



Victoria F. Sheehan
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



William Cass, 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
September 19, 2016

REQUESTED ACTION

PURSUANT to RSA 228:31, authorize the Commissioner of the State of New Hampshire, Department of Transportation, to transfer a forty-nine and one tenth (49.1) acre parcel of land, more or less, located in the City of Rochester, to the City of Rochester, retaining an "Executory Interest" to the New Hampshire Department of Environmental Services. This transfer will be effective upon Governor and Executive Council approval. This is a no cost transaction.

EXPLANATION

As part of the environmental commitments for the Rochester, 10620D project, the Department of Transportation agreed to convey fee interest in a forty-nine and one tenth (49.1) acre parcel of land, formerly known as the City Concrete site, to the City of Rochester. The City agreed to accept the conveyance of the property, encumbered with a conservation easement, accepting and reserving the City's ability to operate and maintain a public water supply well on the site. Also as part of the environmental commitments, the State of New Hampshire Department of Environmental Services will maintain an executory interest in the property.

Authorization is respectfully requested to transfer this forty-nine and one tenth (49.1) acre parcel of State owned land to the City of Rochester, as outlined above.

Respectfully,

Victoria F. Sheehan
Commissioner

VFS/JLJ/jl

Attachments

AGREEMENT

THIS AGREEMENT, made and entered into this 19 day of April, 2016, by and between the STATE OF NEW HAMPSHIRE (the "STATE"), acting through the STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION (the "DEPARTMENT"), both having a mailing address at PO Box 483, Concord, New Hampshire 03302-0483 and the CITY OF ROCHESTER (the "CITY"), having a mailing address at 31 Wakefield Street, Rochester, New Hampshire 03867, to wit:

WITNESSETH:

WHEREAS, the STATE, acting through the DEPARTMENT, is the owner in fee simple of certain real property, hereinafter called the "City Concrete site", which property is located in the City of Rochester, County of Strafford, and State of New Hampshire, and is more particularly described in Deed of Wakefield Investments, Inc. to the State of New Hampshire, dated May 30, 2005, recorded in Book 3211, Page 532 of the Strafford County Records; and

WHEREAS, the STATE and the DEPARTMENT, wish to transfer ownership of the City Concrete site to the CITY by Warranty Deed Subject to Conservation Restrictions in exchange for the CITY subjecting a portion (consisting of approximately 36.855 acres) of a certain parcel of real property owned by the CITY in fee simple, hereinafter called the "Henderson site", which property is located in the City of Rochester, County of Strafford, and the State of New Hampshire, and is more particularly described in Deed of Charles L. and Mildred E. Henderson to the CITY, dated August 31, 2005, recorded in Book 3251, Page 687 of the Strafford County Records to certain conservation restrictions by virtue of an amended and expanded Conservation Easement on the said Henderson site (such site already being subject to an 18.45 acre Conservation Easement imposed by virtue of a Conservation Easement Deed dated October 18, 2005 and recorded in Book 3278, Page 594 of the Strafford County Registry of Deeds); and

WHEREAS, said transaction and this Agreement being contingent upon the prior approval of Governor and Council; and

WHEREAS, the STATE purchased the City Concrete site for use as an identified mitigation location for both wetlands creation and for flood plain impacts arising in connection with, and as a result of, the DEPARTMENT'S so-called "Rochester 10620D project", which project involves the widening of the Spaulding Turnpike from Exit 11 to Exit 16 area as currently exists of said turnpike; and

WHEREAS, the STATE and the DEPARTMENT were required, under Revised Agreement dated March 5, 2010 U.S. Army Corps of Engineers New England District, Permit No. NAE-200-002933 (October 12, 2007) and New Hampshire Department of Environmental Services, Wetlands Permit No. 2009-02922 (March 5, 2010), to "create Phase 1 (approximately 5.3 acres) wetland mitigation within a 46 acre City Concrete site adjacent to the Cocheco River" in order to partially mitigate impacts attributable to the so-called Rochester 10620D project ("Proposed mitigation includes wetland creation noted above and habitat preservation on 46 acres of land at the City Concrete site and to replace all floodplain impacts (35,000 cubic yards of fill) one for one in the floodplain of the Cocheco River"); and

WHEREAS, the City Concrete site has been identified by the CITY as a highly productive location for a potential municipal production well site in a report from Emery & Garrett Groundwater, Inc. dated February 23, 2000; and

WHEREAS, the CITY's purpose in entering into this Agreement is to enable it to establish a municipal production well on the City Concrete site as more particularly contemplated and referred to herein; and

