

MASTEN HOUSE

Newcomb, New York | \$1,450,000



For more information, please contact:

VINCENT MCCLELLAND

518-576-2297 | vmcclelland@landvest.com

LandVest | **CHRISTIE'S**
INTERNATIONAL REAL ESTATE

245 Johns Brook Road, Keene Valley, NY 12943 | 518-576-2297 www.landvest.com

Listing # NY0343

STATEMENT OF LIMITATIONS

This Property Profile package is a compilation of public record information and additional material and information from the Seller. The Offered Property is currently offered for sale by LandVest, Inc.

This Property Profile is intended to facilitate a prospective buyer's ability to become generally familiar with the Offered Property. However, neither the Seller nor Seller's representatives (including LandVest, Inc.) makes any express or implied representation or warranty as to the accuracy or completeness of any material or information in this Property Profile package (including, without limitation, any of the exhibits attached hereto), and none of such persons shall have any liability whatsoever relating to or arising from the use of any material or information in this Property Profile package or any errors therein or omissions therefrom. More specifically, no prospective buyer of all or any part of the Offered Property is entitled to rely on the accuracy or completeness of any of this material or information and shall be entitled to rely solely on such representations and warranties as may be specifically and expressly set forth in a fully executed Purchase and Sale Agreement relating to any acquisition of all or any part of the Offered Property, subject to the terms and conditions of such Agreement. Any prospective buyer will have to independently verify any material or information contained in this Property Profile which such prospective buyer deems relevant to his or her decision to purchase or not to purchase all or any part of the Offered Property.

Any alternative use of the Offered Property implied in this Property Profile **does not** constitute a warranty or guarantee of approval for such alternative use by any local, state or federal agency or official. It is the sole responsibility of any buyer to determine the viability of any contemplated use of the Offered Property under pertinent federal, state, and local laws and regulations. The Seller makes no representation as to the likelihood of approval of any proposed use.

Any sketches produced by LandVest, Inc. or plans prepared by other professionals in this Property Profile package are included only to assist the reader in better visualizing the Offered Property.

No access to any part of the Offered Property is allowed unless accompanied by an authorized employee of LandVest, Inc.

Masten House History and Background

The Masten House rests in the Adirondack wilderness, on a low ridge just beyond the shore of Henderson Lake, and perched above the nascent, stream-like Hudson River below. It is the southern-most structure, and the only still maintained, in what once was the thriving community of Adirondac. The Village of Adirondac, spelled without a "k," is nestled at the feet of New York State's tallest mountains, the Adirondack "High Peaks," and has the distinction, among many others, of being the first place in the state to bear the name, in any form, of Adirondack. It is also the geographic site where the Hudson River first takes its name.

The house was built as a modest private summer residence, originally named Gabbro for the metamorphic bedrock on which it was built. It was erected in the late 1890s by Arthur H. Masten, who had married a granddaughter of an original owner of the Adirondack Iron and Steel Company. The company, later known as the McIntyre Iron Company, had operated an iron mine between 1826 and 1856 just north of the home site, which had led to the development of the community encompassing the mine. After the mine closed in 1856 the village was abandoned, but was revitalized in 1877 as a summer vacation community with the formation of what is now known as the Tahawus Club.

The home accidentally burned in the summer of 1926 and was rebuilt in 1927 on its current footprint, having been enlarged into a significantly larger residence. It continued to be occupied by the Masten family until 1947 when National Lead (NL) took possession of the house following their purchase of the McIntyre mine holdings in 1940. During the NL period of ownership Masten House was maintained as an exclusive retreat for NL executives and those of its parent companies.

In 2003 OSI purchased from NL "The Tahawus Tract," encompassing the Upper Works Historic District, and which included the Masten House. OSI considered selling the Masten House as a private home, but was convinced its most appropriate use was to support education in the Adirondacks. In 2006 OSI approached ESF seeking a management agreement where OSI would retain ownership while ESF assumed programmatic responsibility for Masten. Even though this partnership was created and moved forward, in 2011 OSI indicated an interest in selling Masten outright to ESF. The ESF College Foundation, following the strong recommendation and encouragement of the College administration purchased Masten in 2012.

Masten House enjoys an unparalleled location for education and outreach, for recreation, and for engaging in an almost limitless breadth of conversations around natural resource management, conservation, preservation and public policy, not to mention art, history, literature, geology, engineering and technology, economics, and countless additional subjects. The High Peaks Wilderness upon the edge of which it sits, is the largest and most intensely visited wilderness unit in the state, and the Village of Adirondac contains not just the head of the Hudson River but the most well preserved 19th century iron operation in North America. In addition, Teddy Roosevelt, amongst our nation's most revered leaders, and to many the father of conservation policy, became 26th President of the United States while he and his family were vacation at the Village when President McKinley died following an assassination attempt

History:

Date issued July 14, 2003

APA Permit 2003-115, recorded on 7/29/2003 in Book 0059 at Page 0115. Project Description: Phase I, Subdivision of an 11,273-acre tract of land. NL will convey 9646 acres (containing Preston Ponds and Henderson Lake) to OSC, and retain 1627 acres. OSC has the contractual right to acquire a part of the 1627 acres retained by NL.

Phase II is mentioned in APA Permit 2003-115, but not authorized at that time. It is subject to further Agency review and approval. Phase II proposes "a 50 +/- acre parcel containing the Masten House to be conveyed to a private owner subject to a conservation easement precluding further subdivision or development"

Deed from NL to Open Space, 8/14/03, recorded on 8/25/2003, Book 1371 Page 0050. Noted, lands conveyed are subject to APA Permit 2003-115.

APA Permit 2003-115A, issued on March 16, 2004, recorded on March 23, 2004 in Book 61 Page 90 Project Description: Amended Permit; Amendment asks for further subdivision of the 1627 acres retained by NL. Proposed to convey an additional 410.86 Acres. This will provide additional public recreation opportunities on lands transferred to OSC and include use of canoes and kayaks on Henderson Lake and construction of a lean-to on Henderson Lake.

Deed dated October 4, 2004, recorded on December 3, 2004, in Book 1425 Page 0079, National Lead to Open Space. Subject to APA Permit 2003-115 and 2003-115A. The terms and conditions are binding on the heirs and successors and assigns of the grantors and all subsequent grantees.

Phase II: APA Permit 2005-284, issued April 10, 2006 and recorded on May 5, 2006 in Book 68 at Page 121

The second of a two phase report. **Phase I is done.**
The proposed site is 10,050 acres ($9646 + 410.86 = 10,050$) of land which was conveyed to OSC. This is a Proposed 7 lot subdivision of the 10,050 acres.

January 22, 2008 Deed from Open Space to The People of the State of NY, for approximately 6,813 acres, recorded on January 31, 2008 in Book 1565 Page 10. Page 16 of Deed states the same premises as conveyed to Open Space Conservancy Inc., by National Lead, recorded in Book 1371 Page 0050. Therefore, as mentioned above, this land is subject to APA Permit 2003-115. Consideration stated on deed \$5,096,124.00

DEED RESERVATIONS:

Reservation One (Adirondac Core Area and Masten House Parcel) 256 +/- Acres

Reservation Two (Upper Preston Pond Cabin Parcel) 1.6 Acres

Reservation Three (Mount Adams Observer's Cabin Parcel) .30 Acres

Reservation Four (Mount Adams Fire Tower Parcel) 0.41 Acres

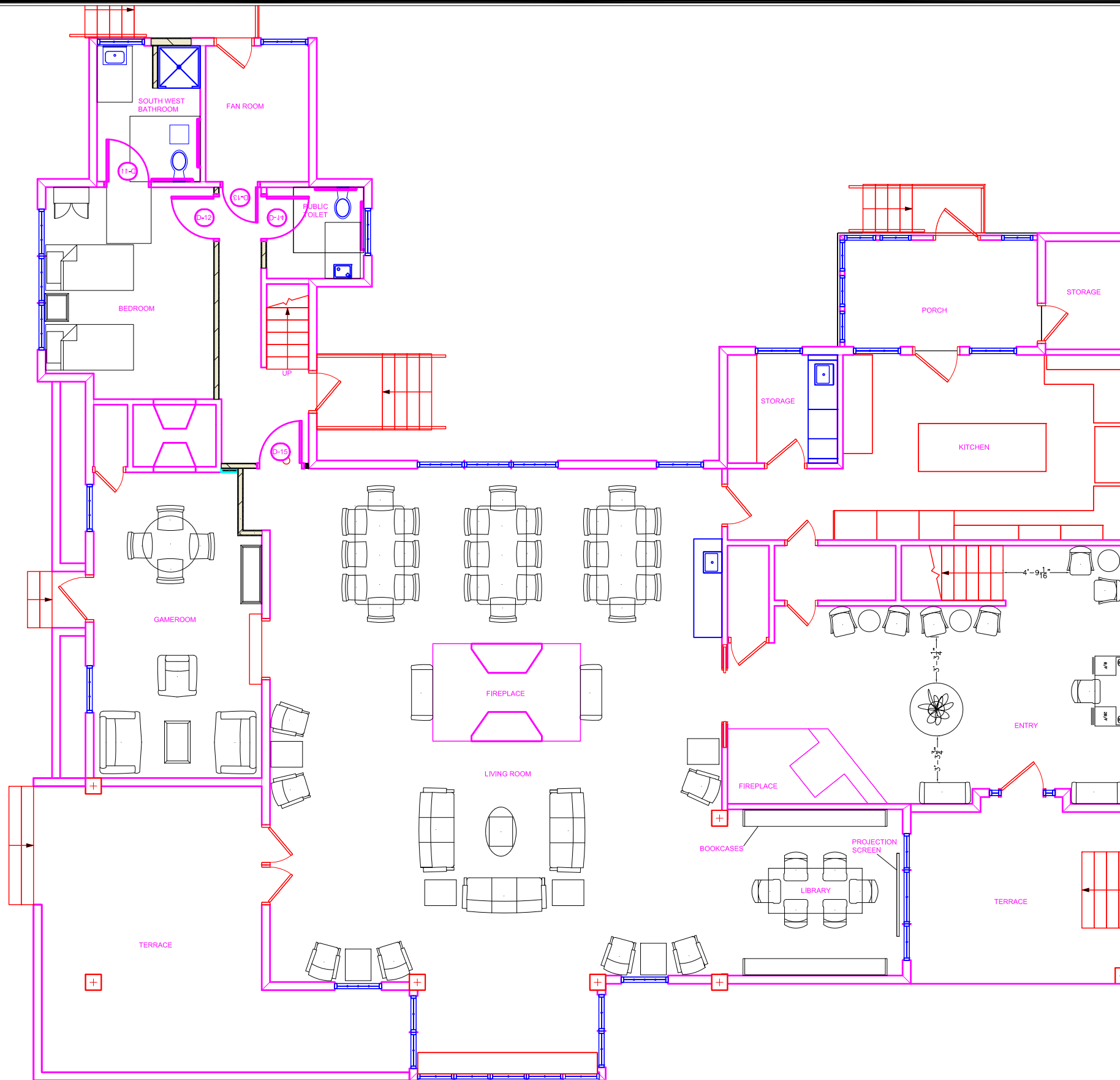
NYSDEC is obtaining Conservation Easements on the parcels that were reserved by Open Space Inc. in Deed Book 1565 Page 10. Parcels are also described as Phase II in APA Permit # 2005-284.

Essex 383 B: Proposed CE is enclosed.

Essex 383 C, Masten House (Parcel 4 in APA Permit) 46 Acres (Tax Map # 90.-1-2.110)
The Masten House Parcel was sold to ESF College on May 9, 2013, recorded in Book 1735 at Page 84. Consideration noted as \$442,500.00

ESF College gave Open Space Conservancy Inc., a Conservation Easement at the same time they purchased the fee, May 9, 2013, recorded on May 24, 2013 in Book 1735 Page 91. Consideration is shown as -0-.

Essex 383 D: Proposed CE is enclosed.



CLIENT APPROVALS

In accordance with Teknion's policy, approval of the drawing package is one of the conditions precedent to commencement of manufacturing and the start of lead time.

All changes or deviations from the approved drawing package will be regarded as a change order and processed accordingly.

A/D AUTHORIZED SIGNING OFFICER _____ DATE _____

- ☐ APPROVED DRAWING PACKAGE
- ☐ APPROVED AS NOTED
- ☐ REVISED, RESUBMIT

CLIENT AUTHORIZED SIGNING OFFICER _____ DATE _____

- ☐ APPROVED DRAWING PACKAGE
- ☐ APPROVED AS NOTED
- ☐ REVISED, RESUBMIT
- ☐ APPROVAL ASSIGNED TO A/D FIRM LISTED ABOVE

| | | | | | |
|---------|-------|-----|--------|--------------|-----------------|
| | | | | | |
| | | | | | |
| | | | | | |
| 0 | | | | | ORIGINAL LAYOUT |
| Rev. #: | Date: | By: | Check: | Description: | |

TITLE:
SUNY ESF
MASTON HOUSE
1st Floor Layout

| | | |
|-----------------------|------------------------|--------------------|
| SCALE: NTS | DATE: 07/22/2013 | PROJECT NUM: DJ |
| STATION COUNT: | OFFICE COUNT: | DRAWN BY: NK |
| LAYOUT NAME: BSIZE | DRAWING NAME: R0-09 | CHECKED BY: |
| SHEET NUMBER: | 1 OF 1 | |



Syracuse
One Webster's Landing
Syracuse, NY 13202
P 315.410.7970
F 315.410.7973

CLIENT APPROVALS

All changes or deviations from the approved drawing package will be regarded as a change order and processed accordingly.

CLIENT AUTHORIZED SIGNING OFFICER _____ DAY _____

☐ APPROVED DRAWING PACKAGE

☐ APPROVED AS NOTED

☐ REVISED, RESUBMIT

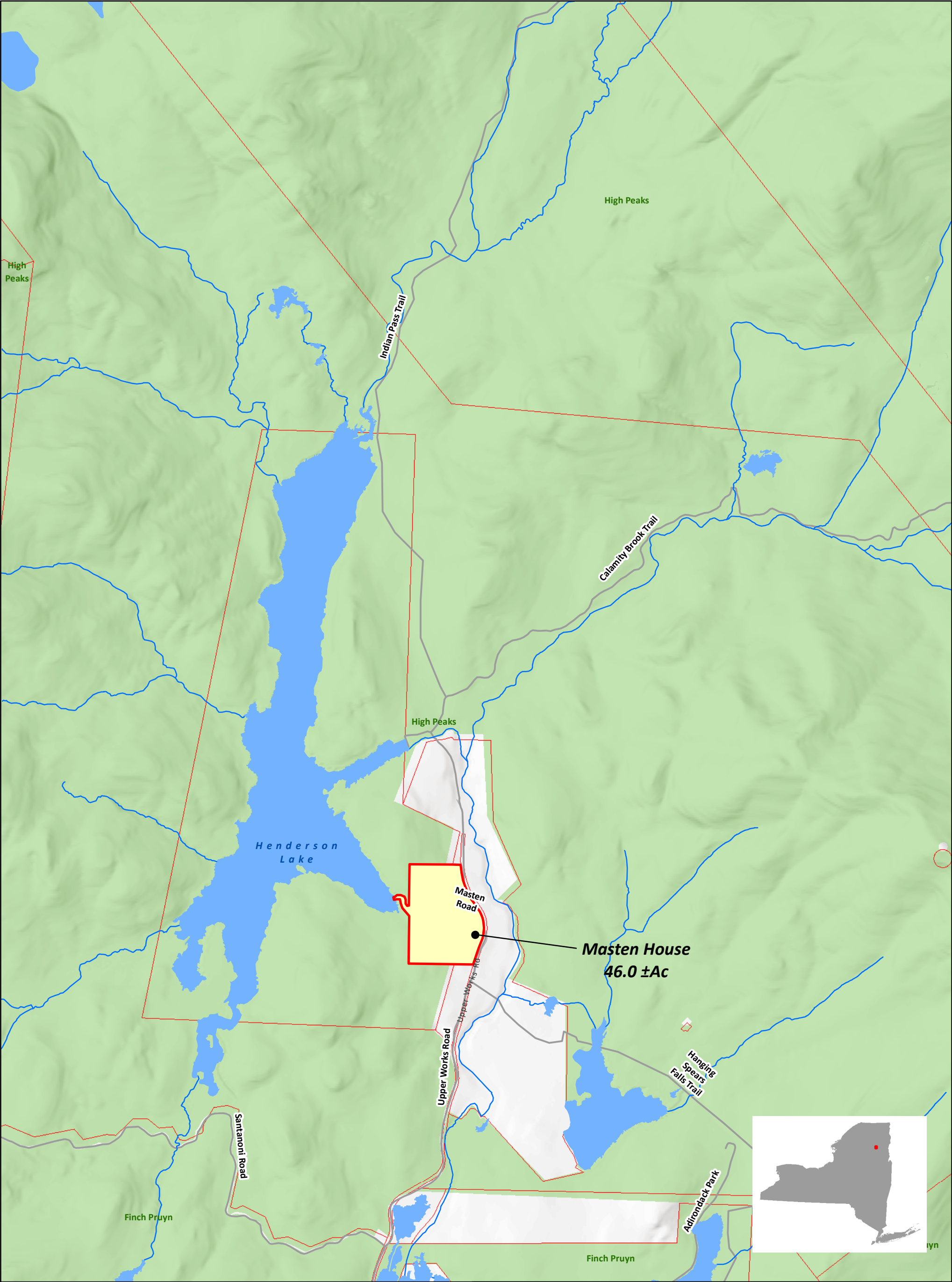
☐ APPROVAL ASSIGNED TO A/D
FIRM LISTED ABOVE

| | | | | | |
|---------------|-------------|-----------|--------------|--------------------|-----------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| 0 | | | | | ORIGINAL LAYOUT |
| <i>Qty. #</i> | <i>Date</i> | <i>By</i> | <i>Check</i> | <i>Description</i> | |





