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STATE OF NEW HAMPSHIRE  
THE ADJUTANT GENERAL'S DEPARTMENT

BUSINESS ADMINISTRATION  
STATE MILITARY RESERVATION  
4 PEMBROKE ROAD  
CONCORD, NEW HAMPSHIRE 03301-5652

David J. Mikolaities, Brigadier General  
*The Adjutant General*

Phone: 603-225-1360  
Fax: 603-225-1341  
TDD Access: 1-800-735-2964

Warren M. Perry, Colonel (ret.)  
*Deputy Adjutant General*

Stephanie L. Milender  
*Administrator*

November 19, 2017

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

**REQUESTED ACTION**

In accordance with RSA 4:40, the Adjutant General's Department requests approval to dispose of the State Armory located at 110 Hastings Avenue in Keene, New Hampshire, to include the building structures and 6.5 acres of land.

**EXPLANATION**

The Adjutant General's Department determined that the New Hampshire Army National Guard no longer has a need for the Keene Armory as the New Hampshire National Guard has not had an active presence at the Keene Armory for many years. The City of Keene has been utilizing the Armory as the West Keene Fire Station since 1997 through an Inter-Agency Agreement with our Department. The deed covenants require that the property revert to, and remain with the City of Keene upon disposal by the Adjutant General. The Council on Resources and Development (CORD) recommended approval of this action on September 14, 2017, item #SLR 17-004 and the Long Range Capital Planning and Utilization Committee approved this request on November 14, 2017, item #LRCP17-029.

Your approval of this item is respectfully requested.

Respectfully Submitted,

David J. Mikolaities  
Brigadier General, NHNG  
The Adjutant General



LRCP 17-029

MICHAEL W. KANE, MPA  
Legislative Budget Assistant  
(603) 271-3161

CHRISTOPHER M. SHEA, MPA  
Deputy Legislative Budget Assistant  
(603) 271-3161

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT  
State House, Room 102  
Concord, New Hampshire 03301

STEPHEN C. SMITH, CPA  
Director, Audit Division  
(603) 271-2785

November 15, 2017

Colonel Warren M. Perry  
Deputy Adjutant General  
Office of the Adjutant General  
State Military Reservation  
4 Pembroke Road  
Concord, New Hampshire 03301-5652

Dear Deputy Adjutant General Perry,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 4:40, on November 14, 2017, approved the request from the Office of the Adjutant General to dispose of the former State Armory at 110 Hastings Avenue, including buildings and 6.5 acres located in Keene, N.H. and waive the \$1,100 Administrative Fee, subject to the conditions as specified in the request dated September 21, 2017.

Sincerely,

Michael W. Kane  
Legislative Budget Assistant

MWK/pe  
Attachment

Cc: Stephanie Milender, The Adjutant General's Department ✓

RECEIVED  
NOV 16 2017  
ADJUTANT GENERAL'S  
DEPARTMENT

# New Hampshire Council on Resources and Development

NH Office of Strategic Initiatives  
107 Pleasant Street, Johnson Hall  
Concord, NH 03301  
Phone: 603-271-2155  
Fax: 603-271-2615



TDD Access: Relay NH  
1-800-735-2964

## MEMORANDUM

**TO:** Major General William F. Rendell, III  
The Adjutant General's Department  
**FROM:** Susan Slack, Principal Planner  
NH Office of Strategic Initiatives – formerly Office of Energy and Planning  
**DATE:** September 14, 2017  
**SUBJECT:** Surplus Land Review, SLR 17-004-Keene

On September 14, 2017, the Council on Resources and Development (CORD) took action on the following Surplus Land Review application:

Request from the Adjutant General's Department to convey to the City of Keene the former State Armory Property at 110 Hastings Avenue, including buildings and 6.5 acres, which is currently utilized by the city as the West Keene Fire Station.

