

49 SJW



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION of PARKS and RECREATION
BUREAU OF TRAILS

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856
PHONE: (603) 271-3254 FAX: (603) 271-3553 E-MAIL: nhtrails@dred.state.nh.us
WEB: www.nhtrails.org

October 23, 2013

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

REQUESTED ACTION

1. Pursuant to RSA 4:40 and RSA 227-H:3, authorize the Department of Resources and Economic Development (DRED) to enter into a 30 year reciprocal access agreement with Jericho Power LLC, Cohasset, MA, to Jericho Mountain State Park in Berlin, NH. 0% State funds
2. Pursuant to RSA 216-F:1, further authorize DRED to accept a permanent trail easement from Jericho Mountain Wind Company on lands abutting Jericho Mountain State Park. The trail is an existing OHRV trail used by riders at the park. 0% State funds

EXPLANATION

DRED wishes to enter into this 30 year reciprocal access agreement with Jericho Power LLC, for the purpose of allowing them access to their property which abuts Jericho Mountain State Park and for continued use of OHRV trails abutting the park. The request for this access was started in 2006, when the park was originally purchased, and the abutting property had wind turbines in place.

Jericho Power LLC cannot get appropriate access to the property for construction from other lands and the most appropriate existing route to their property is over current gravel surface roads within the park. Jericho Power LLC would be required to make all needed road improvements and repairs and their access would not disrupt trail or park activities in the summer or winter riding seasons. DRED would continue to be allowed public trail access on their property, as well as have the ability to increase trail mileage on their lands and receive a permanent trail easement for trails that are currently in existence. The City of Berlin, DES and SEC have all approved the permits for this turbine project in Berlin.

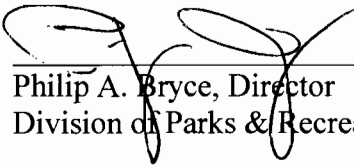
Jericho Mountain Wind Company is the property owner for the development and has offered a permanent trail easement on a portion of their property. The trail easement would protect an existing OHRV trail along the border of the property and will protect the connection from Jericho Mountain State Park to the City Connector Trail, which travels through Berlin to Success

The Jericho Mountain State Park access agreement surplus request was approved on May 3, 2012 by the Council on Resources and Development, and was approved on November 27, 2012 by the Long Range Capital Planning and Utilization Committee.

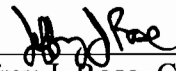
The easement and agreement documents have been approved as to form, substance and execution by the Office of the Attorney General.

Respectfully submitted,

Approved by,



Philip A. Bryce, Director
Division of Parks & Recreation



Jeffrey J. Rose, Commissioner
Department of Resources and
Economic Development

RECIPROCAL ACCESS AGREEMENT

Jericho Mountain State Park Berlin, New Hampshire

This agreement (the "AGREEMENT") made this 5 day of August, 2013 by and among Jericho Power LLC ("JERICHO POWER") with its principal office at 13 Elm Street, Cohasset, MA 02025, Jericho Mountain Wind Company ("JERICHO MOUNTAIN") with its principal office at 11 Island View Road, East Weymouth, MA, 02189 and the State of **New Hampshire, Department of Resources and Economic Development** (hereinafter referred to as "DRED"), with its principal office at 172 Pembroke Road, P.O. Box 1856, Concord, NH 03302-1856.

Whereas, JERICHO POWER is the lessee of certain land (the "PROPERTY"), depicted on ATTACHMENT A, in Berlin, New Hampshire, located off NH Highway 110; and

Whereas, JERICHO MOUNTAIN is the owner of the PROPERTY; and

Whereas, DRED is owner and manager of land abutting the PROPERTY, being a portion of Jericho Mountain State Park (the "PARK"); and

Whereas, JERICHO POWER wishes to use existing trails within the PARK and to construct a new road over the PARK to the PROPERTY (collectively, the "ROW"); and

Whereas, DRED wishes to use the roads and trails that pass through the PROPERTY for motorized recreation and recreation management purposes (collectively the "TRAILS");

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements herein contained, DRED, JERICHO MOUNTAIN and JERICHO POWER (the "PARTIES") agree as follows:

