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STATE OF NEW HAMPSHIRE
DEPARTMENT of NATURAL AND CULTURAL RESOURCES
DIVISION of PARKS and RECREATION
BUREAU OF TRAILS
172 Pembroke Road Concord, New Hampshire 03301
Phone: (603) 271-3254 Fax: (603) 271-3553 E-Mail: nhtrails@dncr.nh.gov

June 22, 2020

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

REQUESTED ACTION

Authorize the Department of Natural and Cultural Resources, Division of Parks and Recreation, Bureau of Trails to enter into a Land Use Agreement with Pike Industries, Inc. (Pike) of Belmont, NH, in the amount of \$10,000 to be paid in equal annual installments for trail access in Gorham, NH for a 5-year period effective upon Governor and Executive Council approval through December 31, 2024. 100% Other Funds.

Funds are available in the following account for Fiscal Year 2021, and are anticipated to be available in Fiscal Years 2022, 2023, 2024 and 2025, upon the continued appropriation of funds in the future operating budgets with authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified.

03-035-035-351510-35620000 -Trail Acquisition

	<u>FY21</u>	<u>FY22</u>	<u>FY23</u>	<u>FY24</u>	<u>FY25</u>
022-500248 - Rents-Leases Other Than State	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000

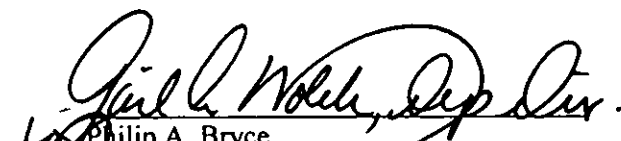
EXPLANATION

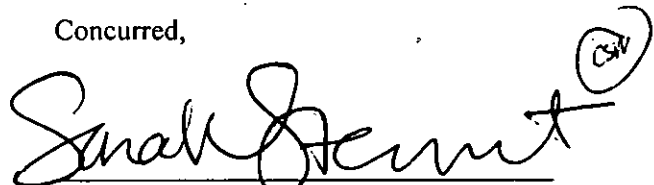
The Bureau of Trails has worked with Pike to provide access to the trails over and across a parcel of land in Gorham, NH for the purpose of utilizing a system of designated Off Highway Recreational Vehicle trails. This Land Use Agreement (Agreement) will help the Gorham community by allowing an alternate route from local businesses to the woods trails and Jericho Mountain State Park, to alleviate use volumes in the local neighborhood. This Agreement includes a new trail connecting the existing Recreational Rail Trail to State Route 16, which Pike Industries will be building and invoicing separately, as an alternate trail route. This Agreement is for the administrative time associated with Pike's staff working with us on trails and property related matters such as maintenance work, trail construction, logging operation coordination, and environmental compliance.

The Attorney General's office has approved this Agreement as to form, substance and execution.

Respectfully submitted,

Concurred,


Philip A. Bryce
Director


Sarah L. Stewart
Commissioner

PAB/CG/mm

LAND USE AGREEMENT

THIS LAND USE AGREEMENT ("Agreement") is made as of this 10th day of June, 2020, pursuant to authority contained under New Hampshire RSA 215-A (Supp.), by and between,

Pike Industries, Inc. a corporation organized under the laws of the State of Delaware, having a principal place of business in the Town of Belmont, County of Belknap, State of New Hampshire, with a mailing address of 3 Eastgate Park Road, Belmont, NH 03220, its successors and assigns, ("**PIKE**"), and the

Department of Natural and Cultural Resources of the State of New Hampshire, acting by and through its Commissioner, and the Chief Supervisor of the Trails Bureau, County of Merrimack, State of New Hampshire, both with a mailing address of State of New Hampshire, Department of Natural and Cultural Resources, Division of Parks and Recreation, Trails Bureau, 172 Pembroke Road, Concord, New Hampshire 03301, ("**DNCR**").