CORD members voted to **RECOMMEND APPROVAL OF SLR 17-004, on condition that** the deed conveying the property to the City of Keene include a covenant to protect the property's historic resources per RSA 227-C:9.

cc: Stephanie L. Milender, Administrator, The Adjutant General's Department  
Jared Chicoine, Director, NH Office of Energy and Planning  
Chair, Long Range Capital Planning and Utilization Committee

To DOJ for review  
11/9/17

Return to:  
State of New Hampshire  
Division of Historical Resources  
19 Pillsbury Street  
Concord, NH 03301

## DECLARATION OF HISTORIC PRESERVATION EASEMENT

The **STATE OF NEW HAMPSHIRE** (the "State"), acting by and through its Department of Natural and Cultural Resources, Division of Historical Resources, having a mailing address of 19 Pillsbury Street, Concord, New Hampshire 03301 (together with its successor agencies, "DHR"), and by and through its Adjutant General's Department, having a mailing address of NH Adjutant General's Department (ATTN: NGNH-BA), 4 Pembroke Street, Concord, New Hampshire 03301 ("TAG"), as authorized by the Governor and Executive Council on (Meeting Agenda Item # \_\_\_\_\_), **does hereby memorialize its intention to reserve unto itself a perpetual historic preservation easement** as a valid and enforceable preservation restriction within the meaning of New Hampshire RSA 477:45-47 with respect to the land and building (1-story brick armory building; butler building and shed are not subject to this easement) located at 106-110 Hastings Avenue in the City of Keene, County of Cheshire, State of New Hampshire, as more particularly described on Schedule A attached hereto (the "Premises"), in the event of the anticipated transfer of the Premises to a future Grantee (City of Keene, New Hampshire), upon the terms and conditions set forth herein. Said future Grantee (City of Keene, New Hampshire), its heirs, administrators, successors, transferees, and assigns, including any subsequent owner of the Premises, shall collectively be referenced hereinafter as the "Grantor" with respect to the easement contemplated hereby.

The Grantor shall covenant and agree that the Premises are conveyed and shall be held subject to the following preservation restrictions (the "Restrictions") and to do or refrain from doing on or to said Premises all acts required or prohibited by the Restrictions, respectively.

1. Applicability: The Restrictions specified herein shall apply to the Premises unless and until DHR provides the Grantor with a written waiver regarding any specific act in contravention thereof.
2. Term: The burden of these Restrictions shall run with the land and building comprising the Premises in perpetuity following the date upon which the Premises are first transferred by the TAG to the Grantor and shall be binding upon the Grantor and all subsequent owners of the Premises or any interest therein. The right of enforcement of these Restrictions by DHR shall be as provided in New Hampshire RSA 477:45-47, as such statutes may be amended. The benefit of the Restrictions and the right to enforce them shall be assignable by DHR to any governmental body or any entity whose purposes include preservation of structures or sites of historical significance; and if DHR ceases to exist without having so assigned the benefit and right to enforce the Restrictions, then a qualified successor to DHR may be named by a New Hampshire court of competent jurisdiction.
3. General Intent: In the event the Grantor and DHR have a difference of opinion about the meaning of a specific term used or condition stated herein, their interpretation shall be guided by the following statements of general intent:
  - A. An addition to the building situated on the Premises will be allowed if said addition is in keeping with the Standards for Alterations set forth in Section 12 hereof.

B. Auxiliary buildings will be allowed on the Premises, but only as incidental to the existing building and in keeping with the Standards for Alterations set forth in Section 12 hereof.

C. Upon request, DHR shall provide advice to Grantor pertaining to the maintenance, repair, restoration, or rehabilitation of the building situated on the Premises, the treatment of the site where the building is located, all or any of which must be done in a manner that preserves the character defining historic features of the building as identified in certain baseline documentation prepared by Douglas C. McVarish entitled "Individual Inventory Form – NHDHR Inventory# KEE0549" dated November 2008 with supplemental character-defining features analysis by TAG dated November 1, 2017 ("Baseline Documentation").

4. Dispute Resolution: In the event of a dispute between Grantor and DHR as to the interpretation or application of any of these Restrictions, either party may request that the matter be submitted to binding arbitration, or in the event that either party does not wish to submit to binding arbitration, either party may petition the Cheshire County Superior Court for relief.

