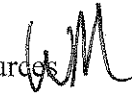



MEMORANDUM

TO: Peter Shumlin, Governor

THROUGH: William L. Martin, Deputy Secretary, Agency of Natural Resources 

FROM: Michael C. Snyder, Commissioner, Department of Forests, Parks & Recreation 

DATE: November 19, 2015

RE: Easement Acquisition Approval – 1,144 ± acre Five Peaks property, owned by Everett and Susan B. McGinley, Montgomery, Vermont

Your approval is requested pursuant to Title 10, Chapter 83, §2606(a), VSA, for the acceptance of the easement acquisition reference above. This acquisition was reviewed by the Agency of Natural Resources Land Acquisition Review Committee on 12/10/2009 and approved by the Secretary on 1/25/2010. The Trust for Public Land partnered with FPR to help complete this acquisition.

Description

The Five Peaks Property, located in Montgomery, Vermont, consists of 1,144 acres of forestland, adjacent to Jay State Forest. The acquisition includes conveyance of a ROW to access Jay State Forest, enhancing opportunities for management by FPR. The property is located within a large, relatively un-fragmented forested landscape with high conservation value for species that depend on contiguous forest blocks, including an important wildlife corridor for east-west movement in the Northern Appalachian Acadian ecoregion. With a mixture of hardwood and softwood timberland, the property is carefully managed by the present owners to produce high quality timber stands as well as important wildlife habitat by encouraging stands of hard and soft mast species. The property also provides recreational opportunities for a variety of activities including an excellent network of trails maintained by a local mountain bike club with permission from the landowner.

Ownership and Management

This parcel will continue to be owned by Everett and Susan B. McGinley with a Federal Forest Legacy Program conservation easement held by the State of Vermont, Department of Forests, Parks & Recreation. The property is expected to be used for production of timber products, protection of wildlife habitat and travel corridors.

Budget & Funding


Total acquisition cost will be \$580,000, the appraised value of the easement. Funding for this acquisition comes from a Federal Forest Legacy grant in the amount of \$2,000,000. It is expected that an additional \$8,000 will be used for associated closing costs.

APPROVAL FOR LAND ACQUISITION

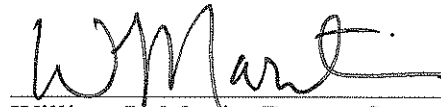
We, the undersigned, hereby approve the acquisition by the State of Vermont, Agency of Natural Resources, Department of Forests, Parks, & Recreation, of a Grant of Development Rights, Conservation Restrictions and Public Access Easement on the so-called Five Peaks property, located in the Town of Montgomery, from Everett and Susan McGinley. The Grant of Development Rights, Conservation Restrictions and Public Access Easement will encumber an area of 1,144 ± acres in size.

This approval is pursuant to Title 10, Chapter 83, §2606(a) of the Vermont Statutes Annotated for the acceptance of the land acquisition referenced above.

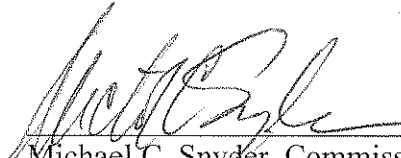
10/2/15
Date


Peter Shumlin, Governor
State of Vermont

11/24/15
Date


William L. Martin, Deputy Secretary
Agency of Natural Resources

11/23/15
Date

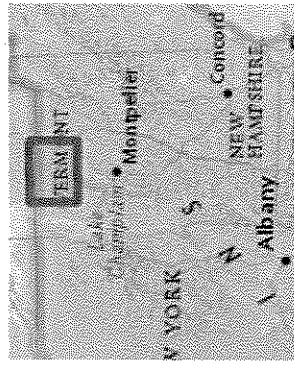

Michael C. Snyder, Commissioner
Dept. Forests, Parks & Recreation



Natural Resources Atlas

Vermont Agency of Natural Resources

vermont.gov



LEGEND

Town Boundary

NOTES

Map created using ANR's Natural Resources Atlas



1: 296,727
November 19, 2015

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

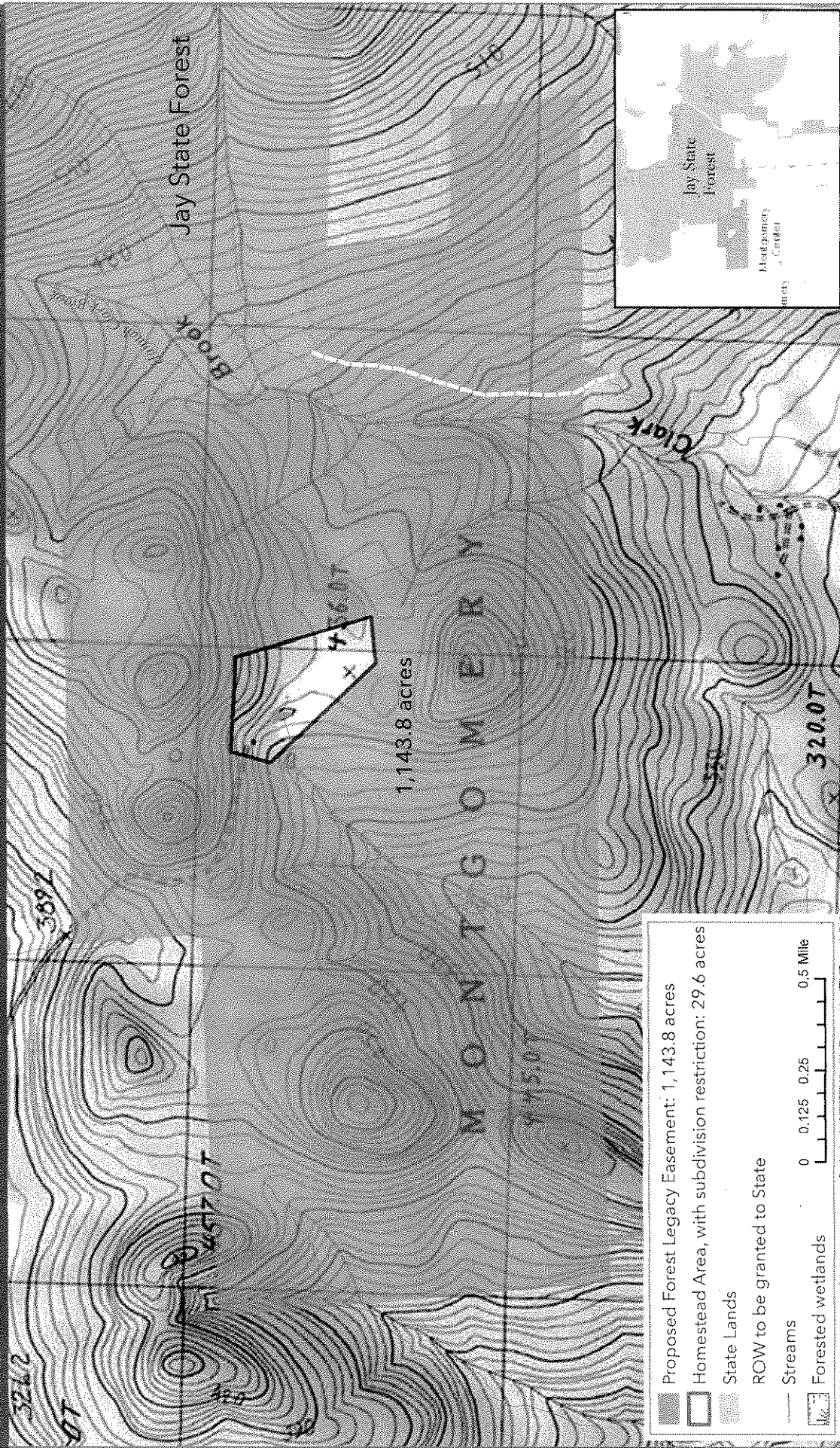
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1" = 24727 Ft. 1cm = 2967 Meters
THIS MAP IS NOT TO BE USED FOR NAVIGATION

