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New Hampshire Fish and Game Department

HEADQUARTERS: 11 Hazen Drive, Concord, NH 03301-6500
(603) 271-3421
FAX (603) 271-5829

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

June 5, 2015

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 wildlife habitat management agreement with Keith McMann and Scott Mason for the management of 150 acres of agricultural land on the Fort Hill Wildlife Management Area in Stratford, NH, effective upon Governor and Council approval through December 31, 2025. No funding involved

EXPLANATION

The New Hampshire Fish and Game Department owns 424 acres in Stratford containing 150 acres of agricultural fields. The wildlife management goals for these lands include maintaining certain agricultural crops for waterfowl, turkeys, grassland birds and other wildlife species. To achieve these goals, the Department proposes to allow Keith McMann and Scott Mason to annually harvest hay, corn and other crops from the date of this approval through December 31, 2025. In return, Keith McMann and Scott Mason agree to pay the Department an annual fee of \$1,500, maintain seven acres of special habitat areas and leave four rows of the grain crop unharvested for use by migrating waterfowl and other wildlife as specified in the wildlife habitat management agreement.

Respectfully submitted,

Glenn Normandeau
Executive Director

STATE OF NEW HAMPSHIRE

Inter-Department Memo

DATE May 13, 2015

FROM: Richard Cook

RC ME 6/5/15

TO: Chris Aslin
Assistant Attorney General

Attached is Wildlife Habitat Management Agreement for the agricultural lands on the Fort Hill Wildlife Management Area in Stratford. I have treated this as a contract that will require your signature on the contract checklist. The agreement is with two private citizens, Keith McMann and Scott Mason therefore the G&C packet does not contain a certificate of good standing or a certificate of vote.

If you have any questions or concerns please give me a call.

Chris,

*I would like to make 6/10 deadline
if possible. Thanks, Rich*

Fort Hill Wildlife Management Area
WILDLIFE HABITAT MANAGEMENT AGREEMENT

This agreement made this ___ day of _____, 2015 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 and Keith Mcmann whose address is 523 Trucott Road, Derby Line, VT, 05830 and Scott Mason whose address is 806 US Route 3, N Stratford, NH, 03596, as agent for Keith Mcmann hereinafter referred to as the "FARMERS".

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 Fort Hill Wildlife Management Area in the town of Stratford (the "Property"); and

WHEREAS, the wildlife management objectives for the property include maintaining a grain crop primarily for migrating waterfowl, but also white-tailed deer, turkey, and other wildlife; and

WHEREAS, Keith Mcmann has the legal right of first option to enter into an Agricultural Management Agreement with the DEPARTMENT and has opted to have Scott Mason act as his agent to do so, with the DEPARTMENT'S consent.

WHEREAS, Scott Mason has the knowledge, skills and equipment necessary to effectively harvest and maintain a grain crop;

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

1. Grant of Authority to FARMERS
 - a. The DEPARTMENT hereby allows the FARMERS to enter the premises for the purpose of utilizing approximately 150 acres of field land as shown on Exhibit A ("Farmed Ground") for planting and harvesting a forage or grain crop (e.g., corn, millet, rye, etc.) each year from the date of this agreement through December 31, 2025.
 - b. Pasturing livestock on the portion of the Property west of the St Lawrence and Atlantic Railroad line requires review and approval of the DEPARTMENT. If such approval is granted, an amendment to this

agreement may be required.

- c. Ash from DES-certified sources may be used to amend soils on the Farmed Ground. Ash applications must comply with all applicable laws and administrative rules including Env-Sw 1700 REQUIREMENTS FOR LAND APPLICATION OF WOOD ASH. The use of biosolids or similar materials is expressly prohibited.
- d. Pesticides may be used on the Farmed Ground as agreed to by all parties. Applications must comply with all applicable state and federal laws. The use of atrazine based pesticides on the Farmed Ground is expressly prohibited.
- e. Stockpiling of manure on the Farmed Ground will be allowed after fall harvest. Stockpiling may occur in areas with ground slopes < 10% and > 100 feet from surface water wetlands or specially marked areas.

