



STATE OF NEW HAMPSHIRE
 DEPARTMENT of NATURAL and CULTURAL RESOURCES
 DIVISION of PARKS and RECREATION
 172 Pembroke Road Concord, New Hampshire 03301
 Phone: (603) 271-3556 Fax: (603) 271-3553
 Web: www.nhstateparks.org

February 22, 2022

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

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources (DNCR), Division of Parks and Recreation to enter into a five year lease agreement with the Society for the Protection of New Hampshire Forests (Forest Society) of Concord, NH for Forest Society property adjacent to Monadnock State Park known as Monadnock Reservation and Gap Mountain Reservation, for an annual payment equal to the gross proceeds from fees collected by DNCR at Forest Society owned trailheads in the previous fiscal year minus any direct operating expenses with the option to pursue two five year lease extensions consecutively, effective upon Governor and Executive Council approval through February 1, 2027. 100% Other Funds (Agency Income).

EXPLANATION

In accordance with RSA 227-D:2, DNCR is authorized and directed as follows, "to negotiate agreements with the Society for the Protection of New Hampshire Forests, the towns involved, and others, by which such lands shall be managed and supervised by department personnel. Such agreements shall include, but are not limited to, provisions for the exercise of enforcement powers vested in department personnel on such lands; timber cutting; trail location and maintenance; search and rescue operations; public liability; restrictive uses such as camping; and all other aspects of operating said lands for public recreational uses consistent with the natural environment."

Historically, the first lease agreement was executed by the parties on March 5, 1979 and a second in 2006, both for a 15 year period with Governor and Executive Council approval. In 2021, an extension was granted for one year per Governor and Executive Council approval on April 7, 2021, Item #36, enabling continuation of the lease agreement provisions for another season while a new lease agreement could be negotiated going forward.

Previously, annual lease payments were paid by the DNCR from prior fiscal year gross revenue collected from fees charged at the Old Toll Road trailhead, minus any direct expenses. This new lease allows for the DNCR to collect fees at various Forest Society trailheads which this year and going forward, include the trailheads of Dublin, Marlboro, Gap Mountain North and South during DNCR seasonal operations. The annual lease payments made to the Forest Society by DNCR will include these areas of collection, minus direct expenses. This lease includes provisions for trail maintenance and improvements funded by the lease payments to the Forest Society.

The Attorney General's office has reviewed and approved this Lease extension as to form, substance, and execution.

Respectfully submitted,


 Philip A. Bryce
 Director

Concurred,


 Sarah L. Stewart
 Commissioner

(15M)

**LEASE AGREEMENT
BETWEEN THE
STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
AND THE
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**

THIS LEASE, with an intended effective date of _____, 2022 is made in connection with a certain Lease Agreement (the "Lease") between the **STATE OF NEW HAMPSHIRE, DEPARTMENT OF NATURAL AND CULTURAL RESOURCES** acting through the Division of Parks and Recreation (the "Lessee," the "State," or the "DNCR," as the context may require), through its Commissioner, having its principal place of business at 172 Pembroke Road, Concord, NH 03301, and the **SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS** (the "Lessor" or the "Forest Society," as the context may require), having its principal place of business at 54 Portsmouth St, Concord, NH 03301.

WITNESSETH THAT:

WHEREAS, in consideration of the Lease obligations to be performed by DNCR, the Forest Society does hereby Lease and demises to DNCR, with the approval of the Governor and Executive Council of the State of New Hampshire for the intentions and goals of the parties hereinafter stated those certain premises in the Towns of Dublin and Jaffrey, Cheshire County, known as the Monadnock Reservation, and in the Town of Troy, Cheshire County, known as the Gap Mountain Reservation (collectively, the "Leased Property"), which is owned by the Forest Society, and being more particularly described in Exhibit A attached hereto and made a part hereof, and subject to the covenants, restrictions, agreements, rights-of-way and other encumbrances set forth therein; and

WHEREAS, subject to the foregoing, DNCR and the Forest Society desire and intend that the Forest Society shall have the right to perform certain activities on the Leased Property during and throughout the Lease Term ("Lessor's Retained Rights") as set forth in more detail herein ; and

WHEREAS, DNCR may occupy and utilize the Leased Property during the Lease Term exclusively and peaceably and free from lawful claims of any other persons. Such exclusive possession is subject only to the Forest Society's right to enter for reasonable inspections to determine that the terms of this Lease are being observed by DNCR and the Society's right to enter upon the Leased Property for the purposes of exercising Lessor's Retained Rights; and

