



**US Army Corps  
of Engineers**®  
New England District  
**696 Virginia Road  
Concord, MA 01742-2751**

# PUBLIC NOTICE

**Comment Period Begins:** December 28, 2021  
**Comment Period Ends:** January 27, 2022  
**File Number:** NAE-2009-01349  
**In Reply Refer To:** Taylor Bell  
**Phone:** (978) 318-8952  
**E-mail:** taylor.m.bell@usace.army.mil

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**SUBJECT:** This notice announces a request to modify the Ducks Unlimited, Inc. – Vermont In-Lieu Fee (ILF) Program Instrument for the addition of the Otter Creek Site.

**ILF PROGRAM SPONSOR:** Ducks Unlimited  
159 Dwight Park Circle  
Syracuse, New York 13209

**BACKGROUND:** The Ducks Unlimited, Inc. ILF Program is authorized by the New England District, Army Corps of Engineers (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 Otter Creek Site 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 Otter Creek 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 169.98-acre Otter Creek Site is to provide wetland mitigation to compensate for wetland impacts within the Richelieu River 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 Corps. 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 Corps. The approval of the use of the ILF program for specific projects is the decision of the Corps pursuant to Section 10 of the Rivers and Harbors Act

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of 1899 and/or Section 404 of the Clean Water Act (CWA). The Corps 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 Otter Creek Site:

- Restoration of 14.5 acres of wetland
- Preservation of 80.22 acres of wetland
- Preservation of 74.12 acres of upland buffer
- Rehabilitation of 0.86 acres of upland buffer

Please see enclosed Otter Creek Prospectus Site for more detail about the proposal.

**ESSENTIAL FISH HABITAT:** The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). Essential Fish Habitat describes waters and substrate necessary for fish for spawning, breeding, feeding or growth to maturity.

The District Engineer has made a preliminary determination that there will be no site-specific adverse effects as there is no EFH habitat present.

**NATIONAL HISTORIC PRESERVATION ACT:** Based on the initial review, the District Engineer has determined that none of these projects may affect properties in, or eligible for listing in, the National Register of Historic Places. Additional review and consultation to fulfil requirements under Section 106 of the National Historic Preservation Act of 1966, as amended, will be ongoing as part of the proposal review process and the permit review process for those requiring Corps authorization.

**ENDANGERED SPECIES CONSULTATION:** The New England District, Army Corps of Engineers, has reviewed the list of species protected under the Endangered Species Act of 1973, as amended, that might occur at the project sites. It is our preliminary determination that the proposed projects, situated or will be operated/used in such a manner that it is not likely to adversely affect any federally listed endangered or threatened species or their designated critical habitat. By this Public Notice, we are requesting that the appropriate federal agency concur with our determination.

**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.

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The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; American Indian Tribes; and other interested parties to consider and evaluate the proposed activity. All comments received will be considered by the Corps during the formulation of the initial determination of potential for the proposed activity.

**COMMENTS:** In order to properly evaluate the proposals, we are seeking public comment. Anyone wishing to comment is encouraged to do so. Comments should be submitted in writing by the above date. If you have any questions, please contact Mr. Taylor Bell at (978) 318-8952, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps 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. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant 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.**

*Taylor Bell*

**Taylor Bell**  
**Mitigation Program Manager**  
**Regulatory Division**

If you would prefer not to continue receiving Public Notices by email, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at [bettina.m.chaisson@usace.army.mil](mailto:bettina.m.chaisson@usace.army.mil). You may also check here ( ) and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

Enclosure

# Otter Creek Site Prospectus

## Richelieu 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: 10 December 2021**

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## **Otter Creek ILF Site Prospectus**

Ducks Unlimited, Inc., (DU) as the sole sponsor of the Ducks Unlimited Vermont In-Lieu Fee Program, proposes to establish the Otter Creek In-Lieu Fee Site to compensate for wetland impacts in the Richelieu 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:**