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© Vermont Agency of Natural Resources

FIVE PEAKS

Montgomery, Vermont



THE TRUST *for* PUBLIC LAND

CONSERVING LAND FOR PEOPLE

GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS, AND

PUBLIC ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that **Everett McGinley and Susan B. McGinley**, a married couple, on behalf of themselves, their heirs, successors and assigns (hereinafter “Grantor”), pursuant to Title 10 V.S.A. Chapters 34 and 155 and in consideration of the payment of Ten Dollars (\$10.00) and other valuable consideration paid to its full satisfaction, do freely give, grant, sell, convey and confirm unto the **STATE OF VERMONT, AGENCY OF NATURAL RESOURCES, DEPARTMENT OF FORESTS, PARKS AND RECREATION** and its successors and assigns (hereinafter “Grantee”), forever, the development rights and perpetual conservation easement restrictions (all as more particularly set forth below) in a certain tract of land (hereinafter “Protected Property”) consisting of approximately 1,143.8 +/- acres, situated in the Town of Montgomery, State of Vermont, said Protected Property being a **PORTION ONLY** of all and the same lands and premises conveyed to Everett McGinley and Susan B. McGinley by Julian Thomka Gazdik (a/k/a Julian G. Gazdik) by Warranty Deed dated February 6, 2006 and recorded in Book 74, Page 180 of the Montgomery Land Records, and being more particularly described in Schedule A attached hereto and incorporated herein and as shown on the survey plan titled “Everett & Susan B. McGinley,” by H.W. Chaffee, Map No. 2012-26, sheet 1 and 2 of 2, dated February 06, 2015, (hereinafter “Survey”) as the same to be recorded in the Montgomery Land Records. Also included in this Grant is a limited conveyance restricting the right to subdivide the 29.6 +/- acre area shown as “Homestead Area” on the Survey as set forth in Section II.9 of this Grant. The Homestead Area shall be excluded from all terms and conditions contained in this grant except for Section II.9 herein.

The development rights hereby conveyed to the Grantee shall include all development rights except those specifically reserved by the Grantor herein and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The conservation easement and restrictions hereby conveyed to the Grantee consist of covenants on the part of the Grantor to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that said development rights and conservation easement and restrictions shall constitute servitude upon the land and shall run with the land. Grantor reserves said rights and interests in order to conserve the Protected Property’s biological diversity, forest resources, wildlife habitats, and scenic and outdoor recreation resources, all as more particularly described in Section I below.

I. Purposes of the Grant.

The purpose of this Grant (“Purposes”) is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c) on the herein described land, which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities; and to contribute to the implementation of the policies of the State of Vermont designed to foster the conservation of the state’s wildlife habitats, forestry, and other natural resources through planning, regulation, land acquisition, and tax incentive programs.

Grantor and Grantee further acknowledge that the Objectives of this Grant are as follows (hereinafter collectively the “Objectives”):

1. The Primary Objectives of this Grant are to conserve biological diversity, native flora and fauna, and the environments and ecological processes which support them, as those values exist on the date of this grant and as they may evolve in the future. These Objectives include:
 - a. The protection, maintenance and enhancement of wildlife habitats on the Protected Property as identified by the State of Vermont, including, among others: critical black bear habitat, feeding and nesting areas for moose, fisher, osprey, eagle, bobcat, migratory songbirds, and other amphibians and wildlife dependent upon undeveloped mid- and upper-elevation lands and wetlands;
 - b. The protection, maintenance and enhancement of habitat for native brook trout and other biodiversity in and along Hannah Clark Brook; and
 - c. The conservation of woodlands, natural communities and other natural resource values of the Protected Property for their intrinsic ecological value and scenic beauty.
2. The Secondary Objectives of this Grant are to (i) promote economically sustainable management of forests and creation of forest products; and (ii) allow dispersed non-commercial pedestrian public recreational and outdoor and wilderness educational opportunities; (iii) protect water supply and quality; and (iv) encourage protection of soil resources.

