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*Victoria F. Sheehan*  
Commissioner

**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



*William Cass, P.E.*  
Assistant Commissioner

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

Bureau of Right-of-Way  
August 9, 2021

**REQUESTED ACTION**

Pursuant to RSA 4:39-d, "Leasing of State Owned Real Estate on Public Waters", authorize the New Hampshire Department of Transportation (Department) to lease 31 linear feet of shoreline along lake Winnepesaukee adjacent to Route 11 in the Town of Alton, to Timothy J. Jordan and Theresa L. Jordan (Lessees). The term of the lease will be five years, effective retroactively to August 1, 2021 upon Governor and Council approval, through July 31, 2026. The annual lease amount is \$1,084.07.

Lease income will be credited as follows:

04-096-096-962015-3028-406912	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
Rental Income	\$993.73	\$1,084.07	\$1,084.07
	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
	\$1,084.07	\$1,084.07	\$90.34

**EXPLANATION**

This request is retroactive to coincide with the signed lease terms.

As a result of the number of encroachments discovered along the NH Route 11 corridor in 2013, a reestablishment plan was developed and all abutters were notified of their encroachments. The Department has decided to enter into Lease Agreements with those land owners meeting statutory requirements.

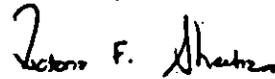
The taxes for the Alton Bay leases will be calculated by using the linear distance of frontage along the lake as outlined in RSA 228:57-a, IV. This calculation method was reviewed and supported by the Attorney General's Office, and is currently used by the Department's Bureau of Rail and Transit.

The Department received a request from the Lessee, to lease the subject property located in the Town of Alton.

On June 21, 2021, the Long Range Capital Planning and Utilization Committee granted approval (LRCP 21-023) to enter into Lease Agreements with property owners adjacent to NH Route 11 along Lake Winnepesaukee in the Town of Alton, valid for 5-year terms with the option of renewal at the end of the 5-year term.

The Department respectfully requests authorization to retroactively enter into a 5-year lease with the Lessees.

Sincerely,



Victoria F. Sheehan  
Commissioner

VFS/SGL/lmw  
Attachments

**- LITTORAL RIGHTS LEASE -**

**between**

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
"DEPARTMENT"**

**AND**

**Timothy J. Jordan and Theresa L. Jordan  
"TENANTS"**

**for property located at  
257 Mount Major Highway, Alton New Hampshire**

**August 1, 2021 – July 31, 2026**

**Supplemental document checklist**

- Certificate of Insurance
- Is A Renewal
- DES Permit X
- Attachment "A" defining property
- Amendment(s)
- LAW DOT Initials

r 3/30/2021

tenant(s) initials

TJ

TJ

## LITTORAL RIGHTS LEASE

THIS LEASE AGREEMENT, made between The State of New Hampshire, Department of Transportation, hereinafter called the "Department," and **Timothy J. Jordan and Theresa L. Jordan** hereinafter called the "Tenants."

WHEREAS the Department is the owner of land as identified on the State of New Hampshire Reestablishment Plan dated November 13, 2013, and recorded as Drawer L73-45, at the Belknap County Registry of Deeds.

WHEREAS, Timothy Jordan agrees to enter into a lease agreement in accordance with RSA 4:39-d, the subject lease being only that shoreline frontage necessary to accommodate Jordan's dock, as presently configured, equaling 31 linear feet, more or less, and depicted on exhibit A, attached WHEREAS the Tenants have requested to lease the littoral rights to use said shoreline of the lot along Lake Winnepesaukee on an "as is", temporary basis,

NOW THEREFORE the Department is willing to comply with said request, provided that the Tenants, as a condition to the enjoyment of said littoral rights, joins in the execution of this Lease or the purpose of accepting each and every condition herein set forth during the term of this Lease.

### 1. IDENTIFICATION OF THE LEASED PROPERTY

- 1.1. For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the Tenants of each and every term and condition herein set forth, the Department hereby leases to the Tenants the LITTORAL RIGHTS to the shoreline of Lake Winnepesaukee as depicted on Attachment A incorporated herein.

### 2. TERM

- 2.1. The term of this Lease shall begin on August 1, 2021 and shall end on July 31, 2026, unless terminated sooner in accordance with the provisions of this Lease.

### 3. RENT

- 3.1. Rent for the term of the Lease shall be \$1,084.07, annually.
- 3.2. Rent is due annually, on or before August 1<sup>st</sup>, to the "TREASURER, STATE OF NH" and mailed to: **New Hampshire Department of Transportation, Bureau of Finance and Contracts, P.O. Box 483, Concord, NH 03302.**
- 3.3. If a check is returned unpaid for any cause within reasonable control of the Tenants, the Tenants agrees to pay an additional charge of \$50.00 to the Department and the Department will have the right to require any or all subsequent payments to be in the form of cash or money orders for the remaining term of the Lease.
- 3.4. Per RSA 72:23, I(b)(4), "Failure of the Tenants to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said Lease or agreement by the Lessor."

r 3/30/2021

Tenant(s) Initials   *TJ*

4. USE OF PREMISES

- 4.1. The temporary littoral rights are herein conveyed only for non-commercial, private uses. Any public and/or commercial uses are not permitted under this Lease.
- 4.2. The Tenants shall not use the littoral rights, or property in any manner that will disturb the peaceful enjoyment of others.

5. COMPLIANCE WITH LAWS

- 5.1. The Tenants shall comply with all the laws, ordinances, rules and orders of appropriate governmental authorities during the term of this Lease.

6. ASSIGNMENT AND SUBLETTING

- 6.1. The Tenants shall not assign, license, sublet, transfer, grant, or otherwise convey this Lease or any of the littoral rights associated with this Lease.

7. HOLDOVER BY THE TENANTS

- 7.1. No holdover by the Tenants will be permitted. The Department and the Tenants must execute a new lease on or before expiration of an existing lease for the Tenants to remain in possession of the littoral rights.

8. DEFAULT

- 8.1. The Department shall be the sole judge of what shall constitute a violation of the provisions of the Lease, or the failure of the Tenants to otherwise abide by any of the covenants herein contained.

9. TERMINATION OF LEASE FOR CAUSE

- 9.1. In the event the Tenants defaults in the payment of any installment of rent or other sum herein specified and such default continues for (seven) 7 days after written notice thereof, or if the Tenants defaults in the observance or performance of any other of the Tenants' covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days of written notice by the Department to the Tenants specifying such default and requiring it to be remedied then, and in such an event, the Department may terminate this Lease and the temporary littoral rights herein conveyed. Tenants hereby understands and agrees to forfeit any and all rents that have been prepaid if this Lease is terminated for cause.
- 9.2. Sale or transfer of the Tenants' abutting property, identified in the Alton tax records as **Map 38, Lot 16**, will be cause for termination of this Lease under paragraph 9.1 above.

- 9.3. The Department shall be entitled to recover incidental costs, attorney's fees, and court costs from the Tenants if it becomes necessary for the Department to institute suit for eviction, damages, rental arrears, or violations of the terms of this Lease.

#### 10. TERMINATION FOR CONVENIENCE

- 10.1. The Department may terminate the Lease at any time by giving at least a 90-day notice thereof in writing, and may take full, exclusive, and complete possession of the littoral rights hereby leased, at the end of said 90-day period with no further liability of any nature whatsoever to the Tenants for doing so. Should the Department terminate this Lease by giving the 90-day notice during any period for which rent has already been paid, the Department will reimburse the Tenants for the pro-rata proportion of the remaining number of days for which rent has been paid in advance but during which the Tenants no longer retains said littoral rights.
- 10.2. The Tenants may terminate this Lease at any time by giving at least a 30-day notice in writing, specifying in said notice to day (and time of day) on which possession of the littoral rights will be surrendered. In the event that the Tenants shall terminate this Lease in accordance with the above provisions, Tenants hereby understands and agrees to forfeit any and all rents that have been prepaid if this Lease is terminated under this paragraph.

#### 11. SURRENDER OF ENCUMBERANCES TO THE LITTORAL RIGHTS

- 11.1. In the event that the Term or any extension thereof shall have expired or terminated, the Tenants shall peacefully quit and surrender to Department. In such a case, Tenants further agrees to remove any and all non-Department owned improvements, alterations, or additions that encumber the site at Tenants' expense.

#### 12. INDEMNIFICATION AND RELEASE FROM LIABILITY

- 12.1. The Tenants shall defend, indemnify, and hold harmless the State of New Hampshire, its agencies, officers, agents and employees, from and against any and all losses suffered by the State of New Hampshire, its officers, agents and employees, and any and all claims, liabilities or penalties asserted against the State, its officers, agents and employees, by or on behalf of any person on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Tenants or from the use or exercise of said littoral rights.
- 12.2. The Tenants further releases the State of New Hampshire, its agencies, agents and employees, from any and all claims or demands for damages or injuries of any nature whatsoever attributable directly or indirectly to the littoral rights herein leased.
- 12.3. The Tenants shall provide to the DEPARTMENT proof of insurance demonstrating that the required coverage has been obtained before taking possession of the Premises and thereafter upon renewal of the policy.

r 3/30/2021

Tenant(s) Initials

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- 12.4. The Tenants shall provide a minimum General Liability coverage: \$1,000,000.00 per incident, \$250,000.00 per person; or unless insurance of a different type and in higher amounts is customary. The Tenants shall provide to the State a certificate of insurance demonstrating that the required coverage has been obtained and containing the following wording. "The State of New Hampshire is named as additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." The Tenants shall keep same in force, at the Tenants' expense, throughout the Tenants' tenancy.

### 13. MISCELLANEOUS

- 13.1. **Department's Agents.** All rights and obligations of the Department under this Lease may be performed or exercised by such agents as the Department may select.
- 13.2. **Notice.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by registered or certified mail, postdate prepaid, in a United States Post Office.
- 13.3. **Extent of Instrument, Choice of Laws, Amendment, etc.** This Lease, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto, and may be canceled, modified, or amended only by a written instrument executed and approved by the Department and the Tenants.
- 13.4. **No Waiver of Breach.** No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.
- 13.5. **Unenforceable Terms.** If any terms of this Lease or any application thereof shall be invalid or unenforceable, the remainder of the Lease and any application of such term shall not be affected thereby.
- 13.6. **Entire Agreement.** This Lease and any documents attached hereto or referenced herein shall constitute the entire Agreement and understanding between the parties hereto and supersedes all prior Agreements and understanding relating to the subject matter hereof.
- 13.7. **No Waiver of Sovereign Immunity.** No provision in this Lease is intended to be or shall it be interpreted by either party to be a waiver of the State's sovereign immunity.

### 14. Tenants Liability.

- 14.1. All Tenants are jointly and severally liable for all Tenants responsibilities of this Lease.

r 3/30/2021

Tenant(s) Initials

          Ⓟ          T.J.

**15. Effective**

15.1. This lease is subject to approval of both the Long Range Capital Planning and Utilization Committee, and the Governor and Executive Council and thereafter will become effective on August 1, 2021.

**16. Amendments**

16.1. None

r 3/30/2021

Tenant(s) Initials

Ⓟ TJ

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

The State of New Hampshire  
Department of Transportation

By: [Signature] Date: 4/26/21  
Victoria F. Sheehan, Commissioner  
Department of Transportation

STATE OF NEW HAMPSHIRE, Merrimack SS April 26 A.D. 2021

On this 26 day of April, 2021, before me, Jennifer Lane the undersigned officer, personally appeared, Victoria F. Sheehan, who acknowledged as being the Commissioner, and as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the State of New Hampshire as the Commissioner of the Department of Transportation.

IN WITNESS WHEREOF I have hereunto set my hand and seal.