1. JERICHO POWER, its agents and contractors may cross the PARK using the existing trails as shown on the attached plan and included in the original submission (ATTACHMENT A) to access the PROPERTY for the installation, and maintenance of the wind turbines and power transmission facilities located on the PROPERTY.
2. JERICHO POWER may construct an access road (the "ROAD") in the PARK to access the PROPERTY from said existing trails for the installation, and maintenance of the wind turbines and power transmission facilities located on the PROPERTY.
3. JERICHO POWER will be responsible for all costs and state and federal permits and approvals required to improve the existing trails and construct the ROAD, all of which will be built in accordance with the Alteration of Terrain Permit AoT-0511. JERICHO POWER shall remain in compliance with and abide by the terms of said permits and approvals, and all federal and state laws and regulations regarding the construction, maintenance and supervision of use upon the ROW. During the snowmobile season, JERICHO POWER shall not either remove or cause to be removed snow from the existing roads or trails without consent from DRED.

4. JERICHO POWER shall have use of the ROW from the date of signing of this AGREEMENT for as long as JERICHO POWER and JERICHO MOUNTAIN, and each of their assigns, permit DRED to use the TRAILS on the PROPERTY, or 30 (thirty) years, whichever is shortest (the "TERM"). If, during the TERM, the ROW experiences excessive damage due to JERICHO POWER, or its agents, assigns and/or contractors, use of the ROW, JERICHO POWER and DRED will work collaboratively to assess and correct said damage. JERICHO POWER shall work with DRED to ensure that the section of the Bathtub Trail (along the Proposed Construction Access Road in ATTACHMENT A), that provides the so-called Bathtub Feature to the trail system, maintains a comparable water feature reasonably acceptable to DRED either in its current location or at a nearby location.
5. DRED, its agents and contractors may use and maintain TRAILS on the PROPERTY for motorized recreation and recreation management purposes. DRED shall have the right to construct, improve, maintain, repair, reconstruct and enforce the TRAILS using best management practices as described in "Best Management Practices for Erosion Control During Trail Maintenance and Construction" (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau) or such successor standard. DRED and its agents shall have the right to enter the PROPERTY with persons and equipment for purposes of maintaining the TRAILS. Maintenance activities shall include, but not be limited to, installation and replacement of bridges and culverts, rocks and stump removal, smoothing the trail surface, placement of gravel and natural fill, installation of broad based dips, water bars and ditches, removal of fallen trees, cutting back encroaching vegetation and wintertime grooming. Any such improvements made to the TRAILS in the form of structures shall remain the property of DRED, and be removable by DRED.
6. DRED shall have use of the PROPERTY from the date of signing of this AGREEMENT for the TERM. Notwithstanding the foregoing, JERICHO MOUNTAIN agrees to, concurrently with the signing of this AGREEMENT, provide DRED a permanent easement along the Power Line Trail between the Pipeline Trail and the Alpha Trail (see ATTACHMENT A for trail locations) in the form attached hereto as ATTACHMENT C.
7. The terms and conditions of this AGREEMENT shall be included in any contract (the "DRED CONTRACT") issued by DRED which utilizes the PROPERTY. Each DRED CONTRACT shall include provision for a performance bond of sufficient dollar amount determined by the PARTIES to assure compliance. Each DRED CONTRACT shall also contain language requiring DRED's contractor/vendor to hold JERICHO POWER and JERICHO MOUNTAIN harmless from claims arising from injury to persons or damage to property which may arise directly or indirectly from the use of the TRAILS, and also require that each contractor/vendor (the "DRED CONTRACTOR") shall have in effect, during the term of the DRED CONTRACT with DRED, comprehensive general liability insurance in the amount of \$2,000,000.00, and the certificate of insurance shall name JERICHO POWER and JERICHO MOUNTAIN as an "Additional Insured".
8. The terms and conditions of this AGREEMENT shall be included in any contract (the "JERICHO CONTRACT") issued by JERICHO POWER which utilizes the PARK. Each

JERICHO CONTRACT shall include provision for a performance bond of sufficient dollar amount determined by the PARTIES to assure compliance. Each JERICHO CONTRACT shall also contain language requiring JERICHO POWER'S contractor to hold DRED harmless from claims arising from injury to persons or damage to property which may arise directly or indirectly from the use of the PARK, and any such contractor (the "JERICHO CONTRACTOR") shall have in effect, during the term of the JERICHO CONTRACT with JERICHO POWER, comprehensive general liability insurance in the amount of \$2,000,000.00, and the certificate of insurance shall name DRED as an "Additional Insured".

