



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

42



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
July 17, 2024

REQUESTED ACTION

The New Hampshire Department of Transportation (Department), in accordance with RSA 4:39-c and 228:31, seeks authorization to sell approximately 1.75 acres of state-owned land located at 55 North Road in the Town of Conway. The proposed buyer, the Town of Conway (Town) has agreed to acquire the land for \$175,000. The Town has also asked that the \$1,100 administrative fee be waived. This transaction will take effect upon approval by the Governor and Executive Council.

The Department's Bureau of Finance and Contracts has confirmed that the parcel was initially acquired using 100% Highway Funds.

Funding is to be credited as follows:

04-096-096-960015-0000-UUU-409279	<u>FY 2025</u>
Sale of Parcel	\$175,000
(100% of \$175,000)	

EXPLANATION

As noted above, the Department is reviewing the Buyer's request to acquire state-owned land.

The Department has deemed the sale of this parcel to be surplus to its operational needs, and it is available for disposal.

The sale will be subject to the following conditions:

- The Town shall be responsible for obtaining all local and state land use approvals prior to closing.
- If any proposed construction or alteration of structures or temporary equipment on this property will exceed 200 feet above the ground level, then the proponent will need to provide notice to the Federal Aviation Administration.

At the Long-Range Capital Planning and Utilization Committee meeting on June 10, 2024, the request (LRCP 24-026) was approved, authorizing the Department to proceed with the sale of approximately 1.75 acres of state-owned land and to waive the \$1,100 administrative fee. The sale price is set at the market value of \$175,000. The sale of this parcel to the Town helps resolve a property issue and facilitate the relocation of the Flying Yankee.

The Department respectfully requests authorization to proceed with the sale of this land, subject to the conditions noted above.

Respectfully,



William J. Cass, P.E.
Commissioner

WJC/jmp
Attachments

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 25th day of June, 2024, by and between the State of New Hampshire, Department of Transportation, having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (hereinafter referred to as the "Department") and the Town of Conway or their designee at closing (under common control), with a principal address of 23 Main Street, Conway, New Hampshire 03818 (hereinafter referred to as the "Town") (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

This Agreement relates to the sale of real estate consisting of approximately 1.75 acres of state-owned land, improved with two ancillary structures, located at 55 North Road in the Town of Conway (the "Property"). More particularly being a portion of the Property described in the Warranty Deed recorded on July 26, 1972, at the Carroll County Registry of Deeds in Book 518, Page 99.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Department owns certain real estate located at 55 North Road, Conway, New Hampshire, consisting of approximately 1.75 acres of state-owned land as described above.
- II. The Department is divesting the Property, as it has been deemed surplus to the Department's needs.
- III. The Town is afforded the ability to acquire the Property in accordance with New Hampshire State Law RSA 4:39-c.
- IV. The Town, subject to the contingencies set forth within this Agreement, desires to acquire the Property from the Department.
- V. This Agreement is a binding contract that shall become effective upon approval of the Governor and Executive Council.
- VI. All Parties to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY AND REAL ESTATE TRANSACTION:

- 1.1. **General:** Pending the results of the Town's due diligence and the other conditions in this Agreement, the Department intends to sell to the Town, and the Town intends to acquire from the Department, the Property, consisting of approximately 1.75 acres as shown on **EXHIBIT 1: Conway Patrol 208 Salt Shed** and **EXHIBIT 2: Conway Tax Map 277**.
- 1.2. **Purchase Price:** The Town shall acquire the Property for the sum of **ONE HUNDRED SEVENTY-FIVE THOUSAND (\$175,000)** dollars due at closing.
- 1.3. **Payment of Purchase Price:** The purchase price shall be paid in full by the Town, by certified check or bank check, made out to "Treasurer-State of New Hampshire", and presented to the Department at the closing and conveyance of the Property to the Town.
- 1.4. **Conditions of sale:** The Property is being sold "AS IS, WHERE IS, and WITH ALL FAULTS," with the sale conditions approved by the Long-Range Capital Planning and Utilization Committee on June 10, 2024, and pending Governor and Executive Council approval. The following sale conditions must be satisfied prior to closing.
 - 1.4.1. The Town shall be responsible for obtaining all local and state land use approvals precedent to the closing.
 - 1.4.2. If any proposed construction or alteration of structures or temporary equipment on this property will exceed 200± feet above ground level, then the proponent will need to provide notice to the Federal Aviation Administration (FAA) via <https://ocaaa.faa.gov/ocaaa/external/portal.jsp> and no construction can be initiated until the FAA has issued a determination letter about the proposal. Notification to the FAA is to be a minimum of 45 business days before initiating construction. The proponent should be made aware of this federal requirement under the US Code of Federal Regulations Title 14 Part 77.9 (<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=14:2.0.1.2.9>).
- 1.5. **Access to Property:** The Department hereby grants authorization to the Town, its employees, representatives, consultants, and agents to enter the Property for the purposes necessary to carry out the terms of this Agreement. All times and dates for such access shall require prior approval by the Department, and such approval will not be unreasonably withheld.

