



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

25



William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Her Excellency, Governor Kelly A. Ayotte
and the Honorable Council
State House
Concord, New Hampshire 03301

Bureau of Right-of-Way
December 16, 2024

REQUESTED ACTION

Pursuant to RSA 4:39-c, authorize the New Hampshire Department of Transportation (Department) to sell 4.7 +/- acres of State-owned land, located on the southerly side of NH Route 302 (Eastman Road) in the Town of Conway. The sale will be direct to an abutter, Bayard Kennett or designee Continuum at North Conway LLC (Grantee) for \$940,000, and an additional \$1,100 administrative fee, effective upon approval of the Governor and Executive Council.

The Department's Bureau of Finance and Contracts has determined the parcel was originally purchased with 60% Federal Funds and 40% Highway Funds.

Funding is to be credited as follows:

04-096-096-960015-0000-UUU-402156	<u>FY 2025</u>
Administrative Fee	\$1,100
04-096-096-963015-3049-405215	<u>FY 2025</u>
Federal Funds Payback	\$564,000
(60% of \$940,000)	
04-096-096-963515-3054-401771	<u>FY 2025</u>
Highway Funds	\$376,000
(40% of \$940,000)	

EXPLANATION

The Department received a request from Bayard Kennett (Grantee) to acquire the parcel to develop the area. The Grantee owns land located on all three sides of the subject parcel. The Grantee has a site plan in review for development that includes a drive-thru coffee shop, bank, 226 residential rentals, 112-bed senior care facility, 33 senior housing units, 52,000 SF medical office space, and 100 student daycare

center, in addition to the existing high school. It has been determined that access would be granted from the Grantee's current parcels.

The parcel is a portion of a larger parcel acquired in 1999 via condemnation from Frances Stearns Kennett Revocable Trust, Frances Stearns Kennett, Trustee, et al. At the time of the acquisition, the Department acquired an area of 6.2 +/- acres for \$2,289,000. The parcel acquired contains a detention pond to be used as a stormwater treatment area, 1.5 +/- acres will be retained by NHDOT for this purpose.

Under RSA 4:39-c, this sale has been reviewed by the Department and determined to be surplus to our operational needs. The sale will include the following conditions:

- The Grantee must commission a Land Surveyor Licensed in New Hampshire to prepare a perimeter boundary plan illustrating the existing right-of-way or any mutually agreed-upon adjustments. All survey work must adhere to the New Hampshire Code of Administrative Rules 503.09 and encompass all elements outlined in the NHDOT Right-of-Way Layout Plan checklist. All deflection points PTs and PCs shall be monumented and shown on the preliminary plan to be submitted to the Department for review and approval. Following approval from the Department, the surveyor is obligated to record the plan in the Carroll County Registry of Deeds. Upon request, the buyer shall furnish a full-size copy of the recorded plan along with a draft legal description of the parcel to be conveyed.
- The Right-of-Way plans reflect the Grantee was previously granted two access points on adjacent parcels which are currently owned by the Grantee. No additional access will be granted to the subject parcel from U.S. Route 302.
- The newly established Right-of-Way along U.S. Route 302 should be adjusted to reflect a CAROW, consistent with the CAROW on either side.
- The Department will retain an approximate 1.5 +/- acres of drainage area for the detention pond located on the property.
- Excepting and reserving a slope easement from Station 57+29.305 to Station 59+07.974 as depicted on the plan titled "Conway 11339G General Plan" on file at the Department of Transportation and further defined on the required survey plan.
- The Grantee will be responsible for obtaining local and State approvals.

At the April 12, 2024, meeting of the Long-Range Capital Planning and Utilization Committee the request (LRCP24-014) was approved, allowing the Department to sell the 4.7 +/- acres of State-owned land directly to the abutter, Bayard Kennett, for the market value of \$940,000 and to assess an \$1,100 administrative fee.

Pursuant to RSA 4:39-c, the Department has solicited interest from the Town of Conway and received a response on August 20, 2024, that on May 14, 2024, the Board of Selectman voted against purchasing the property.

Pursuant to RSA 204-D:2, the Department also solicited interest from the New Hampshire Housing Finance Authority and received no response.

The Department is respectfully requesting authorization for the sale of land, as noted above.

Respectfully,

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

William J. Cass, P.E.
Commissioner

WJC/EEA
Attachments

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 9th day of December, 2024, by and between the State of New Hampshire, Department of Transportation, (hereinafter the "Department") having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 and Bayard Kennett or their designee (Continuum at North Conway, LLC) at closing (under common control), with a mailing address of PO Box 1350, Conway, New Hampshire, 03818 (hereinafter the "Buyer"). The Department and Buyer are referred to collectively as the "Parties" and individually as a "Party".

