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MAY 12 2016
MURPHY SULLIVAN KRONK

CLARKE DEMAS & BAKER, PLLC

Attorneys at Law

C. KIRK CLARKE
ELIZABETH M. DEMAS
BRUCE D. BAKER
*****
MOLLY BUCCI

PHONE: 802-652-1400
FAX: 802-652-1405

346 SHELBURNE ROAD, SUITE 203
POST OFFICE BOX 4484
BURLINGTON, VT 05406-4484

Of Counsel: PETER L. POTTS

May 11, 2016

Christine Brock, Clerk
Superior Court Chittenden Unit
PO Box 187
Burlington, Vermont 05401

Re: *Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman*
Docket No. **333-4-15 Cncv**

Dear Christine:

I am enclosing Plaintiff's Amended Complaint for Declaratory Judgment, and our certificate of service. This amended complaint is being filed pursuant to the Court's Ruling on Motions for Summary Judgment, and Motion to Require Joinder, which was issued on March 25, 2016.

The complaint has been sent for service upon the additional defendants.

Thank you for your assistance. Please give me a call if you have any questions or concerns regarding this matter. Please let us know if there is a filing fee due.

Sincerely,

Elizabeth M. Demas, Esq.
Clarke Demas & Baker, PLLC
346 Shelburne Road, Suite 203
Burlington, Vermont 05401
(802) 652-1400
edemas@cdbesq.com

cc: Hans Huessy, Esq.
Liam Murphy, Esq.
PO Box 4485
Burlington, Vermont 05406-4485
encs

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 333-4-15 Cncv

Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill
Defendant

CERTIFICATE OF SERVICE

I, Elizabeth M. Demas, attorney for Plaintiff in the above-entitled matter, hereby certify that I served a copy of Plaintiff's Amended Complaint by first class mail to Hans G. Huessy, Esq. and Liam L. Murphy at P.O. Box 4485, Burlington, VT 05406-4485, as Attorneys for Defendant Town of Underhill.

Dated at Burlington, Vermont, this 11th day of May, 2016.

By: Elizabeth Demas

Elizabeth M. Demas, Esq.
Clarke Demas & Baker PLLC
346 Shelburne Road, Suite 602
Burlington, Vermont 05401

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No.333-4-15Cncv

Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill, David Arnold, Stanley and Sue Senger, and Carl and Carol Menard
Defendants

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Elizabeth M. Demas, Esq., attorney for Plaintiff Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S. Eastman and, hereby sets forth Plaintiff's Amended Complaint for Declaratory Judgment, as follows:

This Complaint is amended to add parties to this action. The Town of Underhill has alleged that Repa Trail passes over land owned by third parties, including David Arnold, Stanley and Sue Senger and Carl and Carol Menard. The Court has found that landowners abutting Repa Trail are to be added to this action as necessary parties.

Therefore, the following parties are hereby added as Defendants in this amended complaint:

a) Defendant David Arnold;

b) Defendants Stanley and Sue Stenger; and

c) Defendants Carl and Carol Menard.

FACTS COMMON TO ALL COUNTS:

1. Plaintiff Brianne E. Chase, Trustee of the Revocable Living Trust of Barbara S.

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Eastman (hereinafter "Eastman Trust") is the record owner of 300 acres of land, more or less, located in Westford, Vermont, which land was conveyed to the Eastman Trust by Deed of Oliver R. Eastman and Barbara S. Eastman, recorded on February 2, 1993, of record in Volume 68 at Page 189 of the Westford land records (The "Eastman parcel") A true copy of said deed is attached hereto as Exhibit A.

2. Said Eastman Parcel is adjacent to and bounded on the east by the Underhill-Westford Town Line.

3. Prior to 1972, access to the Eastman Parcel was by Goodrich Road (Westford Town Highway #24) which entered from the west and continued in a generally easterly direction through the Eastman Parcel, and by Repa Road (Underhill TH # 21) which provided access through Underhill, to the border of Westford-Underhill, and connected with Goodrich Road on the Eastman Parcel in Westford. (See Map attached hereto as Exhibit B).

4. In 1972 the town of Westford attempted to discontinue part of Goodrich Road, and reclassify another portion as a trail. Westford then stopped maintaining the discontinued and reclassified portions of Goodrich Road.

5. In 1996 the Town of Underhill attempted to discontinue a small portion of Repa Road to the boundary with Westford, which was also the boundary with the Eastman Parcel.

6. Neither attempt at discontinuance complied with 19 V.S.A. 790.

7. During May and June of 2000, the Select boards of both Towns met to hear testimony regarding the discontinuance or redesignation of Goodrich Road and a small portion of Repa Road (adjacent to the Eastman parcel) as a trail.

8. At the hearing, a representative of the Eastman family appeared, and requested that Repa Road remain at least a class IV road, as Goodrich road had been closed for the previous 25 years. Vehicular access to the Eastman Parcel during that time was over Repa Road in Underhill.

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9. On July 28, 2000, the Town of Westford reclassified Goodrich Road, in its entirety as a trail.

10. On August 2, 2000, the Town of Underhill reclassified 238 feet of Repa Road, from the Westford/Underhill Town Line (also the easterly boundary of the Eastman Parcel) to the Arnold Driveway. The newly designated portion of Repa road was continued as a trail at the same width of three rods.

11. In September 2001, The A. Johnson Co., and Joseph Bornstein, the Town of Underhill and the Town of Westford settled litigation which arose over the redesignation of Repa Road and Goodrich Road.

12. The Stipulation to Dismissal with Prejudice, entered on September 26, 2001, Docket No. S1201-00, Chittenden Superior Court provided that "the Parties enter into this Stipulation and Order to ensure that the Petitioners may not be deprived of access to, or any economic benefits from, their respective parcels". The Court further found that "The A. Johnson Company and Joseph Bornstein are hereby granted, pursuant to 19 V.S.A. Section 1111, the right to use the Trails by any motor vehicles, pick-up trucks, four-wheel drive vehicles, logging trucks, logging equipment and the like in order to continue their programs of forestry management on the A. Johnson Company lands and the Bornstein parcel, respectively, and periodically, to effect the removal of timber from their respective lots during the term of this Stipulation." Said Stipulation provided that it was to run with the land, and be binding on the Parties, their heirs, successors and assigns. A true copy of the Stipulation to Dismissal with Prejudice is attached hereto as Exhibit C.

13. Plaintiff's access to the Eastman Parcel has been periodically challenged by Repa Road neighbors since 1990.

14. Repa Road, in Underhill, has historically provided access to the Eastman parcel, particularly to the farmstead located approximately 500 feet westerly from its terminus.

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15. Said farmstead is depicted on the 1858 "Wallings Map", as "Hapgood", and on "Beers Atlas", published in 1869 as "L. Cushing". Copies of said historic maps are attached hereto as Exhibits D and E.

16. The remains of the farmstead, including barn remnants and a house foundation, are still evident on the site. (See Affidavit of David Crane, Exhibit F hereto).

17. On September 16, 2014, September 25, 2014, and again on January 6, 2015, Plaintiff submitted written requests to the Town of Underhill Selectboard, for a License for "permitted use of right of way" pursuant to 19 V.S.A. Section 1111, for reasonable access over the 238 foot portion of Repa Road designated as a Trail. True copies of those requests are attached hereto as Exhibits D, E and F. Plaintiff offered to improve and maintain the trail, and to limit the use of the trail for logging and agricultural purposes, and one-single family home, without making a subsequent request of the Town.

18. Plaintiff, with counsel, attended hearings in front of the Underhill Selectboard, on September 30, 2014, and February 17th, 2015. Numerous intermediate requests for a response were also made by Plaintiff's counsel, in writing and by telephone, to Defendant's counsel.

19. To date, the town of Underhill declined to issue Plaintiff a License pursuant to 19 V.S.A. 1111 . The Town has made consideration of Plaintiff's request contingent upon Plaintiff providing irrelevant, sensitive, and private documents to the Board, such as the Declaration of Trust. Plaintiff was also challenged to show why, as a non-resident of Underhill, it is entitled to the same free right to use Underhill's public highways as is an Underhill resident.

20. Plaintiff has received an offer to sell the Eastman Parcel, but said offer is contingent upon the purchaser being provided satisfactory access to the land, for logging and for access to a single family residence, which uses are consistent with the historical records.

COUNT I – PLAINTIFF IS ENTITLED TO A PRIVATE RIGHT OF WAY PURSUANT TO 19 V.S.A. Section 717(c)

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21. Plaintiff Eastman Trust's sole means of pedestrian and vehicular access to their land has been over Repa Road in Underhill, since Westford closed Goodrich Road in 1972. 19 V.S.A. 717(c) provides "A person whose sole means of access to a parcel of land or portion thereof owned by that person is by way of a town highway or unidentified corridor that is subsequently discontinued shall retain a private right-of-way over the former town highway or unidentified corridor for any necessary access to the parcel of land or portion thereof and maintenance of his or her right-of-way." Repa Road, now downgraded to a trail in that part of the roadway adjacent to Plaintiff's land, was the sole means of access to Plaintiff's land.