The Department and the Town shall coordinate all access to the Property by third parties working on behalf of the Town as part of the Town's due diligence.

The Town shall indemnify, defend, and hold harmless the Department from and against all claims, actions, damages, or losses arising out of the Town's activities under this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the Town's negligence. The Town shall require all contractors who are retained to complete due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Property, to obtain a certificate of insurance for \$2 million aggregate, \$1 million per occurrence naming the Department as an additional insured. The Town shall also require any such contractors to execute the Town's standard indemnification form naming both the Town and the Department as indemnified parties. The standard indemnification form shall be as follows unless written approval of a requested change is granted by both the Department and Town:

"The contractor agrees to indemnify, defend, and save harmless the Town and the Department, their officials, officers, agents, and employees from any claims and losses accruing or resulting to any contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the contractor in the performance of this contract. This indemnification shall survive the expiration or early termination of this contract."

- 1.6. **Closing:** The Parties agree that the Closing shall occur within ninety (90) days after final approval of the sale by the Governor and Executive Council unless otherwise mutually agreed by the Parties.
- 1.7. **Deed Preparation; Recording Fees:** The Department shall convey the Property by Quitclaim Deed. The Department shall prepare all deeds at its expense.
- 1.8. **Transfer Taxes and Recording Fees:** In accordance with New Hampshire State Law RSA 78-B:2, the Department is exempt from the Real Estate Transfer Tax.

- 1.9. **Department's Disclosures:** The Department makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Property.

 - 1.10. **Casualty and Condemnation:** In the event that the Property, before closing, is damaged by fire, flood, collapse, or other casualties, the Department, or the Town, at any time after the occurrence of such damage or casualty, may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of a casualty, the Department and the Town agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur.
2. **Representations and Warranties of the Town.** The Town hereby represents and warrants that:
- 2.1. The execution and delivery of this Agreement and the performance of the Town's obligations hereunder have been duly authorized by such action as necessary. This Agreement constitutes the legal, valid, and binding agreement of the Town, enforceable against the Town by its terms subject only to the conditions set out in this Agreement. Subject to the conditions set out in this Agreement, neither the execution nor delivery by the Town of this Agreement, the performance by the Town of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Town of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law, charter, ordinance or governmental regulation applicable to the Town, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Town is a party or by which the Town or any of its properties or assets are bound, or constitutes a default there under.

 - 2.2. Except as outlined in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Town, except such as have been duly obtained or made or disclosed in this Agreement.

 - 2.3. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Town, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by the Town of its obligations hereunder or the performance by the Town of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or

any other agreement or instrument entered into by the Town in connection with the transactions contemplated hereby.

3. **Representations and Warranties of the Department.** The Department hereby represents and warrants to the best of its knowledge and belief that:
- 3.1. The Department has the power and authority to execute, deliver, and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery, and performance of this Agreement subject to the Department seeking and obtaining final approval by the Governor and Executive Council under RSA 4:39-c. This Agreement will, upon execution and delivery thereof by the Department and upon approval by the Governor and Executive Council, constitute valid, legal, and binding obligations of the Department enforceable against the Department by the respective terms thereof.
 - 3.2. Neither the execution nor delivery by the Department of this Agreement, the performance by the Department of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Department of the terms or conditions hereof conflicts with, violates, or results in a breach of any constitution, law or governmental regulation applicable to the Department, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Department is a party or by which the Department or any of its properties or assets are bound, or constitutes a default there under.
 - 3.3. Except as outlined in this Agreement, no approval, authorization, order, or consent of, or declaration, registration, or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Department, except such as have been duly obtained or made.
 - 3.4. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Department, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Department of their obligations hereunder or the performance by the Department of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Department in connection with the transactions contemplated hereby.