WHEREAS, the parties acknowledge and agree that the Forest Society shall pay when due all taxes assessed with respect to the Leased Property, and specifically including, without limitation, those taxes assessed pursuant to RSA 79 by reason of the Society's

harvesting timber growth from the Leased Property under Lessor's Retained Rights, from time to time.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency whereof both parties acknowledge, the parties hereby agree as follows:

SECTION I – LEASE RIGHTS AND OBLIGATIONS

A. This Lease is intended and entered into to allow DNCR to administer the Leased Property and to regulate and police the well-established trails leading to the summits, thereby allowing DNCR to (1) collect reasonable fees or donations at the Old Toll Road trailhead, Dublin trailhead, Marlboro trailhead and Gap Mountain North and South trailheads; (2) exercise the police powers vested in its Parks and Recreation Division personnel on all the Leased Property; (3) to allow trail maintenance, repair and relocation subject to limitations hereinafter stated; (4) to allow the conduct of such search and rescue operations as are necessary; to allow assumption of liability with respect to such operations, but to no greater extent than that which has generally been assumed by DNCR on State Park lands; (5) to allow control of restrictive uses such as camping; and (6) to allow all other aspects of operating the Leased Property for public recreational uses consistent with the natural mountain environments (collectively, the "Purposes").

B. The Lease shall be a term of five (5) years from the date of approval by Governor and Council, with renewal for two consecutive five (5) year terms (collectively, the "Lease Term"), upon mutual agreement of the parties and subject to Governor and Council approval.

C. DNCR shall make an annual payment to the Forest Society in an amount equal to the gross proceeds from the collection of fees or donations at the Old Toll Road trailhead, Dublin trailhead, Marlboro trailhead, and Gap Mountain North and South trailheads for the previous fiscal year, less any direct costs of collection and the cost of providing portable toilets. The funds shall be utilized by the Forest Society, with the advice of the Monadnock Advisory Commission, for the following purposes:

1. To periodically provide for independent third-party monitoring of the trails on the Leased Property by a qualified party mutually agreed upon by both DNCR and the Forest Society;
2. To provide for the annual maintenance or improvement of those trails, trailheads, roads, and parking areas and associated gates, signs, kiosks to the extent not undertaken by DNCR;
3. To provide toilet facilities at the Old Toll Road trailhead, Dublin trailhead, Marlboro trailhead, Gap Mountain North and South trailheads during the DNCR seasonal operations.
4. To reimburse the Society for its staff time and expenses associated with managing and insuring the Leased Property and expenses related to the Lease with DNCR, and for

expenses associated with the recreational issues with respect to the Leased Property and the Society's expenditures made pursuant to this Section I.C.4; and

5. To be used for (a) the reimbursement to DNCR for the cost of operations of Monadnock State Park at the Leased Property, including maintenance of and improvements to facilities and the trails at the Leased Property, and (b) maintenance of and improvements to recreational trails and facilities on any land of Monadnock State Park, including land of DNCR or the Town of Jaffrey, mutually agreed to by DNCR and the Forest Society.

Any unexpended balance will be held from year to year by the Forest Society in a restricted account solely for the purposes of this Section.

D. Throughout the Lease Term, the Forest Society RESERVES the right to perform the following activities on the Leased Property, which shall constitute the "Lessor's Retained Rights":

1. **Forestry Management:** Any forestry activity conducted for commercial or noncommercial purposes, including planting, growing, managing, production, or harvesting of trees, or parts of trees. Such activity shall encompass silvicultural activities, such as but not limited to, thinning, girdling, and other forms of forest stand improvement, and the processing, storing, or marketing for sale of trees, or parts or products thereof, such as but not limited to sawlogs, chips, firewood, sawdust, sap and syrup, and bark mulch;
2. **Habitat Management:** Activities intended to improve, enhance, or manipulate natural habitats to control exotic or invasive species, to improve or maintain suitable habitat, to restore degraded habitats, and/or to create new habitat;
3. **Ecosystem Services:** The ability to sell ecosystem services such as but not limited to Carbon Credits;
4. **Maintenance of Trails, Parking Lots, Signs, Kiosks, etc.:** The ability to maintain, enhance and improve trails, parking lots, signs, kiosks or other existing structures or improvements.
5. **Branding, Promotions, and Advertising:** The Forest Society shall have the ability to work cooperatively with DNCR to promote both entities, improve visitor experiences, and raise additional income or donations. In so doing, DNCR and the Forest Society agree that they will actively and passively promote the involvement and long history of both entities in protecting and managing Mount Monadnock and its trail system. The Forest Society may make improvements to the trailheads on the Leased Property, in particular such improvements that aid visitor awareness that the Leased Property are part of the Forest Society's land holdings. Such branding, promotion, and advertising will be conducted in a respectful, cooperative way between DNCR and the Forest Society;
6. **Educational Activities:** The Forest Society shall have the ability to conduct