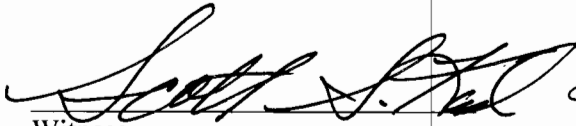
9. JERICHO POWER shall notify DRED of impending use of the PARK by any contractor of JERICHO POWER, and of completion of any use of the PARK by such contractor of JERICHO POWER.
10. DRED shall be required as a precondition of the use of the PROPERTY to assure that any and all third party contractors and subcontractors of DRED who will be engaged by DRED in any respect to conduct, carry out or participate in any way in the recreational use, maintenance of the TRAILS on the PROPERTY, and who will use the PROPERTY in any respect (including but not limited to, those engaged by DRED or as a subcontractor engaged by DRED) shall execute and deliver to JERICHO POWER and JERICHO MOUNTAIN a Compliance, Indemnity and Hold Harmless Agreement (the "INDEMNITY INSURANCE") form (ATTACHMENT B) , prior to any entry upon the PROPERTY. DRED shall not permit any such contractor or subcontractor to use the PROPERTY unless and until the INDEMNITY INSURANCE is executed and delivered to JERICHO POWER and JERICHO MOUNTAIN.
11. DRED shall not execute and deliver to JERICHO POWER and JERICHO MOUNTAIN the INDEMNITY INSURANCE form. Instead, DRED shall provide coverage under the State's Commercial General Liability Policy authorized by RSA 260:61 (at least in the current amount of \$2,000,000.00 or any level amended by the NH Legislature) to JERICHO POWER and JERICHO MOUNTAIN and its assigns.
12. DRED Parks and Recreation shall be required, as a precondition of the use of the PROPERTY, to perform basic bridge and road maintenance on the subject PROPERTY whenever determined necessary by the PARTIES. Road and bridge maintenance will include work such as bridge re-decking, culvert replacement or cleaning and ditching of the TRAILS. Such maintenance will be performed only if agreed to by an agent of DRED, Bureau of Trails, JERICHO POWER, and JERICHO MOUNTAIN. Maintenance will be performed to allow the PROPERTY to be used for recreational motorized use and be passable by four-wheel drive vehicles or equipment necessary for the purpose of maintaining the PROPERTY.
13. Disputes shall be handled as follows: JERICHO POWER, JERICHO MOUNTAIN, and DRED desire that issues arising from time to time concerning uses or activities in light of the provisions of this AGREEMENT will first be addressed through candid and open communication between the PARTIES rather than unnecessarily formal or adversarial action. Therefore, the PARTIES agree that if any party questions whether any use or activity complies with the provisions of this AGREEMENT, whenever reasonably possible, the concerned party

shall notify the other party or PARTIES of the perceived or potential problem, and the PARTIES shall attempt to reach a resolution by informal dialogue.

14. This AGREEMENT may be modified only in writing, signed and acknowledged by all PARTIES, duly authorized, and recorded in the Coos County Registry of Deeds.
15. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the Sovereign immunity of the State, which immunity is hereby reserved to the State. The foregoing sentence shall not be construed as excusing or limiting the contractual obligations of the State herein. This covenant shall survive the termination of this agreement.
16. This AGREEMENT shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the PARTIES and their respective successors and assigns.
17. This AGREEMENT may be amended, waiver or discharged only by an instrument in writing signed by the PARTIES hereto.
18. Except as expressly set forth herein, the PARTIES hereto do not intend to benefit any third parties and this AGREEMENT shall not be construed to confer any such benefit.

