

## MEMORANDUM

**TO:** Peter Shumlin, Governor

**THROUGH:** Deborah L. Markowitz, Secretary, Agency of Natural Resources

**FROM:** Alyssa B. Schuren, Commissioner, Department of Environmental Conservation

**DATE:** December 27, 2016

**SUBJECT:** Approval for Acquisition of an easement on 23 +/- acre property, Stockbridge

Your approval is requested pursuant to Title 10, Chapter 103, Section 4144 VSA, for the acceptance of the acquisition referenced above. This acquisition was reviewed and recommended for acquisition by the Agency of Natural Resources District Stewardship Team on November 14, 2015 and subsequently approved by the Secretary on December 27, 2016. The Stockbridge Selectboard has issued a letter in support of the acquisition dated December 15, 2016.

### Description

The Freund-Finn acquisition is a 23 +/- co-held easement along the White River in Stockbridge, Vermont. The project will conserve the river corridor along the White River and require a 100' vegetated buffer that migrates with the channel. The easement will protect critical floodplain areas from development and/or alteration. Floodwater and sediment attenuation during high flow events will support ANR flood resiliency and water quality goals.

### Ownership and Management

The easement will be co-held with the Agency of Natural Resources and the Vermont River Conservancy. The easement will restrict the management of the floodplain, river corridor and in channel work. Stewardship will be completed by the Vermont River Conservancy staff and guided by the Memorandum of Understanding held between the Vermont River Conservancy and Department of Environmental Conservation.

### Budget and Funding

Acquisition costs are expected to be \$56,704 with the closing costs equal to approximately \$21,000 of that total. The closing costs include a survey, baseline documentation report, legal fees for easement drafting and closing, recording, stewardship endowment fee, and Vermont River Conservancy staff time. All acquisition costs will be paid with a grant from the Ecosystem Restoration Fund.

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## APPROVAL FOR LAND ACQUISITION

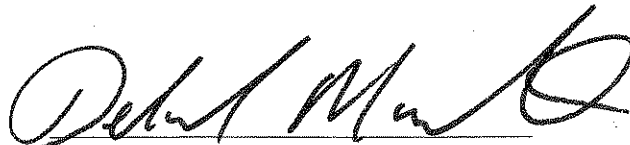
We, the undersigned, hereby approve the easement acquisition by the State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, of a 23 +/- acre Freund-Finn property, located in the Town of Stockbridge, VT.

This approval is pursuant to Title 10, Chapter 103, Section 4144 VSA for acceptance of the land acquisition referenced above.

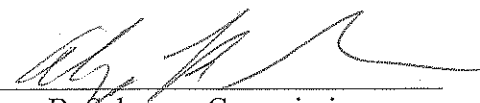
12/28/16  
Date

  
\_\_\_\_\_  
Peter Shumlin, Governor  
State of Vermont

11-28-26  
Date

  
\_\_\_\_\_  
Deborah L. Markowitz, Secretary  
Agency of Natural Resources

12/28/16  
Date

  
\_\_\_\_\_  
Alyssa B. Schuren, Commissioner  
Dept. of Environmental Conservation

## MEMORANDUM

TO: Alyssa Schuren, Commissioner, Department of Environmental Conservation

FROM: Shannon Pytlik, River Scientist

SUBJECT: Acquisition of River Corridor Easement on Freund-Finn parcel on the White River.

**Recommendation:** Approve the purchase of a co-held easement with the Vermont River Conservancy on the 23 acre Freund-Finn property located in Stockbridge, VT.

<b><u>Landowner:</u></b>	Freund-Finn
<b><u>Location:</u></b>	Stockbridge, Vermont
<b><u>Acreage:</u></b>	23 acres
<b><u>Type of Acquisition:</u></b>	co-held easement
<b><u>Recommended Funding:</u></b>	ERP, already approved

### **Background and Ecological Significance:**

The property contains approximately 23 acres of high priority floodplain and river corridor upstream of the village of Gaysville. An easement would be placed on the parcel restricting development, channel management and would require a 100' buffer that moves as the channel migrates over time. If the property is not conserved the site could be developed and adversely affect the water quality and flood resiliency.