To recognize that maintaining productive forestry resources is one of the Objectives of this Grant and that both the resource values of the Protected Property and responsible forest management standards will evolve over time, by using the following forest management objectives (hereinafter "Forest Management Objectives"):

- a. Manage forest stands to maximize the opportunity for harvesting high quality large diameter sawlogs or veneer, sustained over time, while maintaining a healthy and biologically diverse forest. Grantor and Grantee acknowledge that site limitations and biological factors may preclude the production of high quality sawlogs, and further that the production of a variety of forest products can be consistent with the goal of producing high quality sawlogs.
- b. Conduct forest management and harvesting activities (including the establishment, maintenance and reclamation of log landings and skid roads) using the best available yet commercially feasible management practices in order to prevent soil erosion and to protect water quality.
- c. Create a sustained yield of forest products and prevent liquidation harvest practices.

These Purposes and Objectives will be advanced by conserving the Protected Property because it possesses the following attributes:

(examples of attributes, others may also apply)

- a) Approximately 1,150 acres of well-managed forest land with excellent species composition and productive soils within a Tier 2 Matrix Forest Block;
- b) Adjacent to 23,000 acres of protected forest land in Vermont and Quebec, which serves as a bi-national wildlife corridor for wide-ranging animals such as bear and moose;
- c) A significant portion of the Green Mountain viewshed as seen from Big Jay, Little Jay, and the Long Trail;
- d) 85 acres of deer wintering habitat;
- e) The protection of the headwater streams for the Mississquoi River watershed;
- f) A trail network that provides excellent opportunities for non-commercial pedestrian public access activities;
- g) A mix of hardwood and softwood forest types which provides habitat for over 200 bird species; and
- h) Several seeps and 5 acres of open and wooded wetlands.

These Purposes and Objectives will be achieved in accordance with the Forest Stewardship Plan requirements of Section IV.

Grantor and Grantee recognize these forestry, outdoor recreation, and wildlife habitat resources of the Protected Property, and share the common purpose of conserving these values by the conveyance of development rights and conservation restrictions and public access easement to prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with the function and maintenance of these resource values. Grantee accepts such development rights, conservation restrictions and public access easement in order to conserve these values for present and future generations.

II. Restricted Uses of Protected Property.

Except as otherwise provided for in this Grant, the restrictions hereby imposed upon the Protected Property, and the acts, which Grantor shall do or refrain from doing, are as follows:

1. The protected property shall be used for forestry, educational, non-commercial and open space purposes only. No residential, commercial, industrial or mining activities shall be permitted and no building, structure or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Protected Property, except as specifically permitted under this Grant.

2. Except the existing utility lines providing electricity to the Homestead Area or as otherwise specifically permitted under this Grant, no rights-of-way, easements of ingress or egress, driveways, roads, or utility lines or easements shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written permission of the Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such improvement would be consistent with the Objectives of this Grant.

3. No additional easements or restrictions shall be placed on the Protected Property without the prior written permission of the Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such easement or restriction would be consistent with the Purposes and Objectives of this Grant.
4. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that the Grantor may erect and maintain reasonable signs including but not limited to signs indicating the name of the Protected Property and its ownership by Grantor, boundary markers, trail signs, directional signs, memorial plaques, informational and interpretive signs, for sale signs, and signs limiting access or use (subject to the limitations of section IV below). Upon conveyance of the Property or the death of the survivor of Everett McGinley and Susan B. McGinley, Grantors of this Conservation Easement, Grantee may erect and maintain signs designating the Protected Property as land under the protection of the Grantee.
5. The placement, collection or storage of trash, human waste, or any unsightly or offensive material on the Protected Property shall not be permitted except at such locations, if any, and in such a manner as shall be approved in advance in writing by Grantee.
6. There shall be no disturbance of the surface, including but not limited to filling, excavation, and removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner, except as may be reasonably necessary to carry out the uses permitted on the Protected Property under the terms of this Grant. In no case shall surface mining of subsurface oil, gas, or other minerals be permitted.
7. There shall be no manipulation of natural watercourses, marshes, or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level or flow, except as reasonably necessary to carry out the uses permitted on the Protected Property under this Grant.
8. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written permission of Grantee. Grantee may grant such permission if it determines, in its sole discretion, that any such subdivision would be consistent with the Purposes and Objectives of this Grant.
9. The Homestead Area shall not be further subdivided, nor shall the Homestead Area be separately subdivided from the Protected Property except that in the event that Grantee authorizes Grantor to subdivide the Protected Property pursuant to Section II.8 of this Grant, Grantor may convey the Homestead Area together with a portion of the Protected Property that is contiguous with the Homestead Area and that shall exceed two hundred (200) acres.
10. No use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the reasonable opinion of the Grantee, is or may possess the potential to become inconsistent with the Purposes or Objectives of this Grant.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, Grantor shall have the right to conduct the following activities on the Protected Property provided that all such activities are conducted in accordance with an approved Forest Stewardship Plan meeting the requirements of Section IV below prepared by a professional forester or other land manager whose education, experience and qualifications are approved in advance by the Grantee:

1. The right to conduct maple-sugaring operations, harvest firewood, harvest timber, wood products, non-timber forest products and to perform other forest management activities together with the right to construct and maintain access by motorized vehicle if necessary to conduct such operation.
2. The right to construct roads and to harvest and skid wood products, provided Grantor shall employ the applicable practices set forth in the regulations entitled "Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont", promulgated by the Vermont Department of Forests, Parks and Recreation publication on August 15, 1987 (hereafter "AMP's") or such successor amended regulations.
3. The right to commence timber harvesting activities in accordance with the Forest Stewardship Plan, provided Grantor shall provide Grantee with not fewer than fifteen (15) days prior written notice, except that no such notice shall be required for: (a) thinning of forest stands performed without the commercial sale of the harvested products; and (b) any other timber harvesting involving fewer than 10 acres, or yielding fewer than 8,000 board feet of sawlogs or 25 cords of firewood. Nothing in this clause shall be interpreted to require Grantor to harvest a treatment unit (as defined in Section IV, below), but only to require that any such

harvest be conducted in accordance with the Forest Stewardship Plan or the Amended Forest Stewardship Plan should Grantor elect to harvest.