RECITALS

This Agreement relates to the sale of real estate consisting of 6.2 +/- acres of vacant land located on the southerly side of NH Route 302 (Eastman Road) in the Town of Conway, County of Carroll, and State of New Hampshire (hereinafter the "Property"). More particularly being a portion of the Property described in the Conway Bypass Project (11339B). The Property was acquired in 1999 from the Frances Stearns Kennett Revocable Trust. The State shall maintain 1.5 +/- acres on the easterly side of the property with a stormwater treatment detention pond. The total acreage being acquired by the Buyer is 4.7 +/- acres.

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 on the southerly side of NH Route 302 (Eastman Road), Conway, New Hampshire, consisting of 4.7 +/- of an acre of vacant land as described above.
- II. The Department is divesting the Property, as it has been deemed surplus to the Department's operational needs.
- III. The Buyer is afforded the ability to acquire the Property in accordance with New Hampshire State Law RSA 4:39-c.
- IV. The Buyer, 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 Buyer's due diligence and the other conditions in this Agreement, the Department intends to sell to the Buyer, and the Buyer intends to acquire from the Department, the Property, consisting of 4.7 +/- acres, as shown on **EXHIBIT 1: Conway Bypass Project (11339B) Sheet #s 7, 8 and 10** and **EXHIBIT 2: Conway Tax Map 246, Lot 64**.
- 1.2. **Purchase Price:** The Buyer shall acquire the Property for the sum of **NINE HUNDRED FORTY THOUSAND DOLLARS (\$940,000)** due at closing. The amount due at closing will include the purchase price and the remaining balance of \$600, which is credited towards the \$1,100 administrative fee for processing this request (\$500 was previously received), for a combined sum of **NINE HUNDRED FORTY THOUSAND SIX HUNDRED DOLLARS (\$940,600)**.
- 1.3. **Payment of Purchase Price:** The purchase price shall be paid in full by the Buyer, 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 Buyer.
- 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 April 12, 2024, (24-014) pending the Governor and Executive Council approval. The following sale conditions must be satisfied prior to closing.
 - 1.4.1 The Buyer must commission a Land Surveyor licensed in New Hampshire to prepare a perimeter boundary plan illustrating the existing Right-of-Way or any mutually agreed-upon adjustments. All survey work must adhere to the New Hampshire Code of Administrative Rules 503.09 (listed as **EXHIBIT 3**) and encompass all elements outlined in the NHDOT Right-of-Way Layout Plan checklist (listed as **EXHIBIT 4**). The Preliminary plans, submitted for review and approval by the NHDOT Bureau of Right-of-Way, must include all missing and proposed boundary lines, as well as Right-of-way deflection points, PTs, and PCs, appropriately monumented. Following approval from the Department, the surveyor is obligated to record the plan in the Carroll County Registry of Deeds. Upon request, the Buyer shall furnish a full-size copy of the recorded plan along with a draft legal description of the parcel to be conveyed.
 - 1.4.2 The Buyer shall be responsible for obtaining all local and State land use approvals precedent to the closing.

- 1.4.3 The newly established ROW along US Route 302 should be CAROW, consistent with the CAROW on either side.
- 1.4.4 The subject parcel will not be allowed to have access to US Route 302.
- 1.4.5 The Department will retain approximately 1.5 acres of land, in the eastern portion of the subject parcel for a drainage area/detention pond located on the property.
- 1.4.6 Excepting and reserving a slope easement from Station 57+29.305 to Station 59+07.974, as depicted on the plan titles "Conway 11339G General Plan" on file at the Department of Transportation and further defined on the required survey plan.
- 1.5. **Access to Property:** The Department hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Property to complete due diligence and for all other 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 Buyer shall coordinate all access to the Property by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

The Buyer shall indemnify, defend, and hold harmless the Department from and against all claims, actions, damages, or losses arising out of the Buyer's activities under this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the Buyer's negligence. The Buyer 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 Buyer shall also require any such contractors to execute the Buyer's standard indemnification form naming both the Buyer 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 Buyer:

"The contractor agrees to indemnify, defend, and save harmless the Buyer 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 one hundred eighty (180) 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:** Pursuant to the 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 Buyer, 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 Buyer agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur.
2. **Buyer's Contingencies:** The Buyer's obligation to Close on the acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Department.
- 2.1. **Title: Time being of the essence,** upon execution of this Agreement by the Parties, the Buyer may perform a title examination of the Property within fifteen (15) days, to be reasonably satisfied that title to the Property is marketable and insurable. If upon examination of the title it is found not marketable or insurable, after identifying to the Department in writing any apparent title defects and providing the Department reasonable opportunity to cure them, this agreement may be rescinded at the option of the Buyer or Department and all deposits shall be refunded to the Buyer, provided that written notice is delivered within the said time frame, time being of the essence. If no notice is given within said time frame, then any objections to the title are waived.
3. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants that:

- 3.1 The execution and delivery of this Agreement and the performance of the Buyer's obligations hereunder have been duly authorized by such action as necessary. This Agreement constitutes the legal, valid, and binding agreement of the Buyer, enforceable against the Buyer by its terms subject only to the conditions set out in this Agreement.
- 3.2 Subject to the conditions set out in this Agreement, neither the execution nor delivery by the Buyer of this Agreement, the performance by the Buyer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer 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 Buyer, 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 Buyer is a party or by which the Buyer 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 Buyer, except such as have been duly obtained or made or disclosed in this Agreement.
- 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 Buyer, wherein an unfavorable decision, ruling, or finding would materially adversely affect the performance by the Buyer of its obligations hereunder or the performance by the Buyer 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 Buyer in connection with the transactions contemplated hereby.

