



New Hampshire Fish and Game Department

OCT17'18 11.80 DAS

JK
59

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500
(603) 271-3421
FAX (603) 271-1438

www.WildNH.com
e-mail: info@wildlife.nh.gov
TDD Access: Relay NH 1-800-735-2964

October 1, 2018

His Excellency Governor Christopher T. Sununu
And the Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Pursuant to RSA 212:10-b, authorize the New Hampshire Fish and Game Department (NHFG) to enter into a management agreement with Bruce White, of Rindge NH, for the management of an active sugar orchard within the Pearly Lake Wildlife Management Area in Rindge, NH, effective upon Governor and Council approval through June 30, 2024. Mr. White will pay an annual administrative fee to NHFG based on a per-tap formula that is mutually agreed upon and further described in section 3 of the agreement. Funds to be deposited in account 20-07500-00000075-402067, unrestricted revenue.

EXPLANATION

The New Hampshire Fish and Game Department owns 672 acres in the Towns of Fitzwilliam and Rindge which has a stand of Sugar Maple, and/or Red Maple actively used for the production of maple syrup. Maple syrup production is considered a unique part of the state's economy and way of life. Maple syrup and related products are estimated to contribute more than 3 million dollars annually to the economy of New Hampshire. Mr. White has the knowledge, skills and equipment necessary to effectively operate the sugar orchard and NHFG wishes to allow Mr. White to operate maple sap production on the Pearly Lake WMA, which he has been operating prior to NHFG's ownership.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte
Chief, Business Division

REGION 1

629B Main Street
Lancaster, NH 03584-3612
(603) 788-3164
FAX (603) 788-4823
email: reg1@wildlife.nh.gov

REGION 2

PO Box 417
New Hampton, NH 03256
(603) 744-5470
FAX (603) 744-6302
email: reg2@wildlife.nh.gov

REGION 3

225 Main Street
Durham, NH 03824-4732
(603) 868-1095
FAX (603) 868-3305
email: reg3@wildlife.nh.gov

REGION 4

15 Ash Brook Court
Keene, NH 03431
(603) 352-9669
FAX (603) 352-8798
email: reg4@wildlife.nh.gov

**Pearly Lake Wildlife Management Area
Rindge, NH
Maple Sap Operation**

AGRICULTURAL USE LICENSE

This License is made by and between the State of New Hampshire, Fish and Game Department (hereinafter "DEPARTMENT"), acting by and through its Executive Director, 11 Hazen Drive, Concord New Hampshire 03301 and Bruce White of Rindge NH, having a mailing address of P.O. Box 469, Rindge New Hampshire 03461 (hereinafter "PERMITTEE").

WHEREAS, the DEPARTMENT is responsible for the conservation of the fish and wildlife resources of the State of New Hampshire; and

WHEREAS, the DEPARTMENT acquired on November 29, 2017, certain property known as the Pearly Lake Wildlife Management Area (herein WMA) in the Town of Rindge; and

WHEREAS, the WMA has within its boundaries, as shown on the attached plan, an active "sugar orchard", meaning a stand of Sugar Maple (*Acer saccharum*) and/or Red Maple (*Acer rubrum*) used actively and primarily as a source of sap for the production of maple syrup or related maple products; and

WHEREAS, maple syrup production is considered a unique part of the state's economy and way of life. Maple syrup and related products are estimated to contribute more than 3 million dollars annually to the economy of New Hampshire; and

WHEREAS, the DEPARTMENT wishes to allow Bruce White to operate maple sap production on the WMA, which he has been operating for over 40 years even prior to state ownership; and

WHEREAS, Bruce White has the knowledge, skills and equipment necessary to effectively operate the sugar orchard; and

NOW THEREFORE, in consideration herein the parties agree as follows:

1. Grant of Authority to PERMITTEE

The DEPARTMENT through its Executive Director, under authority granted in RSA 212:10-b, grants this license to the PERMITTEE to use a portion of the WMA as indicated in the attached map to install and maintain taps, drop lines, lateral lines and collection equipment for the purpose of collecting maple sap subject to the conditions stated herein.

2. Period of Use

This License shall become effective upon the date of approval by Governor and Executive Council and shall terminate on June 30, 2024. This License is not automatically extended, but may be renewed upon satisfactory performance of the conditions contained herein. Satisfactory performance and the License extension shall be determined solely by the DEPARTMENT.

