



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

JUN 13 '22 PM 1:15 P



William Cass, P.E.
Assistant Commissioner

Handwritten initials: WCF

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

Bureau of Right-of-Way
May 10, 2022

REQUESTED ACTION

Pursuant to RSA 4:39-c and 228:31, authorize the New Hampshire Department of Transportation (Department) to sell 22 +/- acres of state-owned land within the Controlled Access Right of Way (CAROW) on the westerly side of NH Route 11 (Mount Major Highway), in the Town of Alton. The sale will be directly to the Society for the Protection of New Hampshire Forests (Grantee) for \$181,100.00, which includes a \$1,100.00 administrative fee, effective upon Governor and Executive Council Approval.

The Department's Bureau of Finance and Contracts has determined the parcel was originally purchased with 80% Federal Funds and 20% Highway Funds.

Funding is to be credited as follows:

04-096-096-960015-0000-UUU-402156 Administrative Fee	<u>FY 2022</u> \$1,100.00
04-096-096-960015-0000-UUU-409279 Sale of Parcel (20% of \$180,000.00)	<u>FY 2022</u> \$36,000.00
04-096-096-963515-3054-401771 Consolidated Federal Aid (80% of \$180,000.00)	<u>FY 2022</u> \$144,000.00

EXPLANATION

The Department received a request from the Grantee to acquire the 22 +/- acres of land, which falls within the (CAROW), on the westerly side of NH Route 11 in the Town of Alton. The Grantee has had a Memorandum of Agreement (MOA) with the Department for a portion of the requested area since October 2015. The Grantee's use of the property under the MOA has been for trailhead parking for the Mount Major Trail System. Since that time, increased visits to the area have stressed the parking capacity at the trailhead, and along NH Route 11. This acquisition would be a key step in their efforts to strengthen the overall user experience.

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

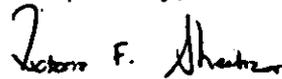
- The Grantee will be required to solicit a NH Licensed Land Surveyor, to survey and prepare a Right of Way Adjustment plan, to be submitted to the Department for review and approval. Upon approval by the Department, the Grantee is required to record the plan in the Belknap County Registry of Deeds, from which the Department will prepare the conveyance deed.
- The Grantee shall be responsible for all local and state approvals, including but not limited to subdivision approval.
- If any proposed construction, alteration of structures, or temporary equipment exceeds 200 feet above ground level, notification to the Federal Aviation Administration (FAA) shall be made, a minimum of 45 days before initiating construction. No construction shall be initiated until FAA has issued a determination letter.
- The recommendation from the District 3 Engineer is to establish a new CAROW line across this frontage, holding a 125-foot offset from centerline.
- Any new access point, or modification to the existing access, shall be obtained through District 3 and comply with the Department's Driveway Permit Policy.
- Restrictive language will be included in the conveyance deed, due to the presence of a historic cemetery. The New Hampshire Division of Historic Resource (NHDHR), "What to do upon Encountering Human Remains" pamphlet (2019) specifies the NHDHR "prefers the burials be left undisturbed and state law required a 25-foot buffer around most cemeteries." The cemetery "remains a special place in perpetuity, regardless of subsequent land transfers."

At the January 24, 2022, meeting of the Long Range Capital Planning and Utilization Committee the request (LRCP 21-038) was approved, allowing the Department to sell the 22 +/- acres of state-owned land directly to the Society for the Protection of New Hampshire Forests for the market value of \$180,000.00 and to assess an \$1,100.00 administrative fee.

Pursuant to RSA 4:39-c, the Department has solicited interest from the Town of Alton and received no response. Pursuant to RSA 204-D:2, the Department also solicited interest from the New Hampshire Housing Finance Authority and received no response.