Jennifer D Lane  
Notary Public, State of New Hampshire  
My Commission Expires Sept. 5, 2023

[Signature]  
Notary Public/Justice of the Peace

My commission expires

By: [Signature] Date: 4/14/2021  
Timothy J. Jordan

Phone: 603-785-8608

Email: tjordan207@gmail.com

STATE OF NEW HAMPSHIRE, Hillsborough SS 14<sup>th</sup> April A.D. 2021

Personally appeared the above named Timothy Jordan, acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

[Signature]  
Notary Public/Justice of the Peace  
My commission expires: \_\_\_\_\_  
My Commission Expires August 3, 2021

By: Theresa Jordan Date 4/14/2021  
Theresa L. Jordan

Phone: 603 285-8614

Email: TeriJordan66@gmail.com

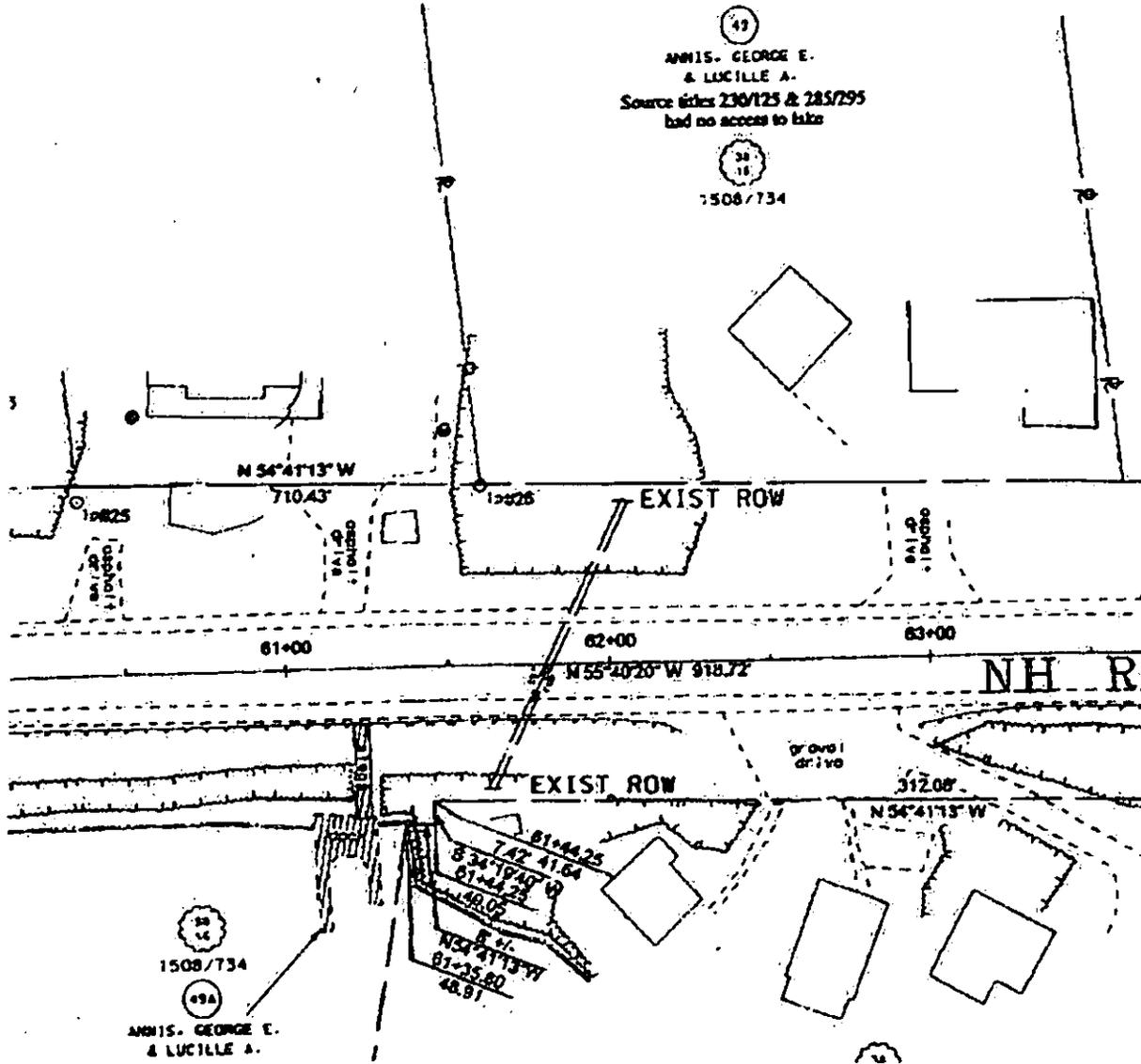
STATE OF NEW HAMPSHIRE, Hillsborough SS 14<sup>th</sup> April A.D. 20 21

Personally appeared the above named Theresa Jordan, acknowledged the foregoing instrument to be her voluntary act and deed. Before me:

[Signature]  
Notary Public/Justice of the Peace

My commission expires: My Commission Expires August 3, 2021

Attachment "A"



r 3/30/2021

Tenant(s) Initials Ⓟ T.J.

STATE OF NEW HAMPSHIRE  
INTER-DEPARTMENT COMMUNICATION

UNLP 21-023

FROM: Stephen G. LaBonte  
Administrator

DATE: June 4, 2021

AT: Dept. of Transportation  
Bureau of Right-of-Way

SUBJECT: Rental of State Owned Property on Alton Public Waters Approved by the Long  
RSA 4:39-d Range Capital

TO: Representative John Graham, Chairman  
Long Range Capital Planning and Utilization Committee  
Utilization Committee  
June 21, 2021

REQUESTED ACTION

Pursuant to RSA 4:39-d, Leasing of State Owned Real Estate on Public Waters, the New Hampshire Department of Transportation (Department) requests approval to enter into 27 Lease Agreements (Agreements) with property owners adjacent to NH Route 11 along Lake Winnepesaukee in the town of Alton. The Agreements would be valid for 5-year terms with the option of renewal at the end of 5-year term. The intent of this requested action is to authorize the use of state owned land by leasing Department's littoral rights to adjacent property owners ensuring compliance with management of the property.

EXPLANATION

The Department acquired the property and related littoral rights from the Town of Alton in 1941 for the reclassification of NH Route 11 under Federal Aid Project No. F.230 (4) "Winnepesaukee Road".

As a result of the number of encroachments discovered along the NH Route 11 corridor in 2013, a reestablishment plan was developed and all abutters were notified in writing of their encroachments. To resolve the issue of encroachments, the Department has decided to enter into Lease Agreements with those land owners who have submitted applications, meet the statutory requirements of RSA 4:39-d, and are approved by Governor and Council.

The rent amount for the Alton Bay leases will be calculated by using the linear distance of frontage along the lake as outlined in RSA 228:57-a Section IV, Leasing Certain Portions of Railroad Properties. The current rate is \$34.97 per linear foot of adjacent shoreline which is recalculated every five years to adjust for the Capital Price Index. This calculation method was reviewed and supported by the Attorney General's Office and is currently used by the Department's Bureau of Rail and Transit.

The maximum total linear footage of property encompassed by the 27 property owners is 2,049.42 feet along the shoreline of Lake Winnepesaukee. The lease rate is \$34.97 per linear foot, therefore the maximum total yearly rental income for the 27 lease agreements is projected to be no more than \$76,249.29. The Department is still negotiating length of linear footage with the lessees so the actual linear frontage for each property may be reduced which could reduce the total lease revenue. The maximum total yearly taxes projected to be paid to the Town of Alton is approximately \$1,040 ±.

The 27 affected property owners who meet the statutory requirements for a Lease Agreement under RSA 4:39-d are outlined in Exhibit 1 on page 2.

Exhibit 1

OWNER	Parcel	Map/Lot	Maximum Frontage	Maximum Tax
Brand Development Corp.	Parcel 29	Map 36/Lot 28	Tax Map Frontage-80'	\$2,098.20
Christenson Family Revocable Living Trust	Parcel 38	Map 38/Lot 6	Tax Map Frontage-100'	\$3,497
Wayne and Susan Copp	Parcel 38	Map 38/Lot 7	Tax Map Frontage-60'	\$1,748.50
Donald F and Sharon E. Cundy	Parcel 37	Map 38/Lot 6	Tax Map Frontage-80'	\$2,098.20
Jeanne Doyle Revocable Trust	Parcel 16	Map 36/Lot 48	Tax Map Frontage-65'	\$2,273.05
Brenda J Falke Revocable Living Trust	Parcel 48	Map 38/Lot 13	Tax Map Frontage-80'	\$2,098.20
Michael Felman	Parcel 36	Map 38/Lot 4	Tax Map Frontage-80'	\$2,797.60
Timothy J. Jordan and Theresa L. Jordan	Parcel 49	Map 38/Lot 18	Tax Map Frontage-31'	\$1,084.07
Raoul & Roland Lacasse Family Rev. Trust	Parcel 47	Map 38/Lot 14	Tax Map Frontage-120'	\$4,196.40
Joseph and Irene Modolo	Parcel 23	Map 36/Lot 28	Tax Map Frontage-80'	\$2,098.20
James Durkin and Catherine O'Brien	Parcel 41	Map 38/Lot 8	Tax Map Frontage-59.42'	\$2,077.92
The Puzzo Family Revocable Trust	Parcel 45	Map 38/Lot 12	Tax Map Frontage-80'	\$2,098.20
The Reed Family Revocable Trust	Parcel 43	Map 38/Lot 10	Tax Map Frontage-60'	\$1,748.50
Brian R. and Kenneth Sullivan	Parcel 24	Map 36/Lot 27	Tax Map Frontage-120'	\$4,196.40
Scott and Karen Telf	Parcel 17	Map 36/Lot 20	Tax Map Frontage-115'	\$4,021.55
K. Les Tamoy	Parcel 42	Map 38/Lot 9	Tax Map Frontage-100'	\$3,497
The Webb Family Revocable Living Trust	Parcel 33	Map 36/Lot 34	Tax Map Frontage-120'	\$4,196.40
The Claude J. Dupuis Revocable Trust	Parcel 14	Map 36/Lot 18	Tax Map Frontage-60'	\$2,098.20
Joyce McKenney & Paa O'Toole	Parcel 10	Map 36/Lot 14	Tax Map Frontage-180'	\$6,294.60
Collins-Norris Family Trust	Parcel 11	Map 36/Lot 15	Tax Map Frontage-80'	\$2,098.20
Kimberly Spoler	Parcel 13	Map 36/Lot 17	Tax Map Frontage-60'	\$2,098.20
Cheryl O'Brien	Parcel 15	Map 36/Lot 19	Tax Map Frontage-60'	\$2,098.20
Golden Realty Trust	Parcel 34	Map 36/Lot 35	Tax Map Frontage-60'	\$1,748.50
Jake and Erin Sears	Parcel 35	Map 36/Lot 36	Tax Map Frontage-60'	\$2,098.20
Jim Falzone	Parcel 12	Map 36/Lot 16	Tax Map Frontage-60'	\$2,098.20
Mae J. Hollsbom	Parcel 44	Map 38/Lot 11	Tax Map Frontage-180'	\$6,294.60
James and Karen Ford	Parcel 48	Map 38/Lot 15	Tax Map Frontage-100'	\$3,497
				\$76,249.29

The Department is respectfully requesting authorization to enter into 5-year Lease Agreements with the 27 property owners adjacent to NH Route 11 along Lake Winnepesaukee in the Town of Alton.

