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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

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

Bureau of Right-of-Way
December 27, 2022

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 **retroactively** lease 75 linear feet of shoreline along lake Winnipesaukee adjacent to Route 11 in the Town of Alton, to Brian Sullivan (Lessee). The term of the lease will be five years, effective August 1, 2021, through July 31, 2026. The annual lease amount is $2,622.75, effective upon Governor and Executive Council approval.

Lease income will be credited as follows:

04-096-096-962015-3028-406912	FY 2022	FY 2023	FY 2024
Rental Income	$2,404.19	$2,622.75	$2,622.75
	FY 2025	FY 2026	FY 2027
	$2,622.75	$2,622.75	$218.56

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 landowners meeting statutory requirements.

The taxes for the Alton Bay leases will be calculated by using the linear distance of the 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 Winnipesaukee 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 a 5-year lease with the Lessee.

Sincerely,

William J. Cass
Commissioner

WJC/SGL/lmw
Attachments

- LITTORAL RIGHTS LEASE -

between

STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION
"DEPARTMENT"

AND

Brian R. Sullivan
"TENANT"

for property located at
165 Mount Major Highway, Alton New Hampshire

AUGUST 1, 2021 – JULY 31, 2026

Supplemental document checklist

Certificate of Insurance

Is A Renewal

DES Permit

Attachment "A" defining property

Amendment(s)

LMW DOT Initials

r 4/6/2021

LITTORAL RIGHTS LEASE

THIS LEASE AGREEMENT, made between The State of New Hampshire, Department of Transportation, hereinafter called the "Department," and **Brian R. Sullivan** 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 Brian R. and Kenneth Sullivan agree(s) to enter into a lease agreement in accordance with RSA 4:39-d, the subject Lease being **75' of shorefront** located directly across from **Parcel 24** shown on said plan, and also identified on **Alton Tax Map 36, Lot 27**, 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 Winnipesaukee 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 for 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 Winnipesaukee 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 **$2,622.75** annually.

3.2. Rent is due annually, on or before August 1st, 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.

Tenant(s) Initials BS

3.4. Per RSA 72:23, I(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.

5. COMPLIANCE WITH LAWS

5.1. 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 **Map 36, Lot 27**, will be cause for termination of this Lease under paragraph 9.1 above.

Tenant(s) Initials

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.

Tenant(s) Initials BS

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 Department 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 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 binging 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

Tenant(s) Initials BS

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

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: William Cass Date 12/27/22
WILLIAM J. CASS ~~Victoria F. Sheehan~~, Commissioner
Department of Transportation

STATE OF NEW HAMPSHIRE, Merrimack SS December 27 A.D. 2022

On this 27 day of December, 2022, 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.

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

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

Jennifer Lane 9/5/23
Notary Public/Justice of the Peace My commission expires

Tenant: Brian R Sullivan Date 12/15/22
Phone: 617-312-4292
Email: BS1070007@Netzero.net

STATE OF ~~NEW HAMPSHIRE~~ MASS, WORCESTER SS DEC 15 A.D. 2022

Personally appeared the above named Brian R. Sullivan acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

