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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
Web: www.nhtrails.org

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June 12, 2023

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 (DNCR), Division of Parks and Recreation, Bureau of Trails to **retroactively** enter into a no-cost agreement with the US Army Corps of Engineers (USACE), New England District by license agreement to construct, operate and maintain a snowmobile trail system, over, across, in and upon lands of the United States known as Franklin Falls Dam Project, Blackwater Dam Project, Hopkinton Everett Lakes Project, Edward MacDowell Lake Project, and Surry Mountain Lake Project in areas already used informally as part of a trail system. Effective retroactive to October 1, 2022, upon Governor and Executive Council approval through September 30, 2027.

EXPLANATION

The requested action is **retroactive** because this is a new agreement between DNCR and USACE and additional time was needed to review the lease agreement. The US Army Corps of Engineers is an authorized retail property agent for the US Army. Property acquired through purchase or lease by USACE is federal property. Due to the state's current unofficial snowmobile trail system on these properties, the US Army Corps Engineers issued this license agreement to officially designate these trails as snowmobile trails under the Bureau of Trails maintenance responsibilities to the state's snowmobile trail system.

The Attorney General's Office has reviewed and approved the attached agreement as to form, substance and execution. If authorization to enter into this agreement is approved by the Governor and Executive Council, the Attorney General's office will be authorized to sign and execute a license agreement substantially in the form of the attached draft.

Respectfully submitted,

Sarah Stewart

Sarah L. Stewart
Commissioner

Attachments
BJW/CR/AR

License No. DACW33-3-23-004

DEPARTMENT OF THE ARMY LICENSE

FRANKLIN FALLS DAM PROJECT
BLACKWATER DAM PROJECT
HOPKINTON EVERETT LAKES PROJECT
EDWARD MACDOWELL LAKE PROJECT
SURRY MOUNTAIN LAKE PROJECT
NEW HAMPSHIRE

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, acting under his general administrative powers, hereby grants to the **STATE OF NEW HAMPSHIRE**, acting through its Department of Natural and Cultural Resources, Division of Parks and Recreation, hereinafter referred to as the Grantee, a license for the construction, operation, and maintenance of a snowmobile trail system, over, across, in and upon lands of the United States, known as Franklin Falls Dam Project, Blackwater Dam Project, Hopkinton Everett Lakes Project, Edward MacDowell Lake Project, and Surry Mountain Lake Project, in areas already used informally as part of a trail system, as shown in Exhibits A to E, attached hereto and made a part hereof, hereinafter referred to as the premises.

Exhibit A (Franklin Falls Dam) shows the trail system in yellow and red; Exhibit B (Blackwater Dam) shows the trail system in yellow and red going within and outside of project lands; Exhibit C-1 (Hopkinton-Everett Lakes, Hopkinton) shows the trail system in teal; Exhibit C-2 ((Hopkinton-Everett Lakes, Everett) shows the trail system in teal; Exhibit D (Edward MacDowell Lake) shows the trail system in yellow and green (NOT blue); and Exhibit E (Surry Mountain Lake) shows the trail system in green.

THIS LICENSE is granted subject to the following conditions:

1. TERM

This license is granted for a term of five (5) years, beginning October 1, 2022, and ending September 30, 2027, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the construction, operation, and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the Grantee, to New Hampshire Department of Natural and Cultural Resources, Division of Parks and Recreation, 172 Pembroke Road, Concord,

New Hampshire 03301; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, U.S. Army Corps of Engineers, New England District; or as from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, New England District, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises;

c. subject to other outgrants of the United States on the premises;

d. personal to the Grantee, and this license, or any interest herein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Grantee, including the Grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payments shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The Grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any direct damage that may be caused to property of the United States by the activities of the Grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the Grantee, the Grantee shall vacate the premises, remove the property of the Grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the Grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefore, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The Grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. TERMINATION

This license may be terminated by the Grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event said notice is not given at least ten (10) days prior to the rental due date, the Grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having

jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

c. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344).

18. EXECUTIVE ORDER 13658 and EXECUTIVE ORDER 13706

a. It has been determined that this license is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR Part 10 pursuant to the Executive Order, and the following provisions.

b. It has been determined that this license is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the Executive Order.

c. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this license, that an erroneous determination regarding the applicability of Executive Order 13658 or Executive Order 13706 was made, Grantee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 or Executive Order 13706 determination. This includes Grantee releasing any claim or entitlement it would otherwise have to an equitable adjustment to the license and indemnifying and holding harmless the United States from the claims of subcontractors and Grantee employees.

