



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.
Assistant Commissioner

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

Bureau of Right-of-Way
February 4, 2020

REQUESTED ACTION

Pursuant to RSA 4:39-c and 228:31, authorize the Department of Transportation to sell a 10.95 +/- acre parcel of State owned land located on the easterly side of US Route 4 in the Town of Andover to the Town of Andover for \$49,000.00 plus the \$1,100.00 Administrative Fee, effective upon Governor and Executive Council approval.

Pursuant to RSA 230:45, further authorize the Department of Transportation to adjust the limits of the US Route 4 Controlled Access Right-of-Way for the disposal of the above-mentioned parcel.

This parcel is a combination of two parcels, one parcel 4.05 +/- acre in size managed by the Department's Bureau of Right of Way and a 6.90 +/- acre parcel managed by the Department's Bureau of Rail and Transit. It has been determined by the Division of Finance that the 4.05 +/- acre portion of the larger parcel (which is 37% of the total parcel area) was originally purchased with 80% Federal Funds, 20% Highway Funds. It has also been determined by the Division of Finance that the 6.90 +/- acre portion of the larger parcel (which is 63% of the total parcel area) was originally purchased with 80% Federal Funds, 20% Highway Funds.

Funding is to be credited to the Highway Fund as follows:

| | |
|--|-------------------------------|
| 04-096-096-960015-0000-UUU-402156 Administrative Fee | <u>FY 2020</u> \$1,100.00 |
| 04-096-096-960015-0000-UUU-409279 Sale of Parcel (37% of area times \$49,000.00) (20%) | <u>FY 2020</u> \$3,626.00 |
| 04-096-096-963515-3054-401771 Consolidated Federal Aid (37% of area times \$49,000.00) (80%) | <u>FY 2020</u> \$14,504.00 |

04-096-096-963515-3054-401771
Consolidated Federal Aid
(63% of area times \$49,000.00) (80%)

FY 2020
\$24,696.00

04-096-096-964010-2991-403532
Railroad Property Sale
(63% of area times \$49,000.00) (20%)

FY 2020
\$6,174.00

EXPLANATION

The Department of Transportation has received a request from the Town of Andover concerning the opportunity to purchase a 10.95 +/- acre parcel of State owned land located on the easterly side US Route 4 in the Town of Andover.

A portion of this parcel was acquired by the Department in 1959 as part of the proposed future layout of NH Route 4 through this area that was never constructed. The remainder of this property was purchased as an ancillary parcel as part of the purchase of the Northern Railroad corridor in 1995 which is now part of the rail-trail corridor utilized for recreational purposes by the Northern Rail Trail.

Inspection of this area by Department's maintenance personnel indicated that the Town of Andover appeared to have constructed their Town maintenance facility on this State owned property and also had been excavating gravel from this parcel. The Town of Andover claimed ownership to this parcel by a deed from 1999 stating they had ownership of this parcel. Deed research has been done by the Department of Transportation, Right of Way Bureau to verify that the State of New Hampshire has ownership in the subject parcel. This research indicated that there is a title defect with the Town's ownership of this property and the parcel is actually owned by the State of New Hampshire and was never owned by the party from whom the Town purchased the parcel. The Town's attorney has also verified that the State of New Hampshire does hold title to these parcels and is the rightful owner.

Conditions of this sale will include:

1. The Town of Andover, at their expense, would have a Right-of-Way Adjustment Plan prepared by a NH Licensed Land Surveyor describing the parcel being sold, and record this plan in the Merrimack County Registry of Deeds. This plan would also provide surveyed metes and bounds description of the so called "Heaton Lots" owned by the State of New Hampshire, which are depicted in the Andover Tax Records on Tax Map 12, Lots 068-456 and Tax Map 12, Lot 078-443. The Department is working with the Heaton's separately to sell these parcels to them.
2. The sale of this parcel will include granting two points of access to US Route 4. These points will be located near their current locations. The Town will need to acquire a permit for these driveways through the Department's District 2 office. The point of access to the South that is located the closest to the Blackwater River will be subject to a permanent right of way access easement to the property to be conveyed to the Heaton's by the State. Further, this access point will be dissolved if in the future if the properties become common ownership as the necessity of this right of way access easement will no longer be needed.

3. This sale will be subject to granting an access point from US Route 4 to the owner of the so called "Heaton lots" from the southerly access point to the grantees as part of the sale. The northerly most access point will be for the sole use of the Town of Andover.