5. Insurance: The Grantor shall carry fire insurance, with extended coverage, on the historic building situated on the Premises in an amount not less than the aggregate actual cash value (defined herein as replacement value less depreciation) of said historic building, and shall keep DHR informed as to the amount of coverage. In the event that the said building suffers fire damage or destruction in an amount not greater than thirty-five percent (35%) of the corresponding actual cash value, the proceeds of said fire insurance shall be used to repair or rebuild the damaged or destroyed portion of the building in a functionally equivalent manner and otherwise in accordance with these Restrictions.

6. Maintenance and Administration: The Grantor shall be responsible for all costs of continued maintenance, repair, and administration of the Premises in a manner consistent with the Restrictions that will preserve the architectural and historical integrity of the features identified in the Baseline Documentation which make the building situated on the Premises eligible for listing on the National Register of Historic Places. The Grantor shall maintain said building at all times and shall keep said building in a state of good repair, and shall not allow the appearance of said building to deteriorate in any material way. Nothing herein shall prohibit the Grantor from seeking financial assistance from any sources available to the Grantor.

7. Obligations of the State: Except as provided herein, the State retains no obligation whatsoever to maintain, repair, or administer the Premises.

8. Inspection and Compliance: DHR shall be permitted upon ten (10) days advance written notice to the Grantor to inspect the exteriors of the building situated on the Premises in order to monitor compliance with these Restrictions. Such inspections shall be conducted during normal business hours and without undue disturbance of any residents or occupants of the Premises. In the event that a violation of the Restrictions is found, DHR shall provide to the Grantor written notice of such violation, said notice to include a reasonable deadline for the correction of such violation. In the event that such violation is not corrected by said deadline, DHR, or its employees, agents, contractors, or subcontractors, shall have the right to enter the Premises for the purpose of making such restorations and/or repairs as may be necessary to correct such violation and, if necessary, to place a lien on the Premises as security for the repayment of all costs so incurred. Grantor agrees to submit to DHR, an annual stewardship report for the Property detailing all physical work, if any, undertaken on the Property's exterior over the course of the previous year, as well as any physical work, if any, for the future year.

9. Alterations: Absent prior written consent from DHR, the Grantor shall make no exterior or interior alterations to the building on the Premises and shall place, erect, relocate, or demolish no structure on the Premises. Notwithstanding the foregoing, the following alterations are expressly permitted without prior written consent from DHR:

A. Ordinary repair and maintenance to conserve architectural, historical, cultural, and engineering values; and

B. Actions required to mitigate a casualty or other emergency, which shall be promptly reported to DHR; and

10. Notification and Approval of Alterations: At least sixty (60) days in advance of the commencement of any work on the Premises, the Grantor shall submit to DHR via certified letter a written proposal to make any alteration for which prior written consent is required by Section 9 hereof. Such proposal must include sufficient detail for DHR to make a reasoned judgment as to the appropriateness of the proposed alteration. DHR shall review the proposal and shall approve, approve with modifications, disapprove the proposed alteration, or request additional information required for review of the proposal in a written response via certified letter to be issued to the Grantor within thirty (30) days of receipt of the Grantor's proposal. Any failure of DHR to provide such a written response to Grantor within thirty (30) days shall be deemed to constitute approval of the proposed alteration and shall satisfy the requirement for "prior written consent from DHR" set forth in Section 9 hereof. Only work that has been described in a written proposal submitted by the Grantor to DHR and approved as set forth in this section may be commenced. The Grantor shall permit DHR to enter the Premises while any approved alterations are underway to ensure proper performance.