COUNT II – PLAINTIFF HAS A COMMON LAW RIGHT OF WAY OVER THAT PORTION OF REPA ROAD NOW DESIGNATED AS A TRAIL.

22. "An abutting landowner retains a reasonable and convenient private easement over a discontinued highway", *Thompson v. Ryan*, 2007 WL 5313344, citing *Okemo Mountain, Inc., v. Town of Ludlow*, 171 VT 201 (2000). "When a public road is discontinued or abandoned, the abutting landowner retains the private right of access." Id at 207. That such common law right of access entitles the abutting landowner only to "'reasonable and convenient access." "Id at 209 (quoting Op. Vt. Att'y Gen., No. 310 (Jan. 12, 1970).

Plaintiff seeks permission to cross the 238 feet of Repa Road that is now a town trail, which trail has retained a right of way with a width of three rods. (see Exhibit 3, *Stipulation and Order,* at P. 2) Plaintiff has specifically agreed not to request Underhill to upgrade or maintain that portion of Repa Road, and is limiting its request to access for to single family home, as historically used, and for logging and agricultural uses. Plaintiff has a necessary need to use Repa road as a reasonable and convenient private easement over a discontinued public highway now designated a trail.

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III. THE TOWN OF UNDERHILL HAS VIOLATED PLAINTIFF'S CONSTITUTIONAL RIGHTS FOR EQUAL PROTECTION UNDER THE LAW

Selectboard members have stated at a public hearing that Plaintiff's request is not a sympathetic one, because Plaintiff is not a resident of Underhill, and therefore not necessarily entitled to access over Underhill public highways. Plaintiff has been the recipient of a consistent pattern of discriminatory conduct, imposed by the Underhill Selectboard, denying the Trust access to its property, due to its status as a owner of land in a different Vermont town . "The U.S. Supreme Court has recognized that a property owner may bring a civil rights action alleging that local officials violated equal protection or due process by treating the property owner differently from others similarly situated for reasons that were wholly arbitrary and irrational and motivated by personal reasons unrelated to their official duties *John Rhodes v. Town of Georgia, 45A.3d 54 (Vt. 2012.*"

Vermont has historically considered Town highways as not a purely local matter: "It is plain from the provisions of the statute, and from the entire course of usage and sentiment on the subject, that, as between towns, the matter of highways is one of mutual comity, the inhabitants of each town having in all other towns the same free and full right to use and enjoy the highways as the inhabitants of such towns have. In this way the duty imposed on each town respectively, is compensated and counterbalanced in respect to other towns, by the fruits of the equal duty proffered to the inhabitants of each town by every other town in the state." *Brock v. Town of Barnet, 57 Vt. 172, 177 (1884)* "The town or its inhabitants have no more interest in the highways within its limits, than any other citizens. *Panton Turnpike Co. v. Bishop, 11 Vt. 198 (1839).*

The Underhill select board has not treated Plaintiff as having a "free and full right to use and enjoy" Underhill's highways. "....Select boards and other local agencies exercise considerable authority and influence in the lives of local citizens. Service on such boards, however, admirable, necessarily and properly carries with it certain ethical and legal responsibilities, not the least being the

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duty to dear fairly and impartially with all who appear before them." *Rhodes, Id., at 76.*

The *Rhodes* Court found Article 7 of the Vermont constitution to be self-executing. Plaintiff is therefore entitled to damages for the costs it incurred by having its requests for a license from the Underhill Selectboard be repeatedly and consistently rebuffed in a discriminatory manner.

WHEREFORE, Plaintiff respectfully prays the Court to issue an Order declaring that the Eastman Trust, its successors, heirs and assigns, is entitled to use the 238 foot length of Trail at the terminus of Repa Road, by motor vehicles, pick-up trucks, four-wheel drive vehicles, logging trucks, logging equipment and the like, and to serve one single family residence or farmstead, and to an award of money damages for Court costs and attorney's fees, and such other and further relief to Plaintiff as the Court may deem just and proper.

DATED at Burlington, Vermont this 10th day of ~~March~~ May, 2016.

Elizabeth M. Demas, Esq.
Attorney for Plaintiff
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edemas@cdbesq.com

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BK68 / 189

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that we, OLIVER R. EASTMAN and BARBARA S. EASTMAN, of Burlington, in the County of Chittenden and State of Vermont, Grantors, in the consideration of ONE DOLLAR, and other valuable consideration, paid to our full satisfaction by the REVOCABLE LIVING TRUST OF BARBARA S. EASTMAN, Grantee, by these presents do freely GIVE, GRANT, SELL, CONVEY and CONFIRM unto the said Grantee, the REVOCABLE LIVING TRUST OF BARBARA S. EASTMAN, and its successors and assigns forever, certain pieces of land in Westford in the County of Chittenden and State of Vermont, described as follows:

Parcel 1.

Being all and the same land and premises conveyed to the Grantors herein by Warranty Deed of Robert Nolan and Margaret Nolan dated June 19, 1963, and recorded in Volume 28, Page 328 of the Land Records of the Town of Westford, and being more specifically described in said deed as follows:

> "Being all that land and premises which was deeded to the Grantors herein by Warranty Deed of Raymond H. Doner, dated August 6, 1957 and of record in Volume 28, Page 33 of the Land Records of the Town of Westford.
>
> The premises contain approximately one hundred ninety-nine (199) acres."

Parcel 2.

Being all and the same land and premises conveyed to the Grantors herein by Warranty Deed of Harold Gillette dated September 27, 1963, and recorded in Volume 28, Page 329 of the Land Records of the Town of Westford, and being more specifically described in said deed as follows:

> "Being all and the same land and premises that were conveyed to the Grantor, Harold Gillette, by Warranty Deed of William F. Cunningham, dated July 19, 1963, and recorded in Volume 28, Page 363, of the Town of Westford Land Records.

LAW OFFICES
BLOOMBERG
& DETTINGER
200 ON BATTERY
P. O. BOX 1456
BURLINGTON, VERMONT
05402

Westford, Vermont, Town Clerk's Office
February 2 AD, 1993 at
11 o'clock 45 minutes A.
received for record and recorded in
book 68 on page
Westford records.
Attest: Trena Phillips
Town Clerk

Vermont Property Transfer Tax
32 V.S.A. Chap. 231
-ACKNOWLEDGMENT-
Return Rec'd.-Tax Paid-Board of Health Cert. Rec'd.
Vt. Land Use & Development Plans Act Cert. Rec'd.
Return No. 93-9
Signed Trena Phillips Clerk
Date February 2 AD 1993

PLAINTIFF'S EXHIBIT
1

The land hereby conveyed contains fifty-seven (57) acres, more or less. Reference is hereby made to the above deed and its record and the deeds and records therein referred to for a more complete description of the premises herein conveyed."

Parcel 3.

Being all and the same land and premises conveyed to the Grantors herein by Warranty Deed of Rolland J. Howard and Beryl A. Howard dated August 7, 1969, and recorded in Volume 31, Pages 160-162 of the Land Records of the Town of Westford, and being more specifically described in said deed as follows:

"A 25 acre woodlot, so called, said parcel being the northerly half of Town Lot 64 in District No. 6, First Division, of the Town of Westford. Said lot No. 64 in District No. 6 First Division, is shown on a Plan of the Town of Westford filed on record in the Westford Town Clerk's Office. Said parcel is bordered on the south by lands and premises of Oliver R. and Barbara S. Eastman, on the west by lands and premises of Oliver R. and Barbara S. Eastman, on the north by the southerly line of Lot 63 and on the east by Lot No. 45, owned by Joseph Bornstein.

Being a portion of the lands and premises conveyed to Rolland J. and Beryl A. Howard by Warranty Deed of Charles E. and Helen E. Austin dated October 14, 1938 and of record in Volume 24, Pages 266-267 of the Westford Land Records."

Reference is hereby made to the above-mentioned instruments and the references contained therein, in further aid of this description.

This conveyance is made without consideration to effectuate a transfer from husband and wife to a revocable trust of the wife.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, the REVOCABLE LIVING TRUST OF BARBARA S. EASTMAN, its successors and assigns, to its own use and behoof forever; and we, the said Grantors, OLIVER R. EASTMAN and BARBARA S. EASTMAN, for ourselves and our heirs, executors and administrators, do covenant with the

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BLOOMBERG
& DETTINGER
ONE CHURCH STREET
P.O. BOX 1456
BURLINGTON, VERMONT
05402

said Grantee, the REVOCABLE LIVING TRUST OF BARBARA S. EASTMAN, that until the ensealing of these presents we are the sole owners of the premises, and have good right and title to convey the same in manner aforesaid, that they are FREE FROM EVERY ENCUMBRANCE, except as herein stated; and we hereby engage to WARRANT AND DEFEND the same against all lawful claims whatever, except as herein stated.

