

# Shade Tree Preservation Plan

Town of East Montpelier

**DRAFT** – September 18, 2023

## **Purpose**

The purpose of this plan is to provide a framework for the future planting and stewardship of certain public trees that benefit its citizens at large, as well as address the appropriate removal of roadside trees that are a hazard or provide limited or no public benefit. This plan clarifies the duties of the town tree warden as a resource to landowners along our roads and a decision maker with regard to maintenance and removal of shade trees under state law. Under state law, private landowners and municipalities share the rights to trees within public rights of way. The underlying land's owners have the right to any wood products that the trees may produce, while the town has the right to make management decisions about the trees. Statewide, towns are drafting shade tree preservation plans in response to changes the state legislature made to the parks and shade trees statutes in 2020 as described below.

## **Background**

The East Montpelier Selectboard created the Resilient Roads Committee in the summer of 2017 when the Town received a grant for a rural roadside vegetation assessment. The Urban & Community Forestry Program of the VT Dept. of Forests, Parks, and Recreation, working with the Committee, inventoried the town's rural roadside vegetation and developed recommendations for long-term maintenance of its roadside vegetation to help reduce pollution from stormwater runoff; to maintain or improve wildlife habitat; and to plan for the future of scenic and culturally important roadside hedgerows and forests. The final plan, Rural Road Resilient Right-of-Ways Vegetation Assessment (2020) is available on the Town website.

With a town-road network of 62 miles total length (51 miles unpaved), the road rights of way comprise the vast majority of land area and number of trees for which the Town has been responsible historically. Other areas include the town cemeteries, the town forest, the Vincent Flats recreation field, and parcels containing the town office, fire department, and highway department. The East Montpelier Elementary School site is no longer town owned.

Where the roadsides support trees and shrubs, the goal is to ensure that the vegetation is diverse, healthy, and not significantly affected by non-native, invasive plant species. Further, the management of vegetation should be compatible with reasonable maintenance activities by the road crew for snow plowing, mowing, and ditching. In fall of 2021, the Committee completed a demonstration project in East Montpelier Center. Working with landowners, several sugar maples were planted and an existing hedgerow starting at Bliss Road and extending about 1,000 feet along the south side of Center Road was selectively cut to promote certain saplings and invasive plants removed. A similar project was also undertaken along Gallison Hill Road at U-32 Middle & High School from 2020-21, and the Committee is encouraging the school to develop a maintenance plan and to engage students in the long-term maintenance of this hedgerow.

Implementation of the recommendations in Rural Road Resilient Right-of-Ways Vegetation Assessment rests mostly on the shoulders of the town tree warden, a position appointed by the Selectboard, and the road foreman. Recent changes to state law that became effective November 1, 2020 modify the scope of the tree warden’s authority and the procedures to followed prior to removing shade trees. This Shade Tree Preservation Plan will help assure that vegetation within our road rights of way and on town-owned land is properly managed in the future.

**Changes to State Tree Law**

Prior to the recent changes in law, public shade trees, including those within a public road rights of way, were subject to preservation and management by town tree wardens pursuant to 24 V.S.A. § 2502:

Shade and ornamental trees within the limits of public ways and places shall be under the control of the tree warden. The tree warden may plan and implement a town or community shade tree preservation program for the purpose of shading and beautifying public ways and places by planting new trees and shrubs; by maintaining the health, appearance, and safety of existing trees through feeding, pruning, and protecting them from noxious insect and disease pests and by removing diseased, dying, or dead trees which create a hazard to public safety or threaten the effectiveness of disease or insect control programs. [Former language that is no longer in statute.]

This language was struck in [Bill H.673](#), which passed in the House and the Senate as Act 171 in September 2020 and was signed into law on October 8, 2020. The bill amended [24 V.S.A. § 871](#), [24 V.S.A. Chapter 67](#) and [19 V.S.A Chapter 9](#), § 901-904 (Appendix A: *Vermont Tree Warden Statutes*)

While the tree warden continues to have jurisdiction over the town’s shade trees, the law immediately limited the scope of jurisdiction to only those trees that had been planted by the town in a public way or place, pending the addition of trees under a duly adopted shade tree preservation plan. This was the consequence of a new legal definition for *shade tree*; previously, there was no legal definition, a circumstance that had created disputes in the past.