### **APPROVAL FOR DEVELOPMENT OF A CONSERVATION PROJECT**

I hereby approve the development of a land acquisition project on the Freund-Finn property located in Stockbridge, Vermont. This approval authorizes Department staff to pursue the development of this project and does not supersede other requirements, statutory, regulatory, procedural or policy, for the State of Vermont to accept interest in real property (e.g., Governor Approval).

12/21/16  
Date

  
Alyssa Schuren  
Commissioner  
Department of Environmental Conservation

**Town of Stockbridge  
P.O. Box 39  
Stockbridge, VT 05772  
802-746-8400  
Townofstockbridge@myfairpoint.net**

December 15, 2016

Mrs. Shannon Pytlik, River Scientist  
Department of Environmental Conservation  
Essex District Natural Resources Office

Dear Mrs. Pytlik:

After reading your letter that summarized the Department of Environmental Conservation's involvement and discussing the project at our Select Board meeting on December 15, 2016, we are writing to offer our full support for the DEC's involvement in purchasing the easements on the Freund and Finn property in the town of Stockbridge. More specifically, the town supports the DEC purchasing the easements to conserve the natural resource values on the property and public access for all wildlife based recreation.

Sincerely,

Stockbridge Selectboard

A handwritten signature in dark ink, appearing to read 'Mark Pelletier', with a long horizontal flourish extending to the right.

Mark Pelletier, Chair

# Land Acquisition Project Case Cover Sheet

**Project Information**

LAP Case #	1897	Project Name	Freund-Finn	Priority	HIGH
Previous LAP Case #					
Description	Parcel located adjacent to the White River.				
Transaction Type	Less than fee	Price	\$70.391	Interest to be Acq.	
Funding?					
Location:	Town	Stockbridge	County	Windsor	
Owner					
# of Parcels	1	Total Acres	23		
Dept to Manage	DEC	Contact	Shannon Pyllik		

**District Stewardship Team Review**

Signature	<i>Lisa Thornton</i> Stewardship Forester	
Date	11/14/16	
Recommendation	acquire	
Comments		

**Commissioner Review**

Signature	<i>[Signature]</i>	
Date	12/27/16	
Disposition		
Comments:		

**Secretary Review**

Signature	<i>[Signature]</i>	
Date	12-27	
Disposition		
Comments:	Approved	

**ALAC Comments**

Comments	A conservation easement located along the West River in Stockbridge, to be held with the Vermont River Conservancy. VRC will include a stewardship endowment in its project budget, so ANR will not accrue any management or stewardship expenses.
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## District Stewardship Team Parcel Review

The questions on this form are derived from Pages 23 – 28 in the *1999 Land Conservation Plan* which is available here, <http://www.vtfpr.org/lands/consplan.cfm>.

Project Name:	<b>Freund-Finn</b>	Next LARC Meeting: (Please complete the review before this date)	
Town:	Stockbridge	Acres:	23 ac
Type of Acquisition:	Less than Fee	Price:	\$70,391 (including closing costs)
District Contact Person:		Dsit 1?	
What is the Parcel's Proximity to existing recreation, conservation, and state owned (or Conservation easement) lands?	Parcel is located adjacent to the White River which is heavily used for recreation. There is a rare species notes just upstream from the site, but I am not privy to what type.		
Does the parcel contain any buildings? If so are they in good repair and do they serve an Agency purpose?	No buildings are present on the parcel.		
Does the Parcel serve any of these purposes of ANR land ownership? If yes then please explain.	<input checked="" type="checkbox"/> Protect, maintain, and enhance, ecological values and biological diversity. The conservation easements will require a 100' native vegetated buffers along the shorelines of the White River. Prohibiting development of the parcels will maintain existing wildlife corridors along the rivers.  <input checked="" type="checkbox"/> Protect public waters and shore lands with important public values. The project will conserve the river corridor along the White River and require a 100' vegetated buffer that migrated with the channel.  <input type="checkbox"/> Protect important scenic and aesthetic values. The property is visible from Rt 107.  <input type="checkbox"/> Provide access to public lands and waters.		