4 **Representations and Warranties of the Department.** The Department hereby represents and warrants to the best of its knowledge and belief that:

- 4.1 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 in accordance with 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.

- 4.2 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.
- 4.3 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.
- 4.4 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.

5 GENERAL PROVISIONS

- 5.1 **Cooperation:** The Buyer 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 Buyer, or their representatives, agents, and consultants.
- 5.2 **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.

- 5.3 **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.
- 5.4 **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.
- 5.5 **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6 **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced by, the laws of the State of New Hampshire.
- 5.7 **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.
- 5.8 **Consent to Jurisdiction and Venue.** The Department and the Buyer 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.
- 5.9 **Independent Parties.** The Department and the Buyer 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.
- 5.10 **Survival of Agreement.** The agreements, covenants, and representations contained herein shall survive the execution and delivery of this Agreement.
- 5.11 **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.
- 5.12 **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.

- 5.13 **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies the Buyer may have for the collection of real property taxes under the law unless expressly set forth herein.
- 5.14 **Time of the Essence.** The Parties agree that time is of the essence in the performance of their respective obligations under this Agreement.
- 5.15 **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.
- 5.16 **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Buyer 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 Buyer.
- 5.17 **Warranties and Representations:** The Department and the Buyer 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.
- 5.18 **Severability 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 Bypass Project (11339B) Sheet #s 7, 8 and 10

EXHIBIT 2: Conway Tax Map 246, Lot 62.

EXHIBIT 3: New Hampshire Code of Administrative Rules 503.09

EXHIBIT 4: Right-of-Way Layout Plan Checklist.

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BUYERS:

By: Joseph F. Hogue Date: 12/9/2024
CONTINUUM of North Conway, LLC

Printed: Bayard Kennett or Designee
Duly Authorized

Maine
STATE OF NEW HAMPSHIRE
COUNTY OF Cumberland

Signed or attested before me on the 9 day of December, 2024.

Vadim V Popov
Justice of the Peace/Notary Public

VADIM V POPOV
NOTARY PUBLIC
State of Maine
My Commission Expires
September 20, 2029

(Seal)

My Commission Expires: _____

SELLER:

STATE OF NEW HAMPSHIRE
By: Eric Sargent Date: 12-13-2024

Printed: Eric Sargent
Administrator, Bureau of Right-of-Way
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Signed or attested before me on the 13th day of December, 2024.

Emily E. Allen
Justice of the Peace/Notary Public

EMILY E. ALLEN
JUSTICE OF THE PEACE
State of New Hampshire
My Commission Expires March 18, 2029

My Commission Expires: 3/18/29

(Seal)