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

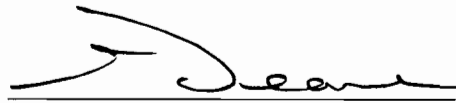
Landowner/Abutter


Witness

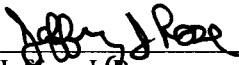

Elizabeth Nolan
For JERICO MOUNTAIN WIND COMPANY

Lessee


Witness

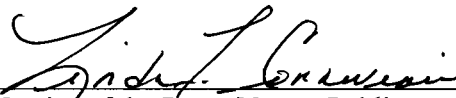

Gordon L. Deane
For JERICO POWER LLC

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES
AND ECONOMIC DEVELOPMENT

By: 
Name: Jeffrey J. Rose
Title: Commissioner, Duly Authorized

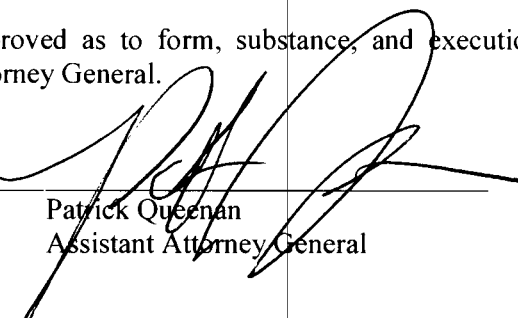
STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

On this 11th day of October, 2013, personally appeared the above-named Jeffrey J. Rose, Commissioner of the Department of Resources and Economic Development of the State of New Hampshire, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he was duly authorized and executed the same in the capacity therein stated and for the purposes therein contained.


Justice of the Peace/Notary Public
My Commission Expires: _____

LINDA F. CORRIVEAU, Notary Public
My Commission Expires September 9, 2014

Approved as to form, substance, and execution by the Department of Justice, Office of the Attorney General.

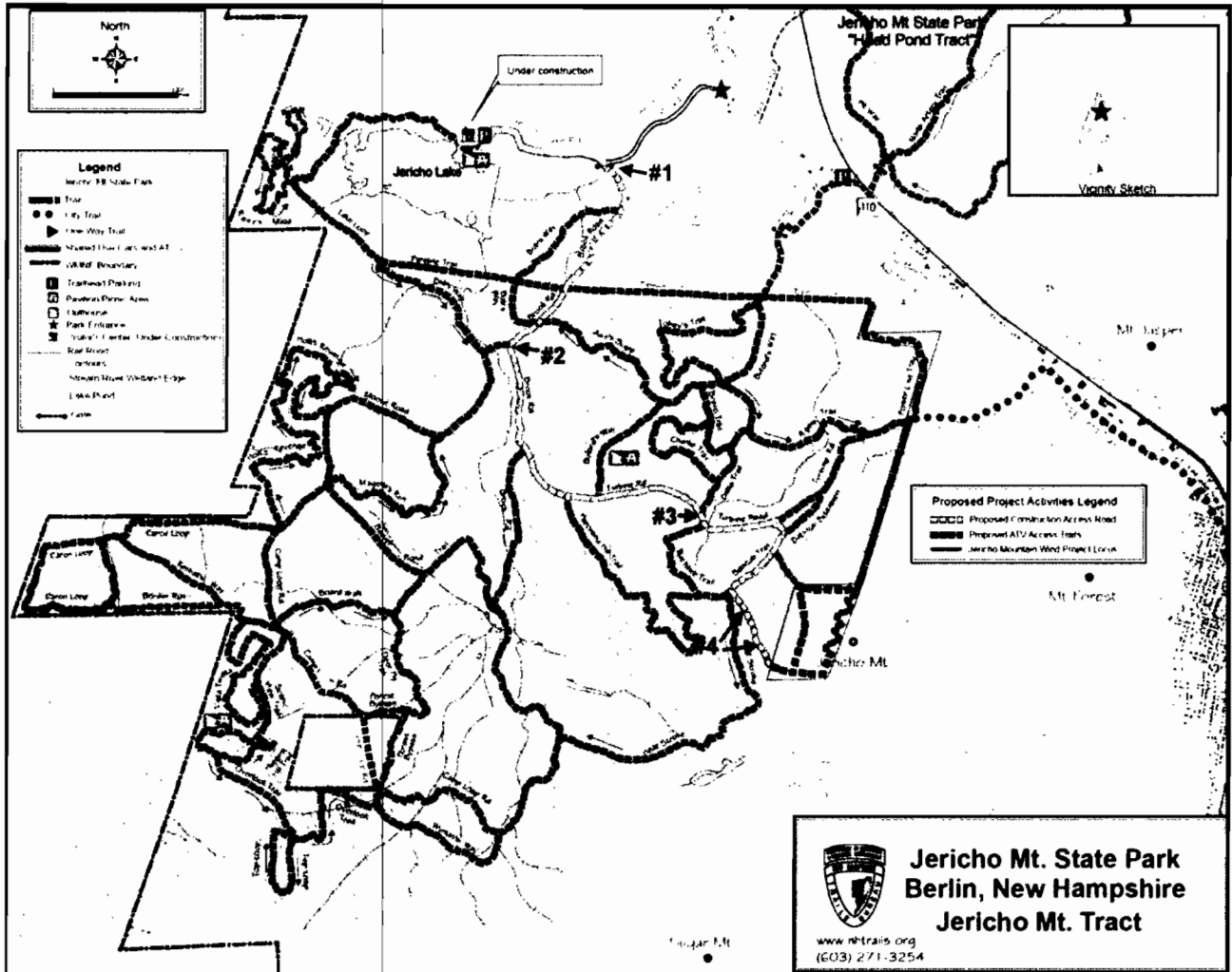
BY: 
Patrick Queenan
Assistant Attorney General