educational activities relating to forestry, wildlife, wildlife habitat, land conservation and other environmental issues on the Leased Property, including but not limited to events, demonstrations, classes, studies, experiments, tours, field trips and other events of an educational nature. The Forest Society will take all reasonable steps to coordinate these activities with DNCR to ensure they don't interfere or conflict with the DNCR uses of the Leased Property. Additionally, the Forest Society reserves the right to collect reasonable fees for providing said outdoor educational activities; and

7. **Member Incentives:** The Forest Society will work with DNCR to offer an incentive to Forest Society members to visit Mount Monadnock at a reduced rate one or more times annually through the trailheads on the Leased Property.

E. The Forest Society and DNCR will develop a 5-year work plan with the purposes of coordinating their combined efforts to address the backlog of trail maintenance and repairs identified in the 2014 Mt. Monadnock Trail Assessment (and/or future trail assessments). DNCR will work to hire or assign an existing employee to have the responsibility of coordinating the trail improvements, working with private professional trail companies or contractors, SCA Crews or other similar trail crews and volunteers to address the backlog of trail maintenance and repairs on Mount Monadnock. The Forest Society and DNCR, when possible, will apply for grant funds from private, state and federal funding sources to address the backlog of such trail maintenance and repairs. The Forest Society and DNCR staff will meet annually to coordinate work on the Leased Property, and the 5-year plan will be updated every 5 years during the Lease Term.

F. DNCR will provide the Forest Society annual financial reports documenting the income raised at each trailhead, the cost to collect those fees and to provide portable toilets, and the total amounts provided to the Forest Society for the uses specified above in Section C.1-5.

SECTION II - RESPONSIBLE USE AND STEWARDSHIP OF LEASED PROPERTY

The Forest Society and DNCR also hereby agree:

A. To maintain the Leased Property in its natural, undeveloped condition for conservation, recreation and forestry purposes without other commercial, industrial or mining uses.

B. To not remove, fill, or disturb soil surface, nor make any changes in topography, surface or subsurface water systems, wetlands, or natural habitat, nor any extract surface or subsurface water resources of the Leased Property, except in the accomplishment of the permitted Purpose.

C. There shall be no dumping, disposal, or burning on, above, or below the Leased Property of man-made materials or materials then known to be environmentally hazardous, except man-made materials as may be permitted in the accomplishment of the Purposes of this Lease.

D. No construction of roads or conveyance of any right-of-way or easement shall be permitted into, under, on, over, or across the Leased Property, in favor of any party, without

the prior written approval of the Forest Society.

E. There shall be no mining, quarrying, excavation, drilling, or removal of surface or subsurface materials, including but not limited to, hydrocarbons, rocks, minerals, gravel, sand, topsoil, or other similar materials on, under, or from the Leased Property, except in the accomplishment of the Purposes of this Lease.

F. No development of additional trails in or through the Leased Property shall be permitted without the prior written approval of the Forest Society, which shall have the final approval of design and location of any additional trails.

G. No structure or improvement shall be constructed, placed, introduced, enlarged, relocated, used, maintained, repaired, replaced, rebuilt, or improved on, above, or below the Leased Property except with the consent of the Forest Society, which reserves the right to approve final design and location.

H. Only to place such signs, inscriptions, monuments and stone cairns on the Leased Property as are necessary to prevent persons from losing their way and as are interpretive for developing appreciation and stewardship of the significant and natural features of the Leased Property, all as DNCR and the Forest Society shall agree in advance. All signs, inscriptions, monuments and cairns shall be consistent with the Purposes of this Lease.

I. To take all necessary precautions, but to no greater extent than that which has generally been taken by DNCR on its lands, to protect the Leased Property from fire, insects, or diseases, with those precautionary measures taken in a manner so as to conform to the Purposes of this Lease.

J. To manage the Leased Property consistent with generally recognized practices in accordance with State Park standards for low-impact recreation.

K. To permit the Forest Society, its agents, and other employees to have access to and to enter the Leased Property at any time for any purpose reasonably connected with the DNCR interest in the Leased Property and to perform any work or act found to be necessary and consistent with the terms of the Lease herein. Specifically address potential new projects as well as expansion of or improvements to the existing trails, parking lots, roads, or facilities to be completed within the next five years. The Forest Society's prior written consent shall be required before any assets are built or improved on the Leased Property, and before any other projects impacting the Leased Property are undertaken. The Forest Society shall give prompt attention to any submissions so as to expedite the review and decision process.