TITLE: MASTEN HOUSE
2nd Floor

| | | | | | |
|-------------------------|--|------------------------|--|-----------------------|--|
| SCALE: NTS | | DATE: 10/29/2013 | | PROJECT NAME: D... | |
| STATION COUNT: | | OFFICE COUNT: | | DRAWN BY: NK | |
| LAYOUT NAME: CSIZE | | CHECKED BY: | | | |
| | | DRAWING NAME: R0-09 | | | |
| SHEET NUMBER: 1 OF 1 | | | | | |





Legend

-  Subject Property - 46.0 ±Ac
-  Adjacent Properties
-  Protected Land
-  Perennial Streams

Credits: Background from
ESRI 'Terrain Base' map
service

Conservation Context

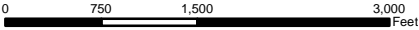
Project Number: 01012

Date: 04/09/19

Masten House
Newcomb, NY



Scale: 1" = 1,500'

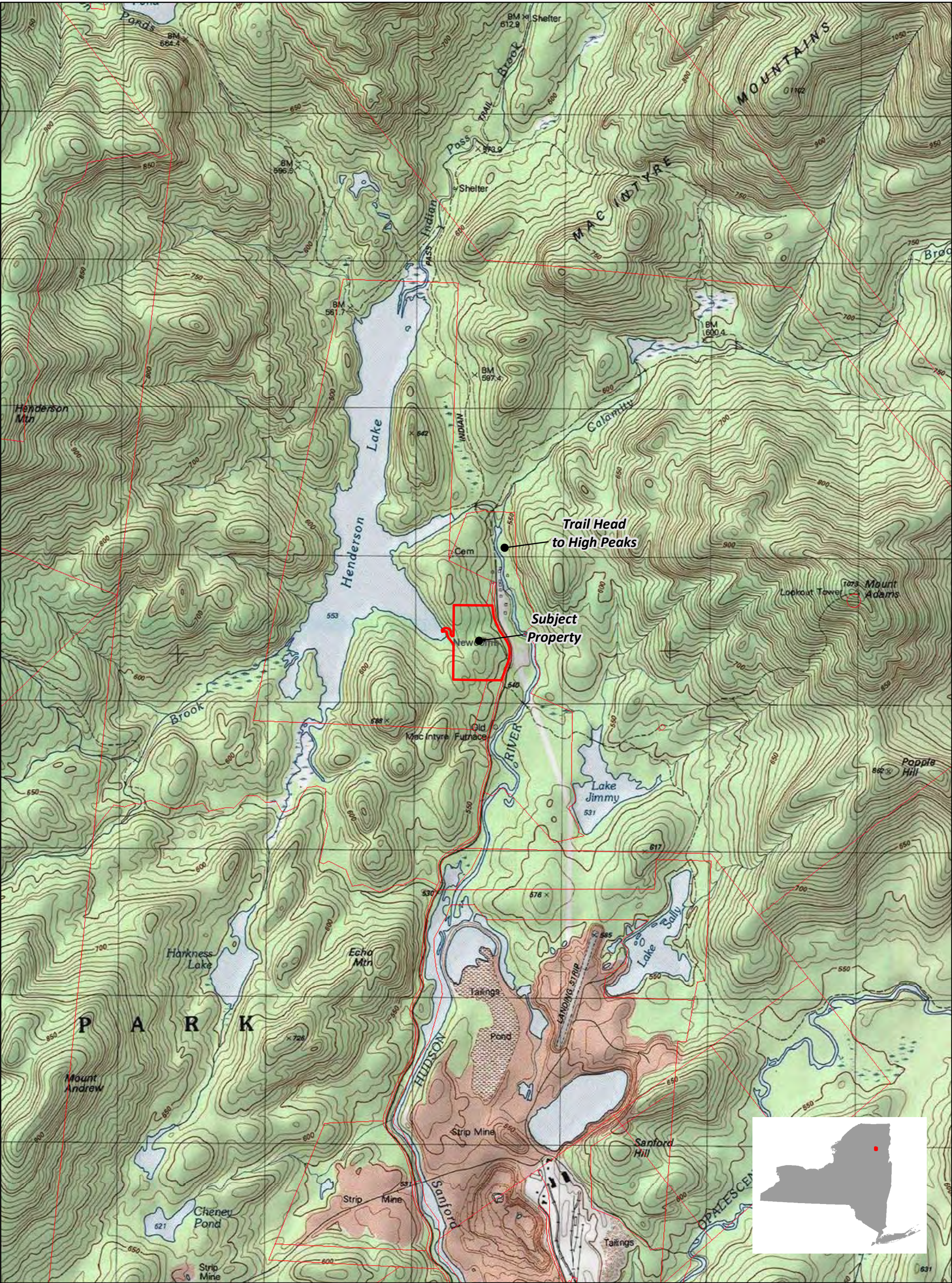


This plan is conceptual only and is not
represented as an engineered plan.





| Legend | | Base Plan Orthophotograph | |
|--|---|--|--|
| <div><div></div> Subject Property - 46.0 ±Ac</div> | <div><div></div> Perennial Stream</div> | <div>Project Number: 01012</div> <div>Date: 04/09/19</div> | |
| <div><div></div> Adjacent Properties</div> | <div><div></div> Contours (ft)</div> | <div><div></div> 0100'200'300'400'500'</div> <div>Scale: 1" = 200'</div> <div>This plan is conceptual only and is not represented as an engineered plan.</div> | |
| <div><div></div> Protected Land</div> | <div><div></div> Open Water</div> | <div>Masten House</div> <div>Newcomb, NY</div> | |
| <div><div></div> Wetlands</div> | <div>Credits: 2015 imagery from ESRI 'World Imagery' map service.</div> <div>LandVest</div> | | |



Legend

- Subject Property - 46.0 ±Ac
- Adjacent Properties
- Protected Land

Credits: USGS Topo Background
from ESRI USA Topo Maps
mapservice.

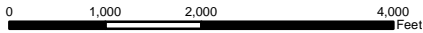
USGS Topography Plan

Project Number: 01012
Date: 04/09/19

Masten House
Newcomb, NY



Scale: 1" = 2,000'



This plan is conceptual only and is not
represented as an engineered plan.



**ESSEX COUNTY
REAL PROPERTY TAX MAP**

These Maps were prepared for Tax Administration Purposes only. They are not intended to be used in the conveyance of property. There is no guarantee of accuracy or completeness. All information on these maps is subject to such variations and corrections as might result from an accurate instrument by a licensed surveyor.

**ESSEX COUNTY
REAL PROPERTY TAX MAP**

No. 90.0 Block 1

Town Newcomb

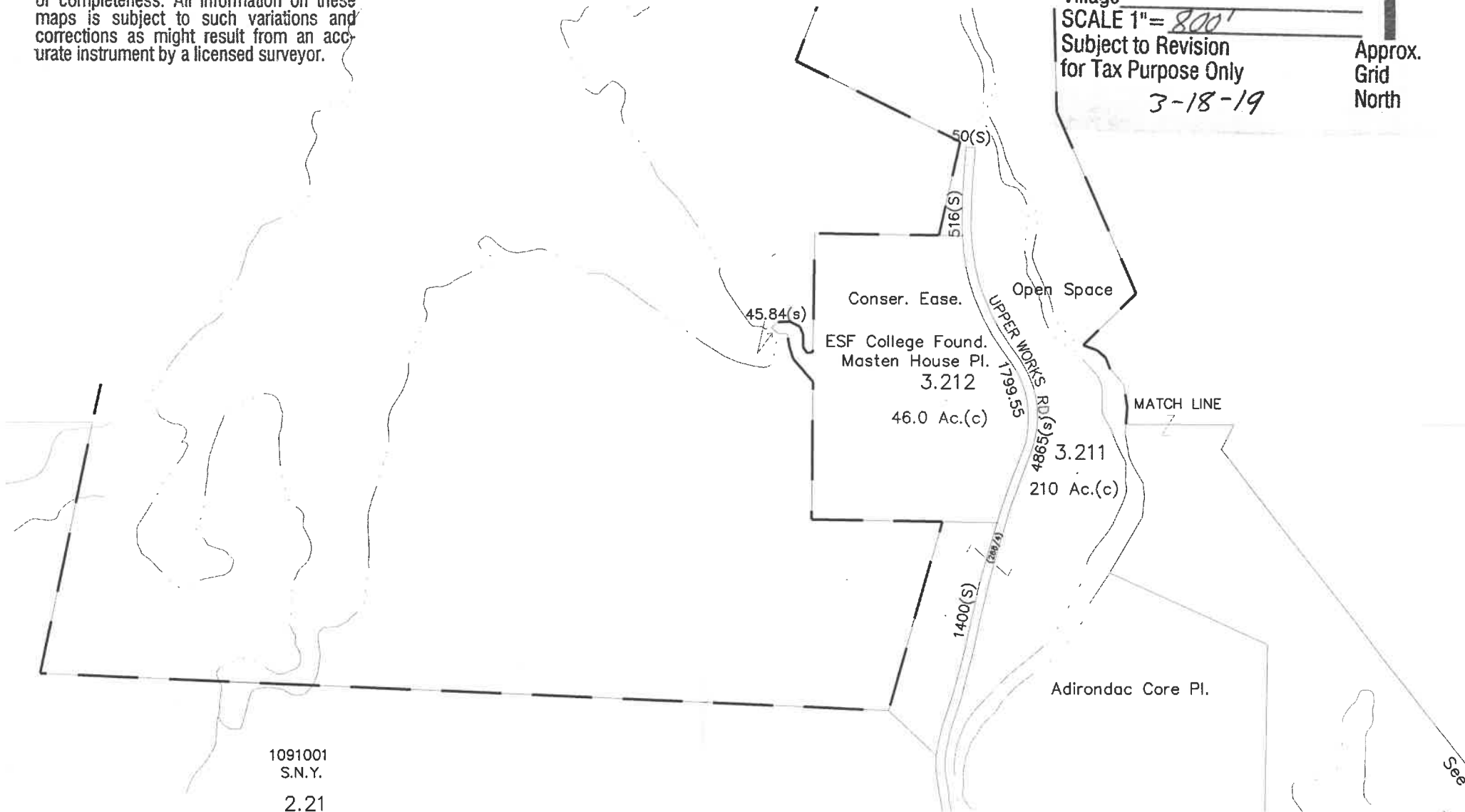
Village _____

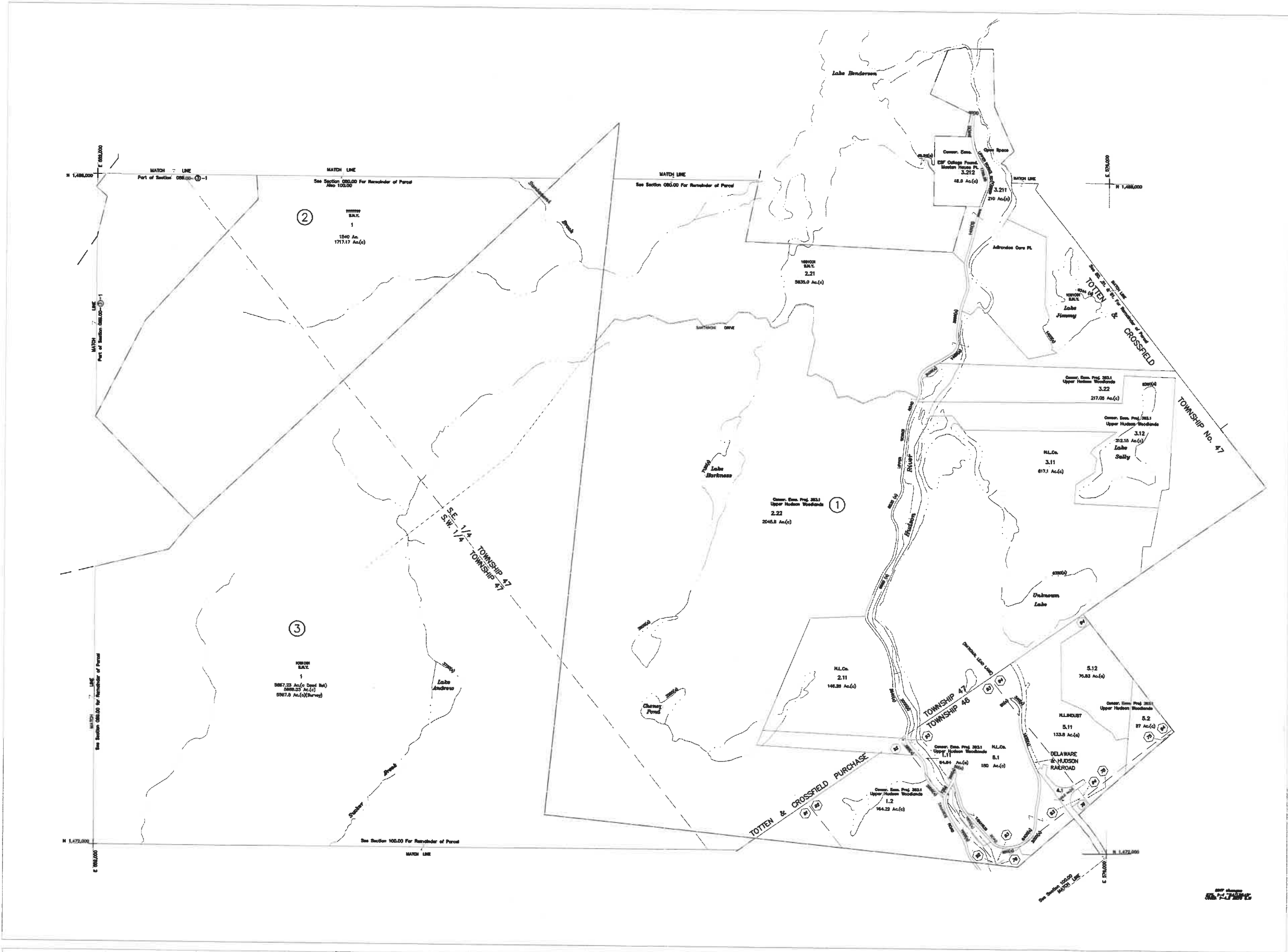
SCALE 1"= 800'

Subject to Revision
for Tax Purpose Only

3-18-19

Approx.
Grid
North





**ESSEX COUNTY
REAL PROPERTY TAX MAP**
These Maps were prepared for Tax Administration Purposes only. They are not intended to be used in the conveyance of property. There is no guarantee of accuracy or completeness. All information on these maps is subject to such variations and corrections as might result from an accurate instrument by a licensed surveyor.