20. ADDITIONAL CONDITIONS

a. The Government reserves the right to close the trail system or any part thereof when it deems necessary (including but not limited to flood control operations, to protect flood control structures, for safety violations, severe environmental degradation, public safety, or if the project's mission is threatened).

b. The Grantee acknowledges that the areas covered by this license are flood prone. If the staff of any of the five USACE projects subject to this license instructs the Grantee to close any of the trail system, the Grantee shall immediately close all trails affected by flood control operations.

c. After flood control operations, trail inspection by the Grantee and the Corps must occur to check for unsafe conditions, including but not limited to insufficient snowpack or icing on trails, before a trail can be reopened.

d. Snowmobile operation may only occur when there is sufficient packed snow for operation without damage to the underlying terrain.

e. The Grantee shall be responsible for providing the Project Manager of each USACE project having lands covered by this license, no later than 1 November of each calendar year, with contact information for the designated snowmobile clubs for the trails on each project. The Corps will notify the Grantee of any changes in the Project Managers for the five Corps projects.

f. The designated Point Of Contact (POC) for each snowmobile club will be the primary POC for the USACE Project Managers for any trail issues on their projects. The Project Managers will copy the Grantee with any information or issues brought to the clubs. If any issues develop between the Project Manager and the snowmobile club, the Project Manager will contact the Grantee and the Grantee will resolve the issues with the snowmobile club.

g. The Grantee shall provide the Project Managers, no later than September 1 of each calendar year, with an operations and maintenance plan for the snowmobile trail system.

h. The Grantee shall make regular inspections of the trails. Areas of concern shall be addressed as they arise and the trails shall be immediately closed for maintenance items that involve safety or progressive erosion until corrective action is complete. The Government shall be notified of any findings discovered during these inspections and also when the corrective action has been completed.

i. The Grantee, at the Grantee's expense, may keep open during the winter months the Stark Pond Parking Area (shown generally on Exhibit C-2 as "Stark Pond OHRV Area") at the Hopkinton Everett Lake Project for snowmobile use. The Grantee is responsible for the ensuring that all gates are opened at the beginning of the snowmobile season when sufficient snowpack is present. The Grantee will be responsible for ensuring that all gates are closed any time insufficient snowpack exists or flood control operations impact the snowmobile trails. Notification will be made to the applicable Government POC when gates are opened or closed.

j. The Grantee is responsible for the construction, maintenance, and inspection of all bridges associated with the snowmobile trail system with prior consent of USACE and other parties as appropriate, and shall provide an inspection report to the Project Managers prior to the start of each season.

k. The Grantee must obtain written approval from the Government before constructing any new bridges, expanding existing bridges, or reconstructing any bridge beyond its existing footprint.

l. Any trail modifications, including expansion or re-routing, or involving the placement or displacement of fill material, must be approved in writing in advance by the Government.

m. The addition of new trails on USACE Projects must be requested in writing and any approval will be through an amendment to this license. The Government will neither authorize nor recognize any trails that end at, or cross, bodies of water. Snowmobile trails will not be allowed to cross any body of water on Government property regardless of whether it is frozen or not.

n. All special events within the area shall be coordinated in advance with the Government.

o. The Grantee is responsible for ensuring that trails are posted with signs and maintained in accordance with NH Bureau of Trails standards.

p. The Government shall be notified by the Grantee of any incidents of damage or injury that occur on the snowmobile trail system, including spills or releases of oil or

hazardous substances, of which the Grantee is aware. Minor incidents shall be reported no later than the next business day while major incidents such as deaths, serious accidents, or serious crimes, etc. must be reported immediately to the Project Manager or his/her designee. The Government agrees to notify the Grantee of any incidents of damage or injury on the licensed premises of which the Government is aware.

q. The Government shall notify the Grantee (or their designated snowmobile clubs) of possible problem areas and/or issues of concern and shall allow the Grantee a reasonable time to address such problem areas and issues.

r. In accordance with Condition 6 above (APPLICABLE LAWS AND REGULATIONS), the Grantee shall manage the trail system pursuant to State of New Hampshire Revised Statutes Annotated.

s. An Environmental Condition of Property (ECP) Report may be required by the Secretary upon expiration, revocation or termination of this license to assess and document the environmental condition of the property at that time, if the need is warranted. This report/assessment will assist in determining any environmental remediation requirements that would need to be completed. Any such requirements will be completed by the grantee in accordance with the condition on RESTORATION.

t. The Grantee must obtain approval in writing from the Government before any pesticides or herbicides are applied to the premises.

u. No trees shall be cut without prior approval from the appropriate Project Manager.

