

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Vermont Natural Resources Board,
Petitioner,

v.

Riverbend Associated Limited
Partnership & Edward C. Childs,
Respondent.

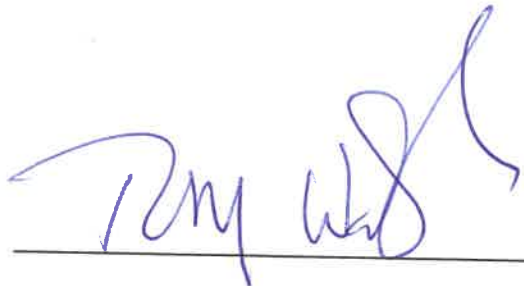
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Docket # 35-3-19 Vtec

ORDER

The Assurance of Discontinuance signed by the Respondent on January 9, 2019, and filed with the Superior Court, Environmental Division, on March 1, 2019, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Dated this 4th day of March 2019.



Thomas G. Walsh, Judge
Vermont Superior Court
Environmental Division

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

Background

1. The Respondent, Riverbend Associates Limited Partnership, owns approximately 750 acres identified in Book 208, Page 476 of the Land Records of Rockingham, Vermont as the subject of a deed to Riverbend Associates Limited Partnership the permittee as grantee (the Project Tract). The Project Tract is also described as some of the property located between Alden Road, Interstate-91, O'Brien Road, Hines Road, and the Williams River in the Town of Rockingham, Vermont.
2. The Project Tract is subject to Land Use Permit 2W0866, which authorized the permittee to conduct forestry management, road building, and earth extraction under specific conditions, granted on January 23, 1991.
3. Permit Amendment 2W0866-1 authorized the creation of a 14-lot subdivision, including 13 house lots and a larger undeveloped parcel.
4. The Respondent, Edward C. Childs, is a principal and managing general partner of Riverbend Associates Limited Partnership, and has directed many of the actions of the Riverbend Associates Limited Partnership regarding the Project Tract.
5. A site visit of the Project Tract revealed several violations of Land Use Permit Series 2W0866 as outlined below:

Logging Within Designated Stream Buffer Zones

6. Condition 8 of Land Use Permit 2W0866-1 states:

All intermittent and permanent streams shall be protected with a 50 foot undisturbed naturally vegetated buffer strip measured from the tops of the stream banks. No timber cutting is allowed within the buffer strip of the permanent streams. Light selective cutting is acceptable in the outer 25 feet of the buffer strip on intermittent streams. In the area of O'Brien Brook where the top of the bank is a few hundred feet from the stream a buffer strip measured from the high water mark could be substituted as provided as follows:

<u>Slope of Land %</u>	<u>Width of Buffer Strip (feet)</u>
0-10	50
11-20	70
21-30	90

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31-40*

110

*Add 20 feet for each additional 10% slope.

(Emphasis in original).

7. Respondents, by and through actions of Respondents' logger, have violated Condition 8 of Land Use Permit 2W0866-1 by cutting timber within the designated buffer zones of streams at six areas on the Project Tract.
8. Respondents claim this cutting was inadvertent. The Board finds such a characterization immaterial to whether a violation occurred.

Failure to Permanently Deed Restrict 82 Acres for Deer Wintering Habitat

9. Condition 30 of Land Use Permit 2W0866-1 required Respondent, Riverbend Associates Limited Partnership, to deed restrict, by December 1, 1995, 82 acres of critical habitat for white-tailed deer on the Project Tract using a deed approved by the Agency of Natural Resources.
10. Condition 31 of Land Use Permit 2W0866-1 required Respondent, Riverbend Associates Limited Partnership, to maintain a 300 foot buffer around this critical habitat mitigation land. Exhibit 68 of Land Use Permit 2W0866-1 states that when this buffer is added to the 82 acres of critical habitat mitigation land, a total of approximately 140 acres will constitute permanently protected habitat. Exhibit 83 of Land Use Permit 2W0866-1 depicts 140 acres as the "proposed mitigation area."
11. On August 8, 1996, the District 2 Environmental Commission issued Land Use Permit 2W0866-2 (revised). Condition 17 of this permit extended the date by which Respondent, Riverbend Associates Limited Partnership had to execute the deed restrictions to December 1, 1996.
12. Condition 17 of Land Use Permit 2W0866-2 (revised) states:

The permittee shall establish written deed restrictions for 82 acres of critical wildlife habitat and shall submit a draft of such documentation to the District 2 Environmental Commission by November 1, 1996, for review and approval. The permittee shall also cause the approved and signed deed restrictions to be recorded in the Rockingham Land Records by December 1, 1996. The permittee shall file a copy of the approved and signed deed restrictions with the District 2 Environmental Commission by December 1, 1996.
13. The Respondents submitted a draft of the "Grant of Development Rights and Conservation Restrictions" to the District 2 Environmental Commission March 6, 1997. Respondents and

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the Board attempted to negotiate the terms of the restrictions, but to-date the Respondents have not permanently deed restricted the critical habitat mitigation land.

14. Respondents assert that any failure of state personnel to finalize and approve the deed restrictions, should deem the Respondents in compliance. The Board acknowledges that both parties bear some responsibility for the delay in finalizing the deed restrictions, but disagrees that any delay attributable to the Board renders Respondents in compliance.
15. Therefore, the Respondents technically violated Condition 17 of 2W0866-2, however based on delay resulting from both parties, the Board does not assess a penalty based on this violation.