**ESSEX COUNTY
REAL PROPERTY TAX MAP**
No. 90.0 Block
Town Newcomb
Village
SCALE 1" = 3400'
Subject to Revision
for Tax Purpose Only
Approx. Grid North

REAL PROPERTY MAP
THE USE OF THIS MAP IS FOR REAL PROPERTY TAX ADMINISTRATION PURPOSES ONLY
PREPARED FOR
ESSEX COUNTY BOARD OF SUPERVISORS
ELIZABETHTOWN, NEW YORK

PREPARED BY
DALE LAYNE TRIANGLE CO. INC.
DAYTON, OHIO

SPECIAL DISTRICTS

| TYPE | SYMBOL | RECORDS PP. 360 |
|--------|--------|-----------------|
| FIRE | — | — |
| LIGHT | — | — |
| SCHOOL | — | — |
| SEWER | — | — |
| WATER | — | — |

LEGEND

| | |
|----------------------------|----------------------|
| STATE OR COUNTY LINE | — |
| CITY, TOWN OR VILLAGE LINE | — |
| ROAD OR RAILROAD R/W | — |
| EASEMENT R/W LINE | — |
| PROPERTY LINE | — |
| WATER OR STREAM | — |
| LAND HOSE | — |
| GREAT LOT LINE | — |
| REALTY LOT LINE | — |
| GREAT LOT NO. | (1) |
| REALTY LOT NO. | (2) |
| BLOCK LIST LINE | — |
| SECTION-BLOCK-LIST NO. | 1.00-1.10 |
| AREA (From Desc) | 1.5 Ac. |
| AREA (Calculated) | 1.5 Ac(s) |
| CONVERSION (From Desc) | 1.5 Ac. |
| CONVERSION (Calculated) | 1.5 Ac(s) |
| COORDINATE-LOCATOR NO. | (2043.619-16.83,790) |
| HYDROLOGIC ABBREVIATION | (S) |
| U.S. HIGHWAY | (1) |
| NEW YORK STATE HIGHWAY | (2) |
| COUNTY HIGHWAY | (3) |
| STREET AND TOWN ROAD | BY NAME |

TOWN OF NEWCOMB
ESSEX COUNTY, NEW YORK

5382,000-H 472,000
00-000000-000000-000000
COPYRIGHT 2001
090.00
000000-000000

3

CONSERVATION EASEMENT

Masten House Parcel

KAR: STEVEN J. MAW, ESQ.
Hancock Estabrook LLP
1500 AXA Tower I
100 Madison Street
Syracuse, NY 13202

THIS CONSERVATION EASEMENT is made this 9th day of May, 2013, by and between **ESF COLLEGE FOUNDATION, INC.**, a not for profit corporation under New York law having its principal place of business at 214 Bray Hall, 1 Forestry Drive, Syracuse, New York 13210 (hereinafter "Grantor") and **Open Space Conservancy, Inc.**, a not for profit corporation under New York law having a mailing address of c/o Open Space Institute, Inc., 1350 Broadway, Room 201, New York, New York 10018 (hereinafter the "Grantee").

WHEREAS, Grantor is the owner in fee of approximately 46 acres of real property with structures and improvements thereon in the Town of Newcomb, Essex County, New York (the "Protected Property"), as more particularly described on **Schedule A** attached hereto and shown on the map recorded in the Essex County Clerk's office as map #11914 (the "Property Map"); and

WHEREAS, by the granting of this Conservation Easement, the Grantor intends to preserve and limit the uses and development of the Protected Property in perpetuity.

NOW, THEREFORE, the Grantor, for the consideration of Ten Dollars (\$10.00) and other valuable consideration paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, grants, conveys, and releases to the Grantee a Conservation Easement (hereinafter, the Conservation Easement) in perpetuity pursuant to Article 49, Title 3 of the Environmental Conservation Law in, on, over, under and upon the Protected Property on the terms and conditions set forth herein:

1. PURPOSE. The purpose of this Conservation Easement is to conserve the scenic, historic, open space, and natural character of the Protected Property while allowing certain residential and not-for-profit commercial activities of Grantor, if those activities are compatible with the public's year-round recreational use of the surrounding area, particularly Henderson Lake and the High Peaks Wilderness Area.

2. RESTRICTED USES AND PRACTICES: The Parties agree that the following restrictions shall apply to the Protected Property in perpetuity:

2.1 Certain Prohibited Uses. Residential, commercial, agricultural, or industrial activities of any kind shall not be permitted on the Protected Property, except as specifically permitted by the terms of this Conservation Easement.

2.2 Subdivision or Conveyance. The division or Subdivision of the Protected Property is prohibited, including the conveyance of less than all the rights reserved to the Grantor herein, except as follows:

1. Conveyance to the Grantee, or to a third party solely for the purpose of facilitating ultimate conveyance to the Grantee, of a fee interest in any

portion of the Protected Property, or a grant of any rights retained by the Grantor in this Conservation Easement;

2. Portions of the Protected Property may be conveyed to abutters to the extent necessary to resolve a bona fide boundary dispute and shall not constitute a Subdivision for purposes of this Conservation Easement, provided that:

(a) any conveyance for the purpose of resolving a bona fide boundary dispute requires the approval of the Grantee which shall not be unreasonably withheld;

(b) the portion of the Protected Property conveyed to a third-party to resolve a boundary dispute shall not remain subject to the terms of this Conservation Easement; and

(c) any real property received by the Grantor in exchange for such conveyance to resolve a boundary dispute shall become subject to this Conservation Easement unless the Grantee agrees otherwise.

3. The grant of a mortgage on the Protected Property, provided that the mortgage, deed or contract is subject to and subordinated to this Conservation Easement.

2.3 Structures. Except as specifically permitted by the terms of this Conservation Easement, no structures shall be constructed or placed in, on, over or upon the Protected Property. For the purposes of this Conservation Easement, the term structure shall be defined as broadly as possible, and shall include but not be limited to any building, facility, edifice, or man-made development of any kind or nature, whether of a permanent or temporary nature, including but not limited to: any residence, building, tower, antenna, mobile home, bridge, dock, utility, pavilion, fence, sign, billboard or other advertising material, outhouse and other sanitary facility, bunkhouse, lean-to, camp, cabin, or other man-made improvements.

2.4 Impervious Surfaces. Except for the existing driveway and parking area shown as existing in the Baseline Documentation, no new or other existing roads, trails, parking areas and other areas shall be paved or covered with Impervious Surface materials, except for routes as may be required for disabled person access or use of the Protected Property.

2.5 Utilities. Except for utilities servicing the Masten House and other buildings on the Protected Property shown as existing in the Baseline Documentation, no new telephone, telegraph, cable television, electric, gas, water, sewer or other utility lines, structures and towers shall be located over, under, in, on, upon or above the Protected Property, except for the following reasons:

1. Utilities servicing the Masten House and other buildings on the Protected Property may be maintained, replaced, upgraded, improved, expanded, or converted to further Grantor's Reserved Rights.
2. Septic disposal systems constructed and maintained in accordance with applicable law serving the Masten House and other buildings on the Protected Property; or
3. Pursuant to the provisions of Section 49-0305 of the ECL when no reasonable alternative exists and only to the minimum extent necessary to accommodate the new utility; or
4. Pursuant to the provisions of Section 49-0307 of the ECL; or
5. Upon the prior approval of the Grantee.

2.6 Forest Management Activities.

1. Forest Management Activities, shall be defined as forest management practices including the cultivation, harvesting, and removal of timber or other forest products from the Protected Property is prohibited, except in compliance with Section 4 of this Conservation Easement.
2. Commercial timber harvest is prohibited.
3. No trees or other vegetation shall be cut within 150 feet of the boundary of the Protected Property, including the shoreline of Henderson Lake, with the exception of such cutting as may be necessary to maintain, but not widen, the existing path from the Masten House parking area to Henderson Lake and maintain, but not widen, two existing driveways from County Route 25 to the Masten House parking area and generator building.

2.7 Waste Disposal.

1. The dumping or storage of ashes, trash, waste, non-composted organic waste, sewage, scrap material, sediment discharges, oil and its by-products, leached compounds, toxic fumes, garbage, or any other unsightly or offensive material on any portion of the Protected Property is prohibited, except for organic debris, the on-site disposal of wood stove or fireplace ashes from the Masten House or other permitted buildings on the Protected Property and the routine storage of containerized waste prior to transport from the Protected Property.
2. No waste water or sewage, chemical wastes or other hazardous waste materials may be dumped or stored on the Protected Property except as provided for herein.

3. This Section shall not be construed to prohibit the Grantor from constructing, installing, maintaining and replacing septic disposal systems on the Protected Property in accordance with applicable law and regulations.
4. The Grantor shall insure the removal of any trash or debris from the Protected Property caused by its own activities or the activities of its lessees, invitees or permittees.

2.8 Mining; Sand and Gravel Use. Surface or subsurface mining and the excavation of sand and gravel are prohibited.

2.9 Chemical Treatments. The use of herbicides, pesticides, fungicides, rodenticides, fertilizer, and pH control or other chemicals on the Protected Property is restricted to use by the Grantor only as necessary for one or more of the following purposes and subject to the following restrictions:

1. To control insect pests for human health and safety purposes.
2. To control non-native plant or animal species.
3. For use in and around structures located on the Protected Property to prevent insect or rodent infestation.
4. For other purposes with the written approval of the Grantee.

2.10 Dams and Water Impoundments. The Grantor shall not construct dams or impoundments, manipulate water levels in watercourses or wetlands, or alter the natural watercourses on the Protected Property, except for minor alterations of surface water and watercourses to protect structures.

2.11 Non-native Species. The Grantor shall not plant, intentionally introduce, release, or broadcast any non-native species on the Protected Property unless such action has been otherwise approved in writing by the Grantee.

2.12 Development and Building Rights.

1. The development and building rights associated with the Protected Property are hereby extinguished. The Protected Property or any portion thereof, shall not be included as part of the gross area of any other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under an otherwise applicable statute, regulation, or ordinance controlling land use and building density.
2. No development or building rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any

other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

- 2.13 Motorized Recreational Vehicles.** No recreational motorized vehicle, including but not limited to all-terrain vehicles and snowmobiles, shall be operated on the Protected Property. No motorized vessel shall be placed, kept, stored or operated on Henderson Lake.

3. AFFIRMATIVE RIGHTS. Grantor grants to Grantee the following Affirmative Rights, which shall run in perpetuity with the Protected Property:

- 3.1 Right to Enter.** The Grantee, its agents, employees, or other representatives shall have access to, on and across the Protected Property at all times to monitor and assure compliance with the restrictions and limitations established herein, and to exercise and administer Grantee's other Affirmative Rights set forth in this Conservation Easement.

3.2 Emergency Actions.

1. The Grantee may take emergency action necessary to respond to natural disaster, environmental hazard, public nuisance or threats to human safety in order to preserve the Protected Property and protect the public from such disaster, hazard, or threat, provided however that Grantee shall have no duty to protect or preserve any property of the Grantor beyond that duty owed to any member of the general public in the exercise of its governmental obligation to protect the public from injury or damage caused by such disaster, hazard, nuisance, or threat.
2. To the extent practicable, the Grantee shall notify the Grantor of its entry under this Section and shall consult with the Grantor regarding such emergency action. Nothing contained in this Section shall relieve the Grantor from any liability for or duty under this Conservation Easement or under applicable law to repair, remediate, dispose or otherwise remedy any condition which it may have caused and which is the proximate cause of the Grantee's entry pursuant to this Section.

4. RESERVED RIGHTS: Notwithstanding anything to the contrary in this Conservation Easement, the Grantor reserves the following rights with regard to the Protected Property:

- 4.1 Use Of the Protected Property.** Grantor, its officers, directors, managers, members, lessees, employees, agents, contractors, invitees and assigns may use the Protected Property and associated buildings and structures for private residential and/or conservation, education, environmental, ecological, historical, archeological, scientific research, outdoor recreation, search and rescue, and natural resource policy and management activities, including but not limited to housing, dormitory and student housing, meetings, conference center, training center, research center, education institution, retreat, inn, hotel or bed and breakfast and support facilities such as

kitchens, garages, maintenance buildings, sheds, security structures for conducting the above activities, any of which however, shall be conducted on a commercial not-for-profit basis or as a private residence.

4.2 Transfer of Permitted Uses. Grantor may lease or grant licenses to others for activities and uses allowed by this Conservation Easement.

4.3 National and State Register of Historic Places. Grantor acknowledges that the structure(s) on the protected property may be eligible for listing on the State and/or National Register of Historic Places. Grantor may seek a determination as to the historic status of the property or buildings by making application for listing on the State or National Historic Register to the New York State Office of Parks, Recreation and Historic Places (OPRHP). However, until such time as the property and/or structure (s) are determined not to be eligible or not accepted to the State or National Registers, Grantor will adhere to the Secretary of the Interior's Standards for the Treatment of Historic Properties. The Grantor will abide by any and all standards and criteria if the property or any buildings or structures on the protected property are listed in the National or State Historic Registers.

4.4 Buildings and Structures.

1. **Masten House.** Grantor may, in agreement with sections 4.1, 4.2 and 4.3 herein, maintain, repair, improve, upgrade, or replace-in-kind, the Masten House, identified as "existing" in the Baseline Documentation. Notwithstanding the foregoing, the exterior of the Masten House shall not be substantially modified, except that nothing herein shall be construed to prohibit the restoration or replacement-in-kind of the Masten House in the event it is destroyed or suffers damage, provided that the Masten House as restored or replaced shall be similar in appearance and size as it exists on the date of the grant of this Conservation Easement.

2. **Other Existing Buildings and Structures.** Grantor may occupy, let, use, in agreement with sections 4.1, 4.2 and 4.3 herein, maintain, repair, improve, upgrade, demolish, replace-in-kind, relocate, abandon, expand, and vacate the existing buildings and structures identified as "existing" in the Baseline Documentation, except that the "existing" dock on Henderson Lake only may be maintained and repaired.

3. **New Buildings and Structures.** Grantor may construct new buildings and structures for use with Grantor's Reserved Rights and consistent with section 4.1 herein. Any new building or structure shall be located and screened with vegetation so as to be invisible from Henderson Lake and County Route 25 in all seasons and not otherwise located within 150 feet of the boundary of the protected property without written permission of the Grantee. No new dock shall be constructed, built or placed on the shoreline of Henderson Lake.

4. New Improvements. Grantor may construct, improve, upgrade, widen, and abandon new roads, trails, bridges, culverts, parking area, driveways, and other related improvements, if such improvements are desirable for Grantor's Reserved Rights.

5. Temporary Structures. Grantor may allow temporary structures including but not limited to, canopies, tents, travel trailers, and other forms of temporary lodging to be constructed, installed, maintained and relocated on the Protected Property, subject to the following limitations:

(a) Such temporary structures may be used for brief periods of time coinciding with events that are consistent with Grantor's use of the protected property as defined in section 4.1, herein.

(b) Such temporary structures are intend to be taken down, stored in-side of permanent structures, or removed from the protected property after conclusion of the event.

(c) Such temporary structures shall be located and screened with vegetation so as to be invisible from Henderson Lake and County Route 25 in all seasons and not otherwise located within 150 feet of the boundary of the protected property without written permission of the Grantee.

6. Building Restrictions. Notwithstanding anything to the contrary in this Conservation Easement, Grantor shall not increase the height of any of the existing buildings or structures identified as "existing" in the Baseline Documentation. New buildings and structures may not exceed the height of the tallest existing building or structure and the total number of new buildings and structures shall not exceed two (2) more than the number of existing buildings identified as "existing in the Baseline Documentation for the protected property.

7. Best Management Practices. In carrying out any construction, maintenance and repair activities, Grantor shall minimize impacts to natural resources of the Protected Property and shall comply with best management practices.

