



**Victoria F. Sheehan**  
**Commissioner**

**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



**William Cass, P.E.**  
**Assistant Commissioner**

June 21, 2019

Rep. John Cloutier, Chairman  
Long Range Capital Planning and Utilization Committee  
Legislative Office Building  
Concord, NH 03301

RE: State-owned Concord-Lincoln Railroad Corridor, Ashland  
Proposed Lease Agreement

Dear Representative Cloutier and Members of the Committee,

The Department of Transportation requests the withdrawal of the item to lease an approximately .07 acres (3200 square feet) parcel of railroad property to the Ashland Historical Society on the State-owned Concord-Lincoln Railroad corridor in the Town of Ashland.

The proposal to build and maintain a loading platform is to facilitate railroad excursion operations and, per the recommendation of the Attorney General's office, RSA 4:40 Disposal of Real Estate does not apply. The Department will proceed under the requirements of RSA 228:57 (attached), which only requires approval of the Governor & Council.

If you have any questions, or wish to discuss this matter, feel free to contact me at (603) 271-2425.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. Herlihy".

Patrick Herlihy  
Director, Division of Aeronautics, Rail & Transit

enc

**STATE OF NEW HAMPSHIRE**  
**INTER-DEPARTMENT COMMUNICATION**

**From:** Louis A. Barker  
 Railroad Planner

**Date:** June 12, 2019

**AT:** Dept. of Transportation  
 Bureau of Rail and Transit

**Thru:** Patrick Herlihy *PCW 6/12/19*  
 Director, Divisions of Aeronautics, Rail & Transit

Stephen LaBonte *[Signature]*  
 Administrator, Bureau of Right-of-Way

**Subject:** State-owned Concord-Lincoln Railroad Corridor  
 Proposed Lease of Land –Town of Ashland RSA 4:40 and RSA 228:57

**To:** Rep. John Cloutier, Chairman  
 Long Range Capital Planning and Utilization Committee

**REQUESTED ACTION**

Department of Transportation, pursuant to the provisions of RSA 4:40 and RSA 228:57 requests authorization to lease railroad property to the Ashland Historical Society, for considerations received in lieu of an annual fee, an approximately .07 acres (3200 square feet) parcel on the State-owned Concord-Lincoln Railroad corridor in the Town of Ashland. The Department requests the Committee waive the \$1,100 Administrative Fee.

**EXPLANATION**

As the owner of the former Ashland Railroad Station building and the former railroad land it sits on the Ashland Historical Society has asked to lease a portion of the railroad property to construct, maintain and use a wood plank platform for the purposes of historically portraying the layout of railroad passenger facilities that once served the Town of Ashland and to offload railroad excursion passengers during events coordinated with the Plymouth & Lincoln Railroad.

Although the area is part of and contiguous to the corridor, the Department has reviewed the request and determined the lease will not interfere with use of the active railroad line. The lease will include termination language in the event that it would impact future rail transportation uses. The proposed dimensions are 400 lf by 8 feet width and will be located to the side of the track structure and will not impede railroad operation or maintenance.

The Ashland Historical Society requested that the State waive both the \$1,100 Administrative Fee cited in RSA 4:40 and an annual fee. The Department has established that there is a precedent for this as the 2003 Lease to the City of Laconia for historical preservation and exhibition purposes of the former Lakeport Freight Station, approved by Governor & Council, January 21, 2004, had the Administrative Fee waived and no annual rent ("considerations received").

The Department previously leased a portion of the subject area to the Ashland Historical Society, approved by Governor & Council May 7, 1999, Item #131. The parties agreed not to renew the lease in favor of the percentage of revenue reported by the Plymouth & Lincoln Railroad for annual excursions utilizing the Ashland Station.

The Department proposes to lease the subject parcel to the Ashland Historical Society for a ten (10) year period for considerations received, as the Historical Society will be responsible for all maintenance and upkeep. The lease could be extended for an additional ten (10) year period under a new negotiated terms and conditions with the approval of the Committee and the Governor and Executive Council.

Authorization is requested to lease the described parcel to the Ashland Historical Society, as outlined above.

Attachments

# **TITLE XX TRANSPORTATION**

## **CHAPTER 228 ADMINISTRATION OF TRANSPORTATION LAWS**

### **Railroads and Other Common Carriers**

#### **Section 228:57**

**228:57 Sale or Lease; Purpose.** – The commissioner as sole agent for the state, with the approval of the governor and council, is authorized to sell, transfer or lease all or any part of the rail properties, and other property acquired under the provisions of this subdivision, to any responsible person, firm or corporation, for continued operation of a railroad, or other public use, provided, if necessary, approval for such continued operation, or other public use, is granted by the interstate commerce commission of the United States whenever such approval is required. Such sale, transfer or lease shall be for such price, and subject to said further terms and conditions, as in the opinion of the commissioner are necessary and appropriate to effectuate the purposes of this subdivision.

**Source.** 1981, 568:55. 2006, 324:19, eff. Jan. 1, 2007.



**STATE OF NEW HAMPSHIRE**  
**INTER-DEPARTMENT COMMUNICATION**

**LRCP 19-018**

**FROM:** Stephen G. LaBonte  
Administrator

**DATE:** June 18, 2019

*Late Item*

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

**SUBJECT:** Process of Addressing NH Route Right of Way Encroachments in Alton

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

**INFORMATIONAL ITEM**

The Department of Transportation proposes methods of addressing encroachments into the NH Route 11 right of way which include dwellings, boat houses, stairs, and decks along a section of NH Route 11 in Alton.

**EXPLANATION**

In 2013, pursuant to the process laid out in RSA 228:35, the Department reestablished the highway boundary along NH Route 11 in Alton Bay. The State originally acquired fee ownership of the land in 1941, and established the right of way boundaries in 1947 as a part of the Alton FAP #F-230(4), P-2001 project. During the reestablishment process, the Department identified that multiple encroachments had been placed within the right of way since the time when the boundary was originally established. These encroachments include dwellings, stairs, decks, docks, and boathouses.

The Department developed plan sheets to document the encroachments and right-of-way boundary, and a formal notice of reestablishment, all of which have been recorded in the Belknap Registry of Deeds. Individuals that were affected by the reestablishment have been notified that they own a structure that encroaches on the State's property.

Since the time of reestablishment, the Department has allowed the encroachments to remain within the right of way. However, the Department must periodically reevaluate the highway limits, and any encroachments that lie within those limits, based upon maintenance and operational needs. As traffic and development continue to grow, the needs for maintaining and operating the roadway may change. The Department must have the ability to use this property at its discretion, but understands that individuals use and enjoy the structures that lie within the State's property. In order to balance these competing interests, the Department proposes to enter into temporary use agreements with all encroachers.

