

VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION ENVIRONMENTAL VIOLATION REPORT

Date or time violation first observed:

ca. May 2016 to the present (November 2022)

*Date or time violation last observed: **

Multiple violations observed continually to the present

*Town where violations occurred: **

Fairlee

*Description of violations: **

On June 16, 2020, the Fairlee Selectboard requested a “technical assist” from the State of Vermont to address a single severe washout along our so-called “Howdy’s Trail.” It was discharging substantial amounts of material directly into an adjoining steeply flowing brook which next empties directly into Lake Morey, less than ½ mile downstream. State Acceptable Management Practices (AMPs) Forester Rick Dyer met with the Town Administrator and me on July 14, 2020, in response to that technical assist request. His comments, observations, and instructions for moving forward are explained in his [report of July 27, 2020](#).¹

This complaint to Vermont’s Department of Environmental Conservation (VT DEC) is that of a concerned citizen, reporting violations which should be enforced by VT DEC. After 29 months, it is very clear that “technical assists” do not work with the Fairlee Selectboard. I am urging firm and immediate enforcement. Many VT DEC and Vermont Department of Forests, Parks and Recreation (VT FPR) employees have visited our forest and have reported countless violations of the federal Clean Water Act (U.S. Environmental Protection Agency) and of a federal [contract with the Land and Water Conservation Fund](#) ² (U.S. Department of the Interior).

VT FPR and US Interior are involved because violations in this report occur not just on Town-owned property, but also on Federally- and State-protected Forest land. Under the contract with U.S. Interior and by the order of our own Selectboard, the LWCF [“...project shall at all times be conducted in conformity with the provisions of law, both Federal and State...”](#) ³ Within our 1600-acre forest are there any boundaries to enforcing state and federal violations of law? A Clean Water Act violation located within our LWCF Acquisition is a violation of Federal laws and a violation of the terms of a federal contract, which exposes us to the actions of 2 Federal agencies.

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Our Selectboard, assisted by the free expert advice and active assistance offered by state experts and many willing volunteers, should be leading an all-out effort to protect, defend and restore what most other towns would consider a priceless asset, our 1600-acre Town Forest. Instead, they are [preventing their own citizens from attempting to uphold the promises our town has made](#)⁴ to the Lange Family and to a myriad of State and Federal agencies and departments.

A detailed description of violations follows. Note that State-employed field experts and our own State-licensed forester have already reported them to our Selectboard, beginning 2-1/2 years ago. Also note that a comprehensive and detailed assessment of violations and an interactive GIS map were presented to our Selectboard 2 years ago by Fairlee residents.

Please refer to:

- Trails assessment completed at no cost for the Fairlee Selectboard in November 2020:
[Fairlee Forest Trails Assessment](#)⁵

Contains information to assist public planning for future trail use(s), necessary for estimating trail repair costs.

Summary of data and description of many Water Quality and other violations included in the 11/18/2020 report:

Over 49,000 feet of trails surveyed:

- Over 17,700 feet cobbled; Rocks or boulders comprise most of trail surface
- Over 12,500 feet severely eroded: Trails devoid of fines down at least 12"
- Several thousand feet involve grades $\geq 25\%$, threatening safety of the public and first responders
- Only 2,600 feet (5%) Green: Grass or vegetation is prominent trail surface
- 400 Water bars or "equivalents" needed
- Build or re-work 3,000 feet of ditches
- 2,500+ feet dug way: Trail surface channeled so deeply that ditches and water bars will not be effective
- 20-25 Active discharges: State and EPA violations: direct discharge into streams, stream headwaters, wetlands

- Interactive Map of the Fairlee Forest for Collaborative Visioning and Planning
[Interactive GIS map of the Fairlee Forest](#)⁶

Produced at no cost for the Fairlee SB. Started in response to Forester Dyer's directive after his first visit in June 2020.

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It depicts the Fairlee Forest graphically and is available online. Its potential to help us manage our forest into the future is unlimited. Updatable as information develops, it includes some information from the 11/18/2020 Trails assessment cited above, including pictures.

•Forester Markus Bradley’s report and map of March 29, 2022:

[Fairlee Trail Report](#) ⁷

[Fairlee Forest Trail Map](#) ⁸

Commissioned by the Fairlee Selectboard for a cost unknown

His report states, “There are problems within the Fairlee Town Forest that have been created by use, lack of management, and lack of maintenance over a long period of time.”

Address of subject site

Fairlee Town Forest

And

The W.H. Lange Memorial Forest, as acquired by the Town under the terms of a Land and Water Conservation Fund (LWCF) Acquisition grant (cited above), Project #50-00320. This contract is administered by the National Park Service for U.S Interior. VT ANR (formerly VT AEC) apparently tasked VT FPR with Compliance Monitoring, in perpetuity, which is VT ANR’s responsibility to NPS/US Interior and to our town.