3. Administrative Fee

The administration fee shall be by price per tap, based on the "USDA Maple Syrup Production National Agricultural Statistics Service, Maple Syrup Price by Type of Sales and Size of Container - States", which is published annually. Prices are listed for New Hampshire Retail, Wholesale and Bulk, by gallon, for the previous year's sugaring crop. The administration fee will be based on the average of Retail, Wholesale and Bulk prices, by gallon, divided by 100. (Example: for 2016 average \$41.77 per gallon/100 = .42¢ per tap, multiplied by the number of taps). Minimum fee shall be \$50.00. The fee shall be deposited into the NH Fish and Game fund in accordance with RSA 206:33.

4. Conditions of Use

The conditions of use are based on state policy and guidelines for maple sugaring by the Department of Cultural and Natural Resources and referenced in "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (University of New Hampshire Cooperative Extension, 2010), and which are in part as follows:

- a) "Health spiles" are required;
- b) Diameter breast height (dbh) tapping schedule shall be as follows:
 - i. 12" to 18" stems: one (1) tap only (no tree under 12" dbh shall be tapped)
 - ii. 18" plus stems: two (2) taps only (no tree shall receive more than two (2) taps).
- c) Space tap holes so that new holes are six inches horizontally, and 2 feet vertically from old tap holes;
- d) Tapping bits shall be either 19/64 inch or 5/16 inch versions, and tap holes shall not be to a depth greater than 2 inches, including bark thickness. Tree should not be tapped when the wood is frozen;
- e) Tubing systems, including mainlines, shall be attached to tree by use of "protectors" such as wood blocks or tubing to protect the stem and prevent girdling. No nails, wire, or other metal fasteners attached directly to the tree shall be allowed. All tubing clippings and other installation waste shall be removed from the site;
- f) Vacuum systems shall not exceed 15 inches of mercury at the tap hole;

- g) Sanitizers, such as paraformaldehyde, shall not be allowed;
- h) The processing of maple products shall not be allowed on the permitted property;
- i) Timber harvesting shall not be allowed within the sugar orchard(s) boundary, however, the DEPARTMENT and the PERMITTEE together may select stems, saplings and brush for removal for the purpose of enhancing maple sap production;
- j) Motorized vehicles are only allowed for the purposes of harvesting sap from the collection tank, snow removal and the maintenance of tap lines and equipment. Motorized vehicles for any other use, are prohibited;
- k) The PERMITTEE shall not use the property for any other commercial purposes without written permission by the DEPARTMENT; and
- l) There shall be no dumping or burial of any materials or use of any material on the land, which is prohibited by state, or federal laws, which is ecologically hazardous, or which is in any way detrimental to the surface or groundwater.
- m) The PERMITTEE shall make every effort to meet the criteria of the attached "Tapping Policy" by the State. Any questions should be directed to:

Jim Oehler, Habitat Biologist
NH Fish and Game Department
Concord NH 03301
603-271-0453
james.oehler@wildlife.nh.gov

5. Reporting

The PERMITTEE shall submit a report of the total number of taps installed within the permitted area of the WMA, together with a check for payment of the tapping fee by June 1st of each year of the License (check payable to "NH Fish and Game Department).

6. Public Use

The lands under this License shall remain open to use by the public at all times and shall remain free from dangerous conditions or obstructions created by the PERMITTEE'S activities under this License. The PERMITTEE shall not prohibit or regulate recreational activities including hiking, hunting, trapping and fishing. No signs or gates shall be erected without the written permission of the DEPARTMENT. The DEPARTMENT acknowledges the competing use of the PROPERTY by the public and agrees to make reasonable efforts to alert the public of the PERMITTEE'S rights and activities under this License.

7. Liability and Safety

- a) The PERMITTEE shall defend, indemnify, and hold harmless the DEPARTMENT, its officers and employees, from and against any and all claims, liabilities or penalties asserted against the DEPARTMENT, its officers and employees, by or on behalf of any person, for injuries to persons (including the PERMITTEE or their employees, agents or representatives), damage to property or expense of every kind and nature (including, without limitation, court costs, expenses and reasonable attorney's fees) arising in any manner, caused by, resulting from, incident to, connected with or growing out of the rights granted hereunder, unless caused solely by the negligent acts or omissions of the DEPARTMENT, or its employees, agents, licensees or delegees.
- b) The DEPARTMENT agrees to contact the PERMITTEE prior to any timber harvest, heavy mowing, or road maintenance planned to occur within 100 feet of the PERMITTEE'S maple sap operation area, as indicated in the attached map, so that the PERMITTEE can temporarily take down sap lines or equipment if he deems prudent to protect equipment from damage. The DEPARTMENT further agrees to notify contractors operating within 100 feet of maple sap operation area of said operation and to provide contractors with a copy of the map of PERMITTEE'S sap lines and equipment.
- c) The PERMITTEE shall obtain and maintain in effect during the term of this License comprehensive or commercial general liability insurance with minimum policy limits of \$500,000 and shall provide the DEPARTMENT a certificate that demonstrates that such insurance is in effect.
- d) The DEPARTMENT shall not be liable or responsible for destruction of equipment or machinery resulting from the activities by the PERMITTEE hereby permitted.
- e) The covenants set forth in this Section 7 shall survive the termination of this License.