	<input type="checkbox"/> Provide areas for resource-related research, education, and demonstration projects. While the proposed easements include rights of the easement holder to conduct natural resource research. Currently none is planned.  <input type="checkbox"/> Provide forest management considerations. If yes, please explain here.  <input checked="" type="checkbox"/> Contributes to flood resiliency. Yes. The easement will protect critical floodplain areas from development and/or alteration. Floodwater and sediment attenuation during high flow events will support flood resiliency goals.  <input type="checkbox"/> Offers recreation potential or use.  <input type="checkbox"/> Offers important cultural or historic resources. None that we are aware of.
What are the threats to this parcel? How likely and imminent are any of these threats?	If the Freund-Finn parcel is not acquired and conserved under this proposal, there will be no guarantee that the parcel will not be sold for development purposes in the future. The site has few development restrictions (good soils for wastewater systems) and the town of Stockbridge has no zoning to protect important floodplains and riparian wildlife corridors.
Are there any management concerns or excessive management or stewardship costs associated with the parcel?	Since the Agency of Natural Resources will only be co-holding a conservation easement to be held by the Vermont River Conservancy, and since the VRC will include a stewardship endowment in its project budget, no ongoing management or stewardship expenses will accrue to ANR.
What issues or concerns are likely to be raised by the public if the proposal is formally pursued by the Agency?	Loss of property tax revenue?
Are there any other considerations, questions, or concerns about this parcel?	The Freund-Finn property was recommended for conservation in our River Corridor Planning Report for the White River and is a high priority for the White River Partnership.
Recommendation:	Acquire



VERMONT **GENERAL ASSEMBLY**

## **The Vermont Statutes Online**

### **Title 10 : Conservation And Development**

#### **Chapter 159 : Waste Management**

##### **Subchapter 001 : General Provisions**



(Cite as: 10 V.S.A. § 6616)

##### **§ 6616. Release prohibition**

The release of hazardous materials into the surface or groundwater, or onto the land of the State is prohibited. This section shall not apply to releases of hazardous materials pursuant to and in compliance with the conditions of a State or federal permit. (Added 1985, No. 70, § 5, eff. May 20, 1985.)

# Upper White River Corridor

Stockbridge, VT

-  River corridor easement area
-  White River Corridor

River Corridor Easement Area: 23.2 acres  
River Corridor Easement Value: \$37,768

Map created 9/24/15

0 125 250 500 750 1,000 Feet



## **Appendix A**

# **Vermont River Corridor Easements**

## **Template Language**



**Vermont Department of Environmental Conservation  
River Management Program**

April 2, 2010

**DEC Program Leader:** Mike Kline, State River Management Scientist, (802) 241-3774,  
[Mike.Kline@state.vt.us](mailto:Mike.Kline@state.vt.us) River Management Program, 10 North Building, 103 South Main St.,  
Waterbury, VT 05671

**Acknowledgements:** The staff and board members of several organizations and agencies greatly contributed to the development of this river corridor easement template, including the DEC River Management Program, the Vermont River Conservancy, the Vermont Land Trust, the Department of Forest, Parks, and Recreation, the Agency of Agriculture, Food, and Markets, the Vermont Housing and Conservation Board, the U.S.D.A. Natural Resource Conservation Service, the Vermont Law School, the Upper Valley Land Trust, the Vermont Chapter of The Nature Conservancy, the Trust for Public Land, and the Stowe Land Trust. Special thanks go to the river corridor easement review committee:

**Review Committee:**

Anne Whitely, Counsel, Department of Environmental Conservation  
Rick Peterson, Project Counsel, Vermont Land Trust  
Steve Libby, Executive Director, Vermont River Conservancy  
John Roe, Vice President for Land Conservation, Vermont Land Trust  
Laura DiPietro, Statewide CREP Coordinator, Agency of Agriculture, Foods, and Markets  
Silvia Jenson, Land Use Planner, Agency of Agriculture, Foods, and Markets  
Alex Wylie, Agricultural Director, Vermont Land trust  
Billy Coster, Director of Stewardship and Policy, Vermont Housing and Conservation Board  
Nancy Everhart, Conservation Director, Vermont Housing and Conservation Board  
Kip Potter, Environmental Specialist, Natural Resource Conservation Service  
Vicky Drew, Assistant State Conservationist, Vermont Housing and Conservation Board  
Meghan Purvee, Counsel, Department of Forest Parks and Recreation  
Peter Helm, Vice President of Stewardship, Upper Valley Land trust  
Marc Mihaly, Director of the Environmental Law Center, Vermont Law School  
Denis Shaffer, Vice President of Stewardship, Vermont Land Trust  
Kari Dolan, Fluvial Erosion Hazards Program Coordinator, River Management Program

**Cover Photo:** Trout River in Montgomery, Vermont. This river corridor easement program is dedicated to the Trout River. Like other rivers in Vermont, the Trout River teaches humility to the river manager. The reach shown in the photo is the site of a failed "restoration project." Most efforts to control it, to keep it static and contained, have failed. Of all the management alternatives pursued on the Trout, river corridor protection is the only thing that has worked.

**GRANT OF DEVELOPMENT RIGHTS  
AND RIVER CORRIDOR CONSERVATION RESTRICTIONS**

KNOW ALL PERSONS BY THESE PRESENTS that, \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ County, Vermont on behalf of themselves, their heirs, successors, and assigns (hereinafter "Grantors"), pursuant to the authority granted in Title 10 V.S.A. Chapter 155 and in consideration of the payment of Ten Dollars and other valuable consideration paid to their full satisfaction do freely give, grant, sell, convey and confirm unto the \_\_\_\_\_, a Vermont non-profit corporation with its principal office in \_\_\_\_\_, Vermont and its successors and assigns (hereinafter "Grantee") forever, the development rights and perpetual and assignable river corridor conservation easement and restrictions, all as more particularly set forth below, said rights and easement pertaining to a portion only of a certain parcel of land located in the Town of \_\_\_\_\_, \_\_\_\_\_ County, Vermont, and being more particularly described in Schedule A attached hereto and incorporated herein (hereinafter "the Protected Property").

The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by Grantors herein, if any, and those reasonably required to carry out the permitted uses of the Protected Property as herein described. The development rights and restrictions hereby conveyed are rights and interests in real property pursuant to 10 V.S.A. §§823 and 6303. The river corridor conservation easement and restrictions hereby conveyed to the Grantee consist of covenants on the part of the Grantors to do or refrain from doing, severally and collectively, the various acts set forth below. It is hereby acknowledged that these covenants shall constitute a servitude upon the land and run with the land.

**I. Purposes of this Grant**

Grantors and Grantee acknowledge and agree that, consistent with the objectives of the river corridor management program administered by the Vermont Agency of Natural Resources, Department of Environmental Conservation, the purposes of this grant are to allow the \_\_\_\_\_ River to re-establish its natural slope and meander pattern, have banks stabilized by a buffer of native, predominantly woody vegetation, and access to natural floodplains in order to reduce flood and erosion hazards, improve water quality through capture and storage of flows, sediment and nutrients, and to conserve and enhance aquatic and wildlife habitats and the natural processes associated with the Protected Property now and in the future.

Grantors and Grantee acknowledge and agree that this Grant of Development Rights and River Corridor Conservation Restrictions will accomplish the above-recited purposes, and that, more specifically, it is their intent that those purposes be achieved by:

1. Accommodating the equilibrium conditions and associated physical adjustment processes of \_\_\_\_\_ River.
2. Minimizing, to the extent consistent with (1) above, future conflicts between the physical adjustment processes of the river and incompatible land use and other channel management activities on the Protected Property.