IN WITNESS, we hereunto set our hands and seals this 29th day of January, 1993.

IN PRESENCE OF:

Witness — Oliver R. Eastman L.S.

Witness — Barbara S. Eastman L.S.

STATE OF VERMONT
CHITTENDEN COUNTY, SS:

At Burlington this 29th day of January, 1993, OLIVER R. EASTMAN and BARBARA S. EASTMAN personally appeared, and they acknowledged this instrument, by them sealed and subscribed, to be their free acts and deeds.

Before me,

Notary Public

Deeds 4/28

LAW OFFICES
BLOOMBERG
& OETTINGER
200 ON BATTERY
P. O. BOX 1458
BURLINGTON, VERMONT
05402

Received for Record
February 2, AD 1993
at 11:45 AM.
Attest: Irene Phillips

Westford / Underhill

Google earth

feet 500
meters 100

PLAINTIFF'S EXHIBIT 2

Westford, Vermont, Town Clerk's Office
Oct. 5, 2001 at
1 o'clock 20 minutes P M
received for record and recorded in
book 93 on page 321-325 of
Land records.
Attest Barbara Rogers
Town Clerk

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

CHITTENDEN COUNTY CLERK
FILED IN CLERKS OFFICE
SEP 26 2001
DIANE A LAVALLEE
CLERK

THE A. JOHNSON COMPANY and JOSEPH BORNSTEIN, Petitioners	)
v.	) CHITTENDEN SUPERIOR COURT) DOCKET NO. S1201-00 CnC
TOWN OF WESTFORD, Respondent, and TOWN OF UNDERHILL, Respondent	)

STIPULATION TO DISMISSAL WITH PREJUDICE AND ORDER

Now come the Petitioners, The A. Johnson Company and Joseph Bornstein, and the Respondents, Town of Westford and Town of Underhill, in the above-captioned matter, with the approval of their undersigned counsel, and hereby stipulate and agree that the above-captioned matter may be DISMISSED WITH PREJUDICE under the following terms and conditions.

1. Consistent with the Return of the Board of Selectmen for the Town of Westford dated July 28, 2000 and recorded in Volume 88, Page 297 of the Westford Land Records, it is determined that the public good and convenience requires that the Goodrich Road, Westford Town Highway No. 24, be classified as a trail in its entirety. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that the trail be continued at the same width or three rods.

2. Consistent with the Return of the Board of Selectmen for the Town of Underhill dated August 2, 2000 and recorded in Volume 102, Page 33 of the Underhill Land Records, it is

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[illegible] 1501
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PLAINTIFF'S EXHIBIT 3
800-631-6989

determined that the public good and convenience requires that the Repa Road, Underhill Town Highway No. 21, be classified as a trail from the Westford/Underhill Town Line, a distance of 238 feet, more or less, to the Arnold Driveway and the conjunction with the Class III portion of Repa Road. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that said portion of Repa Road shall be continued as a trail at the same width or three rods.

3. Both Joseph Bornstein and The A. Johnson Company may need to continue to utilize the Goodrich Road and Repa Road (hereinafter referred to as the "Trails") for timber management and removal of timber and other forest products on their respective properties as well. As such, the parties enter into this Stipulation and Order to ensure that the Petitioners may not be deprived of access to, or any economic benefits from, their respective parcels.

4. Pursuant to 19 V.S.A. §304, the Boards of Selectmen of the respective Towns not only have the duty and responsibility, but the authority to make regulations governing the use of trails and to extend permission regarding the use of such trails. Likewise, the Board of Selectmen in taking the action noted above and creating Trails in both Westford and Underhill, did not intend by their respective actions to prevent access to and egress from the respective lots of the Petitioners/Appellants.

5. The A. Johnson Company and Joseph Bornstein may use the reclassified Town Highways, now designated as Trails, for access

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to The A. Johnson Company and Joseph Bornstein parcels, respectively.

6. The Town of Westford and Town of Underhill shall have no obligation to construct, maintain, plow or repair said Trails within the respective Towns, and all responsibility for maintenance, construction, plowing and repair shall be the responsibility of The A. Johnson Company or Joseph Bornstein, as the case may be.

7. The A. Johnson Company shall acquire no vested rights or interest in the Trails by the construction of or improvements to said Trails for however long a period of time, nor from the use thereof for however long a period of time.

8. The A. Johnson Company and Joseph Bornstein, prior to the construction of any improvements or maintenance of the Trails, shall obtain the approval of the Board of Selectmen and/or Road Commissioner for the respective Towns wherein said Trail is located.

9. The A. Johnson Company and Joseph Bornstein are hereby granted, pursuant to 19 V.S.A. §1111, the right to use the Trails by any motor vehicles, pick-up trucks, four-wheel drive vehicles, logging trucks, logging equipment and the like in order to continue their programs of forestry management on The A. Johnson Company lands and the Bornstein parcel, respectively, and, periodically, to effect the removal of timber from their respective lots during the term of this Stipulation. The parties

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agree that the designation of said Town Highways as Trails does not preclude the use of the herein described vehicles.

10. The parties to this Stipulation recognize that the existence of Goodrich Road, or Westford Town Highway No. 24 has been challenged in the matter of Timothy W. Budell and Della J. Budell, Petitioners v. Town of Westford, Respondent, Docket No. S1149-00CnC. If the resolution of the issues in the Budell case affects the existence of the Westford Town Highway No. 24 and the Court determines that said Town Highway does not exist, then this Stipulation is a nullity.

11. This Stipulation shall run with the land and be valid for and binding upon the Town of Westford, the Town of Underhill, The A. Johnson Company, Joseph Bornstein, and their respective heirs, successors, and assigns.

12. The parties understand and agree that this Stipulation will be incorporated into a Court Order in this case.

DATED at Burlington, Vermont, this 14th day of September, 2001.

TOWN OF WESTFORD

By: _____
Timothy M. Eustace, Esq.

DATED at Montpelier, Vermont, this 19th day of September, 2001.

TOWN OF UNDERHILL

By: _____
Paul S. Gillies, Esq.

ITZEL, PAGE & LETCHER, P.C.
CORNEYS AT LAW
BATTERY STREET
P.O BOX 1507
LINGTON, VERMONT
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DATED at Middlebury, Vermont, this 17th day of September, 2001.

PETITIONERS

By: _____
Karl W. Neuse, Esq.

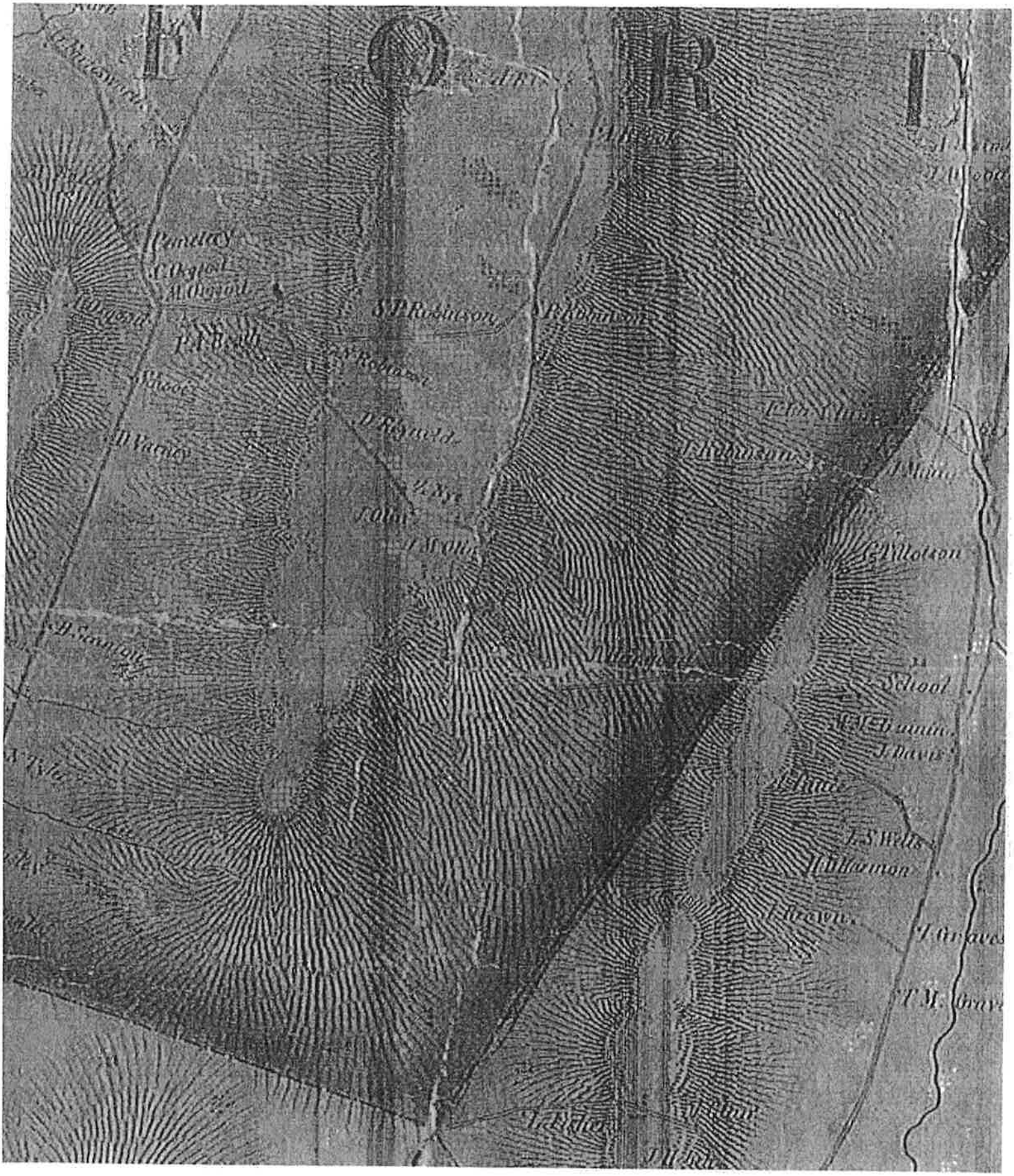
SO ORDERED this 26th day of September, 2001.