WHEREAS, the CITY agreed to provide approximately 36.855 acres required for the Rochester 10620D Spaulding Turnpike Expansion project at the Henderson site for conservation purposes and allow the Department or its designee to construct the replacement wetland creation on such land (later changed to ARM fund payment based on the impacts of the water well production site on the Henderson property and preservation easement of the approximately 36.855 acres) in exchange for the conveyance by STATE to the CITY of the City Concrete site; and

WHEREAS, the STATE, the DEPARTMENT and the CITY presented the permitting agencies which issue and review the Army Corps Permit and Wetlands Permit with the proposed

change of effectuating the proposed mitigation required for Rochester 10620D project by utilizing the City Concrete site as a dual floodplain and 5.3 acres of wetlands creation (expected) (Phase 1 only), 46 acres of preservation, along with a municipal production well site, coupled with a plan incorporating the utilization of portions of the Henderson site for Rochester 10620D project mitigation purposes, and the payment by the STATE, into the ARM fund, on December 3, 2009, and no objections to such proposals were lodged by the reviewing agencies;

NOW THEREFORE, in consideration of the premises, and of the mutual promises and agreements contained herein, the STATE, the DEPARTMENT and the CITY mutually agree as follows:

1. The STATE and the DEPARTMENT have created, on the City Concrete Site, that portion of the proposed wetlands creation mitigation requirements for the Rochester 10620D project required for such site by the agencies that issue and review the Army Corps Permit and the Wetlands Permit, which include, 8.72 acres (greater than the required 5.3 acres) of wetlands creation (actual).
2. The STATE and the DEPARTMENT contingent upon the prior approval of Governor and Council shall, on or before May 30, 2016, convey to the CITY the by Warranty Deed Subject to Conservation Restrictions the City Concrete Site, which conservation restrictions (the "Conservation Restrictions") shall include, and shall subject the entire City Concrete Site to, Conservation Restrictions, in a form consistent with the provisions of RSA 477:45 through RSA 477:47, and in terms mutually agreeable to the STATE, the DEPARTMENT and the CITY, but which Conservation Restrictions shall, at a minimum, permit the CITY to develop, construct, operate, expand, maintain and/or repair, on the City Concrete Site, a municipal production well for water supply uses by the CITY consistent, and compatible, with those water supply uses currently being made, and anticipated to be made in the future, by the CITY's municipal water distribution and supply system, including the installation, construction, repair and/or maintenance of necessary pipes and other infrastructure, including unpaved roads and other structures necessary to allow for the recovery, treatment, transmission and distribution of water

attainable from the aforesaid municipal production well to be located on the said City Concrete Site, as well as the use and distribution of such water in connection with the CITY's water distribution system.

3. In addition to the Conservation Restrictions to be placed upon the City Concrete site, the parties shall incorporate into the aforesaid Warranty Deed Subject to Conservation Restrictions, at a minimum, that:

(a) The CITY, in conjunction with the DEPARTMENT, shall monitor the water levels within the created wetlands on the City Concrete Site to obtain conditions for a favorable wetland;

(b) The CITY shall permit access by the DEPARTMENT, including its employees, consultants, and contractors, during normal business hours, in order to permit the DEPARTMENT to conduct the necessary monitoring at the City Concrete Site;

(c) The DEPARTMENT shall share the results of any monitoring of the City Concrete Site with the CITY including raw data and methodology and conditions through which the monitoring data was obtained;

(d) The CITY, in consultation with the DEPARTMENT, will adjust water withdrawal rates from the City Concrete site, as necessary to maintain water levels within the created wetlands, as contemplated by the wetland's design, in the event that the well withdrawal rate is adversely impacting the created wetland;

(e) The City Concrete Site will not be further subdivided by the CITY;

(f) No changes in topography, surface water systems, wetlands or natural habitat of the City Concrete Site will be allowed, except for the purpose of eliminating existing, potential or future safety hazards, and the establishment and perpetuation of a wetland, floodplain mitigation, and/or municipal production well;

(g) There shall be no-clear cutting and/or removal of trees and/or shrubs within the City Concrete site, except for the purpose of eliminating existing, potential or future safety hazards, and the establishment, accommodation and/or perpetuation of a wetland, floodplain mitigation, and/or municipal production well;

(h) Notwithstanding the provisions of section 3(g) of this Agreement, or any other provision of this Agreement to the contrary, the CITY shall be permitted, after consultation with the STATE and the DEPARTMENT, to develop, maintain, implement, and, from time to time, amend, a forest management plan (including the right to perform select timber harvesting) for the City Concrete site, including, with such plan, the utilization of best forest management practices.

