

39
mac



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
DIVISION OF FORESTS AND LANDS
172 Pembroke Road, Concord, New Hampshire 03301

603-271-2214
FAX: 603-271-6488
www.nhdfl.org

March 2, 2016

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

REQUESTED ACTION

Authorize the Department of Resources and Economic Development, Division of Forests and Lands to enter into a Memorandum of Agreement (MOA) with the Department of Transportation (DOT) to oversee the harvest of timber from the Clark and Oxford Lots upon Governor and Executive Council Approval, expiring with the conclusion and final close out of the timber sale.

EXPLANATION

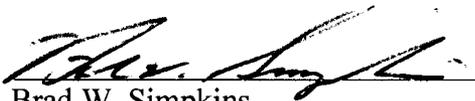
The DOT has jurisdiction of approximately 76 acres of woodland in the town of Barnstead. At the request of DOT the Division of Forests and Lands will prepare the area for a timber sale to harvest low quality timber, high risk trees. The timber sale will generate revenue for the State. The Division of Forests and Lands will track its costs to prepare and oversee this timber sale and charge DOT to cover those costs which will be taken from the timber sale revenue.

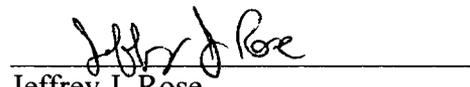
The Attorney General's Office has approved this MOA as to form, substance and execution (see e-mail from Brian Buonomano, Assistant Attorney General).

Respectfully submitted,

Concurred,

(9)


Brad W. Simpkins
Director


Jeffrey J. Rose
Commissioner



Memorandum of Understanding
Between
STATE OF NEW HAMPSHIRE, DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
and
STATE OF NEW HAMPSHIRE, DEPARTMENT OF TRANSPORTATION
for
Forest Management Activities at the Clark and Oxford Lots, Barnstead, NH

This Memorandum of Understanding is entered into this 14th day of March, 2016 between the **New Hampshire Department of Resources and Economic Development** (DRED) with a principle mailing address of 172 Pembroke Road, Concord, NH 03301 and the **New Hampshire Department of Transportation** (DOT) with a principle mailing address of P.O. Box 483, Concord, NH 03302-0483 for purpose of conducting a timber harvest on DOT property in the town of Barnstead that will provide maintenance and stewardship for the property in a cost effective manner and revenue to offset the cost of ownership of the land. DRED 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 Transportation has approximately 76 acres of manageable woodland at the Clark and Oxford Lots located in Barnstead, New Hampshire that would benefit from forest management activities, and;

Whereas, the forest resources growing at the Clark and Oxford Lots are valuable resources in respect to monetary, aesthetic and ecological value. Some of the trees are infested with red pine scale and harvesting the trees will help slow the spread of this problem in the state, and

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

Now Therefore, DOT and DRED 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. DOT agrees to be responsible for locating all property corners and property lines between corners.
- ❖ **Due Diligence** – Prior to timber sale planning DOT will provide DRED with any and all regulatory requirements or issues specific to the fact that the land is owned by DOT, 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. DOT represents that it has the right to sell the timber free and clear of any other owners.
- ❖ **Timber Sale Planning** - DRED 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. DRED will then present the Forest Operation Planning Report to DOT for their consideration and approval prior to further work on site. Once approval is obtained from DOT, DRED will then conduct a public notification process contacting Potentially Affected Interests¹ (PAIs) soliciting public comment as prescribed in DRED's timber sale manual. Any public comment received will be considered and plans adjusted as appropriate. If plans are adjusted, DOT 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, DRED will determine, mark, scale and tally the trees to be harvested. DOT will be given a 2 week period to review the timber marking and make comment to DRED. If DOT does not approve the marking, DOT and DRED will discuss changes to be made. Once approval is granted, DRED 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, DRED and DOT. The buyer will be required to post with DRED a \$5,000 certified check to be used as a performance deposit in the event that the buyer causes any unacceptable damage to the site and does not make the needed repairs within a reasonable time. The buyer will 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 buyer will pay for the second half of the timber. The buyer will pay for any overrun on a weekly basis. The buyer will be a contractor and not an employee of the State of New Hampshire.
- ❖ Timber Sale Supervision and Administration – DRED will supervise and administer the timber sale as an agent of the landowner. DRED's supervisory responsibilities will be for adherence to the contract stipulations by the buyer and not the direct supervision of logging crews. During the harvest DOT will direct any concerns about the harvest to DRED and not to the buyer. DRED will collect and process all stumpage² payments and conduct any needed administrative close outs. At the conclusion of the harvest DRED will notify DOT and provide a 2 week window for DOT to inspect the harvest area. If DOT identifies any infraction of the contract they will notify DRED immediately. DRED will contact the buyer and require the issues to be corrected prior to closing out the contract and returning the performance deposit. DRED will be responsible for the resolution of all conflicts with the contractor. Conflicts with the contractor, if significant, will be evaluated by DRED and DOT.
- ❖ 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 - DRED agrees to conduct the tasks described above for exactly the cost of expenses. At the conclusion of the timber sale DRED will prepare an itemized