11. Subdivision or Transfer: The Grantor shall neither subdivide the Premises nor grant, sell, or transfer any easement thereon or any other partial interest therein without the prior written consent of DHR. In the event that such a subdivision or transfer is proposed, the Grantor shall notify DHR in writing at least forty-five (45) days before a subdivision application is filed with the City of Keene or before such transfer is to occur, respectively. Such notice shall include, as applicable: a detailed plan or drawing of the proposed subdivision, a description of the specific interest in the Premises to be transferred, the name and mailing address of the proposed transferee, and the agreed price. DHR shall review the proposed subdivision or transfer and shall approve, approve with modifications, or disapprove said proposal in a written response to be issued to the Grantor within thirty (30) days of receipt of the Grantor's proposal. Any failure of DHR to provide such a written response to Grantor within thirty (30) days shall be deemed to constitute approval of the proposed subdivision or transfer and shall satisfy the requirement for "prior written consent of DHR" set forth in this section. Nothing contained in this section shall be construed as requiring any consent of DHR to the Grantor's exercise of its right to grant a mortgage on the Premises as security for a loan, to license or lease any portion or all of the Premises to a tenant pursuant to a written license or lease agreement, or to transfer intact to a third party all of the Grantor's right, title, and interest in and to the Premises; provided, however, that the Grantor shall notify DHR in writing of such mortgage, license, lease, or transfer at least forty-five (45) days before such mortgage, license, or lease is granted or such transfer is to occur, such notice to include the name and mailing address of the mortgagee, licensee, lessee, or transferee.

12. Standards for Alterations: DHR shall consider the following materials when exercising any authority created by these Restrictions to inspect the Premises or to review and approve any proposed construction, alteration, rehabilitation, relocation, demolition, subdivision, or transfer of any partial interest in the Premises:

A. Any historical documentation of the Premises or any portion thereof on file with DHR, including, without limitation, the Individual Inventory Form prepared with regard to the building situated thereon and the Baseline Documentation.

B. *The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings* propounded by the United States Secretary of the Interior, as amended. A complete copy of said Standards is on file with DHR. The Grantor shall abide by said Standards in performing any construction, alteration, rehabilitation, relocation, demolition, subdivision, or transfer of any partial interest in the Premises.

13. Public Purpose: The Grantor shall comply with these Restrictions in the spirit of contributing to the public purpose of protecting and preserving the documented historical resources situated on the Premises for the public benefit.

14. Enforcement: The rights and obligations created by the Restrictions herein shall run with the land in perpetuity and shall be binding upon the Grantor and all subsequent owners of the Premises or any interest therein. Said Restrictions shall be real covenants and equitable servitudes to be inserted verbatim or incorporated by reference in any deed or other instrument by which the Grantor may transfer ownership of the Premises during said Term. These Restrictions shall be fully enforceable by DHR in the courts of the State of New Hampshire. DHR shall have the right in any enforcement action to pursue any and all available legal and equitable remedies. By taking ownership of the Premises expressly subject to these Restrictions the Grantor constructively acknowledges and agrees that in the event that it becomes necessary for DHR, in its sole discretion, to pursue any action to enforce these Restrictions, the full cost of enforcement (including reasonable attorney fees) shall be borne by the Grantor.

15. Damage or Destruction: In the event that the building situated on the Premises is damaged or destroyed through the willful action or negligence of the Grantor, DHR shall initiate such administrative or judicial actions as may be legally available and appropriate.

16. Liability of the State: The Grantor shall defend, indemnify, save, and hold harmless the State of New Hampshire, its agencies, officers, employees, and agents from and against any and all losses suffered by the State of New Hampshire, its agencies, officers, employees, or agents and any and all claims, liabilities, or penalties asserted against the State of New Hampshire, its agencies, officers, employees, or agents on account of, based on, resulting from, or arising out of (or which may be claimed to arise out of) or in connection with the acts or omissions of the Grantor or its officer, principal, employee, agent, tenant, contractor, or invitee in connection with these Restrictions. Nothing contained herein shall be construed as a waiver of the sovereign immunity of the State of New Hampshire, which immunity is hereby expressly reserved. The foregoing covenants shall continue beyond the Term specified herein and shall survive any other lapse of effectiveness of the Restrictions.

17. Failure to Enforce: DHR shall not be liable to any party for any failure to enforce these Restrictions, but will use its best efforts to fulfill the obligations herein described. The Grantor shall have no standing or authority to waive any obligation of DHR set forth in these Restrictions.