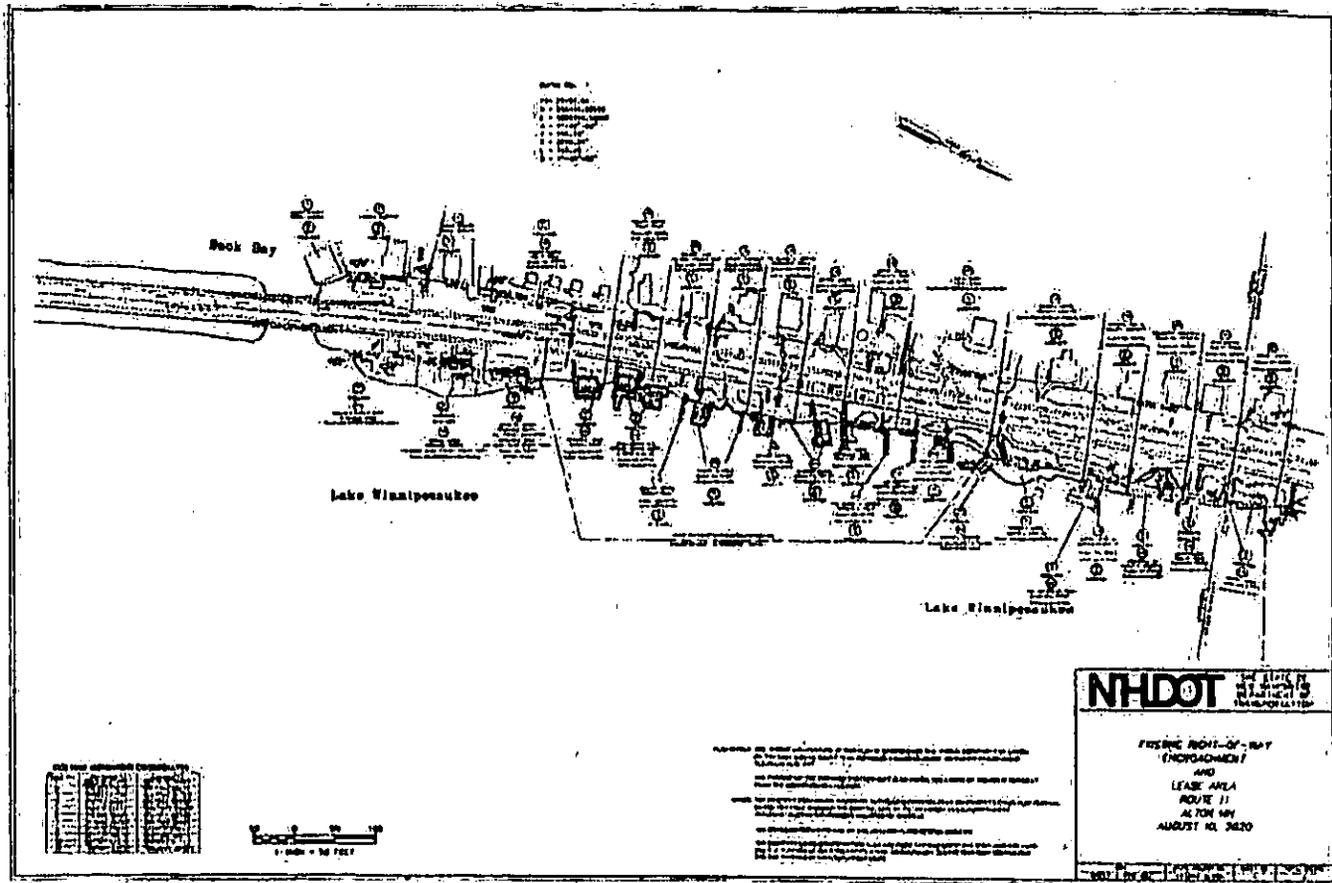
SGL/LMW/  
Attachments

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF REVENUE  
ADMINISTRATION

MOSAIC PARCEL  
MAP SHARING  
POOL



This map was compiled using data believed to be accurate; however, a degree of error is inherent in all maps. This map was distributed "AS-IS" without warranties of any kind, either expressed or implied, including but not limited to warranties of suitability to a particular purpose or use. No attempt has been made in either the design or production of the maps to define the limits or jurisdiction of any federal, state, or local government. Detailed on-the-ground surveys and historical analyses of sites may differ from the maps.

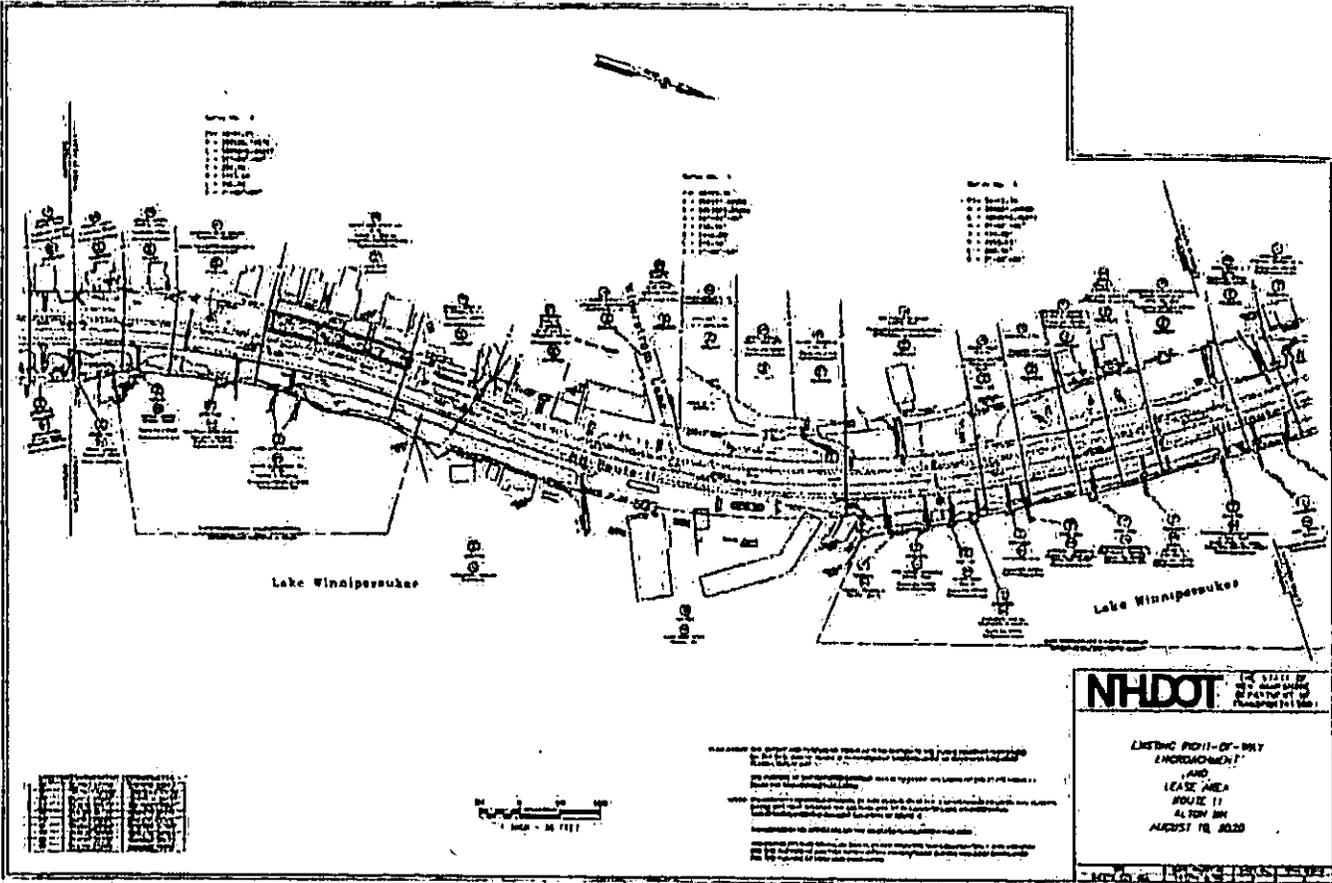


1	BRIDGE DECK
2	TRUSS
3	BRIDGE PIER
4	BRIDGE ABUTMENT
5	BRIDGE APPROACH
6	BRIDGE FLOOR
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8	BRIDGE JOISTS
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1 inch = 50 feet

**NH-DOT** THE STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF TRANSPORTATION  
**AND LEASE AREA**  
**ROUTE 11**  
**ALTON NH**  
**AUGUST 10, 2020**

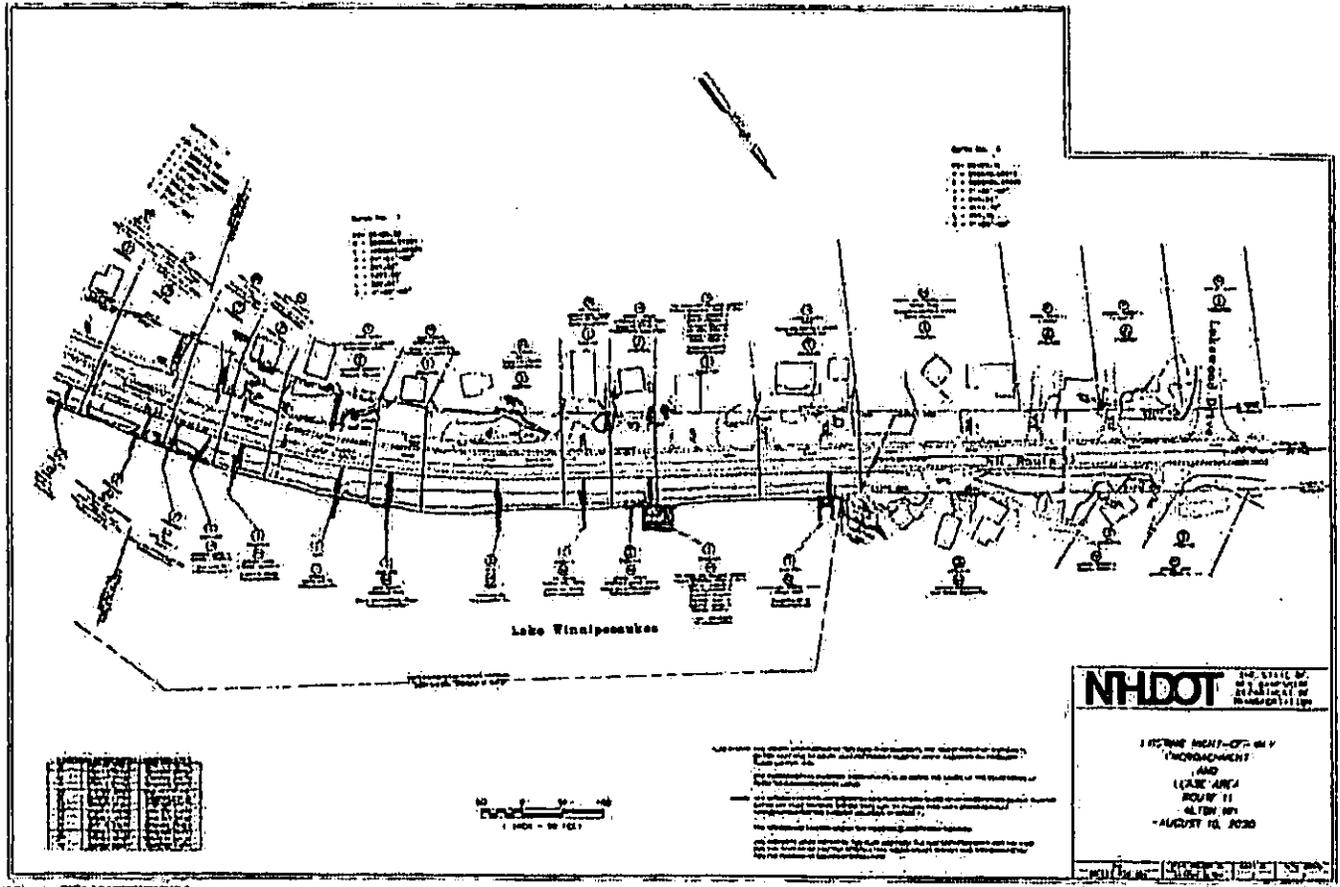
NO.	DATE	BY	REV.



**NHDOT** THE STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF TRANSPORTATION

LISTING POINT-OF-BUY  
 ENFORCEMENT  
 AND  
 LEASE AREA  
 HOUSE 11  
 41,700 SQ  
 AUGUST 18, 2020

REVISIONS TO THIS DRAWING SHALL BE INDICATED BY A NUMBERED CIRCLE IN THE MARGINS OF THIS DRAWING. THE DATE OF THE REVISION SHALL BE INDICATED BY A NUMBERED CIRCLE IN THE MARGINS OF THIS DRAWING. THE REVISIONS SHALL BE INDICATED BY A NUMBERED CIRCLE IN THE MARGINS OF THIS DRAWING. THE DATE OF THE REVISION SHALL BE INDICATED BY A NUMBERED CIRCLE IN THE MARGINS OF THIS DRAWING.



Lake Winnipegosis

**NHDOT** N.D. STATE DEPT. OF HIGHWAYS  
 DIVISION OF HIGHWAYS  
 PROJECT NO. 11-11-11  
 DIVISION OF HIGHWAYS  
 AUGUST 10, 1930

THIS DRAWING IS A PART OF THE PROJECT NO. 11-11-11, AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE DIVISION OF HIGHWAYS.