Logging of Hemlock on the Critical Habitat

16. Condition 32 of Land Use Permit 2W0866-1 states, “[t]here shall be no logging of hemlock on any portion of the critical habitat on the tract of land.”

17. The Findings of Fact and Conclusions of Law for Permit 2W0866-1 state:

The applicant will permanently deed restrict 82 acres of critical cover. Additionally, the applicant will provide a 300 foot buffer around the mitigation land. The remaining critical wintering habitat on the parcel (the rest of stands H2, H3, H4 and C1) will be maintained and possibly used as mitigation for future development. Exhibits 80 and 93.

In order to protect the critical habitat there needs to be a prohibition of logging any hemlock. Exhibit 80.

Permit 2W0866-1, *Findings of Fact and Conclusions of Law* ¶¶ 3-4, page 12.

18. Exhibit 93 of Land Use Permit 2W0866-1 is a map originally submitted by the Respondents which shows critical habitat on the Project Tract including stands H2, H3, H4 and C1. It also shows the locations of the 300 foot buffer around the critical habitat mitigation land.
19. The Respondents assert that they understood Condition 32 to restrict the logging of hemlock only within the critical habitat mitigation land and any violation of Condition 32 of Land Use Permit 2W0866-1 was unintentional.

Harvesting Trees within the Critical Habitat without Approval of the Vermont Fish and Wildlife Department

20. Condition 33 of the Land Use Permit 2W0866-1 states, “All plans for harvesting of trees in critical habitat on the tract shall be approved in writing by the Department of Fish & Wildlife.”

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21. The Finding of Fact and Conclusions of Law for Permit 2W0866-1 states that “[g]iven the problems with previous harvesting operations in the critical habitat it is necessary for these activities to be coordinated with the Department of Fish and Wildlife. Exhibits 46, 80 and testimony.” *Findings of Fact and Conclusions of Law* ¶5, page 13.
22. The Respondents have been harvesting timber from critical habitat since at least 1995 without a forest management plan that has been approved by Department of Fish & Wildlife (Department).
23. Respondents submitted a forest management plan to the Department in July of 2012; however, that plan has not been approved by the Department and will not be until the resolution of this enforcement action.
24. Therefore, the Respondents have violated Condition 33 of Land Use Permit 2W0866-1 by harvesting trees in the critical habitat as designated on exhibit 93 of the Permit without prior approval from the Department.

Delineation of Critical Habitat

25. Condition 34 of Land Use Permit 2W0866-1 states, “[t]he mitigation boundary for the critical habitat shall be delineated no later than one year after receipt of the deposit on the first lot.”
26. Exhibit 80 of Land Use Permit 2W0866-1 states that the Department recommended “the mitigation area boundary to be delineated on the ground.”
27. The Town of Rockingham 2012 tax maps suggests that the Respondents have sold 9 lots.
28. Respondents assert that it flagged the boundary on the ground and by map at the time of their permit application in 1995.
29. Although this flagging may have been done, as of a February 2014 site visit the Respondent did not have a delineated mitigation boundary for the critical habitat, and therefore violated condition 34 of Land Use Permit 2W0866-1 and its obligation to “maintain” the project in accordance with the plans and exhibits on file.

Construction of a Camp Structure without Environmental Commission Approval

30. Condition 39 of Land Use Permit 2W0866-1 states: “[n]o further subdivision, alteration, or development of any parcels of land approved herein shall be permitted without the written approval of the District Environmental Commission.”
31. After the issuance of Land Use Permit 2W0866-1, Respondents constructed on the Project

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Tract a camp-style structure for a security person, which was verbally approved by the Town according to the Respondents, located on the main haul road near the brook that flows southward through the southeast corner of the Project Tract.

32. The camp-style structure consists of a recreational vehicle (RV) with a semi-permanent roof and an attached three-sided cabin-like addition with attached stove pipe. The camp-style structure is occupied at least several months during the year to provide security for the Project Tract and the site employs an outhouse toilet.
33. By constructing the camp-style structure and outhouse on the Project Tract without written approval from the District Environmental Commission, the Respondents have violated condition 39 of Land Use Permit 2W0866-1.

AGREEMENT

Based on the Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. No later than **120 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall submit a Forest Management Plan for the Project Tract approved by the Department to the District 2 Environmental Commission, which includes the following:
 - a. A map depicting the parcel to be conserved by the below-described Grant of Development Rights and Conservation Restrictions to the Department.
 - b. A detailed description of the proposed management activities within the conserved area. All proposed management activities shall be consistent with the Grant to the Department and the long-term conservation of deer wintering habitat. The Forestry Management Plan may address whether it is appropriate to transition hardwood dominated mixed-wood stands toward pine and hemlock dominated stands and whether and how to manage for hemlock wooly adelgid. The Department has agreed to consider these and other issues in reviewing any proposed Plan. Respondent acknowledges that it may need to apply for a Land Use Permit Amendment if an approved Forest Management Plan authorizes forestry activities that are inconsistent with the terms and conditions of Land Use Permit series 2W0866.
 - c. A detailed descriptions of the proposed management activities within all areas designated as H2, H3, H4, and C1 on Exhibit 93 of Land Use Permit 2W0866-1.
- B. No later than **365 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall record a survey, conducted by a surveyor approved by the Department, of the parcel to be conserved by the below-referenced Grant of Development Rights and Conservation Restrictions to the Department. The western and

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north western boundaries of the to-be conserved parcel abut adjoining properties. To avoid encroachment on these properties, the survey shall accurately identify the boundaries shared with these properties. If this can't be done through research in the land records and a site visit to locate existing pins, markers, and/or monuments, Respondents shall conduct a traditional survey of them. All remaining boundaries may be surveyed via GPS pursuant to the specifications in Exhibit 1 attached to this Assurance.