The type and term of temporary use agreement is dependent upon the type of structure:

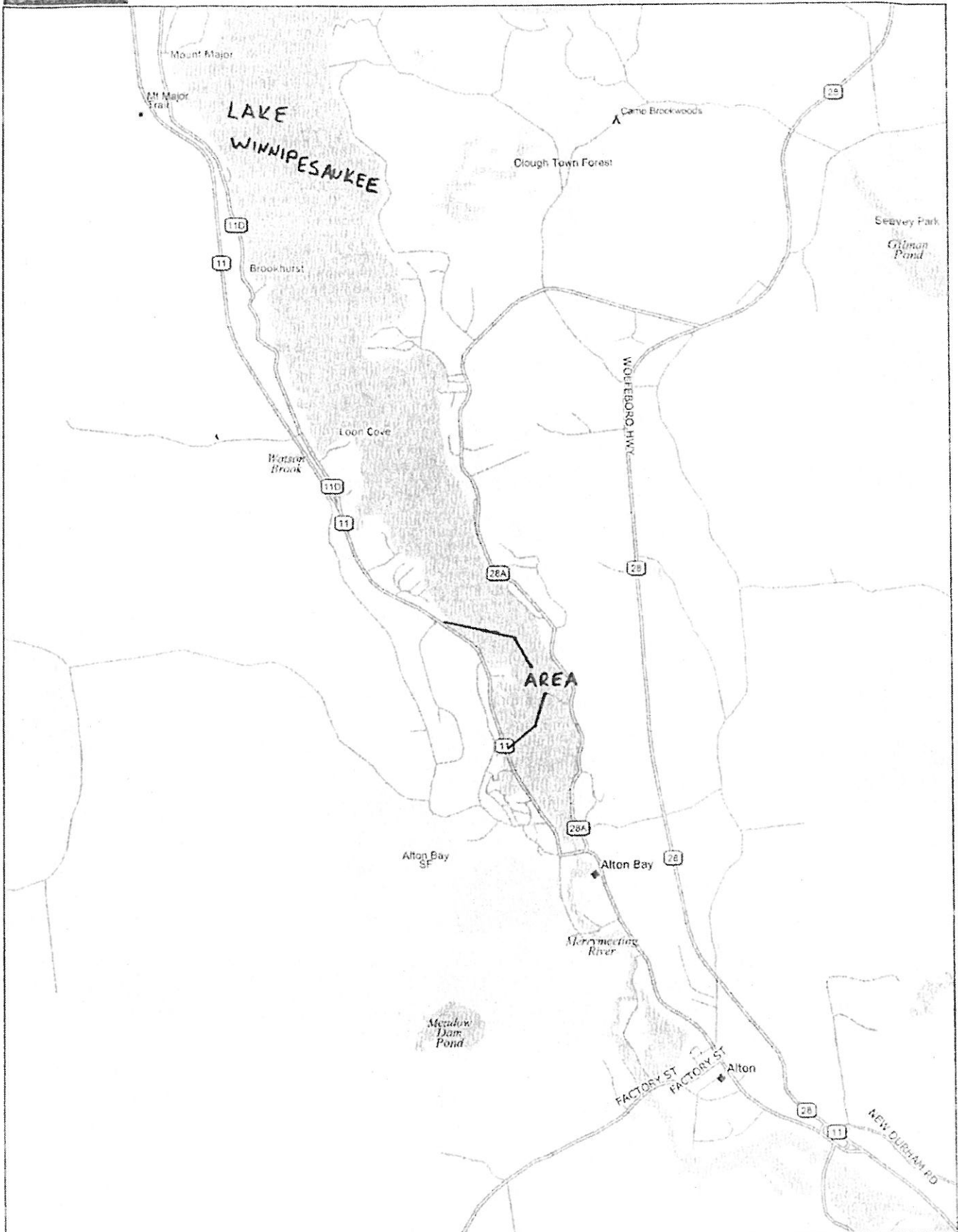
- Dwelling structures and boat houses built prior to the 2013 reestablishment will be grandfathered and eligible for a long-term encroachment agreement. The term of the encroachment agreement would be for 25 years, or during the duration the current occupant owns the dwelling, whichever may expire sooner. The encroachment agreement is desirable to the Department because it acknowledges the permanent nature of a dwelling, by allowing the occupant to remain for a lengthy duration, while allowing the Department to make long-term plans about the use of the right of way, by agreeing that the dwelling will be removed within 25 years at the latest.
- Stairs and decks that were built prior to the 2013 reestablishment, and are used to access an adjacent dock, will be eligible for a short-term lease. A lease will only be granted when the adjacent dock has met all NH DES dock permitting requirements. Stairs and decks that meet these requirements will be eligible for a 5-year lease pursuant to RSA 4:39-C. No new stairs or decks will be approved, and will not be eligible for a lease.



- Docks in place prior to the 2013 reestablishment will be grandfathered until such time as the NH DES dock permit expires. Upon expiration of a dock permit, a dock owner must enter into a lease agreement with the Department, which will be contingent upon the applicant receiving a current NH DES dock permit. All dock leases will run concurrent with the duration of the NH DES dock permit. No new docks will be approved, and will not be eligible for a lease. The short-term lease is desirable to the Department because it allows for reevaluation of Department needs every few years, but also allows individuals with a dock to continue their pre-existing use until such time that the Department may need the property.

The Department has reviewed its maintenance and operational needs along Route 11 in Alton, and at this time is able to allow individuals to continue their encroaching uses. The Department wishes to begin notifying individuals to enter into use agreements for each encroaching structure. The specific terms and conditions of each type of use agreement are contained in the documents attached hereto.

SGL/PJM/jl  
Attachments



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www.delorme.com



Scale 1" = 3,125.0 ft  
Data Zoom 12.4

# INDEX OF SHEETS

SHEET NO.	TITLE PAGE
1	TYPICAL SECTION IMPROVEMENT
2	SECTION OF ROAD IMPROVEMENT
3	SECTION OF ROAD IMPROVEMENT
4	SECTION OF ROAD IMPROVEMENT
5	SECTION OF ROAD IMPROVEMENT
6	SECTION OF ROAD IMPROVEMENT
7	SECTION OF ROAD IMPROVEMENT
8	SECTION OF ROAD IMPROVEMENT
9	SECTION OF ROAD IMPROVEMENT
10	SECTION OF ROAD IMPROVEMENT

NO.	DATE	BY
1	NOV. 1, 1941	W. H. B. B.
2	JULY 1, 1942	W. H. B. B.
3	MAY 15, 1947	W. H. B. B.
4	MAY 15, 1947	W. H. B. B.