Exhibit 2

EXHIBIT 8



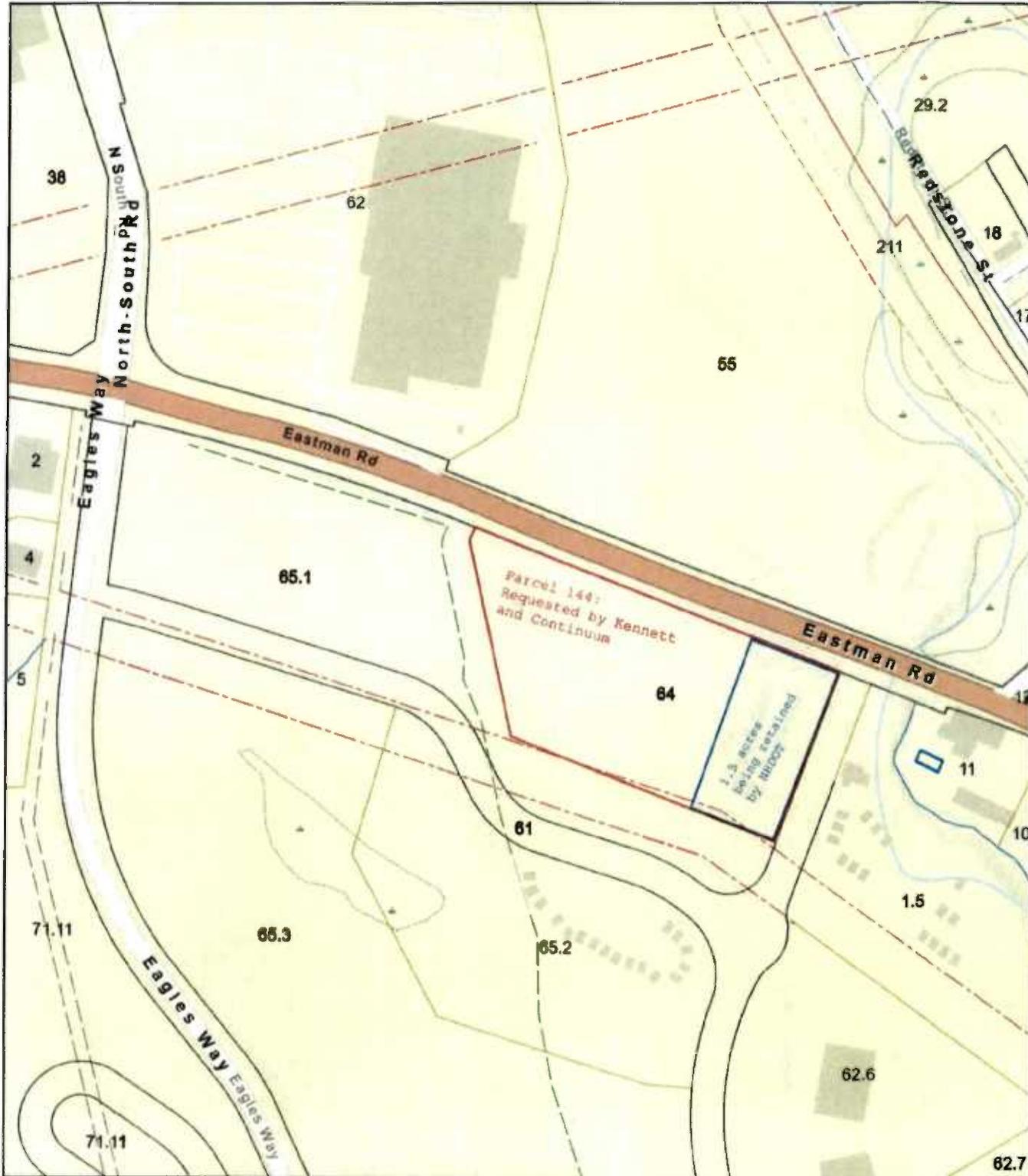
Town of Conway, NH

1 inch = 272 Feet



www.cai-tech.com

November 4, 2024



The property data available on this site is updated periodically. The Town of Conway makes no warranties with regard to its accuracy or completeness and assumes no liability associated with the use of this data.

EXHIBIT 3

N.H. Code Admin. R. Lan 503.09

Current through Register Vol. 42, No. 41, October 13, 2022

Section Lan 503.09 – Plats

(a) For results of a survey where a plat is prepared, the plat shall identify the tract or parcel and contain enough information so that the boundaries of the parcel of interest can be located with certainty in the future by a competent land surveyor.

(b) As appropriate to the purpose of the survey, a survey plat shall contain, but not be limited to, containing the following:

- (1) The municipality, date, scale, bar scale, and description or purpose of the plan;
- (2) The name and address of the company or individual which prepared the plat, or both, and the name and seal of the licensed land surveyor;
- (3) Owner of record with a mailing address, assessor's parcel number, and title reference;
- (4) Meridian arrow and origin with the date of observation or reference plat;
- (5) Vicinity map;
- (6) Bearing and horizontal distances on all pertinent property lines;
- (7) Curved boundary lines showing radius, delta, and length;
- (8) On non-tangent curves, a course and distance of the long chord shall be shown;
- (9) Irregular boundaries without curves, such as rivers or streams, or with curves which have no definable geometry, shall have sufficient information to mathematically close the plat;
- (10) Tie lines, when used, shall be noted that they are not property lines;
- (11) All monuments set or found, including monuments with tie lines on which establishment of the corners of the surveyed premises are dependent;
- (12) Monuments shall be described as to material, and the relation of the monument to the surveyed lines and/or corner;
- (13) Lines of possession where they affect the surveyed boundaries;
- (14) Abutters with title reference and assessor's parcel number;

- (15)** Easement and right-of-way limits, references to easements and encumbrances of record, whether private or public and evidence of any unwritten interests observed, to the extent that they have a physical effect on the land;
- (16)** Revision dates and purposes;
- (17)** Legend, unless symbols are clearly identified within the plat;
- (18)** Man-made structures pertinent to the purpose of the surveyed project;
- (19)** Plats and data relevant to the survey;
- (20)** Any record evidence of a cemetery or burial ground shall be duly noted on the plat unless such cemetery or burial ground is located on the plat;
- (21)** The area of the subject tract or parcel, expressed in acres unless the area is less than 2 acres, in which case the area may be expressed in square feet;
- (22)** If a boundary, easement, or right-of-way shown on the tract is an elevation, the referenced datum shall be noted on the plat along with at least one permanent benchmark with reference elevation;
- (23)** All benchmarks shall be adequately described on topographic surveys or boundary surveys when property lines are defined by an elevation to enable it to be recovered at a later date;
- (24)** A certification by the land surveyor stating the method and classification of the survey or the precision and accuracy attained; and
- (25)** If coordinates of positions are shown the following shall also be included:
- a. The units of reported coordinates;
 - b. The horizontal datum and coordinate system of the horizontal coordinates;
 - c. Vertical datum of the vertical coordinates; and
 - d. Basis of bearings.