18. Exercise of Rights and Remedies: Any failure of DHR to exercise any right or remedy reserved hereunder shall not have the effect of waiving or limiting the exercise by DHR of any other right or remedy, or the invocation of such right or remedy, at any other time.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

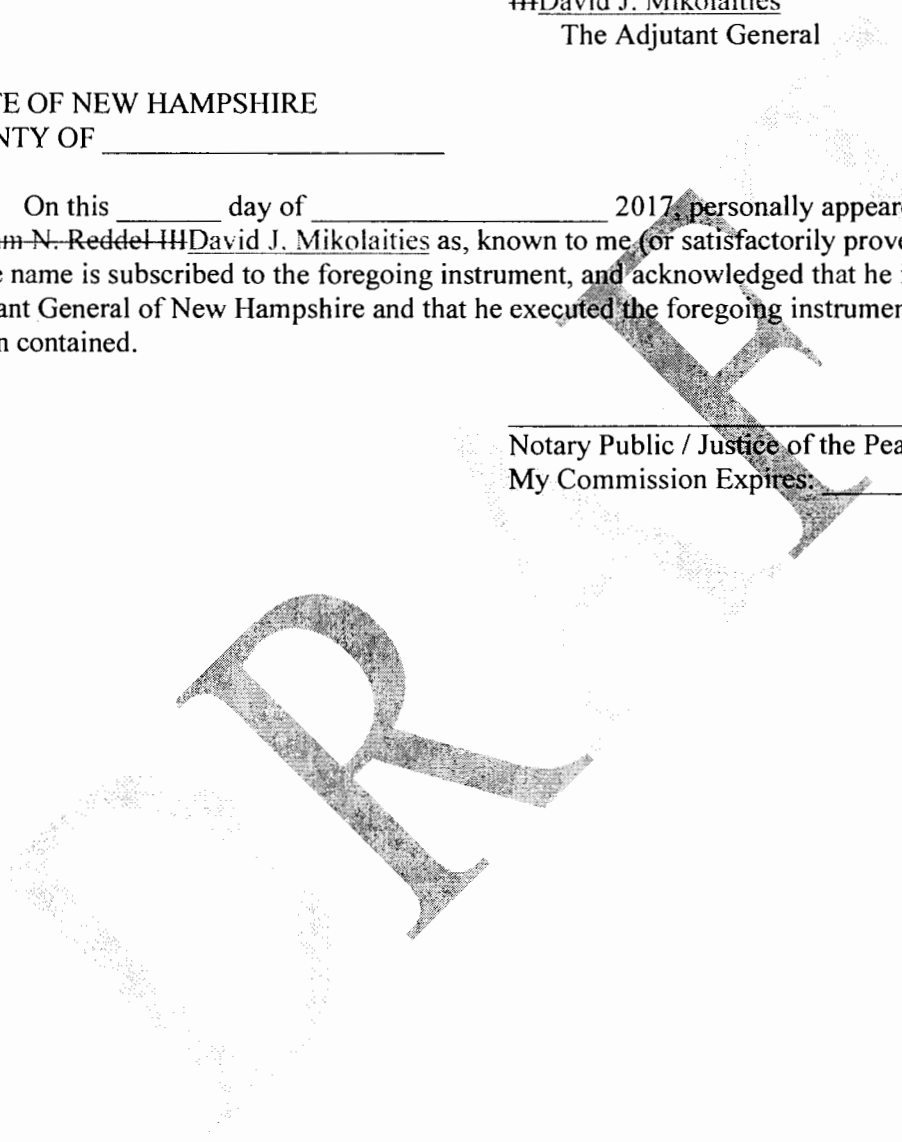
STATE OF NEW HAMPSHIRE  
By and through its  
ADJUTANT GENERAL'S DEPARTMENT

By: \_\_\_\_\_  
Major Brigadier General William N. Reddel  
David J. Mikolaities  
The Adjutant General

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, personally appeared the above-named  
~~William N. Reddel~~ David J. Mikolaities as, known to me (or satisfactorily proven) to be the person  
whose name is subscribed to the foregoing instrument, and acknowledged that he is the duly authorized  
Adjutant General of New Hampshire and that he executed the foregoing instrument for the purposes  
therein contained.