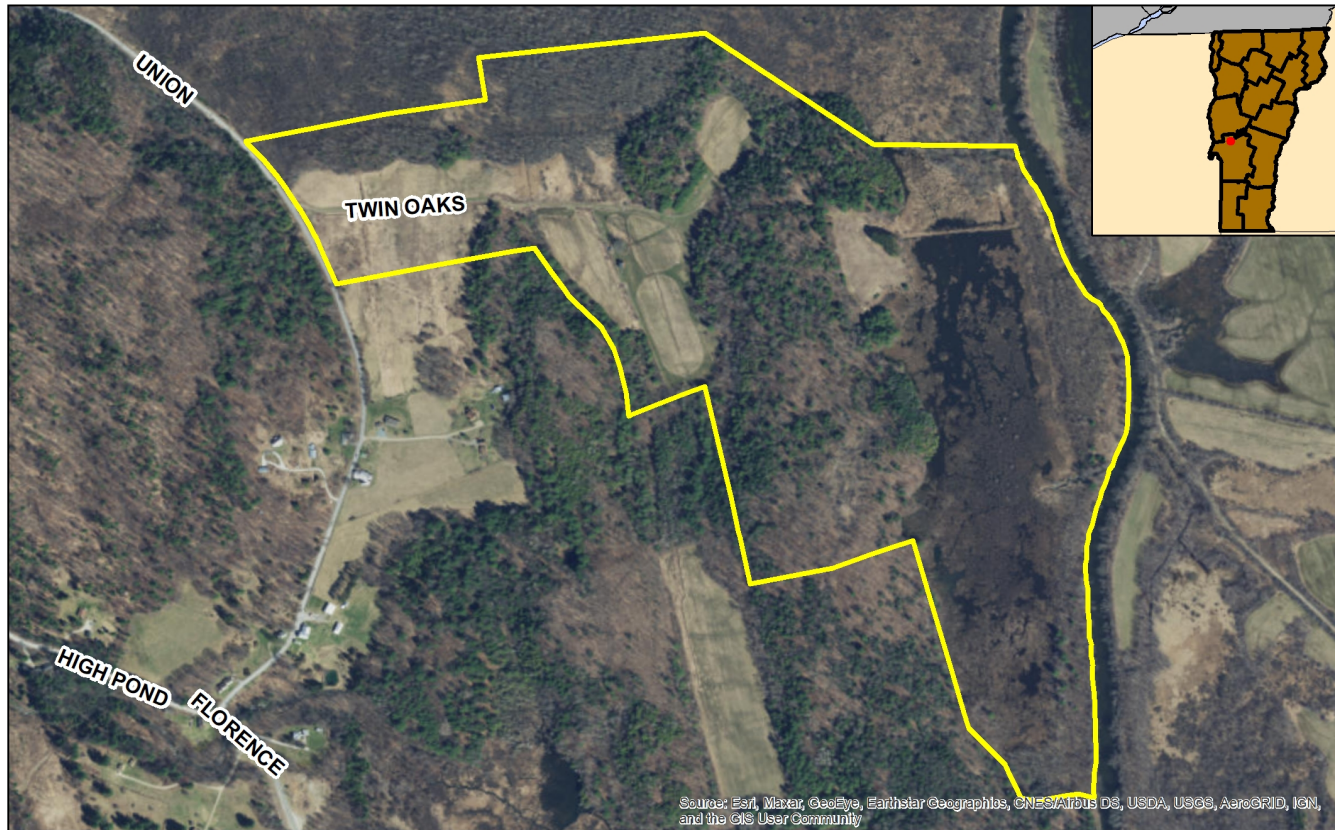
Patrick Raney, Ph.D.  
(o) 315-453-8025  
(c) 315-708-9614  
[praney@ducks.org](mailto:praney@ducks.org)

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.