	Proposed Bridge
	Existing Bridge

0 20 40 60  
 FEET

**- LITTORAL RIGHTS LEASE -**

between

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
"DEPARTMENT"**

**AND**

**"TENANT"**

**for property located at  
123 Mount Major Highway, Alton New Hampshire**

**AUGUST 1, 2021 – JULY 31, 2028**

**Supplemental document checklist**

- Certificate of Insurance
- Is A Renewal
- DES Permit
- Attachment "A" defining property
- Amendment(s)
- DOT Initials

r 4/8/2021

## LITTORAL RIGHTS LEASE

THIS LEASE AGREEMENT, made between The State of New Hampshire, Department of Transportation, hereinafter called the "Department," and Tenant Name(s) hereinafter called the "Tenant."

WHEREAS the Department is the owner of land as identified on the State of New Hampshire Reestablishment Plan dated November 13, 2013, and recorded as Drawer L73-45, at the Belknap County Registry of Deeds.

WHEREAS Joyce McKenney/Peg O'Toole (PENDING) agree(s) to enter into a lease agreement in accordance with RSA 4:39-d, the subject Lease being 'XXX' of shorefront located directly across from Parcel XX, shown on said plan, and also identified on Alton Tax Map XX, Lot XX, as depicted on exhibit A attached hereto, hereinafter called "the lot", and,

WHEREAS the Tenant has requested to lease the littoral rights to use said shoreline of the lot along Lake Winnepesaukee on an "as-is", temporary basis,

NOW THEREFORE, the Department is willing to comply with said request, provided that the Tenant, as a condition to the enjoyment of said littoral rights, joins in the execution of this Lease or the purpose of accepting each and every condition herein set forth during the term of this Lease.

### 1. IDENTIFICATION OF THE LEASED PROPERTY

- 1.1. For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the Tenant of each and every term and condition herein set forth, the Department hereby leases to the Tenant the LITTORAL RIGHTS to the shoreline of Lake Winnepesaukee as depicted on Attachment A incorporated herein.

### 2. TERM

- 2.1. The term of this Lease shall begin on August 1, 2021 and shall end on July 31, 2026, unless terminated sooner in accordance with the provisions of this Lease.

### 3. RENT

- 3.1. Rent for the term of the Lease shall be '\$X,XXX.XX' annually.
- 3.2. Rent is due annually, on or before August 1<sup>st</sup>, to the "TREASURER, STATE OF NH" and mailed to: New Hampshire Department of Transportation, Bureau of Finance and Contracts, P.O. Box 483, Concord, NH 03302.
- 3.3. If a check is returned unpaid for any cause within reasonable control of the Tenant, the Tenant agrees to pay an additional charge of \$50.00 to the Department and the Department will have the right to require any or all subsequent payments to be in the form of cash or money orders for the remaining term of the Lease.

r:4/6/2021

Tenant(s) Initials \_\_\_\_\_

- 3.4. Per RSA 72:23, 1(b)(4), "Failure of the Lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said Lease or agreement by the Lessor."

4. USE OF PREMISES

- 4.1. The temporary littoral rights are herein conveyed only for non-commercial, private uses. Any public and/or commercial uses are not permitted under this Lease.
- 4.2. The Tenant shall not use the littoral rights, or property in any manner that will disturb the peaceful enjoyment of others.

6. COMPLIANCE WITH LAWS

- 6.1. The Tenant shall comply with all the laws, ordinances, rules and orders of appropriate governmental authorities during the term of this Lease.

6. ASSIGNMENT AND SUBLETTING

- 6.1. The Tenant shall not assign, license, sublet, transfer, grant, or otherwise convey this Lease or any of the littoral rights associated with this Lease.

7. HOLDOVER BY THE TENANT

- 7.1. No holdover by the Tenant will be permitted. The Department and the Tenant must execute a new lease on or before expiration of an existing lease for the Tenant to remain in possession of the littoral rights.

8. DEFAULT

- 8.1. The Department shall be the sole judge of what shall constitute a violation of the provisions of the Lease, or the failure of the Tenant to otherwise abide by any of the covenants herein contained.

9. TERMINATION OF LEASE FOR CAUSE

- 9.1. In the event the Tenant defaults in the payment of any installment of rent or other sum herein specified and such default continues for (seven) 7 days after written notice thereof, or if the Tenant defaults in the observance or performance of any other of the Tenant's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days of written notice by the Department to the Tenant specifying such default and requiring it to be remedied then, and in such an event, the Department may terminate this Lease and the temporary littoral rights herein conveyed. Tenant hereby understands and agrees to forfeit any and all rents that have been prepaid if this Lease is terminated for cause.
- 9.2. Sale or transfer of the Tenant's abutting property, identified in the Alton tax records as MapXX, LotXX, will be cause for termination of this Lease under paragraph 9.1. above.

- 9.3. The Department shall be entitled to recover incidental costs, attorney's fees, and court costs from the tenant if it becomes necessary for the Department to institute suit for eviction, damages, rental arrears, or violations of the terms of this Lease.

#### 10. TERMINATION FOR CONVENIENCE

- 10.1. The Department may terminate the Lease at any time by giving at least a 90-day notice thereof in writing, and may take full, exclusive, and complete possession of the littoral rights hereby leased, at the end of said 90-day period with no further liability of any nature whatsoever to the Tenant for doing so. Should the Department terminate this Lease by giving the 90-day notice during any period for which rent has already been paid, the Department will reimburse the Tenant for the pro-rata proportion of the remaining number of days for which rent has been paid in advance but during which the Tenant no longer retains said littoral rights.
- 10.2. The Tenant may terminate this Lease at any time by giving at least a 30-day notice in writing, specifying in said notice to day (and time of day) on which possession of the littoral rights will be surrendered. In the event that the Tenant shall terminate this Lease in accordance with the above provisions, Tenant hereby understands and agrees to forfeit any and all rents that have been prepaid if this Lease is terminated under this paragraph.

#### 11. SURRENDER OF ENCUMBERANCES TO THE LITTORAL RIGHTS

- 11.1. In the event that the Term or any extension thereof shall have expired or terminated, the Tenant shall peacefully quit and surrender to Department. In such a case, Tenant further agrees to remove any and all non-Department owned improvements, alterations, or additions that encumber the site at Tenant's expense.

#### 12. INDEMNIFICATION AND RELEASE FROM LIABILITY

- 12.1. The Tenant shall defend, indemnify, and hold harmless the State of New Hampshire, its agencies, officers, agents and employees, from and against any and all losses suffered by the State of New Hampshire, its officers, agents and employees, and any and all claims, liabilities or penalties asserted against the State, its officers, agents and employees, by or on behalf of any person on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Tenant or from the use or exercise of said littoral rights.
- 12.2. The Tenant further releases the State of New Hampshire, its agencies, agents and employees, from any and all claims or demands for damages or injuries of any nature whatsoever attributable directly or indirectly to the littoral rights herein leased.
- 12.3. The Tenant shall provide to the DEPARTMENT proof of insurance demonstrating that the required coverage has been obtained before taking possession of the Premises and thereafter upon renewal of the policy.

- 12.4. The Tenant shall provide a minimum General Liability coverage: \$1,000,000.00 per incident, \$250,000.00 per person; or unless insurance of a different type and in higher amounts is customary. The TENANT shall provide to the State a certificate of insurance demonstrating that the required coverage has been obtained and containing the following wording. "The State of New Hampshire is named as additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." The Tenant shall keep same in force, at the Tenant's expense, throughout the Tenant's tenancy.

### 13. MISCELLANEOUS

- 13.1. Department's Agents. All rights and obligations of the Department under this Lease may be performed or exercised by such agents as the Department may select.
- 13.2. Notice. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given, at the time of mailing by registered or certified mail, postdate prepaid, in a United States Post Office.
- 13.3. Extent of Instrument, Choice of Law, Amendment, etc. This Lease, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto, and may be canceled, modified, or amended only by a written instrument executed and approved by the Department and the Tenant.
- 13.4. No Waiver of Breach. No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.
- 13.5. Unenforceable Terms. If any terms of this Lease or any application thereof shall be invalid or unenforceable, the remainder of the Lease and any application of such term shall not be affected thereby.
- 13.6. Entire Agreement. This Lease and any documents attached hereto or referenced herein shall constitute the entire Agreement and understanding between the parties hereto and supersedes all prior Agreements and understanding relating to the subject matter hereof.
- 13.7. No Waiver of Sovereign Immunity. No provision in this Lease is intended to be or shall it be interpreted by either party to be a waiver of the State's sovereign immunity.

### 14. Tenant Liability.

- 14.1. All Tenants accept jointly and severally liable for all Tenant responsibilities of this Lease.

**15. Effective**

15.1. This lease is subject to approval of both the Long Range Capital Planning and Utilization Committee, and the Governor and Executive Council and thereafter will become effective on August 1, 2021.

**16. Amendments**

16.1. None.

r 4/6/2021.

Tenant(s) Initials: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

The State of New Hampshire  
Department of Transportation

By: \_\_\_\_\_ Date \_\_\_\_\_  
Victoria F. Sheehan, Commissioner  
Department of Transportation

STATE OF NEW HAMPSHIRE, \_\_\_\_\_ SS \_\_\_\_\_ A.D. 20\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_ the undersigned officer, personally appeared, Victoria F. Sheehan, who acknowledged as being the Commissioner, and as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the State of New Hampshire as the Commissioner of the Department of Transportation.

IN WITNESS WHEREOF I have hereunto set my hand and seal.

Notary Public/Justice of the Peace \_\_\_\_\_ My commission expires \_\_\_\_\_

TENANT: \_\_\_\_\_ Date \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

STATE OF NEW HAMPSHIRE, \_\_\_\_\_ SS \_\_\_\_\_ A.D. 20\_\_

Personally appeared the above named \_\_\_\_\_, acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

Notary Public/Justice of the Peace \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Attachment "A"

S:\Global\B50-ROW\TOWNS\Alton\Route 11 Docks and Reestablishment\ALTON  
DOCKS\Plans\Other plans\10AttachmentA.PNG

r 4/6/2021

Tenant(s) Initials \_\_\_\_\_

**STATE OF NEW HAMPSHIRE  
INTER-DEPARTMENT COMMUNICATION**

**LACP 19-018**

**FROM:** Stephen G. LaBonte   
Administrator

**DATE:** June 18, 2019

**AT:** Dept. of Transportation  
Bureau of Right-of-Way

**SUBJECT:** Process of Addressing NH Route Right of Way Encroachments in Alton

**TO:** Representative John Cloutier, Chairman  
Long Range Capital Planning and Utilization Committee

**INFORMATIONAL ITEM**

The Department of Transportation proposes methods of addressing encroachments into the NH Route 11 right of way which include dwellings, boat houses, stairs, and decks along a section of NH Route 11 in Alton.

**EXPLANATION**

In 2013, pursuant to the process laid out in RSA 228:35, the Department reestablished the highway boundary along NH Route 11 in Alton Bay. The State originally acquired fee ownership of the land in 1941, and established the right of way boundaries in 1947 as a part of the Alton FAP #F-230(4), P-2001 project. During the reestablishment process, the Department identified that multiple encroachments had been placed within the right of way since the time when the boundary was originally established. These encroachments include dwellings, stairs, decks, docks, and boathouses.

The Department developed plan sheets to document the encroachments and right-of-way boundary, and a formal notice of reestablishment, all of which have been recorded in the Belknap Registry of Deeds. Individuals that were affected by the reestablishment have been notified that they own a structure that encroaches on the State's property.

Since the time of reestablishment, the Department has allowed the encroachments to remain within the right of way. However, the Department must periodically reevaluate the highway limits, and any encroachments that lie within those limits, based upon maintenance and operational needs. As traffic and development continue to grow, the needs for maintaining and operating the roadway may change. The Department must have the ability to use this property at its discretion, but understands that individuals use and enjoy the structures that lie within the State's property. In order to balance these competing interests, the Department proposes to enter into temporary use agreements with all encroachers.