E9-1-1 address unknown; likely there are several

*Directions to subject site **

Turn left onto Bald Top Rd, approx. 7/10 mi West on Lake Morey Rd from I-91 Exit 15

Span # of subject site:

Span # unknown; there are several recorded property deeds, including those committing the Town of Fairlee to our LWCF contract

Name of the Violator(s):

The Fairlee Selectboard

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Mailing address of the violator(s):

**PO Box 95
75 Town Common Rd.
Fairlee, VT 05045**

Contact information for the violator(s):

Tad Nunez, Town Administrator
townadministrator@fairleevt.gov
802 333-4363 Ext 2

Your name:

William (Bill) Weale

Your mailing address

Fairlee,

Your phone number:

**Cell
Home**

Your email address:

If you know of any other witnesses, please provide their name(s), and contact information:

**Julie Follensbee, District Wetlands Ecologist
Julie.Follensbee@vermont.gov
https://fogepower.com/20220211_WetlandsReport.pdf
She reports continuing wetlands damages, observed during her site visits**

Danielle Owczarski, State Watershed Planner

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Danielle.Owczarski@vermont.gov

https://fogeypower.com/20210607_State_Watershed_Planner_Reports.pdf

Her report contains observations and explanations regarding many conditions in Fairlee's Forest which are negatively impacting water quality in Lake Morey.

Rick Dyer, State AMPs Forester

Rick.Dyer@Vermont.gov

https://fogeypower.com/20200727_AMP_Forester- Nunez.pdf

https://fogeypower.com/20201015_email_Dyer- Nunez.pdf

Reports and restoration instructions following several site visits.

David Paganelli, County Forester

david.paganelli@vermont.gov

Numerous communications with and reports to the Town during the past 10 years, describing inappropriate logging, many signs of trail abuses and [problems caused in neighboring towns](#)⁹ by our Forest Board's and Selectboard's active encouragement of uncontrolled access by ATVs, mud trucks and trail bikes.

Patrick Ross, Engineer, Vermont Rivers

Patrick.Ross@vermont.gov

https://fogeypower.com/20201129_emails_with_PatRossRE%20Followup%20Re_grant_app.pdf

Explains the requirements to replace 4 undersized, damaged, perched, and dislodged culverts with bridge structures. Stream alteration permits required.

Markus Bradley, Town Consulting Forester

markus@redstartconsulting.com

Please refer to Forester Bradley's report and map as referenced in the "...other witnesses..." section above.

To repeat, his report states, "There are problems within the Fairlee Town Forest that have been created by use, lack of management, and lack of maintenance over a long period of time."

His report lists 23 specific locations where there are EPA/CWA violations or where structures are necessary to mitigate them. It does not appear to include most of the Wetlands violations.

Enter any other information/comments here:

Immediately following AMPs Forester Dyer's technical assist visit to the town on June 16, mentioned above, we began assessing our woods roads and trails. The resulting Fairlee Forest Trails Assessment and the Interactive GIS map are also mentioned above.

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Mr. Dyer has visited our forest several times since then, as have at least a half-dozen other state field experts from VT FPR and DEC. Their findings and advice appear in many reports received by the Selectboard. Please see the content in the “... *any other witnesses...* “ section above.

Those visits by FPR and DEC experts have brought to light the consequences of years of Forest abuse, neglect, and mismanagement.

Confirming and adding to the reports from FPR and DEC experts, Town Forester Bradley’s report reveals more problems. His report arrived 17 months and 2 construction seasons after the Trails Assessment and GIS map we had completed for the town. Both assessments track closely with each other. Both our assessment and those of Forester Bradley are now outdated and understated. We now have lost 3 construction seasons.

This season’s many active discharges and continuing ATV incursions into our wetlands and the urgent need to stop them have drawn minimal attention of the Selectboard. Several gates and much trail excavation work are needed. Last word from the Selectboard is that a neighboring town is willing to pay for 1 gate, but the 2 towns can’t agree where it should be. Delaying what should have been an emergency response by our Selectboard to Forester Dyer’s directives in 2020 has created an accelerating accrual of monetary and environmental damages. We are now exposed to another year of significant rainfall events and another spring runoff.

There is more: the continuing wetlands violations are more thoroughly explained in Wetlands Ecologist Julie Follensbee’s report cited above. That apparently had not been available to inform Mr. Bradley’s report. Her additional concerns focus upon wetlands damages from the past, those occurring presently, and the risk of future damages caused by continuing ATV activity.