4. The right to maintain, repair, and replace existing forest management roads and associated bridges and culverts, together with the right to construct new forest management roads and associated improvements, provided that said roads and associated improvements are in accordance with the Forest Stewardship Plan and fulfill the following requirements:

- a) Such construction is consistent with the Purposes and Objectives of the Grant; and
- b) Additional road improvements are necessary to provide reasonable forest management access to the Protected Property and the system of existing roads are not adequate.

5. The right to construct and maintain temporary saw mills, wood processing facilities, and similar temporary forestry structures or facilities, together with necessary temporary access drives and temporary utilities, on the Protected Property, provided that such temporary structures, temporary access and temporary utilities are used exclusively in functional support of forestry conducted on the Protected Property, and provided further that such construction has been approved in writing in advance by Grantee. "Temporary" shall mean structures or facilities, which remain in place for a period not to exceed 24 months. Grantee's approval shall not be unreasonably withheld or conditioned, provided that the temporary structure or facility is located, constructed and designed in a manner that is consistent with the Purposes and Objectives of this Grant. Further, subject to the prior written approval of Grantee, which may be withheld in Grantee's sole discretion, the right to construct permanent forestry structures, facilities and associated improvements.

6. The right to use motorized equipment, including portable sawmills and all terrain vehicles on the Protected Property for forest management purposes.

7. The right to construct and maintain sugar houses, or similar forestry structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that such structures and facilities are used exclusively in functional support of forestry conducted on the Protected Property, and provided further that such construction has been approved in writing in advance by Grantee. Grantee's approval shall not be unreasonably withheld or conditioned, provided if the structure or facility is located in a manner which is consistent with the Purposes and Objectives of this Grant.

8. The right to utilize, maintain, establish, construct, and improve water sources, courses, and bodies within the Protected Property for uses otherwise permitted hereunder, provided that Grantor does not unnecessarily disturb the natural course of the surface water drainage and runoff flowing over the Protected Property. Notwithstanding the foregoing, the construction of ponds or reservoirs is prohibited.

9. The right to permit operation of motorized and mechanized vehicles, including but not limited to snowmobiles, ATV's and mountain bikes, and the right to permit equestrian use on the Protected Property, provided that no such use is inconsistent with the Purposes or Objectives of this grant.

10. The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing, and other non-commercial, recreational activities within and across the Protected Property (pursuant to a Forest Stewardship Plan developed and approved as described in Section IV).

11. The right to permit others to use the system of forest management roads now existing on the Protected Property, or in the future developed on the Protected Property (pursuant to a Forest Stewardship Plan developed and approved as described in Section IV), provided that:

- a. Such roads are used by others exclusively in association with forest management activities on lands near the Protected Property;
- b. The permission afforded by Grantor consists of a short-term license to use the road system for a period not to exceed 12 months, and is not a longer term license, right-of-way, easement or other permanent legal interest; and
- c. Grantor shall remain responsible for any such licensee's compliance with this Grant.

This clause shall not limit Grantor's right to allow others to use the Protected Property for non-commercial recreational purposes, consistent with the provisions of this instrument.

12. The right to extract sand, stone and gravel from the Protected Property, provided such materials are used exclusively for the construction, maintenance or improvement of forest management roads, and/or log

landings situated on the Protected Property as provided in paragraph III.4, or for the construction, maintenance or improvement of approved access for the Homestead Area.

13. The right to engage in accessory uses of the Protected Property; provided, however, that such accessory uses are (a) related to the principal forestry or recreational uses of the Protected Property, and (b) in the aggregate subordinate and customarily incidental to those principal uses. Grantor shall not engage in any accessory use of the Protected Property without first securing the prior written permission of Grantees, which permission may be conditioned, withheld or revoked if Grantees determine, in their sole discretion, that the accessory use would be or is inconsistent with the Purposes of this Grant.

IV. Stewardship Plan and Forestry Provisions.

General Requirements

As provided in Section III, above, Grantor shall not construct roads, or harvest timber or other wood products without first developing and submitting to the Department of Forests, Parks and Recreation for review and approval by the State Forester or designee, a Forest Stewardship Plan for the Protected Property (hereinafter called the “Forest Stewardship Plan”). All updates, amendments or other changes to the Forest Stewardship Plan shall be submitted to the Department for review and approval by the State Forester or designee, prior to any harvesting. The Forest Stewardship Plan as updated, amended or changed from time-to-time is hereinafter referred to as the “Amended Forest Stewardship Plan”. The State Forester’s approval of the Forest Stewardship Plan and any Amended Forest Stewardship Plan shall not be unreasonably withheld or conditioned, if the Forest Stewardship Plan or Amended Forest Stewardship Plan has been prepared by a professional forester and if the Forest Stewardship Plan and any Amended Forest Stewardship Plan are consistent with the Purposes and Objectives of this Grant.

Plan Requirements

Compliance with the elements of an approved Forest Stewardship Plan or Amended Forest Stewardship Plan, as incorporated therein, is a requirement of this easement. The Forest Stewardship Plan and any Amended Forest Stewardship Plan shall be consistent with the Purposes and Objectives of this Grant, and shall fulfill the requirements of the Vermont Use Value Appraisal Program (if the protected property is enrolled in that program). Stewardship Plans shall be based on the most current science and strive to improve stand quality and maintain important wildlife habitats consistent with current stand conditions and site quality and shall include at least the following elements:

- a. Grantor’s forest management objectives;
- b. An appropriately scaled, accurate map indicating such items as forest stands, streams and wetlands, and major access routes (truck roads, landings and major skid trails);
- c. Forest stand (treatment unit) descriptions (forest types, stocking levels before and after harvesting, soils, topography, stand quality, site class, insect and disease occurrence, previous management history, and prescribed silvicultural treatment);
- d. Plant and wildlife considerations (identification of known significant habitats and management recommendations, and Grantor’s plan with regard to retaining snag trees, den trees, and downed trees);
- e. Recreational considerations; and
- f. Historic and cultural resource considerations (identification of known resources and associated management recommendations).