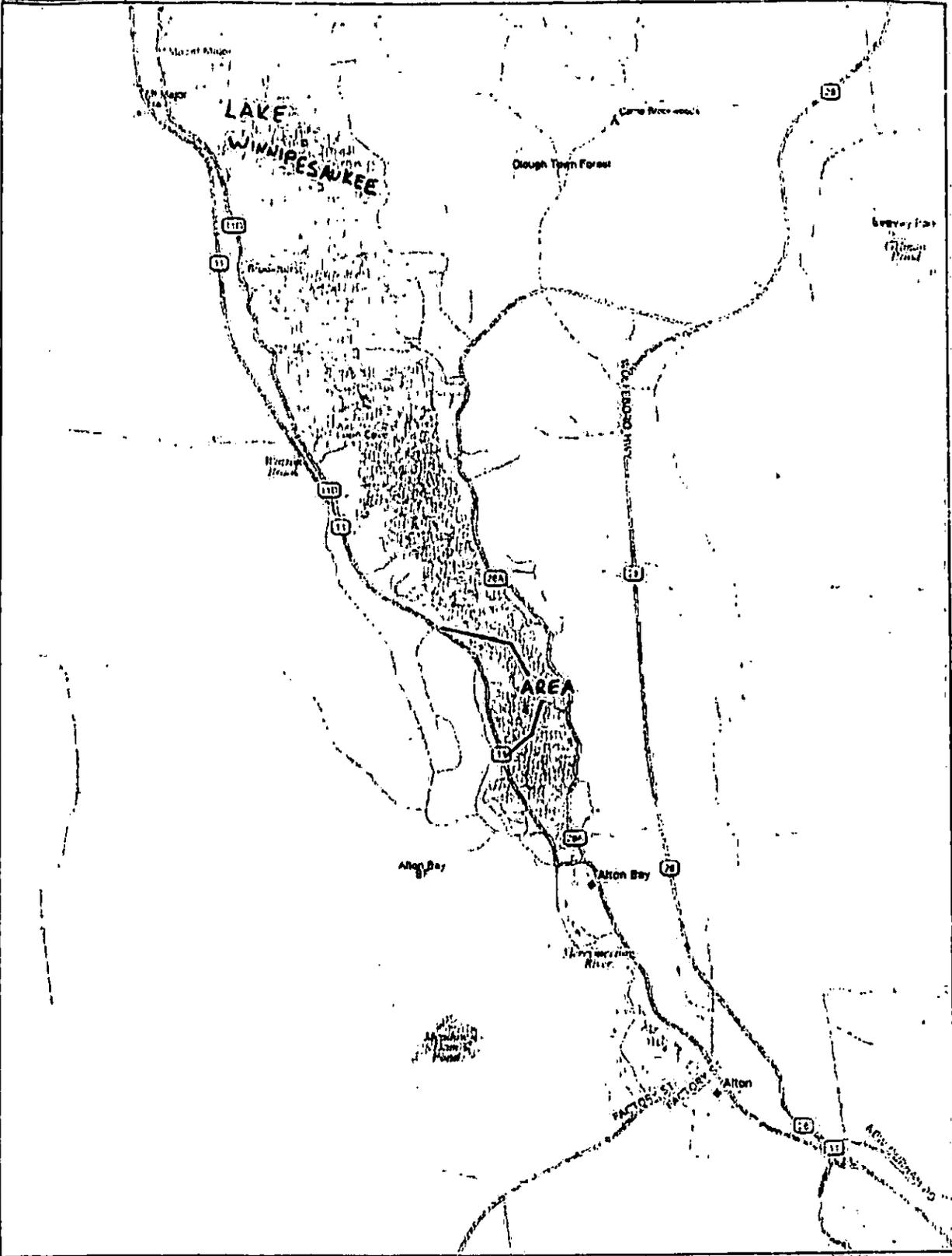
The type and term of temporary use agreement is dependent upon the type of structure:

- Dwelling structures and boat houses built prior to the 2013 reestablishment will be grandfathered and eligible for a long-term encroachment agreement. The term of the encroachment agreement would be for 25 years, or during the duration the current occupant owns the dwelling, whichever may expire sooner. The encroachment agreement is desirable to the Department because it acknowledges the permanent nature of a dwelling, by allowing the occupant to remain for a lengthy duration, while allowing the Department to make long-term plans about the use of the right of way, by agreeing that the dwelling will be removed within 25 years at the latest.
- Stairs and decks that were built prior to the 2013 reestablishment, and are used to access an adjacent dock, will be eligible for a short-term lease. A lease will only be granted when the adjacent dock has met all NH DES dock permitting requirements. Stairs and decks that meet these requirements will be eligible for a 5-year lease pursuant to RSA 4:39-C. No new stairs or decks will be approved, and will not be eligible for a lease.

- Docks in place prior to the 2013 reestablishment will be grandfathered until such time as the NH DES dock permit expires. Upon expiration of a dock permit, a dock owner must enter into a lease agreement with the Department, which will be contingent upon the applicant receiving a current NH DES dock permit. All dock leases will run concurrent with the duration of the NH DES dock permit. No new docks will be approved, and will not be eligible for a lease. The short-term lease is desirable to the Department because it allows for reevaluation of Department needs every few years, but also allows individuals with a dock to continue their pre-existing use until such time that the Department may need the property.

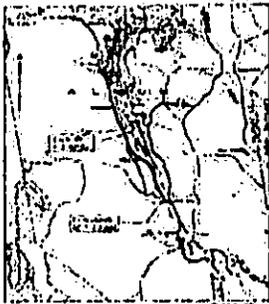
The Department has reviewed its maintenance and operational needs along Route 11 in Alton, and at this time is able to allow individuals to continue their encroaching uses. The Department wishes to begin notifying individuals to enter into use agreements for each encroaching structure. The specific terms and conditions of each type of use agreement are contained in the documents attached hereto.

SGL/PJM/jl  
Attachments

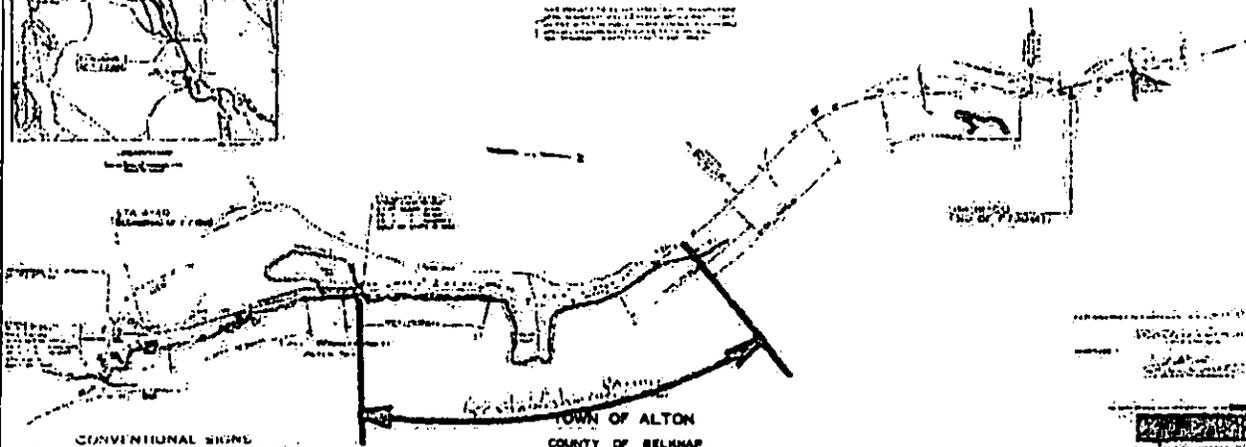


**INDEX OF SHEETS**

Sheet No.	Scale	Description
1	1" = 100'	General Location
2	1" = 100'	Plan of Proposed Road
3	1" = 100'	Plan of Proposed Road
4	1" = 100'	Plan of Proposed Road
5	1" = 100'	Plan of Proposed Road
6	1" = 100'	Plan of Proposed Road
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50	1" = 100'	Plan of Proposed Road

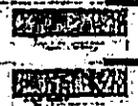


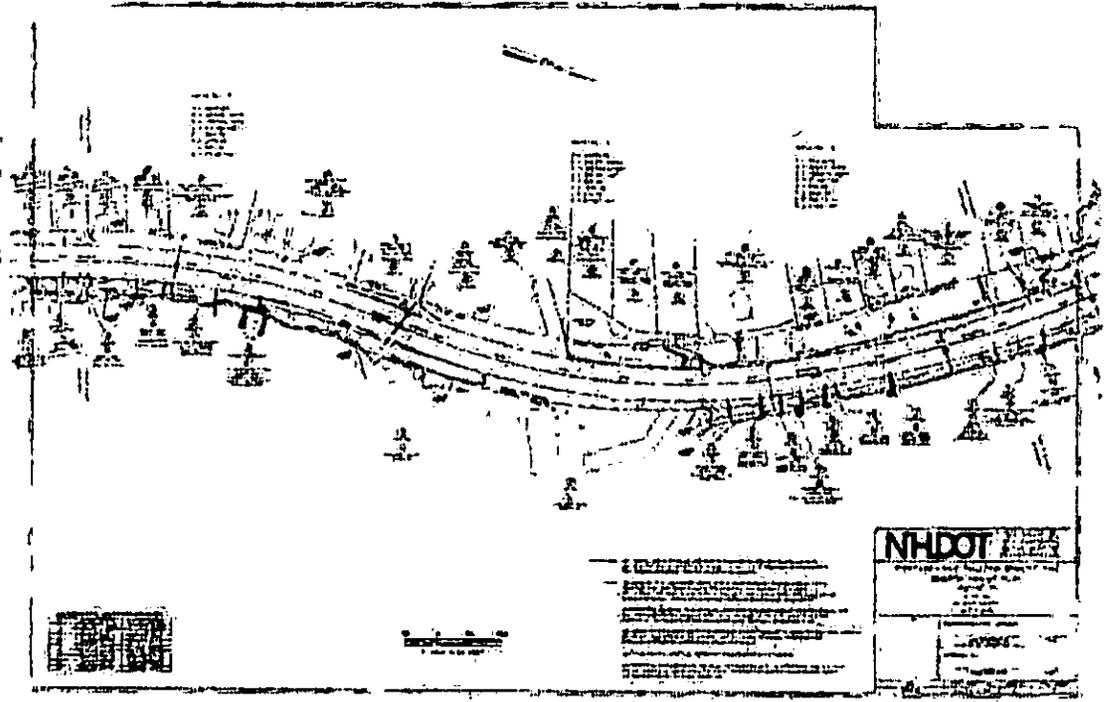
STATE OF NEW HAMPSHIRE  
 HIGHWAY DEPARTMENT  
 PLANS OF PROPOSED  
 FEDERAL AID PROJECT  
 NO. F 230(4)  
 WINNIPESAUKEE ROAD  
 TOWN OF ALTON  
 COUNTY OF BELKNAP

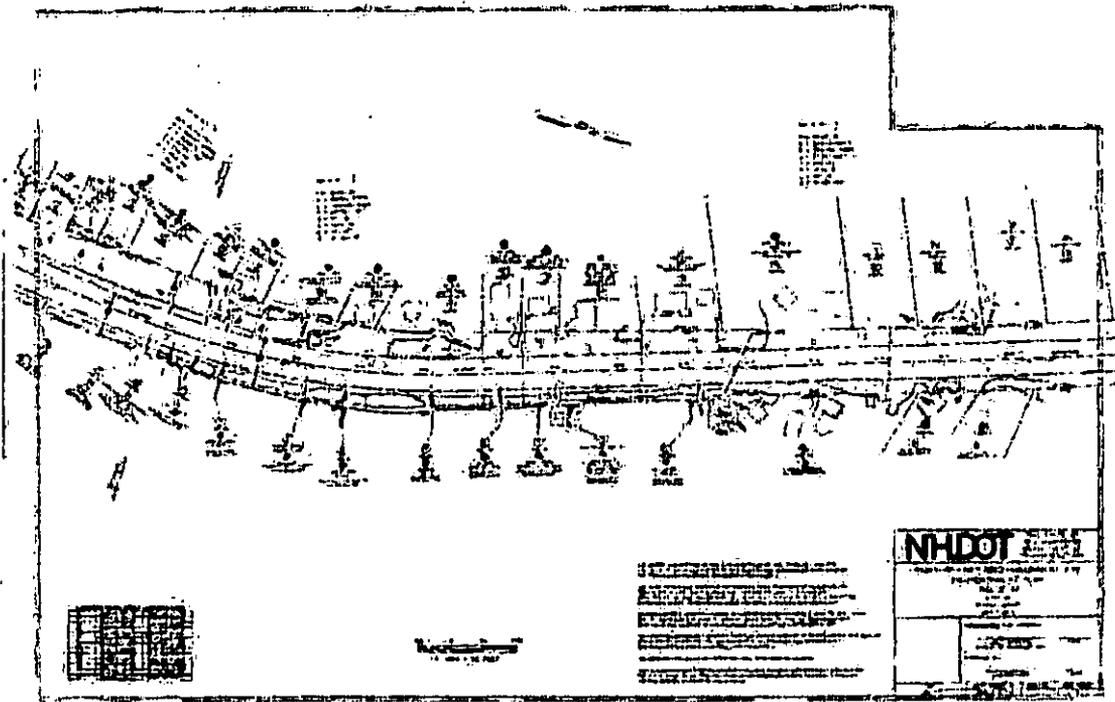


**CONVENTIONAL SIGNS**

Symbol	Description
[Symbol]	End of Road
[Symbol]	Dead End
[Symbol]	One Way
[Symbol]	Yield
[Symbol]	Stop
[Symbol]	Warning
[Symbol]	Information
[Symbol]	Regulatory
[Symbol]	Guide
[Symbol]	Other