Our Selectboard created their own appointed Forest Board, thereby acquiring plenary power for themselves over all aspects of Forest Management: planning, policy development, operations, maintenance, budgeting, and financial reporting. Our voters have had neither voice nor knowledge about dealings in the forest. We have neither oversight authority nor complete knowledge about the true extent of environmental damages or the costs of restoration, to which we are now obligated. The problems we have now were foreseen by our voters in 1979-80 when our Forest Board was organized, and our Recreation and Forest Management plan was prepared. The results we are saddled with now are precisely those we tried to prevent, via a 92-53 vote, 42 years ago. The Fairlee Selectboard made the decision to self-assign full and absolute authority over all forest matters. It is time now for them to assume full responsibility—and accountability—in our restoration efforts.

This is not a cultural issue of 2022. Our town had that debate in 1979. By a nearly 2-to-1 margin our voters committed to protect our forest—not just its trees—to a very high level of stewardship focused on outdoor recreation. We specified that an independent *elected* group should govern forest management. We were assured by Vermont’s Agency of Environmental Conservation that they would monitor compliance by our town, in perpetuity, to the terms we voted to accept. Those terms are explicitly articulated in a legally binding, written, and recorded agreement signed by our Selectboard.

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[When interviewed by a reporter about the Selectboard's estimate for repair costs](#),¹⁰ the Town Administrator stated, "Repairs are expected to cost about \$65,000, which could be paid for by a combination of taxpayer money and town forest reserve funds, according to Nunez." [Valley News, 2 July 2022] [VT Digger, 28 July 2022] [This is grossly deceptive and misleading](#). Thousands in taxpayer money have already been spent, without voter authorization and without having been reported properly in the town's financial statements. They were spent over the years merely to attempt to close out past logging projects. Making matters even worse, [taxpayer money has been directed toward destroying properly constructed close-out structures](#),¹¹ in order to provide access by ATVs, trail bikes and mud trucks. The cost of rehabilitating one parking lot will far exceed \$65,000. In fact, the "town forest reserve funds," mentioned by Town Administrator Nunez, are bankrupt. The funds have been harvested, without going through the legally required budget process, to the point where the cost of forest restoration far, far exceeds the total of our Forest reserve funds.

We have collected enough reliable estimating information to show that restoration costs alone will exceed \$400,000. It will cost \$25-\$60,000 each to replace 4 culverts and do the required stream alteration and stream bank armoring as specified in [Engineer Ross' report](#).¹² Delaying is costing our taxpayers real money: the culverts mentioned above would have cost \$20-\$25,000 each if they had been replaced during the 2020 season, when we knew it was necessary. We have gathered information from the various field reports cited above and from estimates given to us when we applied for grant funding last year, which the Selectboard withdrew. The losses since 2014 from logging plus the spending down of our forest trust accounts plus the amount of needed repair costs means that Fairlee's losses and liabilities easily exceed \$500,000.

Just this summer, our current Forest Board chair quoted that taxpayers have "never had to pay for the forest," Legal documents paint a very different picture: over half of our forest—770 acres—was fully paid for by the Lange Family and by tax dollars from Vermont and the federal government. Taxpayers have already paid thousands to accommodate ATVs and forest neglect. "Merely" to restore what we had in 1980 will cost tens of thousands more.

Perhaps our Selectboard has a detailed estimate of the work needed to justify their \$65,000 estimate? Are they really planning to restore what we've lost and tell us what it will cost?

As voters, residents, and taxpayers we are challenged 1) by the negligence of our own town officials; add 2) the failure by VT FPR to monitor compliance to our federal contract. This is a heavy lift—bearing both the consequences of our Selectboard's actions and those of our state's lack of action—for the voters of a Vermont town of 950 folks, who are trying to make things right. Hopefully, using the authorities given it by both federal and state law, VT DEC's enforcement responsibilities will help our town begin to restore our forest and regain our ability to manage it responsibly.

It is our duty to try every way possible to mitigate what surely are continuing violations and increasing damages, both to our wallets and to the environment.

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This is a DEC enforcement matter, comprising our entire 1600-acre Town forest. Vermont ANR, of which VT DEC is one department, is one of the 3 signatories to our LWCF stewardship contract. The others are the Town of Fairlee and the U.S. Department of the Interior. The full burden of compliance monitoring, and therefore its consequences, rests with the Vermont Agency of Natural Resources. (See footnote #13 and its linked document below.)

This complaint is intended to cover everything referenced under the “*Description of violations*” section over which DEC has enforcement authority. DEC need not be confused by our problems with our federal grant. Within our 1600 acres there are no boundaries to enforcing state and federal violations of law. Enforcement should assist us to conduct a project which requires public planning leading toward a major forest restoration project, sooner rather than later. Most of us who have lived through all of this would like to see things fixed for our children and for their children, while we still can see. Compliance monitoring, which we thought had been arranged for 42 years ago, must then become a process, continuing in perpetuity.

