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State of New Hampshire
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
25 Capitol Street – Room 120
Concord, New Hampshire 03301

VICKI V. QUIRAM
Commissioner
(603)-271-3201

JOSEPH B. BOUCHARD
Assistant Commissioner
(603)-271-3204

March 15, 2016

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

Retractive

REQUESTED ACTION

Authorize the Department of Administrative Services (the "Department") to enter into a **retroactive** Memorandum of Agreement with the Department of Safety (DOS) in an amount not to exceed \$62,256.30 for the continued use and occupation by the DOS Bureau of Emergency Communications (E911) for use of space in the State-owned Dwinell Building located on the Lakes Region Facility campus, Laconia NH (the "Premises"). The term of the Memorandum of Agreement shall be for fifteen (15) years commencing as of September 15, 2014 and terminating on September 14, 2029. Funding Source: 100% Agency Income.

Funds are available in the SFY 2016 and SFY 2017 operating budget, and anticipated to be available in SFY 2018 through SFY 2030, contingent upon continued appropriation in the following:

02-23-23-236510-13950000 Dept. of Safety–Emergency Communications–Bur of Emergency Comm.
103-502664 – Contracts for Operational Services

Funds shall be deposited to and lapsed at State Fiscal year–end to the General Fund as follows:

01-14-14-141510-53200000 Dept. of Admin Services-Bur Plant/Prop Management-Lakes Region Campus
009-402067 – Miscellaneous Agency Income

EXPLANATION

This agreement is retroactive because of delays coming to agreement on several issues including building maintenance, parking and water/sewer fees. Under the key terms of the proposed Memorandum of Agreement, which are set forth in the Agreement attached hereto, E911 shall continue to be fully responsible for maintenance and repair of the Premises and for all utilities and services utilized by E911 except for water and sewer service, which shall be provided by the Department. E911 shall be further responsible under the Memorandum of

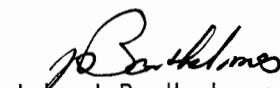
Agreement for reimbursing the Department annually for the estimated cost of providing water and sewer service to the Premises, with the aggregate amount of such reimbursement payments not to exceed \$62,256.30 over the fifteen (15) year term.

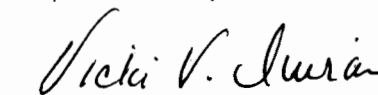
E911 has occupied and used the Premises since 1999 pursuant to a certain so-called "Lease" Agreement by and between the Department of Corrections, as predecessor in interest to the Department, and E911, having an effective date of September 15, 1999 and an expiration date of September 14, 2014. Throughout that period the remainder of the Dwinell Building has been leased and occupied by the Lakes Region Mutual Fire Aid Association (LRMFAA). Effective December 16, 2013, the LRMFAA lease was renewed for another fifteen (15) years until December 15, 2028.

An "Informational Item" regarding the proposed Memorandum of Agreement was reviewed and accepted by the Long Range Capital Planning and Utilization Committee at its meeting on March 30, 2016.

Based on the foregoing, we respectfully recommend authorization of the proposed Memorandum of Agreement described herein.

Respectfully submitted,


John J. Barthelme
Commissioner,
Dept. of Safety


Vicki V. Quiram
Commissioner,
Dept. of Administrative Services

LIST OF EXHIBITS

1. Memorandum of Agreement
2. Location Map
3. Tax Map Detail
4. Aerial View
3. Dwinell Building Floor Plan (showing area occupied by E911)

**MEMORANDUM OF AGREEMENT
FOR
USE AND OCCUPANCY OF OFFICE SPACE**

This Memorandum of Agreement (this "Agreement") is made this 15th day of April 2016 by and between the New Hampshire Department of Administrative Services (the "Host Agency" or "DAS") and the New Hampshire Department of Safety (the "Tenant Agency" or "DOS").

WHEREAS, DAS has management responsibility for the State land and buildings in Laconia, New Hampshire bordered by New Hampshire Route 106 to the east, Meredith Center Road to the northeast, Eastman Road to the northwest, and Ahern State Park to the southwest, comprising the Lakes Region Facility (formerly known as the "Laconia State School");

WHEREAS, the Lakes Region Facility includes an office building known as the "Dwinell Building" that has been partially used and occupied by the DOS Bureau of Emergency Communications (E911) since 1999 pursuant to a certain so-called "Lease" Agreement by and between the New Hampshire Department of Corrections, as predecessor in interest to DAS, and the Bureau of Emergency Communications, having an effective date of September 15, 1999 and an expiration date of September 14, 2014; and

WHEREAS, DOS desires to continue its use and occupancy of the Dwinell Building for an additional fifteen (15) years, and DAS has no other immediate need or use for the portion of said building presently occupied by DOS.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the parties agree as follows:

1. Except as otherwise provided in this Agreement DAS hereby grants to DOS the right to exclusively use and occupy approximately 12,000 square feet of office space located in the "Dwinell Building" at 50 Communications Drive on the Lakes Region Facility campus in Laconia, New Hampshire (the foregoing portion of said building occupied by DOS is hereinafter the "Premises") subject to the terms and conditions of this Agreement. The Premises are shown on the building floor plan attached to and made a part of this Agreement as Attachment A.
 - a. **PARKING:** Except as otherwise provided herein, DOS shall have priority over the other occupant of the Dwinell Building to use any on-site Dwinell Building parking spaces in the paved parking lot to the northeast of the Building adjacent to Right Way Path; DOS may grant permission to the other occupant of the Building to use any or all of such parking spaces in its discretion. The other occupant of the Building shall have the exclusive right to use the two (2) southeasterly parking spaces out of the five (5) "perpendicular" parking spaces located closest to the main northeasterly entrance to the Building. DOS shall have the exclusive right to use all of the "parallel" parking spots along the driveway to the north of the

Building. DOS shall have the right in common with the other occupant of the Building to use any of the “visitor” parking spaces located directly across the driveway to the southwest of the Building.

2. TERM: This Agreement shall remain in effect for a period of fifteen (15) years commencing upon the Effective Date unless sooner terminated in accordance with the provisions herein.
 - a. EFFECTIVE DATE: Subject to section 20 hereof, this Agreement and all obligations of the parties hereto shall commence effective retroactively to September 15, 2014 upon approval by the Governor and Executive Council.
 - b. TERMINATION DATE: This Agreement shall terminate without further action of the parties hereto on September 14, 2029.
 - c. OPTION FOR EARLY TERMINATION: Notwithstanding the foregoing, either party may terminate this Agreement in advance upon providing the other party twenty-four (24) months prior written notice.

3. REIMBURSEMENT FOR WATER AND SEWER: DOS shall reimburse DAS annually for the estimated cost of providing water and sewer services to the Premises, said estimated cost to be Three Thousand Six Hundred dollars (\$3,600) for the first full year commencing with the Effective Date of this Agreement and to escalate by approximately two percent (2%) for each successive full year throughout the Term. The resulting annual reimbursement amount has been calculated for each full year of the Term as shown in the "Payment Schedule" included below. DOS shall make single lump sum payments to DAS annually in advance, in the corresponding amounts shown, the first payment to be due not later than thirty (30) days following the execution of this Agreement by both parties and subsequent annual payments to be due not later than thirty (30) days following each anniversary of the Effective Date; provided, however, that no payment shall be due for the period of retroactive effectiveness occurring prior to the date upon which this Agreement has been fully executed by both parties. The first annual payment due hereunder shall be adjusted pro rata in proportion with the amount of the then current term year (as defined below) which follows the execution of this Agreement.

PAYMENT SCHEDULE

<u>Term year</u>	<u>Dates</u>	<u>Annual reimbursement amount</u>	<u>% increase</u>
1	9/15/2014 - 9/14/2015	\$3,600.00	
2	9/15/2015 - 9/14/2016	\$3,672.00	2%
3	9/15/2016 - 9/14/2017	\$3,745.44	2%
4	9/15/2017 - 9/14/2018	\$3,820.35	2%
5	9/15/2018 - 9/14/2019	\$3,896.76	2%
6	9/15/2019 - 9/14/2020	\$3,974.69	2%
7	9/15/2020 - 9/14/2021	\$4,054.18	2%
8	9/15/2021 - 9/14/2022	\$4,135.27	2%
9	9/15/2022 - 9/14/2023	\$4,217.97	2%

10	9/15/2023 - 9/14/2024	\$4,302.33	2%
11	9/15/2024 - 9/14/2025	\$4,388.38	2%
12	9/15/2025 - 9/14/2026	\$4,476.15	2%
13	9/15/2026 - 9/14/2027	\$4,565.67	2%
14	9/15/2027 - 9/14/2028	\$4,656.98	2%
15	9/15/2028 - 9/14/2029	\$4,750.12	2%

TOTAL TERM RENT: \$62,256.30

4. COMPLIANCE BY TENANT AGENCY WITH LAWS AND REGULATIONS: DOS shall at all times during the existence of this Agreement observe and comply with all applicable federal, state, and local laws, rules, regulations, and standards, and in particular those provisions concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, life safety systems, Americans with Disabilities Act, and solid and hazardous waste. Any violations shall be immediately reported to DAS. DOS shall, at its own expense, be solely responsible for any costs incurred as a result of its violation of, or its failure to observe or comply with, the aforementioned federal, state, and local laws, rules, regulations, and standards.