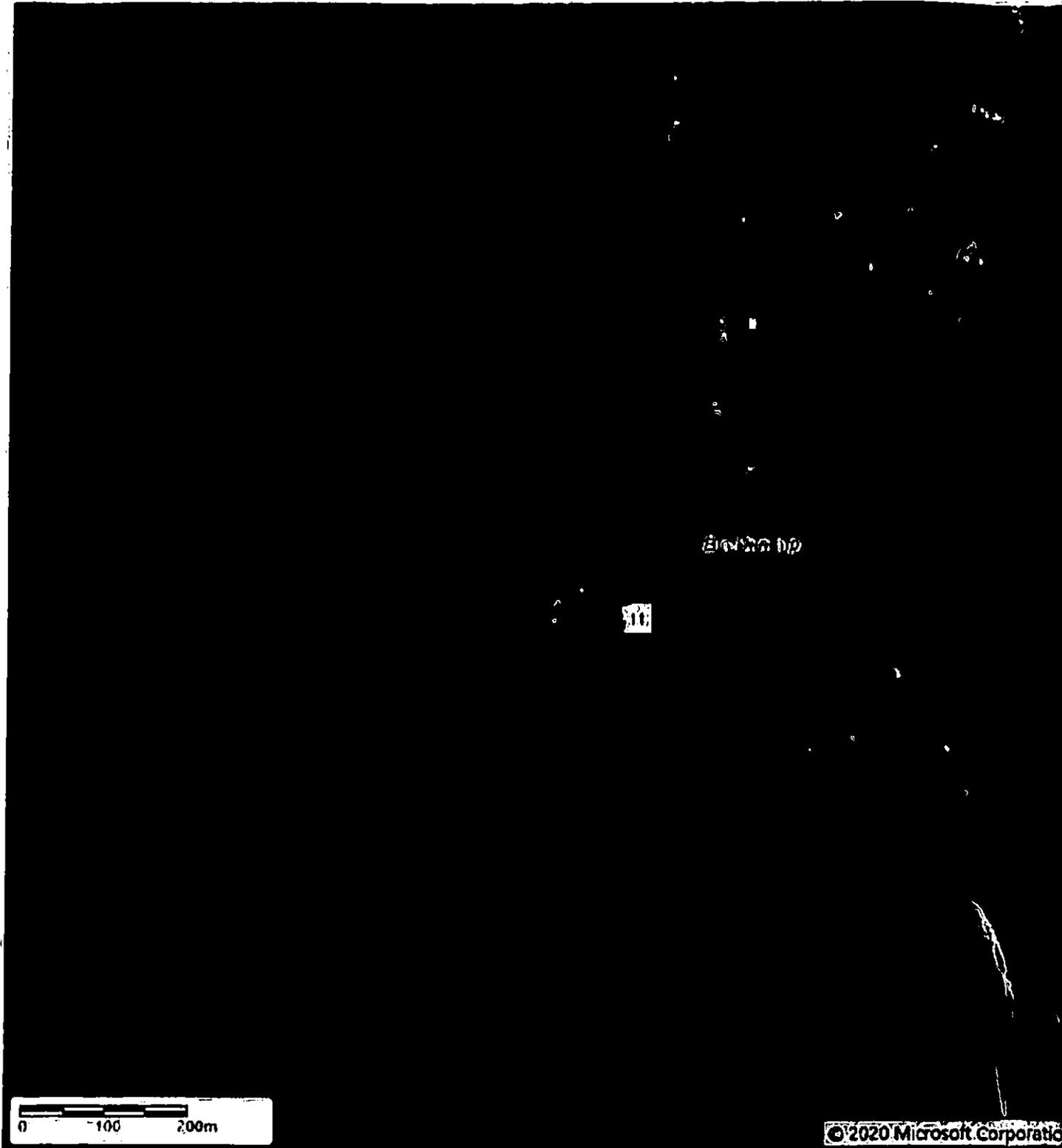
The Department is respectfully requesting authorization for the sale of land, as noted above.