## 1. Objectives

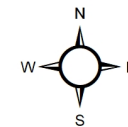
The primary goal of the **Otter Creek Prospectus** is to provide wetland mitigation on a watershed scale to compensate for wetland impacts within the Richelieu Service Area. More specifically, it will provide an opportunity to:

- Mitigate for wetland impacts;
- Reestablish, rehabilitate, and preserve habitat for a wide range of species;
- Preserve and improve flood attenuation capacity;
- Retain sediment and nutrients in runoff before it reaches Otter Creek;
- Preserve a wildlife connective corridor along Otter Creek and connect the property to downstream NRCS conservation easements; and
- Potentially provide educational and research opportunities for nearby universities.



 Property Boundary 169.98 acres +/-

0 237.5475 950 Feet



**Figure 1. Proposed ILF Site.** DU has an agreement in place with the seller to obtain the property through a fair-market value acquisition; closing could occur as soon as late February or March.



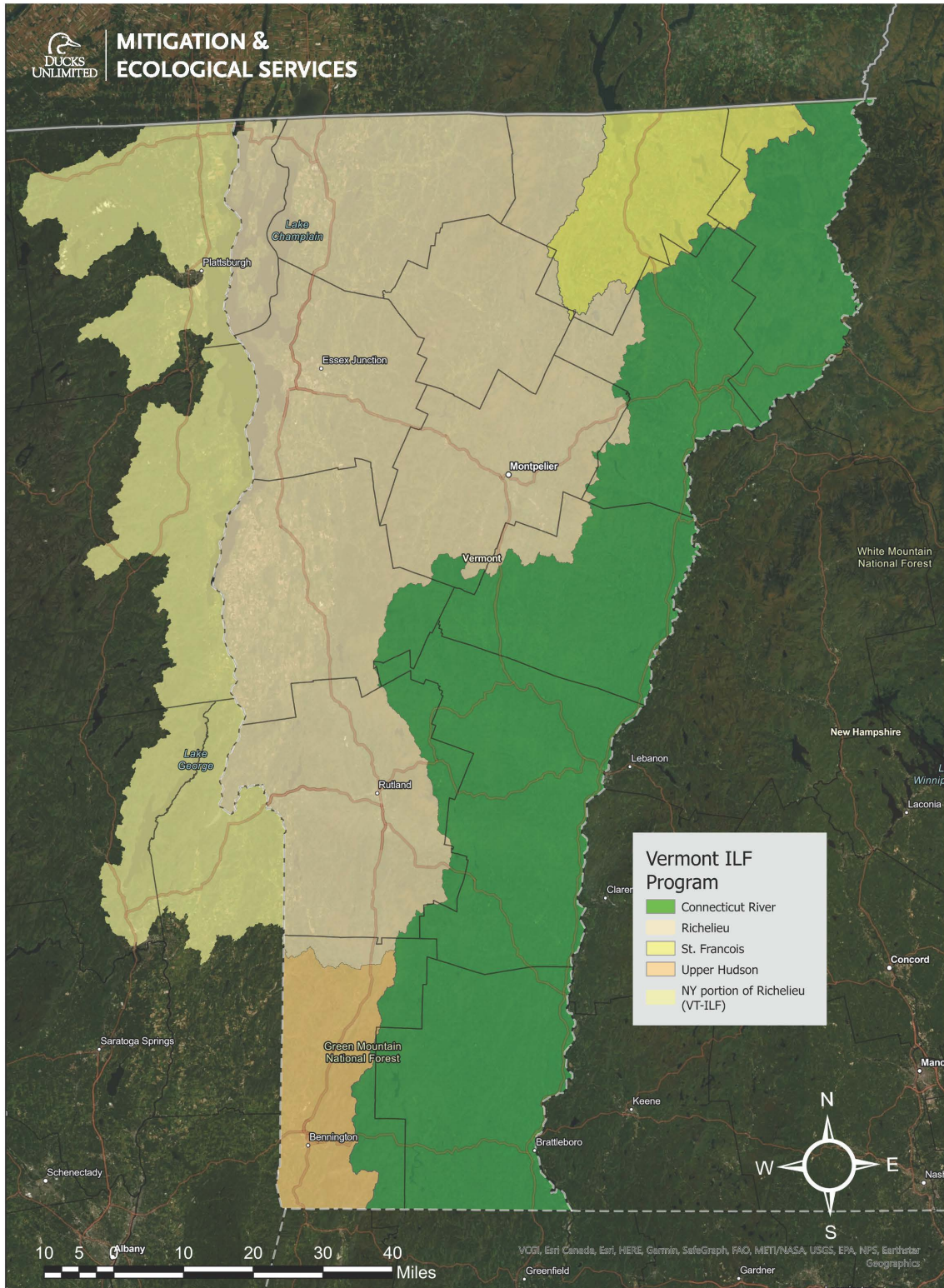
## **2. Establishment and Operation**

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 169-acre (+/-) Otter Creek ILF site is located directly to the west of Otter Creek, approximately 2 miles south of the town of Brandon in Rutland County, as shown in Figure 1. The project site lies within the Richelieu ILF Service Area shown in Figure 2. The coordinates for the project entrance are: 43°46’1.2” N, 73°05’6” W. To date DU has sold 27.026 credits in the Richelieu Service Area. This watershed drains into Lake Champlain and into the Richelieu River, where it meets the St. Lawrence. According to the Compensation Planning Framework (CPF) in DU’s ILF Instrument, the Richelieu Service Area encompasses 56% of the state of Vermont and much of the landscape has been altered by human activities. Phosphorus concentrations in Lake Champlain and its tributaries is a concern. The CPF lists the following goals for the Richelieu watershed, which will be addressed by the proposed compensatory mitigation project: reduction of phosphorus inputs, exotic species control and prevention, wetland restoration and natural community restoration, manage and re-vegetate riparian buffers, and prioritize river, lake shorelines, and floodplain forests for conservation.

The first ILF Site established in this Service Area, Three Mile Bridge, was approved on November 11, 2016, and will provide up to 22.81 mitigation credits. The Otter Creek Site will provide the remaining balance of credits required to offset existing and future impacts in this watershed. A sufficient operational balance exists in this watershed to begin developing this project. DU will use Richelieu Service Area funds and future credit sales to purchase the property, develop a mitigation plan and reestablish, rehabilitate, and preserve wetlands on site. DU has performed cash-flow modeling to ensure that sufficient capital is available to fund both the continued maintenance and stewardship activities at Three Mile Bridge, and to facilitate the development of this proposed project.