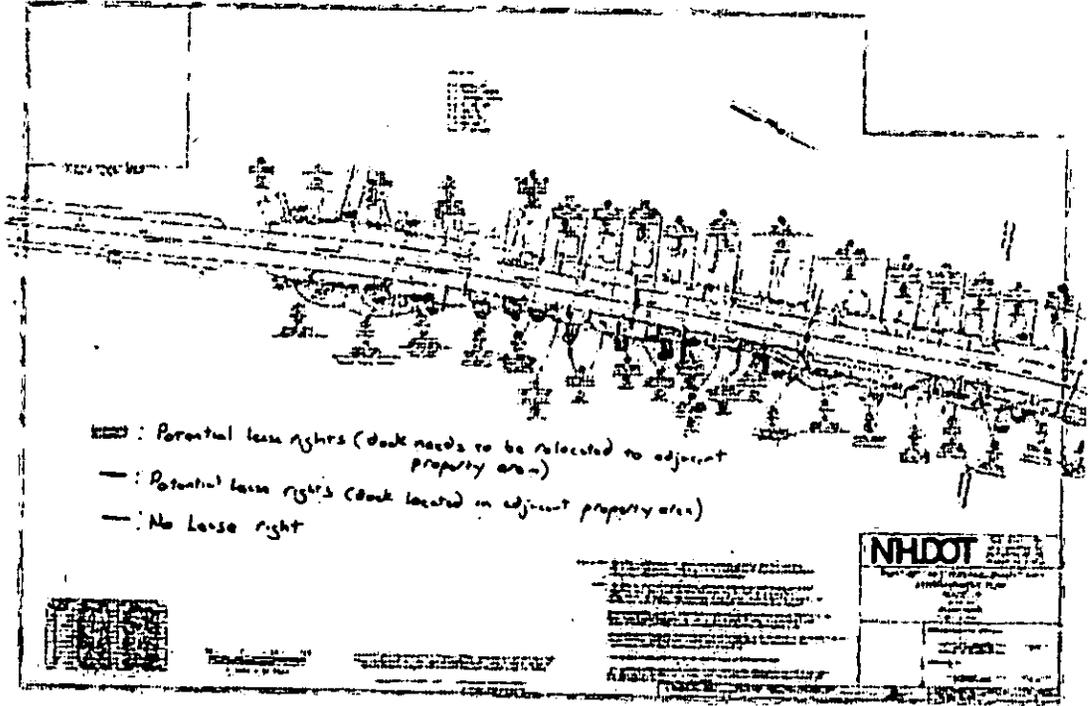







1. GENERAL NOTES  
2. MATERIALS  
3. DIMENSIONS  
4. CONNECTIONS  
5. FINISHES  
6. TOLERANCES

<b>NH DOT</b>	
PROJECT NO.	
DRAWING NO.	
DATE	
SCALE	



{individual name}  
{individual street address}  
{individual town, state, zip}

Re: Alton Bay Reestablishment, Parcel No. { }, Right-of-Way Reestablishment and Encroachment Plan

Dear Alton Bay Resident,

You are receiving this letter because you maintain a dwelling, dock, boathouse, stairs, deck, and/or other structure that encroaches on State-owned land in Alton, New Hampshire. In 2013, the New Hampshire Department of Transportation reestablished the highway boundaries of NH Route 11 along Alton Bay. During the reestablishment, the Department learned that there were many structures along Alton Bay that encroached wholly or in part on the State land. Our records indicate that you maintain one or more of these encroachments.

The Department must balance the ever-changing needs of the highway with the interests of individuals that have enjoyed the use of Alton Bay. To address these competing interests, the Department has created a process to grant temporary encroachment agreements or lease agreements, depending upon the type of encroachment. Encroachers must execute a formal agreement with the Department in order to continue using any structure. Failure to enter into an agreement with the Department may result in the removal of your encroachment.

The process to obtain an agreement may take a year or more. Applicants are encouraged to start the process early in order to obtain an agreement before any other relevant permits expire. The process for obtaining an agreement is attached to this letter. Also attached are the relevant plans which may assist you in locating and identifying your encroachment.

The Department looks forward to reaching agreements with all individuals that have encroaching structures. Please review the attached process and take the steps as outlined. Please direct all questions to [insert email contact for District 3 Engineer].

{signature block for District 3 Engineer}

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
MAINTENANCE DISTRICT 3**

**APPLICATION FOR ENCROACHMENT AGREEMENT OR LEASE AGREEMENT FOR  
TEMPORARY USE OF STATE-OWNED LAND**

Pursuant to the provisions of Revised Statutes Annotated (RSA) 4:39-c Disposal of Highway or Turnpike Funded Real Estate and 4:39-d Leasing of State-Owned Real Estate on Public Waters, (printed on the reverse side of application) and amendments thereto, permission is requested to enter into an encroachment agreement or lease agreement as deemed necessary by the New Hampshire Department of Transportation Maintenance District 3 Engineer (DOT D3) for continued use of State land for recreational purposes.

**Property and Encroachment Description (please provide as much information as possible)**

Town of Alton – NH Route 11  
Water Body – Lake Winnepesaukee

Street Address \_\_\_\_\_

Tax Map and Number \_\_\_\_\_

Distance to Utility Pole/Pole No. \_\_\_\_\_

ROW Reestablishment Plan Parcel Number \_\_\_\_\_

Estimated Area of Encroachment \_\_\_\_\_ Square Feet

Please provide a sketch showing details of the encroachment.

Please include two photos of encroachment area:  
 \_\_\_\_\_ one taken from NH Route 11  
 \_\_\_\_\_ one taken from the Lake

IMPROVEMENTS	
Dwelling Structure	Y or N
Boathouse	Y or N
Dock	Y or N
Dock Permit #	_____
Stairs	Y or N
Deck	Y or N
Boat/Canoe Rack	Y or N
Watercraft Storage	Y or N
Outbuildings	Y or N
Other:	_____

Signature of Applicant \_\_\_\_\_

Mailing Street Address \_\_\_\_\_

Printed Name of Applicant \_\_\_\_\_

Town/City \_\_\_\_\_

Zip Code \_\_\_\_\_

Date \_\_\_\_\_

Contact Phone Number \_\_\_\_\_

**FOR OFFICE USE ONLY**

GPS N \_\_\_\_\_ GPS W \_\_\_\_\_

Right of Way \_\_\_\_\_

Conditions \_\_\_\_\_

Recommend to Bureau of Right of Way: Y or N

Recommended Action: \_\_\_\_\_ Encroachment Agreement \_\_\_\_\_ Lease Agreement \_\_\_\_\_ Denial

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
ENCROACHMENT AGREEMENT

{enter address of encroaching property}

**THIS ENCROACHMENT AGREEMENT**, is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between {encroacher name}, {encroacher address}, hereinafter called the "Grantee(s)" and the State of New Hampshire, Department of Transportation, P.O. Box 483, Concord, New Hampshire, 03302-0483, hereinafter called the "State".

**WITNESSETH**, that the Grantees do hereby covenant and agree to follow the stipulations set forth in this Encroachment Agreement, relative to a certain portion of a premises, herein termed the "Encroachment," located on State property as shown on plans on file with the Belknap County Registry of Deeds, Plan L73-045, L73-046, and L73-047, and on file with the New Hampshire Department of Transportation, designated as Right-of-Way Reestablishment and Encroachment Plan. The Grantees covenant and agree to follow these stipulations in exchange for a non-exclusive, temporary use of the Encroachment for recreational use and access to Lake Winnepesaukee.

**DESCRIPTION OF ENCROACHMENT:** The Encroachment shall consist of one (1) location within the highway right-of-way located on NH Route 11 in the Town of Alton, as shown on attached Exhibit A, and more specifically described as follows:

- a. A {type of structure}, located on State property on the {easterly/westerly} side of NH Route 11, at Station {station number}, Parcel {parcel number}, GPS coordinates {north} {west}

**WHEREFORE**, the Grantees agree to the following terms and conditions in exchange for the non-exclusive, temporary use of the Encroachment identified above.

1. The Grantees acknowledge that any and all rights to access the Encroachment are taken subject to any and all matters as shown on the above-described plans or any other matter of record.
2. Except as provided herein, the Grantees are granted permission to use and maintain the above-described Encroachment for the purposes of maintaining the existing Encroachment and accessing Lake Winnepesaukee for recreational purposes. The Department retains the right to revoke the permission granted by this Agreement.
3. If the Encroachment area is required for highway maintenance, construction, reconstruction, or any other purpose, at any future time, the State will so inform the Grantees and give adequate time for the removal of any or all items and structures by the Grantees at no expense to the State. If any or all items and structures are not removed at the time this area is required by the State, the State will remove and dispose of any or all of these items and structures as necessary with no liability for the State to reimburse for the value of said items and structures.

4. The Grantees acknowledge that this permission for the non-exclusive, temporary use of the Encroachment does not create an ownership interest, easement, or any other property interest in the underlying State-owned property.
5. By entering into this Encroachment Agreement, the Grantees waive any and all claims of ownership to the above-described parcel.
6. The Grantees agree that any alterations, additions for improvement, maintenance, use, or repair of the Encroachment is subject to the advance written approval of the Department of Transportation, Bureau of Highway Maintenance, District Three, located at 2 Sawmill Road, Gilford, New Hampshire 03249, or any other such location that the NHDOT District 3 office may be located at a future date.
7. The Encroachment shall in no way interfere, obstruct, or prevent adequate sight distance for the safe movement of all types of traffic entering or leaving the subject premises, as determined by the standard highway design requirements.
8. The Encroachment shall in no way interfere, obstruct, or prevent any or all highway maintenance activities.
9. If the Encroachment is found to interfere, obstruct, or prevent the safe movement of any type of traffic, highway maintenance, or repair activities, the obstruction must be removed promptly by the Grantees, at no expense to the State. If the Grantees do not promptly remove said obstructions when so notified, the State will remove the obstructions as necessary with no liability for damages, costs, or reimbursement for any or all items removed.
10. The Encroachment shall in no way create unsanitary or unsightly conditions within the surrounding area. It shall be the responsibility of the Grantees to ensure the Encroachment is kept clean and free of litter.
11. The Grantees are prohibited from removing any trees larger than one-inch diameter within the State-owned land without the express written permission of the State. Ground cover and shrubs shall not be disturbed.
12. The Grantees are prohibited from planting or landscaping on the State-owned land, or from placing signs, fences, flagpoles, patios, or any other item on the State-owned land.
13. The Grantees are responsible for any damages to the State-owned land, including but not limited to vegetation loss requiring re-stabilization, as determined by the State.
14. No portion of any Encroachment shall be attached to guardrail posts, sign posts, any other State-owned device, extend above the top of guardrail posts, or extend toward the highway beyond the face of the guardrail.