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this 6th day of June, 2023.

DAVI.MAUREEN.B.1296966980 Digitally signed by DAVI.MAUREEN.B.1296966980 Date: 2023.06.06 14:48:31 -04'00'

Maureen B. Davi
Realty Specialist
Real Estate Contracting Officer

This License is also executed by the grantee this 12 day of December, 2022.

STATE OF NEW HAMPSHIRE
Department of Natural and Cultural Resources, Division of Parks and Recreation

By: Sarah Stewart
Sarah L. Stewart, Commissioner

Approved as to form, substance, and execution:

Shari Phillips, Assistant Attorney General 6/9/2023

Attorney General Date

License No. DACW33-3-23-004
(Snowmobile Trails through
Five Projects in New Hampshire)

Certificate of Authority

I, Christopher Marino, certify that I am the Chief of Administration of the State of New Hampshire, Department of Natural and Cultural Resources, Division of Parks and Recreation; and that Sarah L. Stewart, who signed the foregoing instrument on behalf of the Grantee, is the Commissioner of the State of New Hampshire, Department of Natural and Cultural Resources, Division of Parks and Recreation. I further certify that the said officer was acting within the scope of her authority and powers delegated to this officer by the governing body of the Grantee in executing said License.

Signature

6/12/2023

Date

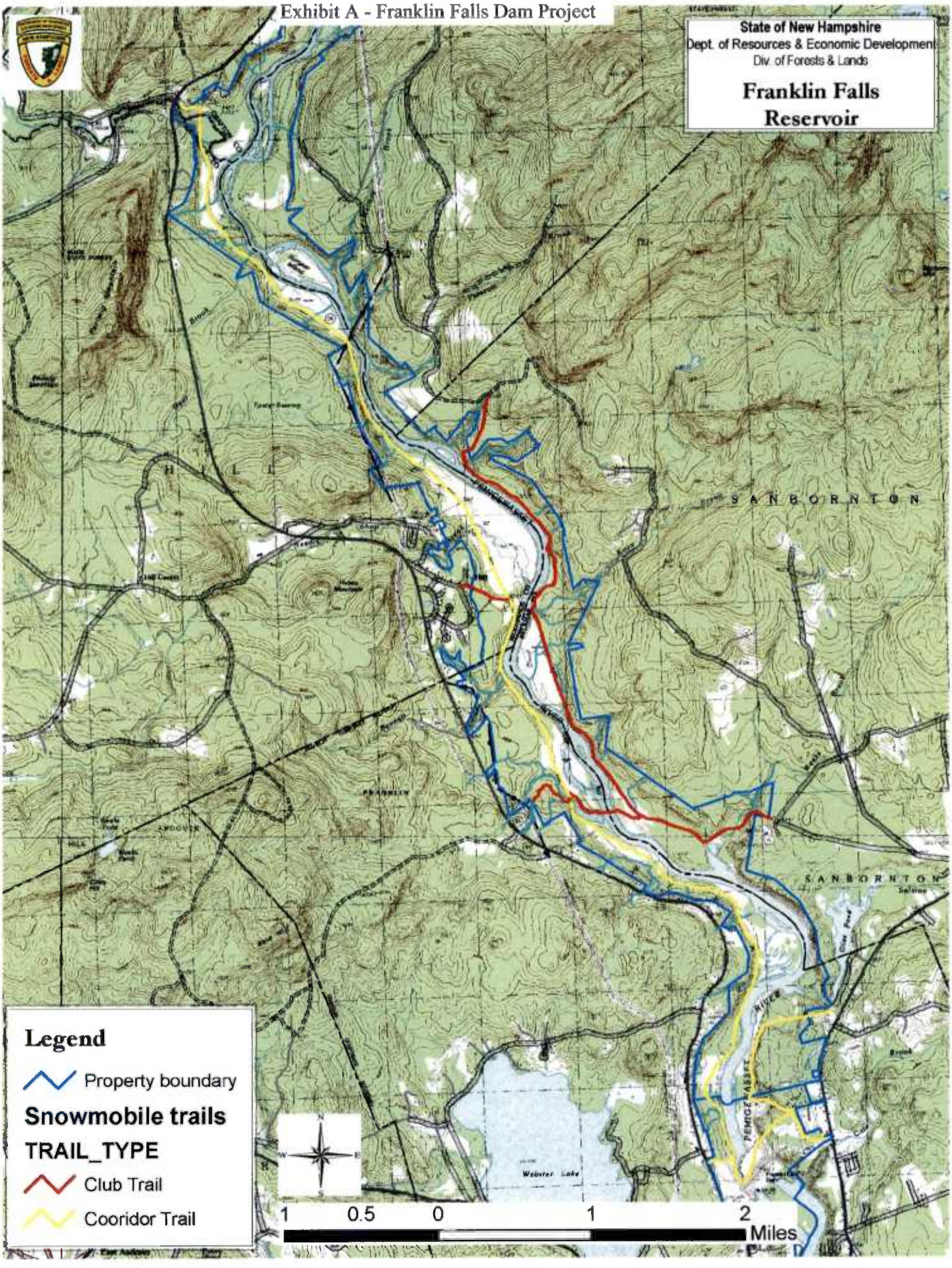
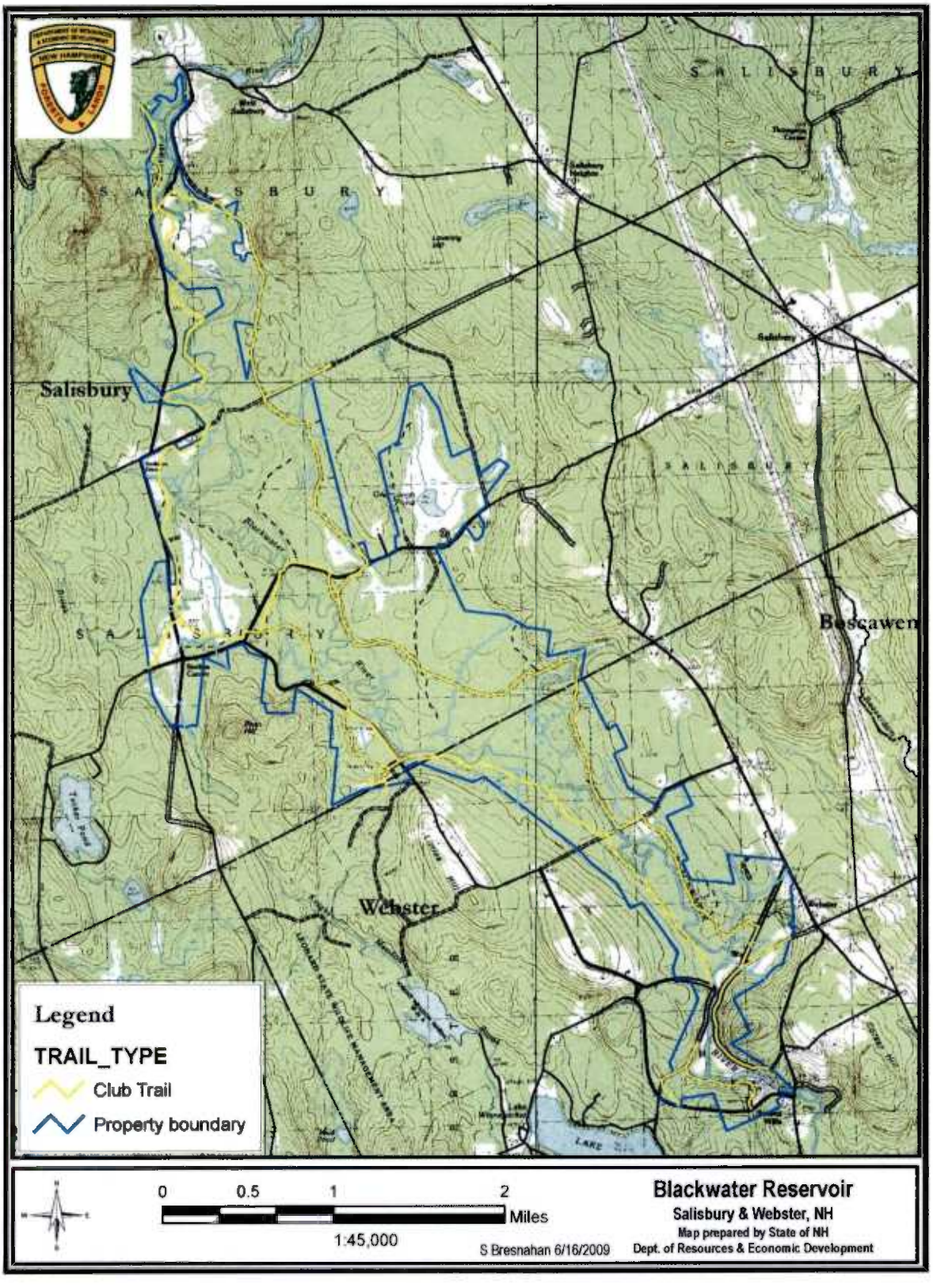