ROBERT C. BUTCHER MY COMMISSION EXPIRES JUNE 5, 2026 NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS

Robert C Butcher
Notary Public/Justice of the Peace

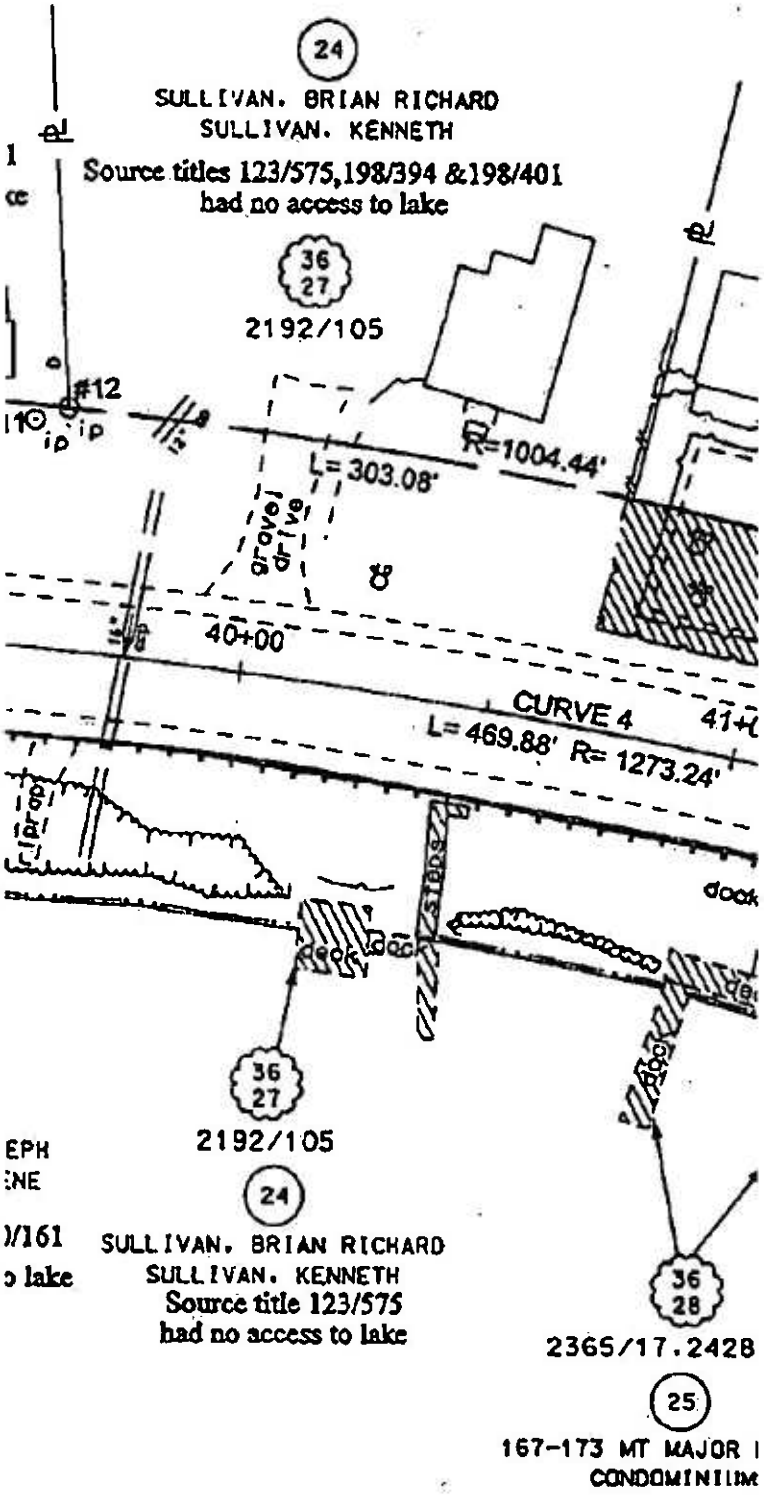
Tenant(s) Initials BS

My commission expires: 7/31/2026

Attachment "A"

BS

Tenant(s) Initials



Tenant(s) Initials

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 06/10/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Morin Insurance
PO Box 1372
Alton NH 03809-1372

CONTACT NAME: Paulette Williams
PHONE (A/C, No, Ext): (603) 875-1200 FAX (A/C, No): (603) 875-1201
E-MAIL ADDRESS: paulette@morinagency.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Evanston Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Brian Sullivan
26C Country Club Lane
Milford MA 01757

COVERAGES CERTIFICATE NUMBER: CL2261002188 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y		3AA574087	05/05/2022	05/05/2023	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ INLCUDED
								$
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					[ ] PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of New Hampshire, its Officers, Agents and Employees are included as Additional Insured, as regards to their relationship as allowing access/easement to state owned property at Lake Winnipesaukee: easement adjacent to 165 Mt Major Hwy Alton Bay NH 03810

CERTIFICATE HOLDER
State of New Hampshire
19 Pillsbury Street
Concord NH 03301

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Paulette Williams

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(FAP F 250 (4) -Alton 1832HA)