The key legal definitions now in statute ([24 V.S.A. §2501](#)) are:

- 1) "Public place" means municipal property, including a municipal park, a recreation area, or a municipal building. "Public place" shall not include any municipal forestland or property that is subject to any ownership interest held by the Agency of Transportation.
- 2) "Public way" means a right-of-way held by a municipality, including a town highway.
- 3) "Shade tree" means a shade or ornamental tree located in whole or in part within the limits of a public way or public place, provided that the tree:
  - A. was planted by the municipality; or
  - B. is designated as a shade tree pursuant to a municipal shade tree preservation plan pursuant to section 2502 of this title.

Removal of a shade tree, as defined, will continue to need prior authorization of the tree warden; however, the process is now somewhat simplified. If the tree warden approves of the removal, a hearing will only be required if, after notice of the action, a landowner or resident appeals the approval to the Selectboard. For shade trees that are infested with or infected by a tree pest or that constitute a public hazard, the tree warden may approve removal without notice or hearing.

## Action of the Town

The Town of East Montpelier adopts this Shade Tree Preservation Plan pursuant to [24 V.S.A. §2502](#) that expands the duties of the tree warden in the municipality beyond solely trees planted by the municipality and specifies the processes by which municipal shade trees are managed and governed. This action initially continues the protection of all larger trees that are within the road rights of way (49.5 feet wide in most locations) by subjecting any removal proposals to review by the tree warden as was previously required. It is noted that the right of way only extends a short distance from the edge of the travelled way. Trees that are fully or partially in that zone will be under the warden's jurisdiction. Over time, the protection zones will be refined and smaller trees may be designated shade trees to develop healthier, more diverse vegetative zones, including the ability to provide for succession for older trees.

The East Montpelier tree warden has jurisdiction over all shade trees, consisting of:

1. Trees planted by the municipality in public ways and places (*see Appendix B: Municipally Planted Shade Trees*, which shall be periodically updated when additional trees are planted);
2. The following trees hereby designated by the Selectboard and Tree Warden pursuant to [24 V.S.A. §2502\(c\)\(2\)](#) as critical to the cultural, historical, or aesthetic character of the town:
  - All trees located in whole or in part within the right of way of town highways, if the diameter at breast height equals or exceeds 4.0 inches, with the exception of common buckthorn and glossy buckthorn; trees that are managed under a forest management plan as part of the Vermont Use Value Appraisal Program ("Current Use Program"); and all trees within the zones listed in Appendix D: *Zones with no shade trees*;
  - All trees regardless of diameter and located in whole or in part within the right of way of town highways of zones listed in Appendix C: *Zones of cultural, aesthetic, and ecological (or silvicultural) protection*, with the exception of common buckthorn and glossy buckthorn;
  - Five white ash (*Fraxinus americana*) that the Town is having treated with trunk-injected, systemic insecticide to protect them from the non-native and invasive emerald ash borer that feeds on all native north American species of ash trees. These trees are:
    - Two white ash on the east side of North Street, marked with tree tags #4 and #5, 750 feet and 960 feet north of Cummings Rd., respectively (2570 North St.).
    - One white ash on the west side of Center Road at the trailhead of the East Montpelier trail network, about 1,300 feet south of Templeton Road, marked with tree tag #3 (3485 Center Rd.).
    - Two white ash on the south side of Gallison Hill Road at U-32 Middle & High School, about midway between the entrance/exit drive intersections; marked with tree tags #1 and #2 (930 Gallison Hill Rd.).

3. Trees on municipal cemetery properties, whether planted by the Town or others, all hereby deemed by the Selectboard and Tree Warden to be critical to the cultural, historical, or aesthetic character of the town.

### **Planting of New Trees and Shrubs and Management of Small Trees**

The tree warden will be available for consultation on planting of trees and shrubs in public places and roadsides. The Town will consider sharing the expense of tree planting in road rights of way where landowners indicate such an interest and will continue to seek state and federal grants when available for targeted tree planting, such as the East Montpelier Center 2021 Arbor Day Project. Trees planted by the Town in public ways and places will periodically be added to Appendix B: *Municipally Planted Shade Trees*.

New plantings will be evaluated based on expected public benefits, including:

1. Beautification of public ways and public places to increase public enjoyment and enhance recreational use;
2. Restoration or perpetuation of historic tree corridors;
3. Provision of shade on public roads and in public places;
4. Wildlife habitat that provides cover, food sources, and homes for a diversity of animals;
5. Continuity of forested cover for safe movement of animals across roads or on travel corridors;
6. Replacement of declining and dead trees, such as historic trees or trees affected by disease or pests;
7. Prevention of pollution due to stormwater runoff and erosion;
8. Enhancement of stream and wetland buffers where roads or public places are in close proximity;
9. Production of edible fruits and nuts;
10. Plant species diversity;
11. Competition with non-native, invasive plants

For roadside plantings, the tree warden will work with landowners, the road foreman, and the Resilient Roads Committee. Consideration will be given to road safety (e.g., sight distance) and maintenance.