Respectfully,



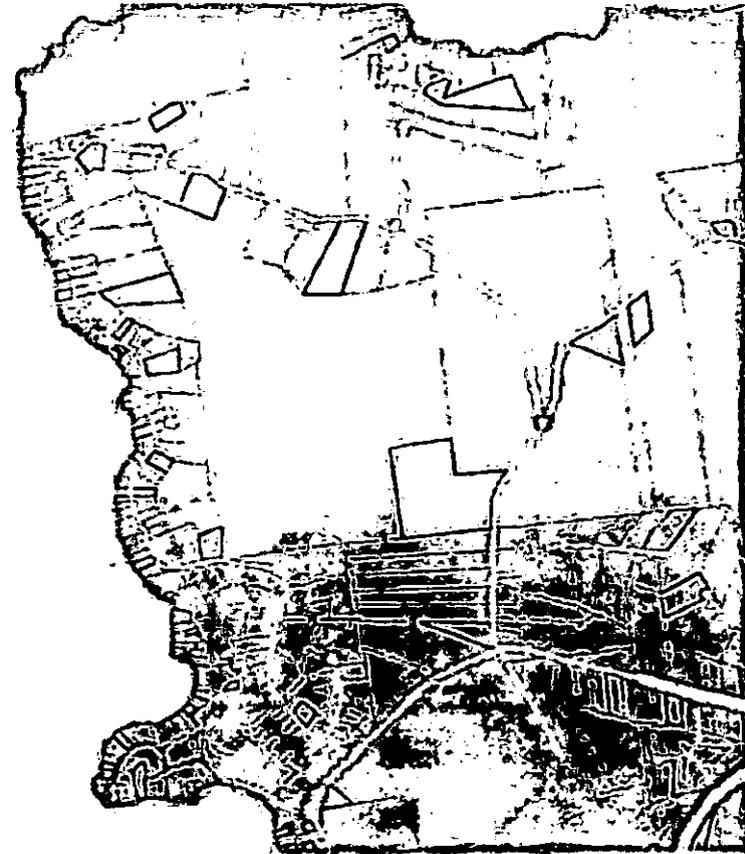
Victoria F. Sheehan
Commissioner

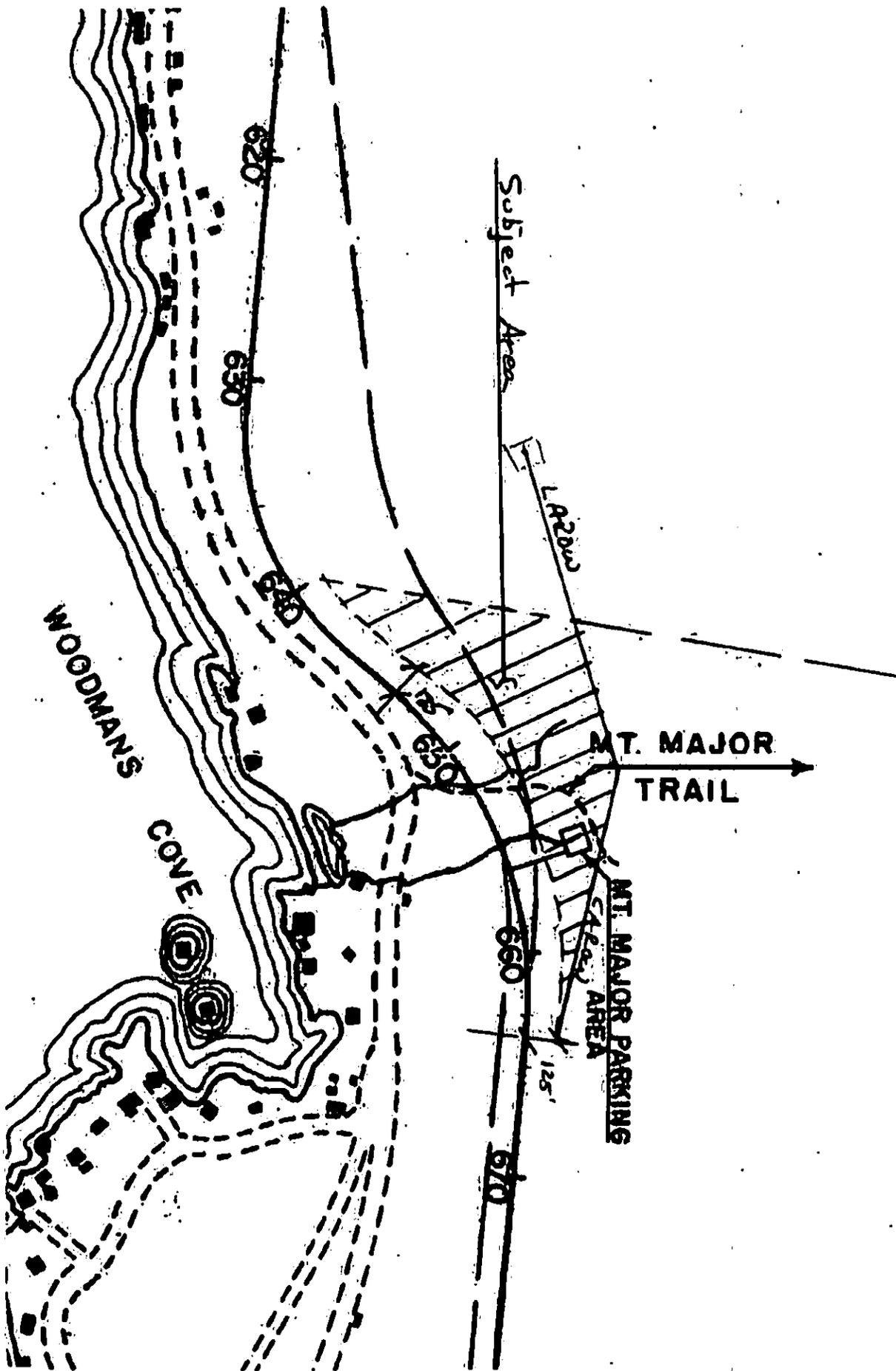
VFS/SJN
Attachments

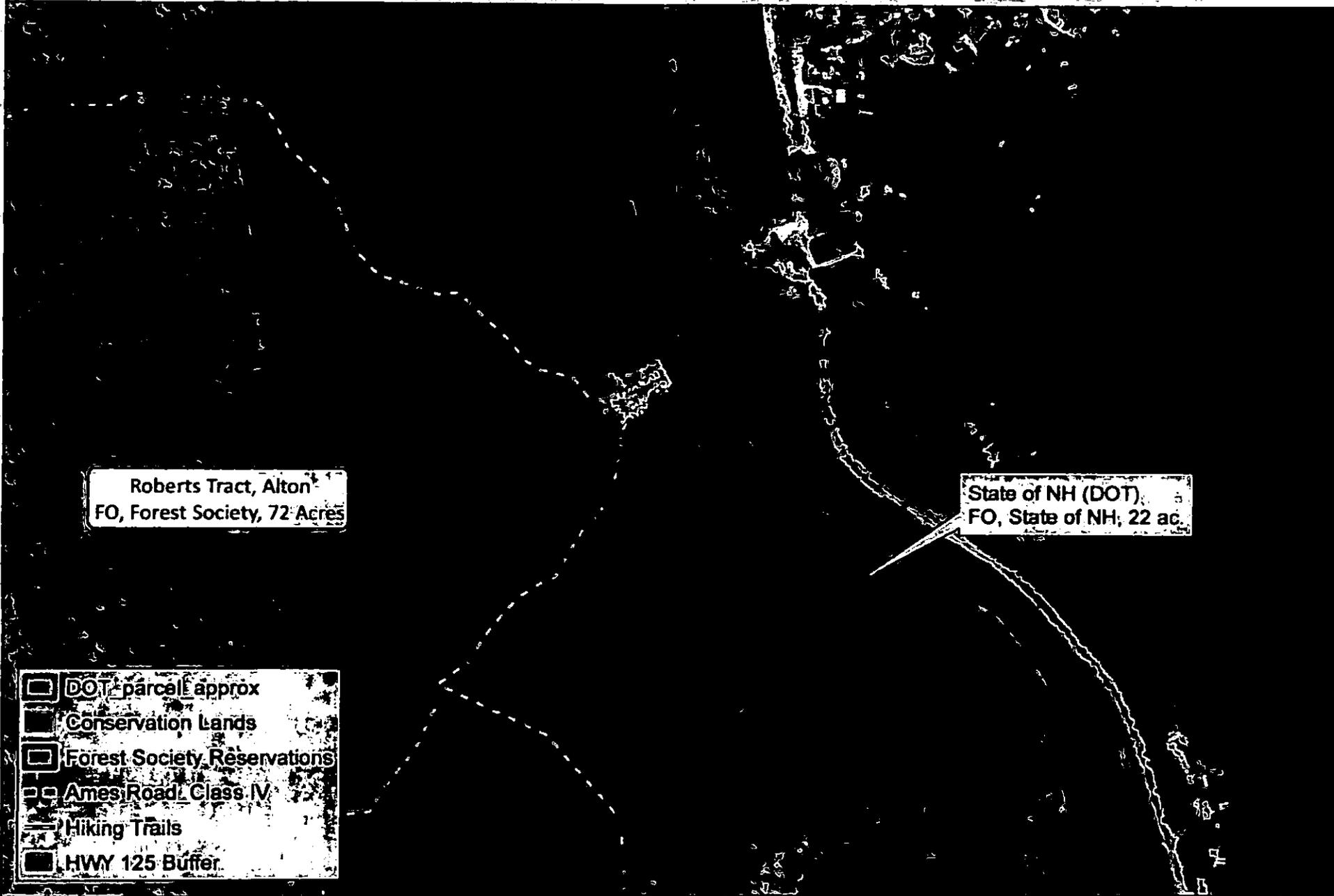


0 100 200m

© 2020 Microsoft Corporation







Roberts Tract, Alton
FO, Forest Society, 72 Acres

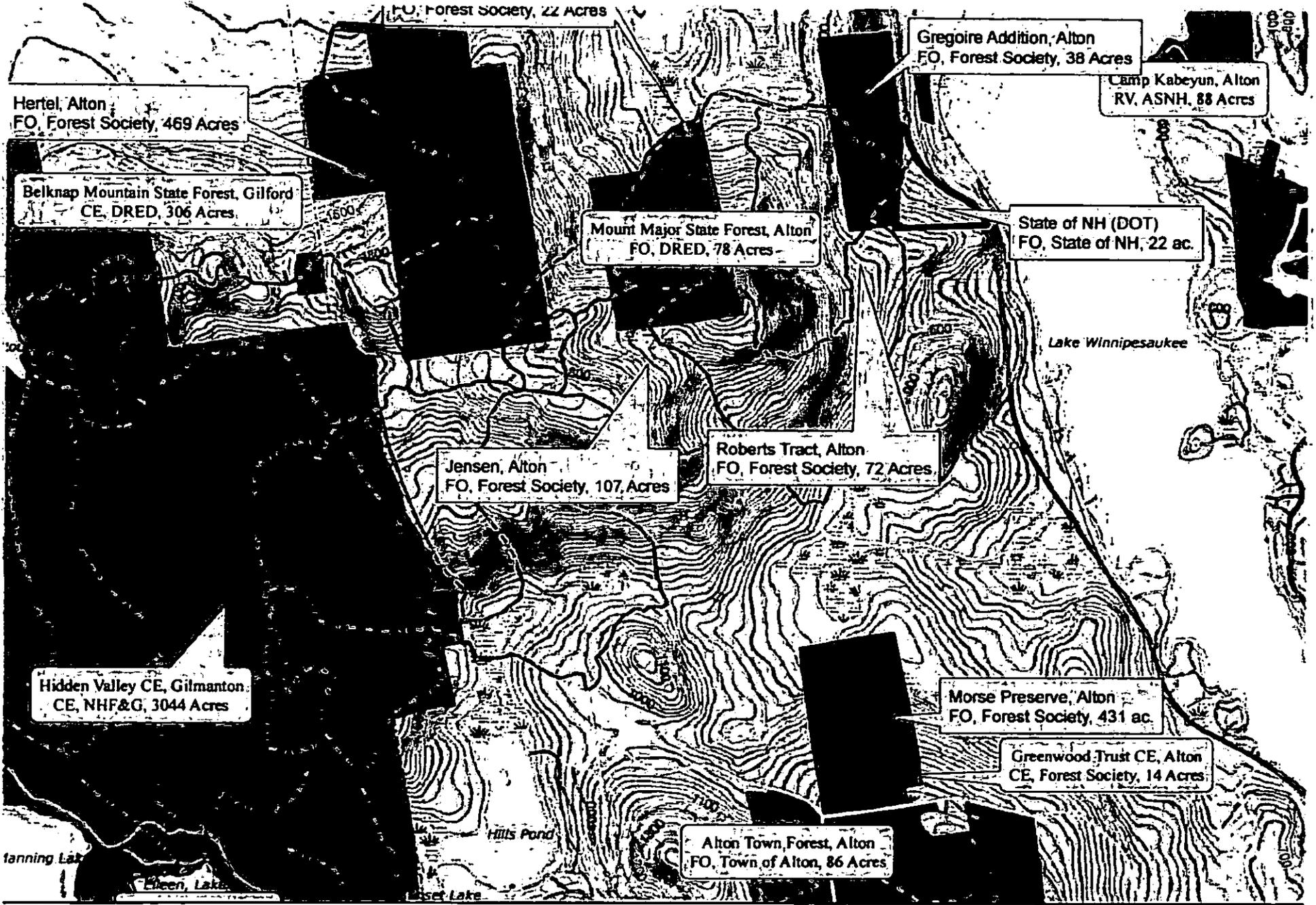
State of NH (DOT)
FO, State of NH, 22 ac.

- DOT parcel approx
- Conservation Lands
- Forest Society Reservations
- Ames Road Class IV
- Hiking Trails
- HWY 125 Buffer



Mt. Major - State of NH-DOT Land

State of NH (DOT) FO Purchase 22.± acres Alton NH



STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

LRCP 21-038

FROM: Stephen G. LaBonte
Administrator

DATE: November 15, 2021

AT: Dept. of Transportation
Bureau of Right-of-WaySUBJECT: Sale of State Owned Land in Alton
RSA 4:39-cApproved by the Long Range
Capital Planning and
Utilization Committee
January 24, 2022TO: Representative John Graham, Chairman
Long Range Capital Planning and Utilization Committee

REQUESTED ACTION

The New Hampshire Department of Transportation (Department) pursuant to RSA 4:39-c requests authorization to sell approximately 22 +/- acres of state-owned land within the Controlled Access Right of Way (CAROW), located on the westerly side of NH Route 11 (Mount Major