These purposes will be advanced by conserving the Protected Property because it possesses the following attributes: *[Numbers may change, based on more detailed mapping prior to signing of this easement.]*

- a) it contains \_\_\_\_\_ feet of frontage on natural watercourse(s) including the \_\_\_\_\_ River **[add if applicable: and \_\_\_\_\_[name(s)]\_\_\_\_\_ its tributary(ies)]**;
- b) it consists of \_\_\_\_\_ acres of land, in which the river **[add if applicable: and its above-named tributary(ies) are]** is unconstrained by permanent structural modifications and improvements; and
- c) it provides a meander belt width corridor to accommodate the equilibrium dimension, pattern, and profile of the \_\_\_\_\_ River **[add if applicable: and \_\_\_\_\_[name(s)]\_\_\_\_\_ its tributary(ies)]** (said river and tributaries being herein-after collectively referred to as "the River").

Grantors and Grantee recognize the Purposes of this Grant and share the common goal of conserving these values by the conveyance of this Grant of Development Rights and River Corridor Conservation Restrictions and to avoid the future public and private expenditures and public safety hazards that will arise from the conversion of the Protected Property and other riparian corridor lands to uses incompatible with the anticipated physical adjustments of the \_\_\_\_\_ River and its (named) tributaries and to prevent the use or development of the Protected Property for any purpose or in any manner which would conflict with the intent and Purposes of this Grant. Grantee accepts the development rights and restrictions contained in this conservation easement in order to achieve these objectives for the benefit of present and future generations. The purposes set forth above in this Section I are herein collectively referred to as "the Purposes of this Grant."

## **II. Roles and Responsibilities of State Agencies**

Grantors acknowledge that the Vermont Agency of Natural Resources, Department of Environmental Conservation and any successor agencies (VTDEC), is a third party beneficiary to this Grant, and covenants not to contest the ability of the VTDEC to enforce any provision or restriction contained in this Grant. As a condition of its status as third party beneficiary, that section of the VTDEC dealing with river management shall provide technical assistance to the Grantee for any channel management or maintenance activities and shall perform the responsibilities hereinafter set forth in this Grant.

Upon request, State Resource Agencies (as hereinafter defined) shall provide technical assistance within their areas of expertise to the Grantee in exercising its discretion on restrictions and uses of the Protected Property consistent with the provisions of Sections III, IV, and V, and with the Purposes of this Grant. In addition to the VTDEC, State Resource Agencies shall include the Vermont Agency of Natural Resources, Department of Forest, Parks, and Recreation (VTDFPR) and Department of Fish and Wildlife (VTDFW), and the Vermont Agency of Agriculture, Foods, and Markets (VTAAF), or any successor agencies.



### **III. Restricted Uses of Protected Property**

The restrictions hereby imposed upon the Protected Property, and the acts which Grantors shall do or refrain from doing, are as follows:

1. Except as otherwise permitted under this Grant, Grantors shall not construct, place, repair, remove or modify structures or structural elements such as revetments, levees, or earthen fills. Grantors shall not remove or deposit sand, gravel or rock, or otherwise manipulate the River, wetlands or other water bodies in a manner that will alter natural water levels of the \_\_\_\_\_ River during ordinary high water flows, or intervene in the natural physical adjustment of the River.

2. Except as hereinafter otherwise permitted in this Grant, an undisturbed buffer of a minimum of fifty feet (50') in width measured landward from the top of the bank(s) of the River, as it may move from time-to-time, and also any land located between the top of said bank(s) and the low water mark of the River (together hereinafter referred to as "the Buffer") shall be established and maintained. No agricultural activities that disturb the Buffer land surface and vegetation other than crossings and the maintenance of existing man-made drainage improvements (as per Section IV(5)) shall occur within the Buffer. Grantee may grant written permission for a non-commercial, non-motorized recreational trail and/or a new drainage structure through the Buffer to provide for drainage of lands outside the Buffer, if it and VTDEC determine, in their sole discretion, that any new trail or drainage structure will have minimal impact through or across the Buffer (consistent with Section IV(5)), and is consistent with the Purposes of this Grant.