8. No Waiver of Sovereign Immunity

Notwithstanding the provisions of Section 7, above, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State and of New Hampshire Fish and Game Department as a subdivision of the State, which immunity is hereby reserved.

9. Inspection of Premises

The PERMITTEE agrees that the DEPARTMENT or its duly authorized agent, including but not limited to the NH Department of Natural and Cultural Resources Regional Forester, at any time, may examine and inspect any and all areas of the WMA which are included in this License.

10. Termination

The PERMITTEE may terminate this License with thirty (30) days written notice to the DEPARTMENT. The DEPARTMENT, at the end of a sugaring season of any given year, may

terminate this License with thirty (30) days written notification before the end of the given calendar year.

11. Non-conformance

The PERMITTEE shall comply with all applicable State and local laws, zoning ordinances, rules and regulations in connection with the exercise of terms under this License.

12. Compliance with the Laws and Regulations

- a) The PERMITTEE and all persons using these premise with the consent of the PERMITTEE, shall comply with all laws, rules and regulations of the State of New Hampshire governing Wildlife Management Areas.
- b) In connection with the performance of services the PERMITTEE shall comply with all statues, laws, regulations and orders of federal, state, county or municipal authorities which impose obligations upon the PERMITTEE, including, but not limited to, civil rights, and equal opportunity laws. In addition, the PERMITTEE shall comply with all applicable copyright laws.
- c) During the term of this License, the PERMITTEE shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination.
- d) If this License is funded in any part by monies of the United States, the PERMITTEE shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The PERMITTEE further agrees to permit the State or United States, access to any of the Farmer's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this License.

13. Personnel

- a) The performance of services shall be carried out by employees of the PERMITTEE. The PERMITTEE shall provide, at its own expense, all personnel necessary to perform the services. The PERMITTEE warrants that all personnel engaged in services shall be qualified to perform the services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
- b) The PERMITTEE shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the services, to

hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

- c) By signing this License, the PERMITTEE agrees, certifies and warrants that the PERMITTEE is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").
- d) The DEPARTMENT, its successors, assigns and agents, shall be the State's representative. In event of any dispute concerning the interpretation of this License, the DEPARTMENTS decision shall be final.

14. PERMITTEE's Relations with the State

In the performance of this License the PERMITTEE is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the PERMITTEE nor any of his or her officers, employees, agents or members shall have the authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

15. Assignment, Delegation and Subcontracts

This License is not transferable. None of the services shall be delegated or subcontracted by the PERMITTEE without prior written consent of the State, and only then under special circumstances.

16. Waiver of Breach

No failure by the State to enforce any provisions hereof shall be deemed a waiver of its rights with regard to that event, or any subsequent event.

17. Notice

Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties herein.

18. Amendment

This License may be amended only by written request by either party hereto. The amended License must be signed by both parties, and only after approval of such amendment by the Governor and Executive Council may the amendments come into effect.

19. Construction or License and Terms

This License 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.

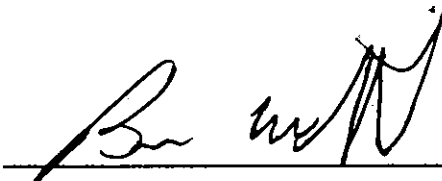
20. Third Parties

The parties hereto do not intend to benefit any third parties and this License shall not be construed to confer any such benefit.

21. Entire License

This License, which may be executed in three (3) of counterparts, each of which shall be deemed an original, constitutes the entire License and understanding between the parties, and supersedes all prior Licenses and understandings relating hereto.


IN WITNESS WHEREOF, the parties hereto have hereunto caused their names to be set and their seals to be affixed as of the day and year first above written.



Bruce White


STATE OF NEW HAMPSHIRE
COUNTY OF Cheshire

I, hereby certify that Bruce White personally appeared before me on this 17 day of September, 2018 and acknowledged the foregoing agricultural license agreement.



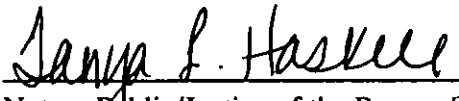
Notary Public/Justice of the Peace [seal]
My Commission Expires: 5/16/2023

The STATE OF NEW HAMPSHIRE, acting through its Fish and Game Department:


Glenn Normandeau, Executive Director

STATE OF NEW HAMPSHIRE
COUNTY OF Merriamack


Personally appeared before me on this 9th day of October 9 2018,
Glenn Normandeau, who acknowledges himself to be the Executive Director for the New
Hampshire Fish and Game Department, and as such is duly authorized to executed the foregoing
instrument for the purposes therein contained, by signing his name on behalf of the State of New
Hampshire.