- C. No later than **365** days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall install boundary markings in accordance with Department directives, along the boundary of the parcel to be conserved by the below-referenced Grant of Development Rights and Conservation Restrictions to the Department.
- D. No later than **365 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall execute and record the Grant of Development Rights and Conservation Restrictions to the Department that is attached to this Assurance as Exhibit 2. Schedule A to this Grant, which will contain the property description of the conserved lands, shall be finalized upon completion of the above-referenced survey. The conserved lands shall contain the 82 acres referenced in condition 30 of Land Use Permit 2W0866-1 and condition 17 of Land Use Permit 2W0866-2 (Revised) and the 300 foot buffer referenced in condition 31 of Land Use Permit 2W0866-1. These areas are depicted on Exhibits 93 and 83 to Land use Permit 2W0866-1. It shall also contain the areas of land needed to fill in the gaps that currently exist between these areas. The area of the parcel of land to be covered by the Grant to the Department will consist of approximately 145 acres and its approximate boundaries are depicted on the map attached to this Assurance as Exhibit 3. This additional acreage shall serve as partial mitigation for deer wintering habitat that was compromised by the unauthorized logging activities referenced in this Assurance.
- E. No later than **180 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall conduct, under the Department's supervision, a baseline documentation report for the conserved lands subject to the above-referenced Grant of Development Rights and Conservation Restrictions.
- F. No later than **120 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall file an application for and diligently pursue an amendment to Land Use Permit 2W0866 for either the removal or approval of all unpermitted residential development and appurtenances, including the "camp-style structure and outhouse" on the Project Tract.
- G. For purposes of this Assurance, "diligently pursue" shall mean that Respondents shall (a) respond to any and all requests for information from the Act 250 District 2 Environmental Commission or the Coordinator for the Commission (as applicable) by the date set by the Commission or Coordinator, and (b) in good faith meet and comply with all scheduling or

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other orders or memoranda issued by the Commission. Respondents shall not be responsible for delays outside their control, including those caused by the Commission.

H. According to the below payment schedule and pursuant to 10 V.S.A. Ch. 201, Respondent shall pay: (i) a civil penalty in the amount of **Eight Thousand Dollars and Zero Cents (U.S.) (\$8,000.00)** for the violations noted herein; and (ii) **Six Thousand Six Hundred Seventy-three Dollars and Forty-three Cents (U.S.) (\$6,673.43)** to reimburse the Natural Resources Board for the costs of this enforcement action.

1. On or before April 1, 2020, **Five Thousand Dollars and Zero Cents (U.S.) (\$5,000)** by check made payable to the "Vermont Natural Resources Board."
2. On or before April 1, 2021, **One Thousand Six Hundred Seventy Three Thousand and Forty Three Cents (U.S.) (\$1,673.43)** by check made payable to the "Vermont Natural Resources Board."
3. On or before April 1, 2021, **Three Thousand Three Hundred Twenty Six Dollars and Fifty Seven Cents (U.S.) (\$3,326.57)** by check made payable to "Treasurer, State of Vermont."
4. On or before April 1, 2022, **Four Thousand Six Hundred Seventy Three Dollars and Forty Three Cents (U.S.) (\$4,673.43)** by check made payable to: "Treasurer, State of Vermont."

I. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay the following:

1. The amount of **Ten Dollars and Zero Cents (U.S.) (\$10.00)**, for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Rockingham land records, by check made payable to: "Town of Rockingham, Vermont."

J. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondents shall mail the Board an executed Acceptance of Service, on a form approved by the Board, showing that Respondents have actual notice of the Judicial Order and Assurance of Discontinuance.

K. All payments and documents required by this Assurance shall be sent to:

Natural Resources Board
10 Baldwin Street
Montpelier, Vermont 05633-3201

L. Respondents are jointly and severally liable for all obligations under this Assurance.

M. Each Respondent shall not deduct or attempt to deduct any payment made to the State pursuant to this Assurance from that Respondent's reported income for tax purposes or

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attempt to obtain any other tax benefit from such payment.

- N. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
- O. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
- P. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- Q. Pursuant to 10 V.S.A. § 8007(d), Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.
- R. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- S. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- T. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

SIGNATURES

(Two Signature Pages Follow)

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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Brattleboro, Vermont, this 9th day of January, 2019

Riverbend Associates Limited Partnership

By


Edward C. Childs, Duly Authorized Agent

*managing General Partner
Riverbend Assoc. L.P.*

STATE OF VERMONT

COUNTY OF WINDHAM, ss.

BE IT REMEMBERED that on the 9th day of January, 2019, personally appeared Edward C. Childs, individually and as a duly authorized agent of **Riverbend Associates Limited Partnership**, signers and sealers of the foregoing instrument who is known to me or who satisfactorily established his identity to me and acknowledged the same to be his free act and deed and the free act and deed of **Riverbend Associates Limited Partnership**, and that he has the authority to contract on behalf of **Riverbend Associates Limited Partnership** and that he has been duly authorized to enter into the foregoing Assurance on behalf of that entity.