(i) There shall be no mining, quarrying, excavation or removal of minerals, gravel, sand, topsoil, or other similar materials from the City Concrete Site, except for that required to eliminate existing, potential or future safety hazards, and the establishment, accommodation and/or perpetuation of a wetland, floodplain mitigation, and municipal production well;

(j) No outdoor advertising structures shall be allowed or displayed on the City Concrete Site, including, but not limited to, advertising signs and billboards;

(k) There shall be no industrial or private commercial activities conducted on any portion of the City Concrete Site;

(l) There will be no dumping, filling, injection or burial of any waste and/or refuse materials whatsoever on any portion of the City Concrete Site; and

(m) Enforcement of the terms and conditions of the Conservation Restrictions to be placed on the City Concrete Site shall be permitted in accordance with the terms and conditions of New Hampshire RSA 477:46 and 477:47, as currently amended and as the same may be subsequently amended, and the provisions of the Warranty Deed Subject to Conservation Restrictions shall be binding upon the CITY and its successors and assigns.

4. The parties hereto specifically reserve the right, upon mutual agreement, to expand and/or modify the terms of this Agreement in writing, prior to their respective execution thereof, so as to address issues necessary and/or appropriate to effectuate the purposes outlined in this Agreement.
5. In exchange for the conveyance of a Warranty Deed Subject to Conservation Restrictions upon the City Concrete site by the STATE and DEPARTMENT, the CITY shall place conservation restrictions on approximately 36.855 acres of the Henderson site for the Rochester 10620D project required by the agencies that issue and review the Army Corps Permit and the Wetlands Permit and provide for the effective maintenance, preservation and administration thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written by causing their respective duly authorized representatives to affix their signatures on their behalf.

CITY OF ROCHESTER

By: Daniel W. Fitzpatrick
Daniel W. Fitzpatrick, City Manager
(Print name and title above)
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

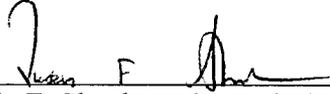
April 19, 2016

Personally appeared the above-named Daniel W. Fitzpatrick, duly authorized City Manager of **City of Rochester** and acknowledged that she/he executed the foregoing instrument on behalf of said **City of Rochester** for the purposes therein contained.

Before me,

Robert J. Wensley
Notary Public/Justice of the Peace
My Commission Expires: 1/15/19

STATE OF NEW HAMPSHIRE,
DEPARTMENT OF TRANSPORTATION

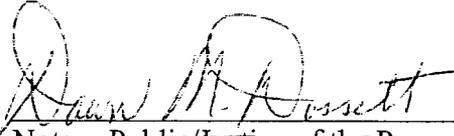
By: 
Victoria F. Sheehan, Commissioner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

April 27, 2016

Personally appeared the above- Victoria F Sheehan, duly authorized Commissioner of **State of New Hampshire, Department of Transportation** and acknowledged that she/he executed the foregoing instrument on behalf of said **State of New Hampshire, Department of Transportation** for the purposes therein contained.

Before me,


Notary Public/Justice of the Peace
My Commission Expires: DAWN M. DOSSETT
Notary Public-New Hampshire
My Commission Expires Sept. 28, 2016

This AGREEMENT has been reviewed and is approved as to form and execution.

Date: 4/29/16

Karen Schlitzer
Karen Schlitzer
Senior Assistant Attorney General
Office of Attorney General
State of New Hampshire