Highway) in the Town of Alton. The sale will be directly to the Society for the Protection of New Hampshire Forests (Grantee), for \$181,100.00, which includes an \$1,100.00 administrative fee. The sale will be subject to conditions as specified in this request.

EXPLANATION

The Grantee has had a Memorandum of Agreement since October 2015 for a portion of the state-owned land they are looking to acquire. This had been used for trailhead parking for the Mount Major Trail System. Since that time, increased visits to the area have stressed the parking capacity at the trailhead and along NH Route 11. This acquisition would be a key step in their effort to strengthen the overall user experience.

The parcel, consisting of approximately 22 +/- acres, is a portion of a larger parcel acquired in 1968 from Elmer and Kathryn Birdsey for \$2,900.00. After a departmental review, it was determined that the subject parcel is surplus to the Department's operational needs and available for disposal. This parcel will be conveyed with the following conditions:

- The Grantee will be required to solicit a NH Licensed Land Surveyor, to survey and prepare a Boundary and Right of Way Adjustment plan, to be submitted to the Department for review and approval. Upon approval by the Department, the Grantee is required to record the plan in the Belknap County Registry of Deeds, from which the Department will prepare the conveyance deed. The Buyer will supply a full-size copy of the recorded plan and draft description of the surveyed parcel.
- If any proposed construction, alteration of structures or temporary equipment exceeds 200 feet above ground level, notification to the Federal Aviation Administration (FAA) shall be made a minimum of 45 days before initiating construction. No construction shall be initiated until FAA has issued a determination letter.
- The recommendation from the District 3 Engineer is to establish a new CAROW line across this frontage, holding a 125-foot offset from centerline.
- Any new access point, or modification to existing, shall be obtained through District 3 and comply with the Department's Driveway Permit Policy.
- Restrictive language will be included in the conveyance deed, due to the presence of an old family cemetery. The New Hampshire Division of Historic Resource (NHDHR) "What to do upon Encountering Human Remains" pamphlet (2019) specifies NHDHR "prefers the burials be left undisturbed and state law required a 25-foot buffer around most cemeteries." The cemetery "remains a special place in perpetuity, regardless of subsequent land transfers."