Exhibit A - Franklin Falls Dam Project
State of New Hampshire
Dept. of Resources & Economic Development
Div. of Forests & Lands
Franklin Falls
Reservoir
SANBORNTON
SANBORNTON
Legend
Property boundary
Snowmobile trails
TRAIL_TYPE
Club Trail
Cooridor Trail
1 0.5 0 1 2
Miles

EXHIBIT B – Blackwater Dam Project



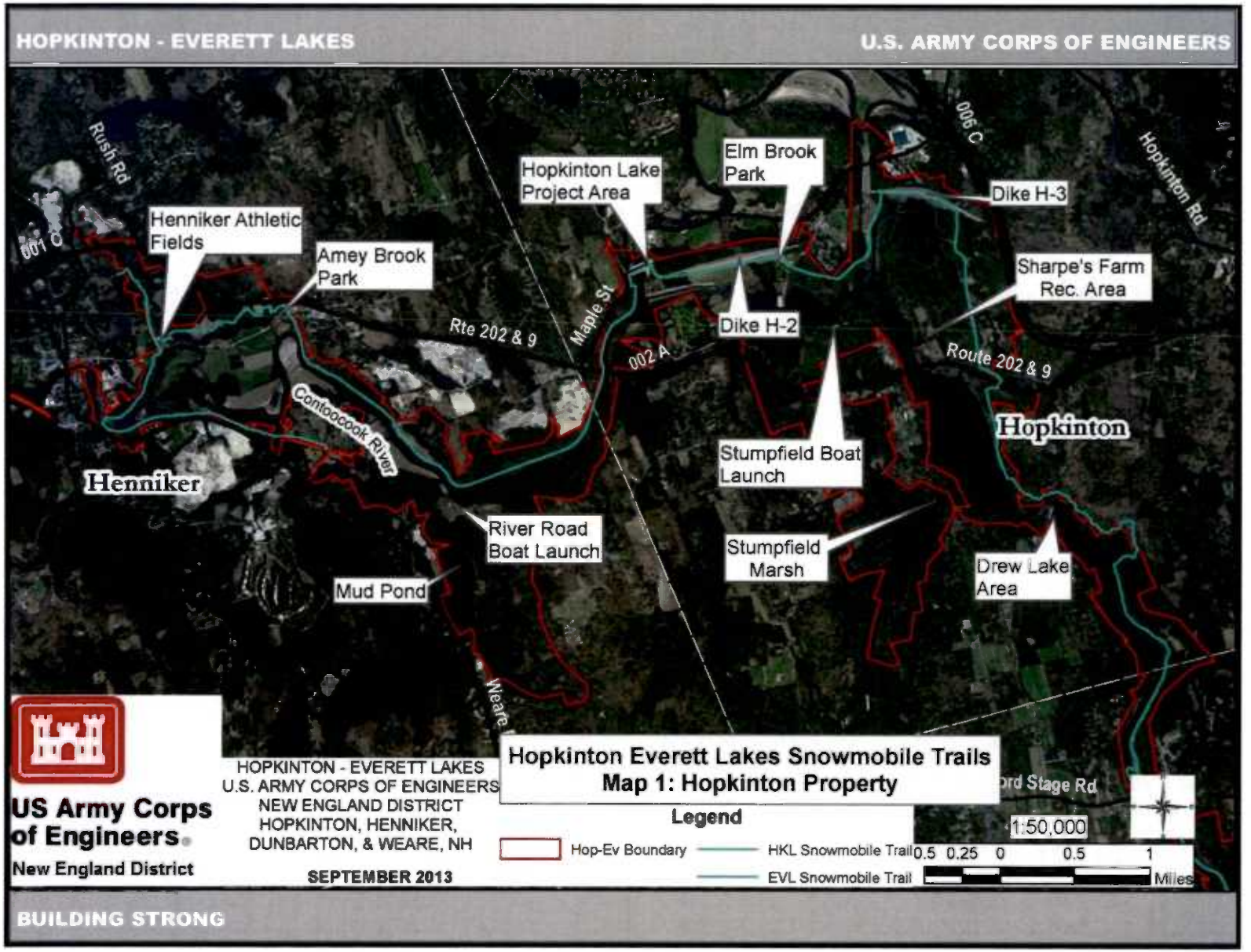


EXHIBIT C1 – Hopkinton Everett Lakes Project

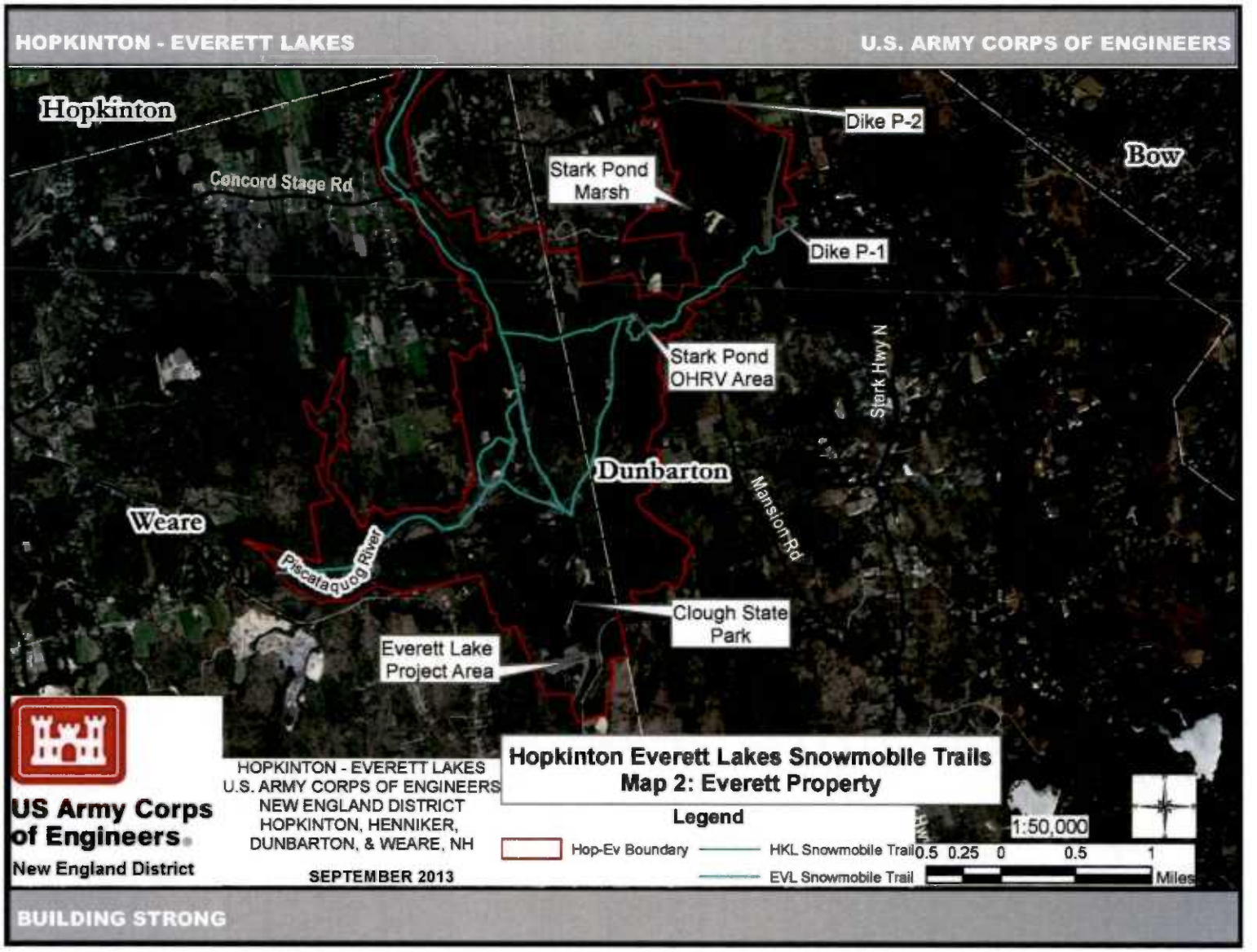
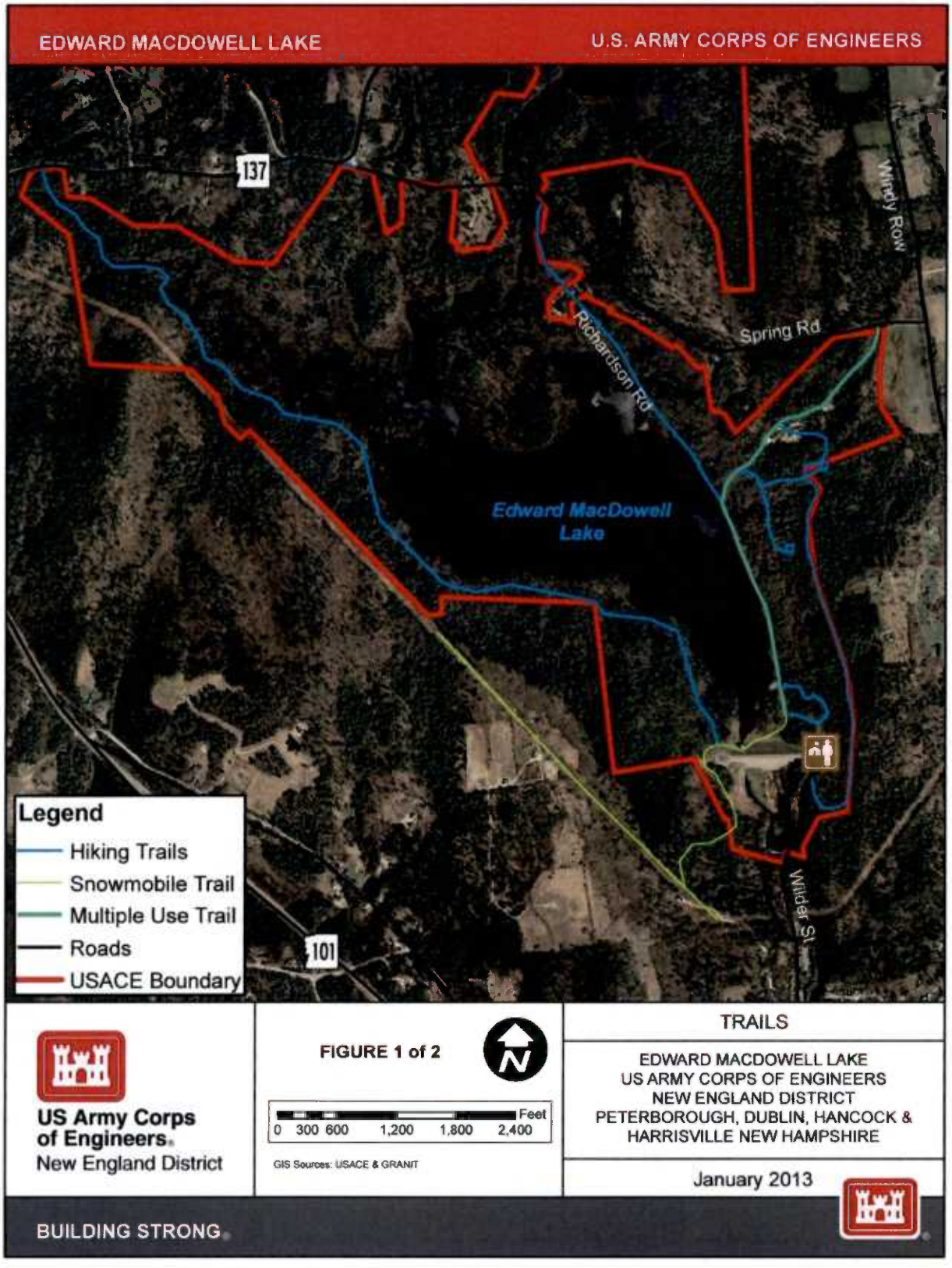