2. Compensation

- a. The FARMERS agree to pay the DEPARTMENT an annual fee of \$1,500.
- b. Scott Mason agrees to provide to the DEPARTMENT access to and authority to construct a three (3) car parking area and to install a WMA sign and information kiosk on his land easterly of the most northerly railroad crossing access to the WMA as shown on Exhibit B. Mason also agrees to allow public vehicular access to the parking area and pedestrian traffic from the parking area to the railroad crossing.
- c. If the parking area described in 2b above does not meet the needs of the DEPARTMENT, the parties agree to relocate the parking area to an area owned by Scott Mason adjacent to Route 3 as shown on Exhibit B.
- d. During the term of this Agreement, the DEPARTMENT agrees to continue to allow Scott Mason the use of its 1.25 acre lot located at the rear of his barns as shown on the map attached as Exhibit B.
- e. The DEPARTMENT agrees to relinquish use of its right-of-way across Mason's pastures as shown on Exhibit B.
- f. The FARMERS agree to maintain 7 acres of special habitat areas shown on Exhibit A via mowing every 2-3 years. Mowing of special habitat areas shall be completed between August 1 and October 1.
- g. The FARMERS also agree to leave four rows of grain crops un-harvested for use by migrating waterfowl, turkeys and other wildlife in each of the fields planted for grain. The rows must be fully matured stalks with viable ears and should be left standing.
- h. Given that the primary purpose of Wildlife Management Areas is to provide habitat for wildlife, neither the DEPARTMENT nor its partnering agencies will compensate or issue depredation permits to the FARMER for damage caused by wildlife to crops grown under this Agreement.

3. Special Conditions

- a. The FARMERS will contact the Department Representative each year to discuss wildlife habitat management issues and plans for the season. A meeting may be held at the Property or via telephone at the discretion of the Department Representative.
- b. A "protective" vegetated buffer (sumac, brush, etc.) of at least 50 feet shall be left between any planted area of the Farmed Ground and surface-water wetlands or specially marked areas, unless otherwise designated by the Department Representative.

- c. The FARMERS may prune or cut trees encroaching into the Farmed Ground as agreed upon by the Department Representative.
- d. The FARMERS will utilize a flushing bar or similar device on mowing equipment used to harvest hay on the Farmed Ground to reduce direct mortalities of ground nesting birds and other wildlife. The flushing bar will be provided by the Department.
- e. There shall be no dumping or burial of any materials or use of any material on the Property, which is prohibited by state, or federal laws, which is ecologically hazardous, or which is in any way detrimental to the surface or groundwater.
- f. The FARMERS may amend field soils on the Farmed Ground with a fertilizer/lime combination, manure, DES-certified ash, or other suitable substitute per the recommendations of the University of New Hampshire Cooperative Extension and with approval by the DEPARTMENT.
- g. The FARMERS shall regularly check areas within the Farmed Ground prone to soil erosion within the designated areas or along access to them and stabilize those areas immediately.
- h. The FARMERS shall keep gates installed by the DEPARTMENT closed at all times, except during periods of planting, harvesting and other times of intense use.

4. Period of Use

This agreement shall become effective upon the date of approval by Governor and Executive Council and shall terminate on December 31, 2025. This Agreement may be renewed upon satisfactory performance of the conditions contained herein by the FARMERS. Satisfactory performance and the agreement extension shall be determined by the DEPARTMENT by February 28, 2025. All parties agree to work collaboratively to review the terms of the agreement extension and ensure approval by Governor and the Executive Council (G&C) by April 30, 2025. If the agreement extension is not approved by G&C by that time, planting cannot occur on the Farmed Ground until such time as it is approved by G&C. If the Department determines that the FARMERS have not performed the conditions, it shall provide FARMERS written notice specifying the failure of performance and FARMERS shall have a reasonable opportunity to cure, if possible. The FARMERS may terminate this agreement with 30 days notice to the DEPARTMENT. If the DEPARTMENT, at the end of a cropping season of any given year, determines that FARMERS have failed to perform their obligations under this Agreement, the Department shall give FARMERS written notice of such failure, providing a reasonable opportunity to cure, if possible. If the FARMERS cannot or do not cure such failure, the Department may terminate this agreement with 30 days written notification before the end of the given calendar year.

If either Keith Mcmann or Scott Mason shall be unable to continue to perform under this Agreement, then the other shall have all of the rights and the obligations of FARMERS for the balance of the term of this Agreement.

5. Taxes

The FARMERS shall pay all properly assessed real or personal property taxes on the Property subject to this Agreement no later than the due date assessed by the town. Failure of the FARMERS to pay the duly assessed personal or property taxes shall be good cause to terminate this agreement. FARMERS shall have the right to seek an abatement of taxes in accordance with law.