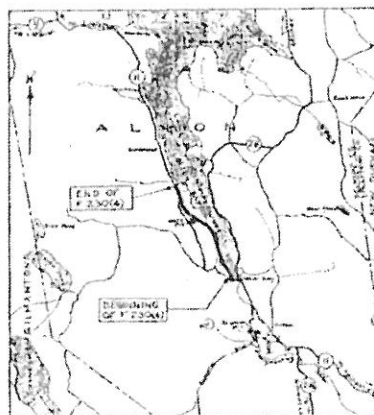
STATE OF NEW HAMPSHIRE  
HIGHWAY DEPARTMENT

## PLANS OF PROPOSED FEDERAL AID PROJECT NO. F 230(4)

WINNIPESAUKEE ROAD

PLAN NO. 1  
SCALE: HORIZONTAL 1" = 40' VERTICAL 1" = 10'  
SECTION TEXT: 1" = 10' HORIZONTAL

THIS PROJECT TO BE CONSTRUCTED IN ACCORDANCE  
WITH STANDARD SPECIFICATIONS FOR HIGHWAY  
CONSTRUCTION, 1947 EDITION, AS AMENDED  
BY THE BOARD OF SUPERVISORS, JANUARY 1, 1948.  
SPECIAL PROVISIONS ATTACHED TO PROPOSAL  
AND STANDARD SPECIFICATIONS ARE TO BE USED.



LOCATION MAP

STA. 4+20  
BEGINNING OF F 230(4)

STA. 11+00  
END OF F 230(4)

STA. 11+00  
END OF F 230(4)

### CONVENTIONAL SIGNS

NO.	NAME	NO.	NAME	NO.	NAME
1	STOP	11	ROAD NARROW	21	ROAD NARROW
2	STOP	12	ROAD NARROW	22	ROAD NARROW
3	STOP	13	ROAD NARROW	23	ROAD NARROW
4	STOP	14	ROAD NARROW	24	ROAD NARROW
5	STOP	15	ROAD NARROW	25	ROAD NARROW
6	STOP	16	ROAD NARROW	26	ROAD NARROW
7	STOP	17	ROAD NARROW	27	ROAD NARROW
8	STOP	18	ROAD NARROW	28	ROAD NARROW
9	STOP	19	ROAD NARROW	29	ROAD NARROW
10	STOP	20	ROAD NARROW	30	ROAD NARROW

TOWN OF ALTON  
COUNTY OF BELKNAP

RECOMMENDED FOR APPROVAL DATE 12-22-47

APPROVED

APPROVED

APPROVED

APPROVED

APPROVED

APPROVED

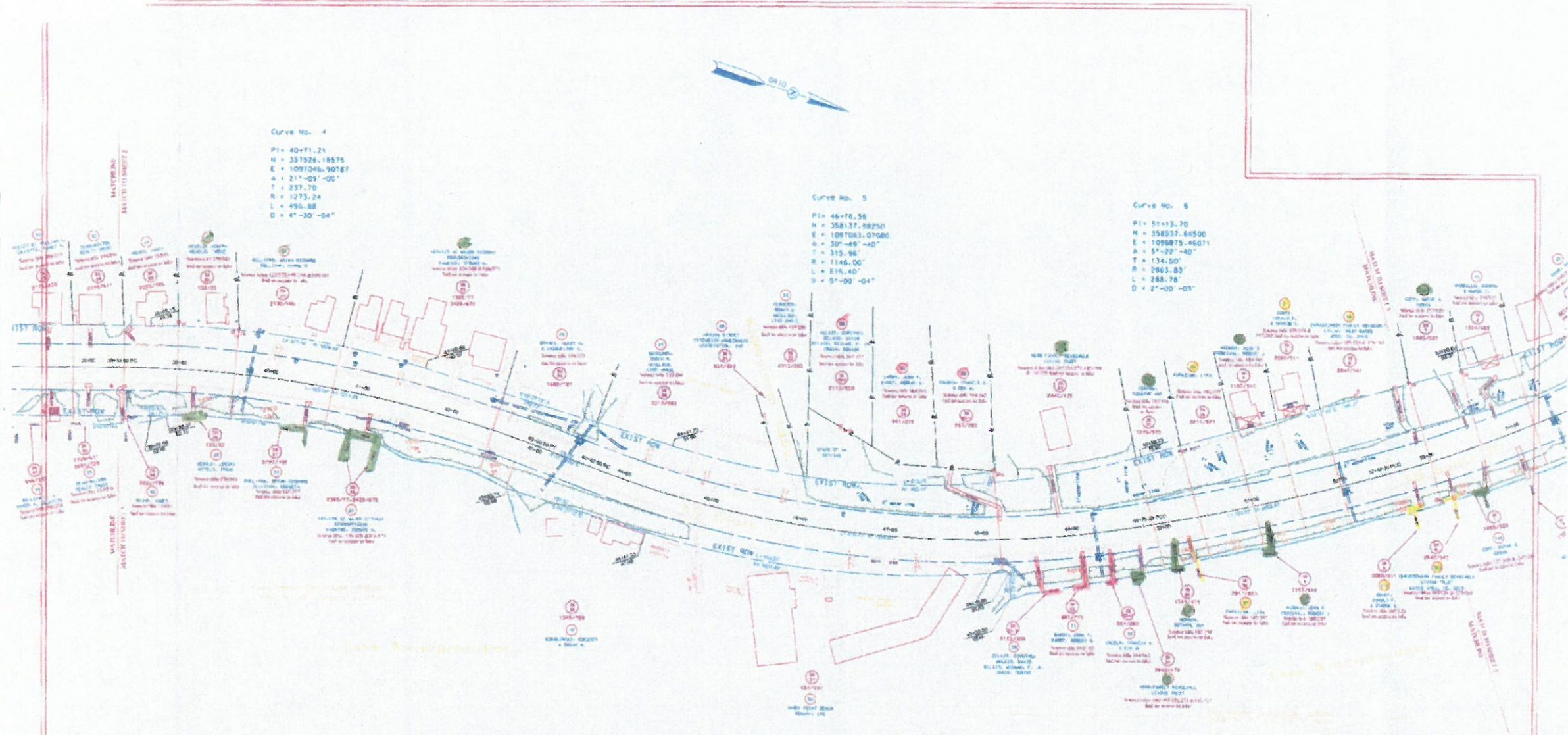
APPROVED

APPROVED

APPROVED

N.H. PROJ. NO. P-2001





EXISTING MONUMENT COORDINATES

STATION	Easting	Northing
1	357261.1200	1097046.9078
2	357261.1200	1097046.9078
3	357261.1200	1097046.9078
4	357261.1200	1097046.9078
5	357261.1200	1097046.9078
6	357261.1200	1097046.9078
7	357261.1200	1097046.9078
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15	357261.1200	1097046.9078
16	357261.1200	1097046.9078
17	357261.1200	1097046.9078
18	357261.1200	1097046.9078
19	357261.1200	1097046.9078



PLAN INTENT: THE INTENT AND PURPOSE OF THIS PLAN IS TO REESTABLISH AND DETERMINE THE LIMITS OF THE HIGHWAY RIGHT-OF-WAY FOR ROUTE 11 IN ACCORDANCE WITH RSA 236:1 AND IDENTIFY THE ENCROACHMENTS WITHIN THE HIGHWAY RIGHT-OF-WAY.

NOTES: THE RIGHT-OF-WAY LINES SHOWN ON THIS PLAN WERE DEVELOPED FROM A PLAN FILED WITH THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION AND MAINTENANCE DIVISION, BUREAU OF HIGHWAYS, ON JULY 1, 1970, DATED JULY 30, 1971, OFFICE OF MAINTENANCE ENGINEER, BOSTON, MASS. PLAN 121-107.