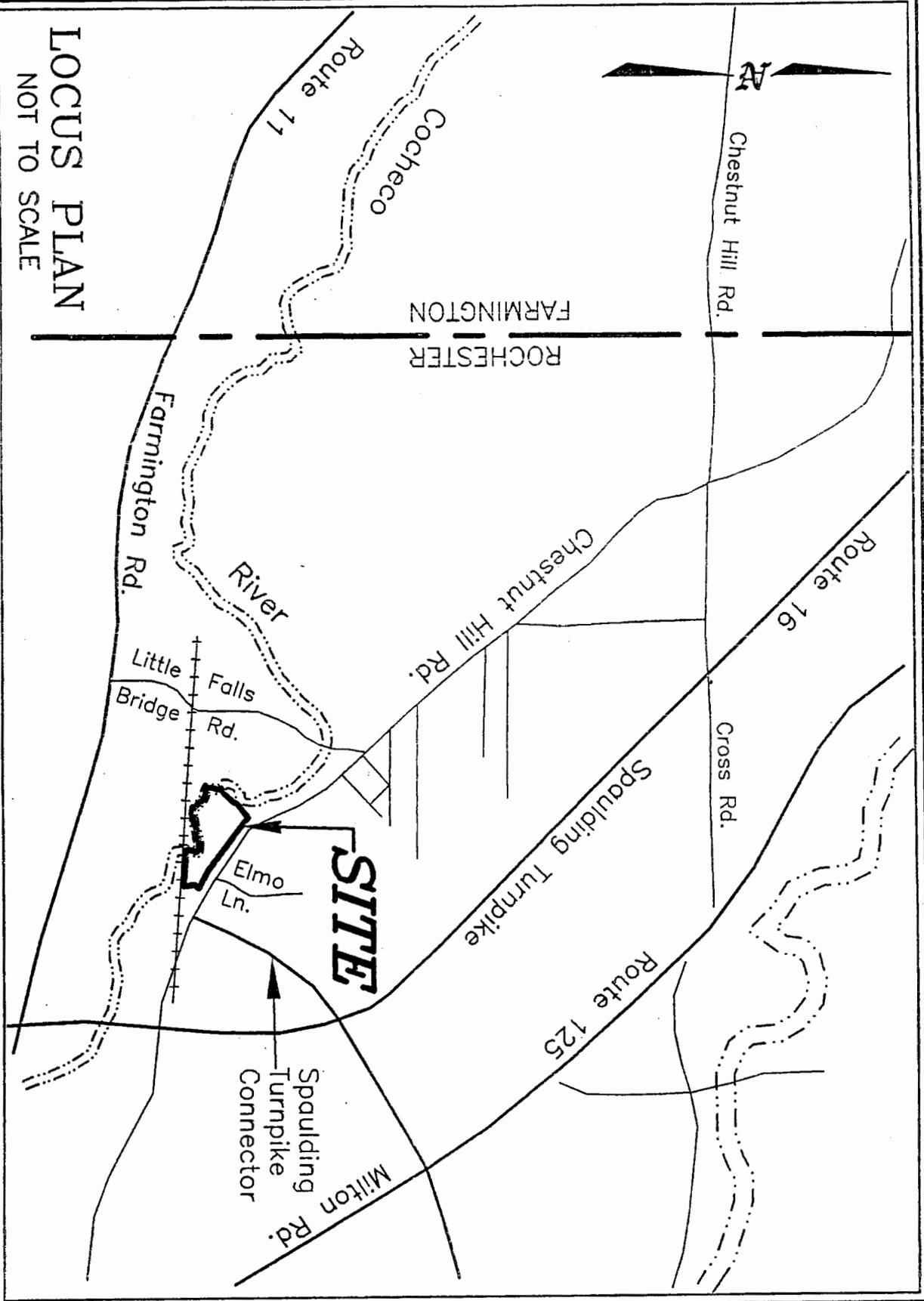
This is to certify that the GOVERNOR AND COUNCIL of the State of New Hampshire on the _____ day of _____, 2016 approved this AGREEMENT as Item # _____.

Date: _____

ATTEST:

By: _____
Secretary of State of New Hampshire

LOCUS PLAN
NOT TO SCALE



N

FARMINGTON
ROCHESTER

SITE

Route 11

Cocheco

Chestnut Hill Rd.

Farmington Rd.

River

Chestnut Hill Rd.

Route 16

Little Falls
Bridge Rd.

Cross Rd.

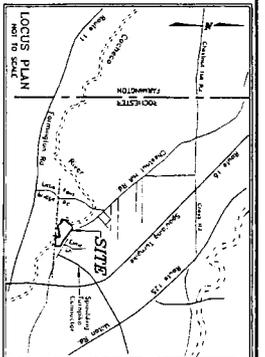
Spaulding Turnpike

Elmo Ln.

