

State of Vermont
Commissioner's Office
Department of Forests, Parks & Recreation
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Agency of Natural Resources
Michael C. Snyder, Commissioner

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MEMORANDUM

TO: Senator Peg Flory, Senate Institutions Committee Chair
Representative Alice Emmons, House Corrections and Institutions
Committee Chair

FROM: Michael Snyder, FPR Commissioner

DATE: February 6, 2018

SUBJ: **Proposed Joint Resolution Pertaining to State Lands
Stowe Mountain Resort Lease Amendments and Amendment to
Conservation Easement in Plymouth, Vermont**

The Department submits the following proposal and accompanying draft Joint Resolution (Attachment A), seeking General Assembly authorization for the Commissioner to 1) amend the ski area Lease for the Stowe Mountain Resort ski area. These amendments are substantially similar to some of the Lease amendments that were authorized by the General Assembly last session via JR 25 for Smuggler's Notch; and 2) to amend a conservation easement interest held by the State, Department of Forests, Parks and Recreation in the Town of Plymouth, Vermont.

I. Summary of Stowe Mountain Resort Lease

Stowe Mountain Resort leases approximately 1,400 acres of Mt. Mansfield State Forest as part of the ski resort area. The current ski area lease was executed in 1972, and can be renewed in 10 year increments until 2057.

Under the terms of the Stowe Mountain Resort state ski area lease, the Department must consent to an assignment of the lease. The Department provided consent for assignment of the Stowe Mountain Resort lease from Mt. Mansfield Company, Inc. to Vail Resorts in June 2017.

At the request of the Department, Vail Resorts/Stowe Mountain Resort and the Department also entered into separate agreement to jointly seek General Assembly approval to amend the lease in order to modernize and update the lease as per some of the recommendations from the State Auditor's 2015 report similar to the Smuggler's Notch Lease Amendment last session. Stowe Mountain Resort has begun to implement the terms of this agreement as outlined below. In addition, there are two minor cleanup items for some historic real property provisions previously approved by the State contained in the agreement. The Department is now seeking legislative authority to amend the lease to include the terms of the agreement between the Department and Vail Resorts/Stowe Mountain Resort.

The agreement between the Department and Vail Resorts/Stowe Mountain Resort addresses the following:

- Ensuring that the state is entitled to rental fees on the existing Zip Tour and Tree Top Adventure activities and any new commercial recreational activities that may be developed on state leased lands;
- Updating and increasing general liability insurance requirements and adding a new provision to improve the indemnification provision;
- Developing an uphill ski policy to ensure that the public can access state-leased lands in a safe manner compatible with mountain operations;
- Expand upon the existing requirement of the lessee to seek written consent from the State to assign the lease;
- Change the leasehold boundary to include a prior General Assembly authorized addition of ten acres to the lease lands;
- Delete the reference in the lease that is obsolete due to prior relocation of the State Campground.

II. Amendment of Conservation Easement, Plymouth Vermont

The Department proposes to amend a conservation easement dated July 30, 2001 made by David A. Cederlund and Maureen E. Cederlund, trustees of the David A. Cederlund Living Trust on the so-called Parcel #9 consisting of approximately 274.12 acres, excepting a 10-acre exclusion area called the Development Parcel, the total easement area consists of approximately 230.5 acres. (See attached survey map). The purpose of the proposed easement amendment is to reconfigure the 10-acre Development Parcel to include the footprint of a shed constructed by the landowner. The shed was mistakenly constructed approximately 5-feet over the eastern boundary between the Development Parcel and the conservation easement area.

The landowner has agreed to cover the costs associated with surveying, documenting and recording the reconfigured Development Parcel in the Town of Plymouth land records. The Commissioner will approve the draft reconfiguration survey of the Development Parcel to ensure that the total area does not exceed 10-acres and will not result in any negative impacts to conservation values on the protected portion of the property.

Please let me know if you have any questions related to this proposal. As always, we look forward to meeting with your respective Committees to discuss this proposal at your convenience.

cc: Meghan Purvee
Rebecca Washburn
Kayla Dewey
Danielle Bean

ATTACHMENT A

Proposed Joint Resolution for Year 2018 Legislative Session (Stowe Mountain Resort Lease Amendments and Cederlund Easement Amendment):

Whereas 10 V.S.A. §2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange, lease or amend easement interests in certain lands, with the approval of the General Assembly, and

Whereas the General Assembly considers the following actions to be in the best interest of the state, now therefore be it

Resolved by the Senate and House of Representatives:

First: That the Commissioner of Forests, Parks and Recreation is authorized to amend the Stowe Mountain Resort ski lease as follows:

- 1) Article 6 of the Lease, in part, requires MMC to pay a rental fee equal to 5% of gross receipts from ski lifts located on the leasehold area. As shown on page 5 of the “Mt. Mansfield Company Report of Procedures and Findings For the 2015-2016 Ski Season,” MMC has paid a 5% rental fee on both revenues from lifts and its recent addition of the Zip Tour and Tree Top Adventure activities within the leasehold area (the Zip Tour and Tree Top Adventure activities being defined as “Additional Activities”). Consistent with this approach the State and Vail now agree to apply the 5% rental fee to the Additional Activities and any new commercial recreational activities occurring on the leasehold.
- 2) Notwithstanding language in Article 14 of the Lease, Vail shall indemnify and hold harmless the State and shall provide general liability insurance policy as follows:
 - a) Except in the event of the State’s gross negligence or willful misconduct, Vail shall defend as well as indemnify and save harmless the State and Additional parties as noted in Article 14 of the Lease from any damages and any claim arising out of or related to the said use, maintenance, operation of lifts or premises.
 - b) Vail shall carry general liability insurance in a policy or policies at all times with minimum coverage of at least \$10,000,000 per occurrence and \$20,000,000 in aggregate, naming the State and additional parties as noted in Article 14 of the Lease as additional insureds under such coverage. No more than once every five (5) years, the State may review required insurance amounts set forth in this paragraph and may increase such insurance amounts to amounts that are reasonably representative of the then current market for insurance amounts for similar operations as reasonably determined by the State.
- 3) Vail shall provide access to the public to the leasehold area, including for uphill travel on the ski area ski trails, subject to Vail’s right to impose reasonable restrictions on the public’s access for uphill travel for safety, operational, or business purposes. Vail shall coordinate with the State to take all reasonable efforts to designate specific trails, times and parking

locations that may be used by the public for uphill travel in the leasehold area, subject to the above restrictions. Vail shall establish a written policy consistent with these terms and shall provide a copy to the State and make the policy publicly available.

4) Other than a Permitted Transfer, Vail (or following a Permitted Transfer, any Permitted Transferees) shall not assign the Lease or engage in a transaction by way of merger, consolidation or sale (singly or in combination) involving the transfer of equity securities constituting more than one-half of the total voting securities or interests of Vail (or if applicable, its Permitted Transferees), without the prior written consent of the State. Notwithstanding the foregoing, an assignment of the Lease by Vail to, or any transaction involving the transfer of equity securities of Vail to any direct or indirect wholly owned subsidiary of Vail Holdings, Inc. shall be a “Permitted Transfer” provided that the Guaranty remains in full force and effect following such Permitted Transfer.

5) Add an approximately 10-acre section of State land to the ski area Lease which was previously approved by the Vermont legislature in Act 148, Section 35, 1998, such land is located between the two “S” turns on Vail’s Toll Road.

6) Delete paragraph 3(d) of the Lease which is presently obsolete due to the relocation of the State campground and the development of a separate independent water source that is not located within the leasehold area.

Second: The Commissioner of Forests, Parks and Recreation is authorized to amend a conservation easement encumbering approximately 230.5 acres of land in the Town of Plymouth, Vermont as follows:

The Commissioner of Forests, Parks and Recreation is hereby authorized to amend the Easement and Grant of Development Rights and Conservation Restrictions dated July 30, 2001 conveyed by David A. Cederlund and Maureen E. Cederlund, trustees of the David A. Cederlund Living Trust to the State of Vermont, Agency of Natural Resources, Department of Forests, Parks and Recreation to reconfigure the 10-acre so-called Development Parcel to include the footprint of a shed that was constructed over the boundary of the existing Development Parcel footprint and the Easement area. The landowners, David A. Cederlund and Maureen E. Cederlund shall prepare and cover the costs of a new survey of the reconfigured 10-acre Development Parcel and shall cause the survey and Easement Amendment Document to be recorded in the Town of Plymouth land records after review and approval by the Department. The reconfigured Development Parcel shall not exceed 10-acres and shall be configured to prevent negative impact to the conservation values of the portion of the property subject to the conservation easement.

ATTACHMENT B

NOTE:

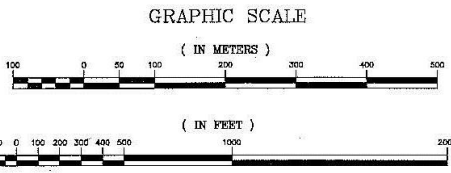
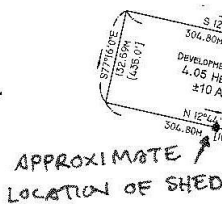
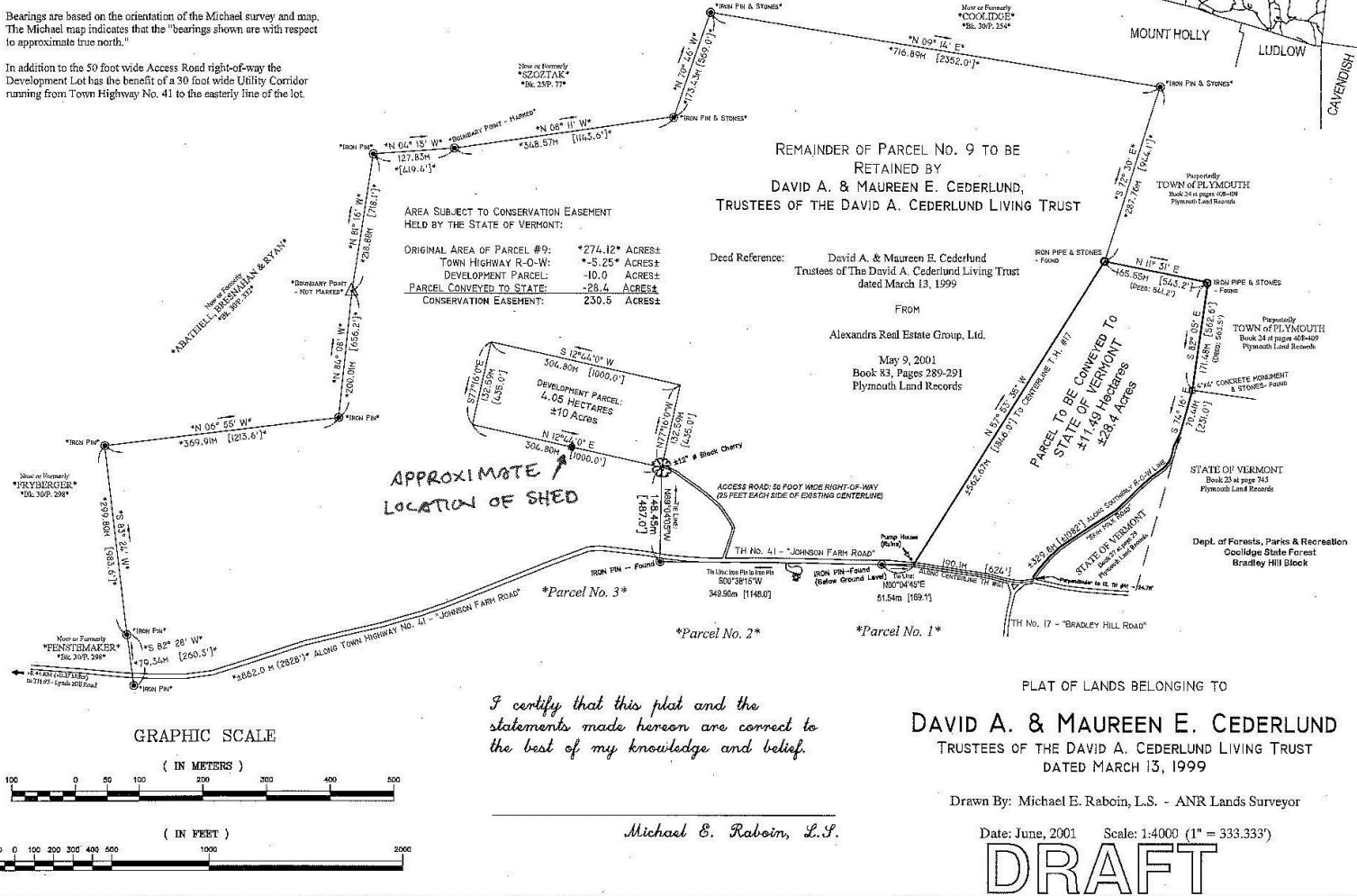
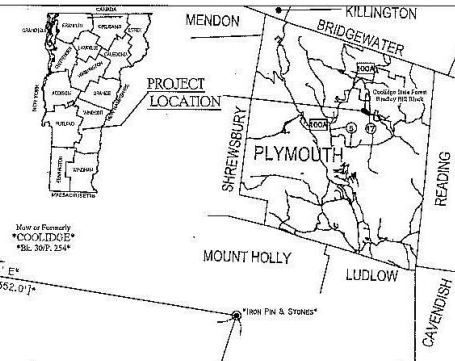
This plat is based on a Total Station Survey done by the VT Dept. of Forests, Parks & Recreation, State Lands Division, and a map entitled "Division of Lands of Philip Dean", dated November 8, 1987, by Ralph J. Michael, L.S. Said map is purportedly recorded in Map Book 4 at page 24 of the Plymouth Land Records.

Information shown hereon bracketed by asterisks (*) was taken from the Michael Survey. No attempt was made to verify its accuracy nor its validity to current ownerships or conditions.

Bearings are based on the orientation of the Michael survey and map. The Michael map indicates that the "bearings shown are with respect to approximate true north."

In addition to the 50 foot wide Access Road right-of-way the Development Lot has the benefit of a 30 foot wide Utility Corridor running from Town Highway No. 41 to the easterly line of the lot.

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I certify that this plat and the statements made hereon are correct to the best of my knowledge and belief.

Michael E. Raboin, L.S.

PLAT OF LANDS BELONGING TO
DAVID A. & MAUREEN E. CEDERLUND
TRUSTEES OF THE DAVID A. CEDERLUND LIVING TRUST
DATED MARCH 13, 1999

Drawn By: Michael E. Raboin, L.S. - ANR Lands Surveyor

Date: June, 2001 Scale: 1:4000 (1" = 333.333')

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