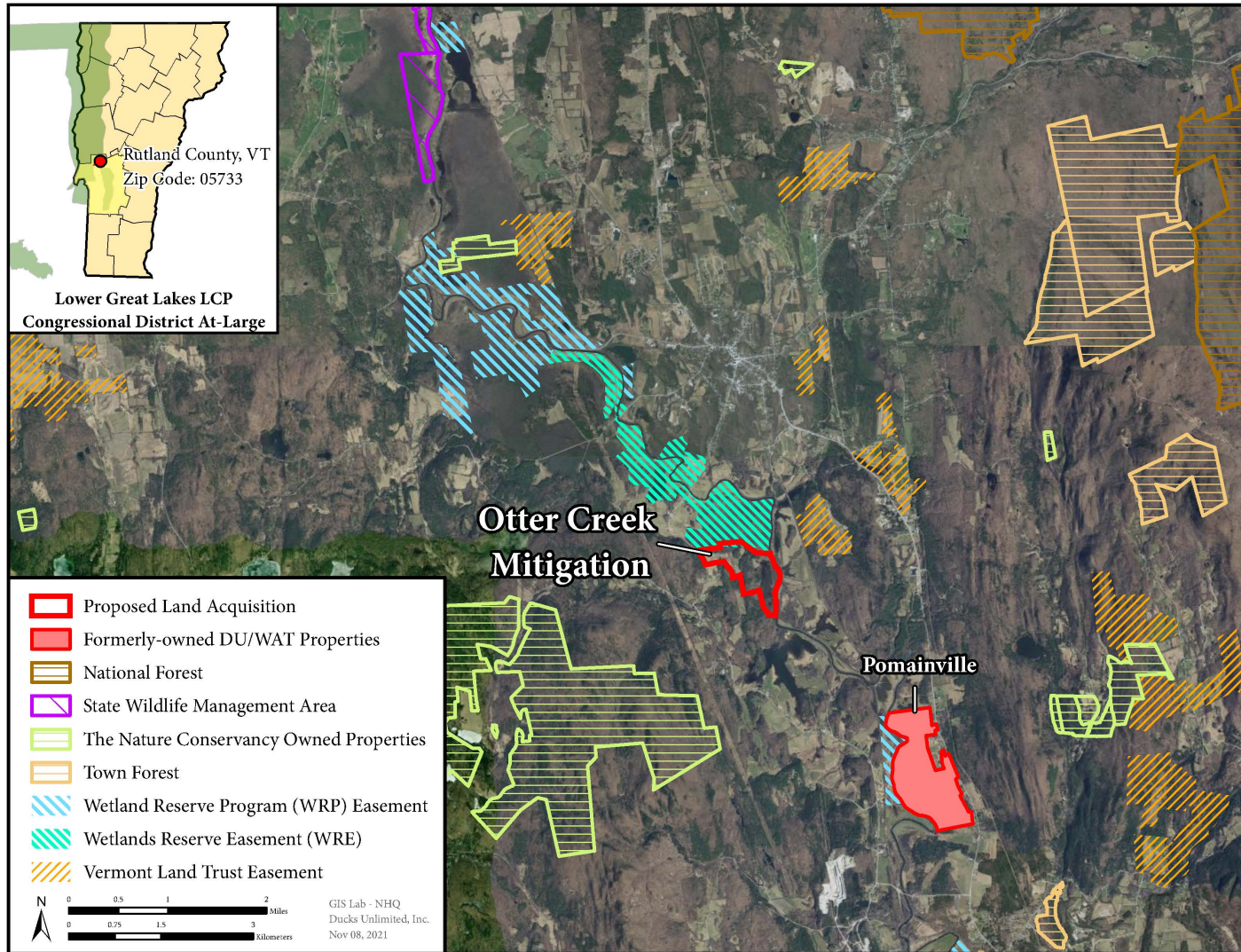
**Figure 2. Service Area.** The Richelieu ILF Service Area (HUC 020100) shown in tan. The project will occur in the state of Vermont, but may also receive funds from the New York Portion of the Richelieu Service Area.

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

The Service Areas established within the Vermont ILF Program are congruent with DEC's basin planning efforts and other resource conservation strategies within Vermont, such as The Nature Conservancy's (TNC) natural areas protection projects. This site has many of the features required for a suitable wetland mitigation project, including the presence of degraded wet meadow mosaics that have been cleared of woody vegetation, leveled, and ditched to facilitate haying and grazing. The extensive network of drainage ditches across the property has manipulated the natural flow of water, most notably including a driveway that was built between two of the wet meadows adjacent to Union Street near the entrance to the property. Restoring the hydrological connectivity and heterogeneity on the Site will restore scrub shrub and forested wetlands to the property. The Site also contains high-quality forested uplands with diverse plant species, as well as a large contiguous wetland complex adjacent to Otter Creek that acts as a flood storage during seasonal high flows. These habitats will be preserved as part of the mitigation project.

The 169-acre Site lies within a corridor protected lands along Otter Creek, including a network of NRCS easements protecting miles of the river and its floodplain (Figure 3). Surrounding uplands are protected by The Nature Conservancy and Vermont Land Trust easements. This mitigation project will ensure the preservation of wetland and upland habitats in a region of Vermont that is experiencing suburban development. The property is approximately 2 miles from the community of Brandon, VT.