10/17/13
Date

Approved by Governor and Council: _____, _____, 2013; Agenda Item # _____

ATTACHMENT A

MAP OF EXISTING TRAILS



ATTACHMENT B

COMPLIANCE, INDEMNITY AND HOLD HARMLESS AGREEMENT

FOR AND IN CONSIDERATION OF the allowance by JERICHO POWER LLC of Cohasset, Massachusetts (hereinafter referred to as "JERICHO POWER") and JERICHO MOUNTAIN WIND COMPANY of East Weymouth, Massachusetts (hereinafter referred to as "JERICHO MOUNTAIN") of the undersigned's exercise of the permission to use an existing woods road installed by JERICHO POWER to cross certain property owned by JERICHO MOUNTAIN in the Town of Berlin, New Hampshire, as granted in that certain "Reciprocal Access Agreement" (the "AGREEMENT") dated _____, 2013, among JERICHO POWER, JERICHO MOUNTAIN and the State of New Hampshire Department of Resources and Economic Development ("DRED"), the undersigned hereby covenants to and agrees with JERICHO POWER and JERICHO MOUNTAIN as follows:

1. The undersigned has been provided by DRED with a complete copy of the AGREEMENT, acknowledges the undersigned's understanding of all of the terms, conditions and limitations of the AGREEMENT, and hereby agrees to fully comply in all respects, and to require its employees and agents or others acting for or on the undersigned's behalf if applicable, to fully comply with all of the terms, conditions and limitations contained in the AGREEMENT.

2. The undersigned hereby agrees to defend, indemnify and hold harmless JERICHO POWER and JERICHO MOUNTAIN, and their assigns, from and against any and all liability, loss, damages, cost and expense (including reasonable attorney fees), and any and all lawsuits, claims, actions or proceedings, for property damage, for damage or contamination to any natural resource, or for personal injury or death to any person, caused by, arising out of or in any way resulting from the exercise by the undersigned, or the employees and agents or others acting for or on the undersigned's behalf if applicable, of the permission to use the woods road to cross JERICHO MOUNTAIN's property as set forth in the AGREEMENT, or the use or conduct of any activities on said woods road or JERICHO MOUNTAIN's property by the undersigned, or the failure or refusal of the undersigned to comply in any respect with the terms, conditions and limitations of the AGREEMENT.

3. The agreements contained herein shall be fully binding upon the heirs, administrators, executors, successors and assigns of the undersigned.