The need for the 10.95 +/- acre portion of controlled access right of way has been reviewed by the Department, which has determined that the subject parcel and improvement is surplus to our operational needs and interest for the purpose of disposal.

Approval of the sale of this property by the Council of Resources and Development is no longer necessary per RSA 4:39-c, whereas the parcel to be sold was purchased with Highway Funds.

An appraisal completed for and approved by the Department estimated the value of the parcel to be \$49,000.00.

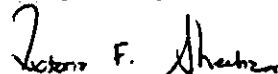
On March 6, 2019, the Long Range Capital Planning and Utilization Committee approved the Department's request to sell this parcel of State owned land directly to the Town of Andover for \$50,100.00 which includes the \$1,100.00 Administrative Fee.

On December 6, 2019, the Department entered into an Agreement and Deposit Receipt with the Town of Andover for \$49,000.00 plus the \$1,100.00 Administrative Fee because the Town of Andover appropriated the funds for purchase for that year. An addendum for corrections to the Agreement was signed by both parties on January 24, 2020.

The New Hampshire Housing Finance Authority was offered the property at the approved price in accordance with RSA 204-D:2 and they did not express an interest in purchasing the property.

Authorization is respectfully requested to sell the above-described 10.95 +/- acre parcel of land to the Town of Andover for the price of \$49,000.00 plus the \$1,100.00 Administrative Fee, and also to adjust the limits of the US Route 4 Controlled Access Right of Way.

Respectfully,



Victoria F. Sheehan
Commissioner

VFS/PJM/pfc
Attachments



DEPT. OF TRANSPORTATION
RIGHT-OF-WAY

MAR 07 2019

LRCP 19-006

RECEIVED

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

March 6, 2019

Stephen G. LaBonte, Administrator
Department of Transportation
Bureau of Right-of-Way
John O. Morton Building
Concord, New Hampshire 03301

Dear Mr. LaBonte,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 4:39-c, on March 6, 2019, approved the request of the Department of Transportation, Bureau of Right-of-Way, to sell a 10.95 +/- acre parcel of State-owned land located on the easterly side of US Route 4 in the Town of Andover, directly to the Town of Andover for \$50,100, which includes an \$1,100 Administrative Fee, subject to the conditions as specified in the request dated February 12, 2019.

Sincerely,

Michael W. Kane
Legislative Budget Assistant

MWK/pe
Attachment

AGREEMENT AND DEPOSIT RECEIPT

THIS AGREEMENT made this 4th day of December, 2019, by and between the Town of Andover, a municipal corporation organized under the laws of the State of New Hampshire, having a mailing address of PO Box 61 Andover 03216, County of Merrimack, State of New Hampshire, (hereinafter referred to as the "BUYER"), and the State of New Hampshire, whose mailing address is PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483; (hereinafter referred to as the "SELLER").

WITNESSETH: That the SELLER agrees to sell and convey, and the BUYER agrees to buy certain land with the improvements thereon, located in Andover, New Hampshire, described as follows:

A certain parcel of land situated on the Easterly Side of US Route 4, as now travelled, in the Town of Andover, County of Merrimack, State of New Hampshire; also bounded and being near US Route 4 Centerline Station 5+50 as shown on a Plan of Andover, S-223(3), P&S -3360, on file in the records of the New Hampshire Department of Transportation, as well as shown on a plan titled: "Lot Line Adjustment Plan of Land of New Hampshire Dept. of Transportation of Land to be Conveyed to Town of Andover and John & Hilde Heaton, Route 4, Andover New Hampshire" prepared by Paton Land Surveying, Springfield VT dated September 11, 2019, revised November 5, 2019 on file in the records of the New Hampshire Department of Transportation, and to be recorded in the Merrimack County Registry of Deeds.

PRICE: The SELLING PRICE is \$51,100.00.

The BUYER'S DEPOSIT, receipt of which is hereby acknowledged, in the sum of \$ N/A.

The BALANCE of the SELLING PRICE shall be payable at closing and tendered in cash or certified check in the amount of \$51,100.00.

DEED: The SELLER agrees to furnish, at its own expense, a duly executed DEED, with *quitclaim covenants*, to the Property.