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

LMCP 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 - RSA 4:39-d

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

Approved by the Long Range Capital Planning and 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 Winnipesaukee 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) "Winnipesaukee 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 Winnipesaukee. 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 Fee
Brandi Development Corp.	Parcel 25	Map 36/Lot 28	Tax Map Frontage-60'	$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 39	Map 38/Lot 7	Tax Map Frontage-50'	$1,748.50
Donald F and Sharon E Cundy	Parcel 37	Map 38/Lot 8	Tax Map Frontage-60'	$2,098.20
Joanne Doyle Revocable Trust	Parcel 16	Map 36/Lot 49	Tax Map Frontage-65'	$2,273.05
Brenda J Fabre Revocable Living Trust	Parcel 46	Map 39/Lot 13	Tax Map Frontage-60'	$2,098.20
Michael Feltman	Parcel 36	Map 38/Lot 4	Tax Map Frontage-80'	$2,797.60
Timothy J. Jordan and Theresa L. Jordan	Parcel 40	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 Medolo	Parcel 23	Map 36/Lot 26	Tax Map Frontage-60'	$2,098.20
James Durkin and Catherine O'Brien	Parcel 41	Map 38/Lot 5	Tax Map Frontage-59.42'	$2,077.92
The Puzzo Family Revocable Trust	Parcel 45	Map 38/Lot 12	Tax Map Frontage-60'	$2,098.20
The Reed Family Revocable Trust	Parcel 43	Map 38/Lot 10	Tax Map Frontage-50'	$1,748.50
Brian R. and Kenneth Sullivan	Parcel 24	Map 36/Lot 27	Tax Map Frontage-120'	$4,196.40
W. Scott and Karen Tait	Parcel 17	Map 36/Lot 20	Tax Map Frontage-115'	$4,021.55
K. Lee Tarney	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
TheClaude J. Dupuis Revocable Trust	Parcel 14	Map 36/Lot 18	Tax Map Frontage-60'	$2,098.20
Joyce McKenney & Peg 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-60'	$2,098.20
Kimberly Spolar	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-50'	$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. Hollsberg	Parcel 44	Map 38/Lot 11	Tax Map Frontage-180'	$6,294.60
James and Karen Ford	Parcel 48	Map 39/Lot 15	Tax Map Frontage-100'	$3,497
				$76,249.29

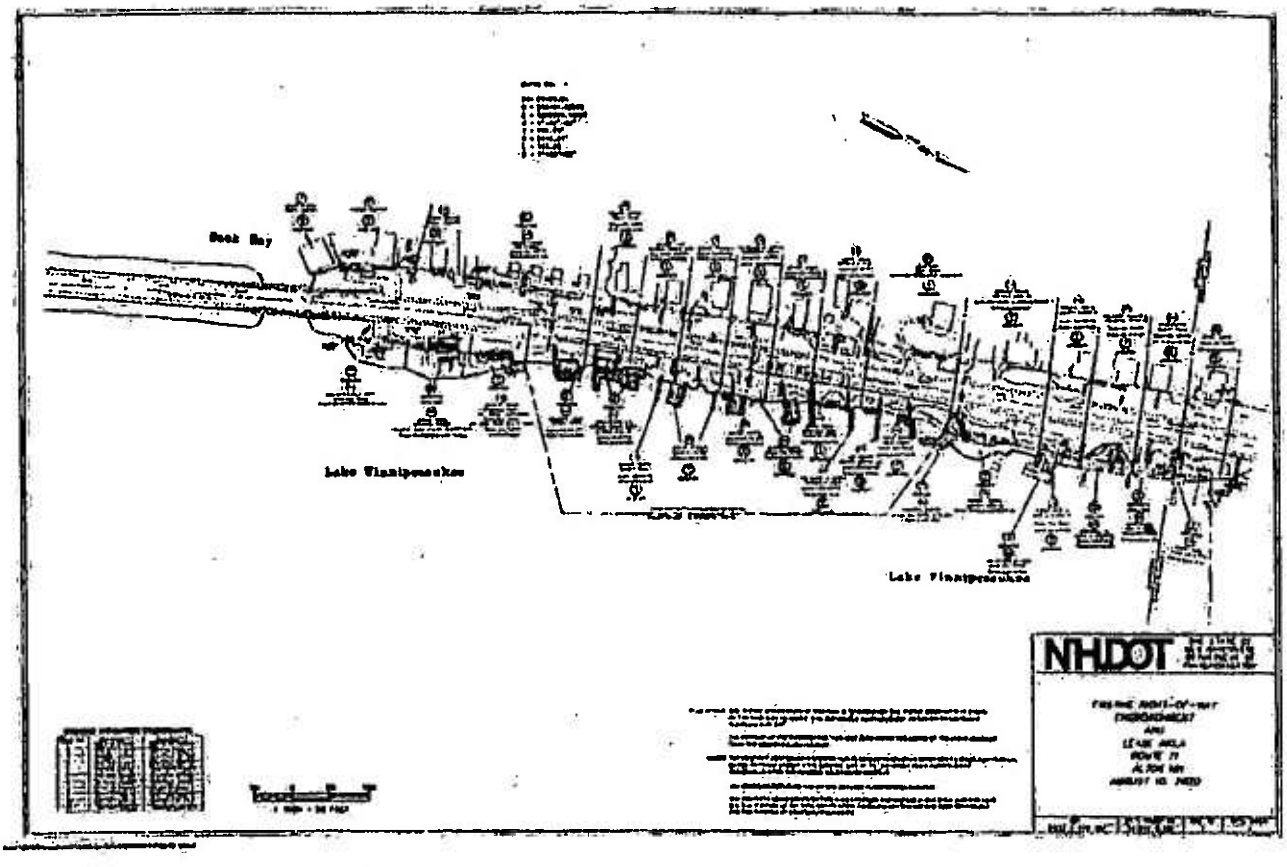
The Department is respectfully requesting authorization to enter into 5-year Lease Agreements with the 27 property owners adjacent to NH Route 11 along Lake Winnipesaukee in the Town of Alton.