There are approximately 95 acres of wetlands and 45 acres of forested uplands on the property, in addition to the 25 acres of old pasture that will be restored and rehabilitated to scrub shrub and forested wetlands. The large ~50-acre contiguous wetland complex on the east side of the property, adjacent to Otter Creek, will provide seasonal habitat for many waterfowl species including American black ducks, mallards, and wood ducks. The property provides breeding habitat for salamanders, frogs, and toads after spring migration occurs from uplands adjacent to Union Street into the proposed ILF Site. This site also contains forested uplands that host diverse native plant species and are important resources worthy of protection, especially because these forests protect water quality in the adjacent sensitive riparian areas. Appendix A provides photo points of the property at the locations identified in Figure 4.

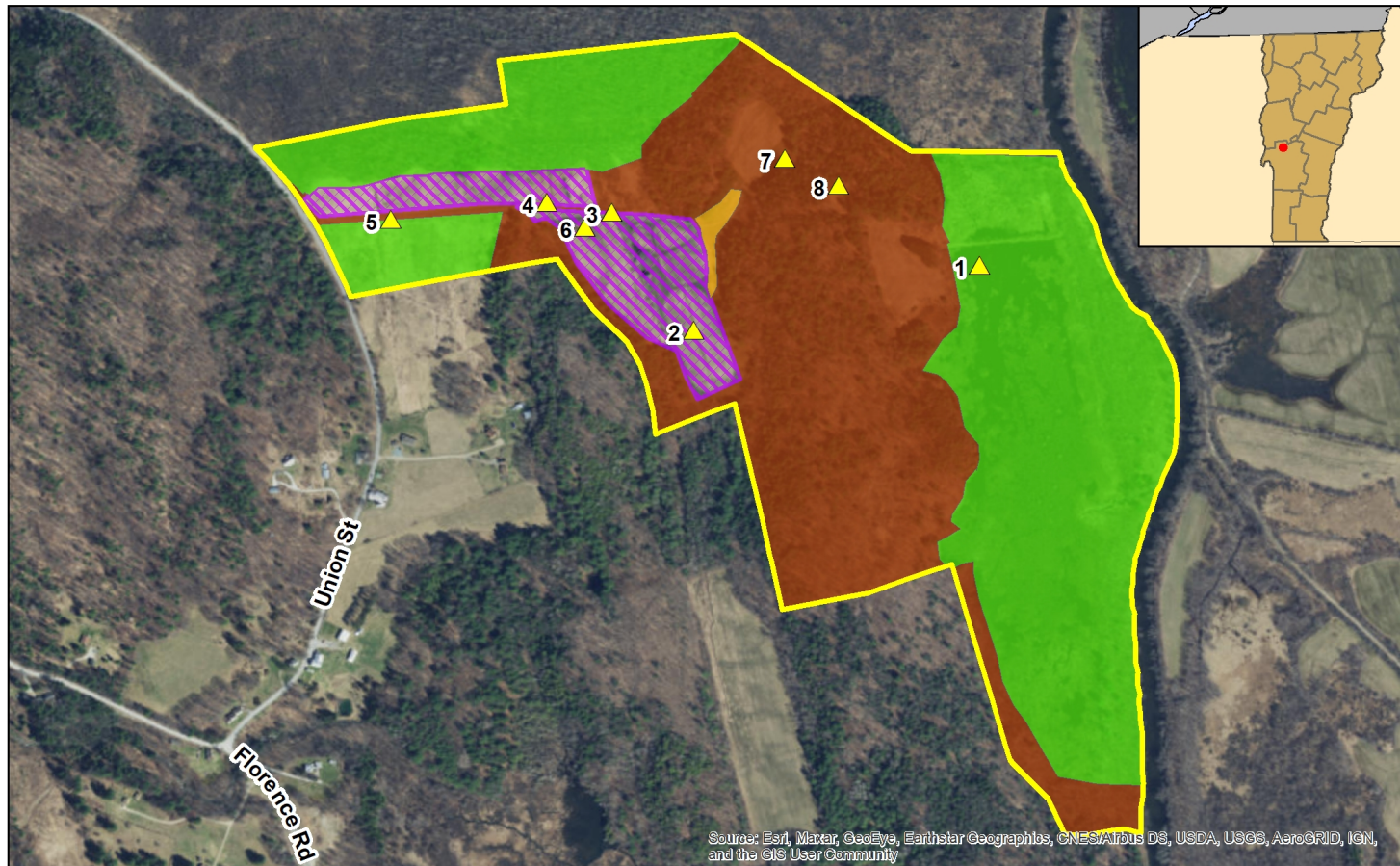








**Figure 3. Site Conservation Context.** The proposed ILF site is shown in red outline. It lies near NRCS easements, TNC easements, and VLT easements. It is also downstream from another formerly-owned DU property.

To date DU's Vermont ILF Program has sold 27.026 credits in the Richelieu Service Area. The Richelieu Service Area account currently has \$1,462,098.30 available for expenses incurred and cash reserved for continued monitoring and stewardship at Three Mile Bridge, but the majority is available for advancing additional projects in this Service Area. This amount of funding combined with future credit sales should be sufficient to provide for a full project incorporating reestablishment (i.e., securing the parcel, permitting and construction of wetland features, monitoring, in perpetuity protection). After construction of the property is completed, DU will transfer title to an acceptable third-party (e.g., land trust), and retain a perpetual conservation easement on the property to ensure that the property remains in an undeveloped state as consistent with the final mitigation plan for the site.

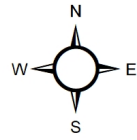
Based on credit-production ratios established in the instrument and used in the New England District, it is anticipated that the site will produce 10 to 15 credits (Figure 4). These credits will be produced through wetland enhancement, reestablishment, rehabilitation, and preservation actions. There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