4. GENERAL PROVISIONS

- 4.1. Cooperation: The Town and the Department agree to cooperate with each other to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Department, the Town, or their representatives, agents, and consultants.
- 4.2. Entire Agreement; Amendments: This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification, or amendment, that requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 4.3. Binding Effect; Successors and Assignors. The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 4.4. Headings. The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 4.5. Exhibits. All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 4.6. Governing Law. This Agreement shall in all respects be governed by, and construed and enforced by, the laws of the State of New Hampshire.
- 4.7. Enforceability. Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 4.8. Consent to Jurisdiction and Venue. The Department and the Town submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties

shall be commenced in Merrimack County Superior Court. Both Parties hereby waive their right to a jury trial.

- 4.9. **Independent Parties.** The Department and the Town are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 4.10. **Survival of Agreement.** The agreements, covenants, and representations contained herein shall survive the execution and delivery of this Agreement.
- 4.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 4.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 4.13. **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies the Town may have for the collection of real property taxes under the law unless expressly set forth herein.
- 4.14. **Time of the Essence.** The Parties agree that time is of the essence in the performance of their respective obligations under this Agreement.
- 4.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction,

request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

- 4.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Town or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable governmental subdivisions, Boards, Committees, Commissions, or agencies, including but not limited to the requirement that the agreement is to be approved by the Governor and Executive Council under RSA 4:39-c before the Department being required and/or authorized to convey the property to the Town.
- 4.17. **Warranties and Representations:** The Department and the Town each acknowledge that they have not been influenced to enter this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 4.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

LIST OF EXHIBITS

EXHIBIT 1: Conway Patrol 208 Salt Shed.

EXHIBIT 2: Conway Tax Map 277

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TOWN:

By:  Date: 6/25/24

Printed: John Eastman
Town Manager, Town of Conway
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF

Signed or attested before me on the 25 day of June, 2024.

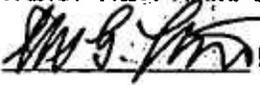

Justice of the Peace/Notary Public

(Seal) My Commission Expires:

KRISTAL DAY
Notary Public - New Hampshire
My Commission Expires March 22, 2028

SELLER:

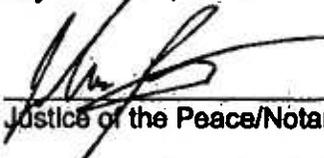
STATE OF NEW HAMPSHIRE

By:  Date: 7/17/24

Printed: Stephen G. LaBonte
Administrator, Bureau of Right-of-Way
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Signed or attested before me on the 17th day of July, 2024.