CONTRACTOR

Witness

Date

By: _____
Name: _____
Title: _____
Duly Authorized

ATTACHMENT C

FORM OF PERMANENT EASEMENT

**Return to:
Chris Gamache
DRED Bureau of Trails
P.O Box 1856
Concord, NH 03302-1856**

THIS IS A TRANSFER TO THE STATE OF NEW HAMPSHIRE AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2(I)

**PERMANENT TRAIL EASEMENT
And
AGREEMENT**

JERICO MOUNTAIN WIND COMPANY, (the Grantor), with a mailing address of 11 Island View Road, East Weymouth, MA., 02189 for consideration of \$2,000.00 paid, grants to the State of New Hampshire (the State), through its Department of Resources and Economic Development (DRED), Bureau of Trails with a mailing address of 172 Pembroke Road, P.O. Box 1856, Concord, New Hampshire 03302-1856, a thirty (30) foot wide perpetual right of way easement corridor (the EASEMENT) with QUITCLAIM COVENANTS.

The EASEMENT is depicted in a drawing attached and incorporated into this document and labeled as “Exhibit A”. The EASEMENT is over a portion of property currently owned by the Grantor and more specifically shown as Lot 5 on Map 410, City of Berlin in Coos County, New Hampshire (the PROPERTY).

The EASEMENT is given in perpetuity and intended to provide access to the STATE and the general public across and/or over the PROPERTY for recreational trail (the TRAIL) purposes, including, but not limited to, snowmobile and OHRV.

Both the Grantors and the State (the Parties) agree to the following conditions:

1. OBLIGATIONS OF THE PARTIES.

The State, through DRED, shall have the right to maintain, manage, enforce and use, and permit the public to use, the TRAIL along the route established as depicted in Exhibit “A”.

DRED’s right to maintain, manage, enforce and use, and permit the public to use the TRAIL shall be subject to the following terms and conditions:

- A. DRED may mark the TRAIL by the use of signage or otherwise, to indicate the location of the TRAIL, to restrict use to within the designated trail corridor, and to restrict access by vehicles other than the intended uses. DRED may do such things that are reasonably necessary and practicable, including the use of gates and barriers, and appropriate official signs, to keep use on the Trail and within the TRAIL corridor, and to restrict access by vehicles other than the intended users.
- B. The easement corridor within which the TRAIL may be maintained is limited to a width of thirty (30) feet.
- C. No less than annually DRED shall conduct a general clean-up of the TRAIL to remove litter, trash and manmade debris
- D. DRED shall maintain the TRAIL using best management practices as described in “Best Management Practices for Erosion Control During Trail Maintenance and Construction” (State of New Hampshire, Department of Resources and Economic Development, Division of Parks and Recreation, Trails Bureau) or such successor standard. DRED and its agents shall have the right to enter the Property with persons and equipment for purposes of maintaining the TRAIL. Maintenance activities shall include, but not be limited to, installation and replacement of bridges and culverts, rocks and stump removal, smoothing the trail surface, placement of gravel and natural fill, installation of broad based dips, water bars and ditches, removal of fallen trees, cutting back encroaching vegetation and wintertime grooming.
- E. DRED shall have the right to temporarily close the TRAIL when weather or ground conditions make the TRAIL unsuitable for recreational use.
- F. Bridges and other improvements to the TRAIL shall be designed and constructed for multi-use and multi-season recreational use, and shall be maintained by DRED, and remain the property of DRED. If a portion of the TRAIL is permanently relocated or abandoned, DRED shall have the right to remove any bridges put in place to accommodate the TRAIL.
- G. DRED shall obtain all necessary federal, state permits and approvals, and remain in compliance with and abide by the terms of said permits and approvals, and all federal and state laws and regulations regarding the construction, maintenance and supervision of use upon the TRAIL.
- H. DRED shall not be responsible for any actions or use of the TRAIL taken by, or on behalf of, the Grantor or its lessees or assigns. Any closures or restrictions by DRED on the TRAIL shall not apply to Grantor or its lessees or assigns.

2. **MONITORING TRAIL USE.**

The STATE, through DRED, agrees to monitor usage on the Property to ensure that the current ecological conditions are not significantly diminished or degraded by recreational use, and that recreational use is limited to the TRAIL and occurs in compliance with the then-current state laws, administrative rules, and this Agreement.