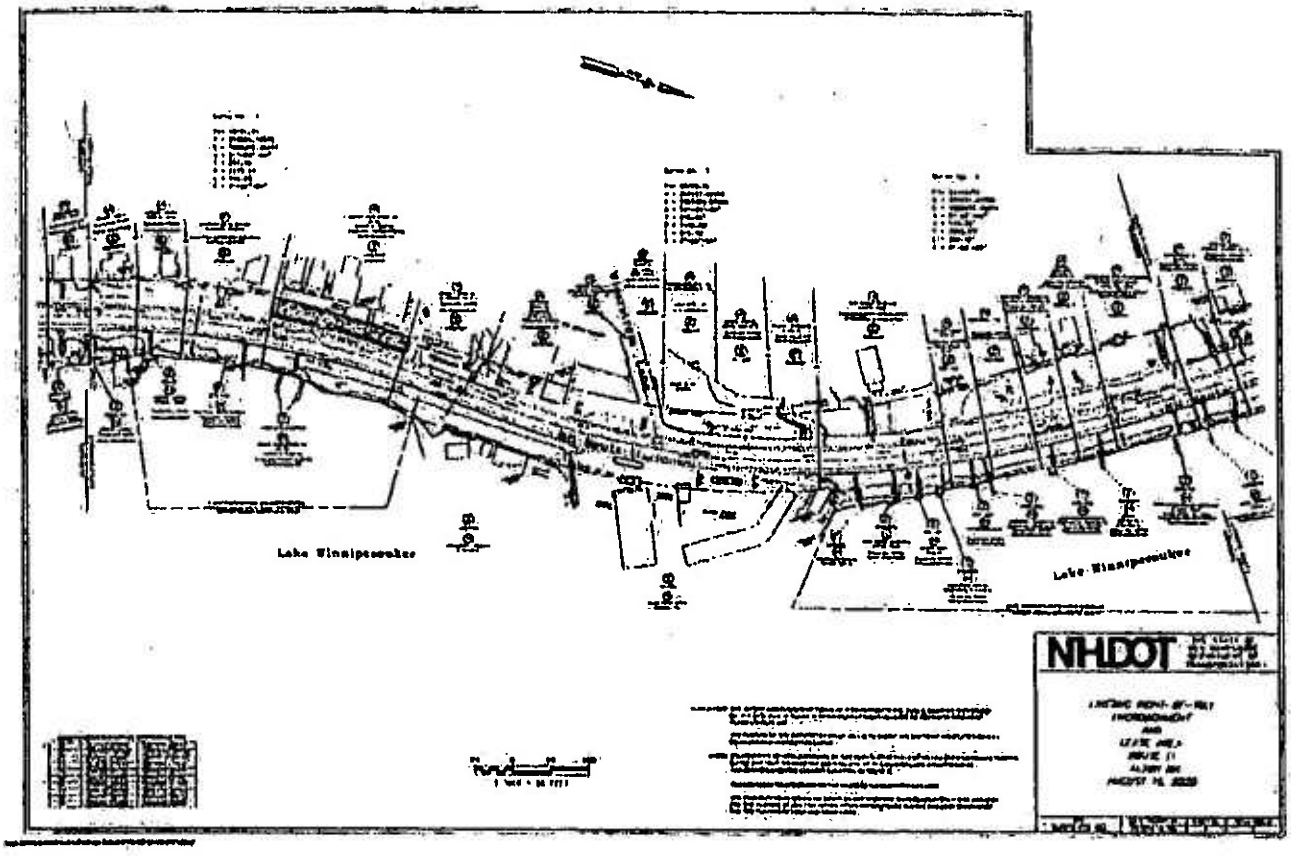
SGL/LMW/
Attachments

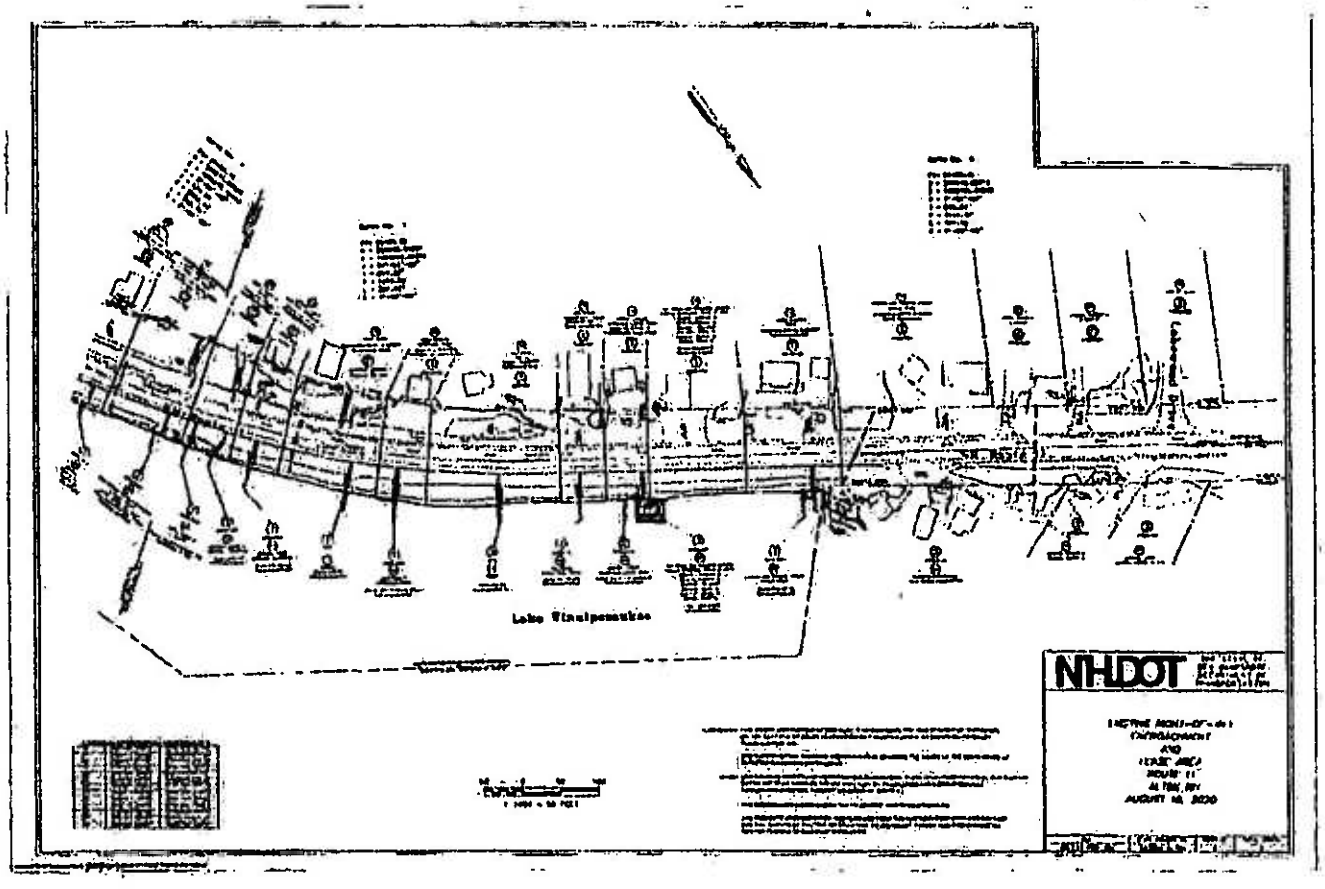
STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE
ADMINISTRATION

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.


Duck Bay
Lake Winnipesaukee
Lake Winnipesaukee
NHDOT


Lake Winnipesaukee
Lake Winnipesaukee
NHDOT


Lake Winnipesaukee
NHDOT

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

LRCP 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:

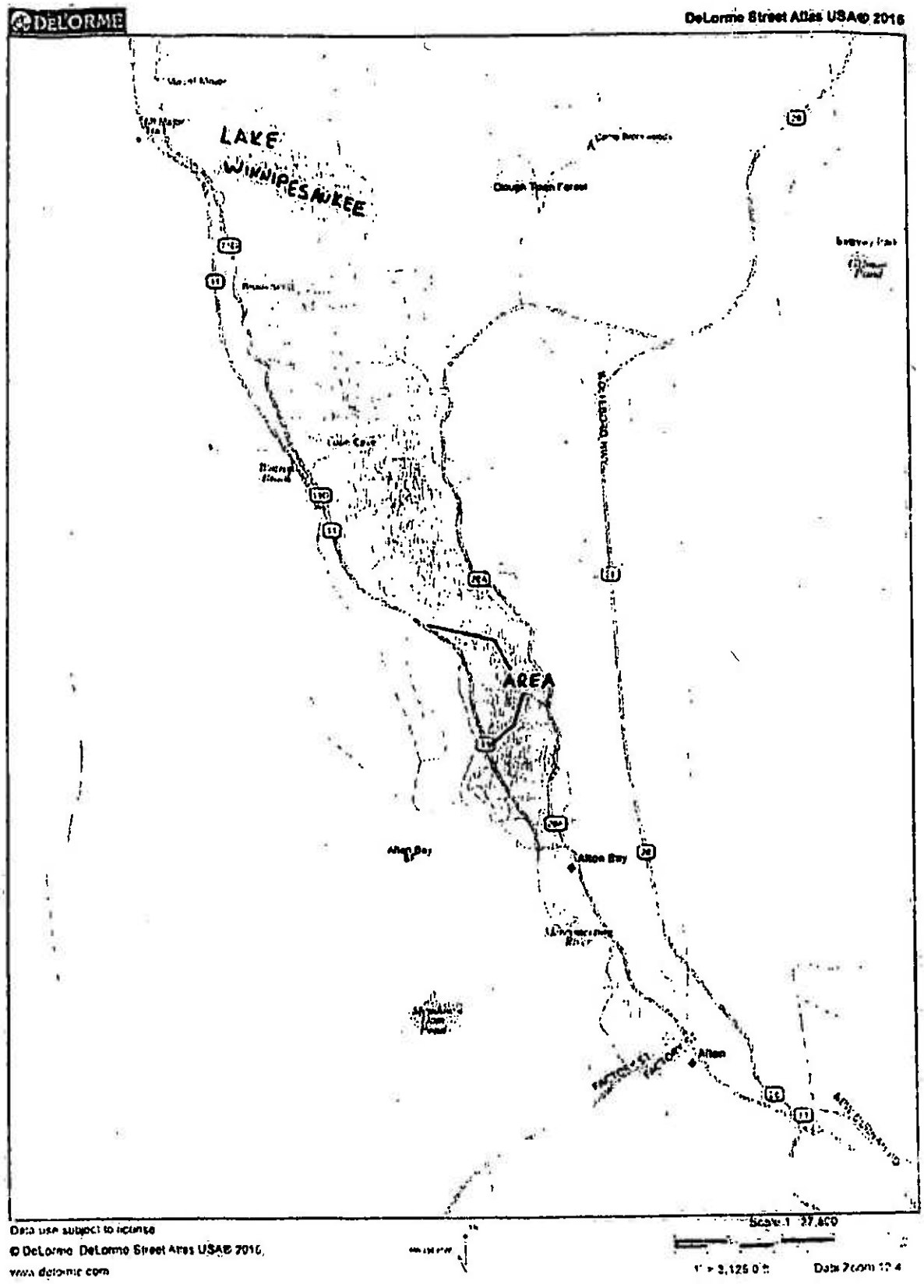
- Dwelling structures and boat houses built prior to the 2013 reestablishment will be grandfathered and eligible for a long-term encroachment agreement. The term of the encroachment agreement would be for 25 years, or during the duration the current occupant owns the dwelling, whichever may expire sooner. 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