A Staff Appraiser from the Department evaluated the subject property and concluded it does have an independent highest and best use. He then prepared a market value appraisal using the sales comparison approach that adheres to the requirements of the Right of Way Manual and the Uniform Standards of Professional Appraisal Practice. The subject property's market value as of September 10, 2021 was concluded to be \$180,000.00.

Pursuant to RSA 4:39-c, the Department will solicit interest from the Town of Alton. Pursuant to RSA 204-D:2, the Department will also solicit interest from the New Hampshire Housing Finance Authority.

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

SGL/SJN/jl.
Attachments

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the 5 day of May, 2022 by and between the **State of New Hampshire, Department of Transportation** having a principal place of business at 7 Hazen Drive, Concord, New Hampshire 03301 (referred to as the "Department" or the "Seller") and the **Society for the Protection of New Hampshire Forests**, or its designee at closing (under common control), with a principal place of business at 54 Portsmouth Street, Concord, New Hampshire 03301. (referred to as "Forest Society" or the "Buyer") (referred to individually as a "Party" and collectively as the "Parties").

RECITALS

This Agreement relates to the sale of real estate located on NH Route 11, Alton, (the "Property"), more particularly described as:

- Belknap County Registry of Deeds Book 504, Page 292 dated August 7, 1968.
- Belknap County Registry of Deeds Book 503, Page 311 dated July 22, 1968.

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

- I. The Seller owns certain real estate located on NH Route 11, Alton, New Hampshire, consisting of 22 +/- acres of vacant land, as further described herein.
- II. The Seller is divesting of a portion the Property totaling 22 +/- acres, as it has been determined that this parcel is surplus to the Seller's needs.
- III. The Buyer is afforded the ability to acquire the Property in accordance with RSA 4:39-c.
- IV. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Property from the Seller for the purposes of future redevelopment.
- V. This Agreement is a binding contract which shall become effective upon approval of the Governor and Executive Council, pursuant to RSA 4:39-c.
- VI. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DESCRIPTION OF PROPERTY AND REAL ESTATE TRANSACTION:

- 1.1. **General:** Pending the results of the Buyer's due diligence and the other conditions in this Agreement, the Seller intends to sell to the Buyer, and the Buyer intends to acquire from the Seller, the Property, consisting of 22 +/- acres of vacant land, as shown on the aerial view of the Property, *Exhibit 1*.
- 1.2. **Purchase Price:** The Buyer shall acquire the Property for the sum of One Hundred Eighty One Thousand and One Hundred Dollars (\$181,100.00) due at Closing.
- 1.3. **Deposit:** The Buyer shall submit a deposit in the amount of Eighteen Thousand Dollars (\$18,000.00) upon execution of this Agreement. The deposit shall be applicable to the purchase price and shall become nonrefundable if the Forest Society does not complete the requirements outlined in this Agreement. Said Deposit shall be in the form of corporate check to be held in escrow by Ransmeier & Spellman PC, as Escrow Agent, of P.O. Box 600, Concord, NH 03302, which hereafter shall be referred to as the "Deposit."
- 1.4. **Payment of Purchase Price:** The Purchase Price shall be paid in full by the Buyer by certified check or bank check to the Seller at Closing and conveyance of the Property to the Buyer.
- 1.5. **Conditions of sale:** The subject property on NH Route 11 is being sold "as is, where is," with the sale conditions approved by the Long Range Capitol Planning and Utilization Committee, LRCP 21-038 on January 24, 2022. The following sale conditions must be satisfied prior to closing:
 - 1.5.1 **Survey** - The Forest Society will be required to solicit a NH Licensed Land Surveyor, to survey and prepare a Perimeter Boundary and Right of Way Adjustment Plan, to be submitted to the Department for review and approval. Upon approval by the Department, the Buyer is required to record the plan in the Belknap County Registry of Deeds, from which the Department will prepare the conveyance deed.
 - 1.5.2 The Forest Society shall be responsible for all local and state approvals, including but not limited to subdivision approval.
 - 1.5.3 If any proposed construction, alternation of structures, or temporary equipment exceeds 200 feet above ground level, notification to the Federal Aviation Administration (FAA) shall be made a minimum of 45 days before initiating construction. No construction shall be initiation until FAA has issued a determination letter.

- 1.5.4 The new CAROW line shall be across this frontage, holding a 125-foot offset from centerline of NH Route 11.
- 1.5.5 Any new access point, or modification to the existing, shall be obtained through District 3 and comply with the Department's Driveway Permit Policy.
- 1.5.6 Restrictive language will be included in the conveyance deed, due to the presence of a historic cemetery. The New Hampshire Division of Historical Resources (NHDHR), "What to do upon Encountering Human Remains" pamphlet (2019) specifies that NHDHR "prefers the burials be left undisturbed and state law required a 25-foot buffer around most cemeteries." The cemetery "remains a special place in perpetuity, regardless of subsequent land transfers."
- 1.6. **Access to Property.** The Department hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Property for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement. All times and dates for such access shall require the prior approval by the Department and such approval will not be unreasonably withheld.