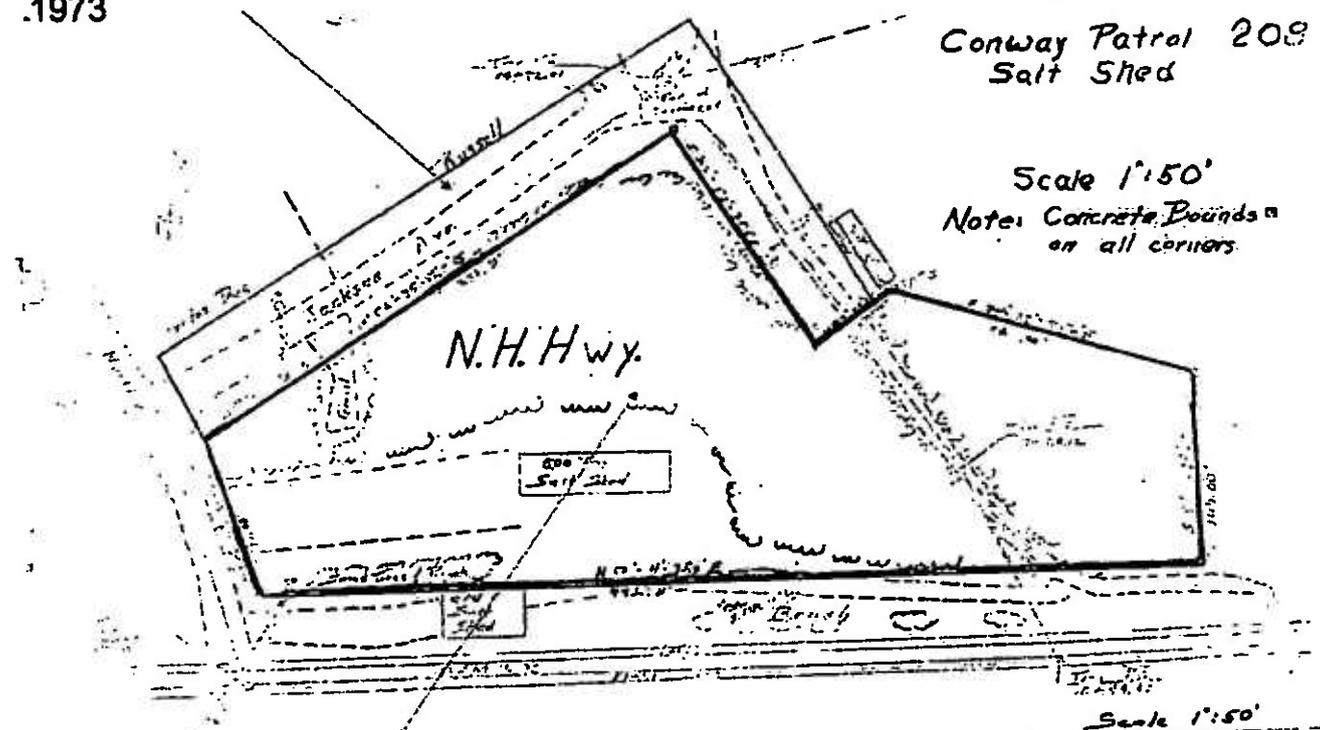

Justice of the Peace/Notary Public

(Seal) My Commission Expires:

JORDAN M. PETERS
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
September 7, 2027

EXHIBIT 1

Area Conveyed to the
Town of Conway in
.1973



Conway Patrol 208
Salt Shed

Scale 1:50'
Note: Concrete Bounds on
all corners.

N.H. Hwy.

Salt Shed

Photo Reduced

Scale 1:50'

New Hampshire
DA 6741

Area of the current
request to the Town
of Conway



TOWN OF CONWAY

23 MAIN STREET • P.O. BOX 2680 • CONWAY, NEW HAMPSHIRE 03818

(603) 447-3811
WWW.CONWAYNH.ORG

NHDOT
Sandra Newman, Property Management
Bureau of Right-of-Way
JO Morton Building-100
7 Hazen Drive, PO Box 0483
Concord, NH 03302-0483

April 16, 2024

DEPT. OF TRANSPORTATION
BUREAU OF RIGHT OF WAY

APR 17 2024

RECEIVED

Dear Ms. Newman,

This letter is in regards to the Town of Conway having an interest in acquiring the state-owned land, located at 55 North Road in the Town of Conway.

The Town of Conway is prepared to pay the determined market value of \$175,000 for this piece of property. This letter can confirm the Town of Conway's interest in continuing the process to acquire this parcel.

I would ask for your assistance when you submit our request to the Long-Range Capital Planning and Utilization Committee that we could be relieved from the administrative fee.

I appreciate your help and am looking forward to hearing back from you after June 10 when the committee convenes.

Sincerely,


John Eastman, Town Manager
Town of Conway

cc: Paul DegliAngeli, Deputy Town Manager
Lisa Weir, Chief of Property Management
Adam Smith, Assistant Administrator

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

LCP 24-026

FROM: Stephen G. LaBonte
Administrator

DATE: May 21, 2024

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

SUBJECT: Sale of State-Owned Land in Conway
RSA 4:39-c

TO: Representative Mark McConkey, Chairman
Long Range Capital Planning and Utilization Committee

REQUESTED ACTION

The State of New Hampshire Department of Transportation, in accordance with RSA 4:39-c, hereby seeks authorization to sell approximately 1.75 acres of state-owned land, located at 55 North Road in the Town of Conway. The proposed sale will be to the Town of Conway (Town) for \$175,000.

Pursuant to RSA 4:40, III-a, the Department, at the request of the Town of Conway, requests authorization to waive the \$1,100 administrative fee.

EXPLANATION

The Department is currently in the process of disposing of a parcel of state-owned land as outlined above. In 1972, the Department acquired this parcel via a Warranty Deed from Leon Bolduc for the amount of \$7,500. This parcel was acquired for the construction of the Conway Patrol 208 Salt Shed via State Project B-1977 and is depicted on the New Hampshire Highway Department Plan, attached herewith. The salt shed has since been removed. The sale will be subject to the specific conditions outlined below:

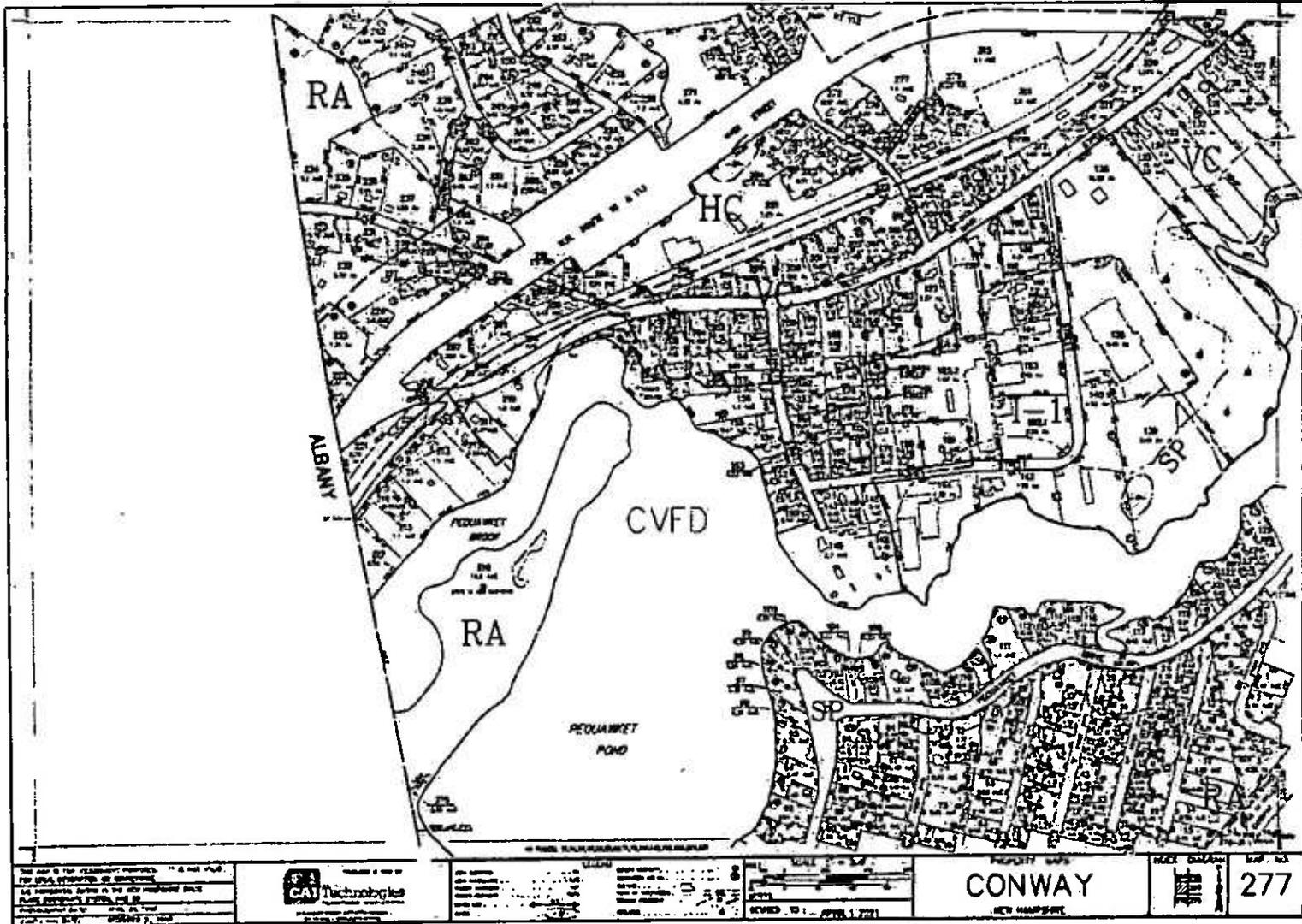
- The Town will be responsible for obtaining all local and state land use approvals before closing.
- The Town will be made aware of any Federal Aviation Administration notice requirements for any proposed construction or alteration of structures or temporary equipment on this property that will exceed 200± feet above ground level.

A Staff Appraiser for the Department evaluated the disposal area. Utilizing the sales comparison approach and adhering to the guidelines outlined in the Right of Way Manual and the Uniform Standards of Professional Appraisal Practice, a market value was prepared. As of February 9, 2024, the determined market value is \$175,000.

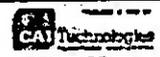
The Department respectfully requests authorization to sell the parcel as outlined above.

SGL/SJN/jl
Attachments

Subject
Parcel



THE MAP IS THE PROPERTY OF THE USER AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM. ANY VIOLATION OF THIS NOTICE IS SUBJECT TO PROSECUTION.