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

TANYA L. HASKELL, Notary Public
My Commission Expires November 4, 2020

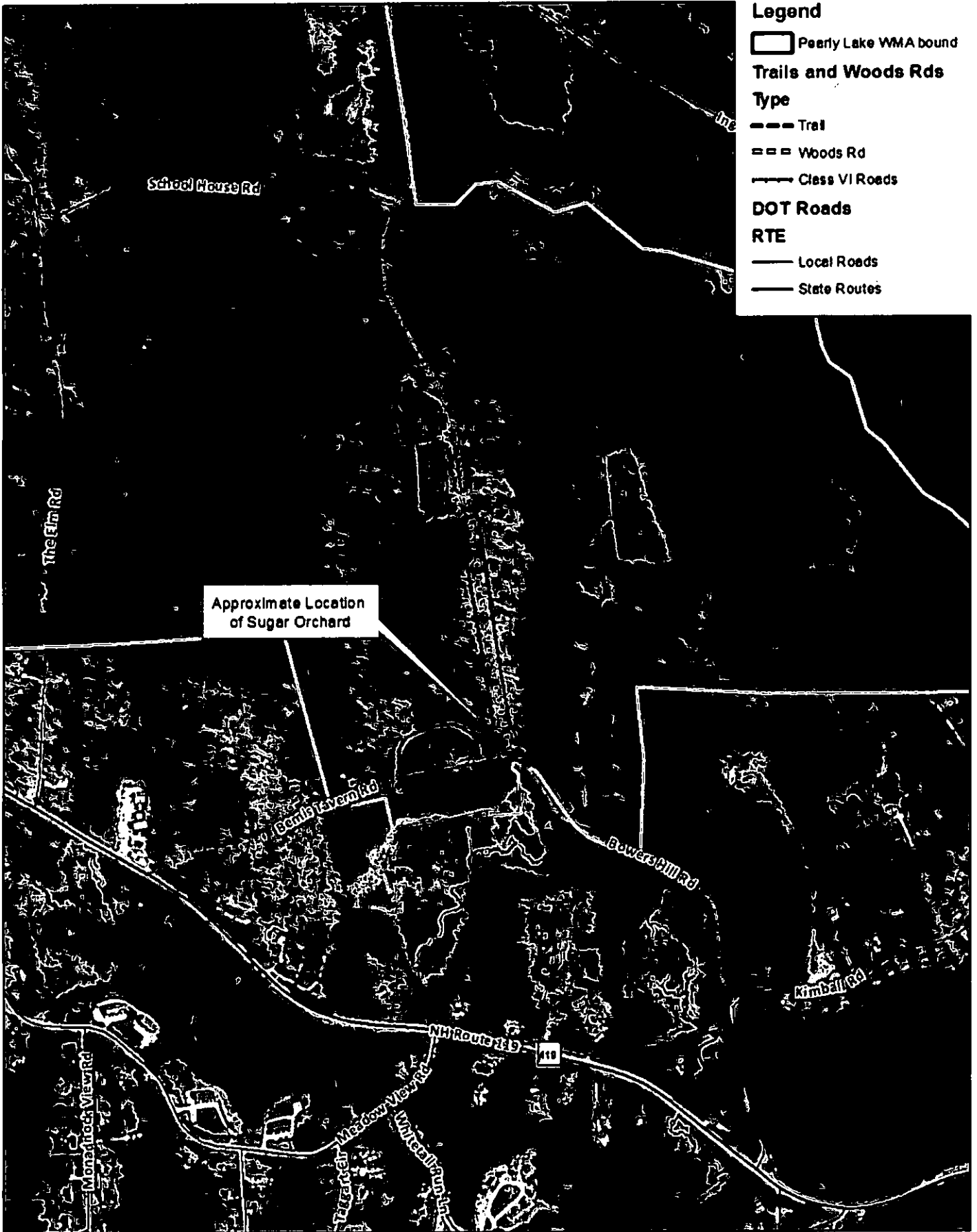
APPROVALS:

Approved by the Department of Justice as to form, substance, and execution on this 16 day of
October, 2018;


Assistant Attorney General

Approved by the Governor and Executive Council: date: _____ #: _____

The date of approval by the Governor and Executive Council shall constitute the
Commencement Date of this Agricultural Use License.



Approximate Location of the Sugar Orchard
on the Pearly Lake WMA, Rindge