\_\_\_\_\_  
Notary Public / Justice of the Peace  
My Commission Expires: \_\_\_\_\_  
(SEAL)





Accepted by:

STATE OF NEW HAMPSHIRE  
By and through its  
DEPARTMENT OF NATURAL AND CULTURAL  
RESOURCES, DIVISION OF HISTORICAL  
RESOURCES

By: \_\_\_\_\_

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Title)

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, personally appeared the above-named \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that s/he is the duly authorized \_\_\_\_\_ of the New Hampshire Department of Natural and Cultural Resources, Division of Historical Resources and that s/he executed the foregoing instrument for the purposes therein contained.

\_\_\_\_\_  
Notary Public / Justice of the Peace

My Commission Expires: \_\_\_\_\_

(SEAL)

DRAFT

Schedule A

A certain parcel of land located at 106-110 Hastings Avenue, Keene, New Hampshire, together with all buildings and other improvements situated thereon, consisting of approximately 6.0 acres, more or less, shown on a certain plan entitled "Plan of Land – The State of New Hampshire – Army National Guard Facility (Tax Map 159, Lot 2-10), 106 Hastings Avenue, Keene, New Hampshire" dated April 10, 2013, referenced as Drawing No. 3557A; signed and stamped by Jeffrey A. Goldknopf, L.L.S. #964 on May 10, 2013, prepared by Doucet Survey, Inc.; and also as described in a warranty deed recorded in the Cheshire County Registry of Deeds in Book 650, Page 207 on June 5, 1958, said parcel being more particularly bounded and described as follows in said deed:

"A certain tract or parcel of land located on the westerly side of Hastings Avenue in said Keene more particularly bounded and described as follows:

Beginning at an iron pin in the westerly bound of said Hastings Avenue, said pin being the northeast corner of land now of Arthur S. and Mabel S. Ryder and the southeast corner of the tract herein conveyed; thence N. 3° 0' E. three hundred sixty-eight (368) feet along the westerly bound of said Hastings Avenue to an iron pin; thence S. 86° 0' W. eight hundred thirty-five (835) feet along other land of the grantor to an iron pin; thence S. 13° 30' E. three hundred twelve (312) feet to an iron pin; thence N. 88° 30' E. four hundred sixty-five (465) feet along the northerly bound of said land of Ryder to a point; thence S. 86° 0' E. three hundred sixty-one (361) feet still along land of said Ryder to the bound first mentioned above.

Subject however to the following covenants, reservations and restrictions which shall be covenants running with the land and shall be binding upon the grantee, its successors and assigns:

1. That no building shall be constructed upon the above described tract less than one hundred (100) feet from the present westerly bound of Hastings Avenue.
2. That the perimeter of the lot as above described with the exception of the frontage on Hastings Avenue shall be fenced with suitable fencing, not less than four (4) feet in height. Said fencing shall be maintained by the grantee, its successors and assigns for a period of fifty (50) years from the date of these presents.
3. That the above-described lot is conveyed to the grantee for the purpose of constructing a State Armory thereon. In the event the grantee, its successors and assigns, do not construct an Armory upon said lot within a period of three (3) years of these presents the lot shall revert to Evans H. Barrett and Dorothy W. Barrett upon the payment of the sum of Five Thousand Dollars (\$5,000.00) by said Evans H. Barrett and Dorothy W. Barrett to the City of Keene. This restriction, however, shall be null and void on and after the 18<sup>th</sup> day of December, 1962.
4. That the above-described lot is conveyed to the State for the purpose of the construction of a State Armory and the use of said Armory upon said lot. If the lot above described shall ever cease to be used for the purpose of an Armory, the State within six (6) months after such cessation of use, shall pay to the City of Keene an amount equal to the moneys expended by said City in the acquisition of the premises; otherwise the title to the entire above described tract shall revert to and remain in the City of Keene. "

The buildings presently located on the foregoing parcel are a 1-story brick and concrete block armory building with approximately 20,016 square feet of interior space; a pre-fabricated metal unit storage building with approximately 1800 square feet of storage space, and a 196 square foot concrete and metal butler building (shed). Only the 1-story brick and concrete block armory building is subject to this easement.