LEGEND
PROPERTY LINES
STREETS
UTILITY LINES
ELECTRIC
GAS
SEWER
WATER

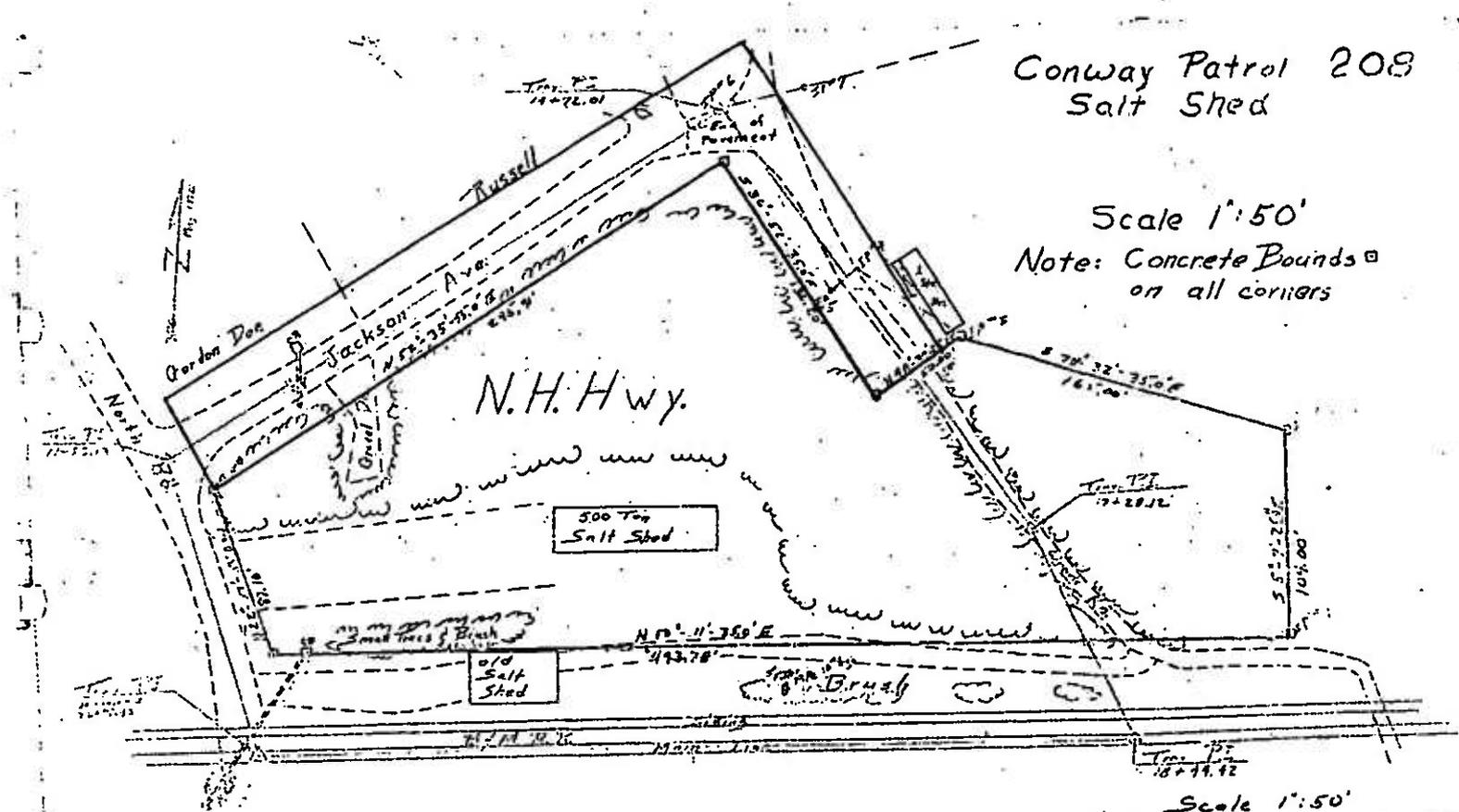
SCALE 1" = 500'
GRAPHIC SCALE BAR
CONWAY, NH 03824

PROJECT NO. 277
DATE 11-1-2011

CONWAY
NEW HAMPSHIRE
PROJECT NO. 277

Parcel Mosaic Viewer





Conway Patrol 208
Salt Shed

Scale 1"=50'
Note: Concrete Bounds on all corners

Scale 1"=50'

Photo. Reduced

New Hampshire Highway Dept.	
208	11-27-41

062741