6. Public Use

The Property shall remain open to use by the public at all times and shall remain free from dangerous conditions or obstructions created by the FARMERS' activities under this agreement. The FARMERS 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 FARMERS' rights and activities under this Agreement.

7. Liability and Safety

- a. The FARMERS shall indemnify the DEPARTMENT and hold the DEPARTMENT harmless from and against any and all injuries to persons (including the FARMERS 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 FARMERS' acts or omission pursuant to 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 FARMERS 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 FARMERS shall be responsible for 50% of any annual costs incurred for crossing licenses required by the St Lawrence and Atlantic Railroad Company.
- e. The DEPARTMENT shall not be liable or responsible in any way for any fire damage caused as a result of activities by the FARMERS hereby permitted.
- f. The DEPARTMENT will not be responsible for destruction of agricultural crops, equipment, or machinery resulting from any cause.

8. Inspection of Premises

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

9. Non-conformance Termination:

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

10. Transferability

This agreement is not transferable.

11. Compliance by Farmers with the Laws and Regulations: Equal Employment Opportunity

In connection with the performance of services the FARMERS shall comply with all statutes, laws, regulations and orders of federal, state, county or municipal authorities which impose obligations upon the FARMERS, including, but not limited to, civil rights, and equal opportunity laws. In addition, the FARMERS shall comply with all applicable copyright laws.

During the term of this Agreement, the FARMERS 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 FARMERS 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 FARMERS 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.

12. Personnel.

The performance of services shall be carried out by employees of the FARMER. The FARMER shall provide, at its own expense, all personnel necessary to perform the services. The FARMER 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 FARMERS 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.

13. Farmer's Relations with the State

In the performance of this agreement the FARMERS are in all respects independent contractors, and are neither agents nor employees of the State. Neither the FARMERS nor any of their 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.

14. Assignment, Delegation and Subcontracts

The FARMERS 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 FARMER without prior written consent of the State.

15. 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.

16. 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 to the addresses included herein.

17. 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.

18. Construction or 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.

19. 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.

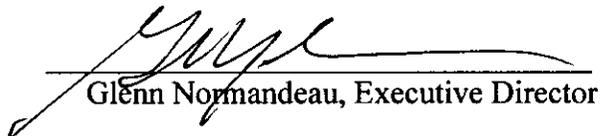
20. Entire Agreement

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 supersedes 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.

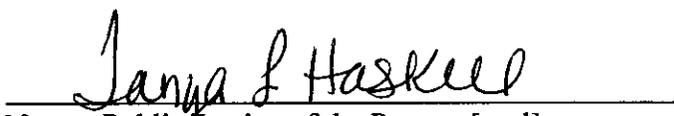
(Executed in triplicate)

The State of New Hampshire, acting by and through its Fish and Game Department on this day 6 of May, 2015.


Glenn Normandeau, Executive Director

STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

Personally appeared before me on this 6th day of May, 2015, 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 October 6, 2015

FARMERS:

Keith McMann

Keith McMann

FLORIDA
STATE OF NEW HAMPSHIRE
COUNTY OF SANTA ROSA

I, hereby certify that Keith McMann personally appeared before me on this 1st day of MAY, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

Debra L. Hawkins



Notary Public/Justice of the Peace [seal]
My Commission Expires: 3/9/2018

Scott R. Mason

Scott Mason, Agent for Keith McMann

STATE OF NEW HAMPSHIRE
COUNTY OF COS

I, hereby certify that Scott Mason personally appeared before me on this 23rd day of April, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

Notary Public/Justice of the Peace [seal]

My Commission Expires: TINA M. HUNT, Notary Public
My Commission Expires February 25, 2020

Tina M. Hunt

Approved by the Governor and Executive Council:

Approval Date: _____ Item #: _____

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

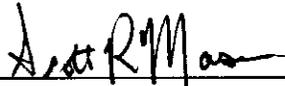
FARMERS:

Keith Mcmann

STATE OF NEW HAMPSHIRE
COUNTY OF _____

I, hereby certify that Keith Mcmann personally appeared before me on this ____ day of _____, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

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

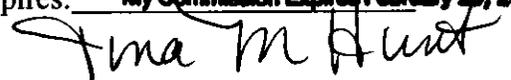


Scott Mason, Agent for Keith Mcmann

STATE OF NEW HAMPSHIRE
COUNTY OF DOOS

I, hereby certify that Scott Mason personally appeared before me on this 23rd day of April, 2015, (known to me or satisfactorily proven) to be the person described in the forgoing instrument and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