The Forest Stewardship Plan shall be updated at least once every ten (10) years. Amendments to the Forest Stewardship Plan shall be required in the event that Grantor proposes a treatment not included in the Forest Stewardship Plan, but no such amendment shall be required for any change in timing or sequence of treatments if such change does not vary more than three years from the prescription schedule set forth in the Forest Stewardship Plan as approved by the Grantee. Grantee may rely upon the advice and

recommendations of such foresters, wildlife experts, conservation biologists or other experts as Grantee may select to determine whether the Forest Stewardship Plan or Amended Forest Stewardship Plan would be detrimental to the Purposes or Objectives of this Grant.

Harvesting Restrictions

1. Heavy Cuts: Disapproval by Grantee of a Forest Stewardship Plan proposing a Heavy Cut (as defined below) shall not be deemed unreasonable. Grantee, however, may approve a Forest Stewardship Plan or an Amended Forest Stewardship Plan that includes a Heavy Cut in its discretion, if such plan is consistent with the Purposes and Objectives of this Grant and accomplishes one or more of the following:

- a. To release a well established understory;
- b. To permit the planting of different species of trees;
- c. For wildlife management purposes; or
- d. To promote natural regeneration.
- e. To salvage damaged or downed trees

“Heavy Cuts” shall mean the harvesting of wood products below the “C-Line” or minimum stocking level on the Protected Property as determined by applying the protocol set forth in the current U.S. Department of Agriculture, Forest Service Silvicultural Guidelines for the Northeast or by applying a similar, successor standard approved by the Grantor and Grantee.

2. Surface Water Buffer Zones: Defined as those areas lying within 50’ of each bank or shore of rivers, ponds and wetlands and streams, identified as “blue line streams” on 7.5 minute United States Geological Survey Quadrangle maps and depicted on a plan entitled “Five Peaks Property, Montgomery, VT” (hereinafter “Five Peaks Conservation Plan”) signed by the original Grantor and Grantee and maintained in the permanent records of Grantee, or any successor maps approved by Grantor and Grantee depicting the Protected Property, shall be designated as Surface Water Buffer Zones (hereinafter “SWBZ”).

a. Any harvesting or other forest management activities conducted within the SWBZ described herein must be consistent with a Forest Stewardship Plan or Amended Forest Stewardship Plan approved by Grantee that takes into account the potential effects of such activities on water quality and the plant and wildlife habitat associated with such areas. The production of timber and other forest products shall be a secondary purpose within the SWBZ.

b. The number and width of stream crossings within the SWBZ described herein shall be kept to a minimum and said crossings shall include the installation of all erosion control devices and employ, at a minimum, all recommended practices described in the AMP publication dated August 15, 1987, or successor standard approved by the Grantee.

The goals, prescriptions and restrictions of this Section IV are in addition to the provisions of Sections II, III and V, and where inconsistent, the provisions of this Section IV shall supersede the provisions of Sections II, III and V.

V. Public Access.

1. Grantor covenants and agrees that upon conveyance of the Property or the death of the survivor of **Everett McGinley and Susan B. McGinley**, Grantors of this Conservation Easement, the Protected Property shall be available to the public for all types of non-commercial, non-motorized, non-mechanized, non-equestrian dispersed recreational purposes (including but not limited to bird watching, backcountry skiing, fishing, hunting, snowshoeing, trapping and walking) consistent with the Purposes and Objectives of this Grant. Notwithstanding the foregoing, Grantee may limit or restrict public access to the Protected Property to assure compliance with the requirements of this Grant, to protect natural habitats, or to protect the public health or safety (including, but not limited to, the right to permit, regulate or prohibit hunting or trapping).

2. The standards for Public Access Section V are as follows:

- a. The primary goal of this Section is to provide public access, as set forth in this section, that is consistent with and does not impede the economically sustainable production of forest resources;

- b. Access to the Protected Property by the public is a conditioned right; conditioned on respecting the rights of Grantor as established herein, the primary purpose of this Grant, the resource values of the protected property, the restrictions and requirements set forth in this Grant and the public health and safety;
- c. Access to the Protected Property is provided to the property as described in Schedule A;
- d. If either Grantor or Grantee identify actions by the public which impede the economically sustainable production of forest resources or violate this Grant, Grantor and Grantee shall consult and will work in good faith to resolve problems cooperatively and to maintain public access to the property.

Therefore, Grantor will permit access by the public for non-motorized, non-mechanized non-equestrian, non-commercial, dispersed recreational purposes (such as hunting, fishing, bird-watching, walking, snowshoeing, trapping and cross-country skiing), provided such access does not interfere with forestry activities and is not otherwise inconsistent with the Purposes and Objectives of this Grant or this Section V.

3. Access to the Protected Property by the public may be closed or restricted by either Grantor or Grantee to protect and ensure compliance with the Purposes of this Grant, and to prohibit activities that are inconsistent with, interfere with or cause damage to said Interests. Without limiting the generality of the foregoing, the right to control public access as aforesaid includes the right to regulate or prohibit hunting or trapping on the Protected Property; the right to prohibit activities that cause damage to the Protected Property's natural resources (such as, for example, hunting out of season, erosion, fire, concentrated use, or other destructive activity); and the right to prohibit public access during periods of active fire hazard, and in areas where active forestry operations (including the transportation of equipment or logs) are being conducted if such access would interfere with the conduct of such operations or would result in a risk to public safety.

Grantor and Grantee shall work in good faith to cooperatively resolve any issues with respect to public recreational access to the Property and to maintain public access to the property. Any issue not resolved voluntarily may be submitted by either party to binding arbitration. Access to the Protected Property by the public may be temporarily closed or restricted by Grantor or Grantee, during the pendency of arbitration and subject to a final decision, to protect and ensure compliance with this Grant.