4.5 Conveyance.

1. The Grantor reserves the right to sell, transfer or otherwise convey the entire Protected Property subject to the terms of this Conservation Easement.

2. The Grantor agrees to give written notice to the Grantee of the transfer of a fee interest in the Protected Property at least twenty (20) days prior to the date of such transfer.

3. Any grant of a mortgage in the Property after the date of this Conservation Easement is expressly subject to the terms of this Conservation Easement.

4. The Grantor covenants and agrees that any instrument evidencing any subsequent conveyance, shall contain the following statement: "This (grant, lease, mortgage, etc.) is subject to a certain Conservation Easement entered into between the ESF College Foundation, Inc. and Open Space Conservancy, Inc. and recorded in the Office of the Essex County Clerk on _____, in Book of Deeds and Page _____."

5. The Grantor shall provide the Grantee with copies of any recorded documents upon completion of a transfer under this paragraph and notice of the name and address of such transferee.

4.6 Vegetation Removal Activities.

1. Control and Remove Vegetation. Grantor may trim, prune and otherwise use mechanical means, or chemicals with permission of Grantee, to control vegetation, and remove trees, shrubs, and other vegetation on the Protected Property for the following purposes:

(a) Landscape and maintain grounds; create and maintain trails and roads throughout the Protected Property.

(b) Construction of allowed structures.

(c) Remove trees, shrubs and other vegetation when dead, diseased, decayed or damaged.

(d) As necessary to maintain Grantor's view from residences and structures located on the Protected Property.

2. Firewood Harvest. Notwithstanding anything to the contrary herein, Grantor may harvest trees for firewood, but no more than fifteen (15) cords of firewood shall be harvested from the Protected Property in any calendar year and all firewood harvested must be burned or used on the Protected Property.

4.7 Gates, Barriers, Fences; Marking Boundaries.

1. The Grantor may erect signs, gates, fences or other barriers necessary to carry out its reserved rights.

2. The parties acknowledge that the Grantor may, but is under no obligation whatsoever, to identify, maintain, and mark the boundaries of the Protected Property.

4.8 Use of Protected Property As Fee Owner. The Grantor reserves all rights as fee owner, not otherwise conveyed or limited by this Conservation Easement, to the Protected Property, including the right to conduct any activity on the Protected Property that is consistent with the terms of this Conservation Easement.

5. ENFORCEMENT: The Grantee shall have the right to enforce terms of this Conservation Easement as follows:

5.1 Inspections. In accordance with Grantee's Right to Enter the Protected Property, as provided in Section 3.1 herein, the Grantee shall have the right to schedule periodic inspections of the Protected Property to determine compliance with the terms of this Conservation Easement. In doing so, the Grantee shall provide the Grantor with ten (10) days prior notice of such inspections and the Grantor shall have the right to accompany the Grantee on said inspections.

5.2 Notice to Cure.

1. Either party (the Aggrieved Party) shall notify the other party (the Noticed Party) of a breach or suspected breach of any of the terms or conditions of this Conservation Easement. Such notice shall describe the breach with specificity including the portion of the Protected Property affected thereby (the Notice to Cure). The Notice to Cure shall set forth how the Noticed Party can cure such breach or suspected breach and shall give the Noticed Party thirty (30) days from the date of receipt of the Notice to Cure, or such longer period of time as may be necessary to cure, provided that actions to cure are commenced within such thirty day period and diligently pursued. Such time periods may be extended in the event of severe weather or if other conditions are experienced that cause a reasonable delay in the Noticed Party's efforts to cure.

2. At the expiration of such period of time to cure, or any extensions thereof granted, the Aggrieved Party shall notify the Noticed Party of any failure to adequately cure the breach or suspected breach. The Noticed Party shall then have an additional fifteen (15) days from receipt of such notice to cure. At the expiration of said fifteen-day period, the Aggrieved Party may commence any legal or equitable action or proceedings in accordance with any applicable law to require compliance with the terms of this Conservation Easement.

5.3 Dispute Resolution

1. In the event the parties cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above and prior to the initiation of any action or proceeding based upon the Notice of Cure and upon the concurrence of both parties, the dispute may be mediated by an entity mutually agreed to by the Grantor and the Grantee whose recommendations are advisory to the parties.

In the event this Conservation Easement is assigned to the People of the State of New York as permitted in Section 6.15 below, and the People of the State of New York – cannot resolve a dispute arising under this Conservation Easement through the Notice to Cure process outlined above and prior to the initiation of any action or proceeding based upon the Notice of Cure and upon the concurrence of both parties, the dispute may be mediated by New York State

Office of Hearings and Mediation Services (or other entity mutually agreed to by the Grantor and the Grantee) whose recommendations are advisory to the parties.

2. Within thirty (30) days of receipt of such recommendations each party must advise the other of its concurrence or non-concurrence.

3. Any disputes remaining unresolved after mediation may be pursued through initiation of any appropriate action or proceeding in a court of competent jurisdiction.

5.4 Right to Restore.

1. Subject to the provisions of Section 5 hereof, the Grantee may require Grantor to restore the Protected Property to its natural state in the event of a breach of the terms of this Conservation Easement and to enforce this right by any action or proceeding necessary.

2. In the event that the Grantor fails to cure in accordance with the provisions of Sections 5.2 and 5.3, the Grantee, at its sole discretion, and after fifteen (15) days advance notice to the Grantor, may enter the Protected Property for the purpose of restoring the same to its natural state. Such notice shall not be required in the event of an emergency provided that the Grantee provides notice to the Grantor within twenty-four hours of the Grantee's entry onto the Protected Property in order to take emergency action to mitigate the consequences of a breach.

3. Grantee may resort to the following in order to restore the Protected Property to its natural state:

(a) Remove items and materials not permitted by this Conservation Easement.

(b) Close, fill, grade and plant with appropriate vegetative cover areas affected by a breach.

(c) Correct, through reasonably practicable measures, conditions that harm any of the following natural resource values on the Protected Property: native flora and fauna and the ecological processes that support them; diverse forest types and conditions; soil productivity; biological diversity; water quality; and wetland, riparian, and aquatic habitats.

(d) Take any other appropriate action reasonably necessary to remedy any breach of this Conservation Easement.

5.5 Force Majeure/Acts of Third Parties. The Grantor shall not be liable for any changes to the Protected Property caused by:

1. Any natural disaster or act of God, or governmental action not related to enforcement.

2. Acts of the Grantee, its employees and contractors.

5.6 Failure to Act. The failure of either party to enforce any of the terms of this Conservation Easement shall not be deemed a waiver of any such term nor shall any such failure in any way bar any enforcement rights hereunder in the event of any subsequent breach of, or noncompliance with, or fault in observance of, any of the terms of this Conservation Easement.

6. OTHER TERMS AND CONDITIONS:

6.1 Construction of Terms and Interpretation.

1. Notwithstanding any term or condition of this Conservation Easement, this Conservation Easement shall be construed to affect the Purposes for which the Conservation Easement was acquired, the purposes of Article 49 of the ECL, as of the date of this Conservation Easement. In interpreting the terms of the Conservation Easement, there shall be no presumption favoring the Grantee or the Grantor.

2. If any provision of this Conservation Easement is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

3. The captions herein have been inserted solely for convenience of reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.

4. Any reference in this Conservation Easement to a statute, regulation or ordinance shall include any amendment or successor thereto adopted after the date of this Conservation Easement. Any reference in this Conservation Easement to a published document, treatise, or guide shall include any successor or replacement thereto published after the date of this Conservation Easement.

6.2 BASELINE DOCUMENTATION.

1. The parties acknowledge that, concurrent with the execution and delivery of this Conservation Easement, the parties will approve and sign a document entitled "Masten House Easement Baseline Documentation".

2. The Baseline Documentation is intended to serve as an objective, although not exclusive, informational baseline for monitoring compliance with the terms of this Conservation Easement. The parties agree that, in the event a controversy arises with respect to the nature and extent of uses or the condition

of the Protected Property, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

3. Counterparts of the Baseline Documentation, signed and acknowledged by both parties to the Conservation Easement, shall be provided to the Grantor and the Grantee.

6.3 Notice, Review and Approval Process.

1. Whenever notice or an approval is required from either party, the party that must provide notice or that is seeking the approval shall deliver a written notice or request for such approval in accordance with the notification directions herein.

2. Requests shall be approved, approved with conditions, or denied. Approvals shall be made in electronic or written form and shall be based upon whether the proposed action complies with the terms and/or purposes of this Conservation Easement. If denied, the reasons for denial and the criteria applied, with specific reference to the terms of this Conservation Easement, shall be specifically set forth in the response to the request.

3. The parties shall not unreasonably delay or deny a request for approval.

6.4 Notices, Notification.

1. Any notice required to be sent to the Grantor herein shall be addressed to:

ESF College Foundation, Inc.
214 Bray Hall
1 Forestry Drive
Syracuse, New York 13210

2. Any notice required to be sent to the Grantee herein shall be addressed to:

Open Space Conservancy, Inc.
c/o Open Space Institute, Inc.
1350 Broadway, Room 201
New York, New York 10018

3. In the event that this Conservation Easement is assigned by Open Space Conservancy, Inc. to the People of the State of New York, Department of Environmental Conservation, any notice required to be sent to the Grantee herein shall be addressed to:

New York State Department of Environmental Conservation
Regional Forester, Region 5
1115 NYS Route 86, P.O. Box 296
Raybrook, New York 12977

4. All notices and requests for approval required or permitted to be given under this Conservation Easement shall be delivered by hand, or sent by registered or certified mail, return receipt requested, or by overnight mail, to the address of the other party as provided herein. Notice shall be deemed to have been given on the earlier of: i) when delivered by hand, or ii) if mailed, three (3) business days after mailing. The party receiving a request for approval shall respond to the request within sixty (60) days of its receipt, unless otherwise specified herein.

5. Either party may change the individual or address to which notices are to be sent by giving written notice thereof to the other party in accordance with paragraph

6. Upon mutual written agreement, the parties may provide for other means of receiving and communicating notices and responses to requests for approval.

6.5 Regulatory Authorities, Compliance With Law. This Conservation Easement shall not remove the necessity of the Grantor to obtain any permit and/or approval from any governmental agency having jurisdiction over any activity conducted or to be conducted on the Protected Property.

6.6 Real Property Taxes and Assessments.

1. The Grantor covenants and agrees to pay all taxes and assessments lawfully assessed against its interest in the Protected Property and to furnish upon request to the Grantee copies of tax receipts showing such payment.

2. Should the Grantor fail to pay any such taxes or assessments within the time prescribed by law for such payment, upon ten (10) days advance notice to the Grantor, the Grantee may take any lawful steps available to it to acquire fee title or such other interests which are the subject of any unpaid assessment or tax, including payment to the taxing authority of any amounts unpaid as the Grantee may be required to pay to obtain title to such property. Any steps so taken by the Grantee are intended and shall be deemed to be adverse to the interest of the Grantor and not taken for the benefit of the Grantor. In the event that the Grantee is successful in acquiring the title or other interest of the Grantor from the taxing authority, this Conservation Easement shall merge with the fee to such property and such Conservation Easement shall be extinguished.

6.7 Not Forest Preserve. The parties agree that the underlying fee title to the Protected Property remains in the Grantor, subject to the terms of this

Conservation Easement, and that the lands constituting the Protected Property do not, by the granting of this Conservation Easement, become a part of the Forest Preserve.

6.8 Reconveyance If Void. In the event a court of competent jurisdiction determines that this Conservation Easement is "void ab initio" in accordance with the provisions of Section 49-0311 of the ECL, the Grantor shall, upon request by the Grantee, reconvey without change or modification and for no additional consideration, this Conservation Easement to a qualified nominee selected by the Grantee; said reconveyance to be made after such declaration that the Conservation Easement is "void ab initio" regardless of the fact that the Grantee may pursue its right of appeal, or otherwise. In furtherance of this provision:

1. The Grantee shall have the right of enforcement of the reconveyance by Grantor to the nominee by any legal means.
2. The form of reconveyance shall be satisfactory to the Grantee and approved if required by law by the Attorney General of the State of New York.
3. The Grantee shall pay any costs and expenses, including but not limited to taxes, filing fees and reasonable attorney's fees that the Grantor may incur as a result of the reconveyance of the Conservation Easement pursuant to the terms of this paragraph.

6.9 Amendments or Modifications. The Grantor and Grantee may amend this Conservation Easement by mutual agreement in writing, executed by both parties, in accordance with the provisions of Section 49-0307 of the ECL and recorded in the appropriate Clerk's Office, provided, however, that no amendment shall be made that will adversely affect the status of this Conservation Easement under applicable laws. Any amendment shall be consistent with the Purposes of this Conservation Easement and shall not affect its perpetual duration.

6.10 Grantor's Negligence.

1. The Grantor agrees to indemnify and hold the Grantee harmless against all claims, loss, damage and expense the Grantee may suffer as a result of the Grantor's negligence in the course of exercising any rights reserved under this Conservation Easement or as the fee owner.
2. The Grantor's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon:

(a) Delivery to the Grantor by the Grantee of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after the Grantee is served with such document; and

(b) After consultation with the Grantee, the Grantor's right to choose legal counsel in connection such indemnification obligation and the right to control the defense, including, without limitation, the right to enter into settlement upon such terms as the Grantor, in its sole discretion, deems reasonable; and

(c) The full cooperation of the Grantee in the defense of such action or proceeding against the Grantor based upon the same act or omission, and in the prosecution of any appeal.

6.11 Grantee's Negligence.

1. In the event that this Conservation Easement is conveyed or assigned to the State of New York, and subject to the availability of lawful appropriations, the Grantee agrees to indemnify and hold the Grantor harmless from any amounts finally to be determined by a court of competent jurisdiction, or any settlement of a claim or suit for damages to person or property where it has been finally determined by said court that such damages have been caused by the negligent acts of the Grantee against loss, damage or any final determination of a judgment or settlement of a claim against the Grantor, provided said settlement is approved in writing by the Grantee, which the Grantor may suffer as a result of the Grantee's negligence in the course of exercising any rights granted under this Conservation Easement or as a result of actionable conduct of the Grantee, as permitted by the Court of Claims Act and Section 17 of the Public Officers Law.

2. The Grantee's duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon delivery to the Attorney General by the Grantor of the original or a copy of any summons, complaint, process, notice, demand, pleading or notice of settlement within fifteen (15) business days after it is served with such document.

6.12 Third Party Liability; Statutory Protections from Liability.

1. Nothing contained in this Easement shall create any liability on behalf of the Grantor to any third party or create any right, claim or cause of action on behalf of any party other than the Grantor or the Grantee and their successors and assigns.
2. Nothing in this Easement shall be interpreted as an assumption of responsibility by, or basis for liability on the part of, the Grantor for any injury to person or damage to property or loss of life that may be sustained by any person while on the Protected Property in the exercise of any of the rights afforded to the public by this Easement or sustained by any person as a result of any entry on or use of the Protected Property. This provision is not intended to release the Grantor from any liability for damages to the person or property of its invitees, employees or agents while on the Protected Property under the authority or by the permission of the Grantor.
3. The Grantor specifically retains all protections from liability provided under New York law to private owners of land, including, but not limited to, the protections contained in Section 9-103 of the General Obligations Law (or any successor or other statutory or regulatory provision then applicable).
4. The Grantee specifically retains all protections from liability provided under New York law.

6.13 Additional Covenants. The Grantor does further covenant to the Grantee as follows:

1. That the Grantor is seized of the Protected Property in fee simple and has good right to convey this Conservation Easement and the rights hereunder.
2. That the Grantee shall quietly enjoy said rights granted to the Grantee under this Conservation Easement, provided, however, that Grantee's enjoyment of such rights shall not interfere with the Grantor's quiet enjoyment of, and exercise of, its Reserved Rights.
3. That the Protected Property is free from encumbrances, except as provided on Schedule B attached hereto and made a part hereof.
4. That the Grantor will execute or procure any further necessary assurances of the Grantor's title to the Protected Property.
5. That, as of the date of this grant, the Grantor has not done or suffered anything whereby the Premises have been encumbered in any way whatsoever, except for those encumbrances imposed by the Grantor set forth on Schedule B.