L. DNCR shall establish policies to limit vehicle parking on parking lots under its control and shall monitor and address parking occurring along roads providing access to said parking lots within its authority and resources.

M. To the extent that the Forest Society expends funds to accommodate recreational use and improve the facilities on the Leased Property as the parties hereto may agree, those expenditures shall be reimbursed to the Forest Society utilizing the fund established in Section I.C above, or from DNCR's other resources as the situation may require and as

allowed under New Hampshire law and as may be subject to Governor and Council approval.

N. While DNCR reserves all rights under the doctrine of sovereign immunity and RSA 508:14, DNCR shall assume liability to the extent that it has generally been assumed by DNCR with respect to State Park lands. DNCR shall be responsible for all negligent actions or omissions of its employees and agents for claims, suits, damages, judgments, recoveries or other liabilities arising from injuries to persons or property in, on, or about the Leased Property. The Forest Society shall not be responsible, other than for the negligence of its employees, agents, and business invitees, for any damage to property of DNCR or others located in, on, or about the Leased Property.

O. All buildings, improvements and structures erected or effected on the Leased Property by DNCR, together with all additions, alterations, and improvements thereto, shall become the property of the Forest Society if not removed within ninety (90) days after termination of this Lease; provided, however, the Forest Society reserves the right to reject ownership of any such buildings, structures and improvements within the sixty (60) days after such termination, in which event DNCR shall remove the rejected buildings, structures or improvements within ninety (90) days of the date of notice of such rejection.

P. If any part of the Leased Property is taken by eminent domain, the Forest Society shall directly and exclusively receive the compensation for such taking, except for the value of any building, improvement, or structure situate on the Leased Property owned by DNCR.

Q. The Forest Society may assign its rights and obligations under this Lease with the approval of the DNCR. DNCR shall make no assignment of its rights and obligations under this Lease except to its legislatively designated successor. This Lease shall be binding upon and inure to be the benefit of the Society and its successors and assigns, and upon and to the benefit of DNCR and its legislatively designated successor.

R. If there shall be any material default in the obligations and covenants of DNCR herein contained which shall remain uncured for a period of thirty (30) days after receipt by DNCR of written notice thereof from the Forest Society specifying the same, the Forest Society shall have the right to re-enter and repossess the Leased Property and eject DNCR therefrom. In addition, the Forest Society shall have the right to pursue any other remedies which it may have according to law for the recovery of damages and any other sums which may be due under the terms of this Lease, or for material default in the obligations and covenants therein contained.

S. Any notice, request, instruction or other document required to be given pursuant to this Lease shall be in writing and shall either be delivered in hand or sent by certified mail, return receipt requested, to the address of the recipient party set forth at the beginning of this Lease.

T. DNCR and the Forest Society shall meet annually on or about January 1 for purposes of developing a mutually agreed upon work plan and budget in furtherance of the provisions in Section I.C, and for any issues relating to the administration of the Lease.

U. This Lease shall not be changed or amended or modified except in a writing signed by all parties to this Lease. Any consent which DNCR must obtain from the Forest Society pursuant to the terms of this Lease shall not be effective unless such consents are in writing and signed by the Forest Society.

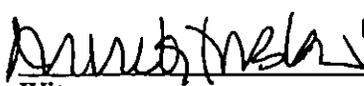
V. DNCR will not knowingly undertake or permit any activities which would jeopardize the tax-free status of the Forest Society under the Internal Revenue Code.

W. **CONDITIONAL NATURE OF STATE PROJECTS.** Notwithstanding any provision of this Lease to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of State-sponsored projects and trail work hereunder, are contingent upon the availability and continued appropriation of funds, contracting, labor and materials (collectively, the "Resources") affected by any State action that reduces, eliminates or otherwise modifies the appropriation or availability of the Resources for this Lease and any work plan, in whole or in part. In no event shall the State be liable for any re-allocation of Resources hereunder. In the event of a reduction or termination of appropriated Resources, the State shall have the right to withhold the Resources until such Resources become available, if ever, and shall have the right to reduce or terminate the activities under this Lease immediately upon giving the Forest Society notice of such reduction or termination of allocated Resources specific to this Lease. The State shall not be required to transfer Resources from any other account or source to the Forest Society in the event Resources earmarked under this Agreement are reduced or unavailable. Nothing in this paragraph shall affect the payment of funds to the Forest Society by the DNCR under Sec. I.C.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereunto have set their hand on the date herein named:

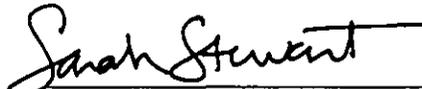
SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

 02/17/2022  02/17/2022
Witness Date David Jackson Savage (Jack), President Date
Duly authorized

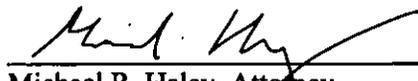
**STATE OF NEW HAMPSHIRE
DEPARTMENT OF NATURAL AND CULTURAL RESOURCES**

Concur:

 2/22/22
Philip A. Bryce Date

 2/22/22
Sarah L. Stewart, Commissioner Date

Approved as to form, substance and execution by the Attorney General's Office

 Date: 2/23/2022
Michael R. Haley, Attorney

Approved by Governor and Executive Council: Date: _____ Item#: _____

4860-7565-9784, v. 1 //PABA/1-012822

EXHIBIT "A"

All restrictions of record contained in the hereinafter listed deeds are applicable with equal force to the lessee and the execution of the lease by the lessee shall constitute legally sufficient notice of all such restrictions. Contravention of the restrictions contained therein shall constitute a breach of this lease agreement and the lessor shall have the immediate right of re-entry and possession upon such action by the lessee.

The so-called Monadnock Reservation of the Society for the Protection of New Hampshire Forests consists of parcels in the Towns of Dublin and Jaffrey described in deeds recorded in the Cheshire County Registry of Deeds at the following volumes and pages:

Volume 369 page 122, volume 400 page 449, volume 400 page 450, volume 380 page 78, volume 420 page 367, volume 422 page 523, volume 433 page 381, volume 436 page 246, volume 436 page 586, volume 453 page 236, volume 453 page 535, volume 453 page 587, volume 458 page 433, volume 462 page 65, volume 464 page 122, volume 539 page 143, volume 775 page 125, volume 785 page 423, volume 790 page 459, volume 884 page 185, volume 902 page 146, volume 1117 page 173, volume 1284 page 452, volume 1807 page 576, and volume 1890 page 62.

The so-called Gap Mountain Reservation of the Society for the Protection of New Hampshire Forests consists of parcels in the Towns of Jaffrey and Troy described in deeds recorded in the Cheshire County Registry of Deeds at the following volumes and pages:

Volume 878 page 523, volume 878 page 377, volume 892 page 530, volume 924 page 678, volume 958 page 01, volume 1002 page 112, volume 1113 page 540, volume 1172 page 09, and volume 1225 page 600.

State of New Hampshire

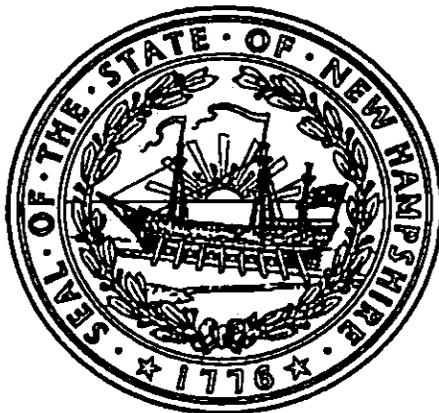
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on March 03, 1910. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 64922

Certificate Number: 0005640190



IN TESTIMONY WHEREOF,
I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 20th day of January A.D. 2022.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

54 Portsmouth Street
Concord, NH 03301

Tel. 603.224.9945

info@forestsociety.org
www.forestsociety.org

EXCERPT

Be it noted that the Board of Trustees of the Society for the Protection of New Hampshire Forests, in a board vote taken on October 2, 2019

VOTED to authorize David Jackson Savage (Jack), President, and Anne G. Truslow, Vice President of Development, to sign all contracts; checks, drafts and orders drawn on SPNHF General Funds or Restricted funds; and that they are hereby authorized to deposit checks and drafts payable to this Corporation; and further are authorized to sell, assign, and endorse for transfer, certificates representing stocks, bonds, annuities, or other securities now registered or hereafter registered in the name of this Corporation.

As the duly authorized Assistant Secretary of the Society for the Protection of New Hampshire Forests, having been appointed at the meeting of December 4, 2019, I hereby confirm that the above Vote was taken by said Board of Trustees on October 2, 2019.


Maria E. Stewart, Assistant Secretary

Attested:


Connelly A. Colton, Notary Public
Commission expires: March 13, 2024

CONNELLY A. COLTON
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
March 13, 2024