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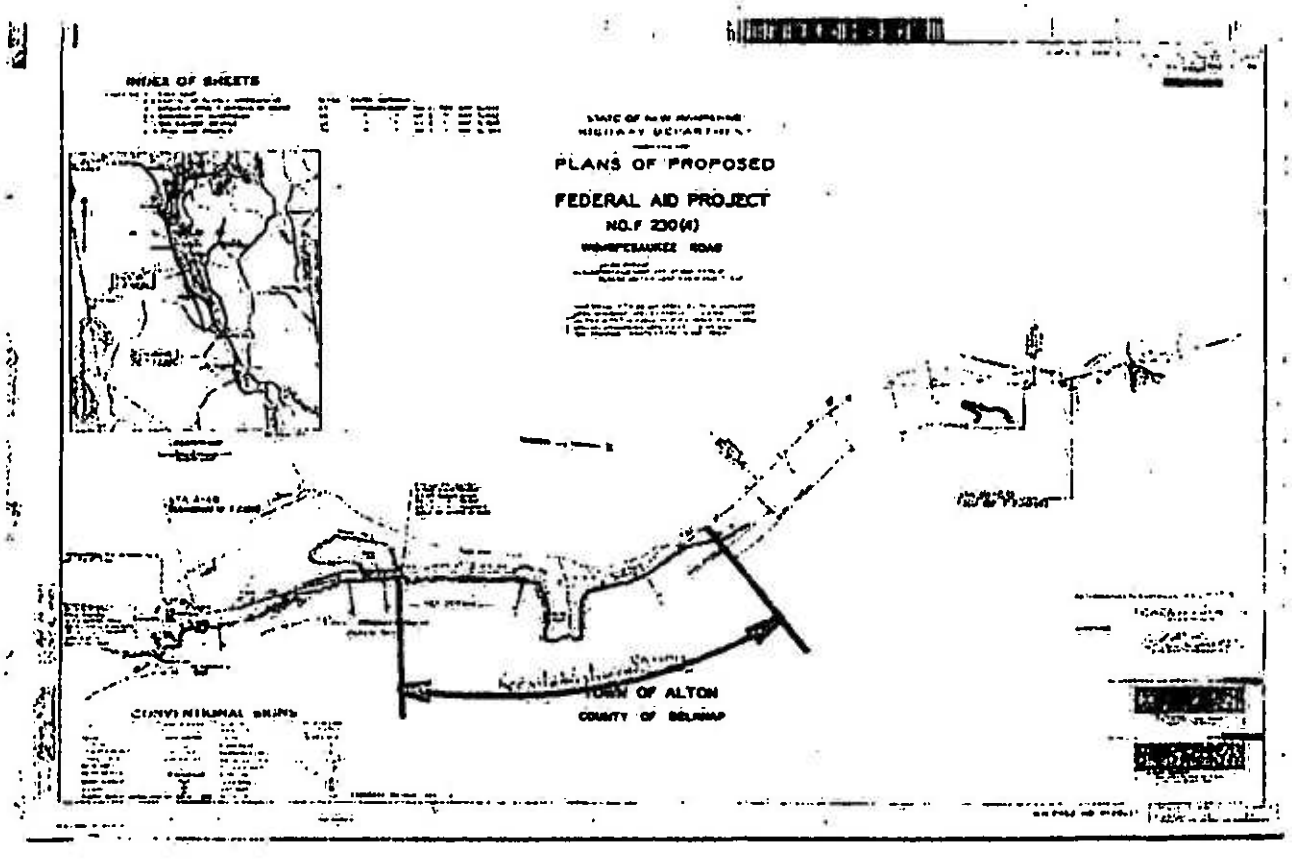
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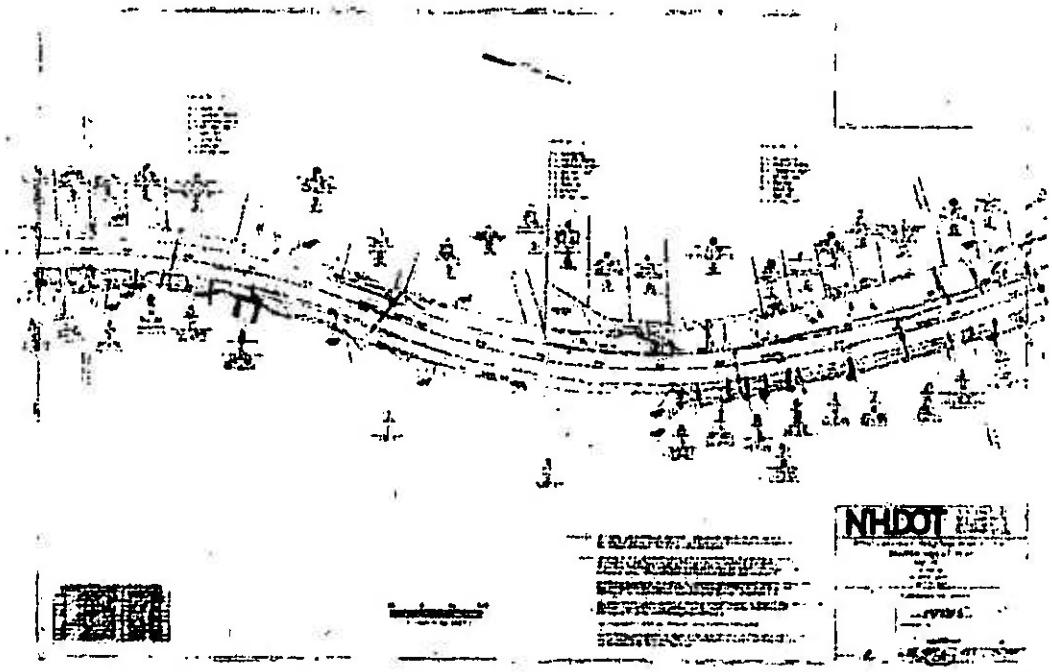
PLANS OF PROPOSED
FEDERAL AID PROJECT
NO. F 230(4)
TOWN OF ALTON
COUNTY OF BELKNAP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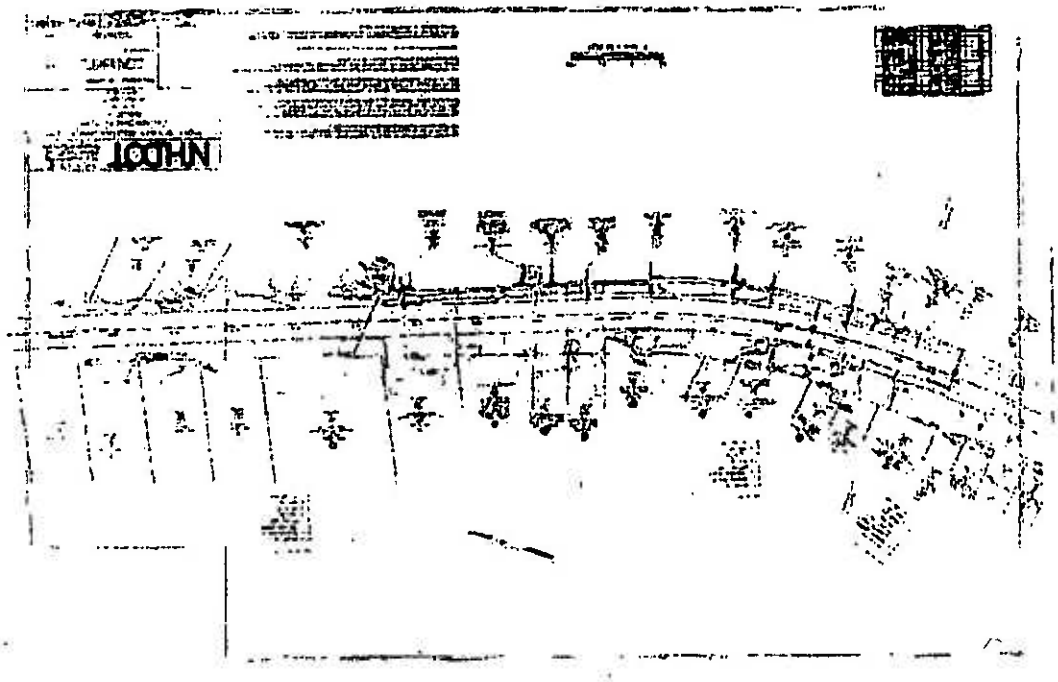
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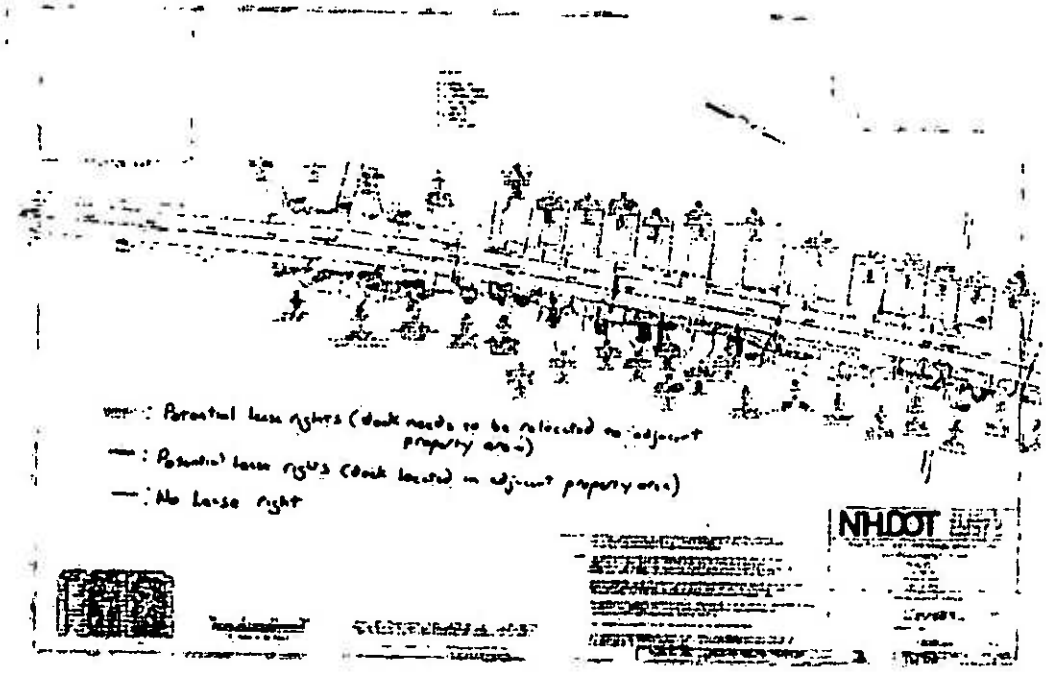
: Potential lease rights (dock needs to be relocated on adjacent property area)
: Potential lease rights (dock located on adjacent property area)
: No lease right
NHDOT

{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 Winnipesaukee

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 Winnipesaukee.

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 Winnipesauke 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 or 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: _____