N.H. Code Admin. R. Lan 503.09

EXHIBIT 4

RIGHT-OF-WAY LAYOUT PLAN CHECKLIST

Revised 1/31/2024

PROJECT: _____

(Refer to Sample ROW Plans in Volume II of the Highway Design Manual. Any variations must be approved through the NHDOT licensed land surveyor in charge of Survey and Mapping, Bureau of Right-Of-Way)

The plans being submitted to the Registries for recording as required by RSA230:32 shall be legible and have no obscured annotations for all proposed and existing detail. Registry plans shall meet the requirements of the County Registry of Deeds and the Plat Law RSA 478:1-a. Plans shall be prepared by a NH Licensed Land Surveyor and /or staff directly supervised by the Licensed Land Surveyor.

I. RIGHT-OF-WAY FRONT SHEET

A. <u>Location Map</u>	Done By/Date	Checked By/Date	Comments
1 Project location designated with a circle			
2 State project number attached to circle			
3 North arrow			
4 Town, city, county, country & state names labeled with boundaries			
5 Major roads, rivers, brooks, streams, lakes, etc. labeled			
6 Railroads (RR) labeled			
7 Leaders of location map box extend to the project location on the State of NH outline			
8 Graphic scale			

B. <u>Layout</u>	Done By/Date	Checked By/Date	Comments
1 ROW Alignment(s) stationed every 500 feet			
2 Road names and Route numbers			
3 Identify intersecting highways, bridges, railroads, rivers, streams, brooks, water course flow arrows and lakes shown			
4 Town/City, County & State boundaries shown and labeled			
5 "To (Town or City)" at ends of the project with destination arrows on State Routes.			
6 North arrow (grid)			
7 Town/City of () - include only those Towns/Cities affected			
8 County of () - include only those Counties affected			
9 Scale (1" = XXX')			

C. <u>Miscellaneous</u>	Done By/Date	Checked By/Date	Comments
1 Plan Intent and notes relating to coordinates, property lines, and existing layout source			
2 Project name with Federal & State numbers			
3 Road name and route number in sheet title			
4 Title block completed with project number & sheet numbers			
5 LLS Stamp and Signature			
6 Layout Hearing Notes and Signatures			
7 Survey Certification for Recording (RSA 676:18, III)			
8 Survey Certification for Class "U" Boundary Survey			

RIGHT-OF-WAY LAYOUT PLAN CHECKLIST

Revised 1/31/2024

NOTE: Symbol, Summary or Property Layout sheets are not required for registry plan sets

Right-of-Way alignments are defined as the alignments used to acquire lands and easements and the setting of the Right-of-Way boundaries and related easements. In areas where there has not been a prior Right-of-Way project, the construction project alignment will be used for Right-of-Way acquisitions. The Construction alignment will also be used on highway realignment projects and shall match into the original alignment at the beginning and end of the realignment.

II. RIGHT-OF-WAY GEOMETRIC LAYOUT SHEET

Right-of-Way geometric sheets are required to show the relationship between individual right-of-way alignments and construction alignments. All alignments need to be tied together geometrically and referenced to the Right-of-Way boundary. If all the geometric data can be shown on the Right-of-Way plan sheets, then the Geometric Layout Sheet may be eliminated.

A.	Plan	Done By/Date	Checked By/Date	Comments
1	ROW alignment(s) stationed every 500 feet			
2	Construction alignments stationed every 500 feet with equations tying the ROW alignment to the proposed construction alignment			
3	Route numbers and/or names of roads			
4	Town/city, county, country, and state boundaries shown and labeled			
5	Match lines (if appropriate)			
6	North arrow (grid)			
7	ROW alignment metes and bounds with PI coordinates and curve data shown as delta, length, radius, tangent and include chord bearing and distance for non-tangent curves.			
8	ROW alignment curve control points shown and labeled (PC, PT, etc.)			
9	Exclude all existing and proposed detail			
10	Exclude all property information (property lines, owner names, parcel numbers, etc.)			
11	Exclude all ROW information (existing and proposed ROW, easements, etc.)			
12	Approximate scale shown as bar scale and written			

B. Miscellaneous

1	Sheet title border filled in completely with road/route name, "RIGHT-OF-WAY GEOMETRIC LAYOUT SHEET", "TOWN/CITY OF ..." project number, sheet number, total sheets, and model name (if used)			
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RIGHT-OF-WAY LAYOUT PLAN CHECKLIST

