JAN31'22 PM 1:18 RCVD

76

STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL AND CULTURAL RESOURCES
DIVISION of PARKS and RECREATION
BUREAU OF TRAILS
172 Pembroke Road Concord, New Hampshire 03301
Phone: (603) 271-3254 Fax: (603) 271-3553 E-Mail: nhtrails@dncr.nh.gov

January 4, 2022

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

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Trails to enter into a Trail Use Agreement with Robert Benson (VC #352715), Grantham, NH in the amount of $14,820 to be paid in equal annual installments for public recreational use of designated snowmobile and off highway recreational vehicle (OHRV) trails for a 5-year period effective upon Governor and Executive Council approval through December 8, 2026. 100% Other Funds.

Funding is available in the following account for Fiscal Years 2022 and 2023 and is anticipated to be available in Fiscal Years 2024, 2025, and 2026, upon the continued appropriation of funds in the future operating budget with authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-35580000, Trails Maintenance

		FY 22	FY 23	FY 24	FY 25	FY 26
022-500248	Rents-Leases Other Than State	$2,964	$2,964	$2,964	$2,964	$2,964

EXPLANATION

Robert Benson's properties consists of 6,187 acres of land in multiple towns. The property has 14.82 miles of trails open to snowmobile and OHRV use as outlined in the Trail Use Agreement (Agreement). The price was calculated by paying $200 per mile of trail, which equates to $2,964 per year. The Agreement also outlines the partnership between the landowner and the Department on matters such as maintenance work, trail construction, logging operation coordination, and environmental compliance.

The Attorney General's office has reviewed and approved this Trail Use Agreement as to form, substance and execution.

Respectfully submitted,

Philip A. Bryce
Director

Concurred,

Sarah L. Stewart
Commissioner

RECEIVED

DEC 08 2021

DNCR

Department of Natural and Cultural Resources
Division of Parks and Recreation
Bureau of Trails

TRAIL USE AGREEMENT

AGREEMENT made as of the 8 day of December, 2021 pursuant to authority contained under New Hampshire RSA 215-A (Supp.) and by and between, **Bob Benson, PO Box 1340, 9 Shore Road, Grantham, NH 03753,** its successors and assigns, the "Lessor" and

the State of New Hampshire, by its Commissioner, Department of Natural and Cultural Resources, through the Supervisor of the Trails Bureau, the "Lessee."

1. Term:

The term of this lease shall be five (5) years starting from the date first written above
2021-2026, and annually reviewed and renewed at the end of the first 5 year term.

2. Description of Property:

In consideration of the rental and covenants herein contained, the Lessor hereby leases and rents to the Lessee the right to construct and maintain a public Snowmobile trail and OHRV trail(s) over and across property of the Lessor located in the following NH towns of: Berlin, Brookfield, Errol, Grafton, Madison, Milan, Sanbornton and Wakefield.

3. Payment:

DNCR shall pay during the term a fee of $14,820.00 for the public use of Trails.

The payment of the fee shall be made in five (5) annual fee installments of $2,964.00

(for each of 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026 seasons) with the first payment made within 60 days of approval of this Lease by the Governor and Executive Council and subsequent payments on or before August 1 of each year. Notwithstanding anything to the contrary within, it is understood and agreed that all payments of all sums by DNCR hereunder are contingent upon availability of continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, DNCR may terminate this Agreement in whole or in part immediately.

4. Lessor's Obligations:

4.1 The Lessor hereby permits the Lessee to cut and remove trees, brush and other obstacles from the trail to a width of 30 feet. All hazardous trees and brush leaning into the trail may be cut.

4.2 The Lessor hereby permits the Lessee to install gates and construct passways through fences and stonewalls. The Lessee agrees to construct gates and replace fences. Gates shall not be locked by Lessor or Lessee without agreement.

4.3 The Lessor agrees not to obstruct the trail to public recreational use. Minor relocations may be made by mutual agreement, and a reasonable effort will be made to accommodate the Lessor in the regard.

5. Lessee's Obligations:

5.1 The Lessee shall maintain the trail in good and usable condition and shall be responsible for placing and maintaining regulatory, informational and interpretive signs.

5.2 The Lessee agrees to patrol the entire trail(s) during the term of this Lease as needed and not less frequently than once per season, and to pick up and dispose of all trash and debris resulting from the use of the trail.

5.3 Minor relocations may be made by mutual agreement, and a reasonable effort will be made to accommodate the Lessor in the regard.

6. Liability Provisions; Sovereign Immunity:

It is expressly understood that the parties intend this lease to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 (Supp.), RSA 215-C:55 and RSA 508:14.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this agreement.

7. Termination:

In the event that the Lessee shall fail to perform any of its obligations hereunder in a timely or satisfactory manner, the Lessor may serve upon the Lessee written notice specifying the nature of the default or breach. If upon the expiration of fifteen (15) days from the delivery of such notice, the default is not remedied, the Lessor may terminate the lease in whole or in part upon two (2) days notice of such termination. Upon the expiration of such two (2) days, the notice of termination period, the lease shall terminate.

7.2 If at any time during the term of this Lease, the Lessor or Lessee chooses to terminate the Lease without cause, then that party shall notify the other party of said termination in writing at least 90-days prior to the effective date of termination.

8. Assignments and Sublease:

The Lessee agrees not to assign, sublet or otherwise transfer any interest in this lease without the written consent of the Lessor.

9. Amendment:

This lease may be modified, waived or discharged only by a written instrument signed by the parties.

10. Special Provisions:

The State of New Hampshire shall provide the lessor with a certificate of $2,000,000.00 liability insurance coverage annually by November 1 of each year.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the date and year above written.

LESSOR

12/6/21
Witness / Date

for Megwood and Savannahwood LLC
Duly Authorized
Robert Benson

LESSEE

State of New Hampshire
Department of Natural and Cultural Resources

12/22/21
Witness / Date

Sarah L. Stewart
Commissioner

Approved as form, substance and execution:

OFFICE OF THE ATTORNEY GENERAL

Michael Haley, Assistant Attorney General

Date: 1/14/2022

EXHIBIT A –

The Premises
List of Robert Benson Properties

List of Robert Benson lands (dated July 13, 2021) on which the Trail Bureau of the Department of Natural and Cultural Resources will manage Off Highway Recreation Vehicle Trails, pursuant to the terms of this agreement.

	ACREAGE
Berlin	2,084.13
Brookfield	506.70
Errol	159.44
Grafton	432.80
Madison	145.00
Milan	1,385.16
Sanbornton	987.40
Wakefield	487.00
Grand Total	**6,187.63**