



THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



CHRISTOPHER D. CLEMENT, SR.  
COMMISSIONER

JEFF BRILLHART, P.E.  
ASSISTANT COMMISSIONER

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Bureau of Right-of-Way  
March 3, 2014

**REQUESTED ACTION**

The Department of Transportation, Bureau of Right-of-Way, requests authorization to pay property owners \$9,640,000.00 as documented in the Contemplated Awards List for amounts greater than \$5,000.00 for the period extending from February 19, 2014 through March 3, 2014, effective upon approval by Governor and Council.

Funding is available based on the  
source of funds for each particular project.

FY 2014  
\$9,640,000.00

**EXPLANATION**

These contemplated award payments are being submitted for approval to compensate property owners, tenants and/or claimants for impacts resulting from Transportation Improvement Projects. The Department certifies that all payments will be made in accordance with all applicable State and Federal regulations as they relate to property acquisition and relocation.

Respectfully,

Christopher D. Clement, Sr.  
Commissioner

CDC/CRS/lr

Attachments





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DEPARTMENT OF TRANSPORTATION



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CONTEMPLATED AWARDS

Project: SALEM TO MANCHESTER; IM-IR-0931(174); 10418C
(RECONSTRUCT & WIDEN MAINLINE, EIS & FINAL DESIGN -
MA. S/L IN SALEM TO I-293 IN MANCHESTER-PE & ROW)

OWNER: [Parcel #W101,W102,W093] 107 INDIAN ROCK ROAD LLC &
DEVINE, MILLIMET & BRANCH, P.A.

JURY VERDICT = \$13,500,000.00 \$9,530,000.00
ORIGINAL AWARD = \$3,970,000.00
3/26/2014 AWARDED \$3,970,000.00 AND REFUSED
- DEPOSIT OF DAMAGES WITH CLERK NHBTLA IN AMOUNT
OF \$3,970,000.00
BALANCE FOR APPROVAL...\$9,530,000.00

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

Project: SWANZEY; X-A000(889); 15697
(Construction of a modern roundabout at
intersection of NH 12 and Lake St/Swanzey Factory
Rd)

OWNER: [Parcel #009] MARY EVA GIBBONS

ACQUISITION \$87,000.00
(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

OWNER: [Parcel #008] SAMS OUTDOOR OUTFITTERS INC

21225 SF CONSTRUCTION EASEMENT \$23,000.00
1307 SF COMMERCIAL LAND

(PURCHASE OF LAND AND RESULTANT DAMAGES-REGULAR)

TOTAL CONTEMPLATED AWARDS: \$9,640,000.00

[Handwritten signature]
CHARLES R. SCHMIDT, PE
ADMINISTRATOR



ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

*Kaura*  
DEPT. OF TRANSPORTATION  
RIGHT-OF-WAY  
*Rebello*

FEB 18 2014

RECEIVED ANN M. RICE  
DEPUTY ATTORNEY GENERAL

JOSEPH A. FOSTER  
ATTORNEY GENERAL



February 14, 2014

*Trish*  
*Laura Riv* ✓

Christopher Clement, Sr., Commissioner  
New Hampshire Department of Transportation  
P. O. Box 483  
Concord, New Hampshire 03302-0483

Re: State of New Hampshire v. 107 Indian Rock Road, LLC  
Project: Salem-Manchester, IM-IR-0931(174), 10418C, Parcel W-93, W-101  
and W-102  
Rockingham County Superior Court Docket No. 218-2009-EQ-00505

Dear Commissioner Clement:

The above-referenced matter has been heard and decided by a jury in Rockingham County Superior Court. The State's initial tender of damages, \$3,970,000, was based upon an appraisal completed on January 10, 2008 by Joseph E. Fahey and Joseph G. Fremeau of Fremeau Appraisal, Inc. of Manchester, New Hampshire. Subsequent to the filing of the Declaration of Taking on June 23, 2008, Mr. Fremeau revised and updated his appraisal to reflect a decrease in damages in the amount to \$3,800,000. A second appraisal was completed by David Rauseo of Rauseo & Associates and he reflected damages as of the date of taking of \$1,600,000. Mr. Fremeau's appraisal was presented as evidence by the State at the hearing before the Board of Tax and Land Appeals.

The subject property, located on Indian Rock Road in Windham, consisted of approximately 62.14 acres on 3 parcels of land. The State's taking consisted of 32.22 acres. The northerly parcel, W93 was taken in full and consisted of just under 11 acres. The southerly parcels combined for the remaining 21 acres.

During trial the central dispute revolved around the density of the potential retail development of the property. The condemnee claimed the property had a highest and best use for over 761,000 square feet of retail development. The State maintained that such an intensive use of the property was not warranted given the topography and economic conditions at that time. The condemnee presented a purchase and sales agreement before 107 Indian Rock and Centro US Acquisition Company with a purchase price of \$62 million for 62 acres of land supporting the \$1 million per acre market value estimate. In supporting this valuation,

Condemnee presented 2 appraisers who valued the property at approximately that amount. The main dispute centered over the property value in the “before.” Web Collins of CBRE came to a value conclusion of over \$45 million in the before situation. Robert Laporte of Colliers International had a value of \$34.7 million. The State’s value in the before was stark in contrast at \$9.7 million.

Consequently, the Condemnees argued the jury should find damages from the taking are “north of \$30 million.” The State argued that although the property is unique, the value is limited, given the declining economy in 2008. The State further argued that the Centro Agreement had little or no chance of coming to fruition. The Agreement was executed at a time when the State’s intentions to effect a taking were well known and the Agreement contained unusual provisions, such as making the seller responsible for obtaining development approvals yet none were ever applied for.

Ultimately, the jury found that the before value of the land was \$19 million. They then determined the value of the after, closely related to the State’s after value of \$5.5 million for damages in the amount of \$13.5 million.

Prior to trial, mediation was held with Retired Justice Allan van Testel that did not prove successful. Trial subsequently started in the Rockingham County Superior Court on December 9, 2013 and last approximately two weeks with the jury rendering a verdict in favor of the Condemnee on December 20, 2013 after a full day of deliberations.

At this point because the award is subject to interest and cost, we are asking for a check for only the difference between the tender and the jury award. Once the Court determines the proper interest and cost, a second check will be requested, that includes all proper interest and cost a prevailing party is entitled under the law.

Therefore, please have drawn and forwarded to me a check in the amount of **\$9,530,000**, made payable to “**107 Indian Rock Road, LLC and Devine, Millimet & Branch P.A.**” which represents the difference in what was paid at the date of take and the jury’s award, without the statutory interest or costs. The Devine firm’s Federal ID is 02-0336151.

|                     |                        |
|---------------------|------------------------|
| \$13,500,000.00     | Jury Verdict           |
| <u>3,970,000.00</u> | State’s initial tender |
| \$ 9,530,000.00     |                        |

Christopher Clement, Sr., Commissioner  
February 14, 2014  
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If you should have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,



Lynmarie C. Cusack  
Assistant Attorney General  
Civil Bureau  
(603) 271-3650

LCC:mc

cc: Charles Schmidt, Administrator, Dept. of Transportation, Bureau of Right-of-Way  
Stephen Bernard, Chief Right-of-Way Appraiser, Dept. of Transportation  
Jamie Sikora, Special Programs Manager, U.S. Department of Transportation

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Project Name \_\_\_\_\_

Project Number \_\_\_\_\_

Checked by \_\_\_\_\_ Date \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