3. No timber harvesting shall be allowed within the Buffer, except when the Protected Property is included in a Forest Management Plan approved by the Grantee or enrolled as managed forest land in the State of Vermont's Use Value program or similar successor program. Harvesting must be conducted consistent with a forest management prescription, which has the primary purpose of maintaining a forested riparian buffer, and as provided for in Section III(2), consistent with the Purposes of this Grant. The Grantee may grant written permission for a temporary opening and crossing of the Buffer for the purpose of timber harvesting on lands across the River that have no other reasonable access. Cutting and removing invasive species from the Buffer shall be permitted with the prior written approval of the Grantee if deemed to be consistent with the Purposes of this Grant by Grantee in its sole discretion.

4. No clearing of existing forests to establish fields, orchards or pastures, shall occur elsewhere within the Protected Property except with prior written permission from the Grantee, if it and the VTDEC determine, in their sole discretion, after consultation with the VTAAFM, that the clearing of existing woody vegetation outside the Buffer to enable agricultural use will be consistent with the Purposes of this Grant. Notwithstanding the foregoing, Grantors may clear orchards or other tree-based agricultural areas outside of the Buffer when switching from one agricultural use to another.

5. Except for routine seasonal preparation of agricultural fields for planting that does not require filling or excavation, or disturbances that may be approved as hereinafter provided, there shall be no disturbance of the surface, including, but not limited to, filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the land in any manner. With the prior written approval of the Grantee and DEC, other disturbances of the surface within the Protected Property may be undertaken as may be reasonably necessary to carry out agricultural and forestry uses, including the installation and

maintenance of man-made drainage improvements (as per Section IV(5)).

6. No residential, commercial, industrial, or mining activities shall be permitted, and no building, structure or appurtenant facility or improvement (other than fences and at-grade fords of streams) shall be constructed, created, installed, erected, or moved onto the Protected Property, except as specifically permitted under this Grant or as may be permitted in writing by Grantee if deemed by Grantee and VTDEC in their sole discretion to be consistent with the Purposes of this Grant following consultation with the VTAAFM. The Protected Property shall be used for agricultural, forestry, educational, non-commercial recreation, and open space purposes only.

7. No rights-of-way, or easements for ingress or egress, driveways, roads, utilities, or other easements or rights shall be constructed, developed, granted, or maintained into, on, over, under, or across the Protected Property, without the prior written permission of Grantee, except as otherwise specifically permitted under this Grant, and as appear of record prior to the date of this Grant. Grantee may grant permission for any rights-of-way, or easements for ingress or egress, driveways, roads, utilities, other easements or rights, if Grantee and VTDEC determine in their sole discretion, that any such rights-of-way, easements for ingress or egress, driveways, roads, utilities, other easements or rights are consistent with the Purposes of this Grant.

8. The Protected Property shall not be subdivided or conveyed in separate parcels without the prior written approval of Grantee, which approval may be granted, conditioned or denied in Grantee's and VTDEC's sole discretion.

9. No use shall be made of the Protected Property, and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purposes of this Grant. Grantors and Grantee acknowledge that, in view of the perpetual nature of this Grant, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Grant. Grantee and VTDEC, therefore, in their sole discretion, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in this Grant, or (b) alterations in existing uses or structures, are consistent with the Purposes of this Grant. All such approved uses, structures or improvements shall not be protected from river flooding or movement, and any loss of the capital investment is solely born by the Grantor.

#### **IV. Permitted Uses of the Protected Property by Grantors**

Grantors shall have the right to make the following uses of the Protected Property:

1. The right to maintain and use cultivated fields, orchards, and pastures together with and subject to the restrictions in Section III, above, the right to construct, maintain, and repair fences and gravel or other permeable surfaced access roads for these purposes. Consistent with Section III(4), Grantors may clear orchards or other tree-based agricultural areas, outside the Buffer, when switching from one agricultural use to another.

2. The right to conduct maple sugaring operations, and the right to harvest timber and other wood products, together with the right to construct and maintain roads necessary for both such activities, subject to the restrictions in Section III(2) and in accordance with sound forestry practices and in accordance with a forest management plan for which Grantors have received the prior written approval of Grantee. Grantors may conduct maple



sugaring operations, and may harvest firewood outside of the Buffer for heating the Grantors' residences and structures, both on existing woods roads only, without submission and approval of a plan. Grantee's approval of forest management plans that may be submitted from time to time shall not be unreasonably withheld or conditioned, if such plans have been approved by a professional forester and if such plans are consistent with the Purposes of this Grant.