6. That this conveyance is made subject to the trust fund provisions of Section 13 of the Lien Law.

6.14 Severability. The parties agree that the provisions of this Conservation Easement are severable and that if any court of competent jurisdiction shall render a judgment voiding or nullifying any provision(s) hereof, the effect of said judgment shall be limited to the nullified or voided portion of this Conservation Easement and the remaining provisions hereof shall continue in full force and effect.

6.15 Assignment. Grantee may assign this Conservation Easement to The People of the State of New York, by and through their Commissioner of Environmental Conservation, who has offices at 625 Broadway, Albany, New York 12233. Grantee agrees that any other assignment of this Conservation Easement shall be only to an assignee that: (a) is a qualified organization as defined in the Conservation Law and; and (b) agrees to continue to carry out the conservation purposes of this Conservation Easement. Any assignee must also be an entity able to enforce this Conservation Easement, and if a non-governmental entity, having purposes similar to those of Grantee. If Grantee ever ceases to exist or no longer qualifies under the Conservation Law, a court with jurisdiction shall transfer this Conservation Easement to a qualified governmental unit or another qualified organization having similar purposes and that agrees to assume such responsibility.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

ESF COLLEGE FOUNDATION, INC., a New York
Not for Profit Corporation

By: Brenda Greenfield
Name: BRENDA GREENFIELD
Title: Executive Director

ACCEPTED:

OPEN SPACE CONSERVANCY, INC., a New York
Not for Profit Corporation

By: Tamy Blumberg
Name: TAMY BLUMBERG
Title: Senior Vice President

STATE OF NEW YORK)

COUNTY OF New York)

ss.:

On the 30th day of April, 2013, before me, the undersigned, personally appeared Tally Blumberg known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Samayla D. Deutch
Notary Public

Samayla D. Deutch
Notary Public, State of New York
No. 02DE6083990
Qualified in New York County
Commission Expires November 25, 2014

STATE OF NEW YORK)

COUNTY OF ONONDAGA)

On the 9th day of MAY, 2013, before me, the undersigned, personally appeared Brenda Greenfield known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Barbara Lynn Young
Notary Public

BARBARA LYNN YOUNG
Notary Public, State of New York
No. 4692822
Qualified in Onondaga County
My Commission Expires August 31, 2013

SCHEDULE A
Property Description
MASTEN HOUSE PARCEL

ALL THAT TRACT, PIECE OR PARCEL OF LAND, lying, situate and being in Township 47, Totten & Crossfield's Purchase, Town of Newcomb, Essex County, State of New York, and more particularly described as follows:

BEGINNING at a capped iron rod located on the northerly bounds of the parcel herein described and the southerly bounds of a parcel to be retained by the Open Space Conservancy Inc, said capped iron rod also marking a point in the easterly bounds of a parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York by a deed dated January 22, 2008 and recorded in the Essex County Clerk's office on January 31, 2008 in Book 1565 page 10, said capped iron rod also being situated N 89° 59' 21" W, 260.08 feet from the westerly margin of the Upper Works Road as conveyed to the Town of Newcomb from National Lead Company by deed dated February 5, 1948 and recorded in the Essex County Clerk's Office on May 17, 1949 as Liber 268 of Deeds at Page 4, being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1914211.43 / Easting 608499.04;

THENCE from said Point or Place of beginning, S 89° 59' 21" E, 260.08 feet to a capped iron rod on the westerly margin of the foresaid Upper Works Road, said capped iron rod marking the southerly bounds of foresaid parcel to be retained by the Open Space Conservancy Inc, and the northeast corner of the parcel herein described ;

THENCE: the following (17) courses and distances along the westerly margin of Upper Works Road:

- 1) S 01° 08' 33" E 231.04 feet
- 2) S 02° 37' 57" E 115.09 feet
- 3) S 04° 46' 36" E 64.04 feet
- 4) S 12° 17' 13" E 75.68 feet
- 5) S 28° 06' 23" E 91.81 feet
- 6) S 31° 45' 06" E 98.70 feet
- 7) S 28° 17' 30" E 106.58 feet
- 8) S 25° 05' 47" E 106.47 feet
- 9) S 23° 05' 40" E 60.79 feet
- 10) S 18° 55' 08" E 159.84 feet
- 11) S 21° 31' 53" E 155.32 feet
- 12) S 10° 34' 25" E 72.41 feet
- 13) S 10° 36' 43" W 73.77 feet
- 14) S 24° 12' 28" W 82.96 feet
- 15) S 30° 24' 18" W 145.57 feet
- 16) S 26° 51' 49" W 77.48 feet

- 17) S 11° 34' 07" W 82.00 feet to a capped iron rod on the westerly margin of the Upper Works Road, said capped iron rod being the southeast corner of the parcel herein described and the northeast corner of a second parcel being retained by Open Space Conservancy Inc.

THENCE: N 89° 59' 41" W along the southerly bounds of the parcel herein described and the northwest corner of the second said parcel to be retained by the Open Space Conservancy Inc. 400.07 feet to a ½ inch Drill Hole Set in the center top of a 3'x 4'x 2' boulder, said Drill Hole also marking the easterly bounds of foresaid parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York

THENCE: N 89° 59' 23" W along the southerly bounds of the parcel herein described and the northerly bounds of foresaid parcel conveyed to the People of the State of New York, 775.53 feet to a ½ inch Drill Hole Set in Bed Rock, said Drill Hole marking the southwest corner of the parcel herein described;

THENCE: N 00° 01' 10" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 785.93 feet to a Mag Nail set in a ½ inch Drill Hole;

THENCE: N 00° 00' 30" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 45.14 feet to a capped iron rod set in stones; said capped iron rod being at the southerly boundary of a trail corridor to be included in the parcel herein described;

THENCE the following six courses and distances along the southwesterly bounds of said trail corridor and the parcel herein described and the northeasterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 39° 47' 51" W, 152.82 feet to a capped iron rod set in stones;
- 2) N 21° 37' 31" W, 55.58 feet to a Mag Nail set in a ½ inch Drill Hole;
- 3) N 06° 22' 11" W, 85.59 feet to a capped iron rod set in stones;
- 4) N 44° 41' 51" W, 36.48 feet to a point;
- 5) N 53° 15' 44" W, 2.20 feet to a ¼ inch Drill Hole set in ledge;
- 6) N 83° 06' 13" W, 19.83 feet to a capped iron rod at the shore of Lake Henderson;

THENCE: northwesterly along the lake edge to a capped iron rod set, said rod being measured on a tie line distance of N 60° 21' 36" W 45.84 feet from the previous capped iron rod;

THENCE the following seven courses and distances along the northeasterly bounds of said trail corridor and the parcel herein described and the southwesterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 57° 38' 07" E, 35.19 feet to a capped iron rod set;
- 2) S 83° 08' 01" E, 48.59 feet to a Mag Nail set in a Drill Hole in stones;
- 3) S 45° 10' 47" E, 61.21 feet to a capped iron rod set in stones;

- 4) S 45° 09' 07" E, 5.31 feet to a point;
- 5) S 06° 22' 16" E, 94.32 feet to a Mag Nail set in a Drill Hole in stones;
- 6) S 21° 37' 22" E, 43.82 feet to a Spike set in the root of a Cedar;
- 7) S 39° 47' 49" E, 98.41 feet to a capped iron rod set in stones;

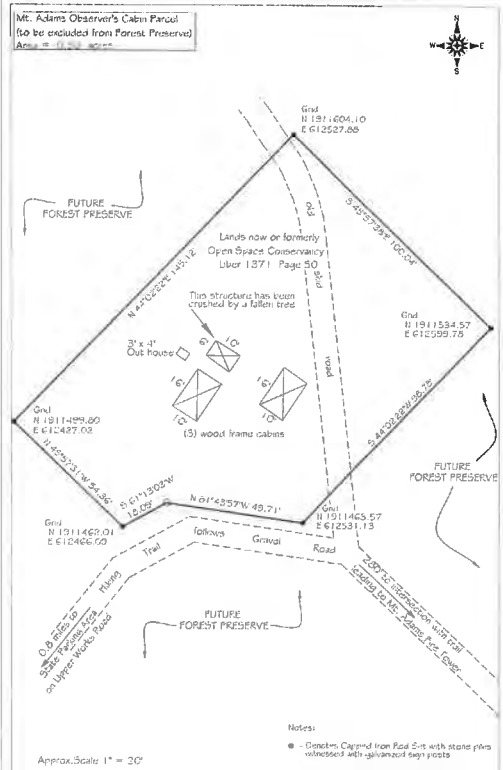
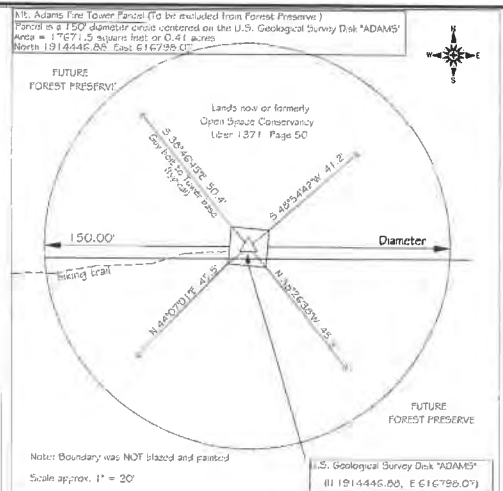
THENCE: N 00° 00' 37" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 293.70 feet to a Mag Nail set in sloping bedrock; and being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1913714.03 / Easting 607779.40;

THENCE: N 00° 02' 59" W along the westerly bounds of the parcel herein described and the southeasterly bounds of foresaid parcel conveyed to the People of the State of New York 497.62 feet to a 1/4 inch Drill hole in a 7"x 5"x 2' high upright stone in a stone pile;

THENCE: S 89° 59' 20" E along the northerly bounds of the parcel herein described and the southerly bounds of foresaid parcel conveyed to the People of the State of New York 720.20 feet to a capped iron rod and the **POINT OR PLACE OF BEGINNING.**

ALL AS SHOWN on a map entitled "'Map showing survey of the lands of Open Space Conservancy Inc. to be acquired pursuant to section 3-0305 of the Environmental Conservation Law, Project: AFP Essex 384, Conservation Easement - Essex 383, Vendor - Open Space Conservancy, Inc., situated in the Towns of Newcomb & North Elba, Essex County and the Town of Harrietstown, Franklin County", by Robert Morrell, dated March 22, 2007 and filed in the Albany office of the New York State Department of Environmental Conservation's Bureau of Real Property as Map #11,914. Map also file in the Essex County Clerk's office on March 29, 2007 in drawer D-30, map number 6106.

BEING a portion of the lands described in a deed from NL Industries, Inc. to Open Space Conservancy, Inc., dated August 14, 2003 and recorded in the Essex County Clerk's Office on August 25, 2003 in Book 1371 of Deeds at Page 0050.



* NOTE: "Upper Works Road" is maintained by the County of Essex and designated as County Route 25.

GENERAL NOTE

[illegible]

LEGEND

- = *Phytophthora blight* (PB) (red)
- = *Botrytis rot* (BR) (blue)
- = *Sclerotinia rot* (SR) (green)
- = *Botrytis rot* (BR) (blue)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Map showing survey of the lands of
Open Space Conservancy Inc.

to be acquired pursuant to section
3-0305 of the Environmental Conservation Law

Project:

AFP Essex 384
Correspondence: Essex 384

Vendor - Open Space Conservancy

| | |
|-------------------------------|--------------------|
| Towns of Newcomb & North Elba | County of Essex |
| Town of Harrietstown | County of Franklin |

Portion of
Totten and Crossfield's Purchase, Townships 46, 47, &
Gore East of Township 47,
Old Military Tract, Township 12, Lot 44,
Macomb's Purchase, Great Tract One, Township 27

I hereby certify that this is an active survey map prepared by me or under my direction,
from an active survey performed in accordance with the provisions of the act.
Witness my hand and the State Department of Surveys and Land Use, at
Annapolis, this 22nd day of March, 2007.

Robert A. Morrell LL5 Licence No. 050242

Date: March 22, 2007

Sheet 5 of 6

Map # 11914

BARGAIN AND SALE DEED
WITH COVENANT AGAINST GRANTOR'S ACTS

Masten House Property

THIS INDENTURE is made on May ^{9th}, 2013 between OPEN SPACE CONSERVANCY, INC., a not-for-profit corporation under New York law having its principal place of business at 1350 Broadway, Room 201, New York, New York 10018 (the "Grantor") and ESF COLLEGE FOUNDATION, INC., a not for profit corporation under New York law having its principal place of business at 214 Bray Hall, 1 Forestry Drive, Syracuse, New York 13210 (hereinafter referred to as the "Grantee"), and

WITNESSETH, that the Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee and its successors and assigns all of the Grantor's interest in the certain premises located in the Town of Newcomb, Essex County, New York described in the Schedule A attached hereto and incorporated herein by reference.

This conveyance is made subject to all covenants, easements, and restrictions of record.

This conveyance is made together with all right, title and interest of the Grantor in and to any streets and roads abutting the above described premises to the center lines thereof.

This conveyance is made together with the appurtenances and all the estate and rights of the Grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, and the successors and assigns of the Grantee forever.

AND the Grantor covenants that the Grantor has not done or suffered anything whereby the premises have been encumbered in anyway whatever.

THE PROPERTY conveyed herein is intended to be a portion of the same property as conveyed to the Grantor by deed executed by NL

Industries, Inc., formerly known as National Lead Company, dated August 14, 2003 and recorded August 14, 2003 in the Essex County Clerk's Office in Liber 1371 cp 50.

AND the Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and the year first above written.

GRANTOR

OPEN SPACE CONSERVANCY, INC.

By: Samantha D. Deutch
Name: SAMANTHA D. DEUTCH
Title: VICE PRESIDENT AND
ASSOCIATE GENERAL COUNSEL

Attachments:

Exhibit A (Description of Premises)

State of New York
County of New York) ss.:

On the 14th day of May in the year 2013 before me, the undersigned, personally appeared Samayra D. Deutch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Linda B. Rosenthal
Signature and Office of individual
taking acknowledgment

LINDA ROSENTHAL
NOTARY PUBLIC, STATE OF NEW YORK
COMM. NO. 01RO4710884
NASSAU COUNTY
COMM. EXR 01-01-2015

Reserve this space for use
of Recording Office:

Record and return by mail to:
Steven R. Shaw, Esq.
Hancock Estabrook LLP
1500 AXA Tower I
100 Madison Street
Syracuse, NY 13202

SCHEDULE A
Property Description
MASTEN HOUSE PARCEL

ALL THAT TRACT, PIECE OR PARCEL OF LAND, lying, situate and being in Township 47, Totten & Crossfield's Purchase, Town of Newcomb, Essex County, State of New York, and more particularly described as follows:

BEGINNING at a capped iron rod located on the northerly bounds of the parcel herein described and the southerly bounds of a parcel to be retained by the Open Space Conservancy Inc, said capped iron rod also marking a point in the easterly bounds of a parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York by a deed dated January 22, 2008 and recorded in the Essex County Clerk's office on January 31, 2008 in Book 1565 page 10, said capped iron rod also being situated N 89° 59' 21" W, 260.08 feet from the westerly margin of the Upper Works Road as conveyed to the Town of Newcomb from National Lead Company by deed dated February 5, 1948 and recorded in the Essex County Clerk's Office on May 17, 1949 as Liber 268 of Deeds at Page 4, being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1914211.43 / Easting 608499.04;

THENCE from said Point or Place of beginning, S 89° 59' 21" E, 260.08 feet to a capped iron rod on the westerly margin of the foresaid Upper Works Road, said capped iron rod marking the southerly bounds of foresaid parcel to be retained by the Open Space Conservancy Inc, and the northeast corner of the parcel herein described ;

THENCE: the following (17) courses and distances along the westerly margin of Upper Works Road:

- 1) S 01° 08' 33" E 231.04 feet
- 2) S 02° 37' 57" E 115.09 feet
- 3) S 04° 46' 36" E 64.04 feet
- 4) S 12° 17' 13" E 75.68 feet
- 5) S 28° 06' 23" E 91.81 feet
- 6) S 31° 45' 06" E 98.70 feet
- 7) S 28° 17' 30" E 106.58 feet
- 8) S 25° 05' 47" E 106.47 feet
- 9) S 23° 05' 40" E 60.79 feet
- 10) S 18° 55' 08" E 159.84 feet
- 11) S 21° 31' 53" E 155.32 feet
- 12) S 10° 34' 25" E 72.41 feet
- 13) S 10° 36' 43" W 73.77 feet
- 14) S 24° 12' 28" W 82.96 feet
- 15) S 30° 24' 18" W 145.57 feet
- 16) S 26° 51' 49" W 77.48 feet

- 17) S 11° 34' 07" W 82.00 feet to a capped iron rod on the westerly margin of the Upper Works Road, said capped iron rod being the southeast corner of the parcel herein described and the northeast corner of a second parcel being retained by Open Space Conservancy Inc.