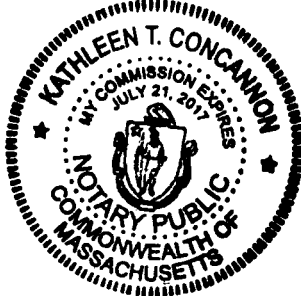
Meaning and intending to convey a permanent right-of-way easement for recreational trail purposes over the property. The source of title is Book 1298, Page 0512, of the Coos County Registry of Deeds. Also meaning and intending to confirm the agreement which is a part of this document. JERICO MOUNTAIN is the deeded owner and has the rights to transfer ownership or easement.

Witness our hand this 9th day of August, 2013.

Elizabeth Nolan
NAME
President
Title

State of Massachusetts
County of NORFOLK

On this the 9th day of August 2013, before me, the above signed President, personally appeared, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that she executed the foregoing instrument, for the purposes therein contained on her behalf.



Kathleen T. Concannon
Justice of the Peace/Notary Public

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF RESOURCES
AND ECONOMIC DEVELOPMENT

By: Jeffrey Rose
Name: Jeffrey J. Rose
Title: Commissioner, Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

On this 11th day of October, 2013, personally appeared the above-named Jeffrey J. Rose, Commissioner of the Department of Resources and Economic Development of the State of New Hampshire, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he was duly authorized and executed the same in the capacity therein stated and for the purposes therein contained.

Linda F. Corriveau
Justice of the Peace/Notary Public
My Commission Expires: LINDA F. CORRIVEAU, Notary Public
~~My Commission Expires September 9, 2014~~

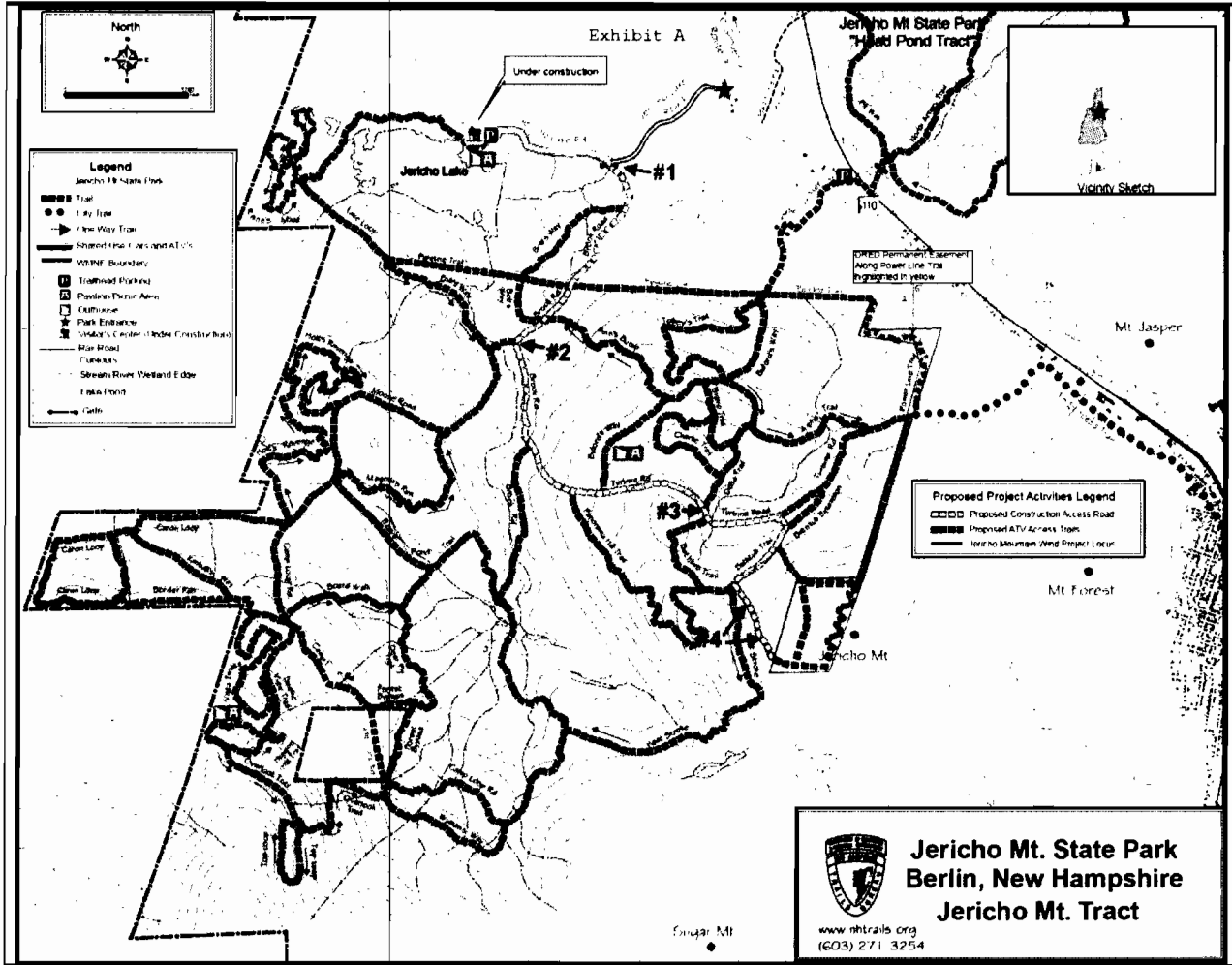
Approved as to form, substance, and execution by the Department of Justice, Office of the Attorney General.