Revised 1/31/2024

III. RIGHT-OF-WAY PLAN SHEET(S)

A. Miscellaneous

	Done By/Date	Checked By/Date	Comments
1			North arrow (grid)
2			Graphic scale
3			Legend
4			Acquisition summary box
5			Provide match lines from sheet to sheet (e.g. Match to ROWSH05)
6			Sheet title border filled in completely with road/route name, "RIGHT-OF-WAY LAYOUT PLANS", "TOWN/CITY OF ..." and "COUNTY OF...", project number, sheet number, total sheets, and model name (if used)

B. Existing Detail

1			Parcel numbers and owners' name (as shown on the 12345ERT.dgn) shown on every sheet the parcel appears on
2			Tax map and lot number for every parcel on each sheet the parcel appears on
3			Book and page and area for each parcel on every sheet the parcel appears on (include boundary plan recorded reference if available)
4			ROW lines and property lines
5			All Right-of-Way and alignments to be defined with metes and bounds. (coordinates must be shown at beginning and end of the project on the mainline alignment)
6			ROW alignments - include 100' stationing with 50' ticks, bearing on tangent sections, stations at PC, PT, and curve data (include delta, radius, tangent, arc length and chord bearing and distance)
7			Flag existing ROW alignment at PC, PT and every 500' minimum with station and offset
8			Existing ROW: label existing ROW appropriately (include source of layout) on all cut sheets (label on inside of ROW) in the event of CAROW include the number of points of access and the project they were granted under
9			Existing ROW transition points with arrows
10			Existing easements with labels and notes
11			Town/city, county, country, and state boundaries shown and labeled
12			Existing iron pins, bounds, drill holes etc. (with flags and /or survey ties)
13			Fence lines and stonewalls (exclude annotation)
14			Geodetic disks
15			Streams, shorelines, brooks, and rivers with flow arrows and names
16			Limits of roadway, existing edge of pavement and curb line
17			Additional detail may be included and will be reviewed for readability by NHDOT.

RIGHT-OF-WAY LAYOUT PLAN CHECKLIST

Revised 1/31/2024

D.

	<u>Proposed Detail</u>	Done By/Date	Checked By/Date	Comments
	Summary table for each parcel shown on each sheet the parcel appears on.			
1	Areas of takes and permanent easements labeled individually on plan and listed in summary box (areas less than an acre shall be in square feet)			
2	Areas of takes and easements completely within the parcel shall be labelled exact. Areas abutting property lines or a meander line (ie: brook, river, shoreline) labelled +/-			
3	Temporary easements labelled on plan. List areas and use (ie: drive) in summary box only.			
4	Proposed ROW: label ROW, LAROW or CAROW on all cut sheets (label on inside of ROW.) Flag changes in type of ROW. For example, the transition from ROW to LAROW			
5	Proposed bounds with boxed station and offset from ROW alignment			
6	Proposed easement lines with labels. Include clearing line area in the slope easement.			
7	Projects with proposed CAROW note under the property owner's name the number of access points granted even if it is zero, check the Report of the Commissioner for points of access granted, or other agreements			
8	All proposed ROW concentric or parallel to and referenced from the ROW alignment at a whole foot offset (if practical)			
9	Do not offset spiral curves. Intersect the forward and back tangents of the simple curve with the tangent line segments.			
10	Bounds at all PC, PT, angle points etc. Limit placement of bounds to a maximum of 1000'. This may be changed to project control monumentation and/or Consultant Licensed Land Surveyors standard property monumentation in lieu of bounds.			
11	Place bounds at intersection of proposed and existing ROW unless the proposed ROW terminates at a property line			
12	Where bounds cannot be set at transition points a reference bound shall be placed and noted as such			
13	Use stone bounds for Town and City Right-of-Way			
14	Label all proposed and existing right-of-way lines and permanent easements with metes and bounds. Effort shall be made to label all lines and curves directly. The use of line and curve tables is to be kept to a minimum and will require final approval by the Department.			
15	Do not include metes and bounds on temporary easements			

The plans being submitted to the registries for recording shall be legible and have no obscured annotations for all proposed and existing detail.

IV PLAN SETS

A. Submissions

1	Submit paper copies for review to the Right-of-Way Bureau and to the Registry. After receiving Right-of-Way and Registry approval, Mylars will be produced for recording. Electronic copies of plans to be submitted to the Department in dwg or dgn format.
2	A Licensed Land Surveyor shall be responsible for recording of the plans.

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

FROM: Stephen G. LaBonte
Administrator



DATE: March 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 New Hampshire Department of Transportation (Department), under RSA 4:39-c, requests authorization to sell 4.7 acres of state-owned land, located on the southerly side of NH Route 302 (Eastman Road) in the Town of Conway. The sale will be direct to the abutter, Bayard Kennett (Buyer) for \$941,100, which includes the \$1,100 administrative fee. The sale will be subject to conditions as specified in this request.

