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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street – Room 120
Concord, New Hampshire 03301

Charles M. Arlinghaus
Commissioner
(603) 271-3201

Joseph B. Bouchard
Assistant Commissioner
(603) 271-3204

Catherine A. Keane
Deputy Commissioner
(603) 271-2059

January 14, 2021

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Administrative Services (the "Department"), acting pursuant to RSA Chapter 563-B (Uniform Disclaimer of Property Interests Act), to disclaim on behalf of the State of New Hampshire the 1961 gift of a contingent remainder interest in over 130 acres of undeveloped forest land in Dublin, New Hampshire, subject to the final sale of such land, unencumbered by the State's interest, by the landowner, Girl Scouts of the Green and White Mountains, a New Hampshire nonprofit corporation (the "Girl Scouts"), to The Monadnock Conservancy, a New Hampshire nonprofit corporation and regional land conservation trust, thereby enabling the Girl Scouts to use the proceeds to further the charitable purposes of the Girl Scouts.

EXPLANATION

In 1961, Swift Water Girl Scout Council, Inc., a New Hampshire nonprofit corporation, acquired by two deeds a tract of undeveloped forest land in Dublin, New Hampshire approximately 132 acres in size (the "Property"). Both deeds include the following provision: "In the event the Swift Water Girl Scout Council, Inc., is dissolved, then the title to the herein-described premises shall vest in the State of New Hampshire." Swift Water Girl Scout Council, Inc. changed its name in 1999 to Girl Scouts of Swift Water Council, and then in 2009, Girl Scout Council of Vermont, Inc. merged with and into Girl Scouts of Swift Water Council, which was then renamed Girl Scouts of the Green and White Mountains.

Since acquiring the Property, the Girl Scouts have essentially only used it for wilderness camping by the Girl Scouts. Because the Property is neither used nor needed for any essential Girl Scouts functions or activities, and because the continued ownership of the Property by the Girl Scouts has become impracticable, the Girl Scouts determined several years ago to liquidate the Property and use the proceeds to further the charitable purposes of the Girl Scouts. However, the Girl Scouts found that the State's contingent remainder significantly inhibits the marketability of the Property, because the possibility endures that the State's contingent interest could vest in the event that the Girl Scouts are ever dissolved—even after the Property has been conveyed to a third party. The Girl Scouts then filed a "Cy Pres" petition in the Cheshire

County Probate Court seeking permission to sell the Property free of the State's contingent remainder. More recently, the Girl Scouts identified The Monadnock Conservancy as a prospective buyer that is not only interested in buying the Property but also will ensure that it remains conserved as undeveloped open space, consistent with the character of most of the abutting land, which includes Leighton State Forest.

The Department became involved after the New Hampshire Director of Charitable Trusts, who exercises all rights, duties, and authority of the Attorney General with regard to the supervision, administration, and enforcement of New Hampshire charitable trusts and is a necessary party in any Cy Pres proceeding involving such charitable trusts, sought assistance from a State executive branch agency to voluntarily disclaim on behalf of the State the State's contingent remainder interest in the Property, subject to the final sale of the Property to The Monadnock Conservancy, in support of the remedy sought by the Girl Scouts' petition. It does not appear that the State has formally accepted the gift of the contingent remainder interest in the Property in accordance with RSA 4:29 or that the interest has ever been allocated to any particular executive branch agency. Pursuant to RSA 21-I:11, I(c)(3), the Department has "custody of all state-owned or rented real property not specifically charged to some other department," so the Department would appear to be the proper State agency to disclaim the State's non-vested (contingent) future interest (remainder) in the Property pursuant to RSA Chapter 563-B (Uniform Disclaimer of Property Interests Act). Because the State's interest in the Property has not vested, the State has no present interest in the Property, itself, and it may never obtain a present interest in the Property unless and until the Girl Scouts, an apparently healthy and long-established New Hampshire nonprofit corporation, ever ceases to operate and dissolves. Furthermore, because the Governor and Executive Council have never formally accepted the gift of the contingent remainder in the Property on behalf of the State pursuant to RSA 4:29, the Department believes that the contingent remainder, itself, is not subject to the surplus State real property disposal requirements of RSA 4:40. The Department would retain the fully executed disclaimer following authorization by the Governor and Executive Council and deliver it to the Girl Scouts only upon the anticipated closing of the contemplated sale in order to ensure that the above precondition sought by the Director of Charitable Trusts is met.