RECITALS

WHEREAS, the State of New Hampshire acting by and through DNCR wishes to have PIKE grant access off of State Route 16 to the citizens of New Hampshire and other members of the public to a certain system of off highway recreational vehicle ("OHRV") trails described below for recreational purposes; and

WHEREAS, PIKE is willing to grant such access and perform the work required to build a ramp from State Route 16 (the "Work") for access, provided that such access can be granted with statutorily limited liability to PIKE, and can be granted at no cost to PIKE, and provided that DNCR is willing to establish, maintain and patrol said trails during such times as this Agreement remains in effect.

WHEREAS, the State of New Hampshire acting through DNCR will pay PIKE for the cost of the construction of the access ramp and access fee.

WHEREAS, the State of New Hampshire acting by and through DNCR and PIKE have agreed to close existing trails (see Exhibit A) through PIKE property in exchange for the new access trail on the Eastern side of PIKE lands.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants set forth herein below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, PIKE and DNCR hereby agree as follows:

Description:

PIKE grants permission to the public, in the manner and subject to the conditions and restrictions stated in this Agreement, to enter onto certain lands of PIKE, described in Section 2 herein, for the purpose of utilizing a system of designated Off Highway Recreational Vehicle(s) trails, including designated bridges/culverts across streams.

PIKE grants permission to DNCR, its employees and agents to enter onto certain lands of PIKE, described in Section 2, for the purpose of location, relocation, establishment, construction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment, and restoration of the designated Off Highway Recreational Vehicle trails.

1. Description of Property:

The access, access and ramp, and Trails are over and across certain lands of PIKE located in the State of New Hampshire, hereinafter referred to as the "Premises". The Premises are generally located in the Town of Gorham, NH, and the access ramp and Trails are restricted to the PIKE designated trails, access ramp, roads, and sites shown as set forth on the attached "Exhibit A- PIKE Gorham OHRV Map", which Exhibit A is attached hereto and made a part hereof.

This Agreement shall be subject to the rights of either party hereto to alter, to close, to relocate, to discontinue and/or to establish new designated locations of Trails as set forth herein below.

2. Term:

The term of this Agreement shall commence on the date of approval of Governor and Executive Council and shall terminate on December 31, 2024. This Agreement shall be subject to the rights of either party hereto to terminate this Agreement as set forth herein below.

3. Payment:

3.1 DNCR shall pay during the term a fee of \$10,000 for the public use of the access ramp and Trails.

The payment of the fee shall be made in five (5) annual fee installments of \$2,000 due upon approval of this Land Use Agreement by the Governor and Executive Council on or before Dec 1 of each year. Further, DNCR shall pay PIKE for the Work within 30 days upon completion of the work.

3.2 Notwithstanding anything to the contrary contained herein, it is understood and agreed that all payments of all sums by DNCR hereunder are contingent upon availability and continued appropriation of State funds, and if for any reason whatsoever, such funds shall be terminated or reduced or otherwise become unavailable, DNCR may terminate this Agreement in whole or in part immediately.

3.3 If at any time during the term of this Agreement the parties agree to alter the Premises as provided for in Item 10.1 herein below, or PIKE divests of and withdraws from this Agreement any of its lands as provided for in Item 10.2 herein below, or otherwise, the subsequent annual fee installments shall be reduced proportionally by the reduction in acres of the Premises. Any such annual fee installment adjustment calculation shall be made pursuant to Federal Bureau of Labor Statistics CPI Inflation Calculator. Any adjusted annual fee installment shall be as invoiced by PIKE.

4. PIKE's Obligations and Reserved Rights:

4.1 PIKE agrees that it shall permit the public to use the access ramp and to use the PIKE designated system of Trails for public recreational purposes only.

4.2 PIKE agrees that it shall permit DNCR, at DNCR's own expense, to locate, to relocate, to establish, to construct, to reconstruct, to install, to erect, to improve, to maintain, to repair, to use, to patrol, to discontinue, to retire, to abandon and to restore

the PIKE designated system of Trails for public recreational purposes only.