Notary Public/Justice of the Peace [seal] **TINA M. HUNT, Notary Public**
My Commission Expires: **My Commission Expires February 25, 2020**



Approved by the Governor and Executive Council:

Approval Date: _____ Item #: _____

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

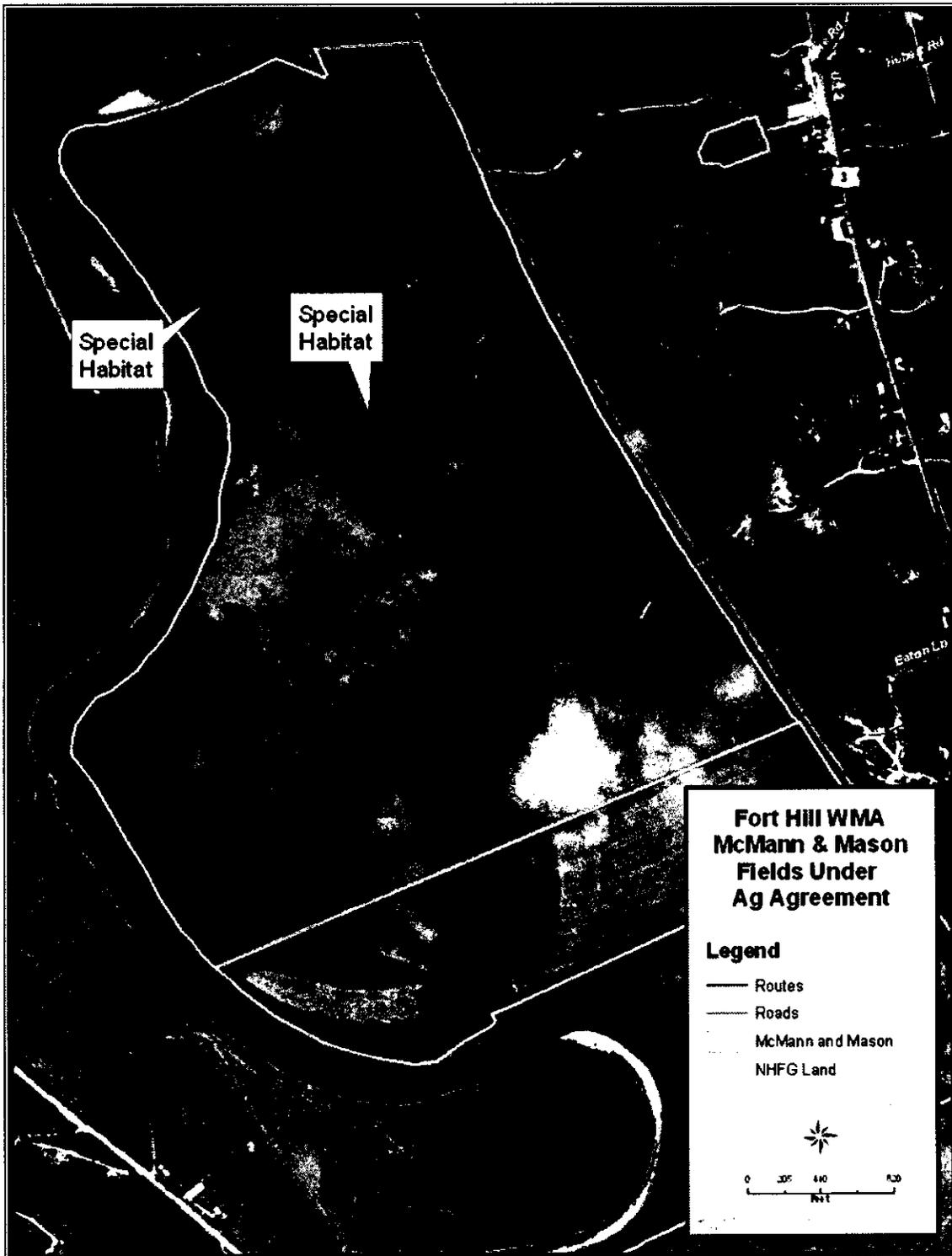


Exhibit A. Map of areas to be farmed by McMann and Mason via farm agreement at the Fort Hill Wildlife Management Area, Stratford, NH.



Exhibit B. Public Access and Parking via farm agreement at the Fort Hill Wildlife Management Area, Stratford, NH.