Before me,


Notary Public

My Commission Expires: 2/15/19

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Dated in Montpelier, Vermont, this 1 day of March, 2019

NATURAL RESOURCES BOARD

By: 

Diane Snelling, Chair

Exhibit 1

The survey shall conform with *Standards for the Positional Accuracy of Cadastral Surveys When Using Global Navigation Satellite Systems (GNSS)*. February 23, 2009, Bureau of Land Management Department of the Interior. Refer to the 2001 version for additional detail if need be. The Surveyor shall use:

- Survey grade Global Positioning System (GPS) units that are rated for accuracy of less than 2.5 centimeter horizontally and 5.0 centimeters vertically,
- GPS units with survey-grade GNSS receivers that record dual frequencies and track at least eight satellites simultaneously on parallel channels,
- No fewer than two operational units: including a base station and a rover, each of which must receive signals from at least four separate satellites for a minimum total of eight.
- Fixed-height tripods the same height as any other fixed-height tripod on the project, the level bubble in adjustment, the center rod not bent or damaged, and the legs secure, and
- Appropriate Real-Time Kinematic (RTK) procedures.

During the survey, the surveyor shall conduct periodic quality control checks to ensure consistent, high quality data collection and point location information.

The Respondent shall provide the Department with:

a) Two stamped mylar property plans that accurately depict the boundary of the Easement, prepared by the surveyor, suitable for recording in the Registry of Deeds and the Town Land Records. The plans shall include the GPS coordinates (DGPS/State Plane) for every angle corner of the boundary of the Easement. Note that the Easement is odd shaped and there are approximately 40 or more angles or corners.

b) Electronic format in ACAD LLD 2000.DXF files (Autocad Format), or approved equal of all coordinate geometry of property plan.”

Riverbend Associates, Limited Partnership
By: *[Signature]* managing General Partner
Riverbend Assoc. L.P.

Exhibit 2

**GRANT OF DEVELOPMENT RIGHTS, CONSERVATION RESTRICTIONS
and PUBLIC ACCESS EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that, **Riverbend Associates Limited Partnership**, a real estate developer with its central place of business in Rockingham, Vermont on behalf of itself and its successors and assigns (hereinafter "Grantor"), pursuant to title 10 V.S.A. Chapters 34 and 155 and in consideration of Ten Dollars and other valuable consideration paid to its full satisfaction, does freely grant, sell, convey and confirm unto the **Vermont Agency of Natural Resources, Fish and Wildlife Department** (the "Department") with an address of 1 National Life Drive, Davis 2 Montpelier, Vermont 05620-3702 (known hereinafter as the "Grantee") the development rights and a perpetual conservation easement and restrictions (all as more particularly set forth below) in a certain tract of land situated in the Town of Rockingham, and the County of Windham, and the State of Vermont, comprised of 145+/- acres of undeveloped land in forestry use that provides deer winter habitat including a buffer, hereinafter the "Protected Property" more particularly described in **Schedule A** and a forestry survey attached as **Schedule B**.

This Grant is being conveyed, in part, to further the purpose of conserving wildlife habitats, biological diversity, natural communities, aquatic habitats, wetlands, water quality, native flora and fauna, non-motorized, non-commercial recreational opportunities, educational opportunities, open space values and scenic resources. The grant of this Protected Property shall constitute, at least in part, restitution for alleged violations of the Act 250 Land Use and Development Statute (10 V.S.A. Chapter 151), Enforcement File No. 13-27 as they related to forest management within deer winter habitat without the required Wildlife Habitat and Forest Management Plan.

The development rights hereby conveyed to Grantee shall include all development rights except those specifically reserved by 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 Grantee consist of covenants on the part of Grantor 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 and shall run with the land.

I. Purposes of this Grant.

A. Statement of Purposes.

1. Grantor and Grantee acknowledge that the Purposes of this Grant are as follows (hereinafter "Purposes of this Grant"):
 - a) The Primary Purpose of this Grant is to conserve and protect necessary deer wintering habitat, forested wildlife habitat, biological diversity, native flora and fauna, natural communities, natural resource values, and the ecological process which support them, as these values exist on the Protected Property, on the date of this instrument and as they may evolve in the future;

- b) To conserve and protect the Protected Property's undeveloped character and scenic and open space resources for present and future generations; and,
 - c) To contribute to the implementation of the policies of the State of Vermont designed to foster the conservation of the state's wildlife habitats, water quality, forestry, and other natural resources through planning, regulation, land acquisition, and tax incentive programs.
2. To advance these purposes by conserving the Protected Property because it possesses the following attributes:
- a) Approximately 82 acres of previously approved and protected critical wildlife habitat including softwood cover and corridors;
 - b) wintering habitat for whitetail deer;
 - c) travel corridors for whitetail deer, as well as other forest dependent species; and
 - d) habitat for myriad wildlife species, including wide ranging carnivores such as black bear, bobcat, and fisher, as well as important breeding habitat for several species of migratory birds.

Grantor and Grantee recognize the Purposes of this Grant and share the common goal of conserving these values of the Protected Property by the conveyance of conservation restrictions, and development rights, to prevent the use or development of the Protected Property for any purpose or in any manner that would conflict with the Purposes of this Grant. Grantee accepts such conservation restrictions, development rights and public access easement in order to conserve these values for present and future generations.