4.3 Annually, prior to May 1, PIKE shall review DNCR's map of the proposed Trail. The locations of all such Trails shall be subject to PIKE's approval.

4.4 PIKE permits DNCR to cut and remove trees, brush and other obstacles from the Trails to a width of twelve (12) feet. All hazardous trees and brush leaning in the Trails may be cut and removed.

4.5 PIKE permits DNCR to perform site preparation, including the cutting and removal of standing trees, for bridge/culvert installation, where permitted.

4.6 PIKE permits DNCR to install gates and construct passways through fences and stone walls.

4.7 PIKE agrees to co-sign the forms necessary for DNCR to obtain all governmental approvals, permits, authorizations, and licenses required under DNCR's obligations.

5. DNCR's Obligations:

5.1 DNCR, at its own expense, shall observe and be in compliance with all Federal, State and Municipal laws and regulations, as such laws and regulations may now be or may hereafter become applicable to Trails and access to the Trails.

5.2 DNCR, unless otherwise mutually agreed upon, shall have the full responsibility of giving notification and/or applying for and obtaining any and all Federal, State or Municipal governmental approvals, permits, authorizations, or licenses relating to DNCR's exercise of rights hereunder. DNCR shall not commence or perform any location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails or access to the Trails on land of PIKE until after DNCR has received authorization from PIKE and given such notifications and/or applied for and obtained any such governmental approvals, permits, authorizations, or licenses required for such action, and copied same to PIKE, if any.

5.3 With respect to DNCR's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and access to the Trails, such activities shall be undertaken only in conformity with any Federal, State and Municipal laws and regulations, and consistent with any approvals, permits, authorizations or

licenses issued pursuant thereto.

- 5.4 With respect to DNCR's location, relocation, establishment, construction, reconstruction, installation, erection, improvement, maintenance, repair, use, patrol, discontinuance, retirement, abandonment or restoration of Trails and access to the Trails allowed under the provisions of this Agreement, such activities shall be accomplished to the best management practices (i.e. Best Management Practices for Erosion Control During Trail Maintenance and Construction, published by the New Hampshire Department of Resources and Economic Development) for such work.
- 5.5 DNCR, at its own expense, shall locate, relocate, establish, construct, reconstruct, install, erect, improve, maintain, repair, use, patrol, discontinue, retire, abandon and restore Trails and access to the trails in a manner that minimizes soil erosion.
- 5.6 DNCR, at its own expense, may as a portion of a Trail install a stream crossing with a bridge or culvert. Such stream crossing installation shall be at a location and of design and with materials as approved by PIKE.
- 5.7 For timber (permitted to be cut by DNCR), DNCR agrees to pay PIKE the current rate for the highest market use of the tree.
- 5.8 Annually, prior to May 1, DNCR shall present to PIKE a map of the proposed Trail for PIKE's review and approval. The locations of all such Trails shall be subject to PIKE's approval.
- 5.9 DNCR agrees to close any Trail (or portion thereof), as requested by PIKE, that in the sole determination of PIKE, the aggregate operations of PIKE or its contractors would make use of any such Trail (or portion thereof) hazardous to the public, within forty-eight (48) hours of receipt of written notice from PIKE to DNCR. The parties agree to work together to relocate the Trail (or portion thereof) so to minimize the interruption of public use of such Trail (or portion thereof).
- 5.10 DNCR agrees to close any Trail (or portion thereof), as requested by PIKE, that in the sole determination of PIKE, is causing unacceptable erosion, or is causing unacceptable sedimentation into a water body or stream, within forty-eight (48) hours of receipt of written notice from PIKE to DNCR. The parties agree to work together to mitigate any cause of erosion or sedimentation along a Trail (or portion thereof), and/or to relocate the Trail (or portion thereof) so to minimize the interrupt of public use of such Trail (or portion thereof).