5. NOTIFICATION: No notice, consent, or other communication between the parties pursuant to this Agreement shall have any binding effect hereunder unless it is in writing. All written notices to be given pursuant to this Agreement shall be addressed as follows:
 - a. If to DAS: Deputy Commissioner Michael Connor, or his successor, New Hampshire Department of Administrative Services, 25 Capitol Street, Room 102, Concord, New Hampshire 03301

 - b. If to DOS: Director Bruce Cheney, or his successor, Division of Emergency Services and Communications, New Hampshire Department of Safety, 33 Hazen Drive, Room 105, Concord, New Hampshire 03305

6. CONDITION OF THE PREMISES, ACCEPTANCE: DOS is familiar with the condition of the Premises and accepts them "as-is" in their current condition without any representation or obligation on the part of DAS to make any alterations, repairs or improvements.

7. UTILITIES, JANITORIAL SERVICES, RUBBISH REMOVAL, SNOW REMOVAL and GROUNDS SERVICES:
 - a. DOS shall furnish at its own expense electricity, heat, telecommunications, and data services to the Premises for its own use and shall be responsible for making direct payment to the providers of all such services.

 - b. DOS shall furnish at its own expense janitorial services, rubbish removal, and recycling services for its own use of the Premises and shall be responsible for making direct payment to the providers of such services.

- c. DOS shall be solely responsible for providing snow shoveling and surface treatment of all pathways leading into the Premises (the “Premises” is defined in Section 1 of this Agreement as the portion of the Dwinell Building that is occupied by DOS pursuant to this Agreement), and shall be further responsible for all snow plowing, snow removal, and surface treatment of the parking lot and driveway serving the Premises. DAS shall provide snow plowing and removal services in areas of the adjacent Lakes Region Facility campus.
 - d. DAS shall furnish water and sewer services to the Premises. DAS shall be responsible for any necessary repair or replacement of the water and sewer infrastructure serving the Premises; provided, however, that DOS shall reimburse DAS for the total invoiced cost of any such work performed within ten (10) feet of the foundation of the Dwinell Building within thirty (30) days following the receipt by DOS of such invoice.
 - e. DAS shall provide grounds services, which shall include mowing and lawn services and maintenance of landscaping elements.
8. MAINTENANCE AND REPAIR: DOS agrees to maintain and keep the Premises in good repair and in accordance with all applicable regulations, ordinances, or codes at its sole expense and without cost or expense to DAS, such maintenance to include, without limitation, building systems such as the roof, HVAC and boiler, plumbing, electrical systems, lighting, emergency exit signs, fire alarm, and fire suppression systems. DOS shall further be responsible for all repairs due to vandalism, wear, or negligence on the part of DOS, its officers, employees, contractors, or invitees and shall exercise due care in protecting the Premises against any damage or destruction. Alternatively, in the event of any damage to or destruction of the Premises for which DOS is responsible, DAS may, in consultation with DOS, require DOS to pay money to DAS in an amount sufficient to compensate DAS for its total anticipated cost of repairing said damage. If DAS decides to accept payment from DOS as an alternative to requiring DOS to repair said damage, then to the extent reasonably possible such repair shall be commenced by DAS within ten (10) days after receiving the full amount of such payment from DOS. In the event of any severe damage to or destruction of the Premises resulting in either a material or total loss of the Premises, DAS may, in consultation with DOS, decide not to repair or rebuild the Premises, in which case this Agreement shall be terminated in accordance with the early termination provisions of Section 17 of this Agreement. All maintenance and repairs shall be subject to any such rules or regulations as DAS may prescribe and to the general supervision and approval of DAS.
9. RIGHT OF ENTRY: DAS may enter the Premises during the hours of 8:00 AM to 4:30 PM, Monday through Friday except State holidays for the purpose of ensuring DOS compliance with this Agreement. DAS may enter the Premises at any other time as may be reasonable or necessary, in its discretion, to fulfill its obligations under this Agreement or to maintain, repair, or improve the Premises. Except in the case of an emergency or as otherwise provided in this Agreement, DAS shall make reasonable efforts to schedule in advance a mutually agreeable time with DOS to enter the Premises for any purpose. In

the event that DOS fails to accommodate or respond to a DAS request to enter the Premises within three (3) business days of said request, DAS may enter the Premises without further notice to DOS.

10. IMPROVEMENTS AND CONSTRUCTION:

- a. Except as otherwise provided in this Agreement, including section 10c below, , all improvements to or construction on the occupied Premises shall be undertaken at the sole risk and expense of DOS.
- b. Other than ordinary maintenance in accordance with the usual and customary standards of the craft involved, no construction on or improvements to the Premises shall be commenced without the prior written approval of DAS, which approval shall not be unreasonably withheld. Additionally, all construction on or improvements to the Premises shall comply with all building codes and ordinances of the State of New Hampshire.
- c. Notwithstanding anything contained herein to the contrary, DAS reserves the right to improve the Premises at the expense of DAS.
- d. Any improvements to or construction on the Premises shall be the property of DAS from their inception.

11. FIXTURES AND FURNITURE: DOS shall be responsible for the provision of all furniture, fixtures, and equipment as DOS may require on the Premises; all furniture and fixtures so provided shall remain the property of DOS at the end of the Term.