_____
Presiding Superior Court Judge

wed451.lit

FITZEL, PAGE & FLETCHER, P.C.
ATTORNEYS AT LAW
71 BATTERY STREET
P.O. BOX 1507
BURLINGTON, VERMONT
05402-1507

9-28-01 Certified to be a true copy of the original as the same appears on file in this office.
_____
Clerk, Chittenden Superior Court



EXHIBIT

tabbies

4

HISTORIC MAPWORKS
Residential Genealogy™

FREE 1-3 DAY PRIORITY MAIL SHIPPING ON ALL FINE ART PRINTS

username
password
Register LOGIN

ITEM #US4793
Westford, Westford Center
From Chittenden County 1869 published by F. W. Beers & Co. in 1869

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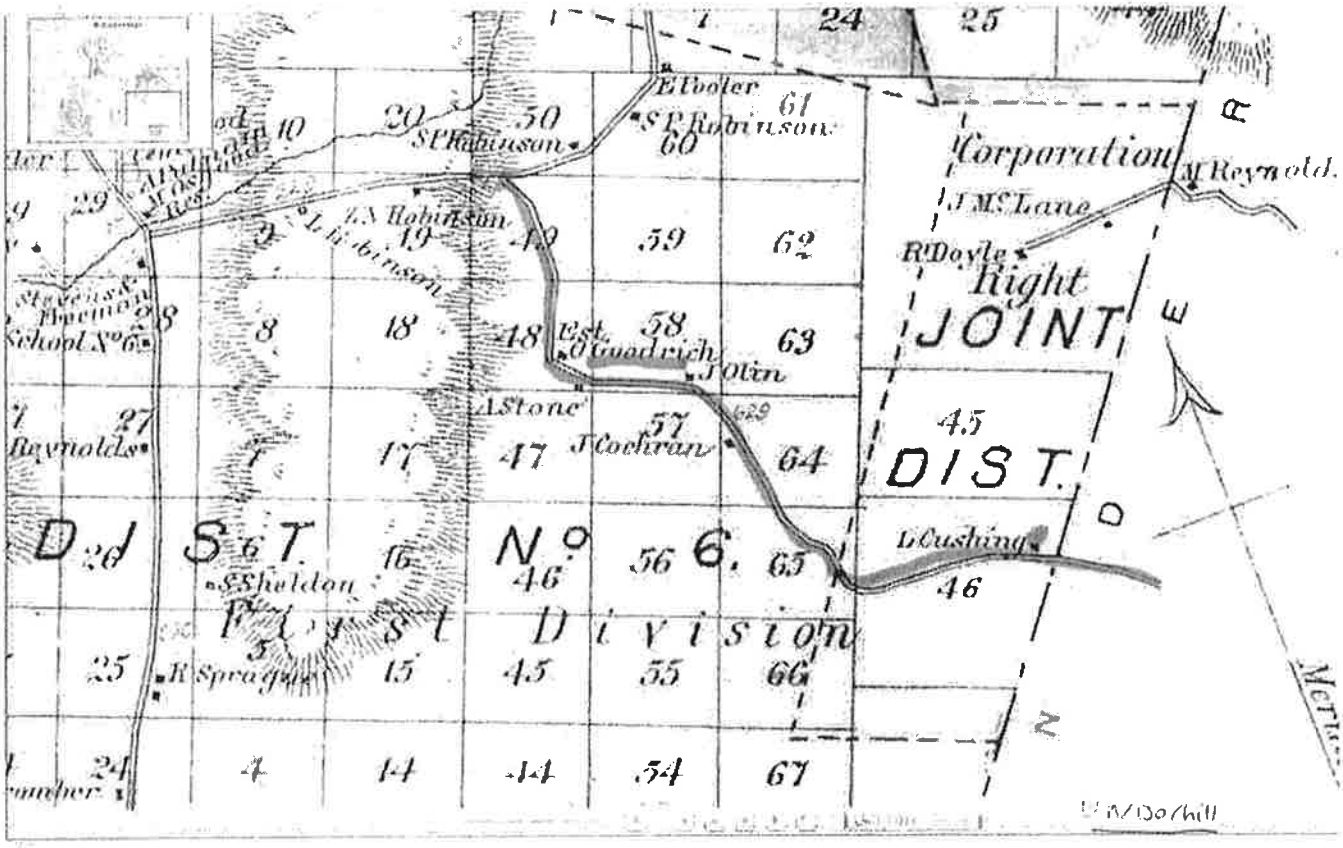

OVERLAY THIS MAP HISTORIC EARTH™ PREMIUM HISTORIC EARTH™ BASIC

Map Information

PLAINTIFF'S EXHIBIT 5
PENGAD 800-631-6989

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. _____

Brianne E. Chase, Trustee of the Revocable Living
Trust of Barbara S. Eastman
Plaintiff

v.

Town of Underhill
Defendant

AFFIDAVIT OF DAVID CRANE

NOW COMES David Crane, and being duly sworn, deposes and says:

1. I am employed as a licensed real estate agent by Coldwell Banker, Hickok & Boardman in Burlington, Vermont. I am the listing agent for the Eastman Property.

2. I have personally visited the Eastman Trust Property, and am familiar with access from Repa Road, in Underhill, Vermont.

3. At the Underhill-Westford town line, Repa Road becomes Goodrich Trail. The trail is evident for about 500 feet, then is unrecognizable and is certainly not passable by passenger car.

4. I observed the remnants of a house foundation, and crumbling barn structures on the Eastman Trust property. These structures are located approximately 500 feet from the terminus of the trail at the end of Repa road in Underhill, which is where the trail "disappears".

5. The only reasonable access to the old house site is over Repa Road, and the 238 feet of trail in Underhill.

Dated at Burlington, Vermont this 27 day of March, 2015.

E. David Crane
David Crane

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington in said County this 27 day of March, 2015, personally appeared David Crane and made oath to the truth of the foregoing.

Before me,

Roxanne T. Stubbs
Notary Public

Roxanne T. Stubbs
Notary Public
Commission Expires:
February 10, 2019

CLARKE DEMAS & BAKER
ATTORNEYS AT LAW

C. KIRK CLARKE
ELIZABETH M. DEMAS
BRUCE D. BAKER

346 SHELBURNE ROAD, SECOND FLOOR
POST OFFICE BOX 4484
BURLINGTON, VERMONT 05406-4484

TEL. 802-652-1400
FAX 802-652-1405

September 16, 2014

Brian Bigelow
Underhill Selectboard
PO Box 32
Underhill, Vermont 85490

Re: Trail Portion of Repa Road, Underhill, Vermont

Dear Mr. Bigelow:

We represent Rolfe Eastman and Brianne E. Chase, Trustees of the Eastman Trust, owner of undeveloped land located in the Town of Westford, and bordering the Underhill-Westford town line. The Eastman parcel was historically accessed by Repa Road, (Underhill TH #21) until June 12, 2000, at which time 238 feet of Repa Road was reclassified as a trail.

Other historical access to this parcel was through Goodrich Road, (Westford TH#24), but the selectboard in Westford had reclassified a portion of Goodrich Road (Westford TH#24) as a trail in 1972. At the hearing on June 12, 2000, the Westford selectboard discontinued the remainder of Goodrich road, and reclassified it as a trail. Since that time, the access to the Eastman property has been unclear, as both means of access were either converted or confirmed on the same day to trail status.