THENCE: N 89° 59' 41" W along the southerly bounds of the parcel herein described and the northwest corner of the second said parcel to be retained by the Open Space Conservancy Inc. 400.07 feet to a ½ inch Drill Hole Set in the center top of a 3'x 4'x 2' boulder, said Drill Hole also marking the easterly bounds of foresaid parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York

THENCE: N 89° 59' 23" W along the southerly bounds of the parcel herein described and the northerly bounds of foresaid parcel conveyed to the People of the State of New York, 775.53 feet to a ½ inch Drill Hole Set in Bed Rock, said Drill Hole marking the southwest corner of the parcel herein described;

THENCE: N 00° 01' 10" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 785.93 feet to a Mag Nail set in a ½ inch Drill Hole;

THENCE: N 00° 00' 30" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 45.14 feet to a capped iron rod set in stones; said capped iron rod being at the southerly boundary of a trail corridor to be included in the parcel herein described;

THENCE the following six courses and distances along the southwesterly bounds of said trail corridor and the parcel herein described and the northeasterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 39° 47' 51" W, 152.82 feet to a capped iron rod set in stones;
- 2) N 21° 37' 31" W, 55.58 feet to a Mag Nail set in a ½ inch Drill Hole;
- 3) N 06° 22' 11" W, 85.59 feet to a capped iron rod set in stones;
- 4) N 44° 41' 51" W, 36.48 feet to a point;
- 5) N 53° 15' 44" W, 2.20 feet to a ¼ inch Drill Hole set in ledge;
- 6) N 83° 06' 13" W, 19.83 feet to a capped iron rod at the shore of Lake Henderson;

THENCE: northwesterly along the lake edge to a capped iron rod set, said rod being measured on a tie line distance of N 60° 21' 36" W 45.84 feet from the previous capped iron rod;

THENCE the following seven courses and distances along the northeasterly bounds of said trail corridor and the parcel herein described and the southwesterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 57° 38' 07" E, 35.19 feet to a capped iron rod set;
- 2) S 83° 08' 01" E, 48.59 feet to a Mag Nail set in a Drill Hole in stones;
- 3) S 45° 10' 47" E, 61.21 feet to a capped iron rod set in stones;

- 4) S 45° 09' 07" E, 5.31 feet to a point;
- 5) S 06° 22' 16" E, 94.32 feet to a Mag Nail set in a Drill Hole in stones;
- 6) S 21° 37' 22" E, 43.82 feet to a Spike set in the root of a Cedar;
- 7) S 39° 47' 49" E, 98.41 feet to a capped iron rod set in stones;

THENCE: N 00° 00' 37" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 293.70 feet to a Mag Nail set in sloping bedrock; and being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1913714.03 / Easting 607779.40;

THENCE: N 00° 02' 59" W along the westerly bounds of the parcel herein described and the southeasterly bounds of foresaid parcel conveyed to the People of the State of New York 497.62 feet to a ¼ inch Drill hole in a 7"x 5"x 2' high upright stone in a stone pile;

THENCE: S 89° 59' 20" E along the northerly bounds of the parcel herein described and the southerly bounds of foresaid parcel conveyed to the People of the State of New York 720.20 feet to a capped iron rod and the **POINT OR PLACE OF BEGINNING.**

ALL AS SHOWN on a map entitled ""Map showing survey of the lands of Open Space Conservancy Inc. to be acquired pursuant to section 3-0305 of the Environmental Conservation Law, Project: AFP Essex 384, Conservation Easement - Essex 383, Vendor - Open Space Conservancy, Inc., situated in the Towns of Newcomb & North Elba, Essex County and the Town of Harrietstown, Franklin County", by Robert Morrell, dated March 22, 2007 and filed in the Albany office of the New York State Department of Environmental Conservation's Bureau of Real Property as Map #11,914. Map also file in the Essex County Clerk's office on March 29, 2007 in drawer D-30, map number 6106.

BEING a portion of the lands described in a deed from NL Industries, Inc. to Open Space Conservancy, Inc., dated August 14, 2003 and recorded in the Essex County Clerk's Office on August 25, 2003 in Book 1371 of Deeds at Page 0050.

EXHIBIT A

Description of the Real Property

The land with buildings, improvements and fixtures thereon, and rights appurtenant thereto located in the Town of Newcomb, Essex County, New York, as generally shown on the tax map of the Town of Newcomb as Parcel 90.1-3.210 and the being the property described below:

ALL THAT TRACT, PIECE OR PARCEL OF LAND, lying, situate and being in Township 47, Totten & Crossfield's Purchase, Town of Newcomb, Essex County, State of New York, and more particularly described as follows:

BEGINNING at a capped iron rod located on the northerly bounds of the parcel herein described and the southerly bounds of a parcel to be retained by the Open Space Conservancy Inc, said capped iron rod also marking a point in the easterly bounds of a parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York by a deed dated January 22, 2008 and recorded in the Essex County Clerk's office on January 31, 2008 in Book 1565 page 10, said capped iron rod also being situated N 89° 59' 21" W, 260.08 feet from the westerly margin of the Upper Works Road as conveyed to the Town of Newcomb from National Lead Company by deed dated February 5, 1948 and recorded in the Essex County Clerk's Office on May 17, 1949 as Liber 268 of Deeds at Page 4, being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1914211.43 / Easting 608499.04;

THENCE from said Point or Place of beginning, S 89° 59' 21" E, 260.08 feet to a capped iron rod on the westerly margin of the foresaid Upper Works Road, said capped iron rod marking the southerly bounds of foresaid parcel to be retained by the Open Space Conservancy Inc, and the northeast corner of the parcel herein described ;

THENCE: the following (17) courses and distances along the westerly margin of Upper Works Road:

- | | | |
|-----|-----------------|-------------|
| 1) | S 01° 08' 33" E | 231.04 feet |
| 2) | S 02° 37' 57" E | 115.09 feet |
| 3) | S 04° 46' 36" E | 64.04 feet |
| 4) | S 12° 17' 13" E | 75.68 feet |
| 5) | S 28° 06' 23" E | 91.81 feet |
| 6) | S 31° 45' 06" E | 98.70 feet |
| 7) | S 28° 17' 30" E | 106.58 feet |
| 8) | S 25° 05' 47" E | 106.47 feet |
| 9) | S 23° 05' 40" E | 60.79 feet |
| 10) | S 18° 55' 08" E | 159.84 feet |
| 11) | S 21° 31' 53" E | 155.32 feet |
| 12) | S 10° 34' 25" E | 72.41 feet |
| 13) | S 10° 36' 43" W | 73.77 feet |
| 14) | S 24° 12' 28" W | 82.96 feet |
| 15) | S 30° 24' 18" W | 145.57 feet |
| 16) | S 26° 51' 49" W | 77.48 feet |

- 17) S 11° 34' 07" W 82.00 feet to a capped iron rod on the westerly margin of the Upper Works Road, said capped iron rod being the southeast corner of the parcel herein described and the northeast corner of a second parcel being retained by Open Space Conservancy Inc.

THENCE: N 89° 59' 41" W along the southerly bounds of the parcel herein described and the northwest corner of the second said parcel to be retained by the Open Space Conservancy Inc. 400.07 feet to a ½ inch Drill Hole Set in the center top of a 3'x 4'x 2' boulder, said Drill Hole also marking the easterly bounds of foresaid parcel conveyed by the Open Space Conservancy Inc. to the People of the State of New York

THENCE: N 89° 59' 23" W along the southerly bounds of the parcel herein described and the northerly bounds of foresaid parcel conveyed to the People of the State of New York, 775.53 feet to a ½ inch Drill Hole Set in Bed Rock, said Drill Hole marking the southwest corner of the parcel herein described;

THENCE: N 00° 01' 10" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 785.93 feet to a Mag Nail set in a ½ inch Drill Hole;

THENCE: N 00° 00' 30" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 45.14 feet to a capped iron rod set in stones; said capped iron rod being at the southerly boundary of a trail corridor to be included in the parcel herein described;

THENCE the following six courses and distances along the southwesterly bounds of said trail corridor and the parcel herein described and the northeasterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 39° 47' 51" W, 152.82 feet to a capped iron rod set in stones;
- 2) N 21° 37' 31" W, 55.58 feet to a Mag Nail set in a ½ inch Drill Hole;
- 3) N 06° 22' 11" W, 85.59 feet to a capped iron rod set in stones;
- 4) N 44° 41' 51" W, 36.48 feet to a point;
- 5) N 53° 15' 44" W, 2.20 feet to a ½ inch Drill Hole set in ledge;
- 6) N 83° 06' 13" W, 19.83 feet to a capped iron rod at the shore of Lake Henderson;

THENCE: northwesterly along the lake edge to a capped iron rod set, said rod being measured on a tie line distance of N 60° 21' 36" W 45.84 feet from the previous capped iron rod;

THENCE the following seven courses and distances along the northeasterly bounds of said trail corridor and the parcel herein described and the southwesterly bounds of foresaid parcel conveyed to the People of the State of New York:

- 1) N 57° 38' 07" E, 35.19 feet to a capped iron rod set;
- 2) S 83° 08' 01" E, 48.59 feet to a Mag Nail set in a Drill Hole in stones;
- 3) S 45° 10' 47" E, 61.21 feet to a capped iron rod set in stones;
- 4) S 45° 09' 07" E, 5.31 feet to a point;
- 5) S 06° 22' 16" E, 94.32 feet to a Mag Nail set in a Drill Hole in stones;
- 6) S 21° 37' 22" E, 43.82 feet to a Spike set in the root of a Cedar;

7) S 39° 47' 49" E, 98.41 feet to a capped iron rod set in stones;


THENCE: N 00° 00' 37" E along the westerly bounds of the parcel herein described and the easterly bounds of foresaid parcel conveyed to the People of the State of New York 293.70 feet to a Mag Nail set in sloping bedrock; and being further described by the New York State Plane Coordinate System, North American Datum (NAD) 1983 (1996), East Zone, Feet as Northing 1913714.03 / Easting 607779.40;

THENCE: N 00° 02' 59" W along the westerly bounds of the parcel herein described and the southeasterly bounds of foresaid parcel conveyed to the People of the State of New York 497.62 feet to a ¼ inch Drill hole in a 7"x 5"x 2' high upright stone in a stone pile;

THENCE: S 89° 59' 20" E along the northerly bounds of the parcel herein described and the southerly bounds of foresaid parcel conveyed to the People of the State of New York 720.20 feet to a capped iron rod and the **POINT OR PLACE OF BEGINNING.**

ALL AS SHOWN on a map entitled ""Map showing survey of the lands of Open Space Conservancy Inc. to be acquired pursuant to section 3-0305 of the Environmental Conservation Law, Project: AFP Essex 384, Conservation Easement - Essex 383, Vendor - Open Space Conservancy, Inc., situated in the Towns of Newcomb & North Elba, Essex County and the Town of Harrietstown, Franklin County", by Robert Morrell, dated March 22, 2007 and filed in the Albany office of the New York State Department of Environmental Conservation's Bureau of Real Property as Map #11,914. Map also file in the Essex County Clerk's office on March 29, 2007 in drawer D-30, map number 6106.

BEING a portion of the lands described in a deed from NL Industries, Inc. to Open Space Conservancy, Inc., dated August 14, 2003 and recorded in the Essex County Clerk's Office on August 25, 2003 in Book 1371 of Deeds at Page 0050.

| | |
|--|---|
|  <p>Adirondack parkagency</p> <p>P.O. Box 99 · Ray Brook, New York 12977 · (518) 891-4050</p> | <p>APA Project Permit 2005-284</p> |
| <p>In the Matter of the Application of</p> <p>OPEN SPACE CONSERVANCY, INC.</p> <p>for a permit pursuant to §809(9) of the Adirondack Park Agency Act, 9 NYCRR Part 578 and 9 NYCRR Part 577</p> | <p>Date Issued: April 10, 2006</p> <p>To the County Clerk: This permit must be recorded on or before June 9, 2006. Please index this permit in the grantor index under the following names: 1. Open Space Conservancy, Inc.</p> |

SUMMARY AND AUTHORIZATION

Open Space Conservancy, Inc. (OSC) is granted a permit, on conditions, authorizing a seven lot subdivision of a 10,050± acre tract of land in areas classified Resource Management, Rural Use, and Industrial Use by the Official Adirondack Park Land Use and Development Plan Map involving wetlands and lands within the river area of a designated wild river in the Towns of Newcomb and North Elba, Essex County, and the Town of Harrietstown, Franklin County.

This project may not be undertaken until this permit is recorded in the Essex and Franklin County Clerk's Offices. This permit shall expire unless so recorded on or before June 9, 2006, in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within two years from the date the permit is recorded. The Agency will consider the project in existence when two of the lots authorized herein have been conveyed.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The project subject to Agency jurisdiction consists of the second of a two phase large-scale project being undertaken in sections ("phases") pursuant to Agency regulations at 9 NYCRR 572.6. Phase I of the project (Agency Project and Permit 2003-115) was undertaken and is in existence. Phase II consists of a seven-lot subdivision in a Resource Management area, a Class A regional project requiring an Agency permit pursuant to §§809(9) and 810(1)(e)(3) of the Adirondack Park Agency Act, and a three-lot subdivision involving wetlands in an Industrial Use area, a regulated activity requiring a wetlands permit pursuant to 9 NYCRR 578.2 and 578.3(n)(1)(i), and a rivers project requiring an Agency permit pursuant to 9 NYCRR 577.4(a) and 577.5(a)(1).

PROJECT SITE

The project site is a 10,050+ acre tract of land located on both sides of Essex County Route 25 in the Towns of Newcomb and North Elba, Essex County, and the Town of Harrietstown, Franklin County, in areas classified Resource Management, Rural Use, and Industrial Use on the Adirondack Park Land Use and Development Plan Map. It is identified as Town of Newcomb Tax Map Section 80, Block 2 as Parcel 1; Section 81, Block 3 as Parcel 1; Section 90, Block 1 as Parcels 1.001 (portion), 1.2, 2 (portion), 2.2, 3 (portion), 3.2, 5 (portion), 5.2 and 6; Section 91 Block 1 as Parcels 1 (portion), 1.2 and 2; Section 101 Block 1 as Parcel 1; and Section 101 Block 6 as Parcels 1, 2 (portion) and 2.2; Town of North Elba: Section 69 Block 1 as Parcel 5; and, Town of Harrietstown: Section 539 Block 1 as Parcel 1.80. The project site is described in a deed dated October 4, 2004 from NL Industries, Inc. to Open Space Conservancy, Inc. which was recorded December 3, 2004 in the Essex County Clerk's Office in Book 1425 of Deeds at Page 79 and in a deed dated August 14, 2003 from NL Industries, Inc. to Open Space Conservancy, Inc. which was recorded August 28, 2003 in the Franklin County Clerk's Office in Book 836 of Deeds at Page 208.

PROJECT DESCRIPTION AS PROPOSED

The project as proposed and conditionally approved herein is a seven lot subdivision, involving no new land use or development or construction of any principal buildings, which is summarized as follows:

- Parcel 1, a 6,815 acre parcel, known as the "Future Forest Preserve Parcel," to be conveyed to the State of New York for inclusion in the forest preserve.
- Parcel 2, a 2,979 acre parcel, known as the "Forest Management Parcel," to be conveyed for future forest management purposes. This parcel will be protected by a conservation easement to be held by the State of New York which will restrict future

development of the parcel including no subdivision, no commercial, residential, agricultural or industrial activities, limitations on placement of structures on the parcel, provide for limited mining on the parcel, and contain a requirement for the preparation of a Recreation Management Plan and a requirement that forest management activities adhere to a Forestry Certification Program or an approved Forest Management Plan.