While the contingent remainder in the Property may have some nominal current value that represents a small fraction of the unencumbered value of the underlying land, any estimate of that value would amount to a speculative bet about the long term survival of the Girl Scouts, being determined almost entirely by rough estimates of the objective likelihood that the Girl Scouts will dissolve in the foreseeable future. Moreover, it seems clear that the original intent of the gift of the Property to the Girl Scouts was to further the charitable purposes of the Girl Scouts, and that the intent of the State's contingent remainder was to ensure that the Property would continue to provide a public benefit in the event that the Property is no longer being used to further the charitable purposes of the Girl Scouts. The Department believes that by disclaiming the State's contingent remainder in the Property, the State ultimately would enable the Girl Scouts to use the Property in a manner that most closely approximates the original intent of the gift of the Property without allowing the continued ownership of the Property to represent a financial burden to the Girl Scouts, while also preserving the

anticipated future public benefits of conserved forest land and recreational access thereto associated with the contingent remainder through the proposed acquisition and conservation of the Property by The Monadnock Conservancy.

Pursuant to RSA 563-B:2, II, the proper time to disclaim a contingent interest in real property is not later than 9 months after the interest becomes indefeasibly vested in the grantee. Because the Girl Scouts continues to exist and operate as a viable charitable corporation, the State's contingent remainder interest in the Property has not yet vested, so the proper time to disclaim the interest under the statute is now.

Therefore, for the reasons set forth above, the Department proposes to disclaim the State's contingent remainder interest in the Property as set forth above pursuant to RSA Chapter 563-B.

Respectfully submitted,

Joseph Bouchard Asst. Comm.

for Charles M. Arlinghaus
Commissioner

General Location of Girl Scouts Land
Northward off of NH Route 101 abutting the
Harrisville Town Boundary, Howe Reservoir, and Leighton State Forest
Dublin, New Hampshire

HARRISVILLE
MARLBOROUGH
MAP 1
MAP 6
GIRL SCOUTS
LAND PARCEL
WRIGHT
POND
STONE
POND
MAIN
STREET
HOWE
HILL
ROAD
CHAPLIN
ROAD
MARLBOROUGH
ROAD
Terra-Map
Legend
Map Boundary
Parcel Boundary
Parcel Numbers
Private Road
Right-Of-Way
Water Boundary
Water General
Town Designated Wetlands
Town Conservation Land
Town Land
Town Road
Scale
400 0 400 800 1200 1600 2000
Map Index
DUBLIN
NEW HAMPSHIRE
2018
For Assessment Purposes
Not to be used
for Conveyances
5

Monadnock Council Scout Leaders Association, Inc.

RETURN TO:
Biron L. Bedard, Esq.
Ransmeier & Spellman Professional Corporation
One Capitol Street
P.O. Box 600
Concord, NH 03302-0600

DISCLAIMER OF CONTINGENT FUTURE INTEREST

The **STATE OF NEW HAMPSHIRE,** acting through its Department of Administrative Services pursuant to RSA Chapter 563-B, as authorized by the Governor and Executive Council on _____, 2021 (Meeting Agenda Item #_____), with a mailing address of Department of Administrative Services, Office of the Commissioner, 25 Capitol Street, Concord, New Hampshire 03301 (the "State"), hereby disclaims its interest in certain land located northward off of New Hampshire Route 101 in the Town of Dublin, County of Cheshire, State of New Hampshire (the "Premises"), said interest being more particularly described as follows:

> Any and all right or interest as may vest in the State upon the dissolution of Girl Scouts of the Green and White Mountains (previously known as the Swift Water Girl Scout Council, Inc. and the Girl Scouts of Swift Water Council) in certain parcels of land of the Girl Scouts of the Green and White Mountains as were acquired by Warranty Deed of Monadnock Girl Scout Leaders Association, Inc., dated February 23, 1961, recorded in the Cheshire County Registry of Deeds at Book 681, Page 347, and Warranty Deed of Jane D. Walsh, dated April 19, 1961, recorded in the Cheshire County Registry of Deeds at Book 681, Page 350.

Meaning and intending to describe and disclaim the contingent remainder interest in the Premises that was granted to the State by the following language included in both of the deeds referenced hereinabove: "In the event the Swift Water Girl Scout Council, Inc., is dissolved, then the title to the herein-described premises shall vest in the State of New Hampshire."

By executing and delivering this Disclaimer of Contingent Future Interest, the State hereby disclaims, releases, waives, and terminates any and all contingent future right, title, and interest in and to the Premises as was granted to the State in the deeds referenced hereinabove.

DRAFT

Dated this _____ day of _____ 2021.

STATE OF NEW HAMPSHIRE
By and through its
DEPARTMENT OF ADMINISTRATIVE
SERVICES

By: _____
Charles M. Arlinghaus, Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this _____ day of _____ 2021, personally appeared the above-named Charles M. Arlinghaus, known to me (satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he is the duly authorized Commissioner of the New Hampshire Department of Administrative Services and that he executed the foregoing instrument for the purposes therein contained.

_____
Notary Public / Justice of the Peace
My Commission Expires: _____
(SEAL)

DRAFT