BY: [Signature]
Patrick Queenan
Assistant Attorney General

10/17/13
Date

Approved by Governor and Council: _____, _____, 2013; Agenda Item # _____

EXHIBIT A



New Hampshire Council on Resources and Development

NH Office of Energy and Planning
107 Pleasant Street, Johnson Hall
Concord, NH 03301
Phone: 603-271-2155
Fax: 603-271-2615



TDD Access: Relay NH
1-800-735-2964

MEMORANDUM

TO: George M. Bald, Commissioner

FROM: Susan Slack, Assistant Planner
Office of Energy and Planning *SS*

DATE: May 31, 2012

SUBJECT: Surplus Land Review, SLR 12-009-Berlin

Effective May 3, 2012, the Council on Resources and Development (CORD) took action on the following issue brought by the Department of Resources and Economic Development:

Request to convey a 30-year right-of-way easement over Jericho Mountain State Park to Jericho Power LLC in exchange for an easement from Jericho Power LLC to the State of New Hampshire.

CORD members voted to RECOMMEND APPROVAL OF SLR 12-009 as submitted, subject to no adverse comments being received during the remainder of the comment period ending May 30, 2012. No adverse comments were received.

cc: Bill Carpenter, Department of Resources and Economic Development
Joanne O. Morin, Director, NH Office of Energy and Planning; Chair, CORD
Representative John Graham, Chair, Long Range Capital Planning and Utilization Committee

RECEIVED

NOV 30 2012

D.R.E.D.



LRCP 12-056

JEFFRY A. PATTISON
Legislative Budget Assistant
(603) 271-3161

MICHAEL W. KANE, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

RICHARD J. MAHONEY, CPA
Director, Audit Division
(603) 271-2785

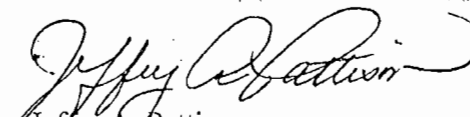
November 28, 2012

Philip Bryce, Acting Commissioner
Department of Resources and Economic Development
172 Pembroke Road
P.O. Box 1856
Concord, New Hampshire 03302-1856

Dear Acting Commissioner Bryce,

The Long Range Capital Planning and Utilization Committee, pursuant to the provisions of RSA 4:40, on November 27, 2012, approved the request from the Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails, to execute a 30 year Right-of-Way (ROW) easement over State land know as Jericho Mountain State Park in exchange for a recreation easement over property of Jericho Power LLC, at no cost to the State, subject to the conditions as specified in the request dated October 26, 2012.

Sincerely,


Jeffrey A. Pattison
Legislative Budget Assistant

JAP/pe
Attachment

Cc: Christopher Gamache
Bureau of Trails

Bill Carpenter
Division of Forests and Lands ✓