The arbitrator shall be selected by the parties or by the American Arbitration Association if the parties cannot agree on an arbitrator. The arbitrator's authority shall include the right to determine: (1) whether a violation of Section V by either Grantor or Grantee has or continues to occur, (2) whether public use materially interferes with Grantor's use of the Property, (3) whether public use has caused significant damage to natural resources, and (4) what corrective action should be implemented to achieve the objectives of permitting reasonable dispersed public recreational access without materially interfering with Grantor's use of the Protected Property and without damaging natural resources.

4. The costs of arbitration shall be shared equally by the parties, unless otherwise determined by the arbitrator due to one party being unreasonable or otherwise dilatory. The decision of the arbitrator shall be binding on the parties. The parties shall select an arbitrator within two weeks of the submission of an issue to arbitration, and every reasonable effort shall be made to complete arbitration of any dispute within thirty (30) days of the selection of an arbitrator.
5. Nothing in this Section V shall be construed to prohibit Grantor from serving a Notice Against Trespass against third parties for any conduct not permitted by this Section V, including use of prohibited motor vehicles on the Protected Property.
6. The general public's right of access to and use of the Protected Property shall be limited to the access privileges outlined in this Section V, and the public shall have no other right to use or occupy the Protected Property.

VI. Enforcement of the Restrictions.

Grantee shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantee may make periodic inspection of all or any portion of the Protected Property, and for such inspection and enforcement purposes, the Grantee shall have the right of reasonable access to the Protected Property. In the event that Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth,

Grantee shall give notice to Grantor of such event or circumstance of non-compliance via Certified Mail, return receipt requested, and demand corrective action by the Grantor sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. In the event there has been an event or circumstance of non-compliance, which is corrected through negotiation and voluntary compliance, Grantor shall, at Grantee's request, reimburse Grantee for all reasonable costs incurred in investigating the non-compliance and in securing its correction.

Failure by the Grantor to cause discontinuance, abatement, or such other corrective action as may be demanded by the Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle the Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Grant and to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Grantee to corrective action on the Protected Property, if necessary. If the court determines that the Grantor has failed to comply with this Agreement, Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. In the event that Grantee initiates litigation and the court determines that the Grantor has not failed to comply with this Agreement and that the Grantee has initiated litigation without reasonable cause or in bad faith, then the Grantee who commenced the court proceedings shall reimburse Grantor for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees; provided this clause shall not apply to any Grantee protected by the doctrine of sovereign immunity. The parties to this Grant specifically acknowledge that events and circumstances of non-compliance constitute immediate and irreparable injury, loss, and damage to the Protected Property and accordingly entitle Grantee to such equitable relief, including but not limited to injunctive relief, as the court deems just. The remedies described herein are in addition to, and not in limitation of, any other remedies available to the Grantee at law, in equity, or through administrative proceedings.

No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair the Grantee's rights or remedies or be construed as a waiver. Nothing in this enforcement section shall be construed as imposing a liability upon a prior owner of the Protected Property, where the event or circumstance of non-compliance shall have occurred after said prior owner's ownership or control of the Protected Property has terminated.

VII. Access to Adjacent State Lands

The Grantor and Grantee hereto, further agree that the Grantee shall have access over the Hannah Clark Brook Road and the adjacent forest road which crosses the Protected Property for motorized and mechanized vehicles, including but not limited to snowmobiles and ATV's for forest management and emergency access to the State's adjacent land known as the "Jay State Forest".

VIII. Miscellaneous Provisions.

1. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of the Grantee before commencing an activity or act, and where the Grantee has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of the Grantee, provided that Grantor has given its written consent to such designation, which consent shall not be unreasonably withheld. Grantor shall reimburse Grantee or Grantee's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantee's approval; but not to include those costs which are expected and routine in scope. When Grantee has authorized a proposed action requiring approval under this Grant, Grantee shall, upon request, provide Grantor with a written certification in recordable form memorializing said approval.

2. It is hereby agreed that any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations of the Town of Montgomery and the State of Vermont

3. The Grantee shall transfer the development rights, conservation restrictions and public access easement conveyed by Grantor herein only to a State agency or municipality, as defined in Chapter 34 or Chapter 155, Title 10 V.S.A., in accordance with the laws of the State of Vermont and in accordance with the Forest Legacy Program (16 USC Section 2103c).

4. In the event the development rights, conservation restrictions or public access rights conveyed to the Grantee herein are extinguished by eminent domain or any other legal proceedings, including arbitration proceedings under Section V, above, Grantee shall be entitled to any proceeds which pertain to the

extinguishment of Grantee's rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantee in accordance with the value of their respective interests at the time of extinguishment as determined by an appraisal commissioned by Grantee. Grantee shall reimburse the United States of America from the proceeds received pursuant to this Section for the value at the time of extinguishment of any extinguished interests acquired with federal Forest Legacy funds. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange or disposition upon the State's tender of equal value consideration acceptable to the Secretary. (P.L. 101-624; 104 Stat .3359) Otherwise, Grantee shall use any such proceeds to preserve undeveloped and open space land in order to protect the aesthetic, agricultural, educational, scientific, forestry, and natural resources of the state through non-regulatory means.

5. In any deed or lease conveying an interest in all or part of the Protected Property, Grantor shall make reference to the conservation easement, restrictions, and obligations described herein and shall indicate that said easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify the Grantee of the name(s) and address (es) of Grantor's successor(s) in interest.
6. Grantee shall be entitled to re-record this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Montgomery Land Records as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§ 603 and 605.
7. It is further agreed that the Protected Property is accurately depicted and described in both the Grantor Legacy Conservation Plan and a Baseline Documentation Report ("BDR") signed by the original Grantor on or about the date of this Grant and held by Grantee. The Grantee may use the Grantor Legacy Conservation Plan or BDR in enforcing this Grant, but are not limited in their use of the Grantor Legacy Conservation Plan and BDR to show a change of conditions.
8. The term "Grantor" shall include the successors and assigns of the original Grantor. The term "Grantee" shall include the successors and assigns of the original Grantee, State of Vermont, Agency of Natural Resources, Department of Forests, Parks and Recreation consistent with the conditions and requirements of Federal Grant # 11-DG-11420004-194 and 13-DG-11420004-160 by and between the VT Department of Forests, Parks and Recreation and the USDA Forest Service.
9. The Grantor agrees that activities conducted within the easement area shall be in compliance with the provisions of the Stewardship Plan prepared in association with the conveyance of this Grant and pursuant to the provisions of Section 5(f) of the Cooperative Forestry Assistance Act of 1978 (P.L. 95-313), as amended, 16 U.S.C. 2103a(f), the provisions of which are listed below. The Grantor agrees that it may periodically seek to revise the Stewardship Plan in order to incorporate timber management practices that are described by regulations promulgated by the State of Vermont, Agency of Natural Resources, or its successor agency, (hereinafter "ANR"). Such proposed revisions to the Stewardship Plan will become effective only upon written approval by the ANR.