12. EVENTS OF DEFAULT; REMEDIES:

- a. EVENTS OF DEFAULT: Any failure of DOS to perform any of the covenants and conditions of this Agreement shall constitute an event of default.
- b. REMEDIES: Upon the occurrence of any event of default, DAS may:
 - i. Give DOS a written notice specifying the event of default and requiring it to be remedied within sixty (60) days following the date of the notice or within such other reasonable time period as may be specified in the notice;
 - ii. If the event of default is not timely remedied, terminate this Agreement effective one hundred eighty (180) days after giving DOS notice of termination;
 - iii. If the event of default is a failure to comply with section 10 above, require DOS at its sole risk and expense to restore the Premises to their condition immediately prior to the event of default, and, if DOS shall fail to do so,

then DAS shall have the right to restore the Premises, itself, at the risk and expense of DOS; and

- iv. Re-enter and take possession of the Premises.
 - c. CUMULATIVE NATURE: The remedies described in paragraph 12b above are cumulative, and the selection of one such remedy by DAS shall not be a bar to the use of any other remedy, or all other remedies, so long as notice and opportunity to cure are provided as specified in paragraph 12b(i) above.
13. DOS RELATION TO DAS: It is understood and acknowledged by the parties that both of them are agencies of the State of New Hampshire, and, as such, they are not separate and independent entities from each other but have a common duty of cooperation in furtherance of the policies and best interests of the State of New Hampshire.
 14. WAIVER: No failure by DAS to enforce any provisions hereof after any event of default on the part of DOS shall be deemed a waiver of its rights with regard to that event, or any subsequent event, and no express waiver of an event of default shall be deemed a waiver of its rights to enforce each and all of the provisions herein upon any further or other default on the part of DOS.
 15. ASSIGNMENT OR LEASE: DOS shall not assign or otherwise transfer any interest in this Agreement to any other agency of the State of New Hampshire, and DOS shall not grant any lease or license relating to any portion of the Premises to a third party, without the prior written consent of DAS.
 16. AMENDMENT: This Agreement may be amended only by an instrument in writing signed by the parties hereto upon approval by the Governor and Executive Council.
 17. SURRENDER OF PREMISES; EARLY TERMINATION BY DAS: Upon the Termination Date, or any amendment or extension thereof, DOS shall peacefully quit and deliver up the Premises to DAS in good order and broom clean condition, reasonable wear, tear, and obsolescence excepted, and shall surrender all improvements, alterations, or additions made by DOS which cannot be removed without causing damage to the Premises. DOS shall further remove all of its furnishings and personal property, failing which such property shall become property of DAS without compensation therefore or be removed for disposal at the sole risk and expense of DOS. In the event that DAS elects to terminate the Agreement before the Termination Date, DAS shall reimburse DOS as provided herein for the value of any capital improvements made upon the premises during the Term of this Agreement pursuant to Section 10.b. hereof, to be redistributed by DOS pro rata to those who incurred the expense; provided, however, that there shall be no such reimbursement by DAS in the event that this Agreement is terminated due to a material or total loss of the Premises pursuant to Section 8 of this Agreement, by legislative action, or due to a legislatively ordered disposal of the Premises or transfer of management responsibility for the Premises to another agency of the State of New Hampshire. Any capital improvements made during the Term of this Agreement to be


reimbursed under this Section 17 due to early termination by DAS shall be reimbursed at the depreciated value of such improvements as of the time of termination; provided, however, that any such reimbursement shall be subject to availability of funds.

18. CONSTRUCTION OF AGREEMENT AND TERMS: This Agreement, which may be executed in a number of counterparts, each of which shall have been deemed an original, but all of which shall together constitute one and the same instrument, is to be construed according to the laws of the State of New Hampshire and shall bind upon and inure to the benefit of the parties and their respective successor agencies. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
19. ENTIRE AGREEMENT: This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.
20. This Agreement shall become effective only upon approval by the Governor and Executive Council.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

HOST AGENCY:

NEW HAMPSHIRE DEPARTMENT OF ADMINSTRATIVE SERVICES


By: 
Vicki V. Quiram, Commissioner

TENANT AGENCY:

NEW HAMPSHIRE DEPARTMENT OF SAFETY

By: 
John J. Barthelmes, Commissioner

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

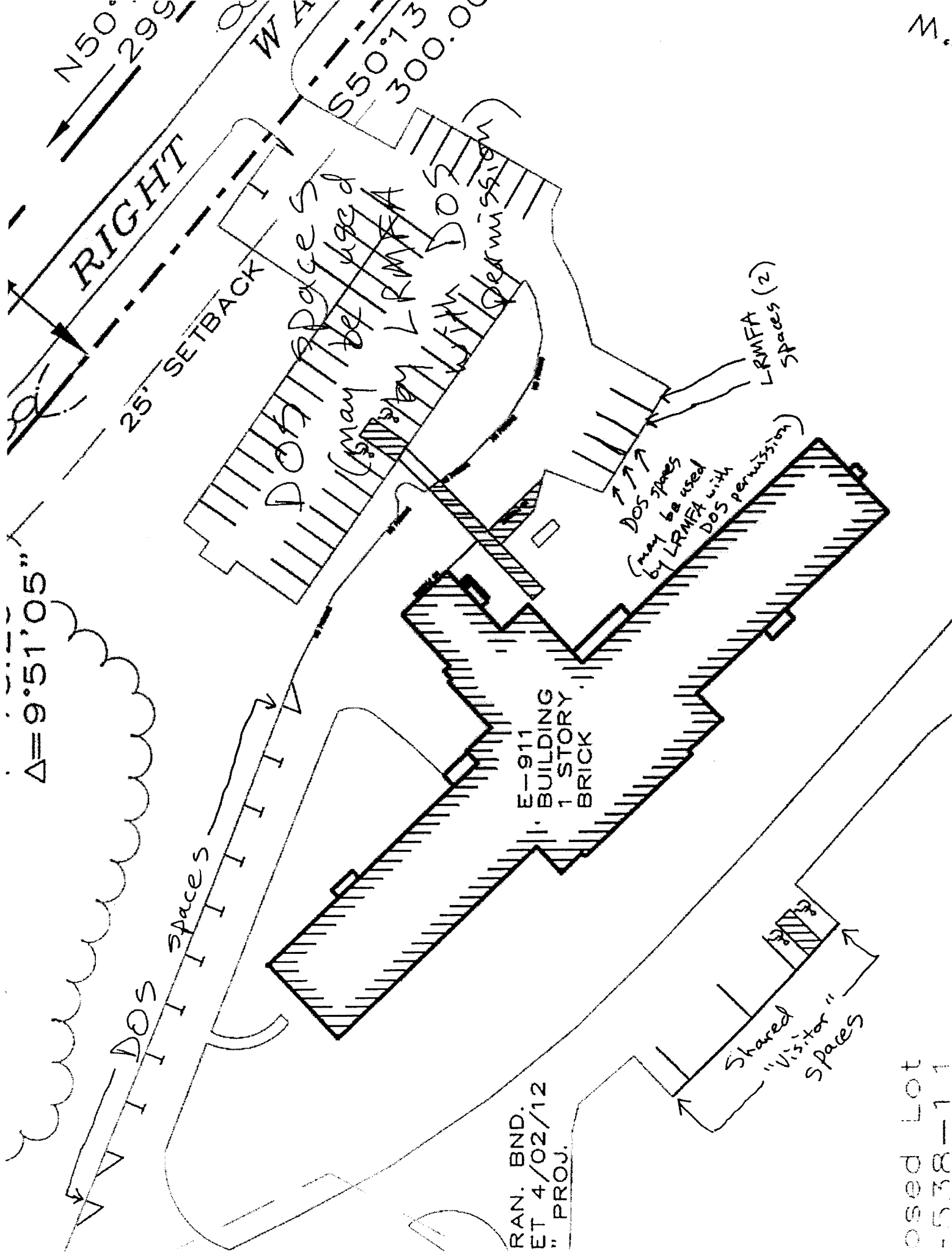
By: 
Print Name: Jill Desrochers, Assistant Attorney General

ATTACHMENT A

Dwinell Building Partial Floor Plan
(showing area occupied by DOS)