II. Restricted Uses of Protected Property.

Unless otherwise provided herein, the restrictions hereby imposed upon the entire Protected Property, and the acts that Grantor shall do or refrain from doing, are as follows:

1. The Protected Property shall be maintained in its natural condition as a conservation area in perpetuity. No residential, commercial, industrial or mining activities shall be permitted on the Protected Property and no building or structure associated with such activities shall be constructed, created, erected or moved onto the Protected Property. The term structure as used in the preceding sentence shall include, but not be limited to, any telecommunications, broadcasting or transmission facility. No other building or structure shall be constructed, created, erected or moved onto the Protected Property, except as specifically permitted by this Grant.

2. Other than woods road depicted on the attached Schedule B no rights-of-way, easements of ingress or egress, driveways, trails, roads, utility lines, other easements or use restrictions shall be constructed, developed, granted or maintained into, on, over, under, or across the Protected Property without the prior written permission of Grantees, which permission shall

not be unreasonably withheld or conditioned if the proposed right-of-way, easement of ingress or egress, driveway, road, utility line, other easement or use restriction is consistent with the Purposes of this Grant.

3. There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Protected Property; provided, however, that 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, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use (subject to the limitations of Section IV, below). With prior written permission of Grantor, Grantees may erect and maintain signs designating the Protected Property as land under easement protection by Grantees.

4. The placement, collection or storage of trash, human waste, or any other unsightly or offensive material on the Protected Property shall not be permitted, except at locations, if any, and in a manner that is consistent with this Grant. The temporary storage of trash in receptacles for periodic off-site disposal shall be permitted.

5. There shall be no disturbance of the surface of the Protected Property 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, except as may be reasonably necessary to carry out the forestry 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.

6. Grantor shall not give, grant, sell, convey, subdivide, transfer, lease, mortgage, pledge or otherwise encumber the Protected Property without the prior written approval of Grantee, which approval may be granted, denied or conditioned if necessary to ensure consistency with the Purposes of this Grant. Notwithstanding the foregoing, Grantor may mortgage or pledge the Protected Property provided that said mortgage or pledge is subordinate in priority to this Easement.

7. There will be no intentional introduction of non-native or invasive plants or animals and genetically modified plants or animal without the Grantor requesting and receiving approval from the Grantees prior to doing so in their sole discretion.

8. There shall be no operation of motorized vehicles on the Protected Property except for uses specifically reserved, such as forestry and property management, as well as, for emergency purposes. There shall be no all-terrain vehicle use permitted on the Protected Property except for emergency or management purposes. However, Grantee may permit motorized personal assistive mobility devices for use by persons with mobility disabilities on the Protected Property if consistent with the Purposes of this Grant. For purposes of this Grant, all-terrain vehicles include, but are not limited to, motorized four-wheeled, three-wheeled and two-wheeled or tracked vehicles, not including snowmobiles. December 15 to April 15, cross country skiing, snow shoeing, and dogs are prohibited on the Protected Property.

9. There shall be no manipulation or alteration of natural watercourses, lakeshores, wetlands, water levels and/or flow or other waterbodies except as may be provided for in the Management Plans.

10. Except as expressly permitted by this Grant, no use shall be made of the Protected Property, and no activity thereon shall be permitted which, in the sole discretion of the Grantee, is or may possess the potential to become inconsistent with the Purposes of this Grant.

III. Permitted Uses of the Protected Property.

Notwithstanding the foregoing, Grantor shall have the right to make the following uses of the Protected Property:

1. The right to use the Protected Property for non-commercial, non-motorized, non-mechanized dispersed outdoor recreational purposes (including, but not limited to, birdwatching, cross-country skiing, hunting, snowshoeing, trapping, walking, and wildlife observation) consistent with the Purposes of this Grant and the Management Plans. Notwithstanding the foregoing, other than on the woods road shown on Schedule B from December 15 to April 15, cross country skiing, snow shoeing, and dogs are prohibited on the Protected Property. Grantor and Grantee shall negotiate in good faith to amend this easement in the event additional uses of the Protected property are authorized by future Act 250 permits.

2. The right to maintain, repair, improve and replace existing recreational trails, provided that the location, use and maintenance of such trails are consistent with the Purposes of this Grant, and are provided for in the Management Plans.

3. The right to perform forest management activities, and to harvest timber and other wood products in accordance with a Wildlife Habitat and Forest Management Plan approved by the Vermont Fish and Wildlife Department, as defined in Section IV below. 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 Wildlife Habitat and Forest Management Plan should Grantor elect to harvest. Any harvesting of wood products shall be conducted in accordance with the AMPs (or such successor standard approved by Grantee).

4. In consultation with the Grantor the Grantee shall be entitled to enter onto the Protected Property to make improvements to enhance the function of the Protected Property as deer winter habitat. Included in such work may be the construction of roads and other changes to the physical state of the Protected Property. The Grantor shall manage the Protected Property in accordance with the Wildlife Habitat and Forest Management Plan, as updated and approved by the Fish and Wildlife Department.

5. Grantor shall grant a permanent right of way to the Grantee for the purposes of accessing the Protected Property and carrying out the habitat conservation purposes of this grant.

6. Use of the woods roads and existing trails transecting the Protected Property as shown on Schedule B for recreational and commercial uses that may be permitted in the future.