The Trustees are asking for confirmation from the Selectboard that they have a right of way over that 238 foot portion of Repa Road located in Underhill, that has been designated as a trail, for access and for utilities.

Clarification of this right has been previously given to other landowners in Westford. At the time of the discontinuance of a small portion of Repa Road, and of Goodrich Road, the Towns of Westford and Underhill entered into a Stipulation agreeing that the A. Johnson Company and Joseph Bornstein had the right, pursuant to 19 V.S.A. 1111 to use the trails by any "motor vehicles, pick-up trucks, four wheel drive vehicles, logging trucks, logging equipment and the like". The Eastman Trust property was not included in this Stipulation, as it was not part of the lawsuit this Stipulation settled.

Under the common law, property owners have a right to access abutting public roads. The general rule is that an owner of property abutting a public road has both the right to use the road in common with other members of the public and a private right for the purpose of access. When a

public road is discontinued or abandoned, the abutting landowner retains the private right of access.[1] The Eastman property abuts the terminus of Repa Road on the westerly end.

The Trustees are requesting that the selectboard confirm that the Eastman parcel is entitled to the same rights and privileges as afforded the A. Johnson Company and Joseph Bornstein in its stipulation, as it is entitled to these rights by common law.

I am attaching a copy of a Stipulation, and a copy of the minutes from 2000, wherein the select board designated the final 238 feet of Repa Road as a trail, and discontinued its prior status as a town road.

Thank you for your consideration.

Sincerely,

Elizabeth Demas

Elizabeth M. Demas, Esq.

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[1] Okemo Mountain, Inc., v. Town of Ludlow, 171 Vt. 201 (2000)

All of the abutters were given notice of the time and place of examination by Return Receipt mail. Notice was given to the Minicipal Planning Commissions of the Town of Westford and the Town of Underhill. A copy of said notice was posted in the offices of the Town Clerk of Westford and Underhill, and the like notice was published in the Burlington Free Press.

At the time and place appointed the Selectboards made the site visit to the Goodrich Road and Repa Road and heard all interested parties. This hearing was adjourned to allow the Selectboard to gather additional information on the public highway in question. The public hearing continued on June 12, 2000, at which time the Selectboards heard further testimony.

Upon due consideration the Westford Selectboard has determined that the public good and convenience requires that the following action be taken with respect to Goodrich Road:

> The Goodrich Road (TH#24) be classified as a trail in its entirety.

Upon due consideration the Underhill Selectboard has determined that the public good and convenience requires that the following action be taken with respect to Repa Road:

> The Repa Road (TH#21) be classified as a Trail from the Westford/Underhill Town line a Distance of 238 feet, more or less, to the Arnold Driveway and the conjunction with the Class 3 Portion of Repa Road.

You have a right to appeal this decision to the superior court of this county, in writing within 30 days of the date of the decision, pursuant to V.R.C.P. 75. You need to serve the towns, as you would do in any civil action, through a constable or sheriff, or using the alternative first class mail method explained V.R.C.P. 4(1). Merely sending a written notice of appeal is not enough. The fee is $150.00. If you fail to appeal within that time, you may lose your right to challenge this decision at some future time.

GOODRICH ROAD/REPA ROAD PUBLIC HEARING
JUNE 12, 2000 WESTFORD, VT
WESTFORD SELECTBOARD AND UNDERHILL SELECTBOARD

FINDINGS OF FACT

1. IN 1972, THE TOWN OF WESTFORD DISCONTINUED PART OF GOODRICH ROAD AND TURNED ANOTHER SECTION OF IT INTO A TRAIL. THEY DID THIS WITHOUT REALIZING THAT, ACCORDING TO 19 VSA 790, THEY SHOULD HAVE WORKED JOINTLY WITH THE TOWN OF UNDERHILL, SINCE THE ROAD, CALLED GOODRICH ROAD IN WESTFORD AND REPA ROAD IN UNDERHILL, IS AN INTERTOWN HIGHWAY.

2. IN 1996, THE UNDERHILL SELECTBOARD DISCONTINUED A SMALL SECTION OF REPA ROAD TO THE BOUNDARY WITH WESTFORD. THE UNDERHILL BOARD KNEW THAT THE WESTFORD SIDE OF THE ROAD HAD BEEN DISCONTINUED, AND THEY NOTIFIED THE TOWN OF WESTFORD THAT THE ACTION TO DISCONTINUE THE ROAD WAS TAKING PLACE. HOWEVER, UNDERHILL DID NOT NOTIFY THE PROPERTY OWNED ON THE WESTFORD SIDE OF THE BOUNDARY LINE.

3. THE TOWN OF UNDERHILL WAS ADVISED BY PAUL GILLIES, ESQ., THAT THE SITUATION COULD BE REMEDIED BY GOING THROUGH A ROAD RECLASSIFICATION PROCESS ACCORDING TO 19 VSA 790 JOINTLY WITH WESTFORD.

4. AFTER DUE NOTICE TO ALL INTERESTED PARTIES, THE SELECTBOARDS MET JOINTLY IN WESTFORD, HEARD FROM INTERESTED RESIDENTS, WALKED A PORTION OF THE GOODRICH ROAD, WALKED THE AFFECTED PORTION OF THE REPA ROAD IN UNDERHILL, AND HEARD FROM OTHER INTERESTED PARTIES ON THE ROAD AND IN THE UNDERHILL TOWN HALL.

5. WESTFORD: JOHN LOUIS, REPRESENTING ABUTTING LANDOWNER A. JOHNSON COMPANY, TESTIFIED THAT THE COMPANY NEEDED ALL AVAILABLE ACCESSES. THEY RECONSTRUCTED THE ROAD FROM MACHIA HILL RD. TO THEIR LANDING. THEY WANT TO MAINTAIN A ROW, AND NOT LOSE THAT OPTION. IF THE ROAD GOES TO THE EASTMAN PROPERTY AND STOPS, THEN THEY DO NOT HAVE THAT OPTION. THEY HAVE AN ACCESS CLOSE TO THE HOUSE OF PEOPLE WHO WILL TESTIFY LATER. THEY WOULD LIKE THE TRAIL TO BE AS WIDE AS POSSIBLE. THEY WOULD LIKE THE ROAD TO REMAIN CLASS 4, BUT REALIZE PEOPLE DO NOT LIKE LOG TRUCKS COMING ON A TRAIL. JOHNSON CO. LAND ABUTS EASTMAN PARCEL. HE IS SYMPATHETIC TO NO ATV USE.

6. WESTFORD: MOLLY LIEBOWITZ, REPRESENTING ABUTTING LANDOWNERS THE EASTMAN FAMILY, SAID THE FAMILY HAD NO OBJECTION TO WESTFORD DISCONTINUING THE ROAD ON THE WESTFORD SIDE, BUT WANTS ACCESS ON THE UNDERHILL SIDE. THEY WOULD LIKE REPA ROAD TO BE CLASS 3, BUT WOULD SETTLE FOR CLASS 4. THEY DO WANT A DISCONTINUANCE OF GOODRICH ROAD THROUGH THE EASTMAN PARCEL.

7. WESTFORD: TIM AND DELLA BUDELL LIVE AT THE END OF THE PRESENTLY MAINTAINED ROAD. HOW WILL YOU KNOW WHERE THE ROAD IS? A COUPLE OF PEOPLE SEEM TO KNOW WHERE IT IS, INCLUDING DAVID ARNOLD ON THE UNDERHILL SIDE. DELLA BUDELL SAID, IF THE ROAD EXISTS, WE WANT IT DISCONTINUED. SHE IS OPPOSED TO MOTORIZED ACCESS.

8. WESTFORD: JOHN COOLEY, WHO ABUTS JOHNSON LAND TO THE WEST, WANTS ACCESS FOR VEHICLES BECAUSE HE CUTS WOOD.

9. WESTFORD: JACOB AND LAURA HOLZSCHEITER ,ABUTTING LANDOWNERS, WOULD LIKE TO HAVE THE ROAD DISCONTINUED. THEY DO NOT WANT A THROUGH TRAIL OR ATV ACCESS. ANYTHING THAT WOULD DECREASE ACTIVITY ON THE TRAIL WOULD PLEASE THEM. IN 1998 THE WESTFORD CONSERVATION COMMISSION SUBMITTED A REPORT ON TRAILS. THEY DO NOT WANT TO RESTRICT ACCESS TO THE PEOPLE ALREADY UP THERE. THEY HAVE HAD ATV AND DRINKING PROBLEMS WITH USERS OF THE TRAIL. PEOPLE RECALL THAT THE OLD TRAIL BY THE HOUSE (WHICH HOUSE?) IS NOT WHERE THE TRAIL CURRENTLY IS.