3. The right to clear, construct, and maintain trails for non-commercial walking, horseback riding, skiing, and other non-commercial, non-motorized recreational activities within and across the Protected Property, all subject to the restrictions in Section III(2) and in a manner consistent with the Purposes of this Grant. Non-commercial snowmobiling may be permitted at the discretion of Grantors.

4. Following a flood event, Grantors may remove wood and other non-earthen debris from the Protected Property on surfaces outside of the River and the Buffer, but only if necessary to prevent injury or damage to persons or property outside of the Protected Property or to enable the resumption of agricultural, silvicultural or non-commercial recreational activity, being conducted within the Protected Property immediately prior to the flood event.

5. The right to maintain existing drainage improvements on the Protected Property in compliance with all applicable laws and regulations, including drainage improvements to those watercourses that have not been specifically identified for protection within the Protected Property (Section I(c), above), but only to the extent necessary to enable continued use of agricultural soils on property outside the Buffer. Subject to receiving the prior written approval of the Grantees and DEC, Grantors may create and maintain new man-made drainage improvements across the Protected Property, but only to the extent necessary to maintain productive agricultural soils outside the Protected Property for agricultural purposes, constructed in a manner to have minimum impact on natural water flow on the Protected Property, are otherwise consistent with the Purposes of this Grant, and comply with all applicable laws and regulations.

6. The right to manage beaver dams in accordance with best management practices established by the Agency of Natural Resources but only to the extent necessary to prevent or mitigate flooding outside of the Buffer.

7. Subject to written approval by the Grantee, not to be unreasonably withheld, the right to place on the Protected Property temporary, portable agricultural structures (such as irrigation intakes, pump platforms, above ground piping), temporary recreational structures (such as hunting blinds), and one small seasonal dock or boat landing as long as these structures do not require excavation or tree removal other than may be necessary for the ingress and egress of the temporary structure. Machinery associated with such uses shall be removed if not in use. All such structures or improvements shall not be protected from river flooding or movement, and any loss of the capital investment is solely born by the Grantor.

## **V. Permitted Uses of the Protected Property by Grantee**

Grantors and Grantee acknowledge and agree that achieving the Purposes of this Grant generally means no intervention in the physical changes that may occur in the course, current, or cross-section of the River. Achieving the Purposes of this Grant, however, may require limited management of the Protected Property. Therefore, the following rights and uses hereby conveyed to the Grantee, and to the Grantee's designees including VTDEC, licensees and successors in interest:

1. A right of access over, across and within the Protected Property, upon reasonable notice, to conduct any and all activities provided hereunder or related to the Purposes of this Grant.
2. With the approval and participation of the Grantors, the right to mark the general boundaries of the Protected Property.
3. The right within the Protected Property, with approval from the VTDEC and consistent with the Purposes of this Grant, to conduct stream and channel management activities including, but not limited to: installing, maintaining, repairing, or removing structural elements or improvements including, but not limited to, bank revetments, levees, or earthen fills; adjusting bank height or otherwise manipulating the water courses. No such management activity shall be undertaken without adequate notice to the Grantors and due regard to the impact of such management activity on the Grantors' use of the Protected Property otherwise permitted under this Grant, particularly agricultural use; so that Grantors' capital investments in the Protected Property approved by the Grantee subsequent to this Grant, if any, and which will be lost due to management activity are reasonably considered but without the obligation to pay compensation for such loss.
4. The right to establish and maintain native woody vegetation within the Buffer along the River described in Section III(2), above and the right to manage for exotic invasive species.