IV. Forest Management Plans.

As provided in Section III(3), above, Grantor shall not harvest timber or other wood products without first developing and submitting to Grantee for its approval, a Wildlife Habitat and Forest Management Plan for the Protected Property (hereinafter the "Management Plan"). All updates, amendments, or other changes to the Management Plan shall be submitted to Grantee for its approval prior to any harvesting. The Management Plan as updated, amended, or changed from time-to-time is hereinafter referred to as the "Amended Management Plan." The Management Plan and any Amended Management Plan shall be: (a) drafted by a professional forester, (b) consistent with the Purposes of this Grant, and (c) the timber management activities must be compatible with, and performed in support of the goal of conserving and enhancing wildlife habitat values, especially those pertaining to deer wintering habitat and travel corridors. Grantee may approve or disapprove of the Plans in its reasonable discretion, said reason must be given for any negative decision rendered and a route towards compromise indicated. The Management Plan and any Amended Management Plan shall be consistent with the Purposes of this Grant and shall include at least the following elements and notices (except that those elements of the Management Plan and any Amended Management Plan which do not change need not be re-submitted in updates, amendments, or changes to the Wildlife Habitat and Forest Management Plan):

- a) 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);
- b) 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 including harvest schedules); and
- c) Plant and wildlife considerations (identification of known significant habitats and management recommendations).

The Management Plan shall be updated at least once every ten (10) years. Amendments to the Management Plan shall be required in the event that Grantor proposes a treatment not included in the Management 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 five (5) years from the prescription schedule set forth in the Management Plan as approved by Grantee. In the event that any treatment unit is substantially damaged by natural causes such as insect infestation, disease, fire, or wind, Grantor may elect to conduct an alternative treatment in which event Grantor shall submit an amendment to the Management Plan for Grantee's approval, which shall be given in a timely fashion, or a path to compromise indicated, prior to conducting any alternative treatment.

At this time Forrest Hammond, has been authorized by the Natural Resources Board to approve forest management activities planned for the Protected Property. His approval will be forthcoming in a timely fashion and may precede the signing of this document

V. Public Access

Grantor covenants and agrees that the Protected Property shall be available to the general public, upon request to Grantor, for non-commercial, non-motorized, non-mechanized, dispersed recreational purposes (including, but not limited to, birdwatching, cross-country skiing, hiking, snowshoeing and wildlife observation) consistent with the Purposes of this Grant and the Management Plans. Notwithstanding the foregoing, other than on the woods road shown on Schedule B from December 15 to April 15, cross country skiing, snow shoeing, and dogs are prohibited on the Protected Property. Furthermore, Grantor 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 with the written notice to the Grantee.

VI. Enforcement of the Restrictions.

Grantee shall make reasonable efforts from time to time to assure compliance by Grantor with all 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 become 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 by personal service or via certified mail, return receipt requested, and demand corrective action by 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 that is corrected through negotiation and voluntary compliance, Grantor shall negotiate the reimbursement to Grantee of 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 Grant, 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 a 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 shall reimburse Grantor 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 may constitute immediate and irreparable injury, loss and damage to the Protected

Property and accordingly may 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 of 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. 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. Specifically, at this time Forrest Hammond, has been authorized by the Natural Resources Board to approve forest management activities planned for the Protected Property. His approval (or approval of his designee) will be forthcoming in a timely fashion and may precede the signing of this document

2. It is hereby agreed that the construction of any buildings, structures or improvements, or 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 Rockingham, as well as, the State of Vermont.

3. Grantee shall transfer the development rights, and conservation easement and restrictions conveyed by Grantor 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.

4. In the event the development rights or conservation restrictions conveyed to Grantee herein are extinguished by eminent domain or other legal proceedings, Grantee and Grantor shall be entitled to any proceeds that pertain to the extinguishment of Grantee's and Grantor's rights and interests. Any proceeds from extinguishment shall be allocated between Grantor and Grantee using a ratio based upon the relative value of the development rights and conservation restrictions, and the value of the fee interest in the Protected Property, as determined by a qualified appraisal performed at the direction of Grantor or Grantee at the time of extinguishment.

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 this easement and restrictions are binding upon all successors in interest in the Protected Property in perpetuity. Grantor shall also notify Grantee of the name(s) and address (es) of Grantor's successor(s) in interest.

6. Grantee or Grantor shall be entitled to record this Grant, or to record a notice making reference to the existence of this Grant, in the Town of Rockingham 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. The term “Grantor” shall include the successors and assigns of the original Grantor, Riverbend Associates Limited Partnership. The term “Grantee” shall include the respective successors and assigns of the original Grantee, the State of Vermont Agency of Natural Resources, Fish and Wildlife Department.

8. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Protected Property.

9. Grantor shall hold harmless, indemnify and defend Grantees against any liabilities, claims and expenses, including reasonable attorney’s fees to which Grantee may be subjected in connection with the actions or inactions of Grantor as owners or operators of the Protected Property or those of Grantor’s agents, including, but not limited to, those arising from any solid or hazardous waste/hazardous substance release or disposal, or hazardous waste/hazardous substance cleanup laws.

10. This Grant shall be governed by and construed in accordance with the laws of the State of Vermont. In the event that any provision or clause in this Grant conflicts with applicable law, such conflict shall not affect other provisions hereof which can be given effect without the conflicting provision. To this end the provisions of this Grant are declared to be severable. Invalidation of any provision hereof shall not affect any other provision of this Grant.