- 5.11 DNCR, at its own expense, shall regulate the use of Trails and access to the Trails by the public.
- 5.12 DNCR, at its own expense, shall maintain Trails and access to the Trails in good and usable condition.
- 5.13 DNCR, at its own expense, shall be responsible for the appearance of all Trails and access to the Trails provided for public use by maintaining the Trails and access to the Trails in a good, clean and orderly condition and manner, and in such manner as not to be objectionable to PIKE or detract from the aesthetic values of the general area. DNCR agrees to regularly patrol the Trails and access to the Trails, and to pick up and to dispose of all trash and debris resulting from the public's use of the Trails and access to the Trails.
- 5.14 DNCR agrees that no structure or building will be constructed or erected on the Premises, and that no additional improvements will be made which would alter or injure the natural aesthetic quality of the surrounding area or the Premises' Current Use status.
- 5.15 DNCR agrees that it will not make any strip or waste of any portion of the Premises.
- 5.16 DNCR, at its own expense, shall be responsible for placing and maintaining necessary trail signs along the Trails so to adequately mark Trails. All such signs shall be affixed to freestanding posts and shall not be nailed or otherwise attached to live trees.
- 5.17 DNCR, at its own expense, shall erect signs approved by PIKE that inform the public that limited and specific private lands are being made available for public use and should be used with respect. Said signs will include language demanding that users stay on TRAIL.
- 5.18 Any Trail maps published or otherwise made available through DNCR for the use of the public shall be reviewed and approved by PIKE. Trail maps shall be kept current with revisions made at least annually.
- 5.19 In the event that the use of the Trails or access to the Trails as contemplated by this Agreement shall result in any increase in PIKE's real estate property taxes, or the assessment of any penalty for removal of the Trails' and/or access to the Trails areas from Current Use, DNCR shall promptly reimburse PIKE for all such costs upon PIKE providing proper documentation of such costs, if applicable.
- 5.20 Any application of chemicals, specifically calcium chloride for dust, by DNCR on land of PIKE shall be with the prior

written approval of PIKE. DNCR shall hold PIKE harmless from and against any and all claims, exactions, penalties, or legal actions resulting from acts by DNCR, its employees, contractors, or agents to which this provision applies.

5.21 At the end of this Agreement without any Agreement extension or renewal, DNCR, at its own expense, shall discontinue, retire, abandon, restore and /or stabilize each of the Trails and access to the Trails as mutually agreed to with PIKE. This covenant shall survive the termination of this Agreement.

5.22 DNCR agrees to accept the Trails on the Pike property in its "AS IS – WHERE IS" condition with all faults apparent or latent. Pike makes no representations or warranties of any nature whatsoever regarding the condition of the property on which the Trails are to be located or the suitability or the property for DNCR's use.

6. Liability Provisions; Sovereign Immunity:

6.1 It is expressly understood that the parties intend this Agreement to be subject to the limitations of liability provisions set forth in New Hampshire RSA 212:34 and RSA 508:14.

6.2 Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State. This covenant shall survive the termination of this Agreement.

7. Termination:

7.1 Termination for Cause – In the event that DNCR would: fail to perform any of its obligations hereunder in a timely or satisfactory manner, use or allow the use of the Premises for any purpose or in any other manner except as herein specified, fail to pay the aforesaid annual fee installment when due or cost of the ramp (whether payment is demanded or not), fail to perform in good faith any of the agreements herein set forth, or fail to conform to all the conditions and restrictions herein stated, PIKE, its successors or assigns, may at its election terminate or annul this Agreement so far as all further rights of DNCR or the general public hereunder are concerned, and repossess the Premises and hold the Premises free and clear of all claims of DNCR or the general public under this Agreement or otherwise. Written notice of any such determination by PIKE shall be served upon DNCR by certified mail, return receipt requested, send to the DNCR

address as specified below, specifying the nature of the default or breach. If upon the expiration of fourteen (14) days from the delivery of such notice, the default or breach is not remedied, PIKE may terminate this Agreement in whole or in part upon two (2) days' notice (the notice of termination period) sent by certified mail, return receipt requested, to the DNCR address as specified below, of such termination. Upon the expiration of such notice of termination period, this Agreement shall terminate. No failure on the part of PIKE, or its successors or assigns, to enforce a forfeiture by DNCR of this Agreement, or to terminate this Agreement for any default or breach by DNCR of any agreement, condition or restriction herein contained, shall be construed as a waiver of the right to enforce a subsequent forfeiture or a subsequent default or breach of the same or any other agreement, condition or restriction herein contained.