ON THE REFERENCE TO JERRY W. DORRIS (1) ENCROACHMENT RAILROAD BOOK 1, PAGE 212, JUNE 21, 1989, BOSTON AND MAINE RAILROAD TO TURN OF ALTON BOOK 25, PAGE 290, DECEMBER 1, 1907, TURN OF ALTON TO STATE OF NEW HAMPSHIRE BOOK 25, PAGE 1, SEPTEMBER 1, 1907.

THE HIGHWAY CENTERLINE SHOWN ON THIS PLAN IS FROM STATE OF NEW HAMPSHIRE PROJECT 1-201-107, PLAN 449, DATED MAY 1974, WHICH IS THE EXISTING RIGHT-OF-WAY LINE (SEE STATE OF NEW HAMPSHIRE PROJECT 1-201-107, PLAN 449, DATED MAY 1974, FOR THE LOCATION OF ROUTE 11).

THE COORDINATES LISTED ARE FOR THE NAD 83 STATE PLANE SYSTEM NAD 83-11.

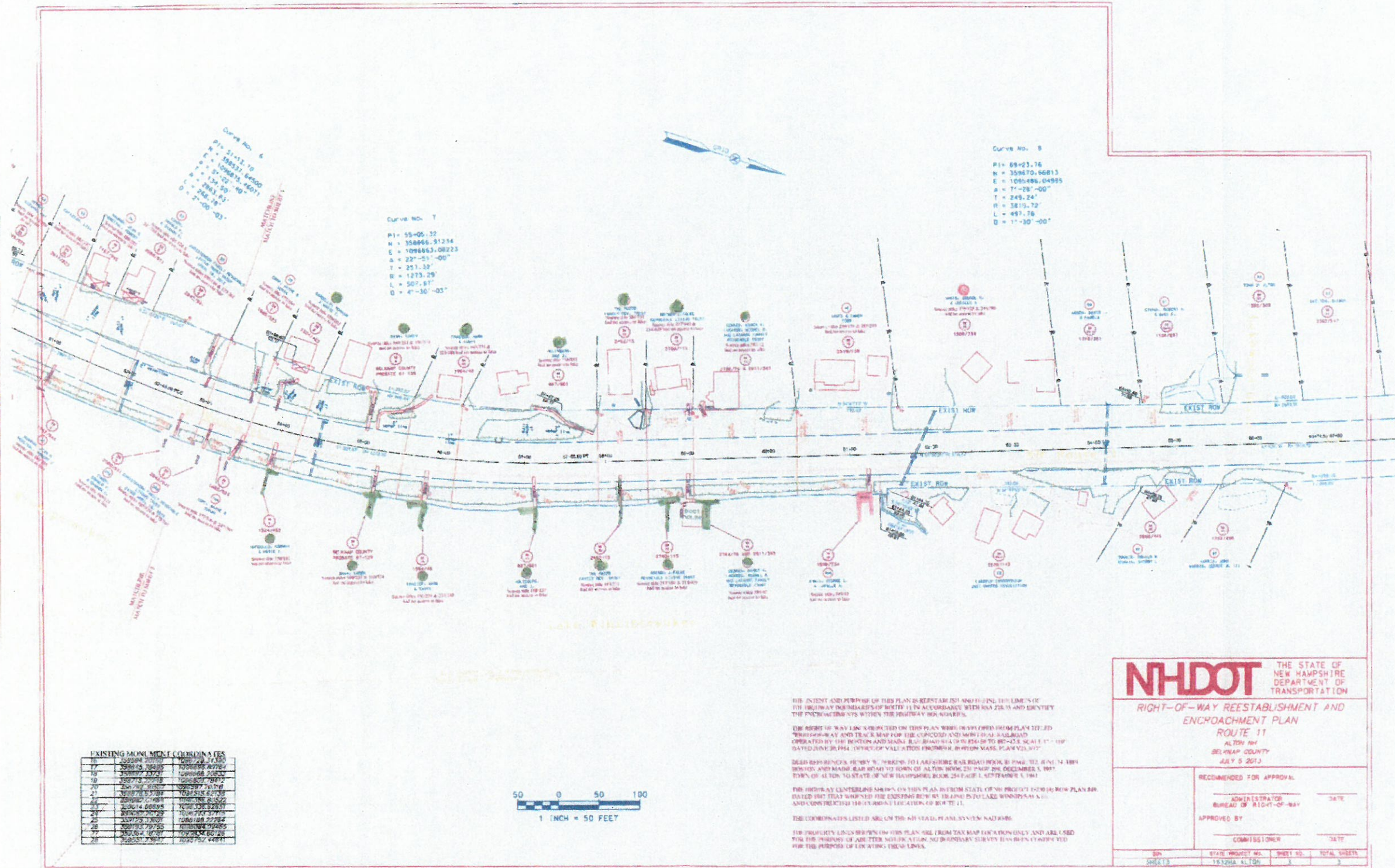
THE PROPERTY LINES SHOWN ON THIS PLAN ARE FROM TAX MAPS OF ALTON AND ARE NOT TO BE USED FOR THE PURPOSE OF ADJUTING OR RE-EVALUATING ANY BOUNDARY SURVEY HAS BEEN CONDUCTED FOR THE PURPOSE OF LOCATING THESE LINES.

THE STATE OF  
NEW HAMPSHIRE  
DEPARTMENT OF  
TRANSPORTATION

RIGHT-OF-WAY REESTABLISHMENT AND  
ENCROACHMENT PLAN  
ROUTE 11  
ALTON RD  
BELMONT COUNTY  
JULY 5, 2013

RECOMMENDED FOR APPROVAL			
ADMINISTRATOR		DATE	
BUREAU OF RIGHT-OF-WAY			
APPROVED BY			
COMMISSIONER		DATE	
DSH	STATE PROJECT NO.	SHEET NO.	TOTAL SHEETS
SHEETS	102286-ALTON	1	3





THE INTENT AND PURPOSE OF THIS PLAN IS TO REESTABLISH AND DEFINE THE LINES OF THE HIGHWAY RIGHT-OF-WAY IN ACCORDANCE WITH RSA 236:1 AND IDENTIFY THE ENCROACHMENTS WITHIN THE HIGHWAY RIGHT-OF-WAY.

THE RIGHT-OF-WAY LINE IS DERIVED FROM THE PLAN DATED 1984 AND THE RIGHT-OF-WAY LINE FOR THE UNIMPROVED AND UNIMPROVED RAILROAD OPERATED BY THE BOSTON AND MAINE RAILROAD CO. IS DERIVED FROM THE PLAN DATED 1914. THE RIGHT-OF-WAY LINE FOR THE UNIMPROVED RAILROAD OPERATED BY THE BOSTON AND MAINE RAILROAD CO. IS DERIVED FROM THE PLAN DATED 1914.