TO HAVE AND TO HOLD said granted development rights and conservation easement and restrictions, with all the privileges and appurtenances thereof, to the said Grantee, Vermont Agency of Natural Resources, Fish And Wildlife Department, to their own use and behoove forever, the said Grantor, RIVERBEND ASSOCIATES LIMITED PARTNERSHIP, for itself and its successors and assigns, does covenant with the said Grantee, their successors and assigns, that until the ensembling of these presents, it is the sole owner of the premises and has good right and title to convey the same in the manner aforesaid, that the premises are free from every encumbrance, except easements and use restrictions of record as set forth in **Schedule B** attached hereto and incorporated herein, and it hereby engages to warrant and defend the same against all lawful claims whatever.

Grantor, RIVERBEND ASSOCIATES LIMITED PARTNERSHIP, has caused this Grant to be executed by its duly authorized agent on this ____ day of _____, 2018.

Grantor:

By: _____
Riverbend Associates Limited Partnership

STATE OF VERMONT
COUNTY OF _____, SS.

At _____, Vermont, on this ____ day of _____, 2018, personally appeared _____, duly authorized agent of the Riverbend Associates Limited Partnership, and acknowledged this instrument, by her sealed and subscribed, to be her free act and deed.

Before me, _____
Notary Public

My Commission Expires: _____

DRAFT

Approved and Accepted by the **Vermont Agency of Natural Resources, Fish & Wildlife Department:**

_____ By: _____
Date Its Duly Authorized Agent

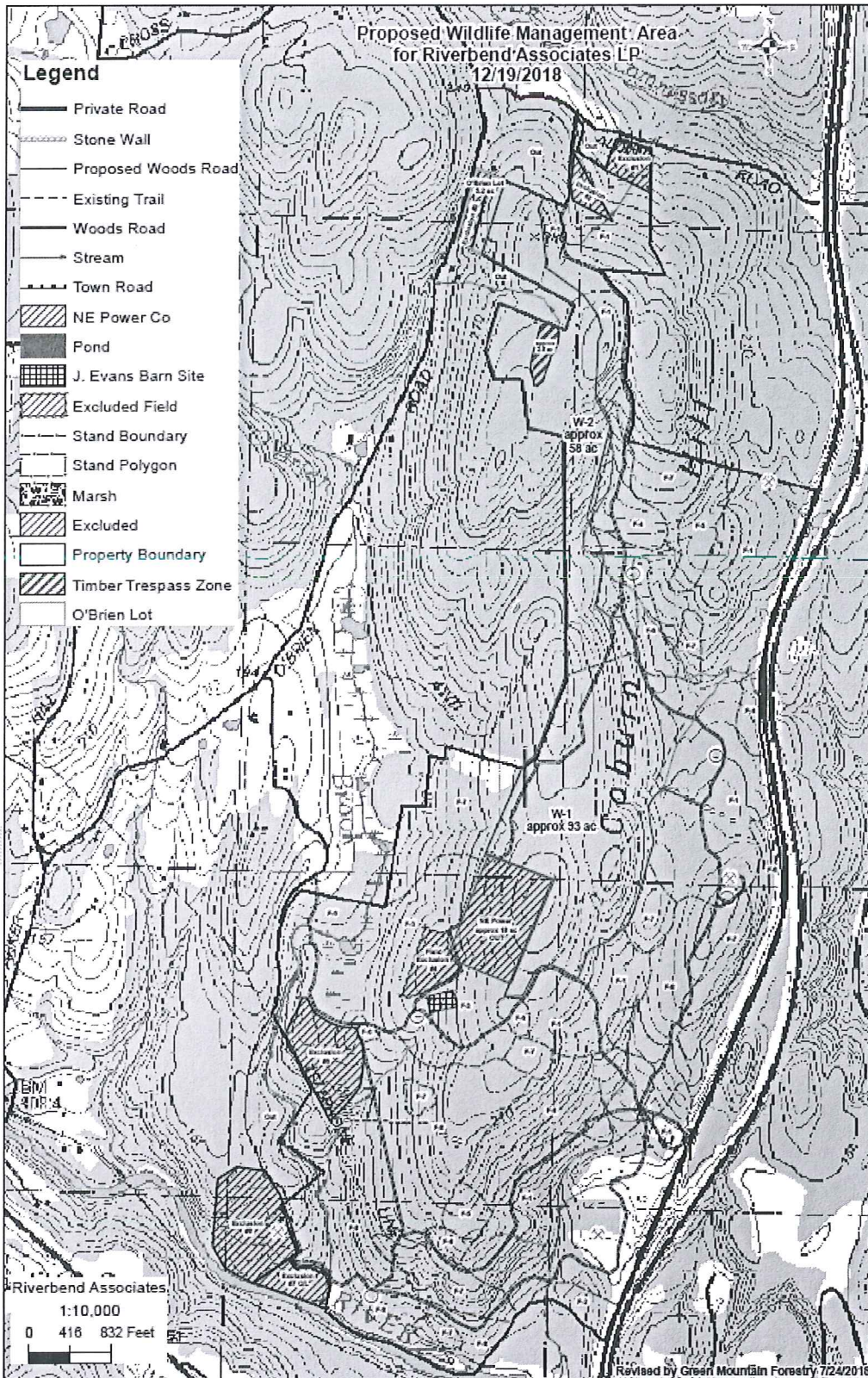
DRAFT

SCHEDULE A
DESCRIPTION OF PROTECTED PROPERTY

To be included upon completion of the survey called for in the Assurance of Discontinuance between the Vermont Natural Resources Board, Riverbend Associates Limited Partnership, and Edward C. Childs in Enforcement File No. 13-27.