10. UNDERHILL: DAVID ARNOLD, ABUTTING LANDOWNER ON UNDERHILL SIDE, TESTIFIED BY TELEPHONE. HE WOULD LIKE THE ROAD TO "RETURN TO NATURE." HE IS NOT IN FAVOR OF GIVING ACCESS SO BUILDING CAN GO ON AT THE EASTMAN PROPERTY.

11. UNDERHILL: JIM PHELPS OF REPA ROAD, NOT AN ABUTTER, WOULD LIKE TO LEAVE THINGS AS THEY ARE AND NOT CREATE MORE TRAFFIC.

12. UNDERHILL: BERNIE COUILLARD OF REPA ROAD, NOT AN ABUTTER, WOULD LIKE TO SEE THINGS REMAIN AS THEY ARE AND THE TOWN NOT BE RESPONSIBLE FOR MORE ROAD MAINTENANCE.

13, UNDERHILL: DENNIS POLEY OF ROUTE 15, NOT AN ABUTTER, WOULD LIKE TO OPEN THE ROAD TO THE WESTFORD TOWN LINE AS CLASS 4 AND DISCONTINUE IT OR MAKE IT A TRAIL IN WESTFORD.

14. UNDERHILL: CRAIG ARMSTRONG OF SAM WARD ROAD, WHO ABUTS EASTMAN IN UNDERHILL AND WESTFORD, BUT DOES NOT ABUT THE ROAD, THINKS WE SHOULD BE FAIR TO THE EASTMANS AND FUTURE PROPERTY OWNERS AND HAVE IT OPEN ON THE UNDERHILL SIDE. IT IS OK FOR WESTFORD TO THROW UP THE ROAD ON EASTMAN'S PROPERTY. A PROPERTY OWNER SHOULD HAVE A SAY OVER A ROAD GOING THROUGH HIS PROPERTY. PEOPLE WHO WANT ACCESS SHOULD TALK TO THE LANDOWNER. PEOPLE WITH ABUTTING PROPERTY SHOULD HAVE ROW.

15, UNDERHILL: JOHN COOLEY REITERATED THAT HE DOES NOT WANT A THROUGH TRAIL ON THE WESTWARD SIDE. WHAT WAS THE CLASSIFICATION OF THE ROAD IN WESTWARD? HE WOULD LIKE TO KEEP THE ROAD OPEN IN UNDERSELL, AND RETAIN THE ABILITY TO BUILD A HOUSE. THE PROPERTY HAS BEEN IN HIS FAMILY SINCE THE 70'S, AND HIS FATHER KNEW THE ROAD WAS BEING DISCONTINUED. HE TALKED TO THE SELECTBOARD ABOUT IT. HE NOW HAS ACCESS THROUGH HOLZSCHEITERS BUT THAT MIGHT NOT CONTINUE.

16, UNDERSELL: JOSEPH BORNSTEIN, WESTFORD, PRESENTED A LETTER AND SOME DOCUMENTS WHICH SHOW THAT HE TOOK THE TOWN TO COURT IN 1974 OVER THEIR ACTION IN 1972. THE COURT AGREED THAT THE ROAD SHOULD BE A TRAIL UP TO A POINT ON A CORNER OF LOT 57. FROM THERE UNTIL THE TOWN LINE IT WAS DISCONTINUED. (EASTMAN HAD DENIED HIM ACCESS–SELECTBOARD GAVE HIM AGRICULTURAL ACCESS THROUGH EASTMAN PROPERTY TO REPA ROAD.) [IS THIS STORY STRAIGHT?]

DISCUSSION FOLLOWED TESTIMONY. QUESTION: COULD LANDOWNERS ON THE WESTFORD SIDE GIVE ROWS TO EACH OTHER? WESTFORD SELECTBOARD PROMISED TO GET INFORMATION ON ACTIVITY ON TRAILS.

THE BOARDS RECESSED THE HEARING UNTIL JUNE 12, AT 7:30 IN WESTFORD

10. Underhill: David Arnold, abutting landowner on Underhill side, testified by telephone. He would like the road to "return to nature." He is not in favor of giving access so building can go on at the Eastman property.

11. Underhill: Jim Phelps of Repa Road, not an abutter, would like to leave things as they are and not create more traffic.

12. Underhill: Bernie Couillard of Repa Road, not an abutter, would like to see things remain as they are and the town not be responsible for more road maintenance.

13, Underhill: Dennis Poley of Route 15, not an abutter, would like to open the road to the Westford town line as Class 4 and discontinue it or make it a trail in Westford.

14. Underhill: Craig Armstrong of Sam Ward Road, who abuts Eastman in Underhill and Westford, but does not abut the road, thinks we should be fair to the Eastmans and future property owners and have it open on the Underhill side. It is OK for Westford to throw up the road on Eastman's property. A property owner should have a say over a road going through his property. People who want access should talk to the landowner. People with abutting property should have ROW.

15, Underhill: John Cooley reiterated that he does not want a through trail on the Westford side. What was the classification of the road in Westford? He would like to keep the road open in Underhill, and retain the ability to build a house. The property has been in his family since the 70's, and his father knew the road was being discontinued. He talked to the Selectboard about it. He now has access through Holzscheiters but that might not continue.

16, Underhill: Joseph Bornstein, Westford, presented a letter and some documents which show that he took the town to court in 1974 over their action in 1973. The court agreed that the road should be a trail up to a point on a corner of lot 57. From there until the town line it was discontinued. (Eastman had denied him access--Selectboard gave him agricultural access through Eastman property to Repa Road.)

The boards recessed the hearing until June 12, at 7:30 in Westford.

JUNE 12, 2000: Westford

1. The selectboards, meeting jointly, heard further testimony, including the minutes from the May 22, 2000 Westford Selectboard meeting, where this matter was discussed. Concerns were raised about motorized vehicles, and the precise location of the trail. Some landowners would like to have the trail moved.

2. The Westford Selectboard has determined that, to the best of its knowledge, the Goodrich Road was a Class 4 town highway prior to the Selectboard's action in 1973.

3. Abutter Joseph Bornstein wants long-term forest management possibilities. Hearings and legal action are a burden for him. He wants controlled motor vehicle access in a respectful manner.

4, Stan Senger of Underhill, not an abutter, does not want the road continued to the Westford line. He thinks what the Selectboard did in 1996 was correct.

5. Dave Cooley of Westford, father of John Cooley, an abutter who testified on May 10, explained that after he purchased the property in the early 1970s, he improved the road, as did the A. Johnson company. He wants a Class 4 road.

6. Barbara Peck of Westford, not an abutter, inquired if the court action of 1974 was legal? No, said Bob Bancroft, chair of the Westford Selectboard, but it is mute, because the 1973 action was illegal. He

continued that the issue for Westford is the portion from Bornstein to Underhill, because the rest of the road must remain, in his opinion, at least a trail.

7. Molly Liebowitz, representing the Eastman family, pointed out that the road on the Westford side through the Eastman property has been closed for over 25 years. They only want approximately 300 feet on the Underhill side.

8. The Selectboards examined various maps of the road in question and the Westford property parcel maps.

9. Tim Budell of Westford inquired if a survey of the Goodrich Road is available. Bob Bancroft replied that it is probably in the town records, but it has not been found.

10. Hearing no further comments, the Selectboards closed the hearing and began to deliberate. Ted Tedford, chair of the Underhill Selectboard, expressed his concerns about the effects of maintaining a Class 3 or 4 road on the Underhill side. Maintenance and safety are his main concerns. He would not want to make any decision that would place a greater traffic impact on Repa Road. Stan Hamlet and Margaret Hummel, the other members of the Underhill board, concurred that Repa Road is one of the most fragile roads in the town, has recently been improved, and has no possibilities for further improvement without major and expensive reconstruction. Steep slopes and drainage are problems. Ted Tedford said that people should have access all along the road. Bob Bancroft said that the town is working on an ordinance for trails which would designate types of uses allowed at appropriate times of year. The property along the Goodrich Road is in Westford's forestry district, which has lot requirements of 30 acres for a house, and if the Eastman property were developed, it would fall under the Westford zoning ordinance. (NOTE: After the hearing was over, the Selectboards learned that the forestry district in Westford was eliminated several years ago, and that the present zoning allows for a dwelling on ten acres or more.)

11. Bill Leach of the Westford board made the motion that the entire road in question, that is, the Goodrich Road in Westford, and Repa Road in Underhill, from the town line to the Arnold driveway, a distance of 238 feet, be designated a trail. Ken Tardie seconded the motion. All on the Westford board agreed.

12. Stan Hamlet offered an identical motion to Bill Leach's on behalf of the Underhill board. Margaret Hummel seconded. All on the Underhill board agreed.