## **VI. Access to the Protected Property (If necessary due to no frontage on a public road.)**

Grantors do freely give, grant, sell, convey and confirm unto Grantee and its designees, licensees and its successors and assigns, and to the third party beneficiary, VTDEC, forever, a perpetual and separately assignable easement for a right-of-way, said easement being on, over, under and across all of a certain parcel of land located in the Town of \_\_\_\_\_, Vermont, and being more particularly described as follows:

**Example:** An easement 30 feet in width for pedestrian and vehicular access on, over and across the existing driveway running from the intersection of said driveway and the \_\_\_\_\_ boundary of the Protected Property, on, over and across other land of the Grantors to the \_\_\_\_\_ sideline of the \_\_\_\_\_ Road (T.H. No. \_\_\_\_). Said access is depicted as "ROW" and more particularly described in Schedule A hereto.

Such access shall be for pedestrian and vehicular use only for access to the Protected Property for all rights and purposes conferred upon Grantee pursuant to this Grant including, but not limited to, management of the Protected Property and monitoring and enforcement by Grantee. No public use or access is permitted by this right-of-way. The rights conveyed herein are in addition to, not in lieu of, the covenants and restrictions otherwise conveyed by this Grant.

## **VII. Enforcement of the Restrictions.**

Grantee shall make reasonable efforts from time to time to assure compliance by Grantors 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, 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 this Grant, Grantee shall give notice to Grantors of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action by Grantors 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, but which has caused Grantee to incur extraordinary costs, including staff time, in investigating the non-compliance and securing its correction, Grantors shall, at Grantee's request, reimburse Grantee for all such costs incurred in investigating the non-compliance and in securing its correction.

Failure by Grantors to cause discontinuance, abatement, or such other corrective action as may be demanded by Grantee within a reasonable time after receipt of notice and reasonable opportunity to take corrective action shall entitle 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 Grantee to corrective action on the Protected Property, if necessary. If the court determines that Grantors have failed to comply with this Grant, Grantors shall reimburse 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 Grantors have not failed to comply with this Grant and that Grantee has initiated litigation without reasonable cause or in bad faith, then the Grantee shall reimburse Grantors for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees. 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 Grantees at law, in equity, or through administrative proceedings.

No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair 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, when the event or circumstance of non-compliance occurred after said prior owner's ownership or control of the Protected Property terminated.

In addition, pursuant to the provisions of Section II, the VTDEC, as third party beneficiary, has the right to enforce in the circumstance of Grantors' non-compliance with this Grant.

## **VIII. Miscellaneous Provisions**

1. Where Grantors are required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantees have 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 Grantee. Grantors shall reimburse Grantee or Grantee's designee for all extraordinary costs, including staff time, incurred in reviewing the proposed action requiring Grantees' approval; but not to include those costs which are expected and routine in scope. Upon the request of Grantors, Grantee shall deliver to Grantors, in written recordable form, any approval, disapproval, election, or waiver given by Grantee pursuant to this Grant.

2. Grantors agree that the construction of any buildings, structures, or improvements, or any use of the land otherwise permitted under this Grant, or the subdivision and separate conveyance of any land which may be approved by Grantee under Section III(8), above, shall be in accordance with all applicable ordinances, statutes, and regulations and at Grantors' sole expense.

3. It is further agreed that the Protected Property is accurately depicted and described in both Schedule A and a Baseline Documentation Report ("BDR") signed by the original Grantors on or about the date of this Grant and held by Grantees. Grantee may use the BDR in enforcing this Grant, and is not limited in the use of the BDR to show a change of conditions.

4. Grantee shall transfer the development rights, and conservation easement and restrictions conveyed by Grantors herein only to a State agency, municipality, or qualified organization, as defined in Chapter 34 or Chapter 155 Title 10 V.S.A., in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers.

5. In the event the development rights or conservation restrictions conveyed to the Grantee herein are extinguished by eminent domain or other legal proceedings, 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 Grantors and Grantee in accordance with the value of their respective interests as determined by an appraisal commissioned by Grantee at the time of extinguishment. 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.

6. In any deed or lease conveying an interest in all or part of the Protected Property, Grantors 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. Grantors shall also notify Grantee and the VTDEC of the name(s) and address(es) of Grantors' successor(s) in interest.

7. 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 \_\_\_\_\_ 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.