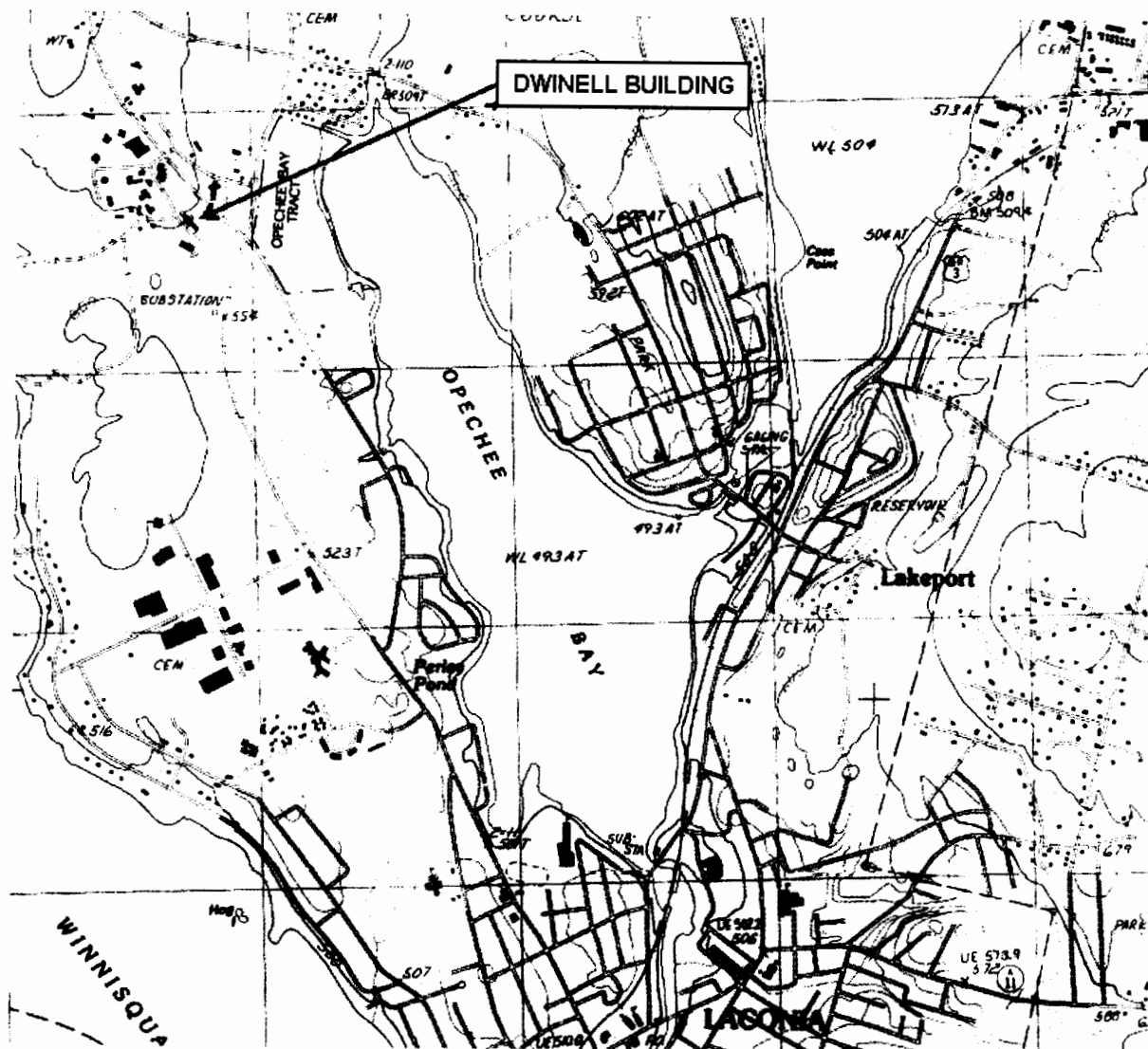
ATTACHMENT B

Parking



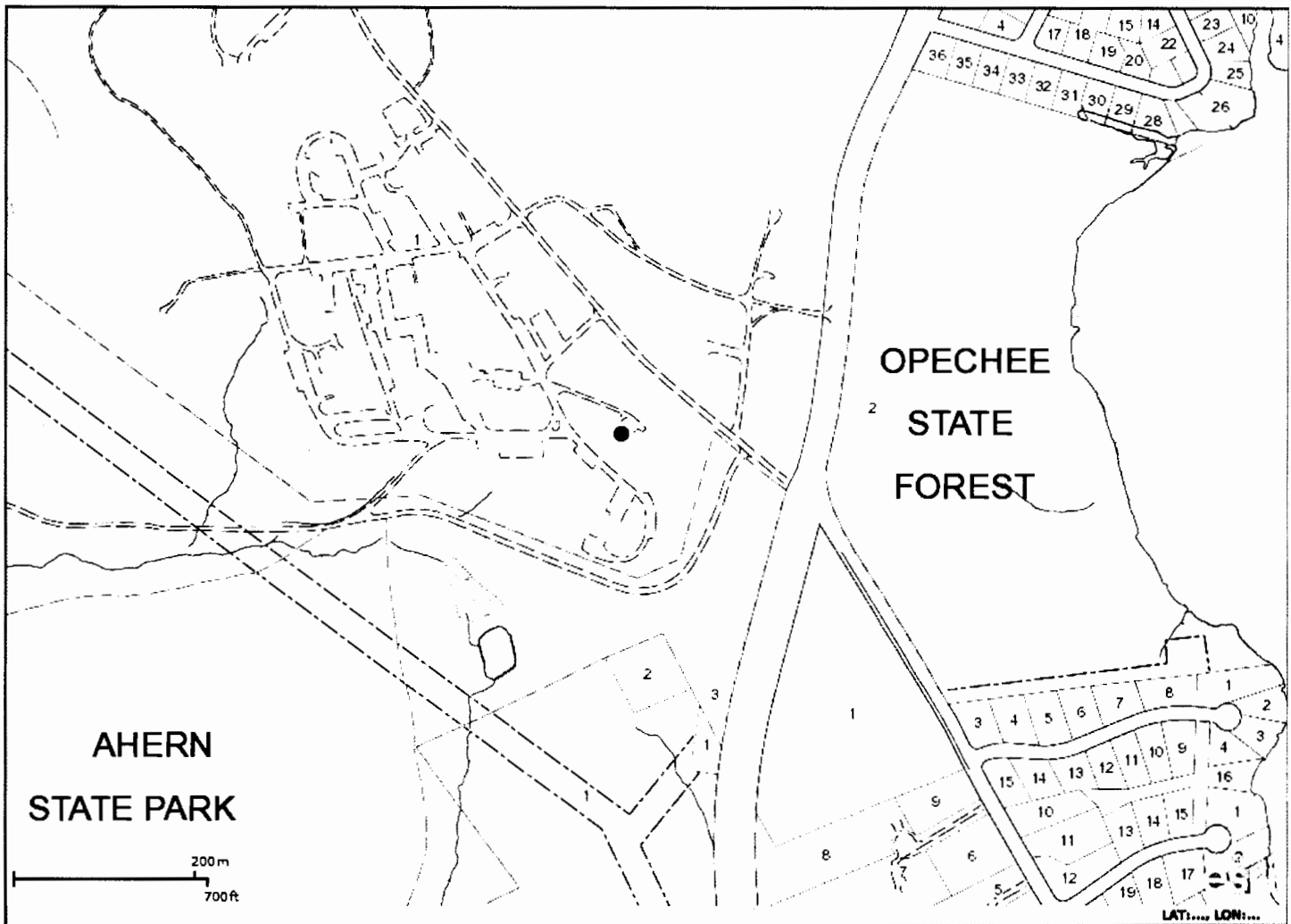
RAN. BND.
 ET 4/02/12
 " PROJ.