- 7.2 Termination without Cause – This Agreement shall be subject to the right of either party hereto at any time during the term of this Agreement to terminate this Agreement by giving written notice to the other party hereto at least ninety (90) days prior to the effective date of the termination. Any such notice shall be sent by certified mail, return receipt requested, to the address of the party hereto being notified as specified below.
- 7.3 It is further understood and agreed, that at the termination of this Agreement, any buildings and all fixtures and personal property of DNCR shall be removed from the Premises within ninety (90) day from the date of termination. DNCR hereby agrees that any buildings, fixtures and personal property of DNCR remaining on the Premises after the expiration of said 90 days shall be and become then the property of PIKE. PIKE, however, reserves the right to require that DNCR shall remove the buildings within the 90 day period if it so demands.
- 7.4 DNCR agrees to provide public notice in local media, social media, and its website upon termination of this agreement. DNCR further agrees to post no trespassing signage at access points to PIKE property upon termination of this agreement.

8. Assignment and Sublease:

- 8.1 DNCR shall not assign, sublet or otherwise transfer any interest in this Agreement, or underlet the Premises or any portions thereof, nor give or surrender the same to any other persons without written consent of PIKE.
- 8.2 PIKE may assign this Agreement, and this Agreement as so assigned shall be

binding on and inure to the benefit of PIKE's successors and assigns.

9. Amendment:

- 9.1 During the term of this Agreement, or any of its extensions or renewals, DNCR and PIKE may negotiate to alter, by mutual accord, the Premises as described in Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes as are agreed upon without affecting the balance of this Agreement (except annual fee installment payment as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing such revised Premises) signed by designated agents of both parties.
- 9.2 During the term of this Agreement, or any of its extensions or renewals, PIKE may withdraw any lands which PIKE may be divesting of, or has divested of, without DNCR's approval or agreement, by giving written notice to DNCR and supplying a revised Exhibit A, at which time said Exhibit A shall be replaced by a revised Exhibit A reflecting such changes without affecting the balance of this Agreement (except annual fee installment payment as described in Item 4.3 hereinabove). Such revised Exhibit A shall be by letter (with revised Exhibit A attached listing the revised Premises) signed by designated agents of both parties.
- 9.3 During the term of this Agreement, or any of its extensions or renewals, DNCR and PIKE may negotiate to alter, to close, to relocate, to discontinue and/or to establish new locations of Trails and of Facility Sites, by mutual accord. Such revised locations shall be located, established, used and discontinued with the written permission of PIKE's designated agent and amendment of Exhibit B. Such amendment of Exhibit B shall be by letter (with map attached showing the revised locations) signed by designated agents of both parties.
- 9.4 This Agreement may be modified, waived or discharged only by a written instrument signed by the parties.

10. Special Provisions:

- 10.1 The State of New Hampshire shall provide PIKE with a liability insurance coverage, naming PIKE, including its members, officers and employees on such policy, said coverage to include two million dollars (\$2,000,000.00), each occurrence, for bodily injury, and fifty thousand dollars (\$50,000.00) property damage, each occurrence. A certificate of liability

insurance evidencing such coverage shall be delivered to PIKE annually by April 1 of each year. The policies shall name the Pike as an additional insured on a primary basis. Pike's coverage shall be noncontributory.