1.

INVALIDATION of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights, conservation restrictions and access easements, with all the privileges and appurtenances thereof, to the said Grantee, **State of Vermont, Agency of Natural Resources, Department of Forests, Parks and Recreation**, its successors and assigns, to their own use and behoove forever, and the said Grantor, **Everett McGinley and Susan B. McGinley**, for themselves and their heirs, successors and assigns, does covenant with the said Grantee, its successors and assigns, that until the sealing of these presents, they are the sole owners of the premises, and have good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance and use restrictions, and it hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, **Grantor**, sets its hand and seal this _____ day of _____, 2015.

Signed, sealed and delivered
In The Presence Of: GRANTOR:

_____ Witness to Grantor	_____ Everett McGinley
_____ Witness to Grantor	_____ Susan B. McGinley

STATE OF VERMONT
FRANKLIN COUNTY, ss.

At _____ this _____ day of _____, 2015, personally
appeared Everett McGinley and he acknowledged this instrument, by him sealed and subscribed, to be his
free act and deed, before me.

Notary Public
My commission expires:

STATE OF VERMONT
FRANKLIN COUNTY, ss.

At _____ this _____ day of _____, 2015, personally
appeared Susan B. McGinley and she acknowledged this instrument, by her sealed and subscribed, to be her
free act and deed, before me.

Notary Public
My commission expires:

The party below adds its signatures to demonstrate their acceptance of this grant of development rights, conservation restrictions, and public access easement.

**State of Vermont, Agency of Natural Resources,
Department of Forests, Parks, and Recreation**

By: _____
Michael C. Snyder
Commissioner

STATE OF VERMONT
COUNTY OF WASHINGTON

At _____, in said County and State on this _____ day of _____, 2015, personally appeared Michael C. Snyder, who acknowledged the foregoing instrument by his sealed and subscribed to be his free act and deed on behalf of the State of Vermont, acting by and through its Agency of Natural Resources, Department of Forests, Parks and Recreation.

Before me: _____

Notary Public
My commission expires:

We understand that Section V of this instrument contains an agreement to arbitrate. After signing this document we understand that we will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement set forth in Section V, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator. We understand that the arbitration provisions of this instrument are limited exclusively to matters set forth in said Section V.

Susan McGinley

Dated: _____

By: Michael C. Snyder
Commissioner

Dated: _____

[illegible]

SCHEDULE A
PROTECTED PROPERTY

The Protected Property is shown on the survey plan titled “Everett & Susan B. McGinley,” by H.W. Chaffee, Map No. 2012-26, sheet 1 and 2 of 2, dated February 06, 2015, (hereinafter “Survey”) and more particularly described as follows:

Beginning at an unmarked point at the south east corner of the parcel herein described:

thence S 89° 34' W a distance of 18.0 ft. to an iron rod found, labeled C1;
thence S 86° 51' W a distance of 230.6 ft. to an ash tree, labeled C2;
thence N 86° 31' W a distance of 186.5 ft. to an birch tree, labeled C3;
thence S 88° 08' W a distance of 185.6 ft. to an iron rod set, labeled C4;
thence S 89° 35' W a distance of 545.7 ft. to an iron rod set, labeled C5;
thence S 86° 08' W a distance of 90.2 ft. to an ash tree, labeled C6;
thence N 83° 24' W a distance of 64.9 ft. to an iron rod found, labeled C7;
thence S 87° 34' W a distance of 180.3 ft. to an iron rod set, labeled C8;
thence S 83° 39' W a distance of 243.8 ft. to an iron rod set, labeled C9;
thence S 88° 21' W a distance of 110.1 ft. to an iron rod set, labeled C10;
thence N 87° 28' W a distance of 459.3 ft. to an iron rod set, labeled C11;
thence S 88° 49' W a distance of 261.2 ft. to an iron pipe found, labeled C12;
thence S 89° 49' W a distance of 135.9 ft. to an iron rod set, labeled C13;
thence S 23° 40' W a distance of 340.1 ft. to an iron rod set, labeled C14;
thence N 29° 22' W a distance of 356.3 ft. to an iron rod set, labeled C15;
thence N 88° 10' W a distance of 342.3 ft. to an iron rod set, labeled C16;
thence S 87° 42' W a distance of 154.5 ft. to an iron rod set, labeled C17;
thence S 87° 43' W a distance of 591.3 ft. to an iron rod found, labeled C18;
thence S 86° 31' W a distance of 732.4 ft. to an iron rod found, labeled C19;
thence N 89° 45' W a distance of 758.1 ft. to an iron rod found, labeled C20;
thence N 85° 15' W a distance of 155.2 ft. to an iron rod found, labeled C21;
thence S 88° 11' W a distance of 209.7 ft. to an iron rod found, labeled C22;
thence S 69° 38' W a distance of 65.4 ft. to an iron rod found, labeled C23;
thence S 79° 32' W a distance of 151.2 ft. to an iron rod found, labeled C24;
thence N 85° 00' W a distance of 286.8 ft. to an iron rod found, labeled C25;
thence N 89° 39' W a distance of 263.0 ft. to an iron rod found, labeled C26;
thence S 05° 36' E a distance of 57.4 ft. to an iron rod set, labeled C27;
thence S 89° 44' W a distance of 2912.0 ft. to an iron pipe found, labeled C28;
thence S 06° 55' W a distance of 7.4 ft. to an iron rod set, labeled C29;
thence S 87° 44' W a distance of 1181.0 ft. to an iron rod set, labeled C30;
thence S 87° 50' W a distance of 1326.2 ft. to an iron rod set, labeled C31;
thence N 05° 28' W a distance of 836.6 ft. to an iron rod set, labeled C32;
thence N00° 21' W a distance of 426.8 ft. to an iron rod set, labeled C33;
thence N 05° 35' W a distance of 2743.7 ft. to an iron rod set, labeled C34;
thence N 82° 34' E a distance of 209.9 ft. to an iron rod found, labeled C35;
thence N 89° 05' E a distance of 738.5 ft. to an iron rod found, labeled C36;
thence N 86° 20' E a distance of 1222.9 ft. to an iron rod set, labeled C37;
thence N 87° 37' E a distance of 168.6 ft. to an iron rod set, labeled C38;
thence N 88° 11' E a distance of 1573.9 ft. to an iron rod set, labeled C39;
thence N 05° 06' W a distance of 376.6 ft. to an iron rod set, labeled C40;
thence N 03° 53' W a distance of 94.6 ft. to an iron rod set, labeled C41;
thence N 04° 33' W a distance of 870.3 ft. to a pk spike set, labeled C42;
thence N 89°38' E a distance of 82.6 ft. to an iron rod found, labeled C43;
thence N 83° 53' E a distance of 107.2 ft. to an iron rod set, labeled C44;
thence N 88° 10' E a distance of 1517.0 ft. to an iron rod set, labeled C45;
thence N 89° 39' E a distance of 2474.5 ft. to an iron rod set, labeled C46;
thence N 88° 10' E a distance of 1374.6 ft. to an iron rod set, labeled C47;
thence S 03°6' E a distance of 2652.7 ft. to an iron rod set, labeled C48;
thence N 83° 09' E a distance of 1419.7 ft. to an iron rod set, labeled C49;
thence S 03° 12' E a distance of 266.1 ft. to an iron rod set, labeled C50;
thence S 05° 15' E a distance of 1290.8 ft. to an iron rod set, labeled C51;
thence N 89°34' E a distance of 1320.0 ft. to an iron rod set, labeled C52

