

**No. R-231. Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to amend conservation easements related to the former Hancock Lands and adjacent Averill Inholdings in Essex County, to sell the Bertha Tract in Mendon and the Burch Tract in Killington to the Trust for Public Lands, to authorize the Commissioner to amend the Department of Forests, Parks and Recreation's existing lease with the Smuggler's Notch Management Company Ltd. and to authorize the Department to enter into a land exchange with the Smuggler's Notch Management Company Ltd.**

(J.R.S.25)

By Committee on Institutions,

*Whereas*, in 1996, the Department of Forests, Parks and Recreation acquired from the John Hancock Mutual Life Insurance Company a conservation easement for certain lands (known as the Hancock Lands) in Warren's Gore, and separately in 2005, the Department acquired a second conservation easement for inholdings within the former Hancock Lands in the town of Averill, and

*Whereas*, these easements envisioned that the covered lands could be subdivided and would be dedicated primarily to conservation purposes but commercial forestry management, including maple sugaring and syrup activities, were permissible, and

*Whereas*, the Department has now determined that the language in both easements is ambiguous concerning the construction of forestry management-related structures such as a sugarhouse, and

*Whereas*, upon consultation with the U.S. Forest Service, whose Forest Legacy Program facilitated the Department's acquisition of the easements, the Department has determined the easements should be amended with clarifying language subject to the approval of the owners of the parcels that resulted from the subdivision, and

*Whereas*, the Department owns the Bertha Tract in Mendon and the adjacent Burch Tract in Killington, both of which contain Green Mountain Club-held easements for segments of the Long Trail, and

*Whereas*, the Department proposes to sell these tracts to the Trust for Public Land in anticipation of their eventual transfer to the U.S. Forest Service for inclusion in the Green Mountain National Forest at which time the Green Mountain Club's easements would terminate and the covered Long Trail segments would be subject to federal protection, and

*Whereas*, in 1987, the Department entered into a lease with the Smuggler's Notch Management Company Ltd. (Smuggler's Notch), terminating in 2058 and renewable in ten-year increments, in which the Department leases 2,000 acres (the boundaries having last been amended in 2005) in the Mt. Mansfield State Forest to Smuggler's Notch for use as a ski resort, and

*Whereas*, under the terms of the lease, Smuggler's Notch's Madonna-Sterling base lodge (and all other buildings and structures on the leasehold property) have remained State property, and

*Whereas*, the 45-year-old lodge is in need of major improvements and the current lease makes it economically difficult for Smuggler's Notch to finance these improvements, and

*Whereas*, Smuggler's Notch proposes to assume ownership of the base lodge and two acres of surrounding land contained in the leasehold and in exchange Smuggler's Notch proposes: (i) to relinquish its leasehold interest in approximately 330 acres of land near the summit of Whiteface Mountain, and (ii) to convey a right-of-way to the State across a separate parcel of land that Smuggler's Notch owns in the Mt. Mansfield State Forest, and

*Whereas*, Smuggler's Notch would be responsible for property taxes for the base lodge and the two-acre parcel and would continue to make payments in lieu of base lodge rent, using the formula now in place, and

*Whereas*, Smuggler's Notch will work with the Department to update the lease, and

*Whereas*, pursuant to the authority granted in 10 V.S.A. § 2606(b), the Commissioner of Forests, Parks and Recreation believes that these land transactions are in the best interest of the State, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly authorizes the Commissioner of Forests, Parks and Recreation:

First: To amend certain terms and conditions of the conservation easements that the Department acquired with federal Forest Legacy funding: (i) on approximately 31,000 acres (known as the Hancock Lands) from the John Hancock Mutual Life Insurance Company on December 17, 1996; and (ii) on 210 acres (known as the Averill Inholdings) from the Trust for Public Land on December 7, 2005 in order to clarify the allowed uses for forestry management-related structures and facilities, including their associated infrastructure and utilities.

Second: To sell to the Trust for Public Land two tracts, with the goal that the Trust will subsequently convey these tracts to the U.S. Forest Service for inclusion in the Green Mountain National Forest: (i) an approximately 113-acre tract in the town of Mendon (known as the Bertha Tract), and (ii) a 58-acre tract in the town of Killington (known as the Burch Tract), both of which the Department acquired from the Green Mountain Club on March 31, 2003 and that the sale shall be pursuant to the terms of a mutually satisfactory purchase and sales agreement. The selling price shall be based on the tracts' fair market value that an appraisal shall determine. The sale of these tracts is contingent on support from the towns of Mendon and Killington. The proceeds of the sale shall be deposited in the Agency of Natural Resources Land Acquisition Fund to be used to acquire additional properties for Long Trail protection purposes.

Third: To amend the lease between the Department and Smuggler's Notch to:

(1) Revise the leasehold boundary to conform to the land exchange authorized in the fourth provision of this resolution.

(2) Include new lease provisions: (i) authorizing the Department to add new terms to reflect new laws, administrative rules, and policies should the leasehold be sold, including the sale of all or substantially all of the lessee's assets; and (ii) clarifying the various types of revenue generated within the ski leasehold area that must be incorporated into the ski lease fee payment but not changing the underlying formula.

(3) Update the indemnification and liability language to meet current State requirements.

(4) Clarify public access rights to the leasehold land, including Smuggler's Notch's right to restrict access for safety reasons.

Fourth: To enter into a land exchange with Smuggler's Notch that provides for:

(1) The Department to convey to Smuggler's Notch the base lodge and approximately two acres of surrounding land located within the Smuggler's Notch leasehold.

(2) Smuggler's Notch's relinquishing to the State 330 acres more or less of land within the leasehold located below the summit of Whiteface Mountain.

(3) Smuggler's Notch's conveying to the Department, for management purposes in the Mt. Mansfield State Forest, a right-of-way, for a route to be mutually agreed upon, through a separate parcel of land that Smuggler's Notch owns on the west side of Route 108.

(4) That the proposed exchanges listed in subdivisions (1)–(3) of this provision of the resolution are contingent on the approval of the Town of Cambridge and that Smuggler's Notch's leasehold interest in the 330 more or less acres to be removed from the lease be equal or greater than the appraised value of the base lodge and two acres of surrounding land.

(5) That Smuggler's Notch, upon the conveyance of the base lodge and the surrounding approximately two acres to its ownership, shall continue to pay the Department 2.5 percent of all revenue generated at the base lodge for as long as the lease shall remain in effect, *and be it further*

**Resolved:** That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forests, Parks and Recreation.