



STATE OF NEW HAMPSHIRE  
 DEPARTMENT of NATURAL and CULTURAL RESOURCES  
 DIVISION of FORESTS and LANDS

172 PEMBROKE ROAD CONCORD, NEW HAMPSHIRE 03301  
 PHONE: (603) 271-2214 FAX: (603) 271-6488 WWW.NHDFL.ORG

DR  
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March 27, 2019

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

**REQUESTED ACTION**

Authorize the Department of Natural and Cultural Resources, Division of Forests and Lands to enter into a Memorandum of Agreement (MOA) with the Department of Corrections (DOC) to oversee the harvest of timber from the DOC State Prison land in Berlin, NH upon Governor and Executive Council approval, expiring with the conclusion and final close out of the timber sale. **No State Funds Required.**

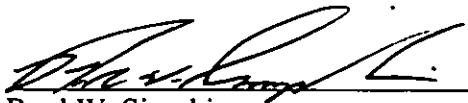
**EXPLANATION**

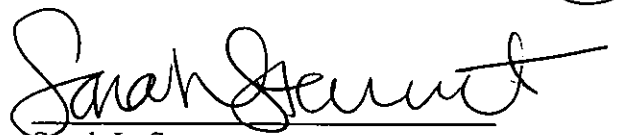
The DOC has jurisdiction of approximately 114 acres of woodland in the town of Berlin. At the request of DOC the Division of Forests and Lands will prepare the area for a timber sale to remove forested cover from within 250 feet of the prison fence to eliminate the passage of contraband. The timber sale will generate approximately \$1,000.00 in revenue for the State, which will help off-set some of the Division of Forests and Lands costs to prepare and administer this project.

The Attorney General's Office has approved this MOA as to form, substance and execution.

Respectfully submitted,

Concurred,

  
 Brad W. Simpkins  
 Director

  
 Sarah L. Stewart  
 Commissioner

**Memorandum of Understanding**  
**Between**  
**STATE OF NEW HAMPSHIRE, DEPARTMENT OF NATURAL AND CULTURAL RESOURCES**  
**and**  
**STATE OF NEW HAMPSHIRE, DEPARTMENT OF CORRECTIONS**  
**for**  
**Forest Management Activities at the Berlin State Prison**

This Memorandum of Understanding is entered into this 7th day of March, 2019 between the **New Hampshire Department of Natural and Cultural Resources (DNCR)** with a principle mailing address of 172 Pembroke Road, Concord, NH 03301 and the **New Hampshire Department of Corrections (DOC)** with a principle mailing address of P.O. Box 1806, Concord, NH 03302-1806 for purpose of conducting a timber harvest to clear DOC State Prison land in the city of Berlin in a cost effective manner. DNCR has the authority to conduct the timber sale under RSA 227-G:3 "Duties and Authority of the Director of the Division of Forests and Lands".

**Whereas**, the New Hampshire Department of Corrections owns approximately 114 acres at the State Prison located in Berlin, New Hampshire, much of which is woodlands that are currently providing cover that allows contraband to be thrown over the prison fence to inmates from individuals outside the prison system, and;

**Whereas**, the New Hampshire Department of Corrections wishes to remove this forested cover from within 250 feet of the prison fence to eliminate this passage of contraband, and;

**Whereas**, The New Hampshire Department of Natural and Cultural Resources employs a professional forestry staff experienced in the management of forest resources,

**Now Therefore**, DOC and DNCR agree as follows:

- ❖ **Establishment of Boundaries** - It is imperative that all timber harvested be from the State land mentioned above and that no trespass occur to abutters to the property. DOC agrees to be responsible for locating all property corners and property lines between corners.
- ❖ **Due Diligence** - Prior to timber sale planning DOC will provide DNCR with any and all regulatory requirements or issues specific to the fact that the land is owned by DOC, including but not limited to any Federal requirements for the property such as the National Environmental Policy Act (NEPA) requirements, restrictions to the use of the land, easements, encumbrances, rights of ownership, requirements for the handling of any income from the property, and impediments to the sale of timber from the property. *DOC represents that it has the right to sell the timber free and clear of any other owners.*
- ❖ **Timber Sale Planning** - DNCR agrees to seek and incorporate review of the project proposal by the State Lands Management Team and prepare a Forest Operation Planning Report that addresses environmental, financial, cultural and other related issues, and then prescribes forest management treatments appropriate for the site and conditions. DNCR will

then present the Forest Operation Planning Report to DNCR for their consideration and approval prior to further work on site. Once approval is obtained from DOC, DNCR will then conduct a public notification process contacting Potentially Affected Interests<sup>1</sup> (PAIs) soliciting public comment as prescribed in DNCR's timber sale manual. Any public comment received will be considered and plans adjusted as appropriate. If plans are adjusted, DOC will be asked to review and approve the changes prior to any further work on the site.