thence S 05° 15' E a distance of 1305.5 ft. to an iron rod set, labeled C53;
thence S 05° 15' E a distance of 14.5 ft. to an unmarked point, labeled C54;
which is the point of beginning.

The above described parcel having an area of 1,173.4 acres.

Less and excepting the following area shown as “Homestead Area” on the Survey:

Beginning at an iron rod set at the most westerly corner of the area herein described:

said iron rod lies S 63°16' E a distance of 1314.0 ft. from a P-K spike set in a ledge outcrop, labeled
item 5;

thence N 16°4' E a distance of 414.2 ft. to an iron rod set;

thence S 87°09' E a distance of 972.3 ft. to an iron rod set;

thence S 15°59' E a distance of 1441.8 ft. to an iron rod set;

thence S 84°32' W a distance of 463.8 ft. to an iron rod set;

thence N 43°23' W a distance of 1486.7 ft. to an iron rod set;

which is the point of beginning;

The above described area contains 29.6 acres.

The total area of the Protected Property contains, therefore, 1,143.8 +/- acres.

Subject to riparian rights of whatever rivers, streams, and other bodies of water that may adjoin,
cross and re-cross the subject property and rights of way for municipal roads, or highways that cross
portions of the property (e.g. North Hill Road).

Five Peaks Forest ~ Montgomery, Vermont



**TOWN OF MONTGOMERY
REGULAR MEETING OF THE
SELECTBOARD AND WATER COMMISSION**

Town Office

Monday, November 16, 2015

6:30 p.m.

Unapproved

Selectboard Members Present: Scott Perry-Chair, Wendy Howard-Vice Chair, Mark Brioullette, Susan Regan, Tom Stanley

Scott called the meeting to order at 6:33.

1. Review and make any changes to the agenda

Add:

3d. On Demand Hot water for Town Hall

3e. Public Works Budget

6. add-Bachman letter

8. PACE program

2. Review/Approve Minutes of Nov 2, 2015

Wendy made a motion to accept the Minutes of 11.2.15. Tom seconded. Motion carried 5-0

3. Public Works (Roads and Bridges, Buildings and Grounds)-garden club will do wreaths

a. **Flags/Roads Closure/Snow Plowing**-Rt. 58 is closed. Snow Plows are ready

b. **Longley Bridge Project Update**-carried over

c. **Equipment and Personnel-work hours overtime draft policy**-Mark made a motion to adopt Montgomery Public Works Payroll Policy as amended to address Item #2 under "Schedule" from "July" to "June" Tom seconded.

d. **Building/grounds report. Post office floor, Winterize Town Hall**-Town will address the Tile floor in the post office and bathroom.

e. **Public works budget**- Estimate for an On Demand Hot Water system is \$2400. Wendy made a motion to approve the installation of Tankless Hot Water Heater at the price of approximately \$2400 to be installed in the Spring. Mark seconded. Motion carried 5-0

4. Visitors: Forest Legacy, Conservation Easement, McGinley Property, Kate Wanner, Trust for Public Land

Present: Everett and Sue McGinnley, Kate Wanner-Trust for Public Land, Benj Deppman-Attorney for Trust for Public Land, Kate Willard-Vermont Department of Forest and Public Rec., Charlie Hancock-Conservation Commission and Planning Commission, Linda Cluba and Parma Jewitt-Board of Listers.

Wendy made a motion to support the Five Peaks Forest Legacy Easement to convey to the State of Vermont Department of Forest and Parks and Recreation. Mark seconded. Motion carried 5-0

5. Response to Stanion Fence Appeal to Environmental Court-The Stanions are appealing the decision of the DRB which voted to uphold the Zoning Administrators decision finding them in violation on 4 counts. -carried over