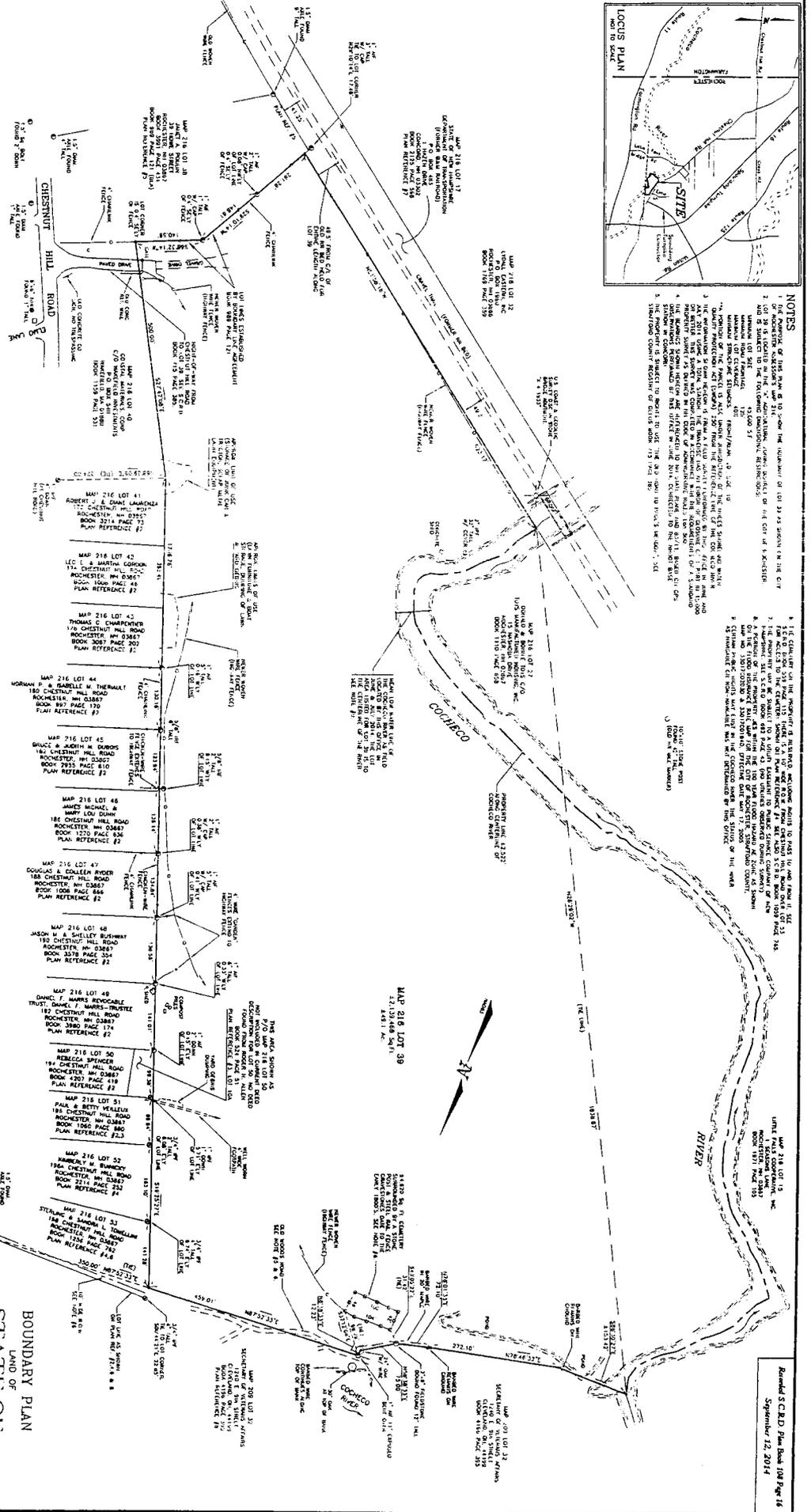
Route 125

Spaulding
Turnpike
Connector

Milton Rd.

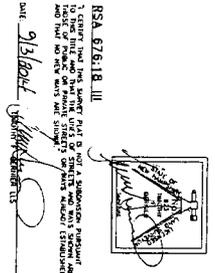


- NOTES**
1. THE PROPERTY OF THIS PLAN IS TO SHOW THE BOUNDARIES OF LOT 216 SHOWN IN THE CITY OF ROCHESTER, NEW YORK.
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- PLAN REFERENCES**
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- LEGEND**
- 1. LOT BOUNDARY
 - 2. EASEMENT
 - 3. EASEMENT
 - 4. EASEMENT
 - 5. EASEMENT
 - 6. EASEMENT
 - 7. EASEMENT
 - 8. EASEMENT
 - 9. EASEMENT
 - 10. EASEMENT



NO.	REVISION	DATE

T.F. BERNIER, INC.
 Land Surveyors - Designers - Consultants
 38 WOODEN STREET - P.O. BOX 3464
 CONROCK, NEW HAMPSHIRE 03307-3464
 TEL: (603) 251-1188 • FAX: (603) 251-0500

BOUNDARY PLAN
 LAND OF
STATE OF
NEW HAMPSHIRE
 ASSESSOR'S MAP 216 LOT 39
 CHESTNUT HILL ROAD
 STRATFORD CO. ROCHESTER, N.Y.
 SCALE: 1"=100' DATE: JULY 2014