EXPLANATION

The Buyer expresses an interest in acquiring the designated parcel at the specified location. Notably, the Buyer already owns the land surrounding this parcel on three sides. Currently, the Buyer is having a site plan reviewed for a comprehensive development project. This plan encompasses a diverse range of facilities, including a drive-thru coffee shop, a bank, 226 residential apartments, a 112-bed senior care facility, 33 senior housing units, 52,000 square foot medical office space, and a 100-student daycare center – all integrated with the existing high school. Importantly, it has been established that access to the parcel in question would be facilitated through the Buyer's existing property.

The parcel, comprising approximately 6.28 acres, constitutes a large tract acquired in 1999 through condemnation from Frances Stearns Kennett Revocable Trust. At the time of the acquisition, the Department acquired a 6.28-acre area for \$2,289,000 via out-of-court settlement. The acquired parcel included a detention pond utilized as a stormwater treatment area and a slope easement along US Route 302, as noted in the conditions. The net area to be conveyed is 4.7 acres. It has been determined that the parcel is surplus to the Department's operational needs and is available for disposal. The conveyance of this parcel will be subject to the following conditions:

- The Buyer must commission a Land Surveyor licensed in New Hampshire to prepare a perimeter boundary plan illustrating the existing right-of-way or any mutually agreed-upon adjustments. All survey work must adhere to the New Hampshire Code of Administrative Rules 503.09 and encompass all elements outlined in the NHDOT Right-

of-Way Layout Plan checklist. All deflection points, PTs, and PCs shall be monumented and shown on the preliminary plan to be submitted to the Department for review and approval.

Following approval from the Department, the surveyor is obligated to record the plan in the Carroll County Registry of Deeds. Upon request, the buyer shall furnish a full-size copy of the recorded plan along with a draft legal description of the parcel to be conveyed.

- According to the Right-of-Way (ROW) plans, the Buyer was previously granted two access points.
- The newly established ROW along US Route 302 should be CAROW, consistent with the CAROW on either side.
- The Department will retain an approximate 1.5-acre drainage area for the detention pond located on the property.
- Excepting and reserving a slope easement from Station 57+29.305 to Station 59+07.974, as depicted on the plan titled "Conway 11339G General Plan" on file at the Department of Transportation and further defined on the required survey plan.
- The Buyer will be responsible for obtaining all local and state land use approvals before closing.

A Staff Appraiser from the Department evaluated the subject property and concluded that it does have an independent highest and best use. They then prepared a market value appraisal using the sales comparison approach, adhering to the Right of Way Manual requirements and the Uniform Standards of Professional Appraisal Practice. The subject property's market value as of 2/5/2024, was determined to be \$940,000.

The Department respectfully requests authorization to sell the parcel as outlined within this request.

SGL/AMO/jl
Attachments

ASSIGNMENT AND ASSUMPTION OF RIGHTS

THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS ("**Assignment**") is made effective as of the 19th day of October, 2024 ("**Effective Date**"), by and between **Bayard Kennett** ("**Assignor**") and **Continuum at North Conway, LLC** ("**Assignee**") with regard to Assignor's rights to acquire 3.8 +/- acres of property from the State of New Hampshire (the "**State**") identified as Parcel 144 and shown on the Conway Tax Map 246, as Lot 64, which Property is located on US Route 302, Conway, New Hampshire, New Hampshire (the "**Property**").

WHEREAS, Assignor has entered into discussions with the State to acquire directly, or through his designee, the Property as outlined in Assignor's letter to the State dated March 11, 2024, a copy of which is attached hereto as **Exhibit A**:

WHEREAS, Assignor wishes to appoint Assignee as his designee to acquire the Property.

NOW THEREFORE, for due consideration paid, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor does hereby grant, convey, transfer and assign to Assignee all of Assignor's rights, title and interest to acquire the Property from the State.
2. Assignee hereby accepts the foregoing assignment and assumes all of the obligations and responsibilities of Assignor to acquire the Property, on or after the Effective Date.

ASSIGNOR:

ASSIGNEE:

Continuum at North Conway, LLC

By: Bayard Kennett
Bayard Kennett

By: Joseph F. Hoque



TOWN OF CONWAY

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

(603) 447-3811
WWW.CONWAYNH.ORG

August 20, 2024

Stephen G. LaBonte
Bureau Right of Way
JO Morton Building – Room 100
7 Hazen Drive
P.O. Box 83
Concord, NH 03302-0483

Re: Sale of State Owned Land in Conway, STP-OAW-NHS-DPI-T-X-0153(001), 11339

Mr. LaBonte,

At the May 14, 2024 meeting of the Conway Board of Selectmen, they discussed the potential of purchasing Map/Lot 246-64 from the State of New Hampshire.

The Board of Selectmen voted unanimously against the purchase of Map/Lot 246-64).

Respectfully,

A handwritten signature in black ink, appearing to read "John Eastman".