POSSESSION AND TITLE: The property is sold in its AS IS, WHERE IS condition, without any warranty as to its use or condition whatsoever, subject to all tenants and rights of use or possession, limitations of use by virtue of prior land use approvals and/or interests secured or inuring to the benefit of abutters, third parties or members of the general public, outstanding municipal charges for sewer, water or betterment assessments/connection or capacity charges for the same, or other matters of record which may impact the use of, or title to, the property, if any, including mortgages, equity lines of credit, liens, attachments, orders to cease and desist, and any State and Federal tax liens.

TRANSFER OF TITLE: Shall be given on or before February 15, 2020, 72 days after the date of this AGREEMENT. The place and time of TRANSFER OF TITLE shall be determined by mutual agreement. Failing such mutual agreement, the time of transfer shall be as designated by the SELLER and shall occur at 7 Hazen Drive, Concord, New Hampshire 03302-0483. Time is of the essence.

AGREEMENT AND DEPOSIT RECEIPT (Cont'd)

TITLE: If the BUYER desires an examination of the title, BUYER shall pay the cost thereof. BUYER acknowledges that TITLE shall be transferred by DEED with quitclaim covenants. DEED and BUYER'S TITLE shall be subject to matters of record and as described in the section entitled POSSESSION AND TITLE above.

TAXES, UTILITIES: BUYER shall be responsible for any and all taxes and utilities assessed or incurred as of the date of transfer.

RECORDING FEES AND TRANSFER TAX: BUYER shall be responsible for all recording fees and transfer taxes, which may be assessed with respect to this conveyance, and shall provide all necessary forms to the Town, and shall cause same to be filed as required by law.

RISK OF LOSS: Risk of loss from any cause shall be upon the SELLER until the transfer of the property.

LIQUIDATED DAMAGES: If the BUYER shall default in the performance of his/her obligations under this AGREEMENT, the amount of the deposit and any additional deposit given by the BUYER may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages. Further, all of the BUYER'S rights and interests in and to the AGREEMENT shall, without further notice or further consideration, be assigned to SELLER. Upon BUYER'S default or failure to close SELLER reserves this unqualified right to sell the property to the next highest qualified bidder. Alternatively, the BUYER may demand specific performance of this contract to which the SELLER will acquiesce.

ACKNOWLEDGES AND AGREES: That the sale of the property as provided for herein is made on an "AS IS" condition and basis with faults, latent or patent.

PRIOR STATEMENTS: All representations, statements, and agreements heretofore made between the parties hereto are merged in the AGREEMENT, which along fully and completely expressed the respective obligations, and the AGREEMENT is entered into by each party after opportunity for investigation, neither party relying on any statements or representation not embodied in this AGREEMENT shall not be altered or modified except by written agreement signed and dated by both BUYER and SELLER.

WAIVER: The waiver by any party of any breach of any provision of this Agreement shall not operate as, or be construed as a waiver of any subsequent breach thereof.

SEVERABILITY: Should any provision of this Agreement or any portion of any provision of this Agreement be held invalid or unenforceable according to law, the remaining portions hereof shall not be effected thereby but shall continue in full force and effect.

MISCELLANEOUS: This instrument, executed in duplicate, is to be construed as a New Hampshire contract; is to take effect as a sealed instrument; sets forth the entire contract between the parties; is binding upon and enures to the benefit of the parties and their respective heirs, devisees, executors, administrators, successors, agents and assigns; and may be canceled, modified or amended only by a written instrument signed by both the SELLER and the BUYER.

ADDITIONAL PROVISIONS:

FIRST ADDENDUM TO AGREEMENT AND DEPOSIT RECEIPT

THIS FIRST ADDENDUM TO AGREEMENT AND DEPOSIT AGREEMENT made this 24 day of January, 2020, by and between the Town of Andover, a municipal corporation organized under the laws of the State of New Hampshire, having a mailing address of PO Box 61 Andover 03216, County of Merrimack, State of New Hampshire, (hereinafter referred to as the "BUYER"), and the State of New Hampshire, whose mailing address is PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483.

WHEREAS, the BUYER AND SELLER executed an agreement and deposit receipt (the AGREEMENT), dated December 6, 2019, concerning real property located within the Town of Andover, and further identified in the Agreement;

WHEREAS, the stated SELLING PRICE in the AGREEMENT is \$51,100.00;

WHEREAS, the SELLER has informed the BUYER that the SELLING PRICE is incorrect, and the correct amount is \$50,100, which represents the base price of \$49,000.00 and an administrative fee of \$1,100.00;

WHEREAS, the SELLER has also requested that the date for transferring title be extended to April 1, 2020;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree that the following paragraphs of the AGREEMENT are revised as shown italics:

PRICE: The SELLING PRICE is *\$49,000.00 plus an administrative fee of \$1,100.*
The BUYER'S DEPOSIT, receipt of which is hereby acknowledged, in the sum of \$ N/A.