Extensive environmental abuse has been confirmed by experts, most of them state employed. The costs to repair the resultant damages of this neglect and abuse clearly are staggering for our town. There is a remedy our voters should be able to trust: [the Federal LWCF contract terms place the responsibility for our town’s failures squarely upon the shoulders of the State of Vermont.](#)¹³ Perhaps DEC, pursuing its role of enforcement after a technical assist has failed, can help the State of Vermont honor its promises? Such a large amount of negligence-caused damage should not be used as an excuse by our Selectboard to continue ignoring problems of the type requiring DEC and federal enforcement.

We’ve tried for years here locally to convince our Selectboard to represent our town’s interests. Instead, they continue to obstruct our voters from making good the stewardship promises we made. The Langes and the State and Federal governments trusted us all to make good on those promises. They did and still do comprise the mandatory obligations enabling us to have acquired, and for us to continue, ownership of our forest land. Doesn’t DEC have the authority, the responsibility and now the opportunity for a Vermont-based initiative to stop this self-imposed failure of 2 levels of Vermont-based governance?

We need enforcement and we need money, and a lot of both. We must restore both our 1600-acre Forest and our trust in our own town—and state—officials.

Respectfully,

/s/ William W. (Bill) Weale
Fairlee, Vermont

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Looking south across the wetlands toward Lake Morey, about 1 mile away and 800' below

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Looking north down Wetlands Trail as it ascends Bald Top Mt. Trail segment is about 4000' long, nearly straight, and drops 550' directly into the wetlands buffer. Some grades exceed 30%.

Before ATV activity this was an entirely green hiking trail. It is now nearly a perennial stream, as are parts of the nearby Beaver Trail, leading NE down to Glen Falls Brook, with equally steep grades.

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A view from and perpendicular to Coyote Trail, between Rivendell Trail and the Ackerman property. This is in the approx. center of a 300-400' segment of trail bisecting the headwaters of a perennial stream flowing into Glen Falls Brook. Coyote Trail bisects the headwaters area of this brook. Pictured here is a low point in the trail where ATV tracks channel the water which then flows nearly constantly into the nearby brook, less than ½ stream-mile from Lake Morey, 900' below.

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Footnotes:

For offline readers or readers of paper copies, the following are the literal Internet addresses for those resources hidden by text—the target behind the hyperlink. Copy the text below and paste or type it into your browser's source field.

- ¹ https://fogeypower.com/20200727_AMP_Forester-_Nunez.pdf
- ² https://fogeypower.com/HCRS_19790817_ltr_VTSAldrich-_SB_Proj_Approval_and_Agreement.pdf
- ³ https://fogeypower.com/HCRS_19800317_SB_Proclamation_CreateLFBocr.pdf
- ⁴ https://fogeypower.com/20210223_FFB_OpposesGrant.pdf
- ⁵ https://fogeypower.com/20201118_Fairlee_Trails_Inventory.pdf
- ⁶ <https://www.fairleeforest.org/trailprojects>
- ⁷ https://fairleevt.gov/vertical/sites/%7BDE34101D-5F32-442E-8787-7525E172DC56%7D/uploads/FairleeTrailReport_2022.pdf
- ⁸ https://fairleevt.gov/vertical/sites/%7BDE34101D-5F32-442E-8787-7525E172DC56%7D/uploads/FTF_TRAIL_AMP_2022.pdf
- ⁹ https://fogeypower.com/20200710_email_Paganelli-_Weale.pdf
- ¹⁰ https://vtdigger.org/2022/07/08/fairlee-residents-at-odds-over-seeing-town-forest-for-the-trees-or-not/?fbclid=IwAR3FWICX2G0vqrlQZWFzbVONRTpa5t4dq2i4oHRHK7lwVvk3_ihwA3H3PyHo
- ¹¹ https://fogeypower.com/20100400_FB_Dismisses_Cty_Forester.pdf
- ¹² https://fogeypower.com/20201129_emails_with_PatRossRE Follow-up Re_grant_app.pdf
- ¹³ https://fogeypower.com/HCRS_19731200_LWCF_Outdoor_Recreation_Grants_in_aid_Manual.pdf#page=279

A more complete timeline for documents pertaining to our Town Forest is posted online at

[FogeyPower.com](https://fogeypower.com)

Thank you for your interest and for any ideas you, or any Fairlee Town Forest user, would like to see considered for Fairlee's Town Forest!

Or, have you seen something in the Forest that “just doesn't look right?”
Please speak up! 😎

Info@FogeyPower.com