15. The Grantees are prohibited from constructing additional stairways or creating breaks in the guardrail. As the State replaces the guardrail in the vicinity of the encroachment, the State retains the right to close any existing openings, and remove any stairs upon notice.
16. Stairs shall be no wider than six feet and constructed over the highway slope without any regrading or recontouring of the slope. The Encroachment must be in conformance with the Environmental Fact Sheet WB-19 "Permitting for Freshwater Docking Structures," published by the New Hampshire Department of Environmental Services, or any other relevant policy in effect.
17. Stairs shall be constructed in conformance with standard building materials and methods, and kept in good repair by the Grantee. Stairs deemed by the State to be a hazard are subject to immediate removal after reasonable notice to the Grantee, with expense of said removal being reimbursed by the Grantee.
18. Grantee shall obtain a permit from New Hampshire Department of Environmental Services for any boat dock associated with use of the Encroachment. Grantee agrees to obtain an excavation permit from the State for placement of any anchoring system associated with positioning or suspending seasonal docks.
19. Parking is prohibited on the State-owned land.
20. Storing of private equipment is prohibited on the State-owned land.
21. Septic tanks, including but not limited to holding tanks, shall not be constructed on the State-owned land.
22. Septic tanks existing at the time this agreement is executed shall be kept in good repair and shall comply with all relevant regulations and requirements.
23. Additional utilities, including wells, shall not be placed on State-owned land without prior permission of the State.
24. The Encroachment shall not be used for any purposes other than the recreational lake access purpose for which the Encroachment was originally constructed.
25. By signing this Encroachment Agreement, the Grantees hereby agree to defend, indemnify, and hold harmless the State, its officers, and employees, from and against any and all losses suffered by the Grantees, their officers, and employees, and any and all claims, liabilities, or penalties assessed against the Grantees, their officers, and employees, by or on behalf of any person, of account of, based on, resulting from, arising out of (or which may be claimed to arise out of the acts or omissions of the Grantees, or any individual or company contracted or hired by Grantees. Nothing contained herein shall constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

26. The Grantees must stay current and in good standing on all mortgages, taxes, or other obligations affecting the encroachment. The State reserves the right to bring any ejectment, eviction, or removal actions in the event that the Grantee fails to comply with this section, resulting in liens, foreclosures, or any other encumbrance on the encroachment.
27. This Encroachment Agreement may not be assigned, transferred, conveyed, subleased, or otherwise modified to benefit any individual or entity not named in this original agreement.
28. Grantee shall comply with all applicable rules, regulations, requirements, statutes, guidance, and directives that any governing body or State agency may deem appropriate.
29. This Encroachment Agreement shall be effective for the duration of time that the Grantee utilizes the Encroachment, or (to be determined) years, whichever shall occur first.
30. This Encroachment Agreement shall be filed by the State with the Belknap County Registry of Deeds.

GRANTEE(S)

\_\_\_\_\_  
{Grantee Name}

\_\_\_\_\_  
{Grantee Name}

STATE OF NEW HAMPSHIRE

\_\_\_\_\_, SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her/their voluntary act and deed. Before me.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Victoria Shaheen, Commissioner

PO Box 483

Concord NH 03302-0483

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, personally appeared the above-named Victoria Shaheen, Commissioner of the Department of Transportation, and as such, being duly authorized to do so, executed the foregoing instrument for the purpose therein contained. Before me.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires: \_\_\_\_\_

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 30, 2015, is made by and among Laurie A. Shea, F. Scott Mertens, and Susan J. Dolan (collectively, "the Permittees"), and the State of New Hampshire Department of Transportation ("NHDOT") (each of which, a "Party"; collectively, the "Parties").

### Recitals

- A. The Permittees and NHDOT are parties to two cases currently pending in Belknap Superior Court: *Laurie A. Shea, et al. v. State of New Hampshire Department of Transportation* (Docket #211-2013-CV-307) and *State of New Hampshire Department of Transportation v. Laurie A. Shea, et al.* (Docket #211-2014-CV-298) (collectively, the "Pending Cases"), concerning the ownership of a parcel of land in Alton, New Hampshire located between the shore of Lake Winnepesaukee and the roadbed of Route 11 (Mount Major Highway) (the "Disputed Property").
- B. The Permittees purchased the Disputed Property in 2009 and subsequently renovated the lakefront camps on the parcel. The Permittees have used, resided in, and maintained the Disputed Property seasonally since 2009.
- C. On February 2, 2010, NHDOT notified the Town of Alton that the Permittees were encroaching on land owned by the State of New Hampshire in fee and contended that the entirety of the Disputed Property is a part of the right-of-way for Route 11.
- D. On July 22, 2013, NHDOT sought to "reestablish" the boundaries of Route 11 pursuant to RSA 228:35. As part of its reestablishment plan, NHDOT depicted all of the Disputed Property as within the boundaries of Route 11.
- E. The Permittees challenged the reestablishment plan in Docket #211-2013-CV-307 pursuant to RSA 228:35. That action was eventually stayed pending the outcome of NHDOT's separate petition to quiet title to the Disputed Property, which was filed on December 22, 2014 as Docket #211-2014-CV-298.
- F. The Parties have decided to settle the Pending Cases and have entered into this Agreement to memorialize the terms on which they have settled.

### Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Encroachment Agreement.** The Parties shall execute an Encroachment Agreement in the form contained in Attachment 1 simultaneously with the execution of this Agreement.

NHDOT shall record the Encroachment Agreement with the Belknap County Registry of Deeds at its own expense.

2. **Mutual Releases.** In consideration of the Encroachment Agreement, each Party (on behalf of themselves and their respective heirs, executors, administrators, agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") hereby releases and forever discharges each and every other Party (and their respective heirs, executors, administrators, agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the Pending Cases, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had, has now, or may ever have against any Released Party arising from the subject matter of the Pending Cases.
3. **Termination of the Pending Cases.** Upon execution of this Agreement and the Encroachment Agreement, the Parties shall take all actions necessary to terminate the Pending Cases with prejudice. The Parties shall bear their own attorney's fees and costs.
4. **Miscellaneous.**
  - 4.1 **No Admission.** This Agreement is the result of compromise negotiations and does not constitute an admission by any Party regarding the merits of any Party's claims or defenses, nor does it constitute an admission of liability on the part of any Party, and each Party expressly denies such liability.
  - 4.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable.
  - 4.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties.
  - 4.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

- 4.5 **Governing Law/Forum Selection:** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings. Each of the Parties agrees to submit to the jurisdiction of the courts of the State of New Hampshire for all purposes hereunder.
- 4.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein and that the Party is unaware of any person or entity (other than one or more of the Parties) having a claim or cause of action of any kind arising from the subject matter of the Pending Cases.
- 4.7 **Fully Integrated Agreement:** The Parties agree that this Agreement, including the Encroachment Agreement, sets forth their entire agreement, superseding all prior negotiations and agreements, whether written or oral. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
5. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE HAD AN OPPORTUNITY TO DISCUSS IT WITH COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

Dated: 10/2/15  
[Signature]  
Witness

Laurie A. Shea  
[Signature]  
Laurie A. Shea

Dated: 12/1/15  
[Signature]  
Witness

Scott M. Merten  
[Signature]  
E. Scott Merten

Dated: 12/2/15  
[Signature]  
Witness

Susan J. Dolan  
[Signature]  
Susan J. Dolan

Dated: 12/9/15  
[Signature]  
Witness

State of New Hampshire Department of Transportation  
By: [Signature]  
Victoria C. Sherman

ATTACHMENT I

*Judith A. [Signature]*

**STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
ENCROACHMENT AGREEMENT**

**Mount Major Highway, Alton, Belknap County, New Hampshire**

THIS ENCROACHMENT AGREEMENT (the "Agreement") is entered into as of November 30, 2015, by and among Laurie A. Shea, an individual, having an address of 330 Emerald Bay Circle, Y1, Naples, Florida 34110; E. Scott Mertens, an individual, having an address of 107 Boulder Drive, Barrington, New Hampshire 03825; and Susan J. Dolan, an individual, having an address of 3216 Garden Brook Lane, Bozeman, Montana 59715 (each of which a "Permittee" and together the "Permittees") and the State of New Hampshire (the "State"), acting by and through its Department of Transportation ("NHDOT"), P.O. Box 483, Concord, New Hampshire 03302-0483 (hereinafter collectively referred to as the "State" and together with the Permittees, the "Parties").

Reference is made to the following:

A. The State owns certain property in the Town of Alton, County of Belknap, State of New Hampshire (the "Township"). The Property is shown on the Alton Bay Reestablishment Plan, attached hereto as Exhibit A and recorded on file with the Belknap County Registry of Deeds at Book 2877, Page 479, and at documents numbered 1313384, 1313385, and 1313386 which can be found in Drawers L73-45, Drawers L73-46, and Drawers L73-47, respectively.

B. The Permittees currently occupy and maintain structures and improvements upon a certain portion of the Property owned by the State (the "Encroachment"). The Encroachment is described with particularity in Section 1 of this Agreement. For the purpose of this Agreement, the Encroachment is intended to refer to the improvements identified as 36-51 on the Reestablishment Plan on the land commonly referred to as 128-130 Mount Major Highway, Alton, New Hampshire (the "Land").

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties do hereby covenant and agree to the following terms and conditions for the Encroachment and recreational access to Lake Winnepesaukee in the Town of Alton.

1. The Encroachment. The Permittees acquired and replaced encroaching structures on the Land as described in and conveyed by deed of Jayne L. O'Toole aka Jayne L. Tourtellotte and Carol S. Tourtellotte, Executrix of the Estate of John R. Tourtellotte, to Permittees November 4, 2009 and recorded in the Belknap County Registry of Deeds at Book 2611, Page 0786, a copy of which is attached as Exhibit B. Permittees have uncontested ownership of the buildings, docks, decks, stairs and all other structures, fixtures, and other improvements (collectively, the "Improvements") on the Land at the time of execution of this Agreement, together constituting the Encroachment.

2. Permitted Use.

2.1 The Permittees, their families, and guests shall be permitted to access, use, occupy and maintain the Encroachment. The Permittees shall not use the Encroachment for any other purposes than those specified in this Section 2. The Encroachment may not be rented, leased, or assigned. There shall be no commercial use of the Land.

2.2 Subject to the rights of NHDOT under this Agreement, the Permittees shall have the exclusive right to use the Improvements and the non-exclusive right to use the Land.

3. Permittees' Waiver of Ownership Claims. The Permittees hereby waive any and all claims of ownership to the Land and acknowledge that nothing in this Agreement is intended to be construed as creating any property interest in the Land.

4. Maintenance, Alterations, and Improvements. The Permittees shall not enlarge the dimensions of the Improvements without the prior written approval of NHDOT, Bureau of Highway Maintenance, District 3 office located at 2 Sawmill Road, Gilford, NH 03249, at telephone number (603) 524-6667 ("District 3"). Permittees may otherwise maintain, repair, renovate, or replace any part of the Improvements provided that Permittees obtain a building permit from the Town of Alton or a permit from the New Hampshire Department of Environmental Services before doing so, in which case Permittees must also obtain the prior written approval of NHDOT District 3.

5. Traffic Safety.

5.1 The Permittees' use of the Encroachment shall in no way interfere with, obstruct, or prevent adequate sight distance for the safe movement of all types of traffic on NH Route 11 (the "Highway"), and if the Permittees' use creates such an interference, obstruction, or inadequacy of sight distance that, in NHDOT's sole discretion, presents a hazard (each of which, an "Unsafe Condition"), NHDOT may remove or relocate any part of the Improvements that is causing or contributing to the Unsafe Condition and may recover from Permittees the reasonable costs of such removal or relocation.

5.2 Vehicles of persons using or visiting the Encroachment shall only be parked in areas designated for public parking. There shall be no other parking on the Property for any reason, and there shall be no parking on the Highway except where lawful.

6. Highway Maintenance.

6.1 If, at the sole discretion of NHDOT, the use of the Land is required for highway maintenance, construction, or reconstruction at any future time NHDOT shall provide Permittees with reasonable written notice of no less than thirty days before NHDOT commences such work unless the work is of an emergency nature.