Funds produced in excess of direct costs to implement the project will remain in the Richelieu 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.



-  Photopoints
-  Property Boundary 169.98 acres +/-
-  Preservation 80.22 acres +/-
-  Reestablishment or Rehab 14.5 acres +/-
-  Upland Buffer 74.12 acres +/-
-  Upland Buffer Rehab 0.86 acres +/-

0 250 500 1,000 Feet



**Figure 4.** Concept Plan.

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

The Site encompasses the entire 169-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 will identify a long-term steward of the property, and plans to donate the property to this steward, while retaining a perpetual conservation easement on the property. DU plans to provide a stewardship endowment for perpetual management against unauthorized use.

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. The site will have funds set aside in an endowment for permanent long-term support.

## **Appendix A.** Photo points



**Otter Creek In Lieu Fee (US-VT-50) Brandon, VT Richelieu Service Area September and October, 2021**

**Photo Point 1)** View looking south over large wetland complex on site. Black ducks, mallards, wood ducks are expected to frequent the site. Wood ducks were abundant.





# Wetland Mitigation

**Photo Point 2)** View looking north at restoration area. A barn structure with no power or plumbing will be demoed in conjunction with construction. Ditches run S-N and E-W in the picture. This area has largely hydric soils suitable for wetland restoration.





# Wetland Mitigation

**Photo Point 3)** View looking west over the restoration area. Hay fields will be targeted for conversion to scrub-shrub wetlands. A major amphibian crossing is located on the adjacent forested land in the background, amphibians (e.g. mole salamanders) cross into this property. Bobcat have been observed on site.



**Photo Point 4)** Pastures suitable for wetland restoration.



**Photopoint 5)** A gated access road into the property constitutes fill that can be removed to produce wetland credits.





# Wetland Mitigation

**Photopoint 6)** Looking South at wet fields suitable for restoration.





## Wetland Mitigation

**Photopoint 7)** Uplands on the property were very diverse, and included many forest herbs (e.g., wild ginger) and fern species including walking fern and goldies fern which are fairly uncommon.