The BALANCE of the SELLING PRICE shall be payable at closing and tendered in cash or certified check in the amount of \$50,100.00.

TRANSFER OF TITLE: Shall be given on or before *April 1, 2020 111 days* after the date of this AGREEMENT. The place and time of TRANSFER OF TITLE shall be determined by mutual agreement. Failing such mutual agreement, the time of transfer shall be as designated by the SELLER and shall occur at 7 Hazen Drive, Concord, New Hampshire 03302-0483. Time is of the essence.

ADDITIONAL PROVISIONS:

- (a) As a condition of this purchase, the deed will provide for a permanent access easement over the parcel from the access point at US Route 4 Centerline Station 10+00 to the parcel noted as "To be conveyed to John & Hilde Heaton 2.201 Acres" on the survey plan titled "Lot Line Adjustment Plan of Land of New Hampshire Dept. of Transportation of Land to be conveyed to Town of Andover and John and Hilde Heaton, Route 4, Andover New Hampshire."
- (b) The conveyance contemplated in this Agreement is conditioned upon approval by the Governor & Executive Council. In the event that Governor & Council do not approve this conveyance; neither party shall be held liable to act under the terms of this Agreement.

(c) Nothing in this Agreement shall be construed to expand, amend, or repeal any other agreement entered into between the Buyer and Seller, including but not limited to the Winter 2019/2020 Sand Removal Agreement.

(d) The Town of Andover, in addition to the purchase price of \$49,000.00 will pay an additional administrative fee of \$1,100.00

WITNESS: The signatures of the above-mentioned parties on the dates as noted below.

STATE OF NEW HAMPSHIRE (SELLER)

TOWN OF ANDOVER (BUYER)

By: 

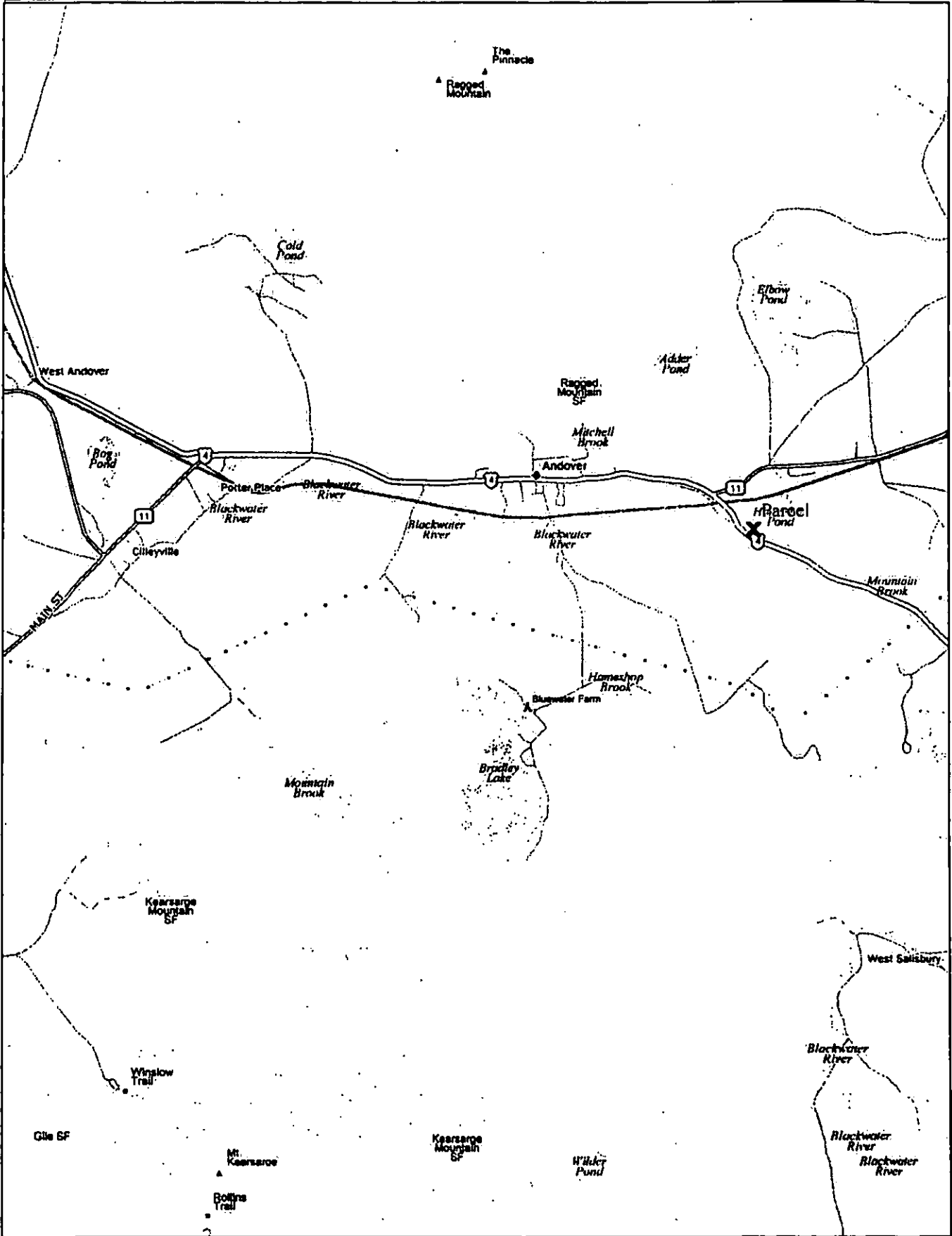
By: 