- 10.2 PIKE reserves the right for itself and its employees, guests, servants, agents, tenants, successors, and assigns to cross, to enter upon, to occupy, to possess and to enjoy the Premises at any and all times in any way in connection with PIKE's business and objectives, including but not limited to, the construction, maintenance, use and discontinuance of road, bridges and log yard landings, the taking off and hauling of any trees, forest management activities, or the excavation, removal and hauling of gravel and sand.
- 10.3 It is also understood and agreed that no Off Highway Recreational Vehicles will be permitted on any Trails during the spring mud season. Appropriate trail closure dates are to be mutually agreed upon by PIKE and DNCR.
- 10.4 If at any time during the term of this Agreement DNCR shall desire to terminate any portion of the Trails or any portion of the seasonal uses, then it shall do so by notifying PIKE by written notice at least thirty (30) days in advance.
- 10.5 DNCR shall be responsible for any and all losses, damages, expenses (including reasonable attorneys' fees), claims, suits, liabilities, fines, penalties, remedial and clean-up costs arising out of or related to the negligence of DNCR.

11. Notice:

Any notice, demand or communication required or permitted to be given under the terms of this Agreement shall be deemed to have been duly given and made if given by any of the following methods.

- a. Deposited in the United States mail in a sealed envelope, postage prepaid, by registered or certified mail, return receipt requested, respectively addressed as follows:

To PIKE : Pike Industries, Inc
3 Eastgate Park Road,
Belmont, NH 03220
Phone: 603

To DNCR: NH Department of Natural and Cultural Resources
Division of Parks and Recreation, Trails Bureau
Attn.: Chris Gamache, Trails Bureau Chief
172 Pembroke Road,
Concord, NH 03301
Phone: 603-271-3254

b. Given in hand to the addressees listed above.

Any such notice shall be deemed effective upon its receipt by the other party.

(The remainder of this page is intentionally blank. Signatures appear on the following pages.)

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on their respective behalves, each having been thereunto duly authorized, the date and year written above.

Pike Industries, Inc:

Nay Williams 6/10/2020
Witness Date

By: [Signature]
Barry Duffy
Its President

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this the 10th day of June, 2020, before me, Deborah Keith, the undersigned officer, personally appeared Barry Duffy, who acknowledged himself to be the duly authorized President of Pike Industries, Inc., and that he, as such Present, being authorized so to do by Pike Industries, Inc., executed the foregoing instrument for the purposes therein contained by signing the name of Pike Industries, Inc., by himself as President of Pike Industries, Inc.

In witness whereof, I hereunto set my hand and official seal.

Deborah A Keith
Notary Public/Commissioner of Deeds
My Commission Expires: 11/08/2022

Department of Natural and Cultural Resources
State of New Hampshire

Sean M. Lawrie 6/10/20
Witness Date

By: Sarah Stewart

Sarah Stewart
Commissioner

Margaret Morrison 6/10/2020
Witness Date

By: Chris Gamache
Chris Gamache
Chief, Bureau of Trails

Approved as form, substance and execution:






OFFICE OF THE ATTORNEY GENERAL

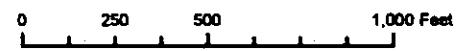
Jill Burke
Assistant Attorney General
Date: 6/17/2020

Approved by Governor and Council
at the _____ meeting as
Item # _____.