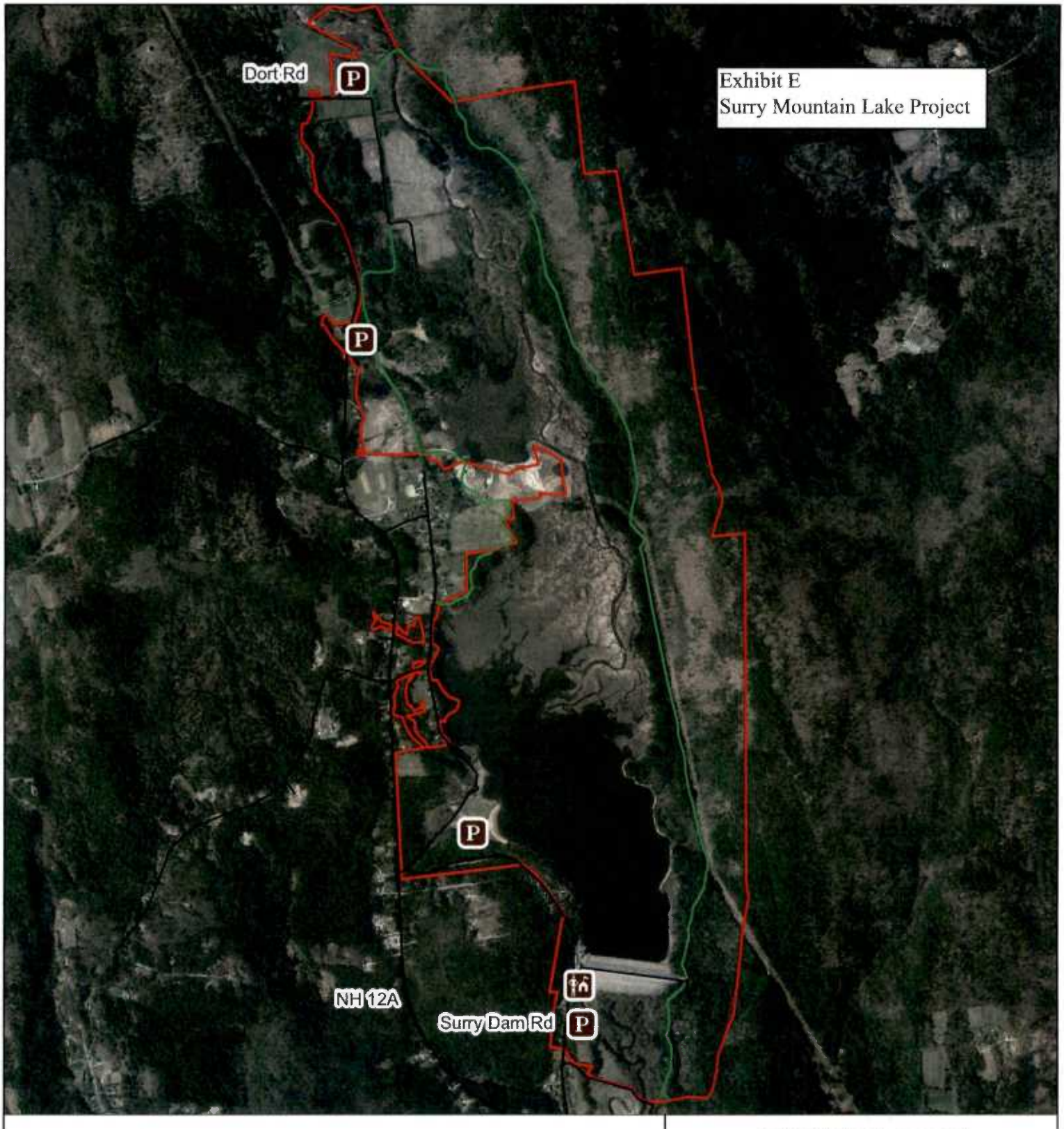


EXHIBIT C2 – Hopkinton Everett Lakes Project

EXHIBIT D – Edward MacDowell Lake Project





SNOWMOBILE TRAIL

U.S. ARMY CORPS OF ENGINEERS NEW ENGLAND DISTRICT®

Roads
Multi-Purpose Trails
USACE Boundary
Parking
Office

0 0.25 0.5 1 Miles

N

SURRY MOUNTAIN LAKE
SURRY, NH
U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT

This map is only a representation for comparison. The data layers indicate approximate real world locations.