



New Hampshire Fish and Game Department

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Glenn Normandeau
Executive Director

January 4, 2013

Her Excellency, Governor Margaret Wood Hassan
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 (NHFGD) to enter into a sugar bush operations agreement with John D. Kelly for the management of a 4-acre sugar bush on the Lower Shaker Wildlife Management Area in the town of Enfield effective upon Governor and Council approval through December 31, 2017. No funding is involved.

Explanation

The New Hampshire Fish and Game Department owns a 1,000-acre parcel in Enfield containing a 4-acre sugar bush that has been operated by Mr. Kelly since before state acquisition in the early 1990s. The Department is willing to allow Mr. Kelly to continue his operation of the sugar bush, under certain conditions, as outlined in the attached agreement.

Respectfully submitted,

Glenn Normandeau
Executive Director

Kathy Ann LaBonte
Chief, Business Division

Lower Shaker
Wildlife Management Area
SUGAR BUSH OPERATIONS AGREEMENT

This agreement made this ___ day of ___, 2012 by and between the State of New Hampshire, Fish and Game Department (hereinafter referred to as the "DEPARTMENT"), acting by and through its Executive Director, 11 Hazen Drive, Concord New Hampshire 03301 and John Kelly, 668 Shaker Hill Rd, Enfield, NH, (hereinafter referred to as the "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 owns certain property known as the Lower Shaker Wildlife Management Area in the town of Enfield; and

WHEREAS, the DEPARTMENT wishes to allow Mr. Kelly to operate the sugar bush on the Lower Shaker Tract, which he has been doing sine 1985, even prior to state ownership; and

WHEREAS, Mr. Kelly has the knowledge, skills and equipment necessary to effectively operate the sugar bush; and

NOW THEREFORE, in consideration of the mutual covenants stated herein the parties agree as follows:

1. Grant of Authority to PERMITTEE

The DEPARTMENT grants authority to the PERMITTEE 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. Special Conditions

- a. All taps, drop lines, lateral lines and collection equipment shall be cleaned and removed from the property by June 1st of the tapping season OR all taps must be removed from trees and the PERMITTEE must provide the DEPARTMENT with a \$3,000 surety bond made out to the NH Fish & Game Department.
- b. "Health spiles" are required.
- c. Diameter breast height (dbh) tapping schedule shall be as follows:
 - i) 10" to 20" stems: one (1) tap only (no tree under 10" dbh shall be tapped)
 - ii) 20" to 25" stems: two (2) taps only
 - iii) > 25": three (3) taps only (no tree shall receive more than three (3) taps)
- d. Space tap holes so that new holes are six inches horizontally, and 2 feet vertically from old tapholes.

- e. 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.
- f. 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 or wire attached directly to the tree shall be allowed. All tubing clippings and other installation waste shall be removed from the site.
- g. Vacuum systems shall not exceed 15 inches of mercury at the tap hole.
- h. Sanitizers, such as paraformaldehyde, shall not be allowed.
- i. The processing of maple products shall not be allowed on the permitted property.
- j. 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.
- k. Motorized vehicles may not be used in the collection of maple sap.
- l. No later than June 1st of each sugaring season, the PERMITTEE shall submit a report of the total number of taps installed and the amount of maple syrup produced.
- m. The PERMITTEE and all persons using these premises with the consent of the PERMITTEE shall comply with all laws and regulations of the State of New Hampshire governing Wildlife Management Areas.
- n. 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.

3. Period of Use

- a. This agreement shall become effective upon the date of approval by Governor and Executive Council and shall terminate on December 31, 2017.
- b. This agreement may be renewed upon Department approval. The renewal shall be determined solely by the DEPARTMENT.
- c. The PERMITTEE may terminate this agreement with 30 days notice to the DEPARTMENT. The DEPARTMENT, at the end of a sugaring season of any given year, may terminate this agreement with 30 days written notification before the end of the given calendar year.
- d. This agreement shall automatically terminate if the PERMITTEE does not operate the sugar bush for two consecutive years.