Its: Administrator, Bureau of
Duly authorized Right of way

Its: Selectman -
Duly authorized

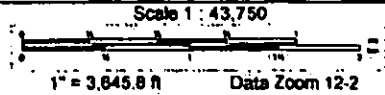
Date: January 24, 2020

Date: 2-27-20



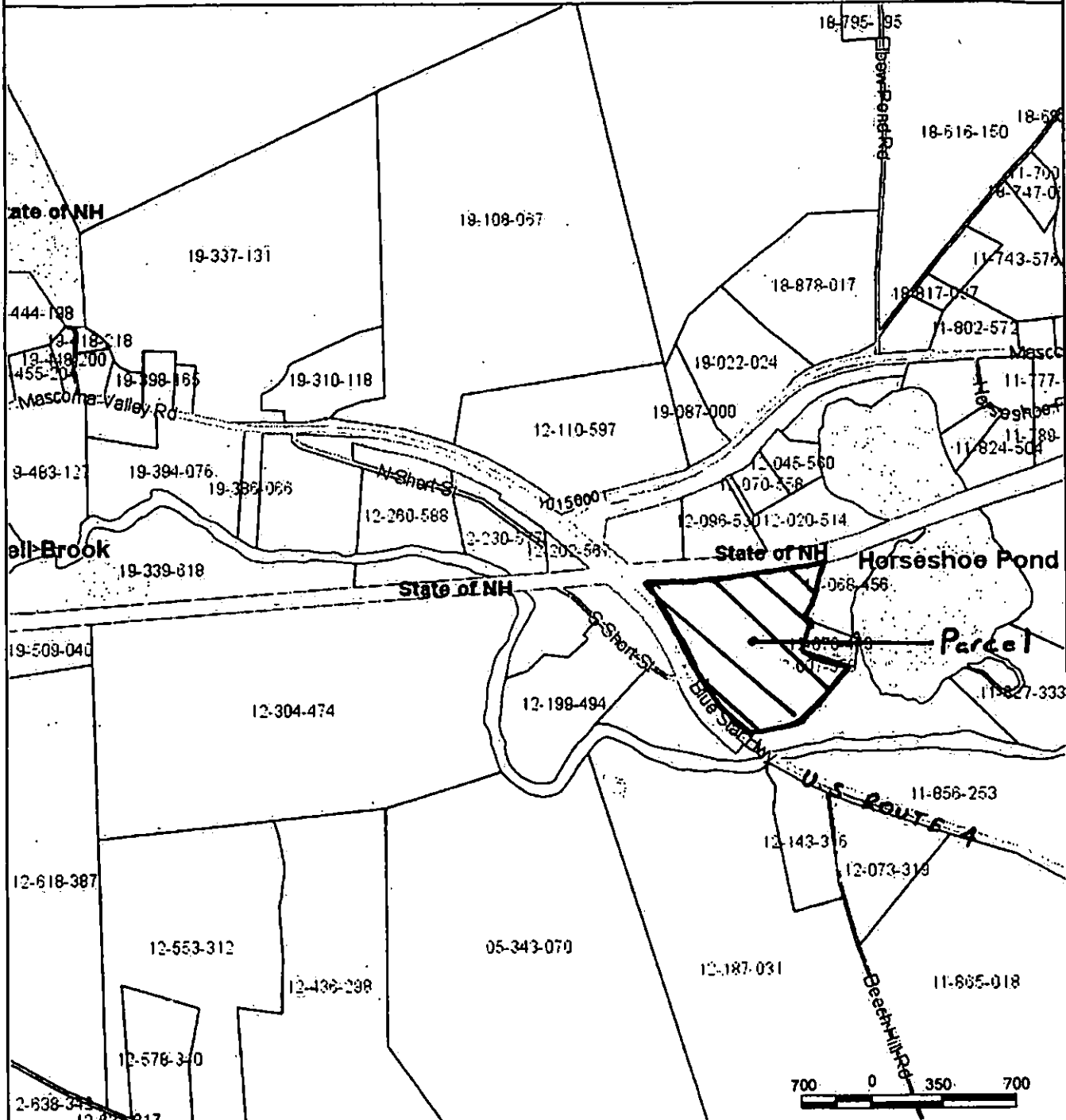
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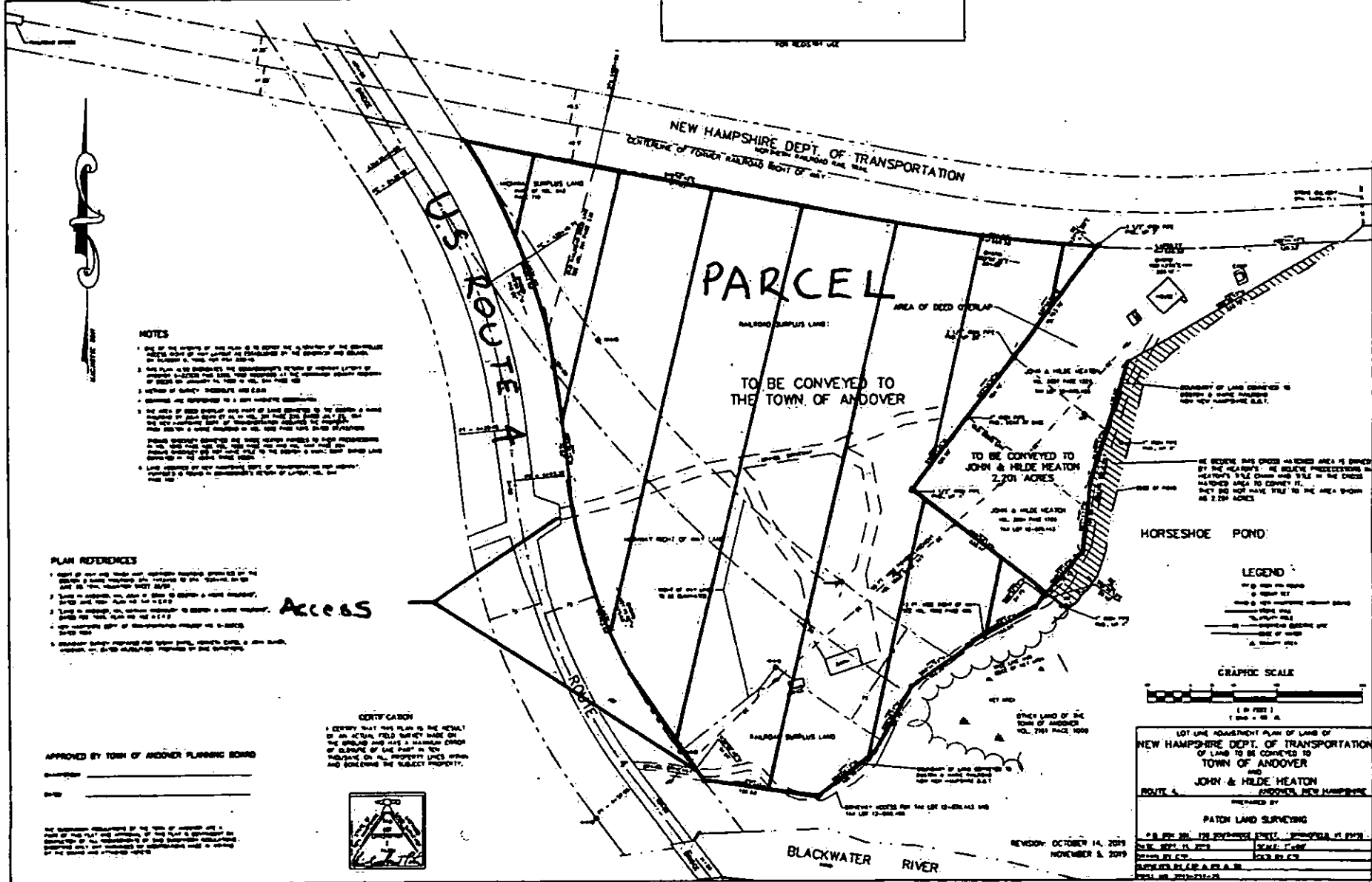


STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE
ADMINISTRATION

MOSAIC PARCEL
MAP SHARING
POOL



This map was compiled using data believed to be accurate; however, a degree of error is inherent in all maps. This map was distributed "AS-IS" without warranties of any kind, either expressed or implied, including but not limited to warranties of suitability to a particular purpose or use. No attempt has been made in either the design or production of the maps to define the limits or jurisdiction of any federal, state, or local government. Detailed on-the-ground surveys and historical analyses of sites may differ from the maps.



NOTES

- 1. THE BOUNDARY OF THIS PLAN IS TO BE THE ADJUSTMENT OF THE BOUNDARY OF THE TOWN OF ANDOVER AS SHOWN BY THE DEED OF CONVEYANCE TO THE TOWN OF ANDOVER, DATED 1856, AND AS AMENDED BY THE TOWN OF ANDOVER, DATED 1887.
- 2. THE PLAN IS SUBJECT TO THE SUBSEQUENT RECORD OF ANY OTHER DEEDS OF CONVEYANCE THAT MAY BE FILED IN THE REGISTERED OFFICE OF DEEDS OF JERSEY COUNTY, MISSOURI, OR ANY OTHER PLACE.
- 3. SURPLUS LAND SHOWN ON THIS PLAN IS THE LAND WHICH WAS CONVEYED TO THE TOWN OF ANDOVER BY THE DEED OF CONVEYANCE TO THE TOWN OF ANDOVER, DATED 1856.
- 4. THE AREA OF DEED OVERLAP IS THE AREA WHICH WAS CONVEYED TO THE TOWN OF ANDOVER BY THE DEED OF CONVEYANCE TO THE TOWN OF ANDOVER, DATED 1856, AND WHICH WAS ALSO CONVEYED TO THE TOWN OF ANDOVER BY THE DEED OF CONVEYANCE TO THE TOWN OF ANDOVER, DATED 1887.

PLAN REFERENCES

- 1. DEED OF CONVEYANCE TO THE TOWN OF ANDOVER, DATED 1856, AND AS AMENDED BY THE TOWN OF ANDOVER, DATED 1887.
- 2. DEED OF CONVEYANCE TO JOHN & HILDE HEATON, DATED 1900.
- 3. DEED OF CONVEYANCE TO JOHN & HILDE HEATON, DATED 1905.
- 4. DEED OF CONVEYANCE TO JOHN & HILDE HEATON, DATED 1910.

Access

CERTIFICATION
 I CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS A MAJORITARIAN SHARE OF SURFACE OF THE PART TO BE SURVEYED ON THE PROPERTY LINES SHOWN AND SHOWING THE SUBJECT PROPERTY.



LOT LINE ADJUSTMENT PLAN OF LAND OF NEW HAMPSHIRE DEPT. OF TRANSPORTATION TO BE CONVEYED TO TOWN OF ANDOVER AND JOHN & HILDE HEATON

PREPARED BY: PATRICK LAND SURVEYING

DATE: OCTOBER 14, 2019

DATE: NOVEMBER 5, 2019

PROJECT: LOT LINE ADJUSTMENT PLAN OF LAND OF NEW HAMPSHIRE DEPT. OF TRANSPORTATION TO BE CONVEYED TO TOWN OF ANDOVER AND JOHN & HILDE HEATON

DRAWN BY: [Name]

SCALE: 1" = 200' (AS SHOWN)

DATE: [Date]

APPROVED BY TOWN OF ANDOVER PLANNING BOARD

DATE: _____

COMMISSIONER: _____

PLANNING BOARD: _____

REVISED: OCTOBER 14, 2019
 NOVEMBER 5, 2019