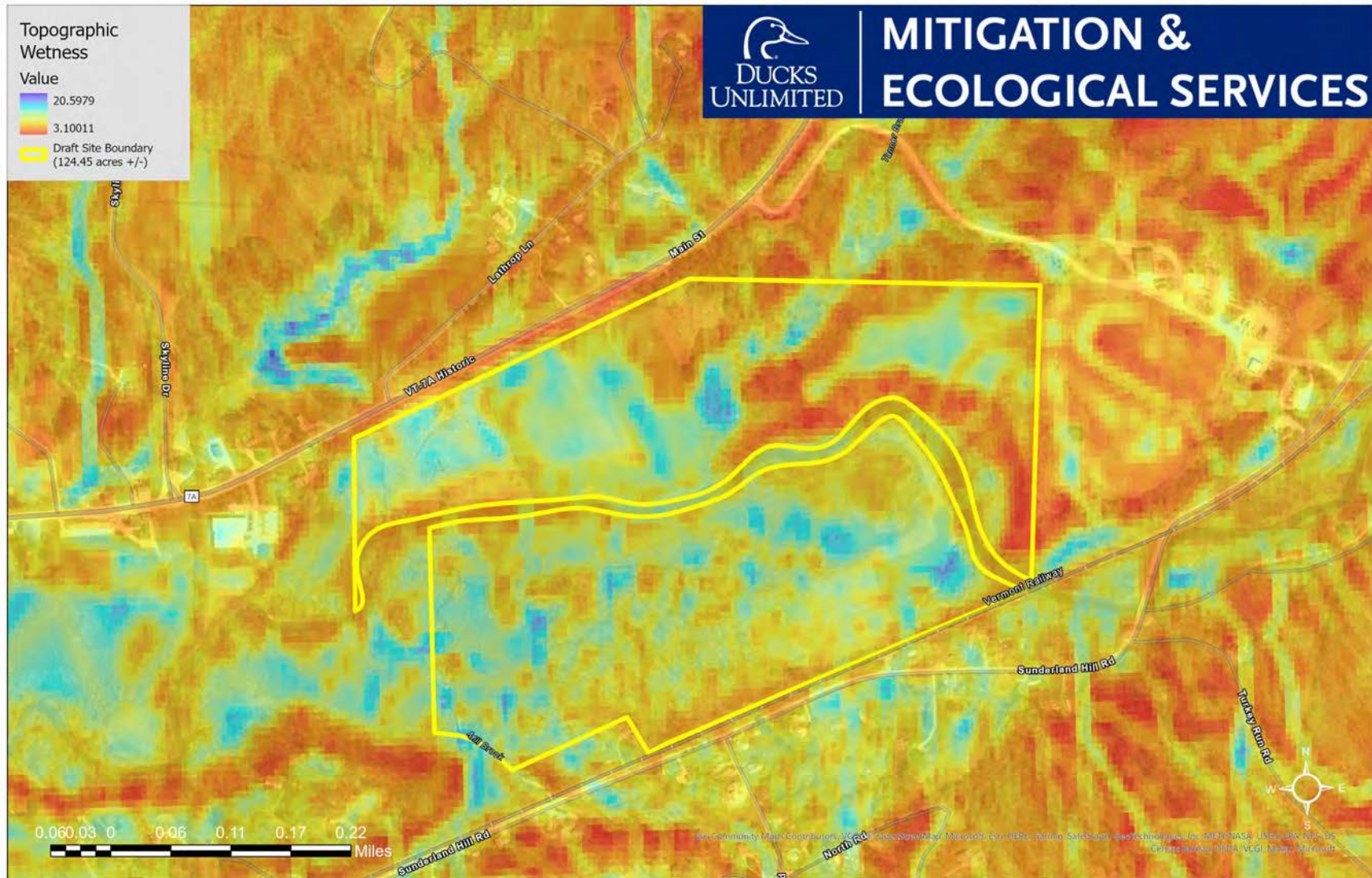
**Figure 5. Draft conceptual restoration plan.** showing areas of proposed disking and wetland revegetation (orange), and buffer reestablishment areas (purple). All other areas would be treated as preservation areas (wetland and upland buffers). DU will utilize prevailing New England District guidance on upland buffer credit generation and ratios.





**Figure 6. Soils Map.** DU will target wetland restoration primarily in Udifluvents and Limerick silt loams soils. These correspond with hydric and partially hydric soils.