4. Public Use

The lands under agreement 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 agreement. The PERMITTEE shall not prohibit or regulate recreational activities including hiking, hunting, trapping and fishing. No signs or gates shall be erected without the express 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 agreement.

5. Liability and Safety

- a. The PERMITTEE shall indemnify the DEPARTMENT and hold the DEPARTMENT harmless from and against any and all 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 PERMITTEE shall obtain and maintain in effect during the term of this agreement 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.
- c. The policy described above shall be standard form employed by the State of New Hampshire (the State), issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.
- d. The DEPARTMENT shall not be liable or responsible in any way for any fire damage caused as a result of activities by the PERMITTEE hereby permitted.
- e. The DEPARTMENT will not be responsible for destruction of equipment or machinery resulting from any cause.

6. Inspection of Premises

The PERMITTEE agrees that the DEPARTMENT or its duly authorized agent, at any time, may examine and inspect any and all property included in this agreement.

7. Non-conformance Termination

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 agreement.

8. Transferability

This agreement is not transferable.

9. Compliance by PERMITTEE with the Laws and Regulations: Equal Employment Opportunity

In connection with the performance of services the PERMITTEE shall comply with all statutes, 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.

During the term of this Agreement, 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.

If this agreement 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 Agreement.

10. Personnel

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.

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.

The Department, or its successor, shall be the State's representative. In event of any dispute concerning the interpretation of this Agreement, the Department's decision shall be final.

11. PERMITTEE's Relations with the State

In the performance of this agreement 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.

12. Assignment, Delegation and Subcontracts

The PERMITTEE shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the services shall be delegated or subcontracted by the PERMITTEE without prior written consent of the State.

13. 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.

14. 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.

15. Amendment

This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

16. Construction of Agreement and Terms

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. Third Parties

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

18. Entire Agreement

This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supercedes all prior agreements 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.

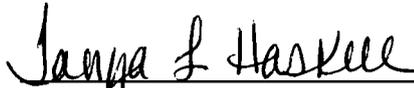
(Executed in duplicate)

The State of New Hampshire, acting through its Fish and Game Department on this day 7 of Jan, 2012. 3TH


Glenn Normandeau, Executive Director

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

Personally appeared before me on this 7th day of January, 2012, 3TH 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: JANUARY L. HASKELL, Notary Public
My Commission Expires October 6, 2015


PERMITTEE

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

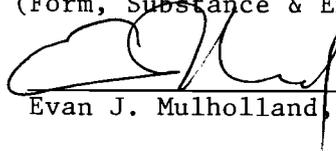
I, hereby certify that [name(s)] personally appeared before me on this 11th day of December, 2012 and acknowledged the foregoing Agricultural Agreement.


Notary Public/Justice of the Peace [seal]
My Commission Expires: 8/24/16

DANIELLE M. PUSHEE
Notary Public - New Hampshire
My Commission Expires August 24, 2016

Approval by the Attorney General (Form, Substance & Execution).

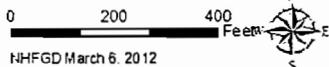
Date: 1/9/13


Evan J. Mulholland, Assistant Attorney General

LOWER SHAKER TRACT - Sugarbush Area



Digital data in NH GRANIT represent the efforts of the contributing agencies to record information from the cited source materials. Complex Systems Research Center (CSRC), under contract to the Office of Energy & Planning (NH OEP) and in consultation with cooperating agencies maintains a continuing program to identify and correct errors in these data. NH OEP, CSRC, NHFGD and the cooperating agencies make no claim as to the validity or reliability or to any implied uses of these data.



NHFGD March 6, 2012

Legend

- Routes
- Roads
- ▭ WMA Boundary

Background 2010 orthophoto provided by NH GRANIT.

Figure 1. Map of area to be tapped for maple sap collection on the Lower Shaker Wildlife Management Area, Enfield, NH.