DRAFT

SCHEDULE B MAP OF PROTECTED PROPERTY



SCHEDULE C
EASEMENTS AND USE RESTRICTIONS

1. Rights of the public and others entitled thereto to use that portion of the Protected Property lying within the boundaries of roads maintained by one or more of the town, state or federal jurisdictions for all purposes commonly used for roads in the State of Vermont. None of the Protected Property lies within such a boundary.

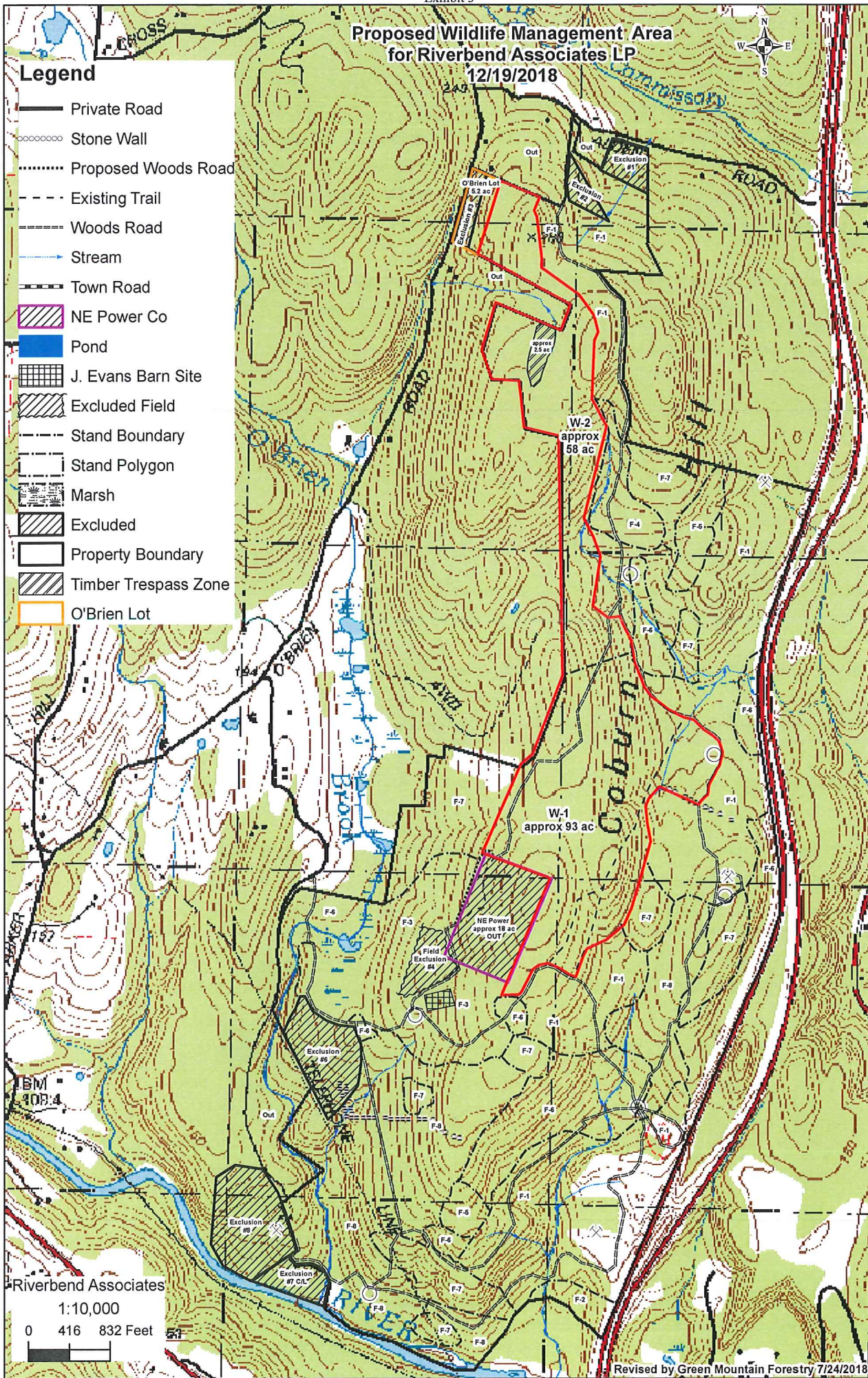
2. Rights of the public to use waterways and bodies of water as implied by the Public Trust Doctrine. None of the Protected Property includes such waterways.

DRAFT

Proposed Wildlife Management Area for Riverbend Associates LP 12/19/2018

Legend

- Private Road
- Stone Wall
- Proposed Woods Road
- Existing Trail
- Woods Road
- Stream
- Town Road
- NE Power Co
- Pond
- J. Evans Barn Site
- Excluded Field
- Stand Boundary
- Stand Polygon
- Marsh
- Excluded
- Property Boundary
- Timber Trespass Zone
- O'Brien Lot



*Riverbend Associates Limited Partners by
General Partner
DR: Edward Calabrese - managing
Riverbend Assoc. L.P.*

Riverbend Associates
1:10,000
0 416 832 Feet