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

THE A. JOHNSON COMPANY and JOSEPH BORNSTEIN, Petitioners	)
v.	) CHITTENDEN SUPERIOR COURT) DOCKET NO. S1201-00 CnC
TOWN OF WESTFORD, Respondent, and TOWN OF UNDERHILL, Respondent	)

STIPULATION TO DISMISSAL WITH PREJUDICE AND ORDER

Now come the Petitioners, The A. Johnson Company and Joseph Bornstein, and the Respondents, Town of Westford and Town of Underhill, in the above-captioned matter, with the approval of their undersigned counsel, and hereby stipulate and agree that the above-captioned matter may be DISMISSED WITH PREJUDICE under the following terms and conditions.

1. Consistent with the Return of the Board of Selectmen for the Town of Westford dated July 28, 2000 and recorded in Volume 88, Page 297 of the Westford Land Records, it is determined that the public good and convenience requires that the Goodrich Road, Westford Town Highway No. 24, be classified as a trail in its entirety. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that the trail be continued at the same width or three rods.

2. Consistent with the Return of the Board of Selectmen for the Town of Underhill dated August 2, 2000 and recorded in Volume 102, Page 33 of the Underhill Land Records, it is

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determined that the public good and convenience requires that the Repa Road, Underhill Town Highway No. 21, be classified as a trail from the Westford/Underhill Town Line, a distance of 238 feet, more or less, to the Arnold Driveway and the conjunction with the Class III portion of Repa Road. Pursuant to 19 V.S.A. §775, the Selectmen and now this Court designate that said portion of Repa Road shall be continued as a trail at the same width or three rods.

3. Both Joseph Bornstein and The A. Johnson Company may need to continue to utilize the Goodrich Road and Repa Road (hereinafter referred to as the "Trails") for timber management and removal of timber and other forest products on their respective properties as well. As such, the parties enter into this Stipulation and Order to ensure that the Petitioners may not be deprived of access to, or any economic benefits from, their respective parcels.

4. Pursuant to 19 V.S.A. §304, the Boards of Selectmen of the respective Towns not only have the duty and responsibility, but the authority to make regulations governing the use of trails and to extend permission regarding the use of such trails. Likewise, the Board of Selectmen in taking the action noted above and creating Trails in both Westford and Underhill, did not intend by their respective actions to prevent access to and egress from the respective lots of the Petitioners/Appellants.

5. The A. Johnson Company and Joseph Bornstein may use the reclassified Town Highways, now designated as Trails, for access

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to The A. Johnson Company and Joseph Bornstein parcels, respectively.

6. The Town of Westford and Town of Underhill shall have no obligation to construct, maintain, plow or repair said Trails within the respective Towns, and all responsibility for maintenance, construction, plowing and repair shall be the responsibility of The A. Johnson Company or Joseph Bornstein, as the case may be.

7. The A. Johnson Company shall acquire no vested rights or interest in the Trails by the construction of or improvements to said Trails for however long a period of time, nor from the use thereof for however long a period of time.

8. The A. Johnson Company and Joseph Bornstein, prior to the construction of any improvements or maintenance of the Trails, shall obtain the approval of the Board of Selectmen and/or Road Commissioner for the respective Towns wherein said Trail is located.

9. The A. Johnson Company and Joseph Bornstein are hereby granted, pursuant to 19 V.S.A. §1111, the right to use the Trails by any motor vehicles, pick-up trucks, four-wheel drive vehicles, logging trucks, logging equipment and the like in order to continue their programs of forestry management on The A. Johnson Company lands and the Bornstein parcel, respectively, and, periodically, to effect the removal of timber from their respective lots during the term of this Stipulation. The parties

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agree that the designation of said Town Highways as Trails does not preclude the use of the herein described vehicles.

10. The parties to this Stipulation recognize that the existence of Goodrich Road, or Westford Town Highway No. 24 has been challenged in the matter of Timothy W. Budell and Della J. Budell, Petitioners v. Town of Westford, Respondent, Docket No. S1149-00CnC. If the resolution of the issues in the Budell case affects the existence of the Westford Town Highway No. 24 and the Court determines that said Town Highway does not exist, then this Stipulation is a nullity.

11. This Stipulation shall run with the land and be valid for and binding upon the Town of Westford, the Town of Underhill, The A. Johnson Company, Joseph Bornstein, and their respective heirs, successors, and assigns.

12. The parties understand and agree that this Stipulation will be incorporated into a Court Order in this case.

DATED at Burlington, Vermont, this 14th day of September, 2001.

TOWN OF WESTFORD

By: _____
Timothy M. Eustace, Esq.

DATED at Montpelier, Vermont, this 19th day of September, 2001.

TOWN OF UNDERHILL

By: _____
Paul S. Gillies, Esq.

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DATED at Middlebury, Vermont, this 17th day of September, 2001.

PETITIONERS

By: _____
Karl W. Neuse, Esq.

SO ORDERED this ___ day of September, 2001.

_____
Presiding Superior Court Judge

wed451.lit

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LETCHER, P.C.
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September 25, 2014

Brian Bigelow, Underhill Town Administrator
PO Box 32
Underhill, Vermont 05490

Underhill Selectboard
PO Box 32
Underhill, Vermont 05490

Re: Trail Portion of Repa Road, Underhill, Vermont

Dear Mr. Bigelow and Underhill Selectboard:

This letter is to follow up with our prior letter of September 16, 2014. As stated, our office represents Rolfe Eastman and Brianne E. Chase, Trustees of the Eastman Trust, owner of undeveloped land located in the Town of Westford, and bordering the Underhill-Westford town line. The Eastman parcel was historically accessed by Repa Road, (Underhill TH #21) until June 12, 2000, at which time 238 feet of Repa Road was reclassified as a trail.

We are requesting that the Underhill Selectboard affirm that the Eastman Trust is entitled to use that 238 feet of "Repa Road", to provide "reasonable access" to their property in Westford. Authority for this request is based in common law. One vehicle for issuing such written authority is provided by 19 V.S.A. 1111, "Permitted Use of Right of Way". This request is supported by the fact that the Selectboard, in September of 2001, agreed to issue such permits to the A. Johnson Company, and to Joseph Bornstein, in order to provide them with access to their parcels. We are requesting that the rights afforded the Eastman Trust not be limited to logging rights, but include all necessary rights of access.

The authority for this request is based on the law summarized by the Vermont Supreme court in 2000, entitled "Okemo Mountain, Inc., v. Town of Ludlow." The Supreme Court, in that case, explained the doctrine of the common law right of access afforded to an adjacent landowner, as follows:

"Under this doctrine, when a public road is opened adjacent to private property, the owner of the abutting property obtains a right to access the public road by operation of law, and when a public road is discontinued or abandoned, the abutting landowner retains the private right of access. The right of access has two requirements: (1) the person claiming the right must own land that *abuts*

the road, and (2) the road must be a *public* road."Abut" means "[t]o reach; to touch.... No intervening land." ("abutting" means to end, to border on, to touch). [1]

The courts define public road loosely, for example, the frozen surface of Lake Dunmore qualifies as public road, because it is open to general circulation, although temporary. Repa Road is still a "public road", although now classified as a "trail".

The common-law right of access entitles the abutting landowner to "reasonable and convenient access." The landowner must have free and convenient access to his property and to his improvements thereon, and his means of ingress and egress may not be substantially interfered with by the public.[2]

The Trustees suggest that the Board treat this petition as a request for a permit allowing the perpetual right to use the right of way of that portion of Repa Road designated as a Trail, under 19 VSA, Section 1111. As stated before, this permitted use was previously granted to the A. Johnson Company and Joseph Bornstein.

Thank you for your consideration.

Sincerely,

Elizabeth M. Demas, Esq.

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[1] Okemo Mountain, Inc., v. Town of Ludlow, 171 Vt. 201 (2000)

[2] Okemo Mountain, Inc., v. Town of Ludlow, 171 Vt. 201 (2000) See, e.g., *Iowa State Highway Comm'n v. Smith*, 248 Iowa 869, 82 N.W.2d 755, 759 (Iowa 1957); *Teachers Ins. & Annuity Ass'n of America v. City of Wichita*, 221 Kan. 325, 559 P.2d 347, 353 (1977)

The Vermont Statutes Online

Title 19: Highways

Chapter 11: PROTECTION OF HIGHWAYS

19 V.S.A. § 1111. Permitted use of the right-of-way

§ 1111. Permitted use of the right-of-way

(a) Permits. Permits must be obtained by anyone or any corporation wishing to use as described in this section any part of the highway right-of-way on either the state or town system. Notwithstanding any other statutory requirement, a permit shall be required for any use of any highway right-of-way, consistent with the provisions of this section. The authority given to the board, the secretary, and the attorney general under this section shall also apply to the legislative bodies of towns, or their designees.