DEED REFERENCE: HENRY W. WICKES TO LAURENCE RAILROAD CO. BY PLAN 112, BOUNDARY MAP AND MAINE RAILROAD CO. TO TOWN OF ALTON BOOK 25 PAGE 298, DECEMBER 3, 1981. TOWN OF ALTON TO STATE OF NEW HAMPSHIRE BOOK 254 PAGE 1, SEPTEMBER 3, 1981.

THE HIGHWAY CENTERLINE SHOWN ON THIS PLAN IS FROM STATE OF NEW HAMPSHIRE BUREAU OF HIGHWAYS AND MAINTENANCE DIVISION RECORD MAP NO. 100, 1981.

THE COORDINATES LISTED ARE ON THE NAD 83 DATUM, NAD 83 DATUM.

THE PROPERTY LINES SHOWN ON THIS PLAN ARE FROM TAX MAP LOCATION ONLY AND ARE USED FOR THE PURPOSE OF IDENTIFYING THE LINES. NO BOUNDARY SURVEY HAS BEEN CONDUCTED FOR THE PURPOSE OF IDENTIFYING THESE LINES.







{individual name}  
{individual street address}  
{individual town, state, zip}

Re: Alton Bay Reestablishment, Parcel No. { }, Right-of-Way Reestablishment and  
Encroachment Plan

Dear Alton Bay Resident,

You are receiving this letter because you maintain a dwelling, dock, boathouse, stairs, deck, and/or other structure that encroaches on State-owned land in Alton, New Hampshire. In 2013, the New Hampshire Department of Transportation reestablished the highway boundaries of NH Route 11 along Alton Bay. During the reestablishment, the Department learned that there were many structures along Alton Bay that encroached wholly or in part on the State land. Our records indicate that you maintain one or more of these encroachments.

The Department must balance the ever-changing needs of the highway with the interests of individuals that have enjoyed the use of Alton Bay. To address these competing interests, the Department has created a process to grant temporary encroachment agreements or lease agreements, depending upon the type of encroachment. Encroachers must execute a formal agreement with the Department in order to continue using any structure. Failure to enter into an agreement with the Department may result in the removal of your encroachment.

The process to obtain an agreement may take a year or more. Applicants are encouraged to start the process early in order to obtain an agreement before any other relevant permits expire. The process for obtaining an agreement is attached to this letter. Also attached are the relevant plans which may assist you in locating and identifying your encroachment.

The Department looks forward to reaching agreements with all individuals that have encroaching structures. Please review the attached process and take the steps as outlined. Please direct all questions to [insert email contact for District 3 Engineer].

{signature block for District 3 Engineer}

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
MAINTENANCE DISTRICT 3**

**APPLICATION FOR ENCROACHMENT AGREEMENT OR LEASE AGREEMENT FOR  
TEMPORARY USE OF STATE-OWNED LAND**

Pursuant to the provisions of Revised Statutes Annotated (RSA) 4:39-c Disposal of Highway or Turnpike Funded Real Estate and 4:39-d Leasing of State-Owned Real Estate on Public Waters, (printed on the reverse side of application) and amendments thereto, permission is requested to enter into an encroachment agreement or lease agreement as deemed necessary by the New Hampshire Department of Transportation Maintenance District 3 Engineer (DOT D3) for continued use of State land for recreational purposes.

**Property and Encroachment Description (please provide as much information as possible)**

Town of Alton – NH Route 11  
Water Body – Lake Winnepesaukee

Street Address \_\_\_\_\_

Tax Map and Number \_\_\_\_\_

Distance to Utility Pole/Pole No. \_\_\_\_\_

ROW Reestablishment Plan Parcel Number \_\_\_\_\_

Estimated Area of Encroachment \_\_\_\_\_ Square Feet

Please provide a sketch showing details of the encroachment.

Please include two photos of encroachment area:

\_\_\_\_ one taken from NH Route 11

\_\_\_\_ one taken from the Lake

**IMPROVEMENTS**

Dwelling Structure Y or N

Boathouse Y or N

Dock Y or N

Dock Permit # \_\_\_\_\_

Stairs Y or N

Deck Y or N

Boat/Canoe Rack Y or N

Watercraft Storage Y or N

Outbuildings Y or N

Other: \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Mailing Street Address

\_\_\_\_\_  
Printed Name of Applicant

\_\_\_\_\_  
Town/City

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Phone Number

**FOR OFFICE USE ONLY**

GPS N \_\_\_\_\_ GPS W \_\_\_\_\_

Right of Way \_\_\_\_\_

Conditions \_\_\_\_\_

Recommend to Bureau of Right of Way: Y or N

Recommended Action: \_\_\_\_\_ Encroachment Agreement \_\_\_\_\_ Lease Agreement \_\_\_\_\_ Denial

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
ENCROACHMENT AGREEMENT

{enter address of encroaching property}

**THIS ENCROACHMENT AGREEMENT**, is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between {encroacher name}, {encroacher address}, hereinafter called the "Grantee(s)" and the State of New Hampshire, Department of Transportation, P.O. Box 483, Concord, New Hampshire, 03302-0483, hereinafter called the "State".

**WITNESSETH**, that the Grantees do hereby covenant and agree to follow the stipulations set forth in this Encroachment Agreement, relative to a certain portion of a premises, herein termed the "Encroachment," located on State property as shown on plans on file with the Belknap County Registry of Deeds, Plan L73-045, L73-046, and L73-047, and on file with the New Hampshire Department of Transportation, designated as Right-of-Way Reestablishment and Encroachment Plan. The Grantees covenant and agree to follow these stipulations in exchange for a non-exclusive, temporary use of the Encroachment for recreational use and access to Lake Winnepesaukee.

**DESCRIPTION OF ENCROACHMENT:** The Encroachment shall consist of one (1) location within the highway right-of-way located on NH Route 11 in the Town of Alton, as shown on attached Exhibit A, and more specifically described as follows:

- a. A {type of structure}, located on State property on the {easterly/westerly} side of NH Route 11, at Station {station number}, Parcel {parcel number}, GPS coordinates {north} {west}

**WHEREFORE**, the Grantees agree to the following terms and conditions in exchange for the non-exclusive, temporary use of the Encroachment identified above.

1. The Grantees acknowledge that any and all rights to access the Encroachment are taken subject to any and all matters as shown on the above-described plans or any other matter of record.
2. Except as provided herein, the Grantees are granted permission to use and maintain the above-described Encroachment for the purposes of maintaining the existing Encroachment and accessing Lake Winnepesaukee for recreational purposes. The Department retains the right to revoke the permission granted by this Agreement.
3. If the Encroachment area is required for highway maintenance, construction, reconstruction, or any other purpose, at any future time, the State will so inform the Grantees and give adequate time for the removal of any or all items and structures by the Grantees at no expense to the State. If any or all items and structures are not removed at the time this area is required by the State, the State will remove and dispose of any or all of these items and structures as necessary with no liability for the State to reimburse for the value of said items and structures.