6.2 If NHDOT determines that any part of the Improvements must be removed from or relocated upon the Land to accommodate an expansion of the improved travelled portion of the Highway, NHDOT shall provide such reasonable written notice, signed by the commissioner of NHDOT, of the need to remove or relocate any such part as may be necessary to give Permittees an opportunity to accomplish such removal or relocation at no expense to the State. If Permittees fail within a reasonable time to remove or relocate any such part of the Improvements as NHDOT identifies in such written notice, NHDOT may remove or relocate any such part with no liability to the Permittees for reimbursement of the value thereof. The Permittees shall be responsible for reimbursing the NHDOT for the reasonable costs of removal.

7. Sanitary Condition of Encroachment. The Permitted Use shall in no way create unsanitary conditions on the Property. It will be the responsibility of the Permittees to ensure that the Land is kept clean and free of litter.

8. Landscaping and Vegetation.

8.1 The Permittees shall not remove any trees from the Land without the prior written approval from the State.

8.2 The Permittees shall be responsible for any damage to the Land caused by Permittees or their guests or invitees, including but not limited to vegetation loss requiring re-stabilization of the Land as determined by the State.

9. Guardrail Maintenance. Permittees will not construct additional stairways or breaks in the guardrail on the Land. At such time as NHDOT needs to replace the existing guardrail, it may eliminate any existing opening if in the reasonable opinion of NHDOT it poses a hazard to the traveling public. Otherwise, all replacement guard rails shall maintain an opening in the guardrail in the same location as presently exists.

10. Septic Facilities. There shall not be any new septic systems constructed on State-owned land including but not limited to holding tanks. Subject to Section 4 of this Agreement, Permittees may replace the existing septic system on the Land in kind if it fails or otherwise ceases to operate properly. In connection therewith, Permittees shall obtain all necessary approvals from the Department of Environmental Services regarding wastewater disposal, wetlands permits and shore land protection.

11. Utilities. No utilities shall be installed within the Land beyond those already in place without the prior written permission of the State.

12. No Discrimination. The Permittees do hereby covenant and agree that as a part of this Agreement, (1) no person on the grounds of race, color, disability, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in use of the Land, (2) that in the construction of any improvements on, over or under such land and the furnishing of service thereon, no person on the grounds of race, color, disability, sex or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination, and (3) that the Permittees shall use and allow use of the Land in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle "A", Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended.

13. Indemnification and Insurance.

13.1 The Permittees hereby agree to defend, indemnify, and hold harmless the State, its officers, and employees, from and against any and all losses suffered by the Permittees and any and all claims, liabilities, or penalties assessed against the Permittees; by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Permittees, or any individual or company contracted or hired by the Permittees. Nothing contained herein shall constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

13.2 The Permittees shall have, maintain and pay the premiums on a policy or policies of insurance effective during the term of this Agreement, covering the following risks, and designating the State of New Hampshire as an additional named insured.

13.2.1 The Permittees agree to obtain and keep in force, during the term of this Agreement as set forth in Section 15 below, a policy or policies of insurance covering the Encroachment, providing Comprehensive General Liability or Comprehensive Personal Liability with a minimum limits of \$2,000,000 in the aggregate covering bodily injury and property damage.

13.3 Procurement and delivery of a certificate indicating such insurance acceptable to the State is a condition precedent to the effectiveness of this Agreement. The Permittees shall provide to the State a certificate of insurance demonstrating that the required coverage has been obtained and containing the following wording: "The State of New Hampshire is named as additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." Nothing contained herein shall be construed as a waiver of sovereign immunity.

13.4 No provision of this Agreement is intended to waive any aspect of the State's sovereign immunity, and any possible counterclaims or defenses it may assert relative to any claim brought related to this Agreement or the Facility.

14. Taxes. Where applicable, in accordance with RSA 72:23, I(b), this Agreement is made between the parties hereto subject to the condition that the Permittees shall pay all properly assessed current and potential real and personal property taxes with respect to any part of the Encroachment on the Land.

15. Term: Unless agreed by the State to the contrary in writing, this Agreement shall automatically terminate upon the later of 25 years from the execution of this Agreement or the death of the last remaining Permittee or earlier with the express written notice of termination to the Permittees in accordance with the provisions of Section 17 of this Agreement. At the expiration of this Agreement, any of the Permittees or their successors shall have the right to remove any or all personal property on the Land and any or all of the Improvements within 180 days of the expiration date. If Permittees fail to remove any such property or Improvements within such period NHDOT shall have the right to sell or remove them from the Land at NHDOT's sole cost and expense and with no liability to the Permittees for reimbursement of the value thereof.

16. Notice.

16.1 Notice to any party by first class mail or the equivalent, at the above identified addresses shall be deemed proper notice under this Agreement.

16.2 All parties shall provide written notice to the other parties of any change in address within ten business days. To the extent any party fails provide the required notice of change in address, notice to the address of record shall be deemed proper notice under this Agreement.

17. Default. Upon any default in the due observance or performance of any covenant, condition or agreement to be observed or performed by the Permittees under this Agreement and such default continues for a period of thirty days following written notice from the State to the Permittees, or such additional time as is reasonably needed by the Permittees to cure such default, provided the Permittees are diligently pursuing a cure of the default, the State shall have the right to terminate this Agreement.

18. Assignment and Amendment. This Agreement shall burden and benefit the Permittees and shall be assignable (a) by any Permittee to a trust as to which a Permittee is a beneficiary or (b) with the express written permission of the NHDOT. The NHDOT will not unreasonably withhold consent to the assignment of this Agreement. This Agreement may be modified only by an instrument in writing, signed by the surviving Parties hereto, and recorded in the Belknap County Registry of Deeds.

19. Agreement to be Recorded. This Agreement shall be filed by the NHDOT with the Belknap County Registry of Deeds.

20. Entire Agreement. This Agreement, together with the Settlement Agreement and Mutual Release of All Claims between the parties hereto, constitutes the entire agreement of the parties with respect the subject matter hereof and supersedes all previous or contemporaneous oral or written offers, proposals, or agreements between them with respect to such subject matter.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

Laurie A. Shea

Dated: 12/15/16

Laurie A. Shea  
Laurie A. Shea

Witness

E. Scott Mertens

Dated: 12/15/16

E. Scott Mertens  
E. Scott Mertens

Witness

Susan J. Dolan

Dated: 12/15/16

Susan J. Dolan  
Susan J. Dolan

Witness

State of New Hampshire  
Department of Transportation

Dated: 12/9/16

By: Victoria F. Mitchell

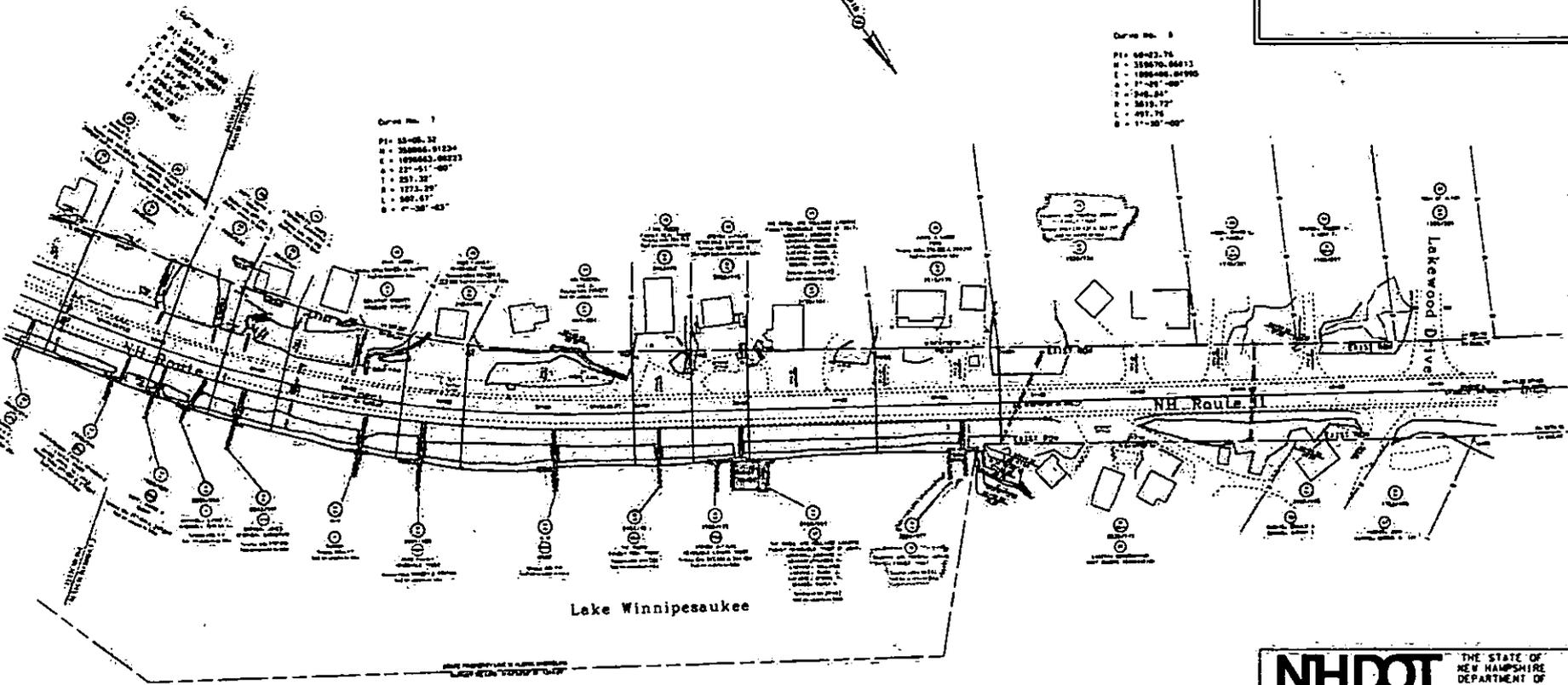
Victoria F. Mitchell

Witness

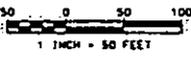


Curve No. 8  
 P1 = 68423.76  
 M = 359676.66813  
 E = 1899486.64990  
 A = 17°40'100"  
 T = 740.24'  
 R = 5819.72'  
 L = 491.76'  
 S = 17°30'100"

Curve No. 7  
 P1 = 55408.32  
 M = 268862.91234  
 E = 1698653.08273  
 A = 22°51'00"  
 T = 257.28'  
 R = 1712.29'  
 L = 569.41'  
 S = 7°30'43"



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PLAN IN FRONT, THE EXTENT AND PURPOSE OF THIS PLAN IS TO THROUGHLY THE PUBLIC RIGHT-OF-WAY LIMITS ON THE LAKE SIDE OF ROUTE 11 AS PREVIOUSLY ACCEP-MAINTAINED AS SHOWN ON RECORDED PLANS L73-448 (A)1

THE PURPOSE OF THIS CHANGED RIGHT-OF-WAY IS TO DEFINE THE LIMITS OF THE STATE RIGHT-OF-WAY FROM THE ADJACENT PRIVATE LANDS.

NOTE: THE BOUNDARY COORDINATES SHOWN ON THIS PLAN IS FROM STATE OF NEW HAMPSHIRE PLANNING AND CONSTRUCTION DEPARTMENT THE COORDINATE MARK BY FIELDING DING LACE WINDING MARKS AND CLASSIFIED FOR THE CENTRAL LOCATION (P. 11).

THE COORDINATE LINES ARE ON THE STATE OF NEW HAMPSHIRE PLANNING AND CONSTRUCTION DEPARTMENT THE COORDINATE MARK BY FIELDING DING LACE WINDING MARKS AND CLASSIFIED FOR THE CENTRAL LOCATION (P. 11).

THE PROPERTY LINES SHOWN ON THIS PLAN ARE FROM THE MAP SURVEY ONLY AND ARE NOT FOR THE PURPOSE OF ANY OTHER SURVEY. NO FURTHER SURVEY SHALL BE CONDUCTED FOR THE PURPOSE OF LOCATING THESE LINES.

**NH DOT** THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

**EXISTING RIGHT-OF-WAY ENCROACHMENT AND LEASE AREA ROUTE 11 ALTON NH AUGUST 10, 2020**

DATE	SHEET NO.	TOTAL SHEETS
11/10/20	1	1