- ❖ **Timber Sale Preparation** - Once the timber sale planning as described above is completed, DNCR will determine, mark, scale and tally the trees to be harvested. DOC will be given a two (2) week period to review the timber marking and make comment to DNCR. If DOC does not approve the marking, DOC and DNCR will discuss changes to be made. Once approval is granted, DNCR will prepare and distribute to potential buyers a timber sale notice and prospectus, conduct a timber sale showing and sealed bid process for the timber to be sold, prepare and process a contract with the successful bidder to be signed by the buyer, DNCR and DOC. The purchaser shall be required to post with DNCR a \$5,000.00 certified check to be used as a performance bond in the event that the purchaser or the purchaser's agent causes any unacceptable damage to the site and does not make the needed repairs within a reasonable time. The Purchaser shall pay for ½ of the timber prior to the start of harvesting operations. When ¾ of the value of the first payment has been harvested the purchaser shall pay for the second half of the timber. The purchaser will pay for any overrun on a weekly basis. The purchaser will be a contractor and not an employee of the State of New Hampshire.
- ❖ **Timber Sale Supervision and Administration** - DNCR will supervise and administer the timber sale as an agent of the landowner. DNCR's supervisory responsibilities will be for adherence to the contract stipulations by the purchaser and not the direct supervision of logging crews. During the harvest DOC will direct any concerns about the harvest to DNCR and not to the purchaser. DNCR will collect and process all stumpage<sup>2</sup> payments and conduct any needed administrative close outs. At the conclusion of the harvest DNCR will notify DOC and provide a two (2) week window for DOC to inspect the harvest area. If DOC identifies any infraction of the contract they will notify DNCR immediately. DNCR will contact the purchaser and require the issues to be corrected prior to closing out the contract and returning the performance bond. DNCR will be responsible for the resolution of all conflicts with the contractor. Conflicts with the contractor, if significant, will be evaluated by DNCR and DOC.
- ❖ **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.
- ❖ **Distribution of Proceeds** - DNCR agrees to conduct the tasks described above for exactly the revenue received from the timber removed from the site as allowed by the contract.

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<sup>1</sup> PAIs include the Town Selectmen or City Mayor, Town or City Manager, Conservation Commission, abutters and any organized users of the property. A public notice is also posted in 2 newspapers – generally one regional or statewide newspaper and one local newspaper.

<sup>2</sup> Stumpage is the volume or value of standing (uncut) timber prior to harvest.


- ❖ Additional Services - Any additional work required to maintain the cleared area in a non-forested state (i.e. stumping, planting grass seed, mowing, etc.) shall be considered service work beyond the scope of this MOA. Such service work may require a contract or rental agreement with an outside source and shall be the sole responsibility of DOC and at DOC's expense.
- ❖ Conflict Resolution - The resolution of disputes or disagreements which may arise between DOC and DNCR will be handled in the following fashion:
  1. Negotiations will be held at the Bureau Administrator level between DOC and DNCR. Both agencies will exhaust all practical means of conflict resolution at this level before involving higher-level state officials.
  2. If conflicts can not be settled at the Administrator level, it will be raised to the Division Director level where every effort will be made to resolve the conflict. If in the event the conflict is still not resolved, the matter will be settled by the Commissioners of DNCR and DOC.
  3. If conflicts cannot be settled between the two agencies at the commissioner level, the matter will be referred by both agencies to the Department of Justice for final resolution.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed in duplicate by their duly authorized representatives on the dates indicated below.

**State of New Hampshire**  
**Department of Natural and Cultural Resources**

  
 \_\_\_\_\_  
 Brad W. Simpkins, Director  
 Division of Forests and Lands

3/13/19  
 Date

  
 \_\_\_\_\_  
 Sarah L. Stewart, Commissioner

3/14/19  
 Date

**State of New Hampshire**  
**Department of Corrections**

  
 \_\_\_\_\_  
 Helen Hanks, Commissioner

3/7/2019  
 Date

## Perry, Rhonda

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**From:** Guinn, William  
**Sent:** Friday, March 22, 2019 8:27 AM  
**To:** Perry, Rhonda  
**Subject:** FW: Berlin Prison MOA

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**From:** Simpkins, Brad <Brad.Simpkins@dn-cr.nh.gov>  
**Sent:** Friday, March 22, 2019 8:21 AM  
**To:** Perlow, Jill <Jill.Perlow@doj.nh.gov>  
**Cc:** Guinn, William <William.Guinn@dn-cr.nh.gov>  
**Subject:** Re: Berlin Prison MOA

Excellent; thanks Jill!

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On: 22 March 2019 08:17,  
"Perlow, Jill" <Jill.Perlow@doj.nh.gov> wrote:

Brad,

I reviewed - and this looks good to me.

Thanks,  
Jill

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**From:** Simpkins, Brad <Brad.Simpkins@dn-cr.nh.gov>  
**Sent:** Friday, March 15, 2019 12:36:40 PM  
**To:** Perlow, Jill  
**Cc:** Guinn, William  
**Subject:** FW: Berlin Prison MOA

Hi Jill,

The Department of Corrections has asked us to help them with a timber sale at their Berlin Prison site, primarily due to contraband being thrown over the fence from the surrounding forest. Attached is a draft MOU we want to enter into with them that would be approved at G&C. We have done this a few times in the past for DOT, so the template has been reviewed by DOJ in the past. We just wanted to make sure you saw it before we move it forward. If you can please let us know if you have any questions/comments that would be great.

Thanks,  
Brad

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**From:** Guinn, William <William.Guinn@dn-cr.nh.gov>  
**Sent:** Friday, March 15, 2019 12:23 PM  
**To:** Simpkins, Brad <Brad.Simpkins@dn-cr.nh.gov>

Cc: Perry, Rhonda <[Rhonda.Perry@dncr.nh.gov](mailto:Rhonda.Perry@dncr.nh.gov)>

Subject: Berlin Prison MOA

Hi Brad,

Can you please ask the AG's office to review the attached MOA with DOC for the Berlin Prison timber harvest so we may submit it to G&C for approval? I have also attached an example MOA with DOT that was reviewed by the AG's office and approved by G&C in the recent past.

Thank you.

-Will

**William T. Guinn, Administrator**  
Forest Management Bureau  
NH Division of Forests and Lands  
172 Pembroke Road  
Concord, NH 03301  
(603) 271-2645  
[www.nhdf.org](http://www.nhdf.org)

Please note new phone number.