The tree warden shall also be available for consultation to landowners and the road foreman on selective thinning of brush and smaller trees to help assure retention of healthy small trees that are not now shade trees but over time will become roadside shade trees and succeed large shade trees that die.

### **Maintenance of Shade Trees**

The tree warden will conduct ongoing visual inspections of shade trees and will perform basic tree care (e.g., pruning, selective removal of competing vegetation) as needed. The Town will continue insecticide treatments for the ash trees that have individually been designated as shade trees.

The Town will continue its initiatives to improve roadside hedgerows through selective thinning, planting, and removal of invasive plants. This will result in smaller trees in hedgerow zones being added to Appendix C: *Zones of cultural, aesthetic, and ecological (or silvicultural) protection*. Prioritization will be based on the same considerations listed above for planting of new trees and shrubs and with the same parties involved.

Special care will be given to newly planted trees to assure survival and good form, including watering, fertilizing, pruning, and protection. The tree warden will advise landowners on proper care.

The tree warden will continue to work with the road foreman and crew on precautions to take during road maintenance, including ditch work, roadside mowing, and snowplowing.

### **Removal of Shade Trees**

The tree warden will identify diseased, dying, or dead shade trees on an ongoing basis as notified by landowners, the Cemetery Committee, or the road foreman. Unless such trees are to be retained for habitat value or rehabilitation (e.g., insecticide treatment), the warden will authorize the tree's removal following the process outlined in the tree warden statutes (Appendix A: *Vermont Tree Warden Statutes*).

The same process will be followed for landowner requests for removal of healthy shade trees. The warden will decide whether the proposal is warranted in consideration of the public and environmental values discussed above, and his/her decision will be placed on public notice for a minimum of 15 days. Appeals of the warden decision go to the Selectboard for hearing.

For any shade trees that create a hazard to public safety, impact a disease or insect control program, or must be removed to comply with State or federal law or permitting requirements, the tree warden will authorize removal without a public hearing. The tree warden will stay informed of infested area designations as described by the Agency of Agriculture and Department of Forests, Parks and Recreation.

Approval of the removal or maintenance of shade trees is not required from any other municipal officer or legislative body other than the tree warden, except in the case of an appeal of the warden's decision to the Selectboard.

### **Tree Warden Fees for Services**

The tree warden is appointed by the Selectboard annually. The warden may receive a stipend at the Selectboard's discretion; however, there are no fees for services to the public or to other municipal entities.

APPENDIX A

Vermont Tree Warden Statutes

[REPLACE BILL WITH STATUTES IN FINAL VERSION]

APPENDIX B

Municipally Planted Shade Trees

Appendix B: Municipally planted shade trees.

Date Initiated	Location	Description
	Town office parcel	All trees
	Town recreation area, 555 Vincent Flats Rd.	All trees between field and Vincent Flats Rd.
	Commuter lot, VT Rte. 14N	All trees
	1595 Center Rd., Fielder lot	Sugar maple at SE corner of lot; planted Sept. 11, 2021



## APPENDIX C

Zones of cultural, aesthetic, and ecological (or silvicultural) protection

Appendix C: Zones of cultural, aesthetic, and ecological (or silvicultural) protection.

[Roadside Zones where all trees are considered Shade Trees regardless of size. Generally, these are zones where the trees are in a hedgerow or forested roadside that has been improved by the Town through tree planting and/or selective management of trees smaller than 4-inch dbh to over time allow those trees to mature and enhance and preserve the value of the roadside vegetation for aesthetics and wildlife habitat. Often those trees may succeed existing older trees.]

Date Initiated	Location
	South roadside hedgerow extending 406 feet on Center Rd. from Bliss Rd.; Lots 1974 Bliss Rd. and 1370 Center Rd.
	Hedgerow along Gallison Hill Rd. at U-32 Middle & Senior High School; 930 Gallison Hill Rd.; about 1,600 feet

APPENDIX D

Zones with no shade trees

(trees, if present, are not critical to the cultural, historical, or aesthetic character of the town)