(b) Driveway entrances, highway grades; drainage. It shall be unlawful to develop, construct, regrade, or resurface any driveway, entrance, or approach, or build a fence or building, or deposit material of any kind within, or to in any way affect the grade of a highway right-of-way, or obstruct a ditch, culvert, or drainage course that drains a highway, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way, without a written permit from the agency, in the case of state highways, or the legislative body, or designee of a municipality, in the case of town highways. As a condition of any such permit, compliance with all local ordinances and regulations relating to highways and land use shall be required. The agency or legislative body, within their respective jurisdictions, may make such rules to carry out the provisions of this section as will adequately protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing highway infrastructure, but shall in no case deny reasonable entrance and exit to or from property abutting the highways, except on limited access highways, using safety, maintenance of reasonable levels of service on the existing highways, and protection of the public investment in the existing highway infrastructure as the test for reasonableness, and except as necessary to be consistent with the planning goals of 24 V.S.A. § 4302 and to be compatible with any regional plan, state agency plan, or approved municipal plan. However, in any case involving an access permit for a development contributing 75 or more peak hour trips to state highways or class 1 town highways, the permit may include reasonable conditions and requirements to protect service levels on such highways.

(c)(1) Installing pipes and wires in highway. It shall be unlawful to dig up or excavate a trench in a public highway for the purpose of installing pipes or wires without a written

permit from the agency in the case of state highways and the selectmen for town highways. The permit shall include any conditions imposed by the issuing party. All inspection of excavation and backfilling shall be done under the supervision of an agent of either the town or state as the case may be. Failure of any person, corporation, or municipality to perform the work or to restore the highways in a satisfactory and timely manner to the agency or the town may result in either the agency or the town completing the work at the expense of the permit holder; provided however, the agency or town shall give timely notice to the permit holder of any defects, and the permit holder upon receipt of notice, shall have a reasonable time in which to repair the defects. The agency or the selectmen may recover reasonable expenses incurred in this manner in a civil action in the name of the state or town with costs.

(2) These provisions shall not apply to cities and shall not prevent a person, corporation, or municipality from excavating to make emergency repairs to a break in a pipe or a short in a wire, but in all cases all work shall be completed to the satisfaction of the agency or the town. Notice shall be given to the appropriate persons as expeditiously as possible after discovery of the problem.

(d) Use by private sewer or water lines. The agency may issue permits allowing the use of highway rights-of-way for private sewer or water lines if, following notice and hearing, the board certifies to the agency that the requested use will serve the needs of the public. In its certificate, the board may attach conditions as are required, including but not limited to the following:

(1) the installation of sewer or water lines shall conform with plans and specifications approved by the agency and shall be relocated at no cost to the state whenever the right-of-way is needed for highway purposes;

(2) reimbursement of the agency by the permit applicant for the actual costs of the review, inspection, and engineering services provided by the agency for these installations;

(3) reimbursement of the agency by the permit applicant for the cost of assigning an inspector to the project during construction.

(e) Project inspectors; highway access plan. The agency may assign an inspector to the project during construction at the applicant's expense. Any application to the agency for a drive or access permit by reason of any development subject to the provisions of this section shall include a proposed highway access plan for the entire tract of land. The agency shall impose reasonable conditions to reduce the number of accesses that will be required for the tract of land. These conditions may include a required setback of any construction or improvements from the highway to permit the construction of frontage road or roads, acceleration and deceleration lanes, and/or other areas for off-highway control and management of vehicles, and may require reimbursement for any costs to the state for the installation of traffic control devices or road improvements reasonably required because of the development and may permit or require integration of the access and on-site traffic control facilities and connection of frontage roads between contiguous

tracts of land as development is occurring or may occur along the highway.

(f) Revoking access; frontage road. The agency, in the case of state highways, or the selectboard, in the case of town highways, may, as development occurs on land abutting the highway, provide as a condition of any permit for the elimination of access previously permitted and require the construction of a common frontage road or other access improvements which may serve more than one property or lot.

(g) Permit suspension. In addition to any other enforcement powers that may be provided for by law, the secretary or his or her designated representative, on behalf of the agency or the legislative body, or designee on behalf of a municipality, may suspend any permit under this section until compliance is obtained. If there is continued use or activity after suspension, the secretary, on behalf of the agency, or the legislative body, on behalf of a municipality, may physically close the driveway or access point if, in the opinion of the secretary or the legislative body, the safety of highway users is or may be affected.

(h) Restraining prohibited acts. Whenever the secretary believes that any person is in violation of the provisions of this chapter he or she may also bring an action in the name of the agency in a court of competent jurisdiction against the person to collect civil penalties as provided for in subsection (j) of this section and to restrain by temporary or permanent injunction the continuation or repetition of the violation. The selectmen have the same authority for town highways. The court may issue temporary or permanent injunctions without bond, and any other relief as may be necessary and appropriate for abatement of any violation. An action, injunction, or other enforcement proceeding by a municipality relating to the failure to obtain or comply with the terms and conditions of any permit issued by a municipality pursuant to this section shall be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date on which the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

(i) Assurance of discontinuance. The secretary or the selectmen may accept an assurance of discontinuance of any violation of the terms of this chapter including when applicable schedules of abatement for a violation. Any assurance of discontinuance shall be in writing, and shall be filed with the attorney general, the court having jurisdiction over the subject matter, and the town clerk of the town in which the violation occurred for recording in the land records. The attorney general, within ten days of receipt of the assurance, if he or she objects to the terms, may petition the board for a hearing of the violation in the manner prescribed by law. The board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 15 days thereafter. Evidence of violation of an assurance shall be prima facie proof of the violation as cited in the assurance. Prior to institution of any action or proceeding under this subsection, the secretary whenever he or she believes any person to be or to have been in violation may issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. In this event, the secretary shall within 30 days provide the person with notice, an opportunity to be heard, and an opportunity to settle the matter before instituting an action or proceeding as provided for

in this subsection.

(j) Civil penalty. Any person who violates the provisions of this chapter or the terms of an order issued by a court under this chapter shall forfeit and pay to the state a civil penalty of not less than $100.00 and not more than $10,000.00 for each violation; provided however, where violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for the correction or termination of the violation shall constitute an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending. For the purposes of this subsection the court issuing the injunction on petition of the secretary shall retain jurisdiction for purposes of awarding the civil penalty.

(k) No deed purporting to subdivide land abutting a state highway or a class 1 town highway can be recorded unless all the abutting lots so created are in accord with the standards of this section, including but not limited to the requirement to provide a frontage road or roads.

(l) Recording of permits; recording fees. Initial and subsequent permits shall be recorded at the expense of the applicant in the land records of any municipality in which the affected property is located, unless the agency (in the case of state highways) or the legislative body (in the case of town highways) determines that such action is not warranted in specific instances or for certain categories of permits. The agency or the legislative body may include, as a condition of the permit, that the issued permit shall not be valid until the permit holder records in the office of the appropriate municipal clerk the "notice of permit action" provided with the issued permit by the agency or the legislative body. (Added 1985, No. 269 (Adj. Sess.), § 1; amended 1989, No. 79; 1989, No. 246 (Adj. Sess.), §§ 13-15; 1997, No. 62, § 56, eff. June 26, 1997; 1997, No. 120 (Adj. Sess.), § 8a; 1997, No. 150 (Adj. Sess.), § 13; 1999, No. 156 (Adj. Sess.), § 13, eff. May 29, 2000; 2003, No. 56, § 55, eff. June 4, 2003; 2009, No. 132 (Adj. Sess.), § 10, eff. May 29, 2010.)

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January 6, 2015

Brian Bigelow, Underhill Town Administrator
PO Box 32
Underhill, Vermont 05490

Underhill Selectboard
PO Box 32
Underhill, Vermont 05490

Re: Trail Portion of Repa Road, Underhill, Vermont

Dear Mr. Bigelow and Underhill Selectboard:

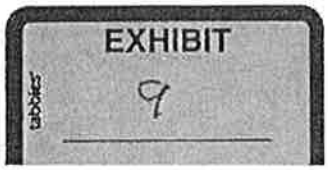
Please consider this a request made on behalf of Rolfe Eastman and Brianne E. Chase, Trustees of the Eastman Trust, owners of property in Westford abutting that portion of Repa Road which is designated as a "Trail."

We are requesting that the Town of Underhill grant the right to The Eastman Trust, and its successors and assigns, (the "Permittee") a "Permitted Use of Right of Way", pursuant to 19 V.S.A. Section 1111, to use the Trail by any motor vehicle, pick-up truck, four-wheel drive vehicle, logging truck, logging equipment and the like in order to access their land for purposes of harvesting timber, and for constructing and maintaining a single family residence on their land.

The Town of Underhill shall have no obligation to construct, maintain, plow or prepare said Trail, and all responsibility for maintenance, construction, plowing and repair shall be the responsibility of the Eastman Trust, its heirs and assigns. Prior to construction of improvements or maintenance of the road, or of utilities serving the residence, the Permittee shall obtain approval from the Board of Selectmen, which permission shall not be unreasonably withheld.

Please inform the undersigned if any fee is assessed for the issuance of this Permit. Thank you for your consideration.

Sincerely,

Elizabeth Demas

Elizabeth M. Demas, Esq.