osed Lot
 -538-11



Dwinell Building
50 Communications Drive, Laconia, NH
New Hampshire Lakes Region Facility

Laconia USGS Quad



Dwinell Building (at red dot above)
50 Communications Drive, Laconia, NH
New Hampshire Lakes Region Facility (shown shaded above)

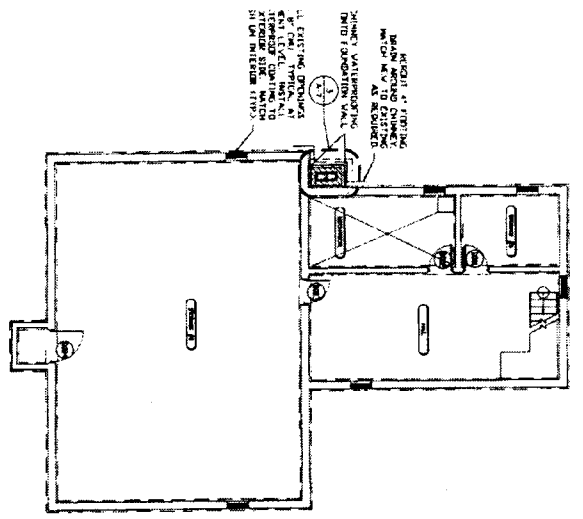
Tax Map Detail
Tax Map 318, Block 538, Lot 1.1
(tax parcel configurations of Ahern State Park and Lakes Region Facility shown above are out of date)