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

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

"The contractor agrees to indemnify, defend and save harmless the Society for the Protection of New Hampshire Forests and State of New Hampshire Department of

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

- 1.7. **Closing:** The Parties agree that Closing shall occur within ninety (90) days after final approval of the sale by the Governor and Executive Council and the Department and securing final unappealable approval of the Town of Alton's Planning Board, and of any other governmental authorities as may be needed, to create a new tax lot or perform a boundary line adjustment to add the Property to the Buyer's adjacent land identified as Tax Lot 3 on the Town of Alton's Tax Map 17, unless otherwise mutually agreed by the Parties.
- 1.8. **Title and Deed Restrictions:** In addition to the terms and conditions set forth within this Agreement, the conveyance of the Property by the Department to the Buyer shall be of good and marketable title thereto by Quitclaim Deed and insurable, upon application by the Buyer, for the benefit of the Buyer, by a title insurer licensed in the State of New Hampshire and acceptable to the Buyer pursuant to an ALTA standard form title insurance policy in an amount equal to the Purchase Price, insuring that the Buyer holds marketable fee simple title to the Property subject to:
 - a) Easements, liens, restrictions, and/or encumbrances of record or any other matters of record in existence at the time of the Closing accepted and approved by the Buyer; and
 - b) Provisions of building and zoning laws in effect at the time of the Closing.
- 1.9. **Seller's Affidavits and Certificates:** If requested to do so by the Buyer, the Department, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or the Buyer's title insurance company with respect to: (1) parties in possession of the Property, (2) rights of third parties and title claims in or to the Property, and (3) mechanic's and materialmen's liens affecting the Property.
- 1.10. **Deed Preparation; Recording Fees:** The Department shall convey the Property by Quitclaim Deed. The Department shall prepare all deeds (including all other applicable recording instruments, if any) at its expense.

- 1.11. **Transfer Taxes and Recording Fees:** In accordance with New Hampshire State Law RSA 78-B:2, the Department is exempt from the Real Estate Transfer Tax.
 - 1.12. **Discharge of Liens:** The Department shall, at its expense, pay or discharge all legitimate liens, mechanics liens, encumbrances, and attachments, if any, which may exist on the Property through the date of closing or filed after recording of the deed transferring the Property to the Buyer due to an action by the Department prior to recording of the transfer deed. To enable the Department to make conveyance as herein provided, the Department may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Department shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances and receive therefrom a discharge(s) to be recorded in the ordinary course of business.
 - 1.13. **Title Insurance:** If applicable, the Department shall execute all customary documents required by the Buyer's Title Insurance Company.
 - 1.14. **Department's Disclosures:** The Department makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Property.
 - 1.15. **Casualty and Condemnation:** In the event that the Property, prior to closing, are damaged by fire, flood, collapse, or other casualty, the Department or the Buyer, at any time after the occurrence of such damage or casualty, may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease and this Agreement shall thereupon be void and of no further force or effect. In the event of casualty, the Department and the Buyer agree to hold each other harmless from any claim for any costs, damages, liabilities, or financial losses it may incur. In the event of said above damage is to such an extent that the Buyer objects, this Agreement may be rescinded at the option of Buyer and the Deposit shall be refunded to Buyer or else Buyer may elect to accept the damaged Property as the Department can convey without diminution in the Purchase Price.
2. **Buyer's Contingencies:** The Buyer's obligation to close on acquisition of the Property shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the

right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Department.