4. The Grantees acknowledge that this permission for the non-exclusive, temporary use of the Encroachment does not create an ownership interest, easement, or any other property interest in the underlying State-owned property.
5. By entering into this Encroachment Agreement, the Grantees waive any and all claims of ownership to the above-described parcel.
6. The Grantees agree that any alterations, additions for improvement, maintenance, use, or repair of the Encroachment is subject to the advance written approval of the Department of Transportation, Bureau of Highway Maintenance, District Three, located at 2 Sawmill Road, Gilford, New Hampshire 03249, or any other such location that the NHDOT District 3 office may be located at a future date.
7. The Encroachment shall in no way interfere, obstruct, or prevent adequate sight distance for the safe movement of all types of traffic entering or leaving the subject premises, as determined by the standard highway design requirements.
8. The Encroachment shall in no way interfere, obstruct, or prevent any or all highway maintenance activities.
9. If the Encroachment is found to interfere, obstruct, or prevent the safe movement of any type of traffic, highway maintenance, or repair activities, the obstruction must be removed promptly by the Grantees, at no expense to the State. If the Grantees do not promptly remove said obstructions when so notified, the State will remove the obstructions as necessary with no liability for damages, costs, or reimbursement for any or all items removed.
10. The Encroachment shall in no way create unsanitary or unsightly conditions within the surrounding area. It shall be the responsibility of the Grantees to ensure the Encroachment is kept clean and free of litter.
11. The Grantees are prohibited from removing any trees larger than one-inch diameter within the State-owned land without the express written permission of the State. Ground cover and shrubs shall not be disturbed.
12. The Grantees are prohibited from planting or landscaping on the State-owned land, or from placing signs, fences, flagpoles, patios, or any other item on the State-owned land.
13. The Grantees are responsible for any damages to the State-owned land, including but not limited to vegetation loss requiring re-stabilization, as determined by the State.
14. No portion of any Encroachment shall be attached to guardrail posts, sign posts, any other State-owned device, extend above the top of guardrail posts, or extend toward the highway beyond the face or the guardrail.

15. The Grantees are prohibited from constructing additional stairways or creating breaks in the guardrail. As the State replaces the guardrail in the vicinity of the encroachment, the State retains the right to close any existing openings, and remove any stairs upon notice.
16. Stairs shall be no wider than six feet and constructed over the highway slope without any regrading or recontouring of the slope. The Encroachment must be in conformance with the Environmental Fact Sheet WB-19 "Permitting for Freshwater Docking Structures," published by the New Hampshire Department of Environmental Services, or any other relevant policy in effect.
17. Stairs shall be constructed in conformance with standard building materials and methods, and kept in good repair by the Grantee. Stairs deemed by the State to be a hazard are subject to immediate removal after reasonable notice to the Grantee, with expense of said removal being reimbursed by the Grantee.
18. Grantee shall obtain a permit from New Hampshire Department of Environmental Services for any boat dock associated with use of the Encroachment. Grantee agrees to obtain an excavation permit from the State for placement of any anchoring system associated with positioning or suspending seasonal docks.
19. Parking is prohibited on the State-owned land.
20. Storing of private equipment is prohibited on the State-owned land.
21. Septic tanks, including but not limited to holding tanks, shall not be constructed on the State-owned land.
22. Septic tanks existing at the time this agreement is executed shall be kept in good repair and shall comply with all relevant regulations and requirements.
23. Additional utilities, including wells, shall not be placed on State-owned land without prior permission of the State.
24. The Encroachment shall not be used for any purposes other than the recreational lake access purpose for which the Encroachment was originally constructed.
25. By signing this Encroachment Agreement, the Grantees hereby agree to defend, indemnify, and hold harmless the State, its officers, and employees, from and against any and all losses suffered by the Grantees, their officers, and employees, and any and all claims, liabilities, or penalties assessed against the Grantees, their officers, and employees, by or on behalf of any person, of account of, based on, resulting from, arising out of (or which may be claimed to arise out of the acts or omissions of the Grantees, or any individual or company contracted or hired by Grantees. Nothing contained herein shall constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

26. The Grantees must stay current and in good standing on all mortgages, taxes, or other obligations affecting the encroachment. The State reserves the right to bring any ejectment, eviction, or removal actions in the event that the Grantee fails to comply with this section, resulting in liens, foreclosures, or any other encumbrance on the encroachment.
27. This Encroachment Agreement may not be assigned, transferred, conveyed, subleased, or otherwise modified to benefit any individual or entity not named in this original agreement.
28. Grantee shall comply with all applicable rules, regulations, requirements, statutes, guidance, and directives that any governing body or State agency may deem appropriate.
29. This Encroachment Agreement shall be effective for the duration of time that the Grantee utilizes the Encroachment, or {to be determined} years, whichever shall occur first.
30. This Encroachment Agreement shall be filed by the State with the Belknap County Registry of Deeds.

GRANTEE(S)

\_\_\_\_\_  
{Grantee Name}

\_\_\_\_\_  
{Grantee Name}

STATE OF NEW HAMPSHIRE  
\_\_\_\_\_, SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her/their voluntary act and deed. Before me,

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Victoria Shaheen, Commissioner  
PO Box 483  
Concord NH 03302-0483

STATE OF NEW HAMPSHIRE  
MERRIMACK, SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, personally appeared the above-named Victoria Shaheen, Commissioner of the Department of Transportation, and as such, being duly authorized to do so, executed the foregoing instrument for the purpose therein contained. Before me,

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires: \_\_\_\_\_



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 30, 2015, is made by and among Laurie A. Shea, E. Scott Mertens, and Susan J. Dolan (collectively, "the Permittees"), and the State of New Hampshire Department of Transportation ("NHDOT") (each of which, a "Party"; collectively, the "Parties").

### Recitals

- A. The Permittees and NHDOT are parties to two cases currently pending in Belknap Superior Court: *Laurie A. Shea, et al. v. State of New Hampshire Department of Transportation* (Docket #211-2013-CV-307) and *State of New Hampshire Department of Transportation v. Laurie A. Shea, et al.* (Docket #211-2014-CV-298) (collectively, the "Pending Cases"), concerning the ownership of a parcel of land in Alton, New Hampshire located between the shore of Lake Winnepesaukee and the roadbed of Route 11 (Mount Major Highway) (the "Disputed Property").
- B. The Permittees purchased the Disputed Property in 2009 and subsequently renovated the lakefront camps on the parcel. The Permittees have used, resided in, and maintained the Disputed Property seasonally since 2009.
- C. On February 2, 2010, NHDOT notified the Town of Alton that the Permittees were encroaching on land owned by the State of New Hampshire in fee and contended that the entirety of the Disputed Property is a part of the right-of-way for Route 11.
- D. On July 22, 2013, NHDOT sought to "reestablish" the boundaries of Route 11 pursuant to RSA 228:35. As part of its reestablishment plan, NHDOT depicted all of the Disputed Property as within the boundaries of Route 11.
- E. The Permittees challenged the reestablishment plan in Docket #211-2013-CV-307 pursuant to RSA 228:35. That action was eventually stayed pending the outcome of NHDOT's separate petition to quiet title to the Disputed Property, which was filed on December 22, 2014 as Docket #211-2014-CV-298.
- F. The Parties have decided to settle the Pending Cases and have entered into this Agreement to memorialize the terms on which they have settled.

### Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **Encroachment Agreement.** The Parties shall execute an Encroachment Agreement in the form contained in Attachment 1 simultaneously with the execution of this Agreement.

NHDOT shall record the Encroachment Agreement with the Belknap County Registry of Deeds at its own expense.

2. **Mutual Releases.** In consideration of the Encroachment Agreement, each Party (on behalf of themselves and their respective heirs, executors, administrators, agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") hereby releases and forever discharges each and every other Party (and their respective heirs, executors, administrators, agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the Pending Cases, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had, has now, or may ever have against any Released Party arising from the subject matter of the Pending Cases.
3. **Termination of the Pending Cases.** Upon execution of this Agreement and the Encroachment Agreement, the Parties shall take all actions necessary to terminate the Pending Cases with prejudice. The Parties shall bear their own attorney's fees and costs.
4. **Miscellaneous.**
  - 4.1 **No Admission.** This Agreement is the result of compromise negotiations and does not constitute an admission by any Party regarding the merits of any Party's claims or defenses, nor does it constitute an admission of liability on the part of any Party, and each Party expressly denies such liability.
  - 4.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable.
  - 4.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties.
  - 4.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

- 4.5 **Governing Law/Forum Selection.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings. Each of the Parties agrees to submit to the jurisdiction of the courts of the State of New Hampshire for all purposes hereunder.
- 4.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein and that the Party is unaware of any person or entity (other than one or more of the Parties) having a claim or cause of action of any kind arising from the subject matter of the Pending Cases.
- 4.7 **Fully Integrated Agreement.** The Parties agree that this Agreement, including the Encroachment Agreement, sets forth their entire agreement, superseding all prior negotiations and agreements, whether written or oral. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
5. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE HAD AN OPPORTUNITY TO DISCUSS IT WITH COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

Dated:

12/2/15

Witness

Dated:

12/1/15

Witness

Dated:

12/2/15

Witness

Dated:

12/9/15

Witness

Laurie A. Shea

Laurie A. Shea

E. Scott Mertens

E. Scott Mertens

Susan J. Dolan

Susan J. Dolan

State of New Hampshire Department of  
Transportation

By:

VICTORIA F. SHEPARD

ATTACHMENT 1

*Just A. McHath*

STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
ENCROACHMENT AGREEMENT

Mount Major Highway, Alton, Belknap County, New Hampshire

THIS ENCROACHMENT AGREEMENT (the "Agreement") is entered into as of November 30, 2015, by and among Laurie A. Shea, an individual, having an address of 330 Emerald Bay Circle, Y1, Naples, Florida 34110; E. Scott Mertens, an individual, having an address of 107 Boulder Drive, Barrington, New Hampshire 03825; and Susan J. Dolan, an individual, having an address of 3216 Garden Brook Lane, Bozeman, Montana 59715 (each of which a "Permittee" and together the "Permittees") and the State of New Hampshire (the "State"), acting by and through its Department of Transportation ("NHDOT"), P.O. Box 483, Concord, New Hampshire 03302-0483 (hereinafter collectively referred to as the "State" and together with the Permittees, the "Parties").

Reference is made to the following:

A. The State owns certain property in the Town of Alton, County of Belknap, State of New Hampshire (the "Property"). The Property is shown on the Alton Bay Reestablishment Plan, attached hereto as Exhibit A and recorded on file with the Belknap County Registry of Deeds at Book 2877, Page 479, and at documents numbered 1313384, 1313385, and 1313386 which can be found in Drawers L73-45, Drawers L73-46, and Drawers L73-47, respectively.

B. The Permittees currently occupy and maintain structures and improvements upon a certain portion of the Property owned by the State (the "Encroachment"). The Encroachment is described with particularity in Section 1 of this Agreement. For the purpose of this Agreement, the Encroachment is intended to refer to the improvements identified as 36-51 on the Reestablishment Plan on the land commonly referred to as 128-130 Mount Major Highway, Alton, New Hampshire (the "Land").

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties do hereby covenant and agree to the following terms and conditions for the Encroachment and recreational access to Lake Winnepesaukee in the Town of Alton.

1. The Encroachment. The Permittees acquired and replaced encroaching structures on the Land as described in and conveyed by deed of Jayne L. O'Toole fka Jayne L. Tourtellotte and Carole S. Tourtellotte, Executrix of the Estate of John R. Tourtellotte, to Permittees November 4, 2009 and recorded in the Belknap County Registry of Deeds at Book 2611, Page 0786, a copy of which is attached as Exhibit B. Permittees have uncontested ownership of the buildings, docks, decks, stairs and all other structures, fixtures, and other improvements (collectively, the "Improvements") on the Land at the time of execution of this Agreement, together constituting the Encroachment.

2. Permitted Use.

2.1 The Permittees, their families, and guests shall be permitted to access, use, occupy and maintain the Encroachment. The Permittees shall not use the Encroachment for any other purposes than those specified in this Section 2. The Encroachment may not be rented, leased, or assigned. There shall be no commercial use of the Land.

2.2 Subject to the rights of NHDOT under this Agreement, the Permittees shall have the exclusive right to use the Improvements and the non-exclusive right to use the Land.

3. Permittees' Waiver of Ownership Claims. The Permittees hereby waive any and all claims of ownership to the Land and acknowledge that nothing in this Agreement is intended to be construed as creating any property interest in the Land.

4. Maintenance, Alterations, and Improvements. The Permittees shall not enlarge the dimensions of the Improvements without the prior written approval of NHDOT, Bureau of Highway Maintenance, District 3 office located at 2 Sawmill Road, Gilford, NH 03249, at telephone number (603) 524-6667 ("District 3"). Permittees may otherwise maintain, repair, renovate, or replace any part of the Improvements provided that Permittees obtain a building permit from the Town of Alton or a permit from the New Hampshire Department of Environmental Services before doing so, in which case Permittees must also obtain the prior written approval of NHDOT District 3.

5. Traffic Safety.

5.1 The Permittees' use of the Encroachment shall in no way interfere with, obstruct, or prevent adequate sight distance for the safe movement of all types of traffic on NH Route 11 (the "Highway"), and if the Permittees' use creates such an interference, obstruction, or inadequacy of sight distance that, in NHDOT's sole discretion, presents a hazard (each of which, an "Unsafe Condition"), NHDOT may remove or relocate any part of the Improvements that is causing or contributing to the Unsafe Condition and may recover from Permittees the reasonable costs of such removal or relocation.

5.2 Vehicles of persons using or visiting the Encroachment shall only be parked in areas designated for public parking. There shall be no other parking on the Property for any reason, and there shall be no parking on the Highway except where lawful.