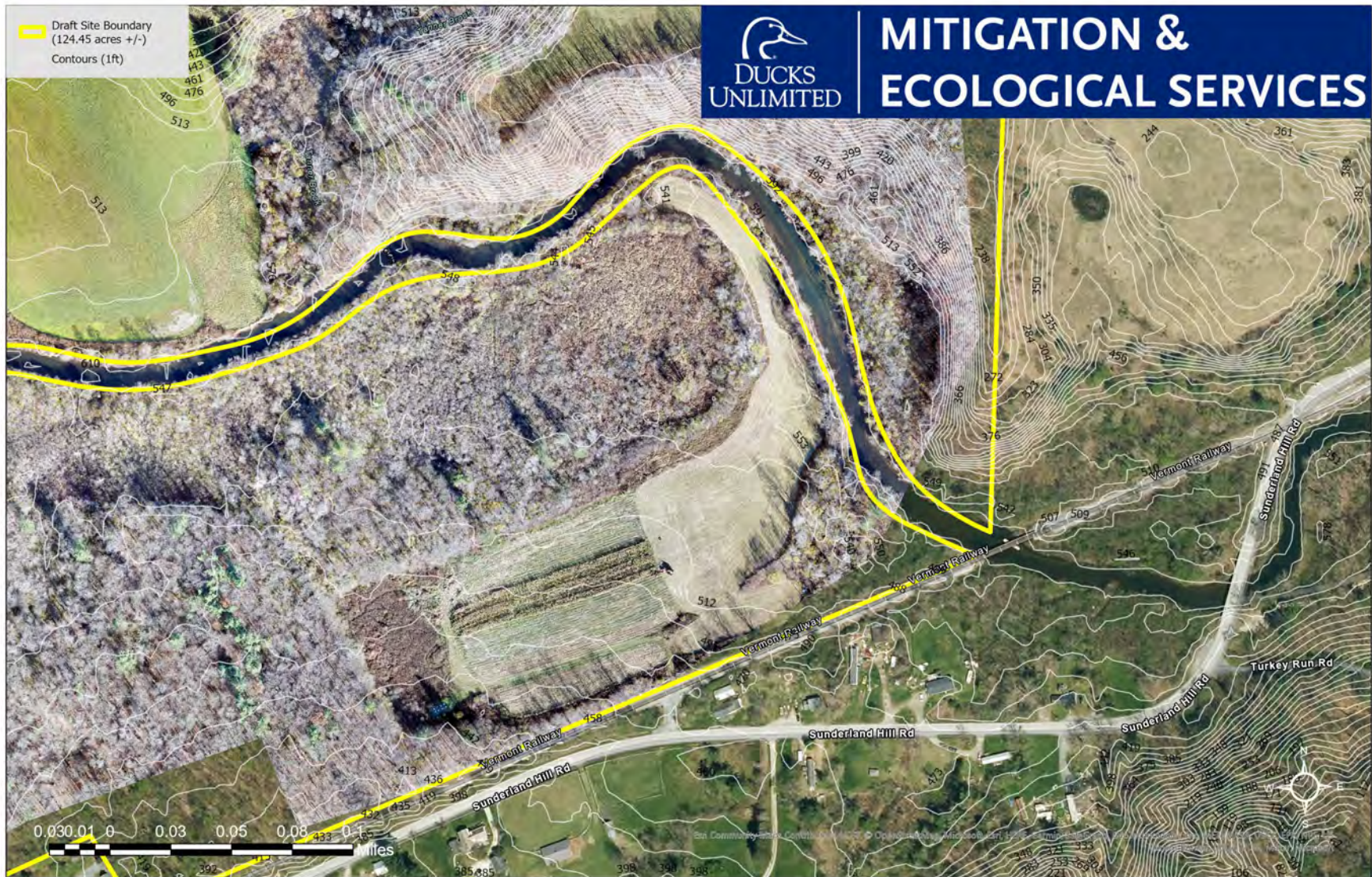
**Figure 7. Topographic Wetness Index Model.** for the project area indicates the site is likely to accumulate water in blue shaded areas from surface runoff.





**Figure 8. Northern Field restoration areas.** Contours are widely spaced indicating a fairly flat surface in the target restoration areas. Imagery is from a drone flight conducted on 11-4-2022, the composite image resolution is 2". White lines are 1ft Lidar-derived contours.