- Parcel 3, a 210 acre parcel, known as the "Adirondac Core Area Parcel," surrounding the historic former mining settlement of Adirondac to be retained by the applicant for archeological research, historic interpretation, stabilization and/or reconstruction of existing structures, and preservation of an 1850's era blast furnace. The applicant proposes to coordinate preparation of a comprehensive interpretive program for this parcel in consultation with the Town of Newcomb, Adirondack Architectural Heritage, the Adirondack Museum, the New York State Museum, the New York State Department of Environmental Conservation, the New York State Office of Parks, Recreation and Historic Preservation and others. This parcel will be protected by a conservation easement to be held by an appropriate municipal, state or non-profit entity which will restrict future development of the parcel including no subdivision of or mining on the parcel, no new structures on the property except for a possible residence to be used by a State forest ranger or other State employee for administrative, research, education, law enforcement, resource management, and maintenance purposes, and limited vegetative cutting.
- Parcel 4, a 46 acre parcel, known as the "Masten House Parcel," is to be conveyed containing two single family dwellings served by on-site wastewater treatment and water supply facilities and a generator building. This lot will have 40 feet of frontage on Henderson Lake which contains an existing boathouse, stairs and footpath. This parcel will be protected by a conservation easement to be held by OSC which will restrict future development of the parcel including no subdivision of or mining on the parcel, prior approval from regulatory authorities is to be required for any use of the existing buildings for commercial purposes or expansion beyond 24% of their existing size or for new accessory structures and improvements, any new structures must be invisible from Henderson Lake or County Route 25, no cutting of vegetation within 150 feet of the parcel's boundaries, and no use of motorized recreational vehicles on the parcels including no motorized vessels on Henderson Lake.
- Parcel 5, a 1.6 acre lot, known as the "Upper Preston Pond Cabin Parcel," on Upper Preston Pond containing a preexisting rustic cabin to be retained by the applicant. This parcel will be protected by a conservation easement which provides for a purchase option to be held by the State of New York and allows for State administrative use and non-profit wilderness-based

outdoor recreation, education, and research programs. These uses by small groups as proposed will not be materially different in terms of intensity or frequency than previous uses.

- Parcel 6, a 0.41 acre parcel, known as the "Mount Adams Fire Tower Parcel," containing a preexisting forest fire observation tower to be repaired and to be retained by the applicant. This parcel will be protected by a conservation easement which provides for a purchase option to be held by the State of New York, and for use by the public.
- Parcel 7, a 0.3 acre lot, known as the "Mount Adams Observer's Cabin Parcel," containing preexisting structures including a fire observer's cabin to be restored and to be retained by the applicant. This parcel will be protected by a conservation easement which provides for a purchase option to be held by the State. Use of the cabin is proposed to be solely for not-for-profit purposes, including displaying it as a historic structure that visitors could view from the outside or, if it is fully restored, uses of an interpretive nature on a seasonal basis. (A student intern might be present at the restored cabin on a day use basis only to provide interpretation.)
- The conservation easement protecting Parcels 5, 6 and 7 will be held by the State of New York and will restrict future development of the parcels including no subdivision of or mining on the parcels, limited cutting of vegetation on the parcels (contrary to the current draft easement, the applicant has modified the project proposal so that no firewood cutting is to be allowed on Parcel 5), no use of motorized vehicles, and no installation of telecommunications structures or equipment. This easement will include an automatically renewable purchase option that will allow the State to acquire Parcel 5 every 5 years, Parcel 6 if the tower is removed or not maintained, and Parcel 7 if the observer's cabin is removed, destroyed or not maintained in a safe condition. The conservation easement limits the maximum overnight occupancy of the cabins on Parcels 5 and 7 to a maximum of six persons.
- Access to Parcels 1, 2, 3 and 4 will be directly from County Route 25 along existing roads and trails. Access to Parcels 5, 6 and 7, which are remote from any public road, after they become "landlocked" by the conveyance of Parcel 1 to the State of New York will be from existing public footpaths. In the case of Parcel 5, access will involve, depending upon the season, a lightweight boat or canoe or skis or snowshoes to cross the south end of Preston Pond since there is no trail providing direct foot access to that parcel. Emergency access, transport of materials and supplies into and waste materials from these "landlocked parcels" may involve infrequent use of a helicopter, the use of which would be required to conform to the Guidelines for Management and Use for Wilderness areas contained in the Adirondack Park State Land Master Plan.

- Except for the on-site generator that supplies electric power to the dwellings on Parcel 4 and existing telephone service to the dwellings on that parcel, no public utility electric power or telephone service is available to any of the proposed lots and there are no plans to have such services become available.

The project is shown on two undated maps (Sheets 5 of 7 and 7 of 7) entitled "Map Showing Survey of the Lands of Open Space Conservancy, Inc. to be acquired Pursuant to Section 3-0305 of the Environmental Conservation Law" prepared by Robert A. Morrell, L.S. and received on January 27, 2006 (hereafter referred to as the "survey maps"). A reduced-scale copy of Sheet 7 of 7 of the survey maps is attached as part of this permit. An extreme southerly portion of proposed Parcel 2 is in areas designated as Resource Management and Rural Use and not Industrial Use as shown on Sheet 7 of 7 of the survey maps.

CONDITIONS

BASED UPON THE FINDINGS BELOW, THE PROJECT IS APPROVED WITH THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. This permit is binding on the applicant, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of Permit 2003-115 and this permit and all the approved maps referred to these permits shall be furnished by the applicant to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2003-115 issued July 14, 2003 and Permit 2005-284 issued April 10, 2006, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
3. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Wetlands

4. Beyond that authorized herein, no "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

Water Resources

5. The indoor toilet and drain pipes to it and to the existing kitchen sink at the cabin on Parcel 5 shall be removed by no later than June 30, 2006. The applicant shall promptly provide the Agency with written notification of its compliance with this condition.
6. All sink wastewater at Upper Preston Pond Cabin shall be disposed of in the existing outhouse.
7. No overnight occupancy of the cabin on Parcel 7 shall be allowed unless or until Agency approval in the form of a letter of permit compliance is obtained based upon its review of plans for an on-site wastewater treatment system(s) to serve that cabin as prepared by a New York State Licensed Professional Engineer submitted to the Agency.
8. Prior to installing any new or replacement on-site wastewater treatment system on the project site, Agency approval in the form of a letter of permit compliance shall be obtained for plans prepared by a New York State licensed professional engineer submitted to the Agency for its review. These plans shall demonstrate conformity with New York State Department of Health's "Wastewater Treatment Standards for Individual Household Systems" (10 NYCRR Appendix 75-A), the Agency's "Guidelines for On-site Sewage Disposal Systems", and with Agency standards in 9 NYCRR Appendix Q-4. Conventional on-site wastewater treatment trench systems shall be installed on existing slopes less than 15 percent and for shallow absorption trench systems on existing slopes less than 8%. Installation of any Agency approved system shall be under the supervision of a licensed professional engineer. Within 30 days of complete system installation and prior to utilization, the design professional must provide the Agency with written certification that the system was built in compliance with the approved plans.

Visual/Open Space Protection

9. Within 100 feet of the centerline of County Road 25 or any navigable water body, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on the project site without prior written Agency approval in the form of an amended permit. This condition shall not be deemed to prevent: (i) the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard; (ii) the removal of vegetation in the normal course of maintaining County Road 25; and (iii) upon review and approval by Agency staff in the form of a letter of approval from the Agency's Deputy Director, Regulatory Programs, the removal of vegetation in the immediate vicinity of the structures in the settlement of Adirondac and the 1854 blast furnace deemed necessary to stabilize and prevent further deterioration of these structures.
10. No trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed within 150 feet of any boundary of Parcel 4 without prior written Agency approval in the form of an amended permit. This condition shall not be deemed to prevent: (i) the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard or; (ii) the removal of vegetation in the normal course of maintaining the driveways and utilities leading to Masten House and its generator building or the path leading to Henderson Lake.
11. No trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed outside of the Limits of Clearing associated with Masten House on Parcel 4 without prior written Agency approval in the form of an amended permit. This condition shall not be deemed to prevent: (i) the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard, or; (ii) selective removal of trees for timber harvesting or obtaining firewood for use at Masten House.
12. No trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed outside of the Limits of Clearing associated with Upper Preston Pond Cabin on Parcel 5 or anywhere on Parcels 6 and 7 without prior written Agency approval in the form of an amended permit. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.

Conservation Easements

13. Copies of the final fully executed conservation easements shall be submitted to the Agency. If the terms of any of the final conservation easements require modifications to this permit (e.g., render any portion of the permit ineffective) or result in any undue adverse impact not identified in this permit, then the applicant and successors and assigns shall apply for an amended permit.

Forest Management

14. Prior to any timber harvesting on Parcel 2, the Agency shall be provided with a copy of either a Forestry Certification Program or Forest Management Plan as provided for in the conservation easement for that parcel and as approved by the applicant.

Recreation Plan

15. The Recreation Management Plan and any Schedule of Operations or Interim Plan referenced in the conservation easement for Parcel 2 shall be submitted to the Agency prior to their implementation so that it may determine whether they render the project inconsistent with the provisions of this permit, the Adirondack Park Agency Act, the New York State Freshwater Wetlands Act and the New York State Wild, Scenic and Recreational Rivers System Act.

Historic Resources

16. Prior to undertaking any activities that will disturb structures and soils on Parcel 3, a Management Plan providing for continued investigation and interpretation of historic resources on this parcel and prepared in consultation with the New York State Office of Parks, Recreation and Historic Preservation shall be submitted to the Agency for its review and approval in the form of a letter of permit compliance. This condition shall not preclude activities necessary to stabilize and prevent further deterioration of structures on this parcel provided written concurrence is first received from both the Agency and the New York State Office of Parks, Recreation and Historic Preservation.
17. In the event the State should exercise the option to acquire Parcel 5, the feasibility of relocating the existing cabin on this parcel shall be assessed and, if deemed feasible, it shall be moved to an appropriate location prior to conveyance of this parcel.

Wild, Scenic and Recreational Rivers Special Provisions

18. Inside and within 100 feet of the mean high water mark of the Opalescent River, no trees or other vegetation shall be harvested, cut, culled, removed, thinned or otherwise disturbed without prior Agency review and approval in the form of an amended permit. Forest management activities in the area between the 100-foot setback and the one-quarter mile setback from the mean high water mark of the river shall meet the standards and conditions of the Agency's river regulations (9 NYCRR 577.6).

Shoreline Setbacks

19. All new structures, except docks, in excess of 100 square feet, including attached decks, shall be set back a minimum of 100 feet, measured horizontally, from the closest point of the mean high water marks of Henderson Lake, Preston Ponds, Sanford Lake and Harkness Lake.
20. All new buildings, decks and other structures (except for fences, poles, lean-tos, docks, boathouses, bridges, and stream improvement structures for fishery management purposes) shall be set back a minimum of 250 feet from the mean high water mark of the Opalescent River (9 NYCRR 577.6).

Boathouses and Docks

21. In accordance with Section 7.031(E) of the Town of Newcomb Zoning and Site Plan Review Local Law, no new boathouses shall be constructed on the project site.
22. No new dock shall be wider than 8 feet.

Review of Future Development

23. No further subdivision of the project site shall occur without prior Agency review and approval in the form of a new permit.
24. No new land use and development shall occur on the project site without first obtaining a jurisdictional determination and, if necessary, a permit from the Agency.
25. The construction of a residence on Parcel 3 shall require separate Agency review and approval in the form of a new permit.

FINDINGS OF FACT

Background/Prior History

1. Creation of the project site by subdivision was authorized by Agency Permit 2003-115 issued July 14, 2003 and amended Permit 2003-115A issued March 16, 2004. The project authorized by those permits was undertaken and is in existence.
2. There is a long history of mining on the project site, beginning in 1826 with iron ore mining at the Upper Works on the site that continued until the 1850's. Ilmenite, or titanium ore, was also mined on the land retained by NL Industries, Inc. as part of previous Project 2003-115 beginning in 1941 and concluding in the 1980's. Ilmenite reserves are known to exist near Cheney Pond on proposed Parcel 2.
3. A settlement known as Adirondac was established on proposed Parcel 3 site during the 19th Century iron ore mining period. Remaining structures associated with Adirondac include the remains of an 1850's era blast furnace and a preexisting two-story dwelling known as the McNaughton House. Numerous other dilapidated buildings and foundations that were constructed in the late 1800's are also located in the vicinity of the Adirondac settlement. The "Upper Works Adirondack Iron and Steel Company" property is listed on both the National and State Registers of Historic Places and is of high historic significance. In fact, in September 1901, the McNaughton House was occupied by then U.S. Vice President Theodore Roosevelt when he received word that President McKinley had been shot, triggering Roosevelt's midnight ride to North Creek, NY to board a train to Buffalo, NY where he was sworn in as president.
4. The Masten House, a preexisting two-story residence, as well as a detached garage containing a caretaker's apartment, a generator building, and a boathouse on Henderson Lake are located on proposed Parcel 4. The caretaker's cottage/garage and replacement of the boathouse were authorized by Agency Permit 90-435. While the caretaker's cottage/garage was undertaken and completed, the boathouse was not replaced. A dock attached to the existing boathouse was recently removed.
5. There is a preexisting hunting and fishing cabin, storage shed and two outhouses on Upper Preston Pond on proposed Parcel 5. The cabin was constructed in the 1930's on Sanford Lake. In 1953 it was relocated to its remote location on Upper Preston Pond to replace another cabin on the site that was lost to fire. The cabin has been determined eligible for inclusion on both the National and State Registers of Historic Places.

6. There is a preexisting cabin, two sheds and an outhouse on proposed Parcel 7. These structures are in various states of disrepair. The "observer's cabin" was historically used by the person manning the forest fire observation tower atop Mount Adams on proposed Parcel 6 and was more recently used as a hunting and fishing cabin. The "observer's cabin" is the last standing example of a standard design adopted by the State in 1922. The "observer's cabin" and fire observation tower, which are both listed on the State Register of Historic Places, are to be restored by an at-present informal, private "friends" group.
7. The original application for permit for this project included the proposed removal of the railroad tracks from a 30± mile long railroad right-of-way that extends south from the project site tract to North Creek, NY by NL Industries, Inc./Kronos Worldwide, Inc. and conveyance of the right-of-way to OSC for subdivision into three parcels. However, OSC abandoned its plans to acquire the railroad right-of-way and rescinded its contractual right to acquire that right-of-way. By letter dated February 15, 2006, NL Industries, Inc./Kronos Worldwide, Inc. confirmed that it is no longer a co-applicant for Project 2005-284. Any plans to remove the railroad tracks, subdivide the railroad right-of-way or other new land use or development will be pursued as part of a separate application for Agency permit (Project 2005-150) not involving OSC. The application for Project 2005-150 remains incomplete.
8. OSC entered into a December 9, 2003 "Multi Party Agreement Regarding Various Rights of Way" with adjoining landowners NL Industries, Inc./Kronos (US), Inc. and Finch, Pruyn and Company, Inc. This agreement provides for the continued use of existing roads now crossing portions of the project site and adjoining lands by the parties to this agreement.

Existing Environmental Setting

9. The project site is predominantly high value forested open space. Timber harvesting has occurred throughout much of the project site for many years. Public hiking trails (described further below) also cross portions of the site.
10. Much of the project site is rugged and mountainous, including Mt. Adams (3,540 feet above mean sea level or amsl), which has a forest fire observation tower on it, Popple Hill (2,800 feet amsl), and portions of Mt. Andrew and Henderson Mountain with elevations in excess of 2,500 feet amsl. Those portions of the project site that are at an elevation of 2,500 feet amsl or more comprise a statutorily-defined "critical environmental area" pursuant to §810(1)(e)(1)(c) of the Adirondack Park Agency Act.