¹ 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.

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

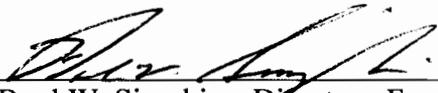
statement of expenses for DOT's review. Once DOT approves the expenses DRED will transfer the timber sale revenues minus the approved expenses, to an account determined by DOT.

❖ Conflict Resolution – The resolution of disputes or disagreements which may arise between DOT and DRED will be handled in the following fashion:

1. Negotiations will be held at the Bureau Administrator level between DOT and DRED. 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 DRED and DOT.
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 Resources and Economic Development**



Brad W. Simpkins, Director - Forests and Lands

3/2/16

Date

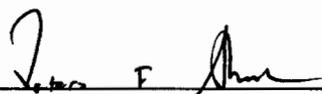


Jeffrey J. Rose, Commissioner

3/4/16

Date

**State of New Hampshire
Department of Transportation**



Victoria F. Sheehan, Commissioner

3/14/16

Date

Desmarais, Kenneth

From: Buonamano, Brian W <Brian.Buonamano@doj.nh.gov>
Sent: Tuesday, December 08, 2015 8:54 AM
To: Desmarais, Kenneth
Subject: RE: MOA with NHDOT

No apology required! This agreement looks good to go. Good luck!

From: Desmarais, Kenneth [<mailto:Kenneth.Desmarais@dred.nh.gov>]
Sent: Tuesday, December 08, 2015 8:51 AM
To: Buonamano, Brian W
Subject: RE: MOA with NHDOT

Thanks Brian, sorry for the omission! Please see attached.

Kenneth M. Desmarais, Administrator
Forest Management Bureau
NH Division of Forests and Lands
172 Pembroke Road
Concord, NH 03301
Tel 603-271-2215 x 317

From: Buonamano, Brian W [<mailto:Brian.Buonamano@doj.nh.gov>]
Sent: Tuesday, December 08, 2015 8:41 AM
To: Desmarais, Kenneth
Subject: RE: MOA with NHDOT

Hi Ken—

I see the G&C letter, but not the MOU.

Brian

From: Desmarais, Kenneth [<mailto:Kenneth.Desmarais@dred.nh.gov>]
Sent: Tuesday, December 08, 2015 8:37 AM
To: Buonamano, Brian W
Subject: MOA with NHDOT

Hi Brian,

Forests and Lands is entering a MOU with the NHDOT to harvest some timber from DOT lands. The MOU was reviewed once by the AG's office (David Hilts) but the MOU language had a minor change. The change is that instead of splitting the timber sale revenue 50/50, the Division of Forests and Lands will charge them for expenses. I have attached the MOU to this e-mail and would appreciate if you could review it before we proceed to G&C with it to be memorialized.

If you could get to this by the end of the week that would be great.

Thanks,
Ken