6. Highway Maintenance.

6.1 If, at the sole discretion of NHDOT, the use of the Land is required for highway maintenance, construction, or reconstruction at any future time NHDOT shall provide Permittees with reasonable written notice of no less than thirty days before NHDOT commences such work unless the work is of an emergency nature.



6.2 If NHDOT determines that any part of the Improvements must be removed from or relocated upon the Land to accommodate an expansion of the improved travelled portion of the Highway, NHDOT shall provide such reasonable written notice, signed by the commissioner of NHDOT, of the need to remove or relocate any such part as may be necessary to give Permittees an opportunity to accomplish such removal or relocation at no expense to the State. If Permittees fail within a reasonable time to remove or relocate any such part of the Improvements as NHDOT identifies in such written notice, NHDOT may remove or relocate any such part with no liability to the Permittees for reimbursement of the value thereof. The Permittees shall be responsible for reimbursing the NHDOT for the reasonable costs of removal.

7. Sanitary Condition of Encroachment. The Permitted Use shall in no way create unsanitary conditions on the Property. It will be the responsibility of the Permittees to ensure that the Land is kept clean and free of litter.

8. Landscaping and Vegetation.

8.1 The Permittees shall not remove any trees from the Land without the prior written approval from the State.

8.2 The Permittees shall be responsible for any damage to the Land caused by Permittees or their guests or invitees, including but not limited to vegetation loss requiring re-stabilization of the Land as determined by the State.

9. Guardrail Maintenance. Permittees will not construct additional stairways or breaks in the guardrail on the Land. At such time as NHDOT needs to replace the existing guardrail, it may eliminate any existing opening if in the reasonable opinion of NHDOT it poses a hazard to the traveling public. Otherwise, all replacement guard rails shall maintain an opening in the guardrail in the same location as presently exists.

10. Septic Facilities. There shall not be any new septic systems constructed on State-owned land including but not limited to holding tanks. Subject to Section 4 of this Agreement, Permittees may replace the existing septic system on the Land in kind if it fails or otherwise ceases to operate properly. In connection therewith, Permittees shall obtain all necessary approvals from the Department of Environmental Services regarding wastewater disposal, wetlands permits and shore land protection.

11. Utilities. No utilities shall be installed within the Land beyond those already in place without the prior written permission of the State.

12. No Discrimination. The Permittees do hereby covenant and agree that as a part of this Agreement, (1) no person on the grounds of race, color, disability, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in use of the Land, (2) that in the construction of any improvements on, over or under such land and the furnishing of service thereon, no person on the grounds of race, color, disability, sex or national origin shall be excluded from participation in, denied the benefits of, or

otherwise be subjected to discrimination, and (3) that the Permittees shall use and allow use of the Land in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle "A", Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended.

13. Indemnification and Insurance.

13.1 The Permittees hereby agree to defend, indemnify, and hold harmless the State, its officers, and employees, from and against any and all losses suffered by the Permittees and any and all claims, liabilities, or penalties assessed against the Permittees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Permittees, or any individual or company contracted or hired by the Permittees. Nothing contained herein shall constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

13.2 The Permittees shall have, maintain and pay the premiums on a policy or policies of insurance effective during the term of this Agreement, covering the following risks, and designating the State of New Hampshire as an additional named insured.

13.2.1 The Permittees agree to obtain and keep in force, during the term of this Agreement as set forth in Section 15 below, a policy or policies of insurance covering the Encroachment, providing Comprehensive General Liability or Comprehensive Personal Liability with a minimum limits of \$2,000,000 in the aggregate covering bodily injury and property damage.

13.3 Procurement and delivery of a certificate indicating such insurance acceptable to the State is a condition precedent to the effectiveness of this Agreement. The Permittees shall provide to the State a certificate of insurance demonstrating that the required coverage has been obtained and containing the following wording. "The State of New Hampshire is named as additional insured with respect to liability arising from the use and/or occupation of State-owned premises under this Agreement between the State and the Named Insured." Nothing contained herein shall be construed as a waiver of sovereign immunity.

13.4 No provision of this Agreement is intended to waive any aspect of the State's sovereign immunity, and any possible counterclaims or defenses it may assert relative to any claim brought related to this Agreement or the Facility.

14. Taxes. Where applicable, in accordance with RSA 72:23, I(b), this Agreement is made between the parties hereto subject to the condition that the Permittees shall pay all properly assessed current and potential real and personal property taxes with respect to any part of the Encroachment on the Land.

15. Term. Unless agreed by the State to the contrary in writing, this Agreement shall automatically terminate upon the later of 25 years from the execution of this Agreement or the death of the last remaining Permittee or earlier with the express written notice of termination to the Permittees in accordance with the provisions of Section 17 of this Agreement. At the expiration of this Agreement, any of the Permittees or their successors shall have the right to remove any or all personal property on the Land and any or all of the Improvements within 180 days of the expiration date. If Permittees fail to remove any such property or Improvements within such period NHDOT shall have the right to sell or remove them from the Land at NHDOT's sole cost and expense and with no liability to the Permittees for reimbursement of the value thereof.

16. Notice.

16.1 Notice to any party by first class mail or the equivalent, at the above identified addresses shall be deemed proper notice under this Agreement.

16.2 All parties shall provide written notice to the other parties of any change in address within ten business days. To the extent any party fails provide the required notice of change in address, notice to the address of record shall be deemed proper notice under this Agreement.

17. Default. Upon any default in the due observance or performance of any covenant, condition or agreement to be observed or performed by the Permittees under this Agreement and such default continues for a period of thirty days following written notice from the State to the Permittees, or such additional time as is reasonably needed by the Permittees to cure such default, provided the Permittees are diligently pursuing a cure of the default, the State shall have the right to terminate this Agreement.

18. Assignment and Amendment. This Agreement shall burden and benefit the Permittees and shall be assignable (a) by any Permittee to a trust as to which a Permittee is a beneficiary or (b) with the express written permission of the NHDOT. The NHDOT will not unreasonably withhold consent to the assignment of this Agreement. This Agreement may be modified only by an instrument in writing, signed by the surviving Parties hereto, and recorded in the Belknap County Registry of Deeds.

19. Agreement to be Recorded. This Agreement shall be filed by the NHDOT with the Belknap County Registry of Deeds.

20. Entire Agreement. This Agreement, together with the Settlement Agreement and Mutual Release of All Claims between the parties hereto, constitutes the entire agreement of the parties with respect the subject matter hereof and supersedes all previous or contemporaneous oral or written offers, proposals, or agreements between them with respect to such subject matter.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
as of the date first written above.

Laurie A. Shea

Dated: 12/15/15

[Signature]  
Witness

[Signature]  
Laurie A. Shea

Dated: 12/15/15

[Signature]  
Witness

E. Scott Mertens

[Signature]  
E. Scott Mertens

Dated: 12/15/15

[Signature]  
Witness

Susan J. Dolan

[Signature]  
Susan J. Dolan

Dated: 12/9/16

[Signature]  
Witness

State of New Hampshire  
Department of Transportation

By: [Signature]

VICTORIA F. SHEDDEN