John Eastman
Town Manager
Town of Conway

CC: Emily Allen, Property Agent

Sheet 9



ADJUSTED RIGHT-OF-WAY

1.5' ADJUSTED RIGHT-OF-WAY

METRIC RIGHT-OF-WAY

Sheet 8

Sheet 8

STATION	DATE	DESCRIPTION	BY	CHECKED
0+00	10/10/00	START OF PROJECT	J. SMITH	M. JONES
0+25	10/15/00	UTILITY LOCATIONS	J. SMITH	M. JONES
0+50	10/20/00	RIGHT-OF-WAY ADJUSTMENT	J. SMITH	M. JONES
0+75	10/25/00	FINAL PLAN REVIEW	J. SMITH	M. JONES
1+00	11/01/00	END OF PROJECT	J. SMITH	M. JONES





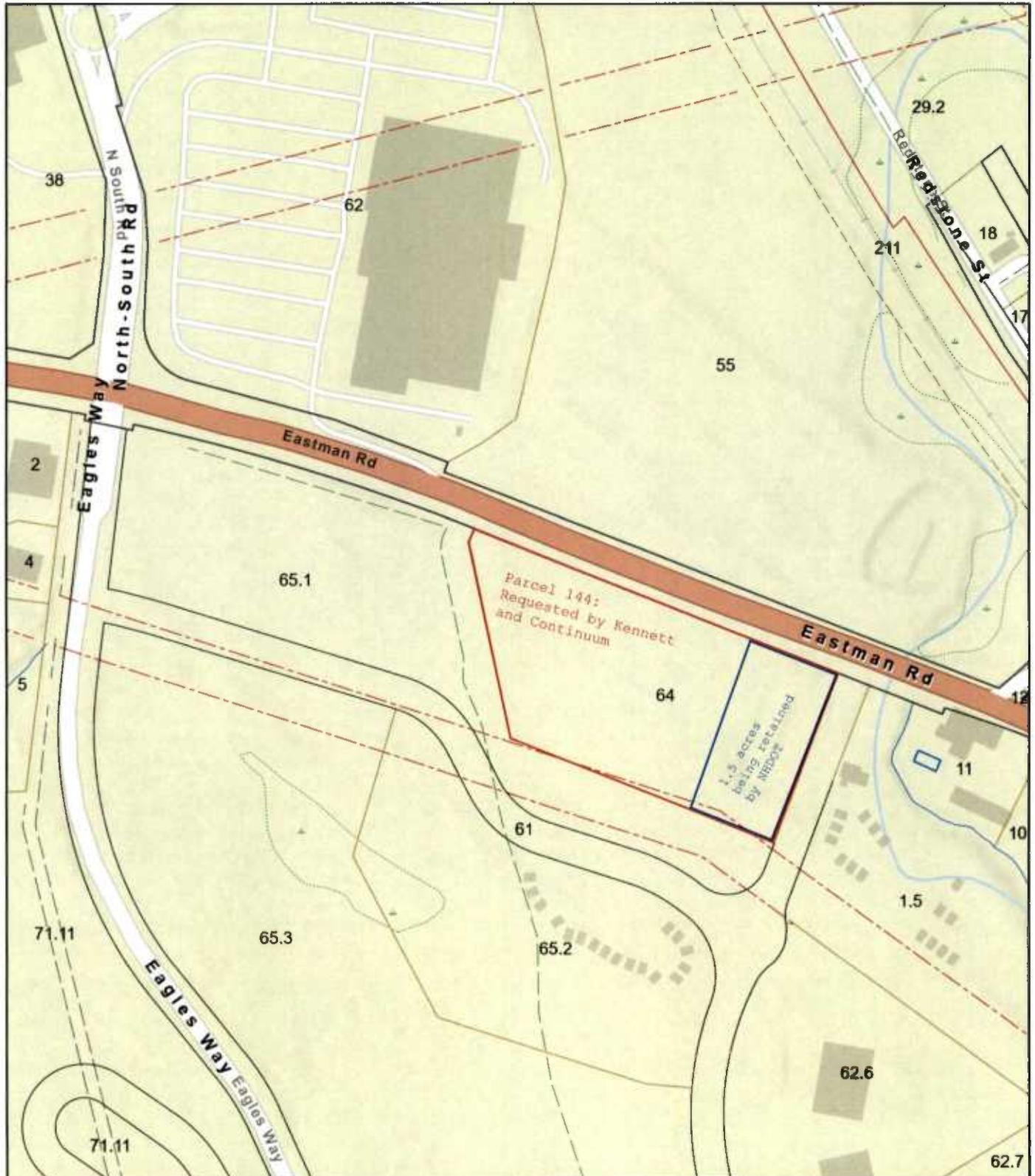
Town of Conway, NH

1 inch = 272 Feet



www.cai-tech.com

November 4, 2024



The property data available on this site is updated periodically. The Town of Conway makes no warranties with regard to its accuracy or completeness and assumes no liability associated with the use of this data.