- 2.1 **Title**: Time being of the essence, upon execution of this Agreement by the Parties, the Buyer may perform a title examination of the Property within thirty (30) days, in order to be reasonably satisfied that title to the Property is marketable and insurable. If Buyer finds, in its sole discretion, defect(s) in the title to any of the lands which together make up the Property or encumbrances on the Property to which Buyer in good faith objects, it shall so notify the Department of that fact promptly in writing by the transfer of title, specifying the defect(s) to which Buyer objects, failing which this right shall be waived. Upon receipt of such notification the Department shall within sixty (60) days thereafter remove or otherwise remedy said defect(s) to the extent practicable. Notwithstanding the foregoing, the Department shall be obligated to remove or subordinate, as the case may be, on or before the date of transfer of title and at the Department's sole cost and expense: (i) any mortgages; (ii) any mechanics' or materialmen's liens; and (iii) any other monetary liens encumbering the Property. If Buyer determines that the title is found not to be marketable or not clear of record or not insurable, or if the Department is unable to remove or otherwise remedy the defect(s) to which Buyer objects within said period, this Agreement may be rescinded at the option of Buyer and the Deposit shall be refunded to Buyer or else Buyer may elect to accept such title as the Department can convey without diminution in the Purchase Price.
- 2.2 **Hazardous Materials** - Time being of the essence, upon execution of this Agreement by the Parties, the Buyer may perform an environmental assessment of the Property within Sixty (60) days, in order to determine if said Property contains hazardous waste or hazardous materials. If Buyer performs an environmental assessment and finds said Property contains hazardous waste or hazardous materials to which Buyer objects, Buyer may then rescind this Agreement and receive return of Buyer's Deposit by so notifying The Department no later than above date or else Buyer shall be deemed to have waived such objections. If such assessment is performed, Buyer agrees that qualified experts will be engaged, that Buyer shall exercise said right to rescind, if at all, promptly following receipt of the assessment report but not later than the above-specified date and will therewith provide The Department with a copy of said report.
- 2.3 **Subdivision Approval** - This Agreement is contingent upon Buyer securing, on behalf of the Department, final unappealable approval of the Town of Alton's Planning Board, and of any other governmental authorities as may be needed, to create a new tax lot or perform a boundary line adjustment to add the Property to the Buyer's adjacent land identified as Tax Lot 3 on the Town of Alton's Tax Map 17. Said Property to be more accurately defined by a survey plan to be developed. Failure to secure subdivision or said boundary line adjustment for the Town of Alton's Planning Board will void this contract and

entitle Buyer to receive a refund of its deposit. The parties agree that a survey plan shall be approved in advance by the Department and Buyer, showing said lot as approved by the Alton Planning Board, and shall be recorded at said Belknap Registry.

REPRESENTATIONS AND WARRANTIES

3. Representations and Warranties of the Buyer. The Buyer hereby represents and warrants that:

- 3.1 The execution and delivery of this Agreement and the performance of the Buyer's obligations hereunder have been duly authorized by such action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms subject only to the conditions set out in this Agreement.
- 3.2 Subject to the conditions set out in this Agreement, neither the execution or delivery by the Buyer of this Agreement, the performance by the Buyer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law, charter, ordinance or governmental regulation applicable to the Buyer, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Buyer is a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.
 - 3.2.1 Except as set forth in this Agreement, no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made or disclosed in this Agreement.
 - 3.2.2 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Buyer, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Buyer of its obligations hereunder or the performance by the Buyer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Buyer in connection with the transactions contemplated hereby.

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

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

5. GENERAL PROVISIONS

- 5.1. **Cooperation:** The Buyer and the Department agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Department, the Buyer, or their representatives, agents, and consultants.

- 5.2. **Entire Agreement: Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 5.3. **Binding Effect: Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 5.4. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.
- 5.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 5.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 5.8. **Consent to Jurisdiction and Venue.** The Department and the Buyer submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County Superior Court. Both Parties hereby waive their right to a jury trial.
- 5.9. **Independent Parties.** The Department and the Buyer are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.

- 5.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement.
- 5.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 5.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 5.13. **Preservation of Rights.** Nothing herein or in any related Agreement shall limit or be construed to limit in any way rights or remedies the Buyer may have for the collection of real property taxes under law, unless expressly set forth herein.
- 5.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 5.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 5.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any Buyer or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable Buyer or other governmental Boards, Committees, Commissions, or Departments, including but not limited to the requirement that the agreement be approved by the Governor and Executive Council pursuant to RSA 4:39-c prior to the Seller being required and/or authorized to convey the property to the Buyer.

- 5.17. **Warranties and Representations:** The Department and the Buyer each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 5.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not affected thereby shall remain in full force and effect.

LIST OF EXHIBITS

Exhibit 1 Aerial view of the subject area.

[The remainder of this page left blank intentionally]

Executed as a sealed instrument this 6th day of May, 2022.

BUYER:

By:  Date: 05/06/2022

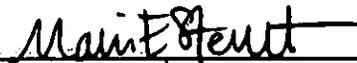
Printed: David Jackson Savage, President

Society for the Protection of New Hampshire Forests

Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this on the 6th day of May, 2022, before me, personally appeared David Jackson Savage, President on behalf of the Society for the Protection of New Hampshire Forests, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.


Notary Public/Justice of the Peace

My Commission Expires: 9/5/2023

MARIA E. STEWART, Notary Public
State of New Hampshire
My Commission Expires September 5, 2023

SELLER

STATE OF NEW HAMPSHIRE

By: Stephen G. LaBonte, NHDOT Date: May 10, 2022

Printed: Stephen G. LaBonte

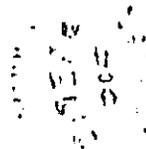
Duly Authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK**

The foregoing instrument was acknowledged before me this on the 10th day of May, 2022, before me, personally appeared, Stephen G. LaBonte, Administrator for the Bureau of Right of Way, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

Sandra J. Newman
Notary Public/Justice of the Peace

My Commission Expires Nov 25, 2024



**SANDRA J. NEWMAN, Notary Public
State of New Hampshire
My Commission Expires Nov. 25, 2024**