11. The project site contains the following named waterbodies: Henderson Lake, Upper and Lower Preston Ponds, Lake Jimmy, Lake Sally, Harkness Lake, Cheney Pond, and Sanford Lake, the Hudson and Opalescent Rivers, Calamity Brook, Indian Pass Brook, and Santanoni Brook. The Opalescent River is designated as a Wild River in the New York State Wild, Scenic and Recreational Rivers System Act. That portion of the project site located within one-quarter mile of the Opalescent River is in a designated river area as is shown on Sheet 7 of 7 of the survey maps. Additional development restrictions apply in this river area pursuant to 9 NYCRR Part 577. The portion of the Hudson River crossing the project site is not a designated river in the New York State Wild, Scenic and Recreational Rivers System.
12. Various covertypes wetlands exist throughout the project site. The approximate locations of wetlands on the project site are shown on the Official Wetlands Map for Essex County.
13. An area known as the Tahawus Talus Slope extends from the northerly end of Henderson Lake along the west side of the outlet of Preston Ponds and Preston Ponds to the northern boundary of the project site. This 160± acre area contains the rare and unusual rock vole and long-tailed shrew. Large talus (up to 10 feet in diameter) is covered by a dense growth of mosses, ferns (spinulose wood, long beech and polypody) and wood sorrel. The forest canopy is dominated by yellow birch, with a few scattered red spruce trees. Understory growth is dominated by mountain maple, with scattered balsam fir, red spruce and witch hobble.
14. The common loon, a species of special concern in New York State, has been known to nest on Henderson Lake.
15. The project site is bounded on the north and partially on the east and west by state-owned forest preserve lands designated as being in the High Peaks Wilderness Area by the Adirondack Park State Land Master Plan. Public hiking trails lead into the High Peaks from a major trailhead known as the Upper Works by way of Indian Pass Brook, Calamity Brook and Duck Hole. Easements allowing use of these trails date back to 1923. The project site is bounded on the south and partially on the east and west by privately owned forestland.

Public Notice and Comment

16. The Agency notified all adjoining property owners and those parties as statutorily required by §809 of the Adirondack Park Agency Act and published a Notice of Complete Permit Application in the Environmental Notice Bulletin. Public comments received include a letter from Adirondack Architectural Heritage in support of the project and letters from the Association for the

Protection of the Adirondacks, the Adirondack Mountain Club and a citizen expressing concern about portions of the project. These concerns include potential impacts to wilderness values created by "inholdings" (i.e., Lots 3 through 7) in what will become part of State-owned forest preserve lands.

Local Government Comment

17. The Adirondack Park Agency sent notice regarding the above permit application to the Town of Newcomb Planning Board by letter dated February 7, 2006. The planning board responded by a letter dated March 2, 2006, advising the Agency that it "does not see any problem with the proposed project."

Pertinent Requirements and Conditions of Local Program

18. The Town of Newcomb administers an Agency-approved Local Land Use Program. A Local Law ("Zoning and Site Plan Review Local Law for the Town of Newcomb, Essex County, New York") was approved by APA March 13, 1992. When the Agency reviews a Class A regional project involving land within the Town, it consults with the Town Planning Board pursuant to 9 NYCRR 572.13 to determine the project's compliance with the local land use program. That portion of the project site designated Resource Management by the Adirondack Park Land Use and Development Plan Map is located in a Land Conservation (LC) Zoning District pursuant to the Town of Newcomb "Zoning and Site Plan Review Local Law" and Zoning Map, and that portion of it designated Industrial Use is in a town Industrial (I) Zoning District.

As depicted on the survey maps (described above in the "Project Description as Proposed"), Parcels 1, 2, 3 and 4 comply with the size, frontage and depth requirements for both the LC (42.7 acres, 500 feet and 200 feet) and the I (5 acres, 200 feet and n/a) zoning districts (Zoning and Site Plan Review Local Law section 4.050). Parcels 5, 6 and 7 do not comply with the size requirement for the LC zoning district. However, at its January 5, 2006 Special Meeting, the Town of Newcomb Zoning Board of Appeals granted variances to the size, frontage and depth requirements for these three parcels given the fact that those parcels all involved existing structures with no new principal buildings proposed and the parcels are protected by conservation easement.

Shoreline regulations at Section 7.031 regarding structure setback, wastewater treatment system setback, lot width and cutting restrictions would also be complied with, as (i) the project does not involve any new structures or wastewater treatment systems, and (ii) no vegetative removal is to occur

within the "restricted cutting zone" within 100 feet of the Hudson (LC zone) or the Opalescent (LC zone) Rivers. No new boathouses are proposed as part of this project and none have been approved for this project site (apart from replacement of the preexisting covered dock/boathouse with a one-story boathouse authorized for Parcel 4 in 1991 by Permit 90-435); hence the project would also comply with the Town's Section 7.031(E) prohibition against new boathouses which took effect in 1992. Finally, sign restrictions in Section 7.010 of the local law would be complied with, as no signs are proposed (except for interpretive signs for Parcel 3).

The project would not be in complete conformity with one of the objectives listed in the Town's 1990 Comprehensive Plan (p. 27, "[e]ncourage NL Industries to sell their lands for residential, industrial and commercial development"), in that the subject project would not involve new residential development on the project site.

It should be noted that (i) the Town's Zoning and Site Plan Review Local Law is Agency-approved and legally controlling with respect to the Town's implementation of the Plan's goals and objectives; (ii) the bulk of the project site is located in a LC zone where new "commercial" uses would (absent a use variance) already be prohibited under the Town's local law; (iii) no change is proposed in local zoning as part of this project and thus local pertinent requirements and conditions such as those associated with use lists and site plan review in LC and I would continue to apply. Further, the project would comply with other Plan objectives such as "[p]romoting tourism and recreation as primary industries" (p. 26) and "[e]ncourag[ing] wood products industries" (p. 26). Moreover, as currently proposed, the project would not prohibit future mineral extraction (or possible associated industrial activities) on I zone portions of the "forestry parcel" (which local I zone is co-terminus with the "Industrial Use" land use area on the Park Plan Map). The sale and use of the Masten House on Parcel 4 would ensure continued residential use of that parcel and Parcel 3 (Adirondac Core Area Parcel) would involve opportunities for economic benefits to the Town through historic, recreational and tourism-related uses. The project would support other portions of the Plan, insofar as the project would not adversely affect the preservation of titanium and vanadium mineral reserves (p. 14), as they would remain in private ownership where mining would be allowed under the terms of a proposed conservation easement; (ii) the project would not affect the railroad right-of-way, because any proposal for removal of the tracks, new land use or development, and any subdivision of it would be subject to further separate Agency review and approval (Agency Project 2005-150); (iii) the project would be in keeping with the stated goal of promoting tourism and

recreation, in that recreational use of the trails pursuant to DEC easements will be continued and historic preservation initiatives which would likely have a positive effect on tourism, recreation and the local economy.

Finally, it should be noted that when making the two permit approval criteria findings pursuant to §809(9) of the Act for projects located in an Agency-approved local land use program (i.e., (i) compliance with local requirements and conditions and (ii) undue adverse impacts to Park resources), the Agency is not required to make a separate "compatibility" finding as it would in "unapproved" towns.

PROJECT IMPACTS

19. As a subdivision only, with no new land use or development or any other ground disturbing activities proposed, this project will have no significant impacts to physical or natural resources such as shorelines, soils, slopes, flora, fauna, air quality, noise, travel corridors, and adjoining state and private lands.

Wetlands

20. The project will not adversely impact wetlands since no new land use or development is proposed. Any development involving wetlands should first be reviewed by the Agency so that impacts can be assessed and properly mitigated.
21. Wetlands described herein are intended to alert landowners and others that wetlands are present on the project site. However, this may not identify all wetlands on or adjacent to the project site. Landowners and others contemplating development activities should contact the Agency for a further delineation of wetlands.

Water Quality

22. Wastewater from the sink and toilet in a cabin on Parcel 5 now go into an on-site wastewater treatment system that is located approximately 40 feet from a stream traversing the parcel. This separation distance is inadequate to prevent contamination of the stream from this system. The toilet and drain pipes from it and the sink should be removed to prevent continued use of the improperly sited on-site wastewater treatment system.
24. There are no known greywater disposal provisions for the cabin on Parcel 7. No overnight occupancy of this cabin should occur unless adequate provisions for wastewater disposal are made.

25. Installation and maintenance of new or replacement on-site wastewater treatment systems in accordance with applicable New York State Department of Health and Agency standards, restrictions and guidelines will adequately protect groundwater quality.

Critical Environmental Areas

26. Since no new land use or development is proposed here, no impacts will result to areas with elevations of 2,500 feet amsl or more, which are both statutorily-defined critical environmental areas.

Wild River Area

27. Since no new land use or development is proposed in the Wild River Area, no impacts will result to the Opalescent River and its associated river area. Adherence to the restrictions and standards in 9 NYCRR Part 577 will serve to protect this resource.

Open Space

28. The project will result in no material change to open space resources, since no new land use or development is being proposed (apart from future interpretation/use of Parcel 3). The project will result in approximately 6,815 acres of the project site being publicly owned as state-owned forest preserve land (Parcel 1) and 2,979 acres of it (Parcel 2) continuing to be privately owned for sustainable forestry purposes and public recreation.
29. Buildings and other structures on Parcels 5, 6 and 7, which will be "landlocked" by what will become State forest preserve land, have been in existence for many years. While these buildings and structures are to be maintained and/or restored, no new buildings, other new land use or development or other new intrusions in open space are proposed.
30. Activities at the cabins on Parcels 5 and 7 would be those customary for their remote, difficult-to-get-to, rustic locations and not traditional residential usage. Their lack of amenities such as electric or telephone service and the challenging accessibility are all self-limiting characteristics. The remote locations and the relative inaccessibility of the cabins will tend to limit frequency of their use and make any stays of short duration. Also, use of the cabins is proposed to be limited to occupancy by no more than six persons and activities at these locations under the terms of the proposed conservation easement are consistent with the nearby and surrounding forest preserve. Day use group sizes would also be limited by DEC regulation to no

more than 15 persons in the event surrounding Parcel 1 is conveyed to the State as is proposed and it becomes part of the High Peaks Wilderness Area. Finally, in the unlikely event that adverse impacts to forest preserve lands result from the use of Parcel 5, the State may exercise its option to acquire that parcel and discontinue that use.

31. The forest fire observation tower on Parcel 6 is a long-term feature on the landscape that will not be altered by this project. It also provides important historic and recreational opportunities. Therefore, no adverse impacts will result to open space resources by its continued presence and use.
32. Retention of existing vegetation outside of the Limits of Clearing on Parcels 4 and 5, on Parcels 6 and 7, and along public roads and water bodies on the project site will serve to protect the existing open space and aesthetic character of these travel corridors and water bodies.

Mineral Resources

33. Ilmenite reserves exist on Parcel 2 which will continue to be privately owned. The conservation easement for this parcel will not preclude mining. Accordingly, the project will not adversely impact the potential mining of mineral resources on the privately-owned lands in the future. Any such future mining will require prior review and approval by both the Agency and DEC.

Forest Resources

34. Parcel 2 will be privately owned where sustainable forestry purposes will continue. The conservation easement for this parcel will require that forest management activities adhere to a Forestry Certification Program or an approved Forest Management Plan. Much of Parcel 1, which is to be included in the state forest preserve where management of forest resources such as timber harvesting would be precluded, is too steep for any practical or meaningful conventional management of forest resources.

Outdoor Recreation

35. Opportunities for public use such as camping, expanded hiking and use of lakes and ponds on the project site will be expanded. Use of Parcel 1 by the public will continue since it will become part of the state forest preserve. A Recreation Plan to be prepared for Parcel 2 will provide public access and use of that parcel. Historic resource interpretation will be allowed on Parcels 3, 6 and 7.

Economic/Fiscal Factors

36. As detailed in Finding of Fact 18 the overall project supports the local economic improvement objectives of "[p]romoting tourism and recreation" by providing for long term public access to lands to be purchased in fee by the State of New York and through conservation easements. Further, retaining the Parcel 3 in private ownership for the purpose of archeological research, structural stabilization/reconstruction, preservation of the 1853 blast furnace and interpretation will provide the Town of Newcomb with an important economic opportunity by attracting visitors interested in regional history and culture.

The local economic objective of "[e]ncouraging wood products industries" is advanced through the use of conservation easements and forest management planning. Finally, in accordance with the State's Open Space Conservation Plan, the proposed timber management area conservation easement allows mining in a limited area on the project site that has substantial reserves of titanium dioxide.

37. Tax parcels included in the project site are currently assessed for \$5.73 million. This figure includes an estimated \$2.54 million assessed value for the current 849 acre tax map parcel containing Masten House which includes a structural value of \$835,222. Other than certain forestland exemptions allowed under §480a of the NYS Real Property Tax Law, the project site has been generating real property taxes to the Towns of Newcomb and North Elba, Essex County, the Town of Harrietstown, Franklin County, the Newcomb Central School District, the Lake Placid Central School District and the Saranac Lake Central School District while owned by the Open Space Conservancy, a not-for-profit organization. The project site generated a total of \$121,000 in real property taxes to local taxing jurisdictions in 2005-2006.

38. The applicant intends to apply for real property tax exemptions on four parcels totaling 212.3 acres (Parcels 3, 5, 6 and 7). The 9,840-acre balance of the property will remain on the tax rolls and should result in a net increase in real property tax payments to local taxing jurisdictions since approximately 4,000 acres that currently have a §480a real property tax exemption will not retain that exemption once conveyed to the State of New York.

Historic Sites or Structures

39. The former settlement of Adirondac including an area surrounding it is included in both the State and National Registers of

Historic Places. The forest fire observation tower on Parcel 6 and the cabin on Parcel 7 have been listed on the State Register of Historic Places and the cabin on Parcel 5 is eligible for listing on the State Register. By letter dated March 23, 2006, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) advised that the project will have no adverse impact upon historic resources provided that a Management Plan to provide for continued investigation and interpretation of the State and National Register listed "Upper Works Adirondack Iron and Steel Company" property is prepared in consultation with OPRHP and that, prior to the completion of the Management Plan, activities on this property are subject to the review by OPRHP. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

40. Although the preexisting cabin was relocated from elsewhere on the project site to Parcel 5, the cabin's historic physical integrity remains intact. It is a rare surviving example of a rustic log wilderness cabin associated with the Tahawus Club and is eligible for inclusion on the State Register of Historic Places. Also, the forest fire observation tower on Parcel 6 and the cabin on Parcel 7 are listed on the State Register of Historic Places. Given the historic values associated with the structures on Parcels 5, 6 and 7, retention of these parcels in private ownership would be consistent with the provisions of ECL Section 9-0109, which generally prohibit the State from acquiring historic structures in the Adirondacks that are listed or eligible to be listed on the State Register. However, in the event the State should exercise the option to acquire this Parcel 5, the feasibility of relocating this historic structure should be assessed and, if feasible, it should be moved to an appropriate location prior to conveyance of this parcel to the State.

CONCLUSIONS OF LAW

If undertaken in compliance with the conditions herein:

1. The project does meet all of the pertinent requirements and conditions of the approved local land use program of the Town of Newcomb.
2. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and

services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived therefrom.

3. The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(9) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574; §24-0801(2) of the NYS Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR 578.10; §15-2709 of the NYS Wild, Scenic and Recreational Rivers System Act (ECL, Article 15, Title 27) and 9 NYCRR 577.6.
4. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

PERMIT issued this 10th day
of April, 2006.

BY: MARK E. SENGENBERGER
Mark E. Sengenberger
Deputy Director (Regulatory Programs)

On the 10th day of Apr. 1 in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark E. Sengenberger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

TRACY J. FRECHETTE
Notary Public - State of New York
Qualified in Essex County
No. 01FR6114799
Commission Expires Aug. 23, 2008

Average Annual Operating Expenses

Generator Fuel - \$3,200

Phone/Internet - \$1,950

Insurance - \$14,500

Maintenance & Repair - \$13,000