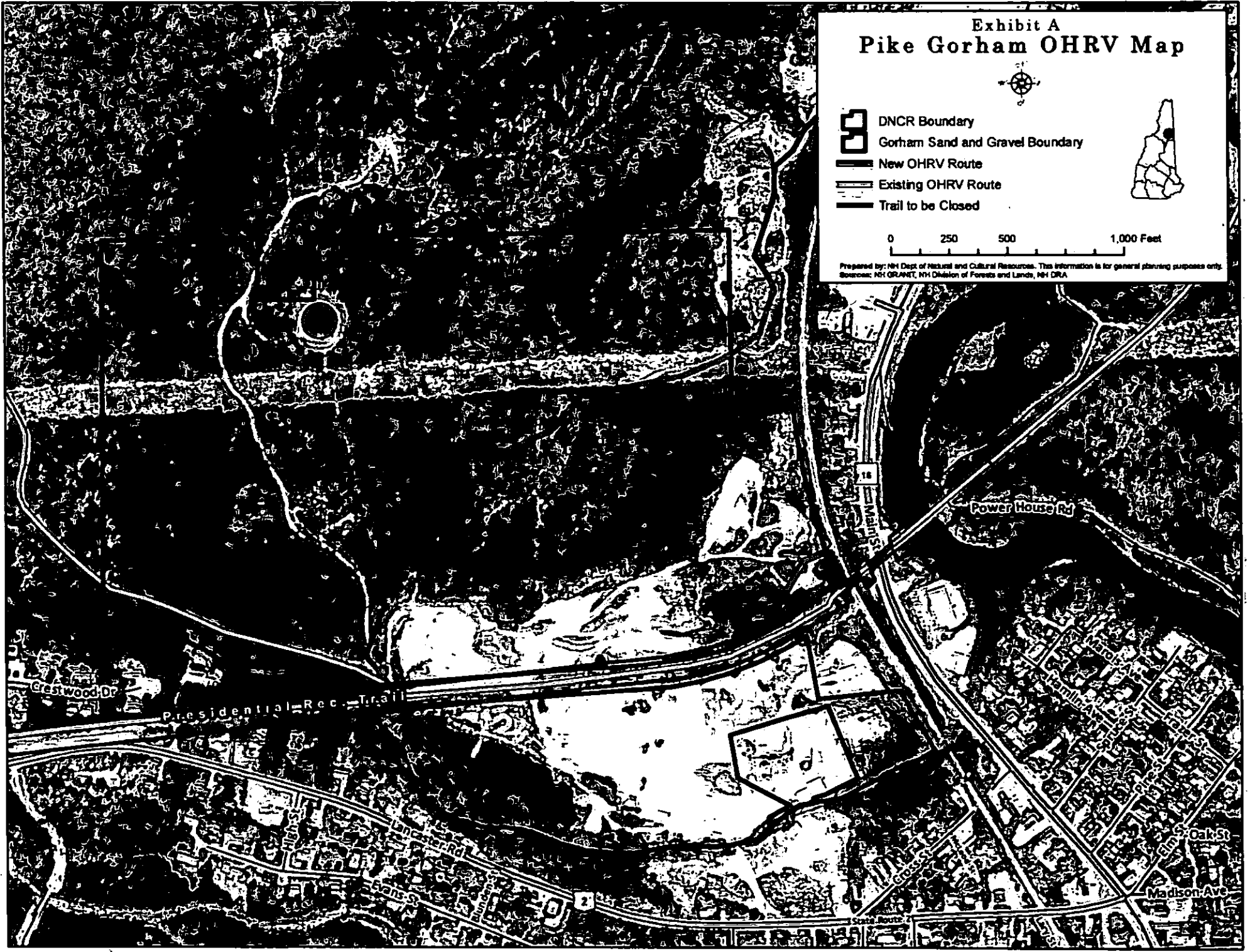
Exhibit A
Pike Gorham OHRV Map



-  DNCR Boundary
-  Gorham Sand and Gravel Boundary
-  New OHRV Route
-  Existing OHRV Route
-  Trail to be Closed



Prepared by: NH Dept of Natural and Cultural Resources. This information is for general planning purposes only.
Source: NH GRANIT, NH Division of Forests and Lands, NH DRA



State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PIKE INDUSTRIES, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on July 08, 1988. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 132573

Certificate Number : 0004930028



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 12th day of June A.D. 2020.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State


PIKE INDUSTRIES, INC.

CERTIFICATE OF AUTHORITY

I, Deborah A. Keith, hereby certify that I am the duly elected Assistant Secretary of PIKE INDUSTRIES, INC.

I certify that Barry Duffy, as President of Pike Industries, is authorized to sign documents relating to the Land Use Agreement with the Department of Natural and Cultural Resources of the State of New Hampshire.

I hereby certify that said certificate has not been amended or repealed and remains in full force and effect as of June 16, 2020.


Deborah A. Keith
Assistant Secretary