**Dwinell Building (at center above)
50 Communications Drive, Laconia, NH
New Hampshire Lakes Region Facility**

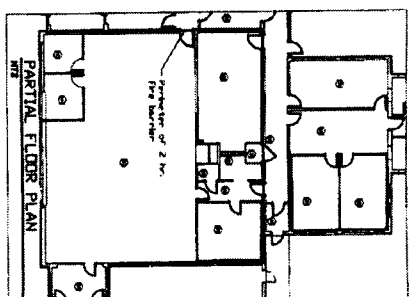
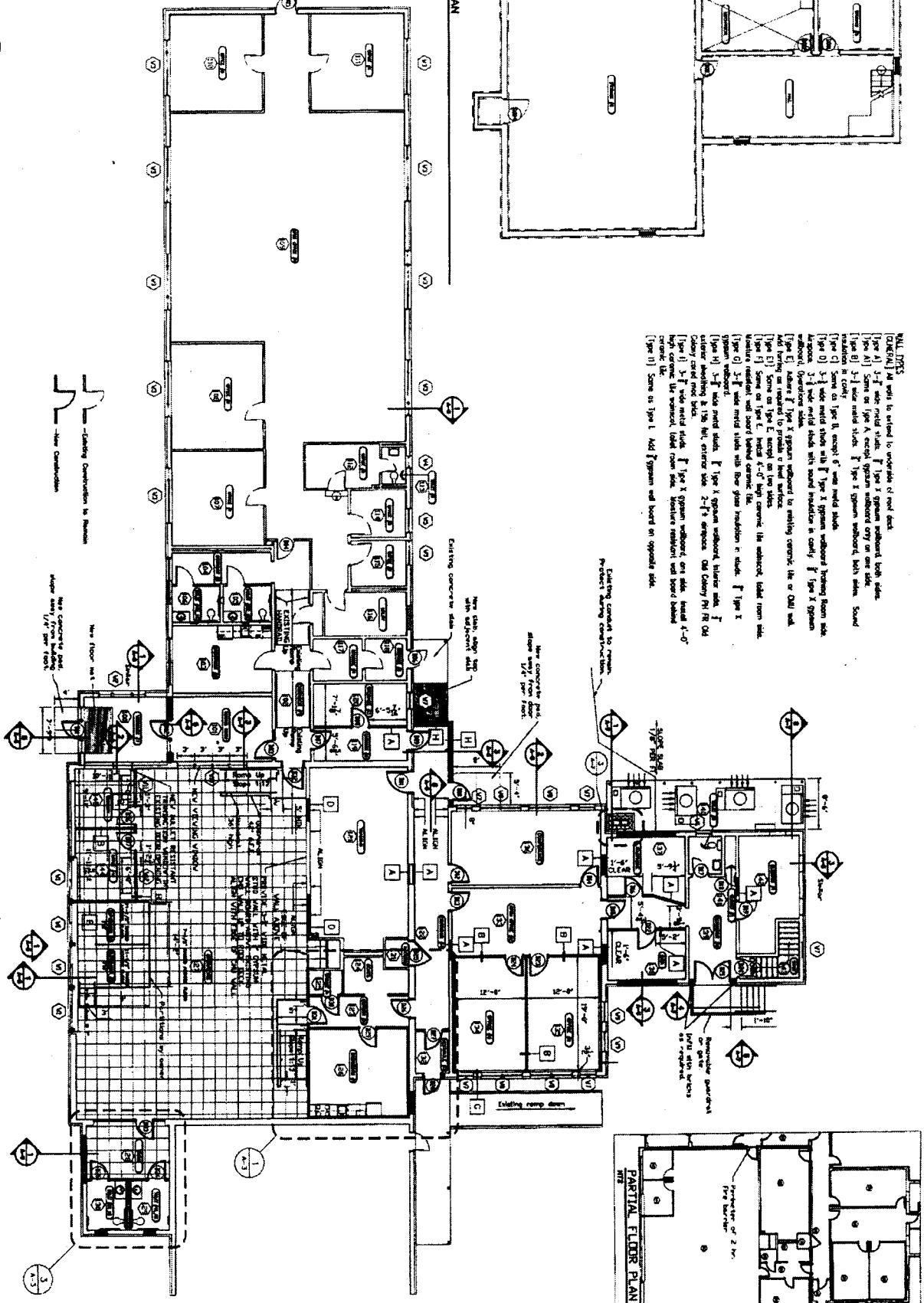
Aerial View

MILL PRES.
 (CONTINUED) All walls to extend to underside of roof deck.
 Type A) 3-1" wide metal studs, Type X gypsum without both sides.
 Type B) Same as type A except gypsum without dry or one side.
 Type C) Same as type A except gypsum without both sides. Sound insulation in cavity.
 Type D) Same as type B, except 6" wide metal studs.
 Type E) Same as type D, except gypsum without backing from side.
 Type F) Same as type D, except gypsum without backing from side. Acoustic insulation in cavity.
 Type G) 3-1" wide metal studs with sound insulation in cavity. Type X gypsum without. Operable valves.
 Type H) Same as type G, gypsum without in cavity. 1/2" or 3/4" wall. Acoustic insulation in cavity.
 Type I) Same as type E, except on two sides.
 Type J) Same as type I, metal 4"-0" high concrete. No conduct. label room side. Weather resistant and board labeled ceramic tile.
 Type K) 3-1" wide metal studs with fiber glass insulation in cavity. Type X gypsum without.
 Type L) Same as type K, except gypsum without. 1/2" or 3/4" wall. Acoustic insulation in cavity.
 Type M) 3-1" wide metal studs, Type X gypsum without, studs side. Exterior finishing to 1/2" thick exterior face. 2-1/2" airspace. Oil Chloro Flu. Oil Chloro Flu. Oil Chloro Flu.
 Type N) 3-1" wide metal studs, Type X gypsum without, one side. Insulated 4"-0" high concrete. Air treatment. Label room side. Weather resistant and board labeled ceramic tile.
 Type O) Same as type I. Add gypsum and board on opposite side.



2) BASEMENT FLOOR PLAN
 1/8" = 1'-0"

1) FLOOR PLAN
 1/8" = 1'-0"



STATE OF NEW HAMPSHIRE
 DEPARTMENT OF TRANSPORTATION
 BUREAU OF PUBLIC WORKS
 STATE ENGINEER
 JOHN W. HARRIS, JR.
 1000 STATE STREET
 CONCORD, N.H. 03301
 FLOOR PLAN AND
 BASEMENT PLAN
 1/8" = 1'-0"