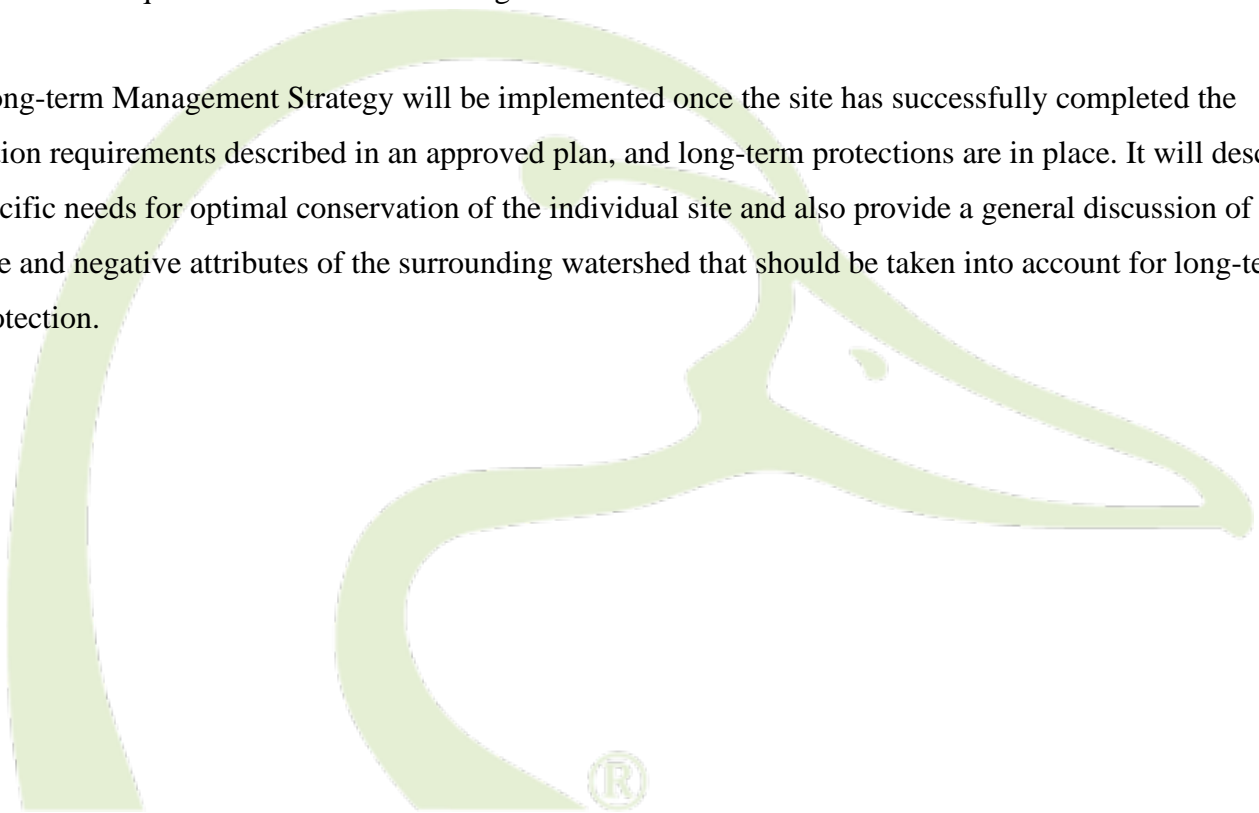


**Figure 9. Southern restoration area.** Field also has relatively flat surfaces as indicated by wide spacing of 1ft contours.

## **5. Ownership Arrangement and Long-Term Management Strategy**

The Site will encompass the entire 124.45-acre parcel owned as fee simple property by DU including all surface and subsurface rights. Areas for off-street parking access for monitoring and maintenance will be identified in the mitigation planning stage. DU intends to donate the property to the State of Vermont as an addition to its public access lands holdings. The State of Vermont has expressed interest in becoming the long-term owner. DU will work with the State to ensure that the long-term management strategy implemented by the state is consistent with requirements of the 2008 Mitigation Rule.

The Long-term Management Strategy will be implemented once the site has successfully completed the mitigation requirements described in an approved plan, and long-term protections are in place. It will describe the specific needs for optimal conservation of the individual site and also provide a general discussion of positive and negative attributes of the surrounding watershed that should be taken into account for long-term site protection.





## Appendix A. Photographs



1. The site will span both banks of the Batten Kill. This view is looking from West to East 11.4.2022



2. Looking East. Farmed in 2022 using no-till practices. Here a stand of corn is being harvested on the Wilcox Tract.





3. View looking West. Toward the Harwood tract.



4. This stretch of the Batten Kill River is a premier native trout stream.





5. View looking Southeast.



6. Close up of Batten Kill River. September 2022.





7. There is potential for wetland restoration within the field shown. Water backs up into the fields during high-flow events. There also appears to be some linear conveyance of flow within this field that appears to be the result of prior ditching/drainage efforts, this is partially visible in this image near Route 7A. This water from run-off could be spread across the relatively flat portion of this field by disruption of any conveyance through ditch plugging/ tile disruption.





8. Lower slope areas along northern side of the Batten Kill under a recent rainfall.







9. Ducks Unlimited Volunteer Michael Gardner who is local to Manchester helped DU identify these properties and the availability of the Wilcox property. Here he is pictured in the PEM wetland areas. These communities dominated by wool grass would likely extend throughout currently hayed fields in the absence of mowing.





10. Downslope area showing the